

No. 20-96

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

KANE COUNTY, UTAH, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT*

**APPENDIX TO THE
PETITION FOR A WRIT OF CERTIORARI
(VOLUME 2)**

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

Case No. 2:08-CV-315 CW

KANE COUNTY, UTAH A UTAH POLITICAL SUBDIVISION,
PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

Filed: Feb. 20, 2009

FIRST AMENDED COMPLAINT

Kane County, Utah (“Kane County”), a Utah political subdivision, for its First Amended Complaint against the United States of America, hereby alleges as follows:

JURISDICTION AND VENUE

1. The claims asserted herein arise under the Quiet Title Act. 28 U.S.C. § 2409a.
2. This Court has subject matter jurisdiction under 28 U.S.C. § 2409a (quiet title) and 28 U.S.C. § 1346(f) (quiet title), as this case involves Kane County’s claim to ownership of public highway rights-of-way crossing lands owned by the United States of America.
3. Venue is proper in this Court under 28 U.S.C. § 1391(e), as the lands which are the subject of this lawsuit are located in Kane County, State of Utah.

4. A case or controversy has arisen over Kane County's ownership of the public highway rights-of-way described herein.

PARTIES AND INTEREST

5. Kane County is a local political subdivision of the State of Utah, duly authorized to maintain this action. *See* Utah Code Ann. § 17-50-302(2).

6. Kane County owns title to, and has statutory duties regarding, public roads and rights-of-way for such public roads within Kane County, Utah, *inter alia*, pursuant to Utah Code Ann. §§ 17-50-309, 72-3-103, 72-5-103-105, and 72-5-302.

7. Defendant United States of America is the fee owner of the lands traversed by and subject to the roads and rights-of-way claimed in this action.

**CONGRESSIONAL GRANT OF RIGHTS-OF-WAY
FOR PUBLIC HIGHWAYS CROSSING PUBLIC LAND**

8. Section 8 of the Mining Law of 1866, 14 Stat. 253, later codified as Revised Statute 2477, and later as 43 U.S.C. § 932 (repealed) (hereinafter "R.S. 2477"), provides: "*And be it further enacted*, That the right of way for the construction of highways over public lands, not reserved for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."

9. R.S. 2477 was an open congressional grant in praesenti of public highway rights-of-way for the benefit of miners, ranchers, homesteaders and members of the public who had need to travel across public lands.

10. Acceptance and vesting of R.S. 2477 rights-of-way required no administrative formalities: no entry, no application, no license, no patent, and no deed on the federal side; no formal act of public acceptance on the

part of the states or localities in whom the right was vested. *See* SUWA v. BLM, 425 F.3d 735, 741 (10th Cir. 2005). R.S. 2477 operated as standing offer of a right-of-way over the public domain, and the grant may be accepted without formal action by public authorities. Id.

11. As a matter of federal law, R.S. 2477 borrows from state law relating to acceptance and scope of such rights-of-way.

12. During the operation of the grant, R.S. 2477 rights-of-way vested by acts of the public or governmental entities evidencing the acceptance of such rights-of-way for public highways, including the construction or establishment of public highways across unreserved public lands according to the requirements of state law. Acts manifesting acceptance of the grant include public use of a road sufficient to confirm acceptance of the public highway right-of-way or acts of the government entity with jurisdiction of the road evidencing acceptance of the road and right-of-way as a public highway.

13. Congressionally granted R.S. 2477 public highway rights-of-way are property interests, sometimes considered a species of easement. As a congressional grant of property for public purposes, the grant of such rights-of-way includes the right of use, enjoyment and the right to cross public land to access and use the property interest granted.

14. The scope of an R.S. 2477 right-of-way includes the course and location of the public highway so established, accepted and used, and that which is reasonable and necessary under the specific circumstances of the road for which the right-of-way serves.

15. A vested R.S. 2477 right-of-way is not restricted to the beaten path and includes reasonable progression of the uses to which it has been put as long as such are reasonable and necessary under the circumstances.

16. The scope of an R.S. 2477 right-of-way includes the physical boundaries of the public highway right-of-way accepted and used, and that which is reasonable and necessary to accommodate the exigencies of the uses to which it has been put according to sound engineering practices that protect the safety of the travelling public, the features of the road, and that prevent undue degradation of adjacent lands.

17. The congressional grant of public highway rights-of-way embodied by R.S. 2477 operated on public lands, while not reserved for public uses, for 110 years until it was repealed on October 21, 1976 by the Federal Land Policy and Management Act (“FLPMA”), 43 U.S.C. § 1701 *et seq.*

18. In repealing R.S. 2477, Congress preserved vested R.S. 2477 rights-of-way as valid existing rights and expressly directed the United States and its subordinate agencies to manage federal lands subject to these valid existing rights. FLPMA Section 701(h) provides: “All actions by the Secretary concerned under this Act shall be subject to valid existing rights.” 43 U.S.C. § 1701, note. *See also* 43 U.S.C. § 1769(a) (“Nothing in this subchapter shall have the effect of terminating any right-of-way or right of use heretofore issued, granted or permitted.”).

19. In Utah, vested R.S. 2477 public highway rights-of-way remain as valid existing property rights until abandoned by formal action of the governmental owner.

20. R.S. 2477 public highway rights-of-way serve to benefit the public and accomplish the congressional intent of promoting the public good through securing safe and efficient means of travel across public lands.

LONG-STANDING DEPARTMENT OF INTERIOR
INTERPRETATION OF R.S. 2477

21. The United States Department of Interior has long agreed that State law governs the acceptance and scope of R.S. 2477 rights-of-way.

22. Across the years the Department of Interior adopted numerous regulations and policies interpreting the congressional grant of R.S. 2477 rights-of-way. These regulations and policies served to ensure Department of Interior's compliance with its statutory duty to manage the public lands subject to valid existing rights.

23. As of and following 1939, R.S. 2477 interpretive regulations found at 43 C.F.R. § 244.55 (1939) stated:

[R.S. 2477] 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.

24. As of and following 1963, R.S. 2477 interpretive regulations found at 43 C.F.R. § 244.58 (1963) stated:

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.

25. As of and following 1974, R.S. 2477 interpretive regulations found at 43 C.F.R. §§ 2822.1-2 & 2822.2-1 (1974) stated:

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.

26. As of and following 1986, R.S. 2477 interpretive policies stated in Bureau of Land Management (“BLM”) Manual, R.2-229 stated:

When public funds have been spent on the road it shall be considered a public road. When the history of the road is unknown or questionable, its existence in a condition suitable for public use is evidence that construction sufficient to cause a grant under RS 2477 has taken place.

27. R.S. 2477 case law and long-standing United States Department of Interior interpretation establish the scope of the R.S. 2477 rights-of-way claimed herein to be that which is reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road. Applicable law, historical practice, and sound engineering confirm that an R.S. 2477 right-of-way, as distinguished from the physical surface of the road, includes a minimum 66 foot right-of-way (33 feet from the center-line descriptions provided herein), and any cuts, slopes and fill areas necessary to ensure a safe travel surface as reasonable and necessary under the circumstances.

28. The scope of an R.S 2477 right-of-way for a county public highway is not limited to the beaten path,

but includes that which is reasonable and necessary to accommodate two lanes of travel according to safe highway engineering practice.

ACCEPTANCE AND SCOPE OF KANE COUNTY'S
R.S. 2477 RIGHTS-OF-WAY

29. After 1866 and prior to the repeal of R.S. 2477 on October 21, 1976, Kane County, by and on behalf of the public, accepted R.S. 2477 rights-of-way for the Mill Creek, Bald Knoll, Skutumpah, Sand Dune, Hancock, Swallow Park/Park Wash, North Swag, Nipple Lake, and the four Cave Lakes roads described herein on public lands not reserved for public uses. As public land grants, the owner of these rights-of-way has the right to access and use these property interests.

