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

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| STATE OF UTAH and BEAVER COUNTY, BOX ELDER COUNTY, EMERY COUNTY, UINTAH COUNTY, WASHINGTON COUNTY and WAYNE COUNTY OF THE STATE OF UTAH,<br><br>Plaintiffs<br><br>vs.<br><br>UNITED STATES OF AMERICA, DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT,<br><br>Defendants. | : | **COMPLAINT TO QUIET TITLE**<br><br>**Judge Dale A. Kimball**<br>**DECK TYPE: Civil**<br>**DATE STAMP: 02/09/2005 @ 14:03:46**<br>**CASE NUMBER: 2:05CV00108 DAK** |

Plaintiffs State of Utah ("State") and Beaver County, Box Elder County, Emery County, Uintah County, Washington County and Wayne County of the State of Utah (the "Counties") allege as follows:

1

## INTRODUCTION

1. This is an action to quiet title to certain described rights-of-way for highways, including the scope thereof, under the grant of R.S. 2477, an 1866 enactment of Congress.

## JURISDICTION AND VENUE

2. The Court has subject matter jurisdiction under 28 U.S.C. §§ 1346(f) and 2409(a) (quiet title to real property in which the United States claims an interest).

3. Venue is proper under 28 U.S.C. § 1391(e) inasmuch as the lands in issue are located in Utah.

## PARTIES

4. The State is one of the fifty sovereign states forming the United States of America, having been admitted to the Union on January 4, 1896 on an equal footing with the original states. The executive power of the State is vested in the Governor, who is responsible for seeing that the laws of the State are faithfully executed. Utah Const. art. VII, § 5; Utah Code Ann. § 67-1-1.

5. Each Plaintiff County is a political subdivision of the State of Utah responsible for providing local government services, including but not limited to road construction, reconstruction and maintenance, search and rescue, emergency medical services and law enforcement, all of which depend on access along the highways.

6. The State and the Counties are joint owners of the R.S. 2477 rights-of-way in Utah. Utah Code Ann. § 72-5-302(2). An R.S. 2477 right-of-way is an interest in real property consisting of the dominant estate in the land.

7. Defendant United States of America is the federal government and the Owner of the servient estate adjacent to the highways relevant to this action, further described below.

8. Defendant United States Department of the Interior ("DOI") is the department of the federal government to which Congress delegated specific authority to administer the public lands under federal law, and hence the above-referenced servient estate.

9. Defendant United States Bureau of Land Management ("BLM") is the agency within the DOI that has been delegated specific authority by Congress to administer public lands, and hence the above-referenced servient estate, under federal law.

## BACKGROUND AND ALLEGATIONS REGARDING R.S. 2477 HIGHWAYS WITHIN THE STATE OF UTAH

10. R.S. 2477, enacted by Congress in 1866, provides in pertinent part as follows:

> § 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.

Mining Act of July 26, 1866, § 8, 14 Stat. 251, 253, 43 U.S.C. § 932 (1970) (repealed with savings provisions).

11. An R.S. 2477 right-of-way is a valid existing property right – an easement recognized by law as the dominant estate in the land.

12. Though R.S. 2477 was repealed in 1976, the repealing legislation specifically recognized the continuing validity of R.S. 2477 rights-of-way established as of 1976. FLPMA §§ 509(a), 701(a) and 701(h), codified respectively at 43 U.S.C. §§ 1769(a) and 1701, savings provisions (a) and (h).

13. R.S. 2477 was self-executing; ratification or approval by the federal government was not required to perfect a 2477 right-of-way. Sierra Club v. Hodel, 848 F. 2d 1068, 1083-84 (10th Cir. 1988).

14. As a matter of federal law, state law controls perfection and scope of an R.S. 2477 right-of-way. Id. at 1081-84.

15. In Utah, an R.S. 2477 right-of-way could be established ("perfected") by public use for a period of ten years without formal action by any public authority, or by affirmative governmental action indicating an intent to accept the grant, including but not limited to construction or maintenance of a road.

16. The scope of R.S. 2477 rights-of-way is that which is reasonable and necessary for the type of use to which the right-of-way has been put. Hodel, 846 F. 2d at 1083, 1084 (affirming the District Court's "reasonable and necessary" definition).

