

# R.S. 2477 Rights-of-Way in Utah



# Revised Statute (R.S.) 2477

“The right-of-way for the construction of highways across public lands not otherwise reserved for public purposes is hereby granted.”

(Act of July 26, 1866, ch. 262 §8; 14 Stat. 251, 253, *codified at* 43 U.S.C. §932)



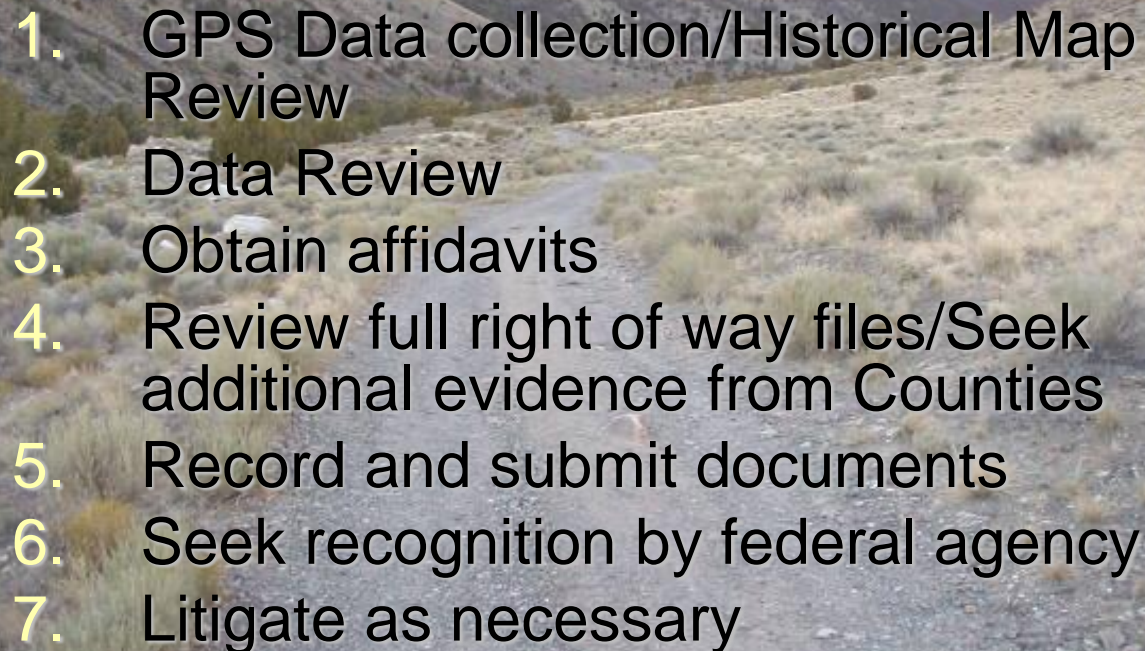
# FEDERAL LAND MANAGEMENT AND POLICY ACT (FLPMA)

"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"

(Sec. 701. *codified at* 43 U.S.C. 1701)



# R.S. 2477 Right of Way Effort

- 
1. GPS Data collection/Historical Map Review
  2. Data Review
  3. Obtain affidavits
  4. Review full right of way files/Seek additional evidence from Counties
  5. Record and submit documents
  6. Seek recognition by federal agency
  7. Litigate as necessary



# Step 1: GPS Data Collection

- B roads done first (federal funds)
- GPS data and photos collected
- Review against historical maps



# Step 2: Data Review

- Fix issues with road names (County Unique number for every distinct road; Road spurs have different names)
- Digitize as necessary using historical photography as an aid



# Step 3: Obtain Affidavits

- Road team meets with witnesses and obtains two affidavits, if possible, on each right of way
  - Approximately 4 to 5 times more D roads than B roads
- Road team updates road list and submits to AGRC
  - Meeting with County to discuss road list



# Step 4: Review Right of Way Files

- Document Preparation
  - AGRC prepares packets for each road
- Team prints packets and combines affidavits into individual right of way files
- Team submits individual files to Governor's Designee (PLPCO Director) for signature





# Step 5: Record and Submit Documents

- Road team members travel to County Recorder to record road packets
- Road team scans recorded road files
- PLPCO submits electronic road files, road list and map to BLM
  - U.C.A. 72-5-309 to 72-5-310
- Recorded road files are uploaded to PLPCO website and submitted to State Archives
  - **<http://www.recorded2477roads.utah.gov/>**



# RECORDED NOTICE

## Acknowledgment and Notice of Acknowledgment of Acceptance of R.S. 2477 Right-of-Way Grant

Ent 251389 Bk 430 Pg 161  
Date: 09-MAY-2008 4:19PM  
Fee: None  
Filed By: CT  
LES BARKER, Recorder  
GARFIELD COUNTY CORPORATION  
For: GOVERNOR/STATE OF UTAH

### THE STATE OF UTAH

#### TO ALL WHOM THESE PRESENTS SHALL COME, Greeting:

**Know ye,** This is an Acknowledgment and Notice of Acknowledgment made under Utah Code Sections 72-5-309 through 310 inclusive, that the grant of the United States of America of "the right of way for the construction of highways over public lands, not reserved for public uses" under United States Revised Statutes 2477 (43 U.S.C. Section 932 (repealed October 21, 1976, with proviso recognizing the validity of rights-of-way already established)) was accepted for and on behalf of the State of Utah and its political subdivision Garfield County as it pertains to the highway located in Garfield County known as BRYCE AIRPORT ROAD; County Road Number: 0445; State Geographic Information Database (SGID) Road Identification Number: RD090068. Total road length is 1.41 miles more or less.