30. At the relevant times herein State law provided that a public highway right-of-way was dedicated and accepted under the jurisdiction and control of the local highway authority (Kane County) by designating the road as a county highway and expending public funds to construct and maintain the road. *See* Utah Code Ann. § 72-3-103 (prior law in accord); *see also* Utah Code Ann. § 27-12-22 (1963).

31. As shown herein, the R.S. 2477 public highway rights-of-way for the Mill Creek Bald Knoll, Skutumpah, Sand Dune, Hancock, Nipple Lake, and portions of the Swallow Park/Park Wash roads were accepted by Kane County's designation of these roads as county highways and expending public funds to construct and maintain these roads prior to October 21, 1976.

32. At the relevant times herein State law provided that a public highway right-of-way is "dedicated and

abandoned to the use of the public when it has been continuously used as a public thoroughfare for a period of ten years.” Utah Code Ann. § 72-5-104 (prior law in accord).

33. As shown herein, the R.S. 2477 public highway rights-of-way for the Mill Creek Bald Knoll, Skutumpah, Sand Dune, Hancock, Swallow Park/Park Wash, North Swag, Nipple Lake, and the four Cave Lakes roads were accepted by continuous use as public thoroughfares for a period in excess of ten years prior to October 21, 1976.

34. Kane County’s vested public highway rights-of-way for the Mill Creek, Bald Knoll, Skutumpah, Sand Dune, Hancock, Swallow Park/Park Wash, North Swag, Nipple Lake, and the four Cave Lakes roads continue as valid existing rights until abandoned by Kane County as the local highway authority having jurisdiction. *See* Utah Code Ann. §§ 72-5-103-105.

35. Kane County has not abandoned the public highway rights-of-way for the Mill Creek, Bald Knoll, Skutumpah, Sand Dune, Hancock, Swallow Park/Park Wash, North Swag, Nipple Lake, and the four Cave Lakes roads claimed herein.

**THE MILL CREEK, BALD KNOLL, SKUTUMPAH,
SAND DUNE, HANCOCK, SWALLOW PARK/PARK
WASH, NORTH SWAG, NIPPLE LAKE AND
CAVE LAKES ROADS**

36. The Mill Creek and Bald Knoll roads are located in western Kane County, Utah.

37. The Mill Creek and Bald Knoll roads cross private and public lands within Townships 40 and 41 South, Range 4.5 and 5 West, S.L.M. The course and location

of the Mill Creek and Bald Knoll roads are shown on Exhibit 1A attached and incorporated herein.

38. The Skutumpah road is located in western Kane County.

39. The Skutumpah road crosses private and public lands within Townships 38, 39, 40 and 41 South, Range 2, 3, 4, 4.5 and 5, S.L.M. The course and location of the Skutumpah road is shown on Attachment 1 of Exhibit 2 attached and incorporated herein.

40. The Sand Dune road is located in southwestern Kane County.

41. The Sand Dune road crosses private, Utah School and Institutional Trust Land Administration ("SITLA"), and public lands with Township 42, 43, and 44 South, Range 7, 8, and 9 West, S.L.M. The course and location of the Sand Dune road is shown on Attachment 1 of Exhibit 3 attached and incorporated herein.

42. The Hancock road is located in southwestern Kane County.

43. The Hancock road crosses public lands within Township 42 and 43 South, Range 6, 7, and 8 West, S.L.M. The course and location of the Hancock road is shown on Attachment 1 of Exhibit 4 attached and incorporated herein.

44. The Swallow Park/Park Wash road, North Swag road, and Nipple Lake roads are located in western Kane County.

45. The Swallow Park/Park Wash road crosses private and public lands within Township 39 and 40 South, Range 2 West, S.L.M., The North Swag road and the Nipple Lake roads cross public lands within Township

40 South, Range 2 and 3 West, S.L.M. The course and location of the Swallow Park/Park Wash road and the North Swag road are shown on Exhibit 5A attached and incorporated herein. The course and location of the Nipple Lake road is shown on Attachment 1 to Exhibit 6 attached and incorporated herein.

46. The four Cave Lakes roads are located in southwestern Kane County.

47. The four Cave Lakes roads cross public lands within Township 42 South, Range 7 West, S.L.M. The course and location of the four Cave Lakes roads are shown on Exhibit 7A attached and incorporated herein. As shown in Exhibit 7A, these roads are also designated RD130016, RD130017, RD131143 and RD121144.

48. The surveyed centerline of the Bald Knoll, Mill Creek, Swallow Park/Park Wash, North Swag and Cave Lakes roads are shown on maps of each road attached as Exhibits 1A, 5A and 7A, respectively, and were plotted using NAD83 mapping grade Global Positioning Survey ("GPS") data collected by Kane County road personnel. This centerline data has been verified, confirmed by on the ground inspection and reference to pre-1976 aerial photography, and overlaid upon United States Geological Survey topographic maps.

49. The surveyed centerline of the Skutumpah, Sand Dune, Hancock, and Nipple Lake roads are shown on maps of each road attached as Attachment 1 to Exhibits 2 (Skutumpah), 3 (Sand Dune), 4 (Hancock), and 6 (Nipple Lake). The information and documentation relevant to the Skutumpah, Sand Dune, Hancock, and Nipple Lake roads was collected by Kane County personnel

and compiled by the State of Utah pursuant to Utah Code Ann. § 72-5-309—310.

50. The road segments claimed herein for the Bald Knoll, Mill Creek, Skutumpah, Sand Dune, and Swallow Park/Park Wash and described in the GPS data, attached hereto as Exhibits 1A (Mill Creek and Bald Knoll), 2 (Skutumpah), 3 (Sand Dune), and 5B (Swallow Park/Park Wash), include only those portions of the roads crossing public lands. The segments of these roads crossing private or SITLA lands are not at issue, are not contested, and are not claimed herein.

THE CASE OR CONTROVERSY

The Mill Creek And Bald Knoll Roads

51. On or about June 16, 2006, the Kane County Commission notified the BLM of its objection to the United State's [sic] intent to issue a permit to a third party to authorize rerouting and modification of Kane County's Mill Creek and Bald Knoll roads without consulting Kane County.

52. On or about June 16, 2006, the Kane County Commission notified the BLM of Kane County's intent to make the needed improvements to the Mill Creek and Bald Knoll roads to meet the safety and transportation needs of the public.

53. As the lawful owner and government entity vested with jurisdiction of these public highway rights-of-way, Kane County has the legal right and duty to ensure the Mill Creek and Bald Knoll roads are properly constructed, maintained, and operated as part of the county's transportation system.

54. Kane County's proposed improvements to the Mill Creek and Bald Knoll roads were developed by an engineer and in compliance with applicable standards of the American Association of State Highway and Transportation Officials (AASHTO).

55. Kane County's proposed improvements to the Mill Creek and Bald Knoll roads are reasonable and necessary to promote public safety, to prevent undue degradation of adjacent public lands, and to serve the needs and uses of the roads for the public and the project.

56. Kane County's proposed improvements to the Bald Knoll road are reasonable and necessary and within the scope of the existing public highway right-of-way. Initially, Kane County must install new culverts and widen blind corners on the Bald Knoll road. A copy of Kane County's initial proposed improvements to the Bald Knoll road, which conform to AASHTO standards, is attached as Exhibit 8 and incorporated herein.

57. Due to the topography of the land near the intersection of the Bald Knoll and Mill Creek roads, rerouting this intersection will promote public safety and will secure a more readily maintainable road.

58. Kane County supported the BLM's proposal to reroute the easternmost one half mile of the Bald Knoll road.

59. Accordingly, Kane County requested a FLPMA Title V permit to reroute the easternmost one half mile of the Bald Knoll road to an intersection with the Mill Creek road.

60. The BLM promptly issued this permit on or about March 6, 2007. A copy of this FLPMA Title V

right-of-way, Serial Number UTU-82147 is attached hereto as Exhibit 9 and incorporated herein.

61. This FLPMA Title V permit granted a right-of-way of 66 feet wide for the rerouted section of the Bald Knoll road. *See* Exhibit 9, p. 2.

