

**TESTIMONY OF SUE SILVER
MEMBER, BOARD OF DIRECTORS
COALITION FOR PUBLIC ACCESS**

**BEFORE THE NEVADA LEGISLATURE'S
SENATE NATURAL RESOURCES COMMITTEE
SENATOR DAVID R. PARKS, CHAIR**

IN SUPPORT OF THE SENATE CONCURRENT RESOLUTION NO. 6

MARCH 10, 2009

Mr. Chairman and Committee Members.

Thank you for the opportunity to speak in support of SCR 6. My name is Sue Silver. I am a resident of Mineral County and a member of the board of directors of the Coalition for Public Access (CPA). My testimony today represents CPA's position on this bill.

Today's comments will outline the importance of:

- Establishing claims of rights-of-way (public roads) over federal lands;
- Why Nevada's counties must make these claims;
- Why the federal land managers are free to ignore legally guaranteed rights-of-way;
- What counties can do to try to avoid potential loss of use of the public roads; and,
- How they may accomplish the task of identifying pre-existing rights-of-way as guaranteed under the Federal Land Management Policy Act (FLPMA) of 1976.

Just over a year ago lands bills were offered to Lyon, Esmeralda and Mineral counties by Nevada's Congressional Delegation. These offers came as a complete surprise not only to the citizens and residents of the counties, but to the respective county commissioners as well. From the initial meetings held in each county, due to the inclusion of proposed wilderness areas it became abundantly clear that if the counties pursued a lands bill they would suffer a combined potential loss of motorized and multiple use access to nearly 1.4 million acres of federally managed public lands. Given the threat of lost access to massive areas of multi-use public lands, the counties rejected the wilderness area proposals and ultimately the lands bills.

To many citizens it became glaringly apparent there was a need to address similar future threats. The CPA was formed in response to the growing need to protect multi-use access and we began to monitor legislation and proposed actions of all kinds that might diminish such access. We also became more aware of the potential for loss of access that is posed by various planning processes of federal land managers.

In response to last year's proposal, Mineral County decided it needed to document the evidence of prior use of its roads in order to help to defend against potential future road closures. They started an effort to inventory the roads, features and other evidence of use of the land, utilizing photography and GPS coordinates to complete the documentation, similar to what many counties in Utah have done. Research was done to identify when the roads across public lands came into existence in order that pre-FLPMA vested rights of ways might be protected. This was done by comparing historical maps of the county and reviewing newspaper accounts and other publications that documented the earliest use of the roads. All the roads documented will be dated as to identify use prior to 1976, so the county may defend against future attempts to close them.

As we understand it, the BLM cannot on its own make final determination of whether such prior rights exist or survive, and it acknowledges that ultimately only a court of law may render rulings in such matters. Because of this, legal action would have to be initiated by the counties in order to prove the right of way pre-existed FLPMA. Such action will require the counties to provide vast amounts of documentary evidence as to the pre-existing right-of-way garnered by the public. If counties hope to defend a right-of-way access across public lands, they must be prepared to show evidence that such a right exists.

In terms of pre-existing rights-of-way within forest reserve lands, only those rights-of-ways that pre-existed the withdrawal of the public lands for forest service management may be asserted by the affected county. Unless counties have sufficiently mapped and documented the roads within their boundaries and are able to produce evidence of the public's use and the dates of use of the roads, at some time in the future it is almost assured that some vested rights-of ways across public lands will be lost.

The Inyo National Forest and the Bridgeport Ranger District of the Humboldt-Toiyabe National Forest have recently undergone the process of review of their travel management plans. These plans will add routes, close routes or change the type of vehicle allowed on forest system motorized routes within their respective jurisdictions. In reviewing the draft TMP maps, CPA found that many roads were not shown on the maps. As a result they were not subject to discussion during the public comment periods. Use of those roads that were not mapped by the forest service will be prohibited in the future.

In the instance of the recent scoping for the Bridgeport Ranger District's Travel Management Plan, the work done by Mineral County to document the roads and rights-of-ways enabled them to assess the closure by determining whether an affected trail, road or route pre-existed forest service jurisdiction and to comment on whether the public had acquired a guaranteed right-of-way over those roads. Despite this, however, some of the forest service representatives stated that only the county commissioners can assert the RS 2477 rights of ways, not the general public. Only the county commissioners may legally challenge a decision by the Forest Service and only through adjudication may a final decision be rendered.

Without proper mapping and documentation, counties that would choose to defend such rights will not be able to timely enough identify the roads having valid, legal rights of ways. Without such documentary evidence, a court challenge will almost certainly fail.

Over the years, government regulations have overwhelmingly encroached on the public's right to use the federal public lands. When access to land is cut off from the people, the freedom to explore, prospect, mine, or develop alternative energy resources is also cut off. Nevada's counties need to be prepared to defend against road closure threats in order to protect previously acquired rights to use of the roads and to preserve public access. Without adequate means of access, future development of mines, renewable energy, grazing, hunting, recreation and tourism will be next to impossible.

Nevadans have long enjoyed such multiple use of the land and many of the roads that presently exist were built by the pioneers of the state who actually tamed the real wilderness that once existed here. Nevada's earliest roads and trails were created through necessity. It was a necessity the federal government understood and encouraged when the 1866 mining act was passed and later codified as section 2477 of the Revised Statutes of the United States. Roads, trails and ways were the heart beat of this nation's movement to expand westward. Roads allowed for the settlement of the West and they have provided access across the lands ever since. The public earned the right to their use by building the roads and settling the lands the government desired to have settled, and the public's interest in these vested rights is deserving of protection.

Last year's wilderness threat to Lyon, Esmeralda and Mineral counties will not be the last assault on access to multiple use lands and future wilderness proposals are expected. In addition, while the Forest Service is finalizing the draft environmental impact studies for their travel management plans, the BLM Carson office is planning a district-wide resource management plan that we fully expect will result in diminished access and road closures.

By urging Nevada's counties to document and map their existing roads, it is hoped they may benefit by being prepared in advance to protect such access ways from whatever threat may be encountered.

Thank you for your time and consideration. We respectfully request the Committee to support SCR 6.

Respectfully,

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