The reason for this Acknowledgment and Notice of Acknowledgment includes, but is not limited to, the fact that the road was constructed, mechanically, or by continuous use as a public highway for a period of at least ten years, over public lands not reserved for public uses, prior to the earlier of (a) the October 21, 1976 repeal of R.S. 2477 or (b) the date the servient estate was reserved for public uses.

This Acknowledgment and Notice of Acknowledgment applies only to the segments of the road that traverse land owned by the Bureau of Land Management, United States Department of the Interior, and does not apply to segments of the road that traverse land owned by any other person or entity. The State of Utah and its political subdivisions reserve the right to make further acknowledgments and notices of acknowledgment with regard to road segments that traverse land owned by other entities, including the United States of America, through one or more of its agencies.

A printed copy of a map showing the location of the road in said county is appended hereto as "Attachment 1," a printed copy of representative photos of the road is appended hereto as "Attachment 2," a printed copy of a description of the beginning and ending points of the entire road together with a list of Townships, Ranges and Sections that may be traversed by the road in said county is appended hereto as "Attachment 3," and a printed copy of the Road Centerline Description Cover Page(s) is appended hereto as "Attachment 4." The Appendices listed in "Attachment 4" that contain the actual road centerline descriptions are incorporated herein by reference. Affidavits provided by individuals familiar with the road are appended hereto as "Attachment 5."

A printed copy of this Acknowledgment and Notice of Acknowledgment, together with its Attachments and Appendices, may be viewed and/or obtained at the office of the Utah State Archives.

An electronic copy of this Acknowledgment and Notice of Acknowledgment, together with its Attachments and Appendices, may be viewed and/or downloaded as read-only PDF (Portable Document Format) files via the

FinalNotice

Page 1 of 2 SGID Road Identification Number RD\_ID: RD090068

Ent 251389 Bk 0430 Pg 0161

Internet at <http://recorded2477roads.utah.gov>.

The owner of the servient estate in the land underlying the road-segments subject to this Acknowledgment and Notice is believed to be the United States of America through one or more of its agencies. Any of such agencies or any other person with a servient ownership claim or a competing dominant estate right-of-way ownership claim, may file a petition in the State District Court for Salt Lake County for a decision regarding the correctness of this Acknowledgment. A claimant shall file a petition within sixty (60) days after receipt of this Notice.

**In Witness Whereof,** I, John Harja, the official designee of the Governor of the State of Utah, in conformity to the laws of the State (Utah Code Sections 72-5-308 through 310 inclusive), have caused this Acknowledgment and Notice of Acknowledgment to be made.

Signed by my hand in Salt Lake City, Utah, the 23<sup>rd</sup> day of April, 2008.

By the Governor's Designee

John Harja  
John Harja

### CERTIFICATION

State of Utah )  
: ss  
County of Salt Lake )

I hereby certify that the signer of the foregoing document, John Harja, is personally known by me, has made a voluntary signature and taken an oath stating that he is the official designee of the Governor of the State of Utah and is authorized to sign this document on the Governor's behalf pursuant to Utah Code Section 72-5-309. He further vouched that, based upon information and belief, the facts alleged therein are true.

Dated this 23<sup>rd</sup> day of April, 2008.