62. This FLPMA Title V permit adopted and incorporated many of Kane County's initial and long term proposed improvements to the Bald Knoll road within its terms. *See* Exhibit 9, pp. 7-9 (Exhibits A and B to UTU-82147). *See also* "Proposed New Road" designated by yellow line in Exhibit 8.

63. Kane County currently holds another FLPMA Title V right-of-way near the southwestern end of the Bald Knoll road. Kane County intends to take the appropriate action to direct public travel across these FLPMA Title V rights-of-way for so long as they remain in effect and provide for Kane County's and the public's transportation needs.

64. Kane County's proposed improvements to the Mill Creek road are reasonable and necessary and within the scope of the existing public highway right-of-way. Initially, Kane County must install new culverts, widen cattle guards, and widen blind corners on the Mill Creek road. A copy of Kane County's initial proposed improvements to the Mill Creek road, which conform to AASHTO standards, is attached as Exhibit 10.

65. Over time and as county funding allows, Kane County must improve the entire length of the Mill Creek and Bald Knoll roads to provide a safe and reliable travel surface according to AASHTO standards. The description of these improvements is provided in Kane County's engineer report attached and incorporated in

the FLPMA Title V issued by the United States Bureau of Land Management for the rerouted portion of the Bald Knoll road. *See* Exhibit 9, pp. 8-9. Kane County intends to improve the Mill Creek and Bald Knoll roads to conform to the applicable AASHTO standards, which are the standards the BLM adopted for the rerouted portion of the Bald Knoll road.

66. On or about June 16, 2006, the Kane County Commission requested the BLM to make an initial determination of whether the proposed improvements to the Mill Creek and Bald Knoll roads were within the scope of Kane County's public highway rights-of-way.

67. Over a year later in July of 2007, the BLM published a preliminary determination for the Bald Knoll road agreeing that Kane County owns an R.S. 2477 public highway right-of-way for the Bald Knoll road.

68. The BLM has not completed this initial determination.

69. Upon information and belief, the BLM has not taken any action regarding the initial determination for the Mill Creek road.

70. Over two years have passed since Kane County notified the BLM of its intent to make these needed improvements to the Mill Creek and Bald Knoll roads.

71. Over two years have passed since Kane County requested the BLM to make an initial determination that these improvements are within the scope of Kane County's congressionally granted public highway rights-of-way.

72. The BLM has not identified any problems or concerns with respect to the proposed improvements as affecting the adjacent public lands.

73. The BLM is under an affirmative legal duty to ensure that its actions are subject to and consistent with valid existing rights.

74. In making an initial determination of whether proposed improvements fall within the scope of a public highway right-of-way, the BLM has an obligation to render its decision in a timely and expeditious manner.

75. In making an initial determination of whether proposed improvements fall within the scope of a public highway right-of-way, the BLM may not use its authority to delay or impair valid existing public highway rights-of-way.

76. The BLM's two year delay in responding to Kane County's request constitutes unreasonable delay and has impaired Kane County's valid existing rights.

77. On October 31, 2008, the BLM adopted its final Resource Management Plan ("RMP") for the public lands managed by the Kanab Field Office in Kane County. The RMP and its Map 10 Route Designations purport to authorize and regulate motor vehicle (including unlicensed and all-terrain vehicle) travel on Kane County's Mill Creek and Bald Knoll roads, including their respective segments crossing public lands—except for the Old Leach Ranch segment. The RMP's Map 9 and Map 10 purport to close the Old Leach Ranch segment of the Bald Knoll road. The BLM's purported regulation of public travel on Kane County's Mill Creek

and Bald Knoll roads constitutes an unlawful impairment of Kane County's property interests and regulatory authority.

78. On December 20, 2006, the Utah State Office of the BLM directed its land use planners, including those in the Kanab Field Office, to avoid considering R.S. 2477 rights-of-way in developing RMP's. Recognizing that this directive would necessarily result in litigation, the Utah State Office of the BLM informed its land use planners to confirm that "nothing in the RMP extinguishes any valid right-of-way, or alters the legal rights the state and counties have to assert and protect R.S. 2477 rights or to challenge in Federal court or other appropriate venue any use restrictions imposed by the RMP that they believe inconsistent with their rights." This BLM policy was put into effect on October 31, 2008 in the RMP.

79. The BLM's failure to respond to Kane County's June 16, 2006 request to improve the Mill Creek and Bald Knoll roads created a case or controversy. The BLM's purported regulation and closure of Kane County's Bald Knoll and Mill Creek roads creates a case or controversy. Title to these rights-of-way is necessary to authorize Kane County to maintain and construct these roads, to receive funding to pay for their maintenance, and to exercise regulatory jurisdiction of these roads where they cross public land.

The Skutumpah Road

80. The BLM has previously determined that the Skutumpah road crosses a Kane County R.S. 2477 public highway right-of-way. See SUWA v. BLM, 425 F.3d at

743. Indeed, the Tenth Circuit remanded the underlying trespass case for review of “whether Kane County exceeded the scope of its right-of-way with respect to the Skutumpah Road.” Id. at 788.

81. On May 16, 2008, the United States District Court, District of Utah issued a decision in The Wilderness Society v. Kane County, Case No. 2:05-CV-0854 TC, Dkt. No. 202 (hereinafter, the “TWS Decision”)¹, stating that Kane County does not own an R.S. 2477 right-of-way for the Skutumpah road. *See* TWS Decision, p. 21.

82. In the TWS Decision, the district court held that “despite the County’s asserted R.S. 2477 rights-of-way, the validity of which have not been adjudicated in a court of law (that is, there are no “valid existing rights” to consider here).” TWS Decision, pp. 20-21. The district court held that Kane County does not own an R.S. 2477 right-of-way unless and until it is adjudicated in a court of law. Id. at 21.

83. The Skutumpah road crosses private land, general public land, and lands within the Grand Staircase-Escalante National Monument (“Monument”). Effective as of February of 2000, the BLM adopted its Final Management Plan for the Grand Staircase-Escalante National Monument (“Plan”). The Plan purports to adopt a transportation plan for roads within the Monument as depicted the Plan’s Map 2.

84. The Plan expressly states that it will be administered subject to valid existing rights and that it will

¹ The TWS Decision has been appealed to the Tenth Circuit Court of Appeals. *See* The Wilderness Society v. Kane County, App. No. 08-4090.

respect R.S. 2477 rights-of-way within the Monument “in the event of legal decisions on R.S. 2477 assertions. . . . ” Nevertheless, the Plan purports to restrict Kane County’s regulation, use and maintenance of the Skutumpah road within the Monument.

85. On October 31, 2008, the BLM adopted the RMP for the public lands managed by the Kanab Field Office in Kane County. The RMP limits motor vehicle travel on public lands within Kane County, including along the Skutumpah road, to designated routes. The RMP’s Map 10 Route Designations fails to show whether the Skutumpah road is open or closed to motor vehicle use. The United States’ failure to designate Kane County’s Skutumpah road as open leaves Kane County subject to another lawsuit identical to that reflected in the TWS Decision.

86. On December 20, 2006, the Utah State Office of the BLM directed its land use planners, including those in the Kanab Field Office, to avoid considering R.S. 2477 rights-of-way in developing RMP’s. Recognizing that this directive would necessarily result in litigation, the Utah State Office of the BLM informed its land use planners to confirm that “nothing in the RMP extinguishes any valid right-of-way, or alters the legal rights the state and counties have to assert and protect R.S. 2477 rights or to challenge in Federal court or other appropriate venue any use restrictions imposed by the RMP that they believe inconsistent with their rights.” This BLM policy was put into effect against Kane County on October 31, 2008 in the RMP.

87. Since 2005, representatives of the Department of Interior provided assistance to the plaintiffs in the TWS Decision and have stated that Kane County does

not now have an R.S. 2477 right-of-way for the Skutumpah road. These statements include the direct statement that the Tenth Circuit was wrong to suggest that Kane County currently owns a right-of-way for the Skutumpah road (see ¶ 80, *supra*), that Kane County's historic maintenance activities on the Skutumpah road were solely part of a symbiotic governmental relationship, but not conducted upon a Kane County right-of-way, and that Kane County must first quiet title to the right-of-way for the Skutumpah road to have any grounds to complain of the United States' restrictions on this Kane County road.

