

Committee on Resources

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Honorable Members of the House Committee on Resources Testimony of Kathleen Hayden – June 28, 2004

In Ronald Reagan's First Inaugural Address on January 20, 1980, he said:

"It is not my intention to do away with government. It is rather to make it work -- work with us, not over us; stand by our side, not ride on our back. Government can and must provide opportunity, not smother it; foster productivity, not stifle it."

I appreciate the opportunity to testify today before this Committee regarding RS 2477 and how it impacts my family and friends, both on private property and on the public domain. As a private property owner whose only access is by virtue of an RS 2477 Right of Way both of these issues are vital to this hearing. My question and dilemma is simply this: Who must govern the granted RS 2477 rights for WE THE PEOPLE as the dominant tenement, on private or public property? Does State Sovereignty extend to the public lands within the borders of California or does it not?

Throughout the United States USFS, BLM, NPS, and other agencies have rezoned the public domain, designating wilderness, wilderness study areas, nature preserves, areas of critical concern for endangered species, as if the preexisting routes were a figment of our imagination or that could be vertically mulched and designated "road less". Planning by ESA policy has replaced the rule of law and infringed on rights enumerated in our state and federal constitutions. Historic use and access across the public domain have been drastically altered and the Federal Government has done so arbitrarily without consent of State Legislatures. Ignoring county RS 2477 proclamations of the grant, agencies continue to process management plans that remove or restrict access to our Nation's historical, cultural and natural resources which provide us with economic security, national independence and recreation. Clearly RS 2477 epitomizes the routes of our nation's history, which are essential to facilitate President Bush's Executive Order.

Grounded in Law Under the equal footing doctrine when a state joined the union, dominion and the sovereign right to govern were effectively transferred from the federal government to the state. California State law clearly chronicles its rights of way laws including pre-statehood (1850) Kearney's Law. In all cases where a state joined the union after 1866, any and all Federal government rights, title and interest in RS 2477 Rights of Way were GRANTED by Congress and surrendered to the state. The state and federal government that are empowered to exercise sovereign powers must honor its grants. By acceptance of the grant it cannot be revoked without consent of the grantee. I assert that any diminution of the RS 2477 is a takings as it breaches the contract that resulted when the grant was accepted by the American people.

Secondary is the issue of the public to bear arms on public lands, a subject inseparable from the RS 2477 issues. We are personally experiencing and hearing reports of Park Rangers, as well as deputies and police, armed with assault weapons, confronting and intimidating citizens on RS 2477 grants.

Agency policies diminishing or removing our rights to bear arms are encroaching upon our Second Amendment rights. Will we be shot for exercising our RS 2477 Rights of Way? We have already been stopped, harassed, cited and arrested. We have experienced more than the diminution of access. The threat is real. The fear is very real. Those who govern the RS 2477 grant must be liable and accountable to uphold our constitutional guaranteed civil rights. We maintain that these have been violated by illegal closures.

Approximately 25 million acres comprise the California desert including the Anza Borrego Park and nearly four million acres are included in the Mojave and Colorado Deserts Biosphere Reserve program. The well funded agenda supporting the U.N. International Biosphere Preserve and Wetlands project have worked with the Sierra Club, Save the Redwoods League, Center for Biodiversity and conservancies to sabotage the RS 2477 grant.

How this affects equestrians as well as the rest of us:

Anza Borrego Desert State Park, Dr. Sandra Thorpe's ticket

In February of this year Dr. Sandra Thorpe was issued a citation "ccrt.14 riding pack animal in non designated area." She states she was on a well-established typical historic desert route. Sandra is one among many of us consistently harassed by armed rangers or deputies on public RS 2477 routes. The public has been abandoned and is at risk.

Illegal Use of Public lands

In February 2002, we were visiting the pictographs when 21 illegals came through the old route in Carrizo Wash. The worn path and trail of "huecho in Mexico" litter indicate this is a common occurrence. When expressing concern for our safety I received the following response from Parks: "Sent: Friday, February 22, 2002 11:53 AM We have a very serious problem down there that we are working with BLM and Border Patrol on. Border Patrol is very difficult to work with since they tend not to respect the environment. The traffic has picked up over the years. When we first brought the subject up to BLM they said they had not even considered Anza Borrego and the S-2 corridor as a possible path. Now they are going to put sensors in the ground to monitor traffic. Mathew L. Fuzie Deputy District Superintendent Colorado Desert District Department of Parks and Recreation 200 Palm Canyon Drive Borrego Springs, CA 92004760-767-4037 mfuzie@statepark.org"

One evening while we were camping on a remote roadside in the Carrizo Corridor a man from the contiguous campsite began shooting at his wife as she escaped down the roadway. He came into our camp looking for her. ASAP my husband called the park on his cell phone. The rangers would not come to our aid until a sheriff was available. We were unarmed because the public is not allowed to carry guns in the park to protect themselves from mountain lions, illegal immigrants, drug runners, and other criminal elements. Our right to bear arms to protect ourselves on the roads and trails have been usurped by land managers.