Pamela Z. Blackham  
Notary Public

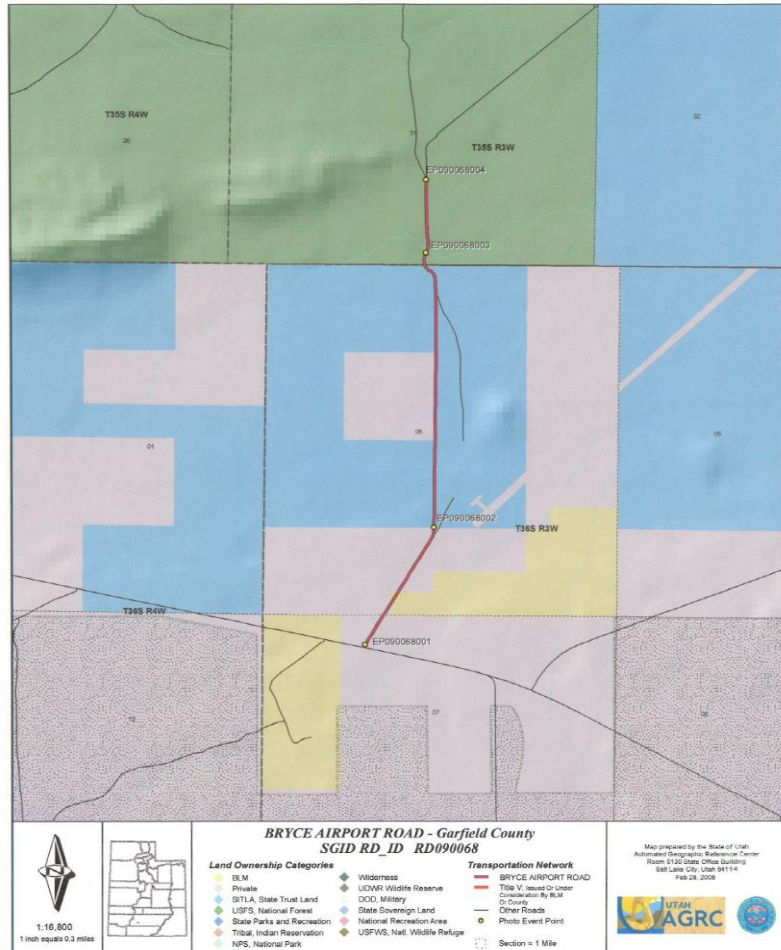
FinalNotice

Page 2 of 2 SGID Road Identification Number RD\_ID: RD090068

Ent 251389 Bk 0430 Pg 0162

# RECORDED NOTICE (cont'd)

Attachment 1



Attachment 1

Attachment 2



Attachment 2

# RECORDED NOTICE (cont'd)

## Attachment 3

### Beginning & Ending Points and Township, Range, and Section References For:

**Popular Name:** BRYCE AIRPORT ROAD

**County:** Garfield

**County Road Number:** 0445

**State Geographic Information Database (SGID) Road Identification Number:** RD090068.

**Total Road Length:** 1.41 miles more or less.

**Beginning at a point** on the road centerline located at 37 degrees 41 minutes 38.86 seconds North Latitude and -112 degrees 09 minutes 38.41 seconds West Longitude, which can be converted to mapping accuracy State Plane Utah South Zone NAD 83 feet coordinates of X = 1,449,258.2 feet and Y = 10,217,292.0 feet based on the US Survey Foot conversion.

**Ending at a point** on the road centerline located at 37 degrees 42 minutes 49.09 seconds North Latitude and -112 degrees 09 minutes 27.91 seconds West Longitude, which can be converted to mapping accuracy State Plane Utah South Zone NAD 83 feet coordinates of X = 1,450,152.1 feet and Y = 10,224,389.0 feet based on the US Survey Foot conversion.

This road may traverse:

Township 35 South Range 3 West, Section(s) 31, Salt Lake Base & Meridian  
Township 36 South Range 3 West, Section(s) 6,7, Salt Lake Base & Meridian  
See Attachment 1 above for a cartographic depiction of the course of this road.

## Attachment 4 Road Centerline Description Cover Page(s)

**Popular Name:** BRYCE AIRPORT ROAD

**County:** Garfield

**County Road Number:** 0445

**State Geographic Information Database (SGID) Road Identification Number:** RD090068.

**Total Road Length:** 1.41 miles more or less.

Centerline Descriptions Of Road-Segments That Cross Over Federally Owned Land, Derived From Global Positioning System Data And Cross-checked against USGS Digital Orthophoto Quadrangles Compiled By The Utah Automated Geographic Reference Center And Entered Into The State Geographic Information Database (SGID).

Road-Segments Listed by SGID Road Identification Number (RD_ID)	Road-Segment Numbers	Believed Ownership Of Servient Estate	Approximate Segment Length	See Attached Appendix
RD090068	001	PVT	0.15 Miles	(not shown)
RD090068	002	BLM	0.04 Miles	A
RD090068	003	PVT	0.21 Miles	(not shown)
RD090068	004	ST	0.77 Miles	(not shown)
RD090068	005	FS	0.25 Miles	†(pending)
Total Road Length			1.41	

\* Indicates that a Title V permit will be requested, is in process, or has been issued.

† Indicates that road-segments crossing Forest Service land are under consideration by the state and county as of the date of this Acknowledgment and Notice of Acknowledgment.



# RECORDED NOTICE (cont'd)

## AFFIDAVIT OF LOWELL HUNTINGTON

### BRYCE AIRPORT ROAD

### COUNTY ROAD NUMBER 0445

### GARFIELD COUNTY, UTAH

State of Utah            )  
                                  : ss.  
County of Garfield    )

LOWELL HUNTINGTON, being first duly sworn, deposes and states as follows:

1. I am an adult competent to testify about the matters set forth below based upon my personal knowledge. I have lived in Garfield County for 62 years.

2. I have observed and am familiar with a road in Garfield County known as Bryce Airport Road. I am also familiar with the land the road traverses. When I first used and observed the road in 1952, it followed the same route as in 2007 when I last observed it. Attached is a Garfield County map showing Bryce Airport Road. To the best of my knowledge and based upon my use of and familiarity with this road and the land it traverses, the location and route of the road are correctly illustrated on the attached map. The County also identifies this road according to the road number listed above.

3. I have observed that the road has been open to the public for all to use, to come and go as they pleased, since at least as early as 1952 and continuing through 1976 to 2007. Throughout this time period I have observed travel on the road by various means, including cars, trucks, maintenance vehicles and jeeps. Throughout this time period, the road has been used daily for more than ten continuous years prior to 1976, and was used daily in 2007.

4. Throughout the time period from 1952 to 2007, I have observed vehicles using the road for airport access.

5. It is also the reputation in the community that this road has been open to the public for all to use, to come and go as they pleased, since at least as early as the early 1950s and continuing through 1976 to the present, for the uses described in the previous paragraphs.

6. Prior to 1976, I observed graders performing maintenance and construction activities on the road. The road is now paved.

Dated this 9th day of July, 2007.

Lowell Huntington  
LOWELL HUNTINGTON

SUBSCRIBED AND SWORN to before me this 9th day of July, 2007.

