EMERGENCY CONFERENCE
ON
RS-2477
&
PUBLIC ACCESS

Sponsored By:
BlueRibbon Coalition
American Land Rights Association
Alliance for America
Western Counties Resources Policy Institute

Endorsed By:
EMERGENCY CONFERENCE ON PUBLIC LANDS ACCESS
May 31 - June 1, 1998
Templin's Resort Post Falls, Idaho

PROGRAM

Sunday, May 31, 1998

7:00pm Kick-Off Session -- Reception, no-host bar
Welcoming Remarks
- Clark Collins, Executive Director, Blue Ribbon Coalition
- Elizabeth Arnold, Chairman of the Board, People for the USA
- Sheldon Kinsel, Vice President for Programs, Western Counties' Resources Policy Institute
- Chuck Cushman, Executive Director, American Land Rights Association

Opening Address, Helen Chenoweth, U.S. House of Representatives,
Chairman, Resources Subcommittee on Forests and Forest Health

8:00pm Slide Show Presentation: What is Access? Chuck Roady, CrownPacific Lumber

8:30pm County Commissioner Panel Discussion County Rights-of-Way Success Stories.
- Bill Redd, San Juan County
- Neal Christiansen, Fremont County
- Fred Grant, Attorney for Owyhee County

Monday, June 1, 1998

8:30am Continental Breakfast
Day's overview -- Adena Cook, Blue Ribbon Coalition

9:00am Comments by - Richard Pombo, U.S. House of Representatives
Member of House Resources Committee & Agriculture Committee
Chairman, Agriculture Subcommittee on Livestock, Dairy and Poultry

9:40am The Problem
How did we get into this mess?
- Mark Pollot, Foundation For Constitutional Law
Public Lands Access History and Issues.
- Chuck Cushman, American Land Rights Association

10:30am Coffee Break

10:45am R.S. 2477 Overview. What is it? Why is it useful?
- Barbara Hjelle, Counsel for R.S. 2477 and Public Land Access Issues, Utah Association of Counties
- Mark Pollot, Foundation For Constitutional Law

12:00pm Lunch
What Do We Do From Here? Helen Chenoweth, Member of Congress
1:10pm Break Out Sessions

1. "How to protect your RS 2477 rights-of-way: The Legal Consideration." Barbara Hjelle, Counsel for R.S. 2477 and Public Land Access Issues, Utah Association of Counties. How to identify and inventory valid rights-of-way; management authority of state and local governments; recommended policies and actions; areas of legal dispute which counties should be aware of in dealing with R.S.2477 rights-of-way. (Part One of Two.)

2. "Dealing With Federal Bureaucrats, EFFECTIVELY: If You Have To Do It, You Better Get Good At It!" Tips, techniques, essential background and case examples will be presented to help you better hold your own when dealing with government bureaucrats. Taught by ex-congressional staffers and "reformed" ex-federal bureaucrats. (Sponsor: Western Counties' Resources Policy Institute)

3. "The Clinton-Gore Forest Service Transportation Policy and Roadless Area Moratorium." What are the impacts on you, your county, or your schools? Are other planning processes, such as the Interior Columbia Basin Ecosystem Management Project, being gutted by executive fiat? What are the legal issues? What are the long-term implications? Local solutions, implementation and partnerships are being paid a great deal of lip service. Is it for real or is it just talk? What is the next step? (Sponsored by American Land Rights Association and Alliance for America)

4. "Recreation Access and Economics." How recreation dollars are affected when resource jobs are lost. The economic benefits of diverse backcountry recreation to local communities, and how state programs supplement federal recreation dollars. How users can work with local officials to keep roads and trails open. (Sponsors: Blue Ribbon Coalition/People for the USA)

2:30pm Break Out Sessions

Session 1. "How to protect your RS-2477 rights of way: PART TWO

Sessions 2, 3, & 4 REPEAT

3:45pm Soda and Cookie Break

4:00pm Community Involvement

-Elizabeth Arnold, Chairman of the Board, People for the USA
-Joe Icenogle, American Association of Professional Landmen

4:15pm Knowledge into Action (What you can/should do!).

-Chuck Cushman, American Land Rights Association

5:00 pm Wrap-UP

-Clark Collins, Blue Ribbon Coalition
-Helen Chenoweth, Member of Congress
Quips, Quotes & Notes
The Interior Columbia Basin Ecosystem Management Plan (ICBEMP) is Not a Plan For ACTION!
It’s a Plan for INACTION!

The Forest Service and Bureau of Land Management are in the process of completing the Interior Columbia River Basin Ecosystem Management Project (ICBEMP), a massive planning effort that could literally shut down parts of 72 million acres of public forest and range-land in eastern Washington and Oregon, all of Idaho, western Montana, and parts of Utah, Wyoming and Nevada. Two draft plans are currently available for public review and comment.

Your input is critical! Your comments, due by April 6, 1998, will be used to prepare the final plans and can help redirect this top-down planning effort!

The ICBEMP plans are deceiving! They propose to meet two important objectives,

1) Provide goods and services for people; and
2) Restore ecosystem health.

but offer alternatives that fail to meet them! Read on to find out how you can help get the plan back on the right track!
What the ICBEMP Plans SAY they’ll do...

1. Provide sustainable and predictable supplies of goods and services for people.

What they REALLY do...

- **Ignore the needs of people and communities!** Under all the plan alternatives, providing goods, services and employment for people will only happen as a by-product of “restoration” activities.

- **Make certain timber harvest uncertainty!** ICBEMP planners have said, “We are not sure that the timber harvest levels estimated [in the plan] will be realized.” AND they _conservatively_ estimate 12 mills will close under these plans!

- **Most people alive today will never see the results of “restoration.”** Management activities will take _70 years_ or more, putting our forests and our communities at greater risk.

- **Discounts negative social and economic impacts on people.** Hundreds of people could be left jobless and communities left in economic ruin! Communities, like Libby, MT; St. Maries, ID; Elgin, OR; and Ellensberg, WA are actually considered “non-timber dependent!”

What the ICBEMP Plans SAY they’ll do...

2. Restore long-term ecosystem health and integrity.

What they REALLY do...

- **Leave 40-60% of our public land unmanaged!** The plans lay out 533 MUST DO statements, including standards that prohibit timber harvest or other forest management. This means increasing the risk of catastrophic wildfire, insect and disease outbreaks.

- **Require complicated and unnecessary study on almost every acre in the study area before any management activity can take place.** Studies must be done in all areas where a threatened or endangered species might live. There is no explanation of how the analysis should be done or how long it could take. Our forests, wildlife, and water will be at risk until these studies are complete.

- **Offer no hope of ending the current gridlock caused by lawsuits and appeals.** If anything, these plans provide yet another opportunity for lawsuits and appeals.
What SHOULD Be Done to Protect our Forests and our People

1. **Avoid a Record of Decision (ROD)!** ICBEMP leaders should allow local agency managers, citizens, and affected people to use the best science to revise individual forest plans at the local level.

2. **Replace restrictive standards with more flexible guidelines.** ICBEMP leaders should replace MUST DO statements with guidelines that allow local managers to use their own judgement and experience on a site-specific basis.

3. **Replace the inadequate social and economic information with a realistic description of impacts to local people.** ICBEMP leaders should honestly assess the impacts of the plan, including reduced county revenues for schools and roads and job losses which will result from decreased timber harvest.

4. **Take immediate action to improve forest and rangeland health.** The region's forests and rangelands are at great risk from catastrophic wildfire, insects and diseases. In their effort to “protect” the environment in the short term, the ICBEMP planners are putting our forests and rangelands at risk for the long term. These risks should be spelled out in detail.

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**What's at Risk . . .**

**What We Can Expect!**
Dear ICBEMP EIS Team,

The health of the forests and rangelands in the Interior Columbia River Basin, the last best place, is critical to the survival of the last best people. **The ICBEMP is BAD for the land and BAD for people.** The ICBEMP DEISs:

- are one-size-fits-all plans which rely too heavily on standards and not enough on guidelines;
- do not allow local management flexibility or local involvement in decision-making;
- only take care of the needs of people as a consequence of “restoring” forest health;
- cater to the “lock-it-up, hands-off” approach advocated by a very vocal few;
- are so wrought with analysis that forest restoration work will take 70 years, at best, to complete.

Although “national” forests and rangelands, these are also the lands our communities depend upon to provide a variety of goods and services to meet the demands of our society. **The plan must be more responsive to the local people who live on the land and know it best.** The idea that the only way to protect forests is to deny public access and use is flawed. We want the opportunity to use - not abuse - our forest and range lands.

**The ICBEMP should not go to a Record of Decision!** Instead, the good science in the document should provide general guidance to local agency managers, with help from local citizens and affected people, as individual forest plans are revised at the local level. Only in this way can the best science, the unique knowledge of local resource managers and the people most affected by management decisions be used to enhance our Western heritage, our land and our people.


Sincerely,

Name

Address

City, State Zip
Guidelines And Suggestions To Help Counties Deal More Effectively With The Forest Roads Issue

Prepared By

The Western Counties’ Resources Policy Institute
www.westerncounties.org

May, 1998

These guidelines have been prepared by the Western Counties’ Resources Policy Institute to assist member-counties in dealing more effectively with the forest roads policy revision and forest transportation plan issues. They are drawn from the experience and advice of county officials and others who have expertise in dealing with RS 2477 rights of way issues and with the Forest Service generally.

As always, any suggestions or comments based upon any county’s individual experience in this area which would improve these guidelines would be greatly appreciated.

