

September 11, 2015

Notice of Appeal-BLM Grand Junction, CO RMP/TMP

BLM, Colorado State Office
Division of Energy, Lands, and Minerals (CO-920)
2850 Youngfield Street
Lakewood, CO 80215

Statement of Reason

The attached recorded access easement (Indian Point Trail/Public Driveway) is from the USFS and was recorded in 1950. The public access easement provides motorized access to the route/s the Grand Junction BLM is calling O813, O2060, O825 and O833. The BLM is proposing closing or limiting these routes by converting them to Administrative or Seasonal Routes. The routes are located in Mesa County. Closing or limiting motorized access on these routes would be a violation of federal and state law and we are requesting the routes be recognized administratively by the BLM as RS 2477 routes and left open to motorized use and non-motorized use.

These routes were clearly built prior to the passage of FLPMA in 1976. Additionally, these motorized routes are a legal public highway based on Colorado Revised Statutes 43-2-201, 29-20-104, and 43-1-202. Closing/restricting these routes would be a violation of Section 509 and 701 of FLPMA, as it would be a **limitation** on State Statutes and is **depriving** the County (political subdivision) its jurisdictional rights. These actions by the BLM are amending, limiting, and infringing the existing laws providing grants or Rights of Way across our public lands.

Section 701 (g) (h) "All actions by the Secretary concerned under this Act shall be subject to valid existing rights." Please also refer to the 1997 Appropriations Act passed by Congress. This Act limits the BLMs ability to manage RS 2477 granted routes, closing a RS 2477 route would be a management decision and violation of the 1997 Act.

The BLM tells us based on the United States Court of Appeals 2005 decision, in SUWA vs BLM, that the County/State must take the BLM to court to reopen an RS 2477 route. This is not accurate; here is the judge's quote from the case pertaining to the BLM's ability to make "administrative decisions" regarding RS 2477 grants. "This does not mean that the BLM is forbidden from determining the validity of R.S. 2477 rights of way for its own purposes. The BLM has always had this authority. It exercises this authority in what it calls "administrative determinations." By ignoring the state/federal laws in place the BLM is acting in an arbitrary and capricious manner.

Colorado BLM public lands are not a Federal Enclave and the BLM holds only a Proprietary Interest level of legislative jurisdiction over 97.2% of the state's public lands. All routes established on unreserved public lands prior to the passage of FLPMA, that meet the definition of a public highway based on state law, are under the authority and jurisdiction of the State and County.

Respectfully,





File Code: 6270
Date: May 18, 2015

Mr.
Director Public Lands Access Association
P.O. Box 3712
Grand Junction, CO 81502

Dear Mr. :

This letter is our response to your Freedom of Information Act (FOIA-2015-FS-R2-03497-F) request dated May 13. Your request was received in the Forest Supervisor's Office on this same day. You requested, "a copy of the USFS access easement, located off of Kannah Creek Road (Mesa County, CO) and heads towards the Grand Mesa Slopes-later clarified as the Indian Point Road (NFSR 130)."

In response to your request we conducted a search for responsive electronic and hard copy records within this office. Attached is an electronic document that is responsive to your request. I believe this fully satisfies your FOIA request. You have the right to appeal my decision. Should you decide that an appeal is necessary, it must be made in writing, within 45 days from the date of this letter, to the Chief, USDA, Forest Service: 1) by email to wo_foia@fs.fed.us; 2) by regular mail to Mail Stop 1143, 1400 Independence Avenue, SW, Washington, DC 20250-1143; 3) by Fed Ex or UPS to 201 14th Street, SW, Washington, DC 20250-1143 and telephone (202) 205-1542; 4) by fax at (202) 260-3245. The term "FOIA APPEAL" should be placed in capital letters on the subject line of the email or on the front of the envelope. To facilitate the processing of your appeal, please include a copy of this letter and/or the FOIA control number assigned to your FOIA request.

In accordance with Title 7 Code of Federal Regulations (CFR) Subtitle A, Part 1, Subpart A, Appendix A, we are required to collect fees for search, review and duplication of records. The total cost for search, review and duplication is less than the two free hours of search and 100 copies; therefore, no billing will occur for this request.

If you have any questions about this FOIA please contact Lee Ann Loupe at lloupe@fs.fed.us or 970-874-6717. We now consider this case closed.

Sincerely,

SCOTT G. ARMENTROUT
Forest Supervisor

Enclosure

cc: William A Edwards, Lee Ann Loupe



65 52M Route 655 0813

Recorded at 11:22 o'clock A.M. May 9, 1949

Book 503 Page 577

Reception No. 500300 Annie M. Dunston, Recorder.

