Before the
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Washington, D.C. 20240

In re:
Memorandum of Secretary
Concerning Non-recognition
Of R.S. 2477 Roads by BLM

TO: Bureau of Land Management
Administrative Record
Room 401 LS, 1849 C. St., NW
Washington, D.C. 20240
(Via Internet to WOComment)
@WO.blm.gov, Attn: AC30))

COMMENT AND PROTEST
OF DISTRICT ATTORNEY OF EUREKA COUNTY,
a political subdivision of the State of Nevada

The Secretary of Interior, by internal memorandum, has instructed the state and district offices of the Bureau of Land Management not to recognize any claims to those rights-of-way known as R.S. 2477 roads, absent the most dire emergency.

The Secretary attempts to accomplish, by internal memorandum, an action which he was prevented from accomplishing by regulation in 1994. In that year the Secretary ordered published in the Federal Register proposed rules to drastically revise the law of R.S. 2477 roads. Publication of the proposed rules produced a firestorm of critical comment and protest. Typical of the comments submitted at that time were the comments of Lander County, a political subdivision of the State of Nevada, a copy of which is submitted with this Comment and Protest as Appendix "B" and made a part hereof by reference. Those comments are adopted and ratified by the Eureka County District Attorney to the extent that they are applicable to the Secretary's current memorandum.

At the behest of Congress, the proposed rules were withdrawn pending Congressional reexamination of the rights-of-way grants incorporated in the Act of 1866, later codified as R.S. 2477. The open-ended grants of rights-of-way provided in R.S. 2477 was repealed in 1976 by the enactment of the Federal Land Planning and Management Act (FLPMA). FLPMA provided, however, that preexisting rights and privileges were not repealed or affected by the 1976 legislation, an apparent attempt by Congress to avoid any "takings" liability pursuant to the Fifth Amendment.

~~In January~~, 1997, the Secretary announced he did not intend to wait any longer for Congressional action, and circulated a memorandum instructing Interior agencies not to recognize R.S. 2477 rights of way except in cases of exceptional, critical need. The effect of the memorandum is to implement the concepts set forth in the proposed 1994 rulemaking without publication in the Federal Register and conformity with the Administrative Procedures Act.

The Secretary's memorandum is unacceptable, and probably unlawful, on several levels:

1. If implemented, the memorandum effects a Constitutional "taking" of property interests -- the rights granted to the public by Congress. Argument that the rights

taken are "public" rather than "private" fails to recognize that many private parties have cognizable interests in those "public" rights of way. Determination by an Executive Branch official to effect a "takings" by a species of adverse condemnation -- taking away a right without judicial process -- implicates the Fifth Amendment prohibition of such "takings" without first making or securing just compensation.

2. Through the memorandum the Secretary arrogates unto himself authority which Congress clearly intended to reserve to the Legislative Branch. The U.S. Constitution does not countenance any such Executive Branch power grab. This is particularly true where the Legislative grant of power to the Executive -- through FLPMA -- expressly limits any effect upon preexisting rights.

3. The Secretary's memorandum, if implemented, sets aside and abrogates an entire line of U.S. Supreme Court decisions interpreting the Act of 1866 as recognizing and ratifying those rights-of-way which existed across the public lands at the time of enactment, and establishing an open-ended, *in praesenti*, grant of rights-of-way for highways, canals, ditches, etc. The Executive lacks any authority under the U.S. Constitution to nullify the interpretations of law and the Constitution pronounced by the Judicial Branch.

The legal status of R.S. 2477 roads has been analyzed at length by the Eureka County District Attorney in a brief originally prepared for amicus *curiae* submission in the case of United States v. Nye County now pending in the U.S. District Court for the District of Nevada. An updated version of that brief is annexed hereto as Exhibit "A" and made a part hereof by reference to state the legal opinion of this office regarding the status of R.S. 2477 roads.

That brief clearly shows that the Act of 1866 evidences the intention of Congress to pass title to an estate in the public domain to persons who would establish public roads on the rights-of-way so granted. Subsequent U.S. Supreme Court decisions hold that the extent or scope of such rights-of-way is to be determined by state laws. The R.S. 2477 grant is equivalent to a patent: once accepted by the grantee by performance of the required act -- establishing a road -- the Executive Branch has no more authority to impose rules and regulations on such rights-of-way than it has to affect any other private property. The Secretary's memorandum of January 1997 is *ultra vires* and may not be implemented.