Background on the problem

The U.S. Forest Service in early 1998 announced an 18 month moratorium on building roads into areas which presently do not have roads and also announced that it will revise its overall forest roads policy. Some individual forests are revising their forest transportation plans as well.

Recommendations for county response

1. Understand that there are two basic categories of roads on the national forests, those on RS 2477 rights-of-way and those which are not.

Your strategies for dealing with Forest Service road actions will depend upon which category a particular road falls into. Almost without exception, no road which was created AFTER the surface was reserved as a national forest can qualify as an RS 2477 road. Non-RS 2477 roads may still be legitimate roads which the Forest Service cannot simply close at will, as for example those which provide access to private land or school trust sections. Whether counties have any legal rights with respect to such non-RS 2477 roads would depend upon local circumstances and probably state law.
Even for roads which do not fall into either of these two categories there are still specific procedures which the Forest Service must follow before it can close a road.

However, with respect to RS 2477 roads, counties have clear legal rights. The right-of-way granted by Congress is a legitimate property right with an accompanying bundle of rights and it was conveyed to the counties in most states. The simple fact is that the Forest Service **HAS NO AUTHORITY TO CLOSE A ROAD OVER A RIGHT-OF-WAY GRANTED UNDER RS 2477. PERIOD.** It appears that most Forest Service bureaucrats either do not understand that fact or reject it. These guidelines are directed largely at helping counties deal with either of these realities.

2. Understand your RS 2477 rights.

If you do not understand at least the basic rights you have been granted under RS 2477, or have someone you can rely upon who does, you clearly put yourself at a serious disadvantage. There are several good sources of this information. One of the best is the Official RS 2477 Web site on the Internet, “www.rs2477roads.com,” which is sponsored by the Utah Association of Counties and maintained largely by the Institute. It has extensive and detailed information on this issue from a county perspective, including a detailed handbook for counties listing a number of actions they should consider taking. In addition, the page is designed to be as user-friendly as possible, whether a visitor wants a quick overview or needs extensive and detailed technical information. Several Institute publications would also be helpful.

**BE AWARE, HOWEVER, THAT RS 2477 WAS AN UNUSUAL FEDERAL LAW BECAUSE ITS APPLICATION DEPENDED HEAVILY UPON STATE ROAD LAWS. A COMPLETE UNDERSTANDING OF THEIR RS 2477 RIGHTS REQUIRES THAT COUNTIES ALSO BE FAMILIAR WITH THEIR INDIVIDUAL STATE’S LAWS AND HOW THEY AFFECTED THE RS 2477 GRANT.**

3. Know what your county’s RS 2477 road assertions are.

Many counties have accurate and up-to-date maps of their county roads. Those which do not must make a decision whether they are going to defend their RS 2477 rights. If they are, they should begin the process of updating their maps. All counties which intend to defend their RS 2477 rights should identify, assemble and safeguard important records and other pertinent documentation related to specific roads if they have not already done so.

This can be a big job but it is essential for a number of reasons. The key reason is that the assault by federal agencies on public access to public lands will only intensify over the near term so it will be increasingly important to have this information. Having accurate, documented maps and other pertinent information is essential if costly, frustrating and time-consuming interactions with federal agencies are to be avoided later on. If a dispute over a road assertion deteriorates to the point where litigation is necessary, it is essential to have such information if you are to have much chance of prevailing. Again, see the county handbook on the RS 2477 Internet site for
suggestions of the kinds of things to consider in this respect.

4. Determine if your national forest is working on a forest transportation plan or revision or is planning to initiate one in the next few years.

Some forests are quite far along on a transportation plan or revision. Some which had not already noticed in the Federal Register were caught in the moratorium imposed by Congress in the last appropriations bill. You should determine immediately the status of national forests in your county in this regard.

5. If your national forest is actively working on a transportation plan, officially inform the Forest Service in detail of the roads on national forest land which you assert are on RS 2477 rights-of-way.

This is perhaps the most essential step. While it should be the responsibility of the Forest Service to determine before it closes or obliterates roads whether they are on RS 2477-granted rights-of-way, the reality is they usually do not and will not. The first step in dealing with the Forest Service on a more equal footing is officially informing the Forest Service of the roads you are asserting are on RS 2477-granted rights-of-way.

The best way to officially inform the agency is in person, probably to the forest supervisor with the forest road person in attendance. When you personally deliver the road assertions you are not only assured that it was received by a responsible person, but you have the opportunity to assess the knowledge about RS 2477 of key forest personnel as well as get some sense of their attitude towards RS 2477 related issues. This assessment should largely determine your next steps.

At the very least, the information should be conveyed with a cover letter which asks among other things how the Forest Service is going to factor these road assertions into their transportation planning process.

6. Even if your forest is not working on a transportation plan revision, ask them if they are planning to close or obliterate any roads in the near future.

If they are, focus specifically on those candidate roads to determine whether they are on RS 2477 rights-of-way. If they are, inform the Forest Service as soon as possible and ask for an immediate meeting to determine what they plan to do in light of your assertions.

7. Be prepared to educate the Forest Service.

For several reasons, the Forest Service personnel you will be dealing with may not understand RS 2477 roads. There are several reasons for this. In many cases the number of RS 2477 roads will be smaller than on adjacent BLM land, so they may not have been at issue as often. Also, the mentality in the Forest Service, with its longer history of managing particular parcels of land, is often less accommodating or respectful of the rights of others on the forest.
Whatever the reason, educating these people on the fundamentals of RS 2477 and determining as quickly as possible where there are disagreements or misunderstandings or simple ignorance can save time, money and frustration later on. Again, the materials on the RS 2477 Internet site and some of the publications the Institute makes available can be valuable tools to begin this education process and dialogue.

6. “Memorialize” your meeting(s)

It is always good policy to follow any official meeting with a federal manager with a letter which memorializes, or creates a written record, of your meeting. The more important the meeting and the issues discussed, of course, the more essential it is to do this. The letter should briefly reiterate the purpose of the meeting and give your understanding of important points raised and especially any agreements which were arrived at or commitments made by the forest service bureaucrats.

7. Comment whenever you have the opportunity

It is important to participate in the comment process whenever you have the opportunity. If the comment is on an action or proposed policy above the Forest District of Forest level, be sure to send copies of your comments to these managers as well as others who may benefit from them, such as your congressional delegation, state legislators, your Governor and others.

Attachment

A useful breakdown and explanation of the Forest Service road system from a Forest Service document is attached.
Forest Roads: Roads wholly or partially within, or adjacent to, and serving the National Forest System and necessary to the protection, administration, and use of the National Forest System and the use and development of its resource (23 USC 101).

Public Roads: Roads under the jurisdiction of, and maintained by, a public authority that are open to public travel. (23 USC 101(a)).

Forest Development Roads (FDR): Forest roads under the jurisdiction of the Forest Service (23 USC 101).

Uninventoried Roads: Short term roads associated with fire suppression, oil, gas or mineral exploration or development, or timber harvest not intended to be a part of the forest development transportation system and not necessary for resource management. Regulations (36 CFR 223.37) require revegetation within 10 years.

Maintained for Public Use: An MOU with FHWA defines FDR's managed as open to the public as those roads open to unrestricted use by the general public in standard passenger cars, including those closed on a seasonal basis or for emergencies.

Maintenance Level 5: Roads that provide a high degree of user comfort and convenience. Normally double lane, paved facilities, or aggregate surface with dust abatement. This is the highest standard of maintenance.

Maintenance Level 4: Roads that provide a moderate degree of user comfort and convenience at moderate speeds. Most are double lane, and aggregate surfaced. Some may be single lane. Some may be dust abated.

Maintenance Level 3: Roads open and maintained for travel by a prudent driver in a standard passenger car. User comfort and convenience are not considered priorities. Typically low speed, single lane with turnouts and native or aggregate surfacing.

Maintenance Level 2: Roads open for use by high-clearance vehicles. Passenger car traffic is discouraged. Traffic is minor administrative, permitted or dispersed recreation. Non traffic generated maintenance is minimal.

Maintenance Level 1: These roads are closed. Some intermittent use may be authorized. When closed, they must be physically closed with barricades, berms, gates, or other closure devices. Closures must exceed one year. When open, it may be maintained at any other level. When closed to vehicular traffic, they may be suitable and used for nonmotorized uses, with custodial maintenance.

Public Lands Highways, Forest Highways: A coordinated Federal Lands Highway Program includes Forest Highways, Public Lands Highways, Park Roads, Parkways and Indian Reservation Roads. These are roads under the jurisdiction of and maintained by a public road authority other than the Forest Service and open to public travel (23 USC 101).
[DATE]

[Name of Government Official]
[Official Title]
[Name of Bureau or Service]
[ADDRESS]
[City, State  Zip Code]

VIA FACSIMILE: HARD COPY TO FOLLOW

RE:       Notice of Trespass to Mkr. [NAME]

Dear:

I have been consulted this date by [CLIENT] regarding a trespass notice issued to him by your office on [DATE], 1995. In that notice, you stated that Mr. [CLIENT] violated the Federal Land Management Act (FLPMA), 43 U.S. C. § 1761, et seg., and 43 C.F.R. 2801.3, by causing "disturbance to public land, by blading a road, without authorization." This action follows on the heels of a claim by your office that a road leading to patented land owned by Mr. [CLIENT] ([ ] Road No. [ ] ) is owned by the United States.