17. Such areas along the roadway beyond the actual beaten path as are reasonable and necessary to accommodate "sound engineering practice," including lands on which attendant accouterments such as drainage ditches, culverts, shoulders and cut slopes existed as of October 21, 1976, or reasonably and necessarily are added after that date to accommodate increased travel, are "part of the reasonable and necessary use" and are therefore within the scope of each highway right-of-way. Hodel, 846 F. 2d. at 1083-83. The scope also includes such areas as are reasonable and necessary to accommodate service of such accouterments as are put in place pursuant to that sound engineering practice.

18. The scope of the R.S. 2477 right-of-way includes the right to conduct reasonable and necessary maintenance within the right-of-way and make reasonable and necessary improvements within it without any BLM authorization. Id. at 1083, 1086 n.16. This necessary legal consequence is acknowledged in the 1990 DOI policy regarding R.S. 2477, which provides as follows: "The holder of the right-of-way has no requirement to inform the BLM of its activities on or within the right-of-way. As such, the Department has no authority under R.S. 2477 to review and/or approve such reasonable activities." BLM Instruction Memorandum No. 90-589. See also Department of the Interior's Report to Congress on R.S. 2477 (June 1993) (Appendix II, Exhibit M at 4) (stating that activities within the R.S. 2477 right-of-way that are within the jurisdiction of the right-of-way holder "include, but are not necessarily limited to, maintenance, reconstruction, upgrading, and reasonable activities").

19. The scope of the R.S. 2477 right-of-way is "'not . . . restricted to the actual beaten path,'" but includes the right to widen the road to meet the exigencies of increased travel even after 1976, "at least to the extent of a two-lane road" to allow travelers to pass each other. Hodel, 846 F. 2d at 1083.

20. Though R.S. 2477 was repealed on October 21, 1976 by the Federal Land Policy and Management Act (FLPMA), R.S. 2477 rights-of-way in existence on the date of FLPMA's passage are protected under that act.

21. FLPMA section 701(a) provides:

> 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.

22. FLPMA section 701(h) provides:

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

23. FLPMA section 509(a) provides:

> 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.

24. In 1939, DOI regulations provided:

> [R.S. 2477 (43 U.S.C. 932)] becomes effective upon the construction or establishing of highways, in accordance with the state laws, over public lands not reserved for public uses. No application should be filed under said R.S. 2477 as no action on the part of the Federal Government is necessary.

43 C.F.R. §244.55 (1939).

25. In 1963, BLM regulations provided:

> Grants of [R.S. 2477 rights-of-way] become effective upon the construction or establishment of highways, in accordance with the State laws, over public lands, not reserved for public uses. No application should be filed under R.S. 2477, as no action on the part of the Government is necessary.

43 C.F.R. §244.58 (1963).

26. In 1974, BLM regulations provided:

> No application should be filed under R.S. 2477, as no action on the part of the Government is necessary. . . . Grants of [R.S. 2477 rights-of-way] become effective upon the construction or establishment of highways, in accordance with the State laws, over public lands, not reserved for public uses.

43 C.F.R. §§2822.1-1 & 2822.2-1 (1974).

27. BLM's current regulations state that if an attempt to administer rights conferred under a right-of-way grant issued prior to October 12, 1976 "diminishes or reduces any rights conferred by the grant or the statute under which it was issued, . . . the provisions of the grant or the then existing statute shall apply." 43 C.F.R. §2801.4.

28. The language of BLM's current regulations was explained by BLM as follows:

> [I]f questions should arise regarding the rights of a right-of-way grant holder under a grant or statute, the earlier editions of the Code of Federal Regulations on rights-of-way will remain available to assist in interpretation of the rights conferred by the grant or earlier statute . . . . In carrying out the Department's management responsibilities, the authorized officer will be careful to avoid any action that will diminish or reduce the rights conferred under a right-of-way grant issued prior to October 21, 1976.

51 Fed. Reg. 6542 (February 25, 1986).

29. Before 1993, BLM policy required that a road be considered a public road when public funds had been spent on the road. BLM Manual, Rel 2-229, 2801.