CONCLUSION: It is evident that the Secretary exceeded his authority when he promulgated a memorandum instructing Department of Interior agencies to ignore claims to R.S. 2477 rights-of-way. The Secretary, the same as any other Federal official, may be held personally liable for damages resulting from acts in excess of ~~delegated authority~~. Further, his subordinates who purport to rely on the memorandum are themselves at risk, since the Secretary lacks the power to delegate to them authority to perform unconstitutional, illegal acts. The memorandum must be withdrawn. See, inter alia, Bivens v. Six Federal Agents.

Respectfully submitted this 13th day of February, 1997.

DISTRICT ATTORNEY OF EUREKA COUNTY,

A political subdivision of the State of Nevada
WILLIAM E. SCHAEFFER, District Attorney

By:

Zane Stanley Miles, Chief Deputy

cc: Board of Eureka County Commissioners
Eureka County Public Lands Advisory Commission

Other Interested Entities

POINTS AND AUTHORITIES
Concerning the Law of R.S. 2477 Rights of Way

PREFACE

Eureka County, a political subdivision of the State of Nevada, does not concede that there are any R.S. 2477 rights of way within the State, asserting that, pursuant to the Equal Footing Doctrine and trust theory, title to the public lands passed to the State upon its Admission to the Union on October 31, 1864, two years prior to enactment by Congress of the standing right-of- way offer commonly referred to as R.S. 2477. If that be correct, there were no remaining Federal public lands in Nevada across which Congress in 1866 could have offered to grant rights of way. Therefore, these Points and Authorities are offered in supplementation of Eureka County's primary thesis, that the public lands of Nevada are owned by the State of Nevada, not the Federal Government.

Issues Presented

I

ARE ALL ROADS AND TRAILS, DITCHES AND CANALS, ESTABLISHED ACROSS UNAPPROPRIATED, FEDERALLY-CONTROLLED PUBLIC DOMAIN, PRIOR TO OCT. 21, 1976, CLASSIFIED AS R. S. 2477 RIGHTS OF WAY?

A. What is the meaning of the term "highway" as used in the Mining Lode Act of 1866 (R. S. 2477)?

II

DO AGENCIES OF THE FEDERAL GOVERNMENT HAVE ANY AUTHORITY TO CONTROL, MANAGE, REGULATE OR CLOSE R.S. 2477 RIGHTS OF WAY?

III

DO COUNTY OFFICIALS OR PRIVATE PARTIES VIOLATE ANY VALID FEDERAL LAW, RULE OR REGULATION WHEN THEY MAINTAIN, OR PREVENT THE DESTRUCTION OR IMPAIRMENT OF, R.S. 2477 ROADS AND TRAILS, DITCHES AND CANALS?

EXHIBIT "A"

Discussion

The Mining Lode Act of 1866 was enacted by Congress two years after Nevada's admission to statehood on October 31, 1864, during a period of intense national interest in the expansion and development of the Western frontier. See, Gates & Swenson, History of Public Land Law Development 716-721 (1968). Also see, Humboldt County v. United States, 684 F.2d 1277, 1281 (9th Cir. 1982).

The Act of July 26, 1866, is entitled "An Act Granting the Right-of-way to Ditch and Canal Owners Over the Public Lands, and Other Purposes," 14 Stat. 251 (1866). Sec. 8 of the Act at 14 Stat. 253, was codified as _ 2477 of the Revised Statutes of the United States (commonly known as R.S. 2477), recodified as 43 U.S.C. _ 932, provides:

"The right of way for the construction of highways over public lands, not reserved

for public uses, is hereby granted."

The R.S. 2477 right-of-way grant remained executory for 110 years until it was repealed by FLPMA, the Federal Land Policy Management Act of 1976. _ 706(a), Pub. L. No. 94-579, 90 Stat. 2793 (1976). Section 701(a) of FLPMA provides:

"Nothing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid right-of-way, or other land use right or authorization existing on the date of approval of this act [Oct. 21, 1976]".

The House Report on FLPMA expressly provided that "rights-of- way granted under statutes superseded or repealed by provisions of this Act are protected." House Report No. 94-1162; see also Senate Report No. 94-583. The law, as codified at 43 U.S.C. _ 1769(a), reads:

"Nothing in this subchapter shall have the effect of terminating any right-of-way or right-of-use heretofore issued, granted, or permitted. However, with the consent of the holder thereof, the Secretary concerned may cancel such right-of-way or right-of-use and in its stead issue a right-of-way pursuant to the provisions of this subchapter."