In previous correspondence, dated [DATE], 1995 ("[NAME] Letter"), a copy of which is attached for your convenience, Mr. [ ], Director of Recreation and Lands for the [ ] Region, U.S. Forest Service, asserted that the Service's attorney advised him that "the burden of asserting property rights adverse to the United States rests with the party asserting those rights." In that letter, Mr. [ ] also stated that establishment of an R.S. 2477 road right-of-way occurs only if three requirements are met. Specifically, he stated that the three elements for establishment of an R.S. 2477 right-of-way are:

1. A road must have been established or constructed;

2. on federal land that was open to entry and appropriation under the public land laws (sic)

3. for use as a public road in accordance with applicable territorial or state laws.

Ross Letter at 1.

As a preliminary note, I need to point out that the [Name] letter does not accurately state even the
elements it mentions. For example, for an R.S. 2477 right-of-way to come into existence the land need merely not have been withdrawn. There is no requirement of availability for appropriation.¹

R.S. 2477 rights-of-way are based were granted by the United States in an Act popularly known as the Mining Act of July 26, 1866 ("the Act"). The pertinent provisions of the Act were included in the Revised Statutes ("R.S.") as Section 2477 and were later recodified in 43 U.S.C. § 932. This Act created or acknowledged a number of other rights-of-way and property rights in local governments and private individuals, none of which required any approval or other affirmative action from any federal agency to become vested, a fact long recognized by the Department in its own regulations. It has also long been recognized that none of the land management agencies of the United States, including DOI and the U.S. Forest Service, have any authority to control or affect R.S. 2477 rights-of-way, other than having the same right as any other landowner to use legal remedies to prevent damage to the servient estate through activities exceeding the scope of the easement. This limitation was recognized as well by the courts of the United States in cases such as City and County of Denver v. Bergland. Some of the rights created or acknowledged by the Act have existed for as many as 128 years. There are thousands of such rights-of-way throughout the West.

The Act of July 26, 1866 granted, inter alia, a right-of-way "for the construction of highways." It contained no language reserving rights that would otherwise have ordinarily passed with the granting of such easements.² One hundred and ten years later, the Act of July 26, 1866 was repealed in favor of the Federal Lands Policy Management Act ("FLPMA"). With the 1866 Act's repeal in October of 1976, the creation of new rights-of-way for the construction of highways pursuant to that Act ceased. However, FLPMA expressly recognized that its provisions were bounded by and subject to the valid existing rights created by the 1866 Act (and, of course, any other valid existing rights). The nature and extent of these valid and existing rights are determined by reference to the law of the state in which the right-of-way in question is located as the law existed at the time of the creation of the right-of-way. Your action in this case seeks to change that fact and place the right to determine whether such rights-of-way exist and the nature and extent of those rights-of-way. This is beyond both the authority and competence of DOI to do.

The critical language in the highway right-of-way grants made by the Act of 1866 are the following terms and phrases: (1) "right-of-way"; (2) "for the construction"; and (3) "highways." (Emphasis added.) These terms must be interpreted based on their meanings at the time of the grant (1866). Of particular importance (as will also be discussed in detail below) is the fact that the grant was not of

¹ However, even were this assertion correct, these requirements have been met on the face of them. The road in question runs to a piece of patented land and was built in part to provide access to that parcel in order to make it possible to take the actions necessary to patent the land. There could, of course, be no patented land were the land not available for entry and appropriation and the road existed prior to the patenting.

² The normal rule in the law of easements is that a grant of an easement ordinarily carries with it all of the rights necessary to make reasonable beneficial use of the easement unless the grantor expressly reserves those rights. In the case of R.S. 2477 rights-of-way, the language is clearly an unreserved grant of a right-of-way. No special language appears limiting the grant. This means that all of the normal rules applying to easements apply, such as that the scope of the easement is broad enough to encompass changes in transportation technology such that the easement's parameters can be adjusted to account for the advent of motor vehicles of various sizes and powers. It also means that the United States cannot interfere with the use of those rights-of-way other than to prevent damage to the servient estate from use exceeding the scope of the right-of-way nor may it require users of the road or other highway right-of-way (which includes navigable streams) to obtain the permission of the United States or its agencies to use such rights-of-way, either for commercial or non-commercial traffic.
highways but of *right-of-ways*. The phrase "for the construction of highways" is no more than a delimiter defining the purpose and nature of the rights-of-way being granted. The crucial question, then, is what was necessary to accept a grant of such a right-of-way. It is the position of the DOI that the grant of 1866 rights-of-way could have been accepted only by the actual "construction" of a "highway" as DOI would like to define those terms. The law with respect to an offer to dedicate public rights-of-way is quite different, however. Similarly, as courts have long noted, an R.S. 2477 right-of-way can also be established if the requirements for adverse use have been met. This is not a statement that adverse use can be had against the federal government, but the Act of 1866 ratified what might otherwise be argued to be adverse use. In either fashion, a valid R.S. 2477 right-of-way comes into existence, with its effective date being the date on which the elements have been established.

Offers to dedicate rights-of-way are universally accepted by the actual use of the right-of-way or some other action, such as a formal procedure established by judicial decision or statute. As in the determination of the nature and scope of a right-of-way, whether a right-of-way has been accepted or the procedure to be used in accepting a right-of-way is determined by reference not to federal law, but by reference to state law. Once the right-of-way has been accepted, it becomes the property of the owner and not of the United States. Whatever remaining property interest the federal government has is subject to the interests of the right-of-way owner. Furthermore, once the right-of-way is established, it constitutes land withdrawn from the (federal) public domain. When land across which such a right-of-way is contained is transferred to third parties, the third party's ownership is subject to and limited by the right-of-way. Similarly, subsequent withdrawals of land across which such right-of-way run from the (federal) public domain does not and cannot extinguish or limit the rights owned by the right-of-way holder any more than transfer to a third party can or does.

As to the land within the scope of the right-of-way, the interest in the United States is a reversionary interest and no other. Unless the right-of-way is abandoned (which generally requires non-use coupled with an intent to abandon), the right-of-way is permanent and cannot be interfered with by the United States. Only Congress may authorize such interference and if it does, the United States becomes liable for a taking of the property right under the Fifth Amendment. Existing law clearly establishes that, vis a vis the United States, the States are private property owners within the meaning of the Fifth Amendment. However, Congress has clearly not authorized the post hoc interference that the proposed regulations would effectuate.

Before DOI can take action adverse to those of an R.S. 2477 right-of-way holder, it must first be granted authority to do so by Congress who, in turn, must be acting pursuant to authority found within the Constitution. We do not need to address whether Congress has the authority to do so, because even if it did, it clearly did not delegate that authority to the DOI. No existing statute grants that authority. One statute and one alone concerned itself with R.S. 2477 regulations and that is the Act of July 26, 1866. FLPMA terminated the ability of potential owners of acquire new right-of-way under that authority. Nothing in FLPMA granted any authority over R.S. 2477 rights-of-way other than that already discussed. In fact, quite the opposite is true. FLPMA specifically recognized that its provisions were subject to and limited by the preexisting rights held by others. Congress has not amended FLPMA to eliminate that provision or to grant any additional authority over such rights-of-way. Neither has Congress passed any new statute granting such authority.

Indeed, Congress has made it clear that it has not created any authority for DOI or any other agency to promulgate regulations such as are proposed. Congress, in fact, specifically asked DOI to examine the issue of R.S. 2477 rights-of-way and to report the results to Congress. It was clear in this charge that Congress was reserving for itself the right to determine whether R.S. 2477 rights-of-ways posed a problem and, if so, the right to determine what to do about that problem. The view posed by B.L.M.
Mr. [Name of Official]

personnel in Boise that it was all right for DOI to write regulations because they told Congress that DOI would draft regulations and Congress did not pass legislation telling DOI not to do so is legally and practically absurd. Congress must affirmatively delegate authority to an agency to take particular actions. Unlike the ordinary citizen who may engage in any conduct not affirmatively made unlawful by government, agencies can undertake no conduct not first authorized by the legislature.

As previously stated, the grant of rights-of-way were for the construction of highways, not of highways. The agency relies on some interpretations of these terms to state that such rights-of-ways were not constructed unless tools of some type were used. However, this is clearly not the case. Mere use of the path, whether it be dry land or navigable stream, is sufficient in most if not all states.

The action you have attempted to take against Mr. [CLIENT] purports to change the nature of the rights-of-way in a manner that is inconsistent with existing law governing their creation and scope and which conflicts with the due process and takings clauses of the Fifth Amendment to the United States Constitution. It violates the Fifth Amendment's due process clause in that it is (1) unauthorized by Congress; (2) contrary to an established body of case law, legislative history, historical precedent, and departmental decisions; (3) arbitrary and capricious, and deprives the County and Mr. [CLIENT] of a meaningful opportunity to defend their rights; and (4) do not follow the procedures required by law. They are violative of the Fifth Amendment's takings clause in that, even if authorized, constitute a taking of property without compensation.

As noted, an action taken without Constitutional validity is void ab initio. Equally important, your action purports to change judicial precedent which has clearly stated how such rights-of-way are created and their scope. No agency has the right to overrule a court decision. The agencies are bound, like any other person, to the law as determined by a court. Congress has not determined to make such a change and has not authorized DOI to do so.

Mr. Ross's claim that every property owner must be forced to "prove" the United States wrong whenever he or she "asserts[ ] property rights adverse to those of the United States" is patently incorrect. First, it is not Mr. [CLIENT] who is asserting a position adverse to that of the United States; it is the United States that is asserting a position adverse to that of the county and Mr. [CLIENT]. It is not to be believed that every state and local entity or other person must submit itself or him or herself to administrative proceedings and to initiate litigation on the mere statement by a federal agent that the entity or person does not own what he thinks it or he or she does. Second, the entity, state, local, federal, or individual, charging another individual or entity with a violation of law has the burden of establishing, by a preponderance of the evidence or beyond a reasonable doubt, depending on whether the charge is civil or criminal in nature, respectively, that the person or entity so charged has acted improperly or illegally.