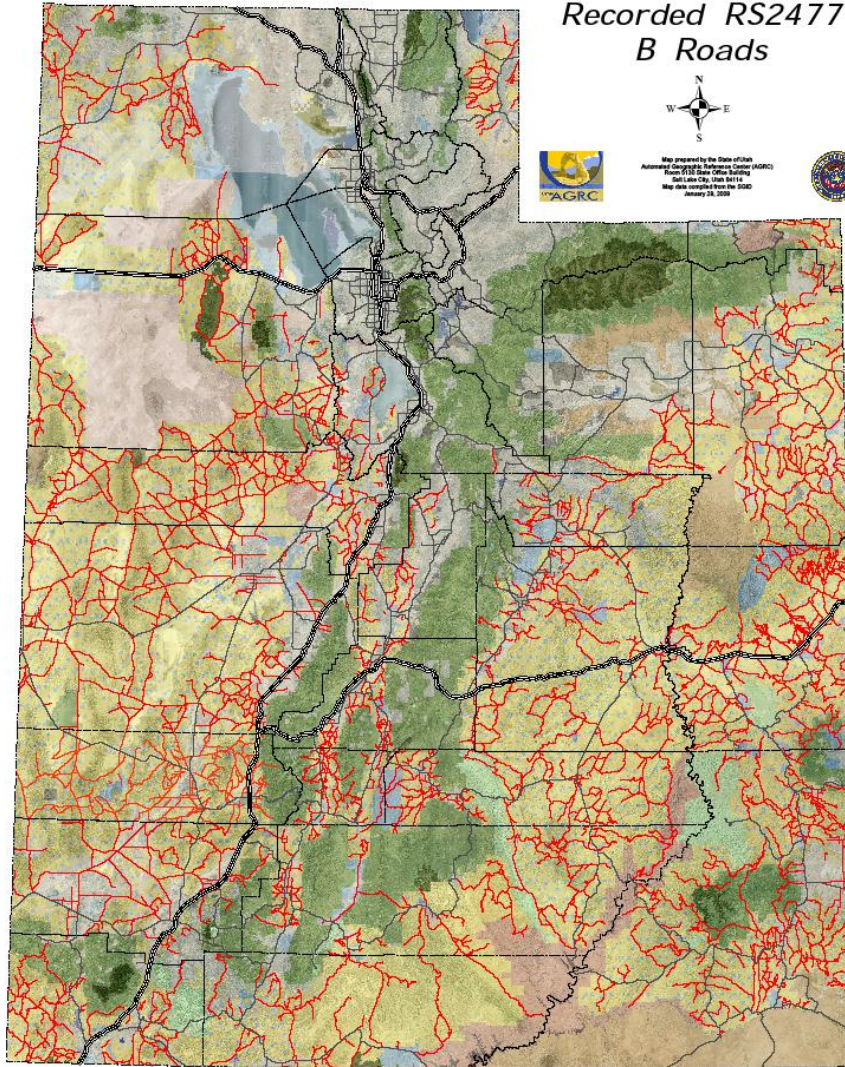


Gloria Schrader  
NOTARY PUBLIC

# *Recorded RS2477 B Roads*

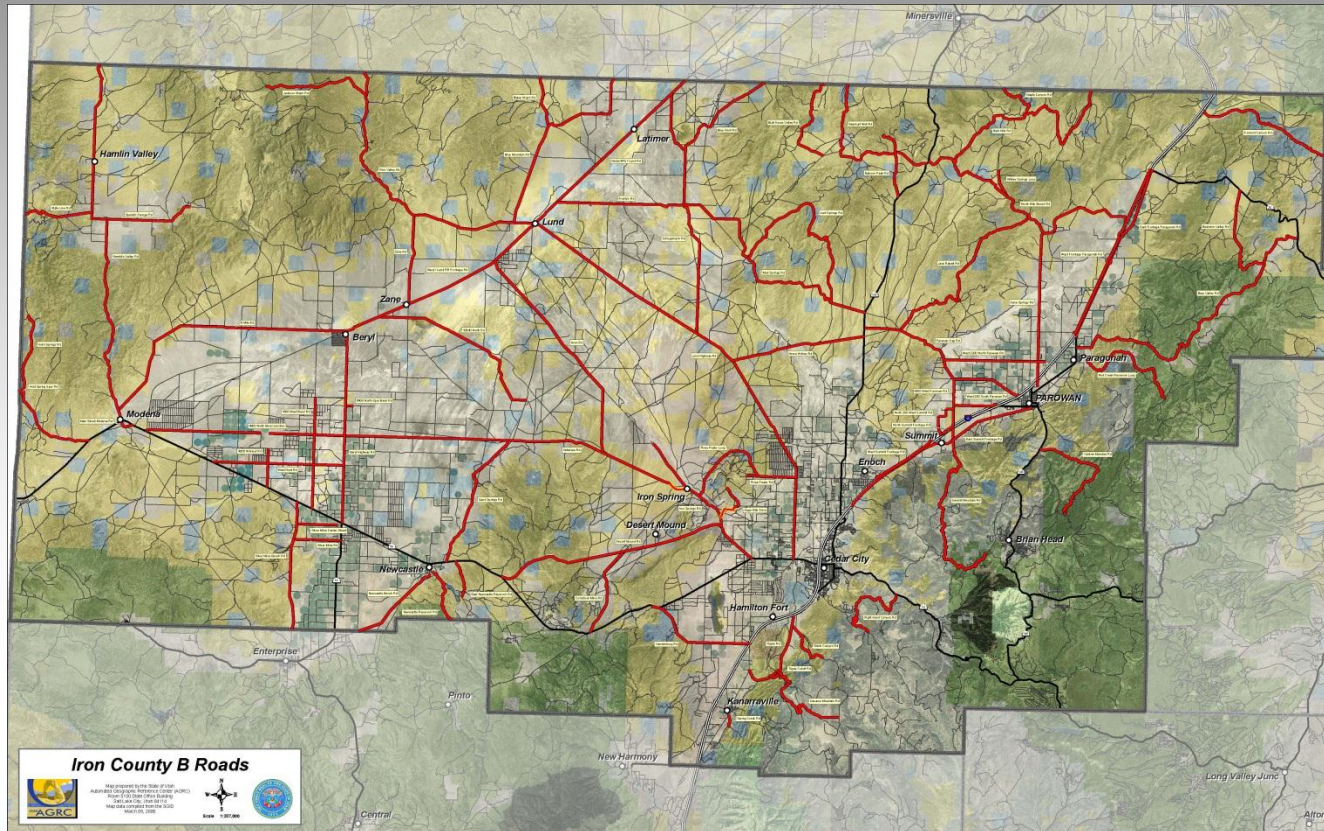


Map prepared by the State of Utah  
Automated Geographic Reference Center (AGRC)  
Project: U.S. State Office Building  
Salt Lake City, Utah 84114  
Map data converted from the 2002  
January 28, 2009