88. Title to this right-of-way is necessary to authorize Kane County to maintain the road, to receive funding to pay for its maintenance, and to exercise regulatory jurisdiction of the road where it crosses public land, including within the Monument.

89. Kane County's Skutumpah road is a heavily travelled, higher speed public highway. The Skutumpah road requires significant routine maintenance to provide for public safety, and even in the few short months since the TWS Decision, the Skutumpah road has deteriorated and is in need of maintenance and repair.

90. The Department of Interior's recent assertion that Kane County has no R.S. 2477 right-of-way, including for the Skutumpah road, and adverse management restrictions, have created a case or controversy regarding the ownership of the right-of-way for the Skutumpah road.

The Sand Dune and Hancock Roads

91. The Sand Dune and Hancock roads are paved major thoroughfares that provide access to locations,

such as the Coral Pink Sand Dunes State Park and connect to highways within the State of Utah and the State of Arizona.

92. Kane County's authority to construct, maintain and regulate these roads as they cross public land exists pursuant to R.S. 2477 rights-of-way.

93. On October 31, 2008, the BLM adopted the RMP for the public lands managed by the Kanab Field Office in Kane County. The RMP limits motor vehicle travel on public lands within Kane County, including along the Sand Dune and Hancock roads, to designated routes. The RMP's Map 10 Route Designations fails to show the paved Sand Dune road as being open to any motor vehicle use. The RMP's Map 10 appears not to show the Hancock road as being open to any motor vehicle use. If one or more short portions of the Sand Dune and Hancock roads are shown (which is uncertain due to map scale imprecision), the RMP purports to unlawfully authorize and regulate public travel on Kane County's Sand Dune and Hancock roads.

94. On December 20, 2006, the Utah State Office of the BLM directed its land use planners, including those in the Kanab Field Office, to avoid considering R.S. 2477 rights-of-way in developing RMP's. Recognizing that this directive would necessarily result in litigation, the Utah State Office of the BLM informed its land use planners to confirm that "nothing in the RMP extinguishes any valid right-of-way, or alters the legal rights the state and counties have to assert and protect R.S. 2477 rights or to challenge in Federal court or other appropriate venue any use restrictions imposed by the RMP that they believe inconsistent with their rights." This

BLM policy was put into effect against Kane County on October 31, 2008 in the RMP.

95. The United States' failure to address Kane County's valid existing public highway right-of-way for the Sand Dune and Hancock roads leaves Kane County subject to another lawsuit identical to that reflected in the TWS Decision.

96. The BLM's purported regulation and closure of Kane County's Sand Dune and Hancock roads creates a case or controversy. Title to these rights-of-way is necessary to authorize Kane County to maintain these roads, to receive funding to pay for their maintenance, and to exercise regulatory jurisdiction of these roads where they cross public land.

97. Following the TWS Decision, a representative of the Department of Interior stated that Kane County does not have any R.S. 2477 rights-of-way that would authorize Kane County to construct, maintain or exercise regulatory jurisdiction of the Sand Dune and Hancock roads where they cross public land.

98. The Department of Interior's recent assertion that Kane County has no R.S. 2477 right-of-way, including for the Sand Dune and Hancock roads, has created a case or controversy regarding the ownership of the rights-of-way for these roads. The BLM's purported regulation and closure of Kane County's Sand Dune and Hancock roads has created a case or controversy.

The Swallow Park/Park Wash, North Swag, and Nipple Lake Roads

99. The Swallow Park/Park Wash and North Swag roads provide access from the Skutumpah road to the

Kitchen Corral road, which itself connects to Highway 89 in western Kane County.

100. The Nipple Lake road provides access from the Kitchen Corral road to a ranch in western Kane County.

101. The Nipple Lake road and portions of the Swallow Park/Park Wash roads are Kane County Class B roads that received routine maintenance and have improved travel surfaces constructed by Kane County.

102. Portions of the Swallow Park/Park Wash road, and the North Swag road are Kane County Class D roads with unimproved traveling surfaces.

103. These roads, as they cross public lands, lie within the Monument. Effective as of February of 2000, the BLM adopted its Plan for the Monument. The Plan purports to adopt a transportation plan for roads within the Monument as depicted the Plan's Map 2.

104. The Plan expressly states that it will be administered subject to valid existing rights. Nevertheless, the Plan also represents that roads not shown on Map 2 are considered closed, subject to valid existing rights.

105. By its Map 2, the Plan shows portions of the Swallow Park/Park Wash road to be restricted to only BLM administrative uses.

106. By its Map 2, the Plan does not show the remainder of the Swallow Park/Park Wash road, or any part of the North Swag and Nipple Lake roads as being public highways.

107. The TWS Decision states that Kane County cannot own, maintain or manage these roads unless and until their rights-of-way are adjudicated in a court of law.

108. Following the TWS Decision, a representative of the Department of Interior stated that Kane County does not have any R.S. 2477 rights-of-way that would authorize Kane County to own, maintain or exercise regulatory jurisdiction of the Swallow Park/Park Wash, North Swag, and Nipple Lake roads where they cross public land.

109. The Plan and the Department of Interior's recent assertion that Kane County has no R.S. 2477 right-of-way, including for the Swallow Park/Park Wash, North Swag, and Nipple Lake roads, has created a case or controversy regarding the ownership of the rights-of-way for these roads.

The Cave Lakes Roads

110. The Cave Lakes roads provide access from the Hancock road to private land in western Kane County.

111. On July 25, 2008, the BLM issued FLPMA Title V rights-of-way to a private entity for improvement, maintenance and ownership of rights-of-way over the top of Kane County's Cave Lakes roads. These FLPMA Title V rights-of-way bear serial numbers UTU-82998, UTU-83004, and UTU-82999.

112. These FLPMA Title V rights-of-way expressly acknowledge that Kane County claims to own public highway rights-of-way for the roads they affect, and expressly provide that in the event of a federal court decision confirming Kane County's R.S. 2477 rights-of-way, they would be superseded and automatically terminate.

113. The BLM's July 25, 2008 issuance of these FLPMA Title V rights-of-way over the top of Kane

County's R.S. 2477 public highway rights-of-way has impaired Kane County's ability to own, maintain and regulate public travel on its public highways.

114. The BLM's issuance of the conflicting Title V rights-of-way, and the Department of Interior's recent assertion that Kane County has no R.S. 2477 rights-of-way, including for the four Cave Lakes roads, has created a case or controversy regarding the ownership of the rights-of-way for these roads.

115. On October 31, 2008, the BLM adopted the RMP for the public lands managed by the Kanab Field Office in Kane County. The RMP limits motor vehicle travel on public lands within Kane County, including along the Cave Lakes roads, to designated routes. The RMP's Map 10 Route Designations purports to authorize motor vehicle (including unlicensed and all-terrain vehicle) travel on Kane County's Cave Lakes roads. The BLM's purported regulation of public travel on Kane County's Cave Lakes roads constitutes an unlawful impairment of Kane County's property interests and regulatory authority.

116. On December 20, 2006, the Utah State Office of the BLM directed its land use planners, including those in the Kanab Field Office, to avoid considering R.S. 2477 rights-of-way in developing RMP's. Recognizing that this directive would necessarily result in litigation, the Utah State Office of the BLM informed its land use planners to confirm that "nothing in the RMP extinguishes any valid right-of-way, or alters the legal rights the state and counties have to assert and protect R.S. 2477 rights or to challenge in Federal court or other appropriate venue any use restrictions imposed by the RMP that they believe inconsistent with their rights." This

BLM policy was put into effect against Kane County on October 31, 2008 in the RMP.

117. In December of 2008, Kane County requested a meeting with representatives of the Department of Interior (being the managers of the BLM Kanab Field Office, the Monument, and the Glen Canyon Recreation Area) to coordinate road snow removal responsibilities, specifically as related to public highways crossing federal lands in Kane County. These representatives did not meet, have not agreed to a later meeting, and it was expressed to Kane County that a United States attorney advised against meeting with Kane County.