The [Name] Letter's position is particularly odious because it essentially constitutes a blanket adverse claim in every property interest surrounded by or near federal land and then says that it will constitute itself an administrative court to determine who is right in the dispute, that it will state what the definition and scope of such rights-of-way are, and that it will then apply the rules it has devised to determine whether it or the "claimant" owns the right-of-way. In short, DOI first disputes ownership, then constitutes itself judge, jury, and executioner in resolving the dispute. Due process does not permit such a usurpation. This is akin to a person saying to his neighbor that he disputes the boundary line between his property and that of the neighbor, but that the neighbor is not to worry. The individual disputing the boundary will constitute himself a court to resolve the dispute and the neighbor should trust the result. A responsible R.S. 2477 owner, to execute his, her, or its responsibilities properly, will be forced to dispute this decision in court. This will increase and not decrease litigation.
Mr. [Name of Official]

PAGE 5

Even worse, the fact is that merely preparing to dispute ownership of the myriad rights-of-way with the agency where no real good faith dispute exists in the administrative arena is prohibitively expensive. In addition, existing law requires that the DOI undertake a number of steps before proceeding with such actions. It must, inter alia, undertake an environmental assessment (EA) under the National Environmental Policy Act (NEPA), undertake a federalism assessment under the Federalism Executive Order, and perform a takings implication assessment under Executive Order 12,630 (the Takings E.O.). Failure to undertake these actions violate both the due process clause and the Administrative Procedure Act (the APA). Even regulations proposed by the DOI recognize that there are R.S. 2477 rights-of-ways owned by private parties as well as governments. Second, and more important, the law under the Fifth Amendment treats state and locally owned property as "private property" for takings purposes and such property taken by the federal government for public use must be paid for. The takings implications here are enormous as is the potential liability of the United States if it proceeds under these regulations. Until the agency undertakes these actions, it is violating due process and the APA.

The [Name] Letter's claim that "record of acceptance by the appropriate public body, commonly the County, is generally necessary," is incorrect, as is the claim that the "appropriate public body must have either formally or informally demonstrated acceptance of the road as public highway." As already noted, even the DOI's proposed R.S. 2477 right-of-way regulations recognized that there can be private ownership of such rights-of-way. Again, it is the law of the state at the time that the highway was created that governs. Generally speaking, as already noted, an R.S. 2477 right-of-way can be established under either the rules of adverse use or of implied dedication without any formal action by a governing body. The Oregon Trail itself qualifies as an R.S. 2477 right-of-way, as do many trails, roads, and other paths, including rivers and streams. Indeed, in at least some states, there need not even be a fixed path for such a right-of-way to come into existence. The route of travel may vary with the seasons and other factors.

The evidence already before you (including, inter alia, maps in the possession of the United States which recognize the road as a county road) indicate that the road in question predated the establishment of the [Name of National Forest or BLM land], and included, inter alia, patented mining lands and other activities to which the road runs. In fact, the property to which the road in question in this instance runs is such patented land. This raises another significant problem for your and Mr. [Name's] position. As court decisions clearly indicate, the United States cannot reasonably be held to have given title over to land without providing a right of access to that land for all of the reasonable uses to which that land may be put unless it explicitly, or by unavoidable implication, does so. Stated differently, the United States does not convey useless land. The land to which the road runs has a commercial use contemplated in the original patent. The road itself was not constructed by, and has never been maintained by the United States.

Mr. [Client], like his predecessor in interest, has a private and unrestricted right-of-way to and from his property even if no R.S. 2477 right-of-way exists or existed. The United States cannot take that right-of-way from him, or alter its nature, without authorization from Congress and payment of just compensation. Congress not only did not authorize the taking of that interest, it affirmatively prohibited it. FLPMA, on which the agency relies, specifically declined to attempt to alter the nature of existing rights-of-way and created a voluntary mechanism for converting interests if, and only if, the property owner desires. Further, virtually every federal land statute from FLPMA, to those creating Forests and national parks, specifically exempt "valid existing rights" from such interference as you propose.

One might argue that where there is no evidence at all to raise a question of ownership that the person claiming the ownership has a heavy burden of at least establishing enough evidence to show that a good faith dispute exists. In a case where such evidence exists or is produced, the agency should clearly refrain from attempting criminal or other sanctions on its mere desire to deny the existence of the claim.
Mr. [Name of Official]

Here, however, the evidence is not so equivocal as to merely raise a question.

The evidence clearly establishes an historic right-of-way which predates the withdrawal of the affected land (indeed, the presence of patented land itself is conclusive on that question) consisting both of an R.S. 2477 right-of-way and a privately-owned right-of-way to the affected property and which a reasonable individual cannot deny raises, at the very least, serious questions as to whether the United States can reasonably claim ownership. Interference with those rights-of-way, particularly by threat of criminal action and civil penalties, cannot be construed as anything short of a wilful trespass by agents of the United States and wilful interference with privately owned rights in violation of the Constitution, which, as Representative Chenoweth properly noted, may open both the agency and participating individuals to liability.

Furthermore, it is my understanding, based on information presently available to me, that the County itself disagrees with Mr. [NAME’s] letter and your current assertions. Even if the other information and points discussed in this letter were not as clear, caution on the part of the agency is warranted before it attempts to impose sanctions or threatens other action. Where a local agency has clear reason to believe that its interests are implicated, it would behoove the federal agency to work with that local agency to arrive at the truth before taking action adverse to a person or entity which is not only an owner of affected interests, but is a member of the public to whom the agency has an obligation. Additional documents constituting some of the information provided and/or available to the United States and your agencies regarding this matter will follow under separate cover.

I request therefore, that you cease interference with Mr. [Client's] operation, at least until such time as a more definitive conclusion can be reached regarding the nature and ownership, which all existing evidence demonstrates does not belong to the United States, and rescind the notice of trespass immediately. I believe that a meeting between you and I, representatives of the County, and Mr. [CLIENT] should be scheduled at the earliest possible convenience. Please contact my office immediately at the above phone number.

I appreciate your attention.

Sincerely,

Mark L. Pollot, Esq.

Attachment

cc: Mr. [Client]
The Honorable Helen Chenoweth
The Honorable Mike Crapo
The Honorable Larry Craig
The Honorable Dirk Kempthorne
The Honorable Bruce Babbitt
The Honorable Peter Cenarrusa
THOMPSON & URQUHART
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Attorneys for Plaintiff
SAN JUAN COUNTY, UTAH

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

SAN JUAN COUNTY, UTAH,

Plaintiff,

vs.

The UNITED STATES OF AMERICA; the
UNITED STATES BUREAU OF LAND
MANAGEMENT; PAT SHEA, in his official
capacity as DIRECTOR OF THE BUREAU
OF LAND MANAGEMENT; KATHERINE
KITCHELL, in her official capacity as
BUREAU OF LAND MANAGEMENT
MOAB DISTRICT MANAGER,

Defendants.

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

Civil No. ____________________

Plaintiff San Juan County, Utah, by and through counsel, allege the following for their
claims against Defendants:
INTRODUCTION

1. Plaintiff brings this action to have the Court declare unlawful and enjoin Defendants from issuing rights-of-way for vehicular travel over Plaintiff's rights-of-way traversing public lands.

2. Defendants are following a policy which prevents the Bureau of Land Management ("BLM") and its employees from recognizing Plaintiff's rights in valid rights-of-way traversing public lands. Such policy forces BLM, when access is required across the public lands to certain locations, to issue rights-of-way on top of Plaintiff's rights-of-way. Issuing a right-of-way to another entity on top of the County's right-of-way and authorizing that other entity to conduct road work activities within the right-of-way prejudices, derogates, and otherwise impairs Plaintiff's vested rights to the dominant estate in these easements and interferes with Plaintiff's ability to properly manage and maintain its transportation infrastructure.

3. Plaintiff asks this Court to declare that Defendants' actions violate: (1) the United States Constitution, because the federal government cannot prejudice or derogate Plaintiff's vested property rights, and (2) the Federal Land Policy and Management Act ("FLPMA"), because Defendants lack authority under that Act, or any other congressional act, to issue FLPMA Title V permits on top of valid existing R.S. 2477 rights-of-way without the consent of the right-of-way holder. Congress required that valid existing rights-of-way across the public lands be honored and not impaired. Further, BLM's own regulations require the agency to notify and coordinate with Plaintiff before issuing FLPMA Title V right-of-way permits within San Juan County, Utah.
JURISDICTION AND VENUE


5. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 [federal question], 28 U.S.C. §1346 [United States Defendant] and 28 U.S.C. § 2201 [declaratory judgment]. This case presents a case or controversy arising under the U.S. Constitution and federal law. Since prejudice to Plaintiff’s claims has already occurred through Defendants’ issuance of permits over Plaintiff’s roads to other entities and through actual road work conducted by those entities pursuant to BLM’s purported authorization, the agency actions which are the subject of this Complaint are final agency action subject to judicial review.

6. Venue is proper under 28 U.S.C. § 1391(e), as the lands subject to Defendants’ actions and which are the subject of this lawsuit, are located in the State of Utah.

PARTIES

7. San Juan County is a political subdivision of the State of Utah. The County holds and manages the public rights-of-way which are the subject of this lawsuit. These rights-of-way vested pursuant to Revised Statutes 2477 (“R.S. 2477”), 43 U.S.C. §932 (repealed by FLPMA). Among other things, the County is responsible for road construction and maintenance, search and rescue, emergency medical and law enforcement, all of which depend on safe and reliable access along passable roads.