# County Map of Recorded Roads



# UTAH R.S. 2477 Roads

## (By County)

County	B roads	D roads	Total
Beaver	171	895	1066
Box Elder	60	167	227
Carbon	41	90	131
Daggett	18	62	80
Duchesne	15	59	74
Emery	116	298	414
Garfield	147	1350	1497
Grand	182	900	1082
Iron	72	1392	1464
Juab	169	571	740
Millard	218	1949	2167
Piute	93	7	100
Rich	29	209	238
San Juan	240	2767	3007
Sanpete	20	402	422
Sevier	91	585	676
Tooele	152	1780	1932
Uintah	123	2416	2539
Utah	17	22	39
Washington	90	372	462
Wayne	126	301	427
Total	2190	16594	18784



# Step 6. Seek recognition by federal agency.

- Use of FLPMA Title 5 permits also used
  - Permit should be in perpetuity and drafted so as not to impact any R.S. 2477 rights
- Nonbinding determinations
- Recordable Disclaimers of Interest



# Step 7. Litigate as Necessary

## Quiet Title Act

“The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights.”

(28 USC § 2409a(a))



## Quiet Title Act, cont'd

(i) Any civil action brought by a State under this section with respect to lands, other than tide or submerged lands, on which the United States or its lessee or right-of-way or easement grantee has made substantial improvements or substantial investments or on which the United States has conducted substantial activities pursuant to a management plan such as range improvement, timber harvest, tree planting, mineral activities, farming, wildlife habitat improvement, or other similar activities, shall be barred unless the action is commenced within twelve years after the date the State received notice of the Federal claims to the lands.



# NOTICE OF INTENT TO SUE



State of Utah

GARY R. HERBERT  
Governor

GREG BELL  
Lieutenant Governor

Exhibit 001

Office of the Governor  
PUBLIC LANDS POLICY COORDINATION

JOHN HARRIS  
Director

May 12, 2011

Honorable Ken Salazar, Secretary  
United States Department of the Interior  
1849 C Street, N.W.  
Washington, D.C. 20240

Re: *Notice of Intention to File Suit to Quiet Title to Certain Rights-of-Way in Garfield County, Utah*

Dear Secretary Salazar:

Pursuant to 28 U.S.C.A. § 2409a(m) ("The Quiet Title Act"), the State of Utah ("State") hereby notifies you, in your official capacity as Secretary of the United States Department of the Interior with jurisdiction to manage federal lands within the State of Utah, of the State's intention to file suit regarding the ownership of certain rights-of-way on federal lands within Garfield County, Utah.

The basis for the suit is the State's position that the grant by the United States of America of "the right of way for the construction of highways over public lands, not reserved for public uses" under United States Revised Statutes 2477 (43 U.S.C. § 932 (repealed October 21, 1976, with proviso recognizing the validity of rights-of-way already established)) was accepted for and on behalf of the State of Utah and its political subdivisions, as this grant pertains to the rights-of-way addressed in this letter.

The herein described rights-of-way are vital to the transportation system and economy of the State of Utah and Garfield County. Consequently, the United States' failure to recognize the State and Garfield County's interest in these rights-of-way creates a cloud on title that impairs the ability of the State to exercise its legal rights regarding the herein described rights-of-way.

The property in this action includes certain rights-of-way acquired pursuant to R.S. 2477. The rights-of-way are listed below by (1) Common Road Name, (2) County Unique Number, and (3) Former County Unique Number (Garfield County recently renumbered its roads). Please note that some roads do not have a Common Road Name and/or a Former County Unique Number. Additionally, some rights-of-way share the same Common Road Name.

Page 1 of 4

5110 State Office Building, PO Box 141107, Salt Lake City, Utah 84114-1107 • telephone 801-537-9801 • facsimile 801-537-9226

Exhibit 001

## Burr Trail Area

- Silver Falls Road, 9640 (0604)
- Burr Trail Road, 11000 ( )
- Deer Creek Road, 11010 (5305)
- Wolverine Loop Road, 11100 (0640)
- Horse Canyon Road, 11120 (0647)
- Wolverine Loop Bypass, 11150 (0643)
- Lampstand Road, 11200 (0628)
- Lampstand Loop Road, 11204 (0629)
- Onion Beds Road, 11210 (0634)
- East Lampstand Road, 11230 (0626)
- Brinkerhoff Spring Road, 11231 (0630)
- Lampstand to Burr Trail Road, 11240 (0632)
- South Onion Beds Road, 11260 (0650)
- 11266 (5318)
- South Onion Beds Loop Road, 11270 (1164)
- South Onion Beds Loop Road, 11271 ( )
- White Flats Loop, 11273 (0636)
- Moody Creek Road, 11300 (0655 & 655E)