Although no new R.S. 2477 roads could be created after the effective date of FLPMA, no R.S. 2477 grants were invalidated by the new law. The new statute recognizes that vested rights cannot be taken, pursuant to Amendment V of the Constitution, the "Takings Clause," without just compensation being paid therefore. The concept of eminent domain, the taking of private property for public purposes, may be traced to early English Common Law. The principal difference between early English royal eminent domain and the United States is that just compensation must be paid to private citizens whose property interests are taken. The Congressional intent of the 1866 law clearly was to protect existing R.S. 2477 rights-of-way against any attempts to restrict or eliminate them, to forbid any "taking" without just compensation.

During that 110 years the nation's courts regularly recognized that R.S. 2477 system confirmed rights of way existing at the date of its passage and authorized acquisition of new rights of way for new "highways." As the U.S. Supreme Court said in Central Pacific Railway Co. v. Alameda County, 284 U.S. 463, 472, 473, 76 L.Ed. 402, 407, 408, 52 S.Ct. 225 (1932):

"We cannot close our eyes to the fact that long before the Act of 1866, highways in large number had been laid out by local, state and territorial authority upon and across the public lands. The practice of doing so had been so long continued, and the number of roads thus created was so great, that it is impossible to conclude otherwise than that they were established and used with the full knowledge and acquiescence of the national government. These roads, in the fullest sense of the words, were necessary aids to the development and disposition of the public lands. (Cit. omit.) They facilitated communication between settlements already made, and encouraged the making of new ones; increased the demand for additional lands, and enhanced their value. Governmental concurrence in and assent to the establishment of these roads are so apparent and their maintenance so clearly in furtherance of the general policies of the United States, that the moral obligation to protect them against destruction or impairment as a result of subsequent grants follows as a rational consequence. The section of the Act of 1866 granting rights of way for the construction of highways, no less than that which grants the right of way for ditches and canals was, so far as then existing roads are concerned, a voluntary recognition and confirmation of preexisting rights, brought into being with the acquiescence and encouragement of the general government." (Emphasis supplied.)

The Central Pacific Railway language is instructive as to several issues. It

specifically observes that maintenance of R.S. 2477 rights-of-way furthers the policies of the Federal Government as expressed by Congress. FLPMA does not invalidate the recognized right and duty to maintain existing R.S. 2477 roads.

When Nevada counties maintain R.S. 2477 roads, even when that maintenance is in conflict with the desires of BLM and Forest Service bureaucrats, the Nevada counties are upholding their "moral obligation" to protect those roads "against destruction or impairment." See, Central Pacific Railway, supra.

The United States Court of Appeals for the D.C. Circuit has held that R.S. 2477 grants do not require the filing of a right-of-way application. Wilderness Society v. Morton, 479 F.2d 842, 882 n.90 (D.C. Cir. 1973). The grant is "self-executing." Standard Ventures, Inc., v. Arizona, 499 F.2d 248, 250 (9th Cir. 1974). An R.S. 2477 right of way comes into existence "automatically when a public highway [is] established across public lands in accord with the law of the state." Standard Ventures, supra, at 250. See, also, Sierra Club v. Hodel, 848 F.2d 1068, 1083-84 (10th Cir. 1988).

The validity of R.S. 2477 roads is to be determined by local governments. The United States Court of Appeals for the Tenth Circuit has held:

"Over the past 125 years, each western state has developed its own state-based definition of the perfection or scope of the R.S. 2477 grant, either by explicitly declaring RS 2477 to incorporate state law or by simply expounding its own law." Sierra Club v. Hodel, 848 F.2d 1068, 1082 (10th Cir. 1988).

That decision was recognized in the "Hodel Policy" adopted by Interior Secretary Donald Hotel in 1988. It is that policy, founded on the 10th Circuit decision, which the present Interior Secretary Bruce Babbitt abrogated by his memorandum of January 22, 1997.