118. As shown above, the actions of the United States and its agencies have, within the last nine years and more recently, created a case or controversy regarding Kane County's ownership, maintenance, and regulation of these public highway rights-of-way. The United States' deliberate refusal to address Kane County's public highway rights-of-way in its management plans has created legal liability for Kane County, clouded its title to these rights-of-way, impaired its regulatory authority, and placed the travelling public at risk.

FIRST CAUSE OF ACTION — QUIET TITLE
MILL CREEK ROAD

119. Kane County incorporates herein and realleges each of the foregoing paragraphs.

Description of Mill Creek Road R.S. 2477 Right-of-Way.

120. The Mill Creek road is designated as Kane County road number K4400. The Mill Creek road claimed herein includes segments also known as the Tenny Creek road K4410 and the Oak Canyon road K4405. See Exhibit 1A.

121. The south end of the Mill Creek road K4400 commences at its intersection with the Skutumpah road on private land in the NW quarter of section 5, Township 41 South, Range 4.5 West, S.L.M., and proceeds in a northerly direction a little over six miles to its end at three gates on private property in the SWSE of section 34, Township 39 South, Range 4.5 West, in the NWNE of section 5, Township 40 South, Range 4.5 West, S.L.M., and in the SESW of section 6, Township 40 South, Range 4.5 West, S.L.M. See Exhibit 1A.

122. The specific right-of-way for the Mill Creek road on public lands claimed herein includes:

a. K4400 Segment 1, consisting of .44 miles more or less commencing in the NESE of section 29, Township 40 South, Range 4.5 West, S.L.M., and ending in the SENE of section 29, Township 40 South, Range 4.5 West, S.L.M. The NAD83 mapping grade GPS data plotting the centerline and course of the Mill Creek road K4400 Segment 1 right-of-way claimed herein is attached hereto as Exhibit 1B and incorporated by reference.

b. K4400 Segment 2, consisting of 4.01 miles more or less commencing in the SENE of section 20, Township 40 South Range 4.5 West, S.L.M., proceeding northerly across sections 20, 17, 8, 5 and 6, and ending at a gate on private property in the SWSE of section 34, Township 39 South, Range 4.5 West, S.L.M. The NAD83 mapping grade GPS data plotting the precise centerline course of the Mill Creek road K4400 Segment 2 right-of-way claimed herein is attached hereto as Exhibit 1C and incorporated by reference.

c. K4410 Segment 3, also known as the Tenny Creek road, consisting of .4705 miles more or less commencing at its intersection with the previously described main Mill Creek road K4400 Segment 2 in the SWSE of section 5, Township 40 South, Range 4.5 West, S.L.M., and proceeding north to its end at a gate on private property in the NWNE of section 5, Township 40 South, Range 4.5 West., S.L.M. The NAD83 mapping grade GPS data plotting the centerline course of this segment of right-of-way claimed herein is attached hereto as Exhibit 1D and incorporated by reference.

d. K4405 Segment 4, also known as the Oak Canyon road, consisting of .6629 miles more or less commencing at its intersection with the previously described main Mill Creek road K4400 Segment 2 in the SENE of section 6, Township 40 South, Range 4.5 West, S.L.M., and proceeding southwesterly to its end at a gate on private property in the SESW of section 6, Township 40 South, Range 4.5 West., S.L.M. The NAD83 mapping grade GPS data plotting the centerline course of this segment of right-of-way claimed herein is attached hereto as Exhibit 1E and incorporated by reference.

123. The Mill Creek road K4400 Segment 1 and 2 provide access across public lands and access to private property that was conveyed into private ownership by the United States on June 10, 1937.

124. The Mill Creek road K4410 Segment 3, also known as the Tenny Creek road, provides access across public lands and access to private property that was conveyed into private ownership by the United States on March 23, 1923.

125. The Mill Creek road K4405 Segment 4, also known as the Oak Canyon road, provides access across public lands and access to private property that was conveyed into private ownership by the United States on August 8, 1957.

126. The right-of-way for the Mill Creek road claimed herein includes K4400 Segments 1 and 2, K4410 Segment 3, and K4405 Segment 4 on public lands owned by the United States. An enhanced detail map plotting the GPS centerline of the intersection and course of K4400 Segment 2, K4410 Segment 3, and K4405 Segment 4 is attached as Exhibit 11 and incorporated herein.

127. The right-of-way for the Mill Creek road claimed herein on public lands includes that which is reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road, and including a width of 66 feet (33 feet from the centerline descriptions provided herein).

Maps Depicting Mill Creek Road R.S. 2477 Right-of-Way

128. The specific length, course and location of Kane County's Mill Creek road has long appeared on United States Geological Survey ("USGS") maps.

129. The entire Mill Creek road (including each of the specific segments claimed herein) has appeared on a USGS Skutumpah Creek, Utah 7.5 minute quadrangle map since at least 1966 (as surveyed in 1964). A copy of this map is attached as Exhibit 12 and incorporated herein. This attached map includes Kane County's former road numbering designations for the Mill Creek road, which are #216, #214, and #546.

130. The northernmost end of the Mill Creek road further appears on a United States Department of Agriculture Dixie National Forest map dated 1963.

131. Pre-1976 aerial photography confirms the historical existence of the Mill Creek road as located on the land and following its historical course. More recent aerial photography continues to show the road as it has historically existed.

Acceptance of the Mill Creek Road R.S. 2477 Right-of-Way Prior to October 21, 1976.

132. Prior to October 21, 1976, Kane County and the public accepted the congressional grant of an R.S. 2477 public highway right-of-way for the Mill Creek road on unreserved public lands as set forth herein. This grant of a right-of-way includes access to the road.

133. The public highway right-of-way accepted and perfected for the Mill Creek road includes K4400 Segment 1, K4400 Segment 2, K4410 Segment 3, and K4405 Segment 4 as described herein on lands owned by the United States.

134. The scope of the public highway right-of-way accepted and perfected for the Mill Creek road includes that which is reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road according to applicable AASHTO standards. This includes a right-of-way width of 66 feet (33 feet from the centerline descriptions provided herein). All of Kane County's proposed improvements to the Mill Creek road are within the scope of its public highway right-of-way for the Mill Creek road.

135. The entire Mill Creek road (including the specific segments claimed herein) was officially designated

as a Kane County highway on Kane County's General Highway map in 1965.

136. Segments of the Mill Creek road appear on earlier Kane County General Highway maps, including those published in 1956. However, the entirety of the Mill Creek road was designated as county highways on the 1965 Kane County General Highway map.

137. Kane County's designation of the Mill Creek road as a county road in 1965 confirmed that these roads were accepted "as county roads . . . under the jurisdiction and control of the county commissioners" of Kane County. Utah Code Ann. § 27-12-22 (1963).

138. Kane County designated and accepted this county road and the R.S. 2477 right-of-way no later than 1965, and thereafter continued to construct, maintain and improve the Mill Creek road using public funds pursuant to the governmental authority of the Kane County Commission.

139. From at least the 1960's and prior to 1976, Kane County road personnel constructed, maintained and improved the Mill Creek road and installed culverts, water bars, and cattle guards on them using public funds. The location of some of these cattle guards and culverts are shown on Exhibit 1A. From at least the 1960's and continuing past 1976, Kane County road crews conducted routine maintenance of this road generally twice a year and regularly repaired those sections of the road that are prone to washouts and headcutting.

140. Upon information and belief, at various times prior to 1976 and thereafter, Utah Department of Transportation personnel inspected this road to ensure that the construction levels met the requirements of State

law for continued appropriations to maintain this road as a general county road (General Highways) conducive to regular travel by two-wheel drive vehicles.

141. Kane County's designation of the Mill Creek road as a Kane County road (General Highways) and expenditure of public funds on this road on or before 1965 constituted formal acceptance of the congressional grant of R.S. 2477 right-of-way for this public highway pursuant to State law codified in Utah Code Ann. § 27-12-22 (1963).