8. Defendant United States of America owns lands within San Juan County, Utah.

9. Defendant the United States Bureau of Land Management is the agency within the Department of the Interior (“DOI”) which has been delegated specific authority by Congress to
administer the public lands pursuant to various existing laws, including the United States Constitution and FLPMA.

10. Defendant Pat Shea is presently the Director of BLM. In his official capacity, the Director is responsible for managing the public lands in accordance with existing law, including the United States Constitution and FLPMA.

11. Defendant Katherine Kitchell is presently the BLM Moab District Manager. In her official capacity, the District Manager is responsible for managing the public lands in the Moab District and San Juan Resource Area in accordance with existing law, including the United States Constitution and FLPMA.

**STATEMENT OF FACTS**

12. Plaintiff possesses valid rights-of-way across the federally-owned, BLM-administered public lands. Such rights-of-way include:

A. County road DO826, which runs for approximately 1.2 miles across public lands in the following location:

   **T37S. R23E. S/LB&M**
   Sec. 24: W1/2W1/2
   Sec. 23: NE1/4NE1/4
   Sec. 14: SE1/4SE1/4

B. County road D0344, which runs for approximately 3.2 miles across public lands and 0.3 miles of State-owned lands in the following location:

   **T36S. R22E. S/LB&M**
   Sec. 12: NW1/4SE1/4, NE1/4SW1/4, S1/2NW1/4
   Sec. 2: Lot 3
   **T35S. R22E. S/LB&M**
   Sec. 35: SW1/4SE1/4, SE1/4SW1/4, N1/2SW1/4
C. County road D08-44, which runs for approximately 0.6 miles across public lands in the following location:

T37S. R24E. SLB&M
Sec. 25: NE1/4NE1/4
T37S. R25E. SLB&M
Sec. 30: Lot 1
Sec. 19: Lot 4.

13. Such rights-of-way were granted to Plaintiff from Congress, pursuant to R.S. 2477, and are valid existing property rights.

14. Congress enacted R.S. 2477 in 1866. R.S. 2477 states:

Section 8. And be it further enacted, That the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.

15. R.S. 2477 was not an authorization to the Executive Branch to issue rights-of-way. Rather, it was a direct grant by Congress to state and local governments, offering them the opportunity to take up rights-of-way for highway purposes across unreserved public lands.

16. Approximately 61% of the land base in San Juan County is owned by the federal government. The vast majority of San Juan County roads traverse lands owned by the federal government. R.S. 2477 rights-of-way are important to assuring adequate access to and across such federal lands.

17. Instruction Memorandum No. 93-113 (January 22, 1993), instructed BLM to refuse to "acknowledge" R.S. 2477 rights-of-way except where there was a "compelling and immediate need
to have a road acknowledged as an R.S. 2477 highway." Such policy continues in force to this date. This policy effectively forces Defendants to take actions over valid existing rights-of-way as if such rights-of-way did not exist. Also, when Defendants issue FLPMA Title V permits over these vested rights-of-way, Defendants collect rents from the permit recipients for use of the County’s rights-of-way.

18. In September 1996, Kate Kitchell, the BLM manager for the Moab District, informed San Juan that the United States intended to change its course of action concerning R.S. 2477 rights-of-way.

19. On or about September 4, 1997, Defendants issued to Petral Exploration, LLC, a FLPMA Title V permit over County Road D0826.

20. On or about January 12, 1996, Defendants issued to Ranclall and Julie Lee a FLPMA Title V permit over County Road D0344.

21. On or about July 25, 1996, Defendants issued to Petral Exploration, LLC, a FLPMA Title V permit over County Road D0844.

22. Based upon information and belief, prior to issuance, Defendants never coordinated with or informed Plaintiff that the above-referenced permits were being considered.

23. Pursuant to the above-referenced FLPMA Title V permits, Defendants authorized the recipients of such permits to conduct road work activities on the County roads.

24. On County Road D0826, according to the terms of the permit, the permit recipient has graded, widened and graveled the surface of the County’s road.

25. On County Road D0344, according to the terms of the permit, the permit recipient
has graded the County’s road.

26. On County Road D8344, according to the terms of the permit, the permit recipient has graded and widened the surface of the County’s road.

27. Plaintiff did not participate in or authorize the permit recipients’ road work activities on D0826, D0344, and D8344 in any way.

28. Defendants’ issuance of the FLPMA Title V permits over the County roads injures Plaintiff’s ability to properly manage and maintain its roads. The County is responsible and potentially liable for the safety of the traveling public over the County’s roads. The County’s ability to maintain its roads in the condition it desires has been impaired by the physical intrusions to those roads resulting from Defendants’ issuance of the permits.

29. Upon information and belief, Defendants have issued additional FLPMA Title V permits over other roads owned by Plaintiff. When asked about this practice, Defendants’ employee said that the practice of issuing FLPMA Title V permits over County roads would continue in the future.

FIRST CAUSE OF ACTION
(VIOLATION OF CONSTITUTION)

30. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 29.

31. The United States Constitution creates a federal government of enumerated powers. The powers delegated under the Constitution to the federal government are few and defined.

32. Powers not granted to the federal government were retained by the states. The
powers retained by the states are numerous and indefinite.

33. The Constitution does not give the federal government the power to take, through eminent domain, the property rights of Plaintiff.

34. The Constitution states, "[N]othing in this Constitution shall be so construed as to prejudice any Claims of ... any particular State." U.S. Constitution, Art. IV, sec. 3.

35. Defendants' actions in granting FLPMA Title V permits over Plaintiff's rights-of-way and authorizing the permit recipients to alter the surface of such rights-of-way prejudices the County's property rights in its roads.

36. A decision by this Court declaring that Defendants lack constitutional authority to take Plaintiff's property by issuing contradictory rights over Plaintiff's vested rights and enjoining Defendants from doing the same will address Plaintiff's injuries.

SECOND CAUSE OF ACTION
(VIOLATION OF FLPMA)

37. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 36.

38. FLPMA directs that R.S. 2477 rights-of-way in existence at the time of FLPMA's passage are not diminished or impaired by that Act.

39. FLPMA establishes that the authority of the Secretary of Interior, in carrying out the mandates of FLPMA, is subject to, valid existing rights, including valid R.S. 2477 rights-of-way.

40. FLPMA section 701(a) states:

Nothing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval
of this act.

41. FLPMA section 701(h) states:

All actions by the Secretary concerned under this Act shall be subject to valid existing rights.

42. FLPMA section 509(a) states:

Nothing in this title [43 U.S.C. §§1701-1784] shall have the effect of terminating any right-of-way or right-of-use heretofore issued, granted or permitted.

43. BLM’s current regulations require that, before issuing a FLPMA Title V permit in San Juan County, Utah, Defendants must coordinate with Plaintiff. See 43 C.F.R. §2802.1(a)(9) and (e).

44. By issuing FLPMA Title V permits over Plaintiff’s rights-of-way, and by doing so without coordinating with Plaintiff, Defendants have violated the provisions of FLPMA and the agency’s own regulations under that Act. Such actions are ultra vires and, under the APA, arbitrary and capricious.

45. A decision by this Court declaring that Defendants lack statutory authority to issue FLPMA Title V permits on top of Plaintiff’s existing rights-of-way and enjoining Defendants from doing the same will address Plaintiff’s injuries.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests relief and judgment against Defendants as follows:

1. Declare as a matter of law that Defendants have taken Plaintiff’s property rights by issuing FLPMA Title V permits on top of County roads;

2. Declare as a matter of law that Defendants’ actions in taking Plaintiff’s property rights
violates the U.S. Constitution;

3. Declare as a matter of law that Defendants have no authority to take property rights from Plaintiff by way of eminent domain;

4. Declare as a matter of law that Defendants have no authority under FLPMA to issue FLPMA Title V right-of-way permits over Plaintiff's rights-of-way;

5. Declare as a matter of law that Defendants have acted ultra vires by issuing FLPMA Title V right-of-way permits over Plaintiff's rights-of-way;

6. Declare as a matter of law that Defendants have acted arbitrary and capricious and not in accordance with law by issuing FLPMA Title V right-of-way permits over Plaintiff's rights-of-way;

7. Enjoin Defendants from issuing FLPMA Title V permits over Plaintiff's rights-of-way;

8. Award Plaintiff's attorneys' fees and costs to the extent permitted by law; and

9. Grant the County such further relief as may be appropriate.

DATED this 25th day of March, 1998.

[Signature]
Craig C. Halls
Ronald W. Thompson
Stephen H. Urquhart
Attorneys for San Juan County
Jefferson, Thomas: “I have sworn upon the altar of God eternal hostility against every form of tyranny over the mind of man.”

Jefferson, Thomas: When the Federal judiciary passes laws which are contrary to the U.S. Constitution, he felt that “that exalted body should be impeached and set adrift.”

Jefferson, Thomas: “If the people felt that the federal government was overstepping the bounds of its just authority and make a tyrannical use of its powers, the people whose creature it is, must appeal to the standard they have formed, and take such measures to redress the injury done to the constitution as (the emergency) may suggest and prudence justify.”

Jefferson, Thomas: “When all government is centered in Washington, this government will become as evil and oppressive as the government from which we have just separated.”

Jefferson, Thomas: “To take from the states all the powers of self government, without regard to the special delegations and reservations solemnly agreed to in the federal compact (Constitution), is not for the peace, happiness, or prosperity of those states.”