30. Before 1993, BLM policy stated that "[w]hen the history of a road is unknown or questionable, its existence in a condition suitable for public use is evidence that construction

sufficient to cause a grant under R.S. 2477 has taken place." BLM Manual, Rel 2-229, June 30, 1986. See Sierra Club v. Hodel 675 F. Supp. 594, 605 (D. Utah 1987).

31. Before 1993, DOI and BLM recognized that under law BLM need not authorize activities conducted within the scope of an R.S. 2477 right-of-way.

32. Before 1993, the Secretary of Interior recognized that BLM has no adjudicative or decision-making role to play in determining the existence or scope of an R.S. 2477 right-of-way and that any conclusions drawn by the agency are for administrative convenience only, thus not appealable to the IBLA, leaving actual decisions to the courts.

33. Before 1993, DOI and BLM recognized the historic DOI regulation providing that validity of an R.S. 2477 right-of-way was not dependant on DOI or BLM recognition of that validity.

34. Sixty-nine percent of the land base in the State of Utah is owned by the federal government and large numbers of roads in Utah traverse lands owned by the federal government.

35. "Normal Maintenance Activities" as used in this complaint means routine maintenance involving use of road graders and other equipment to conduct activities including, but not limited to, the following:

a. Making minor vertical and horizontal alignment alterations as appropriate to provide or improve safety;
b. Grooming and grading of the previous constructed road surface;
c. Establishing and maintaining the crown with materials gathered along the road;
d. Filling ruts;
e. Spot filling with the same or improved materials;
f. Leveling or smoothing washboards;
g. Clearing the roadway of obstructing debris;

h. Cleaning culverts including head basins and outlets;
I. Resurfacing with the same or improved materials of the same general type;
j. Maintaining, repairing, replacing and installing rip rap;
k. Maintaining drainage;
l. Maintaining and repairing washes and gullies;
m. Maintaining, repairing, replacing and installing culverts as necessary to protect the existing surface from erosion;
n. Repairing washouts;
o. Maintaining, repairing, replacing and installing marker posts;
p. Maintaining, repairing, replacing and installing water crossings;
q. Maintaining, repairing, replacing and installing cattle guards;
r. Maintaining, repairing, replacing and installing road signs.;
s. Repairing, stabilizing and improving cut and fill slopes;
t. Removing snow.

36. Performance of Normal Maintenance Activities on County roads minimizes degradation of the servient estate by decreasing erosion, fugitive dust and other impacts on adjacent lands.

37. Before 1993, BLM did not attempt to require the County to inform BLM, submit plans, or request approval or other authorization before conducting Normal Maintenance Activities on the roads subject to this suit.

38. Before 1993, BLM did not object to Normal Maintenance Activities on these roads.

39. The counties have performed Normal Maintenance Activities on thousands of miles of roads for decades. These activities are generally conducted on an "as needed" basis, taking into account the County's financial resources available for that purpose.

DEFENDANTS' CLAIM OF INTEREST IN,
AND ADVERSE TO, PLAINTIFFS' R.S. 2477 RIGHTS-OF-WAY

40. Defendants DOI and BLM began to identify their claim of interest in Plaintiffs' R.S. 2477 rights-of-way in Instruction Memorandum No. 93-113 (January 22, 1993), directing BLM ordinarily to refuse to "acknowledge" R.S. 2477 rights-of-way and not even "examine[]" "assertions" of 2477 rights except where there was a "compelling and immediate need to have a road acknowledged as an R.S. 2477 highway." This refusal to acknowledge Plaintiffs' vested, dominant estate constituting Defendants' assertion of right to the same continues to the present. For example, by policy memorandum dated January 22, 1997 and directed to four Assistant Secretaries, the Director of the Department of the Interior stated that its 1993 position "is still in effect."

41. The January 22, 1997 DOI memorandum further asserts that "[t]hose making claims of the existence of valid R.S. 2477 rights-of-way continue to have the option of seeking to establish the validity of their claims in court."