In 1938 the then Secretary of the Interior (Harold Ickes) viewed R.S. 2477 "as effecting a grant of a right-of-way 'upon the construction or establishing of highways, in accordance with State laws . . .' (Emphasis supplied.)" 43 C.F.R. ¯244.55 (1939). That general rule has been followed since by BLM. The Court of Appeals for the 9th Circuit, in an opinion which is binding in Nevada, concluded that whether a right-of-way has been established over public lands is a question of state rather than Federal law. Schultz v. Department of Army, 10 F.3d 649 (1993) at 655, and citations therein noted. Public user "for such a period of time and under such conditions as to prove that the grant has been accepted" is sufficient. Schultz, supra, at 655-6. In Sierra Club v. Hodel, supra, at 1080, it was observed that the Bureau's own Manual provided:

"State law specifying widths of public highways within the State shall be utilized by the authorized officer to determine the width of the R.S. 2477 grant."

The Manual further provides that an R.S. 2477 right-of-way is "is definitely established in one of the ways authorized by the laws of the state where the land is located." ¯ 2601(B) (Rel. 2- 152 9/10/82). (Emphasis supplied.) The department's own Interior Board of Land Appeals has consistently followed the principle that the validity of R.S. 2477 roads is to be determined under state law. See, Edward A. Nickoli, 90 I.B.L.A. 273, 275 (1986 ("determining the validity of an R.S. 2477 trail is generally beyond the jurisdiction of BLM"); Northway Natives, Inc., 88 Interior Dec. 14, 19 (1981); Leo Titus, Sr., 92 Interior Dec. 573, 588 (1985); Blue Mesa Road Association, 89 I.B.L.A. 120, 125 (1985) ("As a general rule, a determination of the existence of an R.S. 2477 right-of-way will not be made by the Department").

Interior's rules are not binding on the U.S. Forest Service, a unit of the Department of Agriculture. Interior's rules are entitled to great deference however, because Interior – specifically the Bureau of Land Management and its predecessor

agencies -- was the administrative agency charged with administration of the public lands during the sunset years of R.S. 2477.

Agents of the Forest Service have from time to time espoused the position that all roads within the boundaries of a national forest are forest roads, and that R.S. 2477 right-of-way grants somehow were extinguished at the time a particular forest was created by Presidential proclamation. No reasonable support or authority for such a position has been found.

Assuming, arguendo, that R.S. 2477 roads cannot be established across national forest lands (assuming, arguendo, that national forest lands are "reserved for public use" in the statute's language), that does not equate to extinguishment of existing R.S. 2477 rights of way as of the date a particular national forest reserve was created or enlarged.

The Department of Agriculture and its U.S. Forest Service are no different than any other party to a transaction: i.e., the donee or grantee takes and receives no more than the donor or grantor has to give. If the donor/grantor earlier has disposed of part of the bundle of sticks making up fee simple, he cannot legally later purport to grant out the entire bundle, and the donee/grantee has no business trying to claim the entire fee. The rule sometimes is expressed in doggerel, to-wit:

"He who sells what isn't his'n
"Must buy it back or go to pris'n."

It really doesn't matter whether R. S. 2477 offers a grant of easement or of fee simple title, or something between. Whatever the offered property interest is, when it is accepted, the conveyance is absolute. The Federal Government has granted out that stick from the bundle, and it isn't available for future grants from the government.

Any Federal agency obtaining that land by future withdrawal takes it subject to the prior grant of right-of-way, just as any settler or rancher obtaining that land by future patent would take it subject to the prior grant of right-of-way.

In Central Pacific Railway, supra, the High Court upheld that principle. Alameda County, pursuant to State law, had established a public highway in 1859 through and along the bottom of Niles Canyon, between Niles and Sunol. In 1862 an Act of Congress granted to the railway's predecessor, Central Pacific Railroad Company, a right-of-way 400 feet wide across the public lands. The railroad right-of-way grant impinged on the public road. The Court held that the railroad right-of-way was servient to the pre- existing public road easement. See also, Cramer v. U.S., 261 U.S. 219, 67 L.Ed. 622, 43 S.Ct 342 (1923) (public lands occupied by individual Indians prior to railroad grants excepted from those grants); Atchison v. Peterson, 87 U.S. 507 (20 Wall 507), 22 L.Ed. 414, quoting approvingly Irvin v. Phillips, 5 Cal. 140, 146, 63 Am. Dec. 117 (1855) (rights of miners and water appropriators "permitted to grow up by the voluntary action and assent of the population" have "the force and effect of res judicata" and must be protected by the governments and courts because "free and unrestrained occupation of the mineral region has been tacitly assented to by the one [Federal] government and heartily encouraged by the expressed legislative policy of the other [State]").