During recent wildfires numerous marijuana plantations were discovered in Coyote Canyon and other areas of public and contiguous private property. RS 2477 routes closures have encouraged the illegal use of public lands and few arrests made. Yet the local newspapers report the hiring of ex-police as park rangers, armed with semi-automatic guns, to "guard the resource." Is this a sample of our friendly park ranger who gave Sandra Thorpe a citation for riding on a (RS 2477) closed route?

RS 2477 and Private Property Rights

In 1988 we bought a home on a 5 acre parcel, part of a subdivision BLM patented out in the early 1950's under the California Small Tract Act: "the rights of way are common law dedication to the public to provide ingress and egress to the patentees and to provide access for utility services . Fee title lies with land owner subject to the easement of the public. Upon issuance of a small tract patent the government gave up all right to the land. To the extent that the common law dedications were accepted through use by appropriate parties, those rights are protected by the provisions of 43 U.S.C. 1701(a) and 43 U.S.C. 1769. This is RS2477

By 1996 new neighbors blocked our lower driveway with junk cars, debris, fence and a shed. When my husband graded the road the neighbors threw rocks at him. We beseeched the county and deputies for assistance. They insisted it was civil court matter and refused assistance. The assaults continued. I consulted BLM who responded "Any question concerning the use or release of these easements would be subject to a determination under state law. In most cases the proper authority would be the county or the city government. All else failing, the matter may require resolution in civil court. Nonetheless the county and deputies refused to remove the obstructions or protect us from the neighbors continuing criminal actions and assault. In July of 1997 we were battered and beaten by the neighbors and vertebrae in my back was broken which required major surgery. Still the county insisted that the road was a private civil matter. The deputies refused to arrest the neighbors or assist us with a citizens' arrest. In 1998 we sued the neighbors in civil court and quieted title to the easement, based on the BLM documents (patent, 1991 BLM memorandum and Small tract Act.). Yes, it's an RS 2477!! We obtained court orders for damages and permanent injunction against the neighbors who subsequently filed bankruptcy.

In 2002 The San Diego County Board unanimously passed a Blanket RS 2477 assertion, a portion which reads "Other property owners may have succeeded the United States as owners of servient estates traversed by rights-of-way acquired by the County and the public pursuant to the grant in R.S. 2477 and the

rights of those property owners in the servient estate is limited by the obligation to honor the rights-of-way accepted by the public pursuant to the grant offered under R.S. 2477;

Having made this public declaration to date, San Diego County has yet to abate closures on our right of way or on the public domain that continue to threaten our (individual and the public's) safety on RS 2477 routes.

We need a clear statement from Congress that in all cases where a state joined the union prior to 1866, dominion, sovereignty as well as jurisdiction of all (now challenged) RS 2477 Rights of Way were effectively transferred to the state; AND FURTHER, that in all cases where a state joined the union after 1866, that any and all Federal government rights, title and interest in RS 2477 Rights of Way were granted and surrendered to the state for public use. A political solution should rest entirely on a clear statement by Congress that:

1. The role of local Government and state courts to determine what constitutes an RS 2477 Right of Way.
2. The Secretary of the Interior has no power whatsoever to make any determination as what constitutes an RS 2477.
3. No agency shall charge or require a permit for any RS 2477 right of way existing on or before October 21, 1976 (FLPMA).
4. All doubts shall be resolved in favor of recognition of the grant as a right of way as Congress clearly stated the role of local government and state courts is to make the factual determination if the right of way existed on October 21, 1976 (FLPMA).
5. Those determinations of facts are not reviewable by any federal administrative judge/district court.
6. The burden of proof contending the route does not meet the RS 2477 criteria is on the agency challenging the claim and the level of contesting evidence that it is NOT a ROW (right of way) must be established beyond a shadow of doubt.

Thank you for allowing me to testify before you today.