42. Defendants have engaged in continuous conduct and committed many acts furthering their unlawful claim to Plaintiffs' 2477 rights-of-way. Examples are as follows. First, in August of 1994, DOI issued draft regulations to govern R.S. 2477 rights-of-way that would have reversed virtually the entire scope of administrative and judicial precedent governing R.S. 2477 rights-of-way. 49 Fed. Reg. 39216 (August 1, 1994). Congress prohibited DOI from putting those regulations into effect, pursuant to section 108 of the Department of Interior and Related Agencies Appropriations Act, 1997, without express authorization of Congress, which

has not been granted. This 1997 Act also prohibited the DOI from making any final rule or regulation pertaining to the recognition, management, or validity of a right-of-way pursuant to R.S. 2477 without express authorization from Congress, which has not been granted. Yet Defendants have attempted to impose on the Plaintiffs' requirements of those 1994 draft regulations as though they had been finally adopted.

43. Second, the BLM generally has engaged in a pattern and practice of interfering with Normal Maintenance Activities. These include, but are not necessarily limited to:

a. Demanding site visits in connection with activities normally conducted in the past without any BLM involvement;
b. Objecting to activities normally conducted in the past without BLM involvement;
c. Objecting to activities which BLM had previously indicated were not objectionable;
d. Objecting to activities based upon assertions that lands were reserved for public use in areas where road maintenance has gone on without prior BLM interference or objection.

44. Third, the BLM has imposed day-to-day involvement in decisions directed to Normal Maintenance Activities, as identified in paragraph 35, on R.S. 2477 rights-of-way, which has the following effects: unduly and materially interferes with Plaintiffs' traditional and legal role as manager of its transportation infrastructure; materially impedes efficient management of the transportation infrastructure, causing undue expense and burden to limited County resources; interferes with the safety of the traveling public by causing undue delay in repair, maintenance and improvements necessary to maintain and provide safety on any ongoing basis in response to innumerable day-to-day natural events that impact road conditions; and may expose the Plaintiffs to liability arising from injuries resulting from unsafe road conditions.

45. Fourth, BLM has taken the position that construction activities by the counties on their asserted R.S. 2477 rights-of-way that are unauthorized by the federal government degrade the land and therefore constitute trespass regardless of whether the R.S. 2477 rights-of-way exist. Southern Utah Wilderness Alliance, et al. v. Bureau of Land Management, et al., Tenth Circuit Court of Appeals, Case Nos. 04-4071 and 04-4073, at 21 (August 2004).

46. Fifth, the BLM has refused to acknowledge R.S. 2477 rights-of-way where there has been no "expenditure of labor and regular maintenance," and takes the position that "mere passage of vehicles is not sufficient" to establish an R.S. 2477 right-of-way. Plaintiffs' Brief in Support of Motion for Summary Judgment and a Permanent Injunction in Southern Utah Wilderness Alliance, et al. v. Bureau of Land Management, et al., Case No. 2:96 CV 0836S, at 12 (September 20, 2000). The BLM has also stated through counsel that the counties "fail[ure] to provide any information relative to whether the claim was mechanically constructed or improved" was a basis for the BLM's agency action rejecting R.S. 2477 claims. Id. at 27. The District Court upheld this BLM claim. However, the BLM claim and district court ruling are contrary to Tenth Circuit law, and the Counties have appealed the ruling to the Tenth Circuit. In Sierra Club v. Hodel, 675 F. Supp. 594, 604 (C.D. Utah 1987) (affirmed as to 2477 rights in Sierra Club v. Hodel, 948 F.2d 1068 (1988)), the Court stated that "[u]nder R.S. 2477, a right-of-way could be established by public use under terms provided by state law," and after detailing evidence of use only, concluded that "under Utah law, this use was effective to accept and dedicate the road to the public use as a highway." Id. (emphasis added). Defendants, therefore, have asserted the non-existence of many R.S. 2477 rights-of-way claimed in this State, the result

of which, if upheld, would divest Plaintiffs of the dominant estate they assert, and vest that estate in the Defendants.

47. Sixth, in its refusal to acknowledge use alone as a basis for establishing a 2477 highway, the BLM also rejects the settled Tenth Circuit doctrine that state law governs the establishment and scope of an R.S. 2477 right-of-way, following instead new and contradictory federal policies that would cancel all or most R.S. 2477 rights-of-way in Utah, thereby creating federal ownership of the dominant estates asserted by Plaintiffs.

GENERAL ALLEGATIONS REGARDING THIS QUIET TITLE ACTION

48. This is an action under 28 U.S.C. §2409a to quiet title to six R.S. 2477 rights-of-way in six counties of the State of Utah. The rights-of-way are described herein and in Exhibits 1 through 9.