Likewise, in U.S. v. California, 436 U.S. 32, 56 L.Ed.2d 94, 98 S.Ct. 1662 (1978) the Supreme Court held that Presidential proclamations could not incorporate into the Channel Islands National Monument some tidelands which had passed into State owner ship at California's statehood. Once those lands became State lands, the Federal Government lost jurisdiction over them. Those tidelands were public lands but they are not lands subject to any Federal control. See also, Borax Consolidated,Ltd. v. Los Angeles 296 U.S. 10, 80 L.Ed 9, 56 S.Ct. 23 (1935). The legal principle is clear: once fee title passes to a State no increment of owner ship

remains upon which the Federal Government can act.

The Jefferson Canyon road in the Toquima Range above Big Smoky Valley in Nye County, over which the Forest Service claims dominion, was established in the 1800s as a road to the old mining camp of Jefferson. At the time the road was created the R.S. 2477 right-of-way grant offer by Congress was effective. The offer was accepted by establishment of the road. At that point title to the road (either in fee simple or as an easement) passed to the public, represented by Nye County, the local government. The Federal Government at that point was divested of jurisdiction and control over the right-of-way.

The same scenario applies to the road up the west side of the Toiyabe Range into the old mining camp of San Juan (the San Juan Canyon road). The Forest Service is attempting to claim San Juan is a forest road subject to USFS control; in fact the San Juan claim was patented in 1872, more than 30 years prior to any reservation of land for Toiyabe National Forest.

Nevada law provides that the public can perfect an R.S. 2477 right-of-way through mere use. Anderson v. Richards, 96 Nev. 318, 608 P.2d 1096 (1980). See, NRS 403.410, originally enacted in 1866, which declares that "all such roads, streets and alleys as the board of county commissioners of the county in which they are situated shall thereafter lawfully cause to be opened, are declared to be public highways." In Anderson, supra, the Nevada court quoted approvingly from a 1963 Colorado Supreme Court decision:

"The sum of our holding is that the statute [43 U.S.C. ¯ 932] [formerly R.S. 2477] is an express dedication of a right of way for roads over unappropriated government lands, acceptance of which by the public results from 'use by those for whom it was necessary or convenient.' It is not required that 'work' be done on such a road, or that public authorities shall take action in the premises. User is the requisite element, and it may be by any who have occasion to travel over public lands, and if the use be by only one, still it suffices. 'A road may be a highway though it reaches but one property owner.' Brown v. Jolley, 387 P.2d 278 (Colo. 1963). (Emphasis supplied.)

The Nevada statute and Anderson clearly show that mechanical construction of a road is not necessary for it to qualify as an R.S. 2477 highway, contrary to the position currently taken by the Forest Service and Department of Interior agencies. See also, Central Pacific Railway, supra, at 467, 76 L.Ed. 405, noting that the highway which was the subject of that case was formed "by the passage of wagons, etc., over the natural soil . . ."

Anderson, supra, and Central Pacific Railway, supra, also are in accord on the question of abandonment. Anderson holds:

"The party asserting abandonment of a public road must carry the burden by clear and convincing evidence. (Cit. omit.) The fact that travel on the now disputed roadway may have decreased over the years does not work an abandonment or affect its status as a public road. Whether a road is public or private is determined by the extent of the right to use it, and not by the extent to which that right is exercised or by the quantity of travel over it (Cit. omit.)". At 322, 323.

Likewise, in discussing the railroad's claim that portions of the Niles Canyon road had been abandoned, the Central Pacific Railway court observed:

"The burden of sustaining [the abandonment premise] . . . plainly rests upon the party who asserts it, since proof of the establishment of a road raises a presumption of its continuance. That is to say, the respondents having shown the establishment by the county of a road through Niles Canyon in 1859, the continuing identity of that road must be presumed until overcome by proof to the contrary, the

burden of which rests upon the petitioners. (Cit. omit.) This is in accord with the general principle that a condition once shown to exist is presumed to continue." At 463. 76 L.Ed. 405.