Jefferson, Thomas: “The people to whom all authority belongs, have divided the powers of government into two distinct departments, the leading characters of which are foreign and domestic. A spirit of forbearance and compromise, therefore, and not encroachment and usurpation, is the healing balm of such a Constitution, and each party should... maintain the line of power marked by the Constitution between the two coordinate governments, each sovereign and independent in its department. The one may be called the domestic branch of government, which is sectional but sovereign, the other, the foreign branch of government....”

Jefferson, Thomas: “I have sworn upon the altar of God eternal hostility against every form of tyranny over the mind of man.”

Jefferson, Thomas: “Eternal vigilance is the price of liberty.”

Jefferson, Thomas: “The natural progress of things is for liberty to yield and government to gain ground.”

Jefferson, Thomas: “Governments derive their just powers from the consent of the governed.”

Lincoln, Abraham: “Two principles... have stood face to face from the beginning of time; and will ever continue to struggle. The one is the common right of humanity and the other is the divine right of kings.”

Clinton, Bill: “...we realize the American public is not too clear what is best for them, but we do, and that is what drives our administration.” (Pres. Clinton on Meet the Press.)

Jackson, Andrew: “It is well known that there have always been those amongst us who wish to enlarge the powers of the General Government; and experience would seem to indicate that there is
Listing of Documents

1. Chronology of Events
2. Agreement Termination
3. Summary of Proposed Law
4. BLM RS2477 Denial Petition
5. Letter of Non Recognition of Cease & Desist Order
6. Notice of Cease & Desist
7. Official Trespass Notice
8. Copy of Supposed Authority Sources to Issue Trespass Notices
9. Official Trespass Notice
10. Letter Offering Settlement of Trespasses
11. Copy of Complaint of their Trespass and Eminent Domain of our Property
Chronology of events leading up to the issuance of Cease and Desist Order by BLM

1. On April 13, 1981, San Juan County signed an Memorandum of Understanding with the Bureau of Land Management, acting pursuant to the National Environmental Policy Act of 1969, Title IV of the Intergovernmental Cooperation Act of 1968, OMB Circular A-95 (REVISED), the Federal Land Policy and Management Act of 1976, and all other amendatory acts thereof or supplemental thereto and such other Utah and/or Federal legislation and regulation may apply.

2. The stated purposes of the MOU because both agencies were...“interested in establishing effective procedures for coordinating the planning and program operations at the local level, insuring that local viewpoints are taken into account in planning Federal programs and projects, and ...[making sure] the Bureau is responsible for consulting with local governments, to assure that the Bureau of Land Management plans, programs and projects are consistent as practicable with State and local governmental programs, plans and policies, and ...[that] the San Juan County Board of Commissioners is primarily responsible for the welfare of the people of San Juan County with the objectives to provide for direction and management to optimize the economic, social and cultural attributes for the people of San Juan County, and ...[that] the Bureau of Land Management is directed by Congress to administer and manage the public lands with the objective to provide for the direction and management of the public lands so that all the various land and resource uses and values may be utilized in combinations that will best meet the needs of the American people, having due concerns for the citizens of San Juan County.”

3. Each party agrees to:

a. Cooperate in land use decision making, consultation of decisions, and in preparation of land use plans.

b. Inform each other as far in advance as possible of anticipated plans and proposed activities that might affect either party.

c. Cooperate in development and implementation of specific agreements supplemental to this agreement, including, but not limited to agreements regarding zoning, subdivision of lands, road construction, maintenance, and use, and right-of-way. (emphasis added)
4. The above mentioned agreement mentions many other things, however, for the purposes of this document the spirit of the agreement as it relates to roads is clear.

5. Signatures appearing on the agreement are that of Calvin Black, Chairman of the County Commission; Gener Nodine, District Manager, Moab District; and approved by Dean Stepanek, State Director, Utah BLM.

6. Subsequent to the above stated agreement, the San Juan County Commissioners entered into an agreement with the Bureau of Land Management the stated purpose of which is........ “To clarify road construction and maintenance responsibility on Public Lands in San Juan County.”

7. The agreement was signed by Calvin Black, Chairman of the County Commission and Gene Nodine, District Manager for the Moab District, Bureau of Land Management.

8. Some of the pertinent points of that agreement are:

   a. The Bureau is responsible for the orderly administration and management of public lands and natural resources thereon in San Juan County Including the issuance of road rights-of-way.

   b. The County is responsible for the construction and maintenance of dedicated county roads including roads on or across public lands in San Juan County for public purposes.

   c. The county will be responsible for the maintenance of its existing Class B road system.

   d. The county will be responsible for the construction and maintenance of any right-of-way granted under Title V of FLPMA.

   e. The county will be make right-of-way application for realignment of relocation of RS 2477 roads outside the accepted right-of-way and for construction of all new roads crossing public land.

   f. Accepted an understanding that before new construction took place that an archaeological clearance would be conducted.
g. Accepted the idea that all road segments on public lands claimed by the County as Class D roads, be maintained only at current standard within the vehicle disturbed area.

h. While other maintenance points are enumerated in the agreement, the next important point is that a notice giving 90 days is required to break the agreement.

9. In meeting between the BLM and the County over the past year or so has seen an ever increasing awareness that the BLM position on the road agreement has changed.

10. On August 5, 1996, BLM notified the county that the Secretary of Interior intended to reinventory public lands in Utah for wilderness potential.

11. On August 26, Commissioner Lewis in a discussion with BLM Field Director Kent Walter, tells him of the Counties intent to maintain several county class D roads. Mr. Walter asks commissioners to please notify the BLM of those roads the county intends to do maintenance on. Commissioners agree to do but ask Mr. Walter if he will sign a document a stating that the undersigned......”do not recognize the counties right-of-way, or its right to maintain said right-of-way. Mr. Walter respectfully declines to sign the document.

12. On September 13, 1996, San Juan County receives a letter from Moab Field Office Manager, Kate Kitchell, notify the County that the road agreement had been reviewed by the Departmental Solicitor in 1992 (8 years after the agreement was signed), and that it was his determination that the MOU did not meet legal requirement, under the tests of RS 2477. At that point the letter indicates that the MOU is now considered null and void.

13. On September 30, 1996, BLM was told that the county would exercise its right to maintain certain roads on Hart Point, and perhaps Cedar Mesa. After much discussion, on September 30, 1996, BLM notified San Juan County by verbal communication that it intended to file a “cease and desist” order. That notice was delivered to Commissioner Redd on October 1, 1996 along with a notice of trespass.
Moab District  
82 East Dogwood  
Moab, Utah 84532

SEP 13 1996

2822  
9113  
UTU-53767  
(UT-060)

Mr. Ty Lewis  
Chairman  
San Juan County Commission  
Monticello, Utah 84535

Dear Commissioner Lewis:

I appreciate recent meetings to discuss road maintenance and the opportunity to maintain our positive working relationship.

We respect that San Juan County has a need to maintain certain roads over public lands. We also recognize the importance of a transportation network for our citizens, public land users, and a healthy economy. Likewise, the Bureau of Land Management (BLM) has the responsibility to ensure the reasonable mitigation of impacts to public resources that may be affected by County road work activity. In the past, we have been able to meet our individual needs through mutual understanding and appreciation of each other's legal obligations and perspectives. Continued open communication and prior notification are key elements in maintaining our very good record of working together to meet the needs of our constituents.

Our past arrangements where the County coordinated its road work activities with BLM prior to doing any on-the-ground work has worked well. Much of this coordination grew out of the County road agreement Memorandum of Understanding (MOU) signed by Gene Nodine and Cal Black on August 13, 1984. Typically, we have been in agreement as to the need and scope of road maintenance. However, other routes, particularly those that have not been regularly maintained outside the Class "B" system, should be closely looked at by both the BLM and the County before any work is initiated.

During informal discussions with our Regional Solicitor on July 22, 1992, it was concluded that the prior road agreement MOU did not meet the full test of a legal document. The process as outlined by RS2477, which provided for three conditions that must have occurred before October 21, 1976 was not adhered to in developing the 1984 agreement.

We sincerely want to continue to coordinate with the County on your road work schedule in advance of the County's commencing on the ground activities. Where BLM has not yet reviewed the proposed work, we will send our specialists out on the ground to do the necessary inventories and identify reasonable mitigation measures to impacts on public resources. BLM will do this in a timely manner and at no cost to the County. If we have questions on the proposed work, we will continue to work with you to arrange a meeting and discuss our concerns.
In addition, we will be available to meet with your road crews on the ground and advise them if we have questions or concerns about proposed road work. If we ask your road crews to defer work on any road proposed for maintenance, we will provide you with a copy of our staff report detailing our concerns and reasons why we asked for the deferral. I believe this arrangement to address your planned road work over the next several weeks meets both of our needs.

In order to establish a long-term commitment for a transportation network, we would ask that you consider the option of a Title V right-of-way on the County road system. This right-of-way would be issued in perpetuity with a provision that "issuance of the Title V right-of-way does not preclude the County from making assertions under RS2477 when final rulemaking is promulgated." This assures that even if a roadway included in your transportation system does not meet future RS2477 criteria, it will still be considered and authorized under a separate authority. It seems to be a good alternative for both the BLM and the County.

Again, thank you for the opportunity to meet with you and discuss this important issue.

Sincerely,

[Signature]

District Manager

cc: UT-069, San Juan Resource Area
    UT-062, ADM Resources
2. Applications are submitted to:

1. BLM if all the road lies on BLM lands.
2. Park Service if the road lies on Park Service lands or if any of the road enters Park Service lands.
3. U.S. Fish and Wildlife Service if any of the road lies on their lands.
4. The application process will be performed by the agency where the application is submitted. If the R/W lies on both BLM and Park Service lands, the Park Service will get concurrence from BLM before making a final administrative determination.