## Hole in the Rock Area

- Left Hand Collett Canyon Road, 8550 (0608) (see map for claimed portion)
- Hole in the Rock Road, 9000 (1002)
- Rat Seep Road, 9390 (0615A)
- Egypt Road, 9400 (0615)
- Allen Dump Road, 9420 (1275)
- Harris Wash Road, 9600 (0604)
- Little Valley Road, 9610 (0603)
- Buckaroo Flat Road, 9620 (603A)
- The V Road, 9630 (604A)
- Halfway Hollow Road, 9670 (605A)
- Cedar Washes Road, 9700 (0570)
- South Big Flat Road, 9860 (5393)
- South Big Flat Wash Road, 9862 (1155)
- South Big Flat Wash Road, 9863 ( )
- 9880 (5398)
- Borrow Pit Road, 9885 (0599)
- Spencer Flat-Old Sheffield Road, 9900 (0600)
- Spencer Spur, 9920 (5396)
- Spencer Flat Road, 9950 (0600)
- Spencer Flat Road, 9955 ( )

Page 2 of 4



# NOTICE OF INTENT TO SUE cont'd

Exhibit 001

- McGath Bench Road, 9990 (0594)

## Alvey Wash Area

- Alvey Wash Road, 7500 ( )
- Alvey Wash Road, 7545 ( )
- Death Ridge Road, 7550 (1287)
- Death Ridge Fork, 7551 ( )
- Alvey Wash – Smokey Hollow Road, 8000 (0550)
- Rt Collett State Access, 8600 (0550) (see map for claimed portion)
- Alvey Wash 3 Road, 8610 ( )
- 8611 ( )
- 8612 (1509)
- Alvey Wash 3, 8620 ( )
- Alvey Wash Road, 8700 ( )
- Cherry Flat Road, 8725 (1267)
- Canaan CR Loop Road, 8750 (549A)
- 8751 ( )
- Canaan Cr Loop Road, 8752 (1153)
- Canaan Cr Loop Road, 8754 ( )
- Canaan Forest Road, 8760 (1152)
- Canaan Forest Road, 8765
- Coal Bed Canyon Road, 8808 ( )
- 8813 (5319)
- 8818 (5316)
- 8819 (5317) (see map for claimed portion)
- 8820 (5307)
- 8825 (5302)
- 8830 (1073)
- Pet Hollow Road, 8900 (0544)

## Cannonville Area

- Sheep Creek Road, 4600 (0409 & 1506)
- Yellow Creek Road, 4605 (0494) (see map for claimed portion)
- East Spur Jim Hollow Road, 4630 (0488)
- Jim Hollow Road, West, 4630 (0487)
- Jim Hollow Road, West 4632 (0487)
- Lower Sheep Creek Road, 4640 (0493)
- Sheep Creek Road, 4650 ( )
- 4652 ( )
- 7501 ( )
- 7711 (5239 & 5240)
- 7713 (5240N)

<sup>3</sup>  
Page 3 of 4

Exhibit 001

- Henrieville Diversion Road, 7720 (1284) (see map for claimed portion)
- Little Creek Road, 7725 (1288)
- Canaan Peak Road, 7750 (0524)
- 7753 (5248)
- Canaan Mountain 2, 7755 ( )
- Bull Flat Jeep Trail, 7760 (0564 & 1069)
- Coal Bench Road, 7800 (0509)
- Henderson Canyon Road, 7810 (5234)
- 7815, (0510)
- Folsom Canyon Road, 7820 (509A)
- Merrill Bench Road, 7900 (0479)
- 7908 (5207)
- Bulldog Loop, 7920 (0484)
- 7924 (5213)
- 7925 (5214)
- 7927 ( )
- 7950 ( )
- Henderson B Road, 7960 (0476)
- 7967 ( )

Please note that even though the rights-of-way in question cross lands owned and/or administered by multiple property owners, including other federal government agencies, for the purposes of this action only those rights-of-way crossing lands administered by the Bureau of Land Management are involved at this time. A CD is enclosed with this letter which contains maps and centerline descriptions pertaining to the above listed roads.

The State and Garfield County do not waive any rights to rights-of-way not herein identified and may file subsequent notices and complaints, as necessary, until such time as disputes relative to R.S. 2477 rights-of-way statewide have been resolved. Please contact John Hurst at 801-537-9295 with any questions or concerns about this notice.

Sincerely,

  
John Marja, Director  
Public Lands Policy Coordination Office

cc: Juan Palma  
Larry Jensen

<sup>4</sup>  
Page 4 of 4

# **Southern Utah Wilderness Alliance v. Bureau of Land Management 425 F.3d 735 (10th Cir. 2005)**

- September/October 1996, San Juan, Kane, and Garfield Counties began grading 16 roads on Federal land. Six roads in WSAs, nine in GSENM, six traversed overlook of Canyonlands NP
- SUWA claimed Counties did not have the right to pave the roads; Counties claimed ownership of the roads under R.S. 2477
- SUWA sued BLM on claimed violation of statutory duties, Counties for unlawful construction
- Defense of Counties – Activities took place within valid R.S. 2477 ROWs
- BLM informal adjudication that counties did not have valid Rights of Way (15 of 16 roads); Kane Co. exceeded ROW on Skutumpah Road
- District Court affirmed BLM determinations
- Appellate Court remanded.