49. The State of Utah, in its own behalf and in behalf of the County parties, filed with the Department of the Interior various documents, which, taken together, constitute a notification of intention to file suit under 28 U.S.C. § 2409a(m). These documents constitute Exhibits 1 through 9 of this Complaint, and are incorporated herein.

50. The documents identified in the prior paragraph as constituting the notification of intention to file suit were dated June 14, 2000, May 12, 2004, and June 15, 2004 and sent to the Secretary of the Department of the Interior by U.S. mail, and the requirement of 28 U.S.C. § 2409 a(m) that 180 days pass between the notification and the bringing of an action is satisfied.

51. R.S. 2477 enacted by Congress in 1866, provides in pertinent part as follows:

> §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.

Some detail regarding R.S. 2477 is supplied above in paragraphs 10 through 33.

52. The descriptions of the roads in the exhibits hereto are the result of field verification and precise location by mapping-grade Global Positioning Satellite (GPS) technology and in some instances digitalization from digital ortho-photo quadrangles published by the United States along the entire length of the roads. Data obtained by GPS has been electronically downloaded to computers where they were checked for accuracy.

53. The age and use of all these roads is verified by aerial photography, government maps, testimony of witnesses who have used or observed use of the roads before 1966, or if the roads were created by so-called mechanical construction, before 1976, or some combination thereof, and in all cases by the testimony of witnesses.

54. All such roads were open to the public as of 1976 (and continue to be open to the present time).

55. All such roads at the time of their first use or construction were located on open public lands.

56. Road uses as of 1976 continue to the present, though specific means of use may have evolved as conditions have changed, to include such travelers as tourists, land managers and experts.

57. All such roads have been included in the state highway system or infrastructure and the State legislature has given the respective counties jurisdiction over those which are not solely State or city roads for construction, operation, and maintenance.

58. The scope of each of these R.S. 2477 rights-of-way, as a matter of federal law, is governed by Utah law. That scope is that which is reasonable and necessary for the type of use to which the road has been put; it includes the beaten path plus reasonable and necessary accouterments such as drainage ditches, culverts, shoulders, back slopes, realignments that have been made in response to natural impacts on the road such as flooding and rock slides, slight deviations from the common way to avoid encroachments, obstacles or obstructions upon the road, and the right to enhance the road even after 1976 to meet the exigencies of increased travel, at least to the extent of improving the road to two lanes so passengers could pass each other.

59. Reasonable and necessary management activities on the road are also part of the scope of the R.S. 2477 right-of-way of each of the roads that is a subject of this complaint. As long as the R.S. 2477 owner stays within the right-of-way, as defined in the previous paragraph, that owner may make reasonable and necessary improvements without any BLM authorization. Sierra Club v. Hodel, 848 F. 2d 1068, 1086 n.16 (10th Cir. 1988). As BLM stated in its 1993 Report to Congress: "Reasonable activities within the R.S. 2477 right-of-way are within the jurisdiction of the holder. These include, but are not necessarily limited to, maintenance, reconstruction, upgrading, and reasonable activities. BLM's concern is whether such activities are confined within the boundaries of the right-of-way or whether such activities are so extreme that they will cause unnecessary degradation of the servient estate." Department of Interior's

Report to Congress on R.S. 2477 (June 1993) (Appendix II, Exhibit M at 4). This includes the right reasonably to go beyond the traveled way in order to perform the indicated activities.

60. All such roads at the time of their perfection, through use or construction or both or otherwise, were located on open public lands.

FIRST CAUSE OF ACTION

(TO QUIET TITLE IN THE GEOTHERMAL ROAD IN BEAVER COUNTY)

61. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 60.

62. The Geothermal Road is located on public lands, not reserved for public uses, as more particularly shown on the accompanying Exhibits 4 and 10, incorporated herein by this reference. Exhibit 10 reflects the location of the road as identified and plotted using GPS or digital technology. The Geothermal Road links up with other roads in the County's road system.

63. Construction and maintenance of the road before 1976 was performed by Beaver County road crews.

64. The Geothermal Road was also established before October 21, 1976, by continuous public use for at least ten years prior thereto. More specifically, the road was traveled by miners and people traveling to the hot springs in Negro Mag Wash since the early 1900s, and has been continuously used since that time. Various other uses of the road began before 1966. Since 1975 the road has been used to prepare and service the geothermal project.