3. Application will be advertised in local newspaper for three weeks. Thirty day comment period begins on the last day of publication.

4. Comments can be made by anyone or any organization for or against.

5. Administrative determination will be made after reviewing application and comments. Also, concurrence must be received by all other Dept. of Interior management agencies. This determination will be published in the Federal Register and take effect in thirty days if no appeals are received. Anyone can appeal. The Department will allow interim activities on R/W's that are currently being maintained until the final determination is made. This activity is routine maintenance and must notify appropriate office at least three working days before the work is to be performed. This interim work can only be done on R/W currently maintained.

6. If a R/W is granted, only routine maintenance will be allowed. Any improvements or new construction will have to be approved by the appropriate agency.

**Routine Maintenance** is defined as work required to keep road in its condition at latest available date.

**Maintenance** is periodic activities that repair and prevent damage to the present R/W surface. This may include grading, graveling, asphalting, cuts and fills, culverts, curbs, etc. This would not include paving an existing gravel road, widening a road, realigning, etc.

**Construction**: Intentional physical acts performed with the achieved purpose of preparing a durable, observable physical modification of land and that this modification be suitable for highway traffic.

**Improvements** = Paving a dirt road, widening a R/W, realignment, etc.
San Juan County claims an ownership interest in the right-of-way for County Road #______, known as _______________, pursuant to Section 8 of the Mining Act of 1866, recodified as Revised Statutes 2477 (R.S. 2477) 43. U.S.C. Section 932. This interest gives San Juan County the right to construct, improve, maintain and provide for the prolonged use and enjoyment of the right-of-way. The County will perform routine maintenance of its right-of-way by ________________ said road unless requested pursuant to this document that no maintenance be performed.

The undersigned and his/her employer do not recognize the Counties right-of-way, or its right to maintain said right-of-way. The undersigned does hereby demand that no disturbance be made upon the right-of-way.

DATED this _____ day of ____________, 1996.

BY: __________________________

________________________________________

Official Title

Signed in the presence of:
September 30, 1996

Bureau of Land Management
Moab Field Office
82 E. Dogwood Road
Moab, Utah 84532

Dear Kate,

We are in receipt of the fax message ordering San Juan County to cease and desist from further grading roads in San Juan County. You cite as your authority for causing the county to cease and desist, FLPMA, Section 302 (b).

You further indicate that an original copy of the order will be delivered to San Juan County on Tuesday, October 1, 1996.

We will be looking forward to your delivery, however, along with the delivery of the Order, we would like to have you furnish the county a copy of the delegation of authority, wherein the Secretary delegates you authority to conduct such an action and further we would like you to further document your actions, in lieu of my conversation with Mr. Kent Walter this morning, wherein he indicated that the county could grade roads subject to the local offices completing an inventory of cultural resources.

Further, we believe that RS 2477 is clear in its intent, and also believe that Secretary Hodel outlined very clearly the intent of the policy and operation as to how RS2477 was to be administered.

Thank you!

Sincerely,

Bill Redd, Commissioner
1. County's responsibilities to acquire a R/W under the proposed rules:

   A. Two (2) year deadline or lose all R/W's.
   B. Each road has to have a separate application which includes:

      1. Who is filing application.
      2. Address and documentation showing whoever is making application is authorized to do so.
      3. Description of road including local name, state and county number, beginning and ending points, type of surface, widths and maps showing the location so it can be located on the ground.
      4. History of road construction up to the present time.
      5. A statement on whether there exists any construction plans on road and where they can be obtained.
      6. If a prior judicial or administrative decision was made, a case and file number will be needed.
      7. Any evidence of construction including evidence of each part of construction definition.
      8. Intentional physical acts that can be shown with evidence of usage of tools, hand tools, power tools or machinery.
      9. Proof of physical modification of land that can be shown by records of expenditures for construction activities after the initial construction. This is to show construction activities took place continuously so that the road was a continuous route for travel.
     10. Evidence the R/W is a highway. Highway = a thoroughfare that is currently and was, prior to the latest available date, used by the public without discrimination against any individual or group for passage of vehicles carrying people or goods from place to place.
     11. Proof the R/W is maintained and funded by county or state.
     12. Proof of vehicular use which may be shown by evidence or records of use for commercial or personal purposes, by vehicles appropriate to the time and terrain.
     13. Show the R/W served as a connection between two public destinations by describing these destinations.
     14. Proof the R/W is on public land not reserved for public use at the time of construction.
United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Moab District
San Juan Resource Area
P.O. Box 7
Monticello, Utah 84535

9232
UTU-74162
(UT-069)

NOTICE TO CEASE AND DESIST

OCT 1 - 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Certification No.: Z 694 261 136

Ty Lewis, Chairman
San Juan County Commission
San Juan County Courthouse
P. O. Box 9
Monticello, Utah 84535

Dear Mr. Lewis:

You are hereby notified that the Bureau of Land Management has investigated an alleged trespass and has found evidence that shows San Juan County as the alleged trespasser. The Bureau of Land Management alleges that San Juan County has violated the laws specified below and the regulations approved by the Secretary of the Interior pursuant to the authority vested in him by said law. Therefore, it is our opinion that San Juan County:

Has: Admittedly and willfully performed unauthorized grading over public lands described herein:


And, is in violation of the following regulations: 43 C.F.R. 2920.1-2 and 9262.1 (copies attached):

On the following described public lands:

Salt Lake Meridian
T. 32 S., R. 22 E.,
   section 1, W 1/4
section 3, W 1/4 NW 1/4
section 4, NE 1/4 NE 1/4 NE 1/4
section 12, NE 1/4 NW 1/4
section 25, W 1/2
T. 31 S., R. 22 E.,
   section 33, SE 1/4
As a consequence of this act you are liable for fair market value rental of the public lands, rehabilitation/stabilization of the lands damaged by your act, and administrative costs incurred by the Bureau as a consequence of your act.

In addition, the area of the alleged trespass has known potential for archaeological resources. The Bureau does not authorize or condone San Juan County's grading activities, and we will not be flagging archaeological sites as a service to the county. If it is found that the actions listed above have caused damage to such resources, you could be held responsible for damages under willful violation of the Archaeological Resources Protection Act of 1979, 16 U.S.C. Secs. 470aa, et seq., and subject to criminal penalties.

If the allegations we have made are correct you must permanently cease and desist from the violations charged. You are allowed thirty days to arrange settlement with this office of trespass liability or to present evidence to show that you are not a trespasser, as alleged.

Failure to comply immediately with this notice and the accompanying trespass notice may constitute criminal trespass. Failure to resolve your trespass liability may result in trespass penalties and a citation for your appearance before a designated United States magistrate who may impose a fine or imprisonment, or both, under Title 43 C.F.R. 9262.1.

This matter has been referred to the Department of Interior’s Regional Solicitor. For information as to what actions may be taken by the Bureau of Land Management other than those discussed in this letter, please refer your inquiries to Mr. David Grayson of our Regional Solicitor’s office, at (801) 524-5677.

As we have continually stated, we had hoped that this situation could be prevented through mutual understanding and cooperation between the Bureau of Land Management and San Juan County. We would sincerely like to avoid any future conflicts, and remain willing to work with you on these issues.

Sincerely,

Kent E. Walter
Area Manager

Enclosures
1-Trespass Notice Form 9230-1
2-43 C.F.R. 2920.1-2, 9262.1
YOU ARE HEREBY NOTIFIED that the Bureau of Land Management has made an investigation and evidence tends to show that you are in trespass. We allege that you [____] are violating [____] may have violated [____] have violated the law(s) specified below and the regulation(s) approved by the Secretary of the Interior pursuant to the authority vested in him by said law. Therefore, it is our opinion that you:

Have committed the following act(s):

SAN JUAN COUNTY

Unauthorized grading of county routes D510, D514, D516, D518.

Are in violation of the following law(s):


And are in violation of the following regulation(s):

43 C.F.R. 2801.3 - Unauthorized use, occupancy, or development.

In the following-described land (describe the area by legal subdivision if surveyed, or if unsurveyed, by concise reference to such natural landmarks as will clearly identify the area):

See Attachment 1.
Description of additional acreage added to Trespass UTU-74162:

Salt Lake Meridian

T. 32 S., R. 22 E.,
   sec. 3, NW^4_4.

T. 31 S., R. 22 E.,
   sec. 3, NW^4_4;
   sec. 4, SW^4_4, NE^4_4;
   sec. 8, NE^4_4;
   sec. 15, SW^4_4;
   sec. 21, NW^4_4;
   sec. 26, NW^4_4, SW^4_4, SW^4_4;
   sec. 27, S^4_4;
   sec. 34, SE^4_4;
   sec. 35, NW^4_4, SW^4_4.
YOU ARE HEREBY NOTIFIED that the Bureau of Land Management has made an investigation and evidence tends to show that you are in trespass. We allege that you ☐ are violating ☐ may have violated ☒ have violated the law(s) specified below and the regulation(s) approved by the Secretary of the Interior pursuant to the authority vested in him by said law. Therefore, it is our opinion that you:

SAN JUAN COUNTY

Have committed the following act(s):

Unauthorized grading of county route D511 and D507.