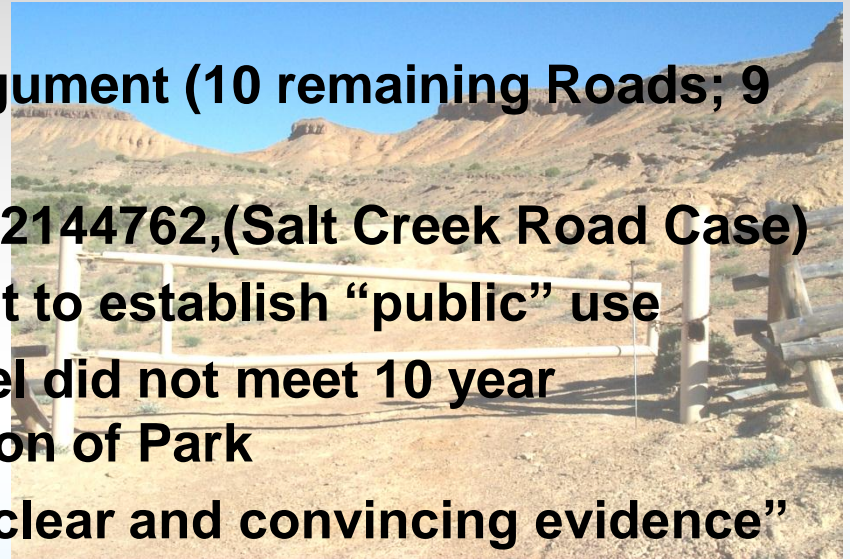
# Southern Utah Wilderness Alliance v. Bureau of Land Management 425 F.3d 735 (10th Cir. 2005) Holding

- BLM does not have authority to make binding determination on the validity of R.S. 2477 ROWs
- Case remanded to the Trial Court for *de novo* trial.
- Holder of an R.S. 2477 ROW must consult with federal agency before undertaking improvements.
- Scope of improvements to ROW limited to those “reasonable and necessary” and determined by established usage as of repeal of statute. Can’t improve hiking trail into 8 lane highway
- Counties bear burden of proof to establish ROW
- 2477 Rights of Way could be established by counties by two methods:
  - Public Use Standard – Acceptance of ROW established through continuous public use for 10 years (applying Utah law)
  - Mechanical Construction Standard may be taken into consideration but not necessary element
- Evidence to be considered on remand regarding identifiable destinations



# Utah R.S. 2477 Litigation Cases

- **Kane County v. U.S., 2011 WL 2489819, (Quiet Title Case; 15 Roads, State of Utah as Intervenor)**
  - S.J. Ruling - 5 Roads, incl. Skutumpah Road are R.S. 2477 ROWs**
  - Ten years public use not only method to establish R.S. 2477 ROW**
  - Post-trial briefing/Closing argument (10 remaining Roads; 9 day trial)**
- **San Juan County v. U.S., 2011 WL 2144762,(Salt Creek Road Case)**
  - Single entity use not sufficient to establish “public” use**
  - Motorized use for scenic travel did not meet 10 year requirement prior to reservation of Park**
  - Use must be established by “clear and convincing evidence”**
  - Intervention by SUWA not allowed**





# R.S. 2477 Litigation Cases cont'd

- **Emery County Case (Quiet Title Case; 7 Closed Roads)**  
**Oral Argument on Summary Judgment - District Court**
- **Juab County Case (Quiet Title Case; 3 Closed Roads)**  
**Settlement Ongoing – over one year**
- **Garfield County v. U.S. (Quiet Title Case; 94 Roads)**  
**Case filed**
- **Kane Co. v. U.S. (“Hole in the Rock”; 64 roads)**  
**Case filed**
- **Kane County v. U.S. (Quiet Title Case; 710 road segments)**  
**Case filed**
- **Other Counties (21 Counties; Quiet Title Cases)**  
**Complaints being drafted**



# Other Cases

- **The Wilderness Society v. Kane County, 560 F. Supp. 2d 1147; 581 F.3d 1198; 632 F3d 1162 (10<sup>th</sup> Cir. 2011)**
  - Environmental Organizations do not have prudential standing required to bring action against county.
  - Dicta: QTA not exclusive means of recognizing R.S. 2477 rights. (Distinguishing Block v. North Dakota, 461 U.S. 273 (1983)(QTA is the exclusive means for an adverse claimant to challenge government's title to real property))
- **SUWA v. Allred (D.C. litigation; RMP Case)**
  - Motion for change of venue to Utah – Notice seeking decision filed 3/15/2010



# Other Options

- Title 5- Uintah County has been successful; Other counties exploring
- Recordable Disclaimers of Interest
- Non-binding Determinations



# Bald Knoll Road Non Binding Determination

“The Bureau of Land Management has completed, for its land management purposes only, a preliminary non-binding determination (NBD) for the Bald Knoll Road in Kane County. Based on review of information submitted by Kane County and information in BLM records, the BLM Utah State Office has made the preliminary determination that the Bald Knoll Road is a valid R.S. 2477 right-of-way.

The Bald Knoll road is located in Kane County, approximately 20 miles northeast of Kanab. Total length of the road is approximately nine miles, with nearly the entire length crossing public lands administered by the BLM.”



# Litigation-Legal Issues

- **Statute of Limitations** under Quiet Title Act
  - WSA designation is notice under QTA
    - 10<sup>th</sup> Circuit: Southwest Four Wheel Drive v. BLM
    - 9<sup>th</sup> Circuit- Inyo County v. Interior
- **Intervenors (Split District Court decisions)**
  - Salt Creek provides guidance
  - Juab 3 roads case- Environmental defendant permitted intervention
  - Emery 7 roads case- Environmental defendant denied intervention
- **Witnesses**
  - Aging witnesses - Rule 27 Depositions
  - State Statute authorizes recording affidavits
  - Private landowners
- **Burden of Proof**





# WHO OWNS THE WEST?

Map of the United States showing the percentage of the population aged 65 and over by state. The states are shaded in red, and the percentage values are printed on or near each state. The map includes a scale bar (0 to 500 miles and 0 to 500 km) and a north arrow.