65. The purposes for use of this road include ranching, sheep herding, accessing TV and UP&L towers, mining, hunting, sightseeing and getting to the north part of the Mineral Mountains.

66. Travelers on the road from before 1966 and continuing thereafter included those who went by freight wagon, truck and automobile.

67. Defendants have asserted their claim to the dominant estate constituting Plaintiffs' R.S. 2477 right-of-way in a manner described above in paragraphs 40 through 47.

SECOND CAUSE OF ACTION

(GOOSE CREEK, GROUSE CREEK, PILOT MOUNTAIN ROAD IN BOX ELDER COUNTY)

68. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 60.

69. The Goose Creek, Grouse Creek, Pilot Mountain Road is located on public lands, not reserved for public uses, as more particularly shown on the accompanying Exhibits 5 and 11 and incorporated herein by this reference. Exhibit 11 reflects the location of the road as identified and plotted using GPS or digital technology. The Goose Creek, Grouse Creek, Pilot Mountain Road links up with other roads to the County's road system.

70. The road is a main access route for the towns of Grouse Creek and Lucin and ranches in the area. It is one of the most important roads through the west side of Box Elder County.

71. Construction and maintenance of the road before 1976 was performed by mechanical road graders beginning at least as early as 1960.

72. The Goose Creek, Grouse Creek, Pilot Mountain Road was also established before October 21, 1976, by continuous public use for at least ten years prior thereto, beginning at least as early as 1960.

73. The purposes for use of said road include ranching, farming, hunting, sightseeing and traveling in and through the area and servicing those who do those things.

74. Defendants have asserted their claim to the dominant estate constituting Plaintiffs' R.S. 2477 right-of-way in manner described above in paragraphs 40 through 47.

THIRD CAUSE OF ACTION

(BLACK DRAGON TO HATT RANCH ROAD IN EMERY COUNTY)

75. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 60.

76. The Black Dragon to Hatt Ranch Road is located on public lands, not reserved for public uses, as more particularly shown on the accompanying Exhibits 6 and 12, incorporated herein by this reference. Exhibit 12 reflects the location of the road as identified and plotted using GPS or digital technology. The road links up with other roads in the County's road system.

77. The Black Dragon to Hatt Ranch Road was established by means of road graders before 1976. The road was graded at least as early as the 1950s and has been maintained regularly with road graders since at least as early as 1965.

78. The Black Dragon to Hatt Ranch Road was also established before October 21, 1976, by continuous public use for at least ten years prior thereto.

79. The purposes for use of this road include ranching, wood gathering, farming, hunting, prospecting, mining, oil and gas exploration and development, sightseeing, camping, recreation, search and rescue, law enforcement, land management, accessing state school and institutional trust lands, and simply traveling in and through te area.

80. Travelers on the road from before 1966 and continuing thereafter included those who went by automobile, horseback, truck and recreational vehicle.

81. Defendants have asserted their claim to the dominant estate constituting Plaintiffs' R.S. 2477 right-of-way in manner described above in paragraphs 40 through 47.

82. All such roads at the time of their first use and construction were located on open public lands.

83. Road uses as of 1976 continue to the present, though specific means of use may have evolved as conditions have changed, to include such travelers as tourists, land managers and experts.

84. All such roads have been included in the state highway system or infrastructure and the State legislature has given the respective counties jurisdiction over those which are not State or city roads for construction, operation, and maintenance.

FOURTH CAUSE OF ACTION

(ATCHEE RIDGE ROAD IN UINTAH COUNTY)

85. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 60.

86. Atchee Ridge Road is located on public lands, not reserved for public uses, as more particularly shown on Exhibits 7 and 13, attached hereto and incorporated herein by this reference. Exhibit 13 reflects the location of the road as identified and plotted using GPS or digital technology. The Atchee Ridge Road links up with other roads in the County's road system.

87. Construction of the road before 1976 was performed by a Cat dozer in the 1930s and has been regularly maintained since at least as early as 1951 by road graders.

88. The Atchee Ridge Road was also established before October 21, 1976, by continuous public use for at least ten years prior thereto.