142. In 1977, the United States Bureau of Land Management and Kane County signed a memorandum confirming that county roads, including the Mill Creek road, included a right-of-way width of 66 feet.

143. Kane County is entitled to an order of this Court quieting title to its R.S. 2477 public highway right-of-way for the Mill Creek road described herein.

Acceptance of the Mill Creek Road R.S. 2477 Right-of-Way By Public Use Prior to 1976.

144. The Mill Creek road has long served as a public highway providing access across public lands and to land conveyed into private ownership in 1937 (K4400 Segments 1 and 2), 1923 (K4410 Segment 3), and 1957 (K4405 Segment 4).

145. Witnesses with personal knowledge of the history of the Mill Creek road confirm public use on a continuous basis for more than ten years prior to October 21, 1976 and dating back to at least the 1940's consisting of general public travel for purposes of accessing private land, mineral exploration, hunting, livestock operations, wood gathering, camping, and recreation, and continuing through 1976 and to the present.

146. Witnesses with personal knowledge of the history of the Mill Creek road confirm public use of the road on a continuous basis for more than ten years prior to October 21, 1976 by means of car, jeep, 2-ton trucks, cattle trucks, pickup trucks, team and wagon, and bicycles.

147. Currently known reputation in the community is that the Mill Creek road has been open for all to come and go as they please since at least as early as the 1930's and continuing through the present.

148. The Mill Creek road was used on a continuous and nonexclusive basis as public thoroughfare for decades prior to October 21, 1976.

149. The Mill Creek road traverses a valid and perfected R.S.2477 public highway right-of-way sufficient in scope for vehicle travel and includes that which is reasonable and necessary to meet the exigencies of these types of travel according to safe engineering practices that protect the public, the road, and prevent undue degradation of the adjacent land.

150. Public motor vehicle use of the Mill Creek road as a public thoroughfare traversing unreserved public lands on a continuous basis for a period in excess of ten years prior to October 21, 1976 confirms acceptance of the grant of R.S. 2477 public highway right-of-way for the Mill Creek road.

151. Kane County is entitled to an order of this Court quieting title to its R.S. 2477 public highway right-of-way for the Mill Creek road described herein.

SECOND CAUSE OF ACTION — QUIET TITLE
BALD KNOLL ROAD

152. Kane County incorporates herein and realleges each of the foregoing paragraphs 1 through 118.

Description of Bald Knoll Road R.S. 2477 Right-of-Way

153. The Bald Knoll road is designated as Kane County road K3935. *See* Exhibit 1A.

154. The Bald Knoll road has at times been referred to as the “Coal Road” or mislabeled as the “Thompson Creek Road”. The west end of the Bald Knoll road commences in the NENW of section 3, Township 41 South, Range 5 West, S.L.M., at the boundary of private land and proceeds northwesterly across public lands to the intersection of the main Bald Knoll road in the SWSE of section 34, Township 40 South, Range 5 West, S.L.M. From this intersection, the Bald Knoll road travels northerly and then easterly to its end at an intersection with the Mill Creek road K4400 Segment 2 in the NENE of section 17, Township 40 South, Range 4.5 West, S.L.M. The total length of the Bald Knoll road is a little over nine miles. *See* Exhibit 1A.

155. The specific right-of-way for the Bald Knoll road K3935 on public lands claimed herein includes:

- a. K3930A Segment 1 (also known as the Old Leach Ranch Segment), consisting of .36 miles more or less commencing in the NENW of section 3, Township 41 South, Range 5 West, S.L.M., at the boundary of private land and ending at an intersection in the SESW of section 34, Township 40 South, Range 5 West, S.L.M. The NAD83 mapping grade GPS data plotting the centerline course of this segment of right-of-

way claimed herein is attached hereto as Exhibit 1F and incorporated by reference.

b. K3935 Segment 2 consisting of 3.29 miles more or less commencing at an intersection in the SESW of section 34, Township 40 South, Range 5 West, S.L.M., and ending at the boundary of private property in the NWNE of section 22, Township 40 South, Range 5 West, S.L.M. The NAD83 mapping grade GPS data plotting the centerline course of this segment of right-of-way claimed herein is attached hereto as Exhibit 1G and incorporated by reference.

c. K3935 Segment 3 consisting of .24 miles more or less commencing at the boundary of private property in the NENE of section 22, Township 40 South, Range 5 West, S.L.M., and ending at the boundary of private property in the SESE of section 15, Township 40 South, Range 5 West, S.L.M. The NAD83 mapping grade GPS data plotting the centerline course of this segment of right-of-way claimed herein is attached hereto as Exhibit 1H and incorporated by reference.

d. K3935 Segment 4 consisting of 5.15 miles more or less commencing at the boundary of private property in the SWSW of section 14, Township 40 South, Range 5 West, S.L.M., and ending at its intersection with the Mill Creek road K4400 Segment 2 in the NENE of section 17, Township 40 South, Range 4.5 West, S.L.M. The NAD83 mapping grade GPS data plotting the centerline course of this segment of right-of-way claimed herein is attached hereto as Exhibit 1J and incorporated by reference.

156. The parcel of private property accessed by Bald Knoll road K3935 Segments 2 and 3, and from which

K3935 Segment 4 departs, was conveyed into private ownership by the United States on October 23, 1928.

157. The right-of-way for the Bald Knoll road claimed herein includes K3930A Segment 1, K3935 Segment 2, K3935 Segment 3, and K3935 Segment 4 on public lands owned by the United States.

158. The right-of-way for the Bald Knoll road claimed herein on public lands includes that which is reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road, and including a width of 66 feet (33 feet from the centerline descriptions provided herein).

Maps Depicting the Bald Knoll Road R.S. 2477 Right-of-Way

159. The specific length, course and location of Kane County's Bald Knoll road has long appeared on USGS maps.

160. The entire Bald Knoll road (including each of the specific segments claimed herein) has appeared on the Skutumpah Creek map (Exhibit 12) and on the USGS Bald Knoll, Utah 7.5 minute quadrangle map since at least 1966 (as surveyed in 1964). A copy of the Bald Knoll map is attached as Exhibit 13 and incorporated herein. The attached map includes Kane County's former road numbering designations for the Bald Knoll road, which are #500, #515, #514 and #513.

161. Of particular note, the 1966 Bald Knoll map (Exhibit 13) specifically shows the historical existence and course of K3930A Segment 1 (also known as the Old Leach Ranch Segment), as commencing in section 3, Township 41 South, Range 5 West, S.L.M., and proceeding northwesterly as former Kane County road number

500 to its intersection with former Kane County road number 515 in section 34, Township 40 South, Range 5 West, S.L.M.

162. Pre-1976 aerial photography confirms the historical existence of the Bald Knoll road as located on the land and following its historic course. More recent aerial photography continues to show this road as it has historically existed.

Acceptance of the Bald Knoll Road R.S. 2477 Right-of-Way Prior to October 21, 1976.

163. Prior to October 21, 1976, Kane County and the public accepted the congressional grant of an R.S. 2477 public highway right-of-way for the Bald Knoll road on unreserved public lands as set forth herein. This grant of a right-of-way includes access to the road.

164. The public highway right-of-way accepted and perfected for the Bald Knoll road includes K3930A Segment 1, K3935 Segment 2, K3935 Segment 3, and K3935 Segment 4 on lands owned by the United States.

165. The scope of the public highway right-of-way accepted and perfected for the Bald Knoll road includes that which is reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road according to applicable AASHTO standards. This includes a right-of-way width of 66 feet (33 feet from the centerline descriptions provided herein). All of Kane County's proposed improvements to the Bald Knoll road are within the scope of its public highway right-of-way for the Bald Knoll road

166. The entire Bald Knoll road (including the specific segments claimed herein) was officially designated

as a Kane County general highway on Kane County's General Highway map in 1965.²

167. Kane County's designation of the Bald Knoll road as a county road by 1965 confirmed that this road was accepted "as [a] county road[] . . . under the jurisdiction and control of the county commissioners" of Kane County. Utah Code Ann. § 27-12-22 (1963).