State	Percentage (%)
AK	69.1
HI	19.4
WA	30.3
OR	53.1
ID	50.2
MT	29.9
WY	42.3
CO	36.6
NV	84.5
UT	57.4
AZ	48.1
NM	41.8
CA	45.3
TX	19.9
OK	1.2
NE	6.2
KS	1.4
MO	5.6
IL	10.0
IN	5.6
MI	5.6
WI	5.6
ND	2.7
SD	0.8
IA	1.8
OH	5.4
PA	9.9
NY	11.8
CT	13.4
RI	1.1
MA	1.9
NH	7.5
VT	0.8
ME	0.4
DC	11.8
DE	0.4
MD	3.1
VA	2.0
NC	2.8
SC	2.9
GA	3.8
FL	8.2
LA	5.1
MS	7.2
AL	7.3
TN	1.6
AR	3.2
OK	3.6
MO	5.0
IL	1.8
IN	2.0
MI	1.7
WI	0.8
ND	1.4
SD	0.8
NE	6.2
KS	1.4
MO	5.6
IL	10.0
IN	5.6
MI	5.6
WI	5.6
ND	2.7
SD	0.8
IA	1.8
OH	5.4
PA	9.9
NY	11.8
CT	13.4
RI	1.1
MA	1.9
NH	7.5
VT	0.8
ME	0.4
DC	11.8
DE	0.4
MD	3.1
VA	2.0
NC	2.8
SC	2.9
GA	3.8
FL	8.2
LA	5.1
MS	7.2
AL	7.3
TN	1.6
AR	3.2
OK	3.6
MO	5.0
IL	1.8
IN	2.0
MI	1.7
WI	0.8
ND	1.4
SD	0.8
NE	6.2
KS	1.4
MO	5.6
IL	10.0
IN	5.6
MI	5.6
WI	5.6
ND	2.7
SD	0.8
IA	1.8
OH	5.4
PA	9.9
NY	11.8
CT	13.4
RI	1.1
MA	1.9
NH	7.5
VT	0.8
ME	0.4
DC	11.8
DE	0.4
MD	3.1
VA	2.0
NC	2.8
SC	2.9
GA	3.8
FL	8.2
LA	5.1
MS	7.2
AL	7.3
TN	1.6
AR	3.2
OK	3.6
MO	5.0
IL	1.8
IN	2.0
MI	1.7
WI	0.8
ND	1.4
SD	0.8
NE	6.2
KS	1.4
MO	5.6
IL	10.0
IN	5.6
MI	5.6
WI	5.6
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NH	7.5
VT	0.8
ME	0.4
DC	11.8
DE	0.4
MD	3.1
VA	2.0
NC	2.8
SC	2.9
GA	3.8
FL	8.2
LA	5.1
MS	7.2
AL	7.3
TN	1.6
AR	3.2

Data source: U.S. General Services Administration, *Federal Real Property Profile 2004*, excludes trust properties.

# UTAH ENABLING ACT

## **SEC. 6.**

That upon the admission of said State into the Union, sections numbered two, sixteen, thirty-two and thirty-six in every township of said proposed State, and where such sections or any parts thereof have been sold or otherwise disposed of by or under the authority of any act of Congress; or other lands equivalent thereto...are hereby granted to said State for the support of common schools....



# UTAH ENABLING ACT

## SEC. 3.

That the people inhabiting said proposed State do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof...and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States...that no taxes shall be imposed by the State on lands or property therein belonging to or which may hereafter be purchased by the United States or reserved for its use....



# UTAH ENABLING ACT

## **SEC. 9.**

That five per centum of the proceeds of the sales of public lands lying within said State, which shall be sold by the United States subsequent to the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid to the said State, to be used as a permanent fund, the interest of which only shall be expended for the support of the common schools within said State





# 2012 Proposed Resolutions

- HCR 001 – Letter to Federal Government

Resolution for letter to federal government – demand for response, indication of intentions by 4/15/2013

- HJR 003 – Federal Transfer of Public Lands

Resolution demanding that the federal government extinguish title to Utah's public lands and transfer title to those lands to the state of Utah.





# 2012 PROPOSED BILLS

- HB 0091, 91S01 – Utah Enabling Act Legislation

Requires the State Attorney General to file an action to enforce the Utah Enabling Act if the United States does not comply with certain demands by 10/1/2012
- HB 0148 – Transfer and Taxation of Public Lands
  - Requires the United States to extinguish title to public lands and transfer title to those public lands to the state on or before December 31, 2014;
  - Provides for 5/95% State/Federal split on sale of public lands to which the State receives title under legislation; 5% State share to be deposited into the permanent State School Fund;
  - Requires the Constitutional Defense Council to study or draft legislation on certain issues related to the transfer, management, and taxation of public lands



## 2012 PROPOSED BILLS (cont'd)

- **HB 0141 – State Sovereignty and Rights of Set Off**  
Affirms Ninth and Tenth Amendments; Grants State right to set off costs and damages against amounts owed to Federal Government
- **HB 0176 – County Land Use Plans**  
Outlines process for a county to recommend to the Legislature proposed congressional land use legislation concerning federal land use within the county.
- **HB 209 - Utah Lands Protection Act**  
Defines sovereign lands.
- **HB 0511 – Eminent Domain of Federal Land**  
Allows eminent domain action against Federal Government by political subdivision of State