89. The purposes for use of said road include ranching, hunting, mining, oil and gas exploration and development, sightseeing, camping, recreation, land management, accessing state school and institutional trust lands, joy riding, and traveling in and through the area.

90. Travelers on the road from before 1966 and continuing thereafter included those who went by horseback, horse-drawn wagon, truck and automobile.

91. Defendants have asserted their claim to the dominant estate constituting Plaintiffs' R.S. 2477 right-of-way in manner described above in paragraphs 40 through 47.

FIFTH CAUSE OF ACTION

(LYTLE (LITTLE) RANCH ROAD IN WASHINGTON COUNTY)

92. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 60.

93. Lytle (Little) Ranch Road is located on public lands, not reserved for public uses, as more particularly shown on the accompanying Exhibits 8 and 14, incorporated herein by this reference. Exhibit 14 reflects the location of the road as identified and plotted using GPS or digital technology. The Lytle Ranch Road in Washington County links up with other roads in the County's road system.

94. Construction of the road before 1976 was performed by a Cat dozer in the 1930s and the road has been regularly maintained since at least as early as 1951 by road graders.

95. The Lytle Ranch Road was also established before October 21, 1976, by continuous public use for at least ten years prior thereto. More specifically, the road was used continuously beginning as early as 1934.

96. The purposes for use of the road include ranching, farming, hunting, mining, commerce, recreation, search and rescue, law enforcement, land management, and traveling in and through the area.

97. Travelers on the road from before 1966 and continuing thereafter included those who went by automobile and other vehicles.

98. Defendants have asserted their claim to the dominant estate constituting Plaintiffs' R.S. 2477 right-of-way in manner described above in paragraphs 40 through 47.

SIXTH CAUSE OF ACTION

(BERT AVERY ROAD IN WAYNE COUNTY)

99. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 60.

100. Bert Avery Road is located on public lands, not reserved for public uses, as more particularly shown on the accompanying Exhibits 9 and 15, incorporated herein by this reference. Exhibit 15 reflects the location of the road as identified and plotted using GPS or digitized technology. The Bert Avery Road links up with other roads in the County's road system.

101. The Bert Avery Road was established by means of road graders and Cat dozers and both of those means of construction of the road were employed before 1976, one or the other of those types of construction vehicles having been used repeatedly to construct and maintain the road in the 1940s, 1950s, 1960s, 1970s and beyond.

102. The Bert Avery Road was also established before October 21, 1976, by continuous public use by motorized vehicles for at least ten years prior thereto.

103. The indicated 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 1940s and continuing through 1976 and beyond.

104. The purposes for use of said road include ranching, hunting, mining, oil, gas and mineral exploration and development, commerce, sightseeing, camping, recreation, search and rescue, law enforcement, land management, accessing state school and institutional trust lands, joy riding, and simply traveling from point A to point B.

105. Travelers on the road from before 1966 and continuing thereafter included those who went by automobile, horseback, horse-drawn wagon, and truck.

106. Defendants have asserted their claim to the dominant estate constituting Plaintiffs' R.S. 2477 right-of-way in manner described above in paragraphs 40 through 47.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs request relief and judgment against Defendants as follows:

1. Quiet title in and to each highway described above;

2. Include within the scope of each such highway: a) that which is reasonable and necessary for the type of use to which the right-of-way has been put, b) the right to conduct ordinary maintenance activities within the right-of-way, including making improvements short of paving the road and reasonable and necessary deviations from the common way without any federal authorization, c) the right to widen the road at least to the extent of a two-lane road to allow travelers to pass each other when increased travel renders that reasonable and necessary, and d) areas along the roadway beyond the actual beaten path that are reasonable and necessary to accommodate reasonable and necessary accouterments such as drainage ditches, shoulders, culverts and road signs that accord with sound engineering practices, including the requirements of AASHTO, and to provide reasonable and necessary servicing of such accouterments as are put in place pursuant to that sound engineering practice;

3. Award the Plaintiffs attorneys' fees and costs to the extent permitted by law; and

4. Grant Plaintiffs such further relief as may be appropriate.

DATED this 9th day of February, 2005.

Respectfully submitted,

MARK L. SHURTLEFF
Utah Attorney General

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