Just as State law provides the criteria for establishment of an R.S. 2477 road, State law provides the criteria for abandonment. If the Forest Service or agencies of the Department of Interior (BLM and others) wish to assert the abandonment of the Jefferson Canyon Road, or any other R.S. 2477 road, they must look to State law to determine whether abandonment has occurred. They would find that Nevada Revised Statute 403.170 authorizes county commissioners to abandon county roads, only after a hearing advertised for at least ten (10) days. There is no statutory provision for abandonment of roads by non-user.

Consequently, it appears that the only Forest Roads to be found in national forests in Nevada are roads which came into existence after the effective date of the proclamation creating a particular forest. All roads which pre-date establishment of a particular forest are roads established pursuant to the open-ended grant made by Congress in ¯ 8 of the Mining Act of 1866, R.S. 2477. Likewise, any roads across BLM-managed lands which came into being prior to repeal of the R.S. 2477 offer by FLPMA (October, 1976) are R.S. 2477 roads.

What is a "Highway?"

The Departments of Interior and Agriculture recently have taken the position that the term "highway" as used in R.S. 2477 means a major paved road. They assert that back country "two- tracks" and trails are not "highways" as intended by the statute.

It seems legally reasonable, however, that contemporaneous definitions of the term "highways" provide guidance as to Congres sional intent when it deliberately used the term in 1866. Some apposite, published definitions from that era follow.

John Bouvier, A Law Dictionary 2 (1866 ed.) at 586:

> "HIGHWAY. A passage or road through the country, or some parts of it for the use of the people. The term highway is a generic name for all kinds of public ways. (Emphasis supplied.)"

A. M. Burrill, A Law Dictionary and Glossary (1867 ed.):

> "Highway. A public way or road: a way or passage open to all; a way over which the public at large have a right of passage. Called in some of the old books, high street. Every thoroughfare which is used by the public, and is in the language of the English books, 'common to all the King's subjects' is a highway, whether it be a carriage-way, a horse-way, a foot-way or a navigable river. The word highway is the genus of all public ways. (Emphasis supplied.)"

A Dictionary of Science, Literature and Art 3 (W. T. Brande, ed. 1867) at 125:

> "Highway. In English Law, a highway is a way over which the public at large have a right of passage, and includes a horse road, or a mere footpath, as well as a carriage road. Any way common to all people, without distinction, is a highway. (Emphasis supplied.)"

The Nineteenth Century definitions cited are representative of the definitions known to Congress when it enacted the Act of 1866. The offer of right-of-way grant provided in that act must be viewed within the context of 1866 language and intent, not what some Federal bureaucrat would like to make the term "highway" mean today.

As noted above, the Nevada Legislature in 1866 defined "highways" as including "roads, streets and alleys". See, NRS 403.410.

Taken, then, in the proper context of 1866, the R.S. 2477 highways are any foot trail, horse trail, wagon road, carriage road, or navigable stream, established by repeated use or by mechanical means. All of the back-country roads and trails in Nevada, the "two-tracks" and the paved roads, are R.S. 2477 highways if they were:

1) Established across Federally-controlled public lands;

2) When those lands were unappropriated and not with drawn for specific purposes;

3) During or prior to the period when the Congressional offer of right-of-way was executory (prior to Oct. 21, 1976).

Neither the Forest Service nor the Bureau of Land Management, nor the U.S. Fish and Wildlife Service, nor the National Park Service, nor the Bureau of Reclamation, nor any other Federal agency, have jurisdiction over such R.S. 2477 highways. The control and management of such roads is vested in the 17 counties of Nevada, which hold title to the rights-of-way (fee simple or easement) in trust for the use of the traveling public, until and unless abandonment pursuant to Nevada statutes has been effected.

Conclusions

1. All roads and trails across Federally controlled and managed public lands, not specifically withdrawn before the roads were established, which came into being prior to Oct. 21, 1976, are R.S. 2477 highways.

2. The Federal Government has no authority to control, manage or regulate R.S. 2477 roads, Federal title having been extinguished when establishment of such a road effected acceptance of the Congressional offer of a grant of right-of-way.

3. Nye County officials, and officials of other Nevada counties, do not violate any valid Federal law, rule or regulation when they maintain, or prevent the destruction or impairment of, R.S. 2477 roads.

Respectfully submitted this _____ day of _____, 1997.

EUREKA COUNTY DISTRICT ATTORNEY

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By

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EXHIBIT "B"

October 20, 1994