Are in violation of the following law(s):


And are in violation of the following regulation(s):
43 C.F.R. 2801.3 - Unauthorized use, occupancy, or development.
(a) "Any use, occupancy, or development of the public lands that requires a right-of-way, temporary use permit, or other authorization pursuant to the regulations of that part and that has not been so authorized, or that is beyond the scope and specific limitations of such an authorization, or that causes unnecessary or undue degradation, is prohibited and shall constitute a trespass as defined in [43 C.F.R.] 2800.0-5."

On the following-described land (describe the area by legal subdivision if surveyed, or if unsurveyed, by concise reference to such natural landmarks as will clearly identify the area):

Salt Lake Meridian, T. 32 S., R. 22 E., sec. 1, W^5_{SE}
sec. 3, W^5_{NE}
sec. 4, NE_{4NE}
sec. 12, NE_{4NW}
sec. 25, W^5_{SE}

T. 31 S., R. 22 E., sec. 33, SE_{4}
1. □ Violations, if continuing, m. stop immediately.
2. □ You are allowed ___ days from receipt of this notice to cease the alleged trespass operation.
3. □ If you have evidence or information which tends to show you are not a trespasser as we have alleged, you are allowed 10 days from receipt of this notice to present such evidence or information at the Bureau of Land Management office shown on the front of this form.

You are allowed 30 days from receipt of this notice to appear at the Bureau of Land Management office shown on the front of this form to effect a settlement for trespass damages.

Failure to comply with this notice will result in further action to protect the interests of the United States. You are further advised that the authorized officer may refuse to issue a permit, lease, or license to a trespasser who has failed to make satisfactory arrangements to satisfy his liability to the United States, as provided in 43 CFR 4150.3e and 4173.1-1. The officer may also refuse to sell timber or materials as provided in 43 CFR 9239.0-

\[Signature\]

\[Area Manager, San Juan Resource Area\]

\[Title\]

CERTIFICATE OF SERVICE

\[Kent E. Walter\]

CERTIFY That on the 1st day of October, 1996, I served written notice on Bill Redd of San Juan County.

the party's address of record, by a true copy of the within notice by \[\checkmark\] personal service \[\square\] certified mail. If by certified mail, the envelope containing said notice bears registry stamp number and return receipt marked "for addressee only" has been requested.

\[Signature of Server\]

\[Area Manager\]

\[Title\]

\[U.S. GPO: 1988-201-964/84766\]
October 15, 1996

Bureau of Land Management
Attn: Kent Walter
P.O. Box 9
Monticello, Utah 84535

Dear Kent,

Recently, you delivered the San Juan County Board of Commissioners a Cease and Desist Order. In addition you delivered a Notice of Trespass which required a response to the BLM indicating that we had 30 days to offer a settlement associated with this trespass.

Kent since you personally delivered both of these documents, and Commissioner Redd. Our evidence of non-trespass is of ownership provided under RS 24777 and the standing Agency Policies also known as the Hodel Policy which as to the best of our knowledge is still a standing agency policy.

This letter is serving notice that San Juan County believes that the roads bladed by San Juan County on September 30, 1996 are valid existing rights-of-way. We do not believe that the BLM has the authority to trespass or issue a cease and desist order to the county on those rights of way.

The county does not plan to make an offer of settlement.

Furthermore, the county has been notified that there are signs asking that the public not drive on these roads because of ongoing rehabilitation activities. We are giving notice that unless these signs are removed by Thursday, October 17 the County will remove them.

Kent, again we appreciate your concerns and honesty in dealing with these issues.
Thank you!

Sincerely,

Ty Lewis, chairman
County Commission
Commissioner Bill Redd  
San Juan County Commission  
P.O. Box 9  
Monticello, Utah  84535  

Dear Commissioner Redd:  

As you requested in your letter dated September 30, 1996, I have enclosed copies of the applicable delegations which provide the Field Office Manager with the authority to order San Juan County to cease and desist from further unauthorized road grading. You will not find specific reference to a cease and desist order because such specificity does not exist in the delegations of authority.  

According to the delegations, the Field Office Manager is authorized to take all actions under the regulations at 43 CFR 2800 which include preventing unauthorized use and preventing unnecessary or undue degradation of the public lands. Therefore, a cease and desist order is warranted for any activity that is unauthorized or that may cause unnecessary or undue degradation of the public lands.  

If you have any questions regarding this matter please contact me at (801) 259-6111 or Dave Grayson, Solicitor for the Department of Interior, at (801) 524-5677 ext. 224.  

Sincerely,  

[Signature]  
District Manager  

Enclosure  
Delegations of Authority (4pp)
1.1 Delegation.

A. The Director, Bureau of Land Management, is authorized, except as provided in 200 DM 1, to exercise the program authority of the Secretary of the Interior with respect to the management of the public domain and acquired lands, including all associated functions which relate thereto.

B. The Director, Bureau of Land Management, is authorized to execute conveyance for lands for airport purposes pursuant to Section 23(b) of the Airport and Airway Development Act of 1970 (84 Stat. 232; 49 U.S.C. 1723(b)), provided that such conveyances are also approved by the appropriate official of the Office of the Attorney General, and in cases where a right of title vested prior to June 30, 1970, conveyance may be pursuant to Section 16 of the Federal Airport Act of May 13, 1946 (60 Stat. 179; 49 U.S.C. 1115).

C. The Director, Bureau of Land Management, is delegated the Secretary's authority to carry out the purposes of the Wild and Scenic Rivers Act, as amended (16 U.S.C. 1271, et seq.), and the National Trails System Act, as amended (16 U.S.C. 1241, et seq.), relating to the selection and location of boundaries, property acquisition, development and administration for assigned components of the National Wild and Scenic Rivers System and National Trails System. The Director also is authorized to make studies regarding additions to and evaluations of components of the National Wild and Scenic Rivers System where the majority of the segment flows across BLM administered lands. This authority will be exercised in accordance with the provisions of 710 DM 1.

D. The Director, Bureau of Land Management, is authorized to exercise the authority of the Secretary regarding the administration of the Lower Colorado River Land Use Plan as described in 613 DM 1.

E. The Director, Bureau of Land Management, is delegated the Secretary's authority for administering the Wild Free-Roaming Horse and Burro Act (85 Stat. 649; 16 U.S.C. 1331-1340) including the enforcement authority specified in Sec. 8(b) of the Act.

F. The Director, Bureau of Land Management, is authorized to exercise the authority delegated to the Secretary by Executive Order 10950, relating to the approval of selections by the State of Alaska of public lands lying north and west of the National Defense Withdrawal Line.

G. The Director, Bureau of Land Management, is authorized to exercise the authority of the Secretary of the Interior under the Alaska Native Claims Settlement Act of December 18, 1971 (P.L. 92-203, 85 Stat. 688), as amended, including authority to sign and execute easement agreements between the Department and the Alaska Native corporations. This authority does not include authority granted to the Assistant Secretary - Indian Affairs under 209 DM 8.
<table>
<thead>
<tr>
<th>SUBJECT-FUNCTION CLASSIFICATION CODE REFERENCE</th>
<th>ACTIVITY</th>
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<tbody>
<tr>
<td>2810</td>
<td>Right-of-Way and Road Use Agreements (Timber Management only - 43 CFR 2812).</td>
<td></td>
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<tr>
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<td>- Approve permits and agreements. Consummate reciprocal permits and agreements for the construction and use of roads on lands owned or controlled by the parties involved and the sharing of construction costs.</td>
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<td>43 CFR 2911</td>
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<td>43 CFR 2912, 2740</td>
<td>Recreation and Public Purpose Leases: (See 43 CFR 2740.)</td>
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<tr>
<td>2916</td>
<td>Approve Alaska Fur Farm Leases. All actions. (Under the Act of July 3, 1926, Alaska only.)</td>
<td></td>
</tr>
<tr>
<td>43 CFR 2920</td>
<td>Approve leases, permits and easements. All actions. (Sec. 302 FELMA.)</td>
<td></td>
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<tr>
<td>43 CFR 3000.4</td>
<td>Act on protests and appeals in accordance with 43 CFR Part 4.</td>
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* - Solicitor's opinion.
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<td><strong>2811</strong> Approve permits and agreements or consummate reciprocal permits and agreements for the construction and use of roads on land owned or controlled by the parties involved, and the sharing of construction costs.</td>
<td>X</td>
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<td><strong>2812, 2740</strong> Take actions under the terms of Reciprocal Permits and Agreements approving site-specific proposals under terms of each permit and agreement.</td>
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<td><strong>3000.4</strong> Act on minerals management activities, including FMV determinations and all mandatory prerequisites for minerals actions.</td>
<td>X</td>
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<td><strong>3040</strong> Classify Mineral Lands.</td>
<td>X</td>
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<td><strong>3045</strong> Act on protests and appeals in accordance with 43 CFR Part 4.</td>
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<td><strong>3060</strong> Act on notices of intent and notices of completion for geophysical exploration, processing, inspections, and closeouts.</td>
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<td><strong>Mineral Reports:</strong></td>
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<td><strong>3060</strong> Prepare or review and approve mineral material appraisals for negotiated and competitive sales estimated at $25,000 or less and for all FURs.</td>
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<td><strong>Note:</strong> Preparation of mineral material appraisals under $25,000 can be redelegated to A.M. if done by a qualified Mineral Appraiser (meets S.O. criteria) and if reviewed by a qualified Appraiser at the District level.</td>
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<td>Mineral Material Appraisals up to $50,000 may be prepared by a qualified Mineral Appraiser at the District level with review at the State Office level.</td>
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1203 - DELEGATION OF AUTHORITY

INDEX

Do not exercise or redelegate any authority without full understanding of the background of the authority. Refer to source cited in the Subject-Function Classification Code Reference Column.

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