



Kane County Commission

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To: Dixie Brunner, SUN Editor

From: Mark Habbeshaw, Commissioner

Re: BLM's intention to close the Paria Canyon Road - part one

BLM employees intend to close the Paria Canyon Road to motorized travel in the near future, allegedly because of pressure from environmental groups. However, the U.S. Supreme Court has ruled the BLM does not have to succumb to such micro-management. It also appears the BLM wants the road closed and would rather litigate with Kane County than work with the County to resolve the roads issue for the "common good" as guided by the Tenth Circuit Court of Appeals in *SUWA v. BLM*.

The Paria Canyon Road would be the first public highway actually closed in Kane County by federal action but it would not be the last. A large number of our historic roads are considered closed in the monument plan. Planning restrictions regarding types of vehicles (OHVs) allowed on roads would also be enforced in short order. People travelling our historic county roads would be subject to federal citations to appear in federal court for violating federal planning provisions.

Environmental groups and federal land managers are on a symbiotic mission to control public highways throughout the West. The local management of highways, founded upon congressionally granted rights-of-way across federally managed lands for the public's benefit, is perceived by federal land managers as interfering with their "control" of public lands. Local public highways also threaten environmental organizations' vision for excessive wilderness in Kane County and across the West. Wilderness, by definition, is roadless. In order to justify more wilderness environmentalists must eliminate the public's rights of motorized access across public lands.

The environmental/federal symbiotic effort to take the public's highways was implemented in 1997 when Department of the Interior (DOI) Secretary Bruce Babbitt directed all Interior agencies to ignore Revised Statute 2477 rights. The monument plan ignored our highway rights in 2000 and claimed federal authority over all roads in the monument. The BLM State Director directed BLM offices to ignore our highway rights in the recently approved resource management plans, which purport to close and restrict additional highways in Kane County.

Heretofore, the public has enjoyed access to all of Kane County's historic roads, open or closed by federal planning, because of the County Commission's efforts to protect the public's right to drive our roads.

Kane County is at the Tenth Circuit level in *Kane County v. Salazar* and *The Wilderness Society v. Kane County* (oral arguments May 6). Kane County has filed Quiet Title on twelve highways. Kane County has taken deposition testimony under a Rule 27(a) Petition, which excluded environmental intervention. Kane County submitted "administrative determinations"

to the BLM over three years ago in an effort to resolve highway jurisdiction regarding several highways. The BLM stonewalled the County by refusing to make any final decisions. The DOI and the BLM have fought the County's every effort to affirm R.S. 2477 jurisdiction over any public highways in Kane County, including "open" roads.

Federal land managers do not recognize any R.S. 2477 rights in the Nation and intend, by administrative fiat, to defeat the public's highway rights. There is no operation of R.S. 2477 rights in the Nation because not one has been adjudicated or administratively accepted.

I was recently informed that in closing the Paria Canyon Road BLM employees are saying that the County should have filed formal R.S. 2477 action two years ago. That position is equally as disingenuous as the BLM's position that the County is somehow obligated to maintain "federal roads." Both of these claims are attempts to shift the responsibility for restricting the public's access across public lands away from federal land managers and to the County. The fact of the matter is, the County did file formal action, along with supporting documentation over one year ago but the BLM ignored the County's submittal.

The U.S. Congress granted R.S. 2477 highway rights in order to facilitate settlement of the West. The highway grants were "established" as rights-of-way across federally managed lands for a period of 110 years. In 1976, R.S. 2477 was repealed by Congress, but all highway rights established by October 21, 1976 were protected in § 701(a). The DOI and the BLM were statutorily directed that all federal actions shall be consistent with valid existing rights in § 701(h). Case law, including *SUWA v. BLM*, 10th Cir., affirms that highways established by 1976 continue as to public use and maintenance established by 1976, without the need for quiet title. The DOI and the BLM, however, refuse to accept either statutory or case law that preserves your rights of public access across public lands.

A recent BLM memorandum regarding "RS 2477 Claims" stated, "On February 20, 2009, the Acting Director on behalf of the Secretary issued a memorandum directing all BLM offices to not process or review any claims under R.S. 2477, including the use of the disclaimer rule. The memo further stated, "To not delay valid requests for access, BLM has encouraged county and state governments to process the road authorization under FLPMA rights-of-way."

This memo documents the intent of the DOI and the BLM to defeat the public's "property rights" to be replaced with "permitted-use" Title Vs allowing the BLM to unilaterally close and restrict public highways, i.e., the Paria Canyon Road. The BLM does not want to carry the burden of going to court when it desires to close or restrict an R.S. 2477 public highway.

The County will be posting additional information on the county web site in the near future.

Next week: part two, details of the Paria Canyon Road closure