168. Kane County designated and accepted this county road and its R.S. 2477 right-of-way no later than 1965, and thereafter continued to construct, maintain and improve the Bald Knoll road using public funds pursuant to the governmental authority of the Kane County Commission.

169. From at least the 1960's and prior to 1976, Kane County road personnel constructed, maintained and improved the Bald Knoll road and installed culverts, water bars, and cattle guards on it using public funds. The location of some of these cattle guards and culverts are shown on Exhibit 1A. From at least the 1960's and continuing past 1976, Kane County road crews conducted routine maintenance of this road generally twice a year and regularly repaired sections of the road that are prone to washouts and headcutting.

170. Upon information and belief, at various times prior to 1976 and thereafter, Utah Department of Transportation personnel inspected this road to ensure that its construction levels met the requirements of State law for continued appropriations to maintain this road as a

² Portions of K3935 Segment 2, 3 and 4 were improperly drawn on Kane County's General Highway maps in 1965 as an apparent carryover mapping error from a similar 1956 map. These mapping errors have since been confirmed and corrected.

county road (General Highways) conducive to regular travel by two-wheel drive vehicles.

171. Kane County's designation of the Bald Knoll road as a Kane County road (General Highways) and expenditure of public funds on this road on or before 1965 constituted formal acceptance of the congressional grant of R.S. 2477 rights-of-way for this public highway pursuant to State law codified in Utah Code Ann. § 27-12-22 (1963).

172. In 1977, the United States Bureau of Land Management and Kane County signed a memorandum confirming that county roads, including the Bald Knoll road (then designated as the Thompson Creek road), included a right-of-way width of 66 feet.

Acceptance of the Bald Knoll Road R.S. 2477 Right-of-Way By Public Use Prior to 1976.

173. The Bald Knoll road has long served as a public highway providing access across public lands and to land conveyed into private ownership in 1928.

174. Witnesses with personal knowledge of the history of the Bald Knoll road confirm public use on a continuous basis for more than ten years prior to October 21, 1976 and dating back to at least 1942 consisting of general public travel for purposes of accessing private land, mining and mineral exploration, hunting, livestock operations, wood gathering, camping, and recreation continuing through 1976 and to the present.

175. Witnesses with personal knowledge of the history of the Bald Knoll road confirm public use of the road on a continuous basis for more than ten years prior

to October 21, 1976 by means of horse, all terrain vehicle, car, jeep, 2-ton trucks, semi-truck, D-9 Cat, tractor, cattle truck, and pickup truck.

176. Currently known reputation in the community is that the Bald Knoll road has been open for all to come and go as they pleased since at least the early 1900's and continuing through the present.

177. The Bald Knoll road was used on a continuous and nonexclusive basis as public thoroughfare for decades prior to October 21, 1976.

178. The Bald Knoll road traverses a valid and perfected R.S.2477 public highway right-of-way sufficient in scope for vehicle travel and includes that which is reasonable and necessary to meet the exigencies of these types of travel according to safe engineering practices that protect the public, the road, and prevent undue degradation of the adjacent land.

179. Public motor vehicle use of the Bald Knoll road as a public thoroughfare traversing unreserved public lands on a continuous basis for a period in excess of ten years prior to October 21, 1976 confirms acceptance of the grant of a R.S. 2477 public highway right-of-way for the Bald Knoll road.

180. Kane County is entitled to an order of this Court quieting title to its R.S. 2477 public highway right-of-way for the Bald Knoll road described herein.

THIRD CAUSE OF ACTION — QUIET TITLE
SKUTUMPAH ROAD

181. Kane County incorporates herein and realleges each of the foregoing paragraphs 1 through 118.

Description of Skutumpah Road R.S. 2477 Right-of-Way

182. The Skutumpah road is designated as Kane County road number K5000. *See* Exhibit 2.

183. The Skutumpah road K5000 commences at the intersection of the Skutumpah road and Kane County road number K3000 in the NESE of section 11, Township 41 South, Range 5 S.L.M., and proceeds in a northeasterly direction, approximately 32.73 miles, to where it ends in the SENW of section 6, Township 38 South, Range 2 West, S.L.M. *See* Attachment 1 to Exhibit 2.

184. The specific right-of-way for the Skutumpah road claimed herein includes seven (7) separate segments on public lands, *see* Attachment 4 of Exhibit 2, specifically described therein, and as follows:

- a. Segment 1 of the Skutumpah road is approximately 2.61 miles;
- b. Segment 3 of the Skutumpah road is approximately 7.33 miles;
- c. Segment 5 of the Skutumpah road is approximately .27 miles;
- d. Segment 7 of the Skutumpah road is approximately 3.73 miles;
- e. Segment 9 of the Skutumpah road is approximately 2.01 miles;
- f. Segment 11 of the Skutumpah road is approximately 6.84 miles;
- g. Segment 13 of the Skutumpah road is approximately 5.43 miles;

185. The right-of-way for the Skutumpah road claimed herein on public lands includes that which is reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road, and including a width of 66 feet (33 feet from the centerline descriptions provided herein).

Maps Depicting the Skutumpah Road R.S. 2477 Right-of-Way

186. The specific length, course and location of Kane County's Skutumpah road has long appeared on USGS maps.

187. The southernmost end of the Skutumpah road has appeared on a USGS Skutumpah Creek, Utah 7.5 minute quadrangle map since at least 1966 (as surveyed in 1964). (Exhibit 12). This attached map includes Kane County's former road numbering designations for the Skutumpah road, which is #50. The remainder of the Skutumpah road has appeared on the USGS Deer Springs Point, Utah 7.5 minute quadrangle map dated 1966, the USGS Rainbow Point, Utah 7.5 minute quadrangle map dated 1966, the USGS Bull Valley Gorge, Utah 7.5 minute quadrangle map dated 1966, and the USGS Cannonville, Utah 7.5 minute quadrangle map dated 1966. A copy of these maps are attached as Exhibits 14-17, respectively, and incorporated herein.

188. The Skutumpah road has appeared on Kane County General Highway Maps as a county highway since at least 1950.

189. In addition, the entire Skutumpah road has appeared on the Froiseth's Territory of Utah Map dated 1878.

190. Pre-1976 aerial photography confirms the historical existence of the Skutumpah road as located on the land and following their historical courses. More recent aerial photography continues to show this road as it has historically existed.

Acceptance of the Skutumpah Road R.S. 2477 Right-of-Way Prior to October 21, 1976.

191. Prior to October 21, 1976, Kane County and the public accepted the congressional grant of an R.S. 2477 public highway right-of-way for the Skutumpah road on unreserved public lands as set forth herein. This grant of a right-of-way includes access to the road.

192. The public highway right-of-way accepted and perfected for the Skutumpah road includes the seven (7) segments claimed herein on lands owned by the United States. *See Exhibit 2.*

193. The scope of the public highway right-of-way accepted and perfected for the Skutumpah road includes that which is reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road according to applicable AASHTO standards. This includes a right-of-way width of 66 feet (33 feet from the centerline descriptions provided herein).

194. The entire Skutumpah road (including the specific segments claimed herein) was officially designated as a Kane County highway on Kane County's General Highway map as early as 1950.

195. Kane County's designation of the Skutumpah road as a county road as early as 1950 confirmed that this road was accepted "as [a] county road[] . . . un-

der the jurisdiction and control of the county commissioners” of Kane County. Utah Code Ann. § 27-12-22 (1963).

196. Kane County designated and accepted the Skutumpah road as a county road and the R.S. 2477 right-of-way no later than 1950, and thereafter continued to construct, maintain and improve the Skutumpah road using public funds pursuant to the governmental authority of the Kane County Commission.

197. From at least the 1950’s and prior to 1976, Kane County road personnel constructed, maintained and improved the Skutumpah road and installed culverts, water bars, and cattle guards on it using public funds. From at least the 1950’s and continuing past 1976, Kane County road crews conducted routine maintenance of this road several times each year and regularly repair sections of the road that become worn, potholed, and washboarded. Some sections of the Skutumpah road are prone to washouts that require regular repairs.