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ACQUISITION - Grand Mesa
Rights of Way, Admin.
Indian Point Trail

RIGHT OF WAY DEED

KNOW ALL MEN BY THESE PRESENTS, That George C. Goldsborough & Nettie L. Goldsborough of the County of Mesa, State of Colorado, in consideration of One Dollar (\$1.00) to them in hand paid and other good and valuable considerations, the receipt whereof is hereby duly acknowledged, do hereby grant, bargain, sell, and convey unto the United States Department of Agriculture, Forest Service, an easement and right of way, in gross, over and across the following described tract or parcel of land, situate, lying and being in the County of Mesa, State of Colorado, to-wit: A strip of land sixty (60) feet in width extending thirty (30) feet on each side of center line following the old road in the SW 1/4 NE 1/4 Sec. 1, T. 13 S., R. 98 W., and SW 1/4 NE 1/4 SW 1/4 Sec. 6, T. 13 S., R. 97 W., as is more particularly shown on the accompanying map, together with all and singular the rights and privileges thereunto belonging or in any wise appertaining.

Said right of way hereby granted is for use as a public driveway.

This grant shall be effective so long as said easement actually shall be used for the purpose above specified and all rights hereunder shall revert to the owner of the land as soon as the said use thereof shall be abandoned and discontinued.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 12th day of April, 1949.

George C. Goldsborough
Nettie L. Goldsborough

ACKNOWLEDGEMENT

STATE OF Colorado }
COUNTY OF Mesa } ss

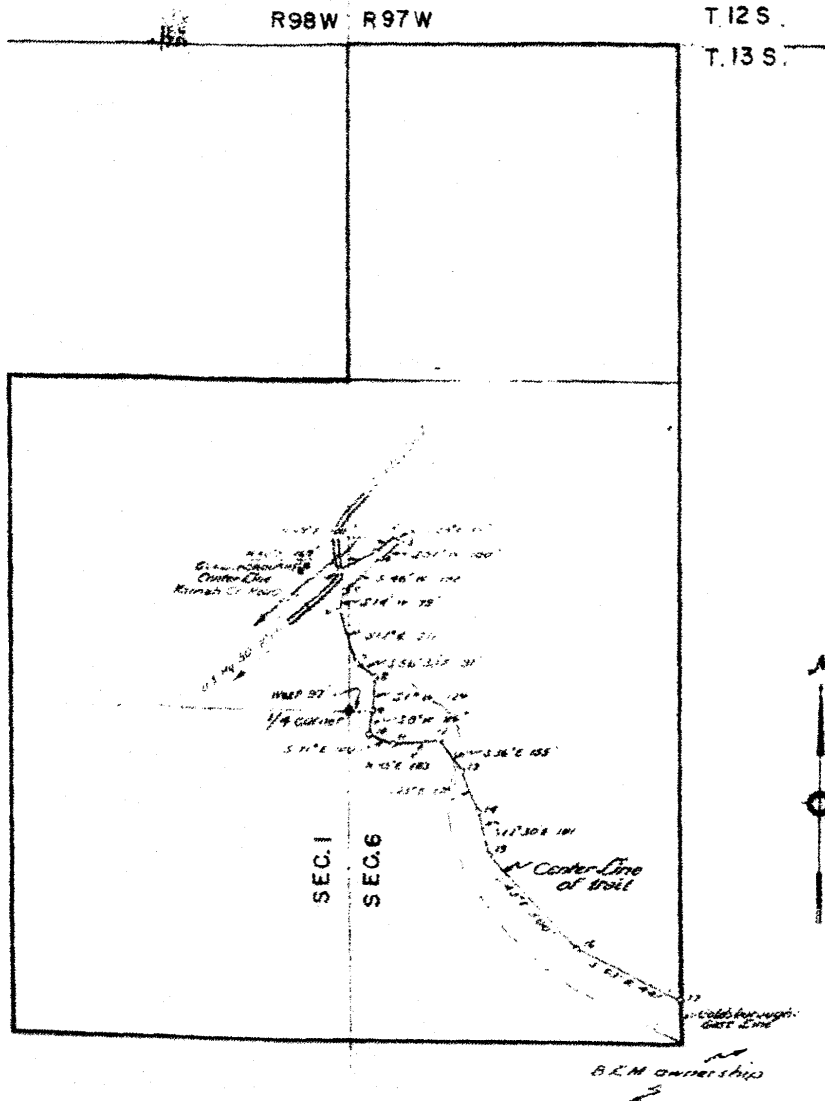
The foregoing instrument was acknowledged before me this 12th day of April, A. D. 1949, by George C. Goldsborough and Nettie L. Goldsborough

My commission expires February 6 1950. Witness my hand and official seal.



Elmer B. Underhill
Notary Public.

L
 Acquisition, Grand Mesa
 Purchase,
 Rights of Way,
 Indian Point Trail



Forest Service
 Grand Mesa National Forest
 INDIAN POINT TRAIL
 Right of Way Map
 Scale 16m to 1mi
 Field Work by Tuller & Erickson
 Plotted by J.E.W. Brown by J.E.W. '28