198. Upon information and belief, at various times prior to 1976 and thereafter, Utah Department of Transportation personnel inspected this road to ensure that its construction levels met the requirements of State law for continued appropriations to maintain this road as a county road (General Highways) conducive to regular travel by two-wheel drive vehicles.

199. Kane County’s designation of the Skutumpah road as a Kane County road (General Highways) and expenditure of public funds on this road on or before 1950 constituted formal acceptance of the congressional grant

of an R.S. 2477 right-of-way for this public highway pursuant to State law codified in Utah Code Ann. § 27-12-22 (1963).

200. In 1977, the United States Bureau of Land Management and Kane County signed a memorandum confirming that county roads, including the Skutumpah road, included a right-of-way width of 66 feet.

Acceptance of the Skutumpah Road R.S. 2477 Right-of-Way By Public Use Prior to 1976.

201. The Skutumpah road has long served as a public highway providing access across public lands and to land conveyed into private ownership.

202. Witnesses with personal knowledge of the history of the Skutumpah road confirm public use on a continuous basis for more than ten years prior to October 21, 1976 and dating back to at least 1942 consisting of general public travel for purposes of general travel, accessing private land, mining and mineral exploration, hunting, livestock operations, wood gathering, camping, and recreation continuing through 1976 and to the present.

203. Witnesses with personal knowledge of the history of the Skutumpah road confirm public use of the road on a continuous basis for more than ten years prior to October 21, 1976 by means of car, jeeps and other four wheel drive vehicles, ATV's, team & wagon, sheep wagon, horse back, bicycles, cattle trucks, motor homes, maintenance vehicles, and road graders.

204. Currently known reputation in the community is that the Skutumpah road has been open for all to come and go as they pleased since at least as early as the late 1800's and continuing through the present.

205. The Skutumpah road was used on a continuous and nonexclusive basis as a public thoroughfare for decades prior to October 21, 1976.

206. The Skutumpah road traverses a valid and perfected R.S.2477 public highway right-of-way sufficient in scope for vehicle travel and includes that which is reasonable and necessary to meet the exigencies of these types of travel according to safe engineering practices that protect the public, the road, and prevent undue degradation of the adjacent land.

207. Public motor vehicle use of the Skutumpah road as a public thoroughfare traversing unreserved public lands on a continuous basis for a period in excess of ten years prior to October 21, 1976 confirms acceptance of the grant of an R.S. 2477 public highway right-of-way for the Skutumpah road.

208. Kane County is entitled to an order of this Court quieting title to its R.S. 2477 public highway right-of-way for the Skutumpah road described herein.

FOURTH CAUSE OF ACTION — QUIET TITLE
SAND DUNE ROAD

209. Kane County incorporates herein and realleges each of the foregoing paragraphs 1 through 118.

Description of Sand Dune Road R.S. 2477 Right-of-Way

210. The Sand Dune road is designated as Kane County road number K1000. *See* Exhibit 3.

211. The Sand Dune road K1000 commences at the southern border of the State of Utah near the SWNW of section 9, Township 44 South, Range 9, S.L.M., and proceeds in a northeasterly direction, approximately 19.96 miles, to where it ends upon intersecting with Utah

State Highway 89 in the NWSE of section 5, Township 42 South, Range 7 West, S.L.M. *See* Attachment 1 to Exhibit 3.

212. The specific right-of-way for the Sand Dune road claimed herein includes ten (10) separate segments on public lands, *see* Attachment 4 of Exhibit 3, specifically described therein, and as follows:

- a. Segment 1 of the Sand Dune road is approximately 2.41 miles;
- b. Segment 3 of the Sand Dune road is approximately .15 miles;
- c. Segment 5 of the Sand Dune road is approximately .99 miles;
- d. Segment 7 of the Sand Dune road is approximately .81 miles;
- e. Segment 9 of the Sand Dune road is approximately .04 miles;
- f. Segment 11 of the Sand Dune road is approximately .06 miles;
- g. Segment 13 of the Sand Dune road is approximately 2.57 miles;
- h. Segment 15 of the Sand Dune road is approximately 6.33 miles;
- i. Segment 16 of the Sand Dune road is approximately .19 miles; and
- j. Segment 17 of the Sand Dune road is approximately .29 miles.

213. The right-of-way for the Sand Dune road claimed herein on public lands includes that which is reasonable

and necessary to ensure safe travel and passage of vehicles on a two lane road, and including a width of 66 feet (33 feet from the centerline descriptions provided herein).

Maps Depicting the Sand Dune Road R.S. 2477 Right-of-Way

214. The specific length, course and location of Kane County's Sand Dune road has long appeared on USGS maps.

215. The northernmost portions of the Sand Dune road has appeared on a USGS Kanab, Utah 15 minute topographic map since at least 1957. A copy of this map is attached as Exhibit 18 and incorporated herein. In addition, the center portion of the Sand Dune road has also appeared on USGS Yellowjacket Canyon, Utah-Ariz. 7.5 minute quadrangle map since at least 1985. A copy of this map is attached as Exhibit 19 and incorporated herein. The southernmost section of the Sand Dune road has appeared on USGS Elephant Butte, Utah 7.5 quadrangle map since at least 1980. A copy of this map is attached as Exhibit 20 and incorporated herein. These USGS maps include Kane County's former road numbering designation for the Sand Dune Road, which is #740.

216. The Sand Dune road has appeared on a Kane County General Highway map as early as 1950 as a county highway.

217. Pre-1976 aerial photography confirms the historical existence of the Sand Dune road as located on the land and substantially following its historical course. More recent aerial photography continues to show this road as it has historically existed.

Acceptance of the Sand Dune Road R.S. 2477 Right-of-Way Prior to October 21, 1976.

218. Prior to October 21, 1976, Kane County and the public accepted the congressional grant of an R.S. 2477 public highway right-of-way for the Sand Dune road on unreserved public lands as set forth herein. This grant of a right-of-way includes access to the road.

219. The public highway right-of-way accepted and perfected for the Sand Dune road includes the road as claimed herein. *See* Exhibit 3.

220. The scope of the public highway right-of-way accepted and perfected for the Sand Dune road includes that which is reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road according to applicable AASHTO standards. This includes a minimum right-of-way width of 66 feet (33 feet from the centerline descriptions provided herein).

221. The entire Sand Dune road was officially designated as a Kane County highway on Kane County's General Highway map as early as 1950.

222. Kane County's designation of the Sand Dune road as a county road as early as 1950 confirmed that this road was accepted "as [a] county road[] . . . under the jurisdiction and control of the county commissioners" of Kane County. Utah Code Ann. § 27-12-22 (1963).

223. Kane County designated and accepted the Sand Dune road as a county road and its R.S. 2477 right-of-way no later than 1950, and thereafter continued to construct, maintain and improve the Sand Dune road using public funds pursuant to the governmental authority of the Kane County Commission.

224. From at least the 1950's and prior to 1976, Kane County road personnel constructed, maintained, and improved the Sand Dune road and installed culverts, water bars, and cattle guards on it using public funds. From at least the 1950's, Kane County road crews conducted routine maintenance of this road generally twice a year and regularly repaired sections of the road. In the 1960's, Kane County paved the northern half of the Sand Dune road, and later paved the entire length of this road. The Sand Dune road continues to serve as a high speed Kane County public highway.

225. Upon information and belief, at various times prior to 1976 and thereafter, Utah Department of Transportation personnel inspected this road to ensure that its construction levels met the requirements of State law for continued appropriations to maintain this road as a county road (General Highways) conducive to regular travel by two-wheel drive vehicles.

226. Kane County's designation of the Sand Dune road as a Kane County road (General Highways) and expenditure of public funds on this road on or before 1950 constituted formal acceptance of the congressional grant of an R.S. 2477 right-of-way for this public highway pursuant to State law codified in Utah Code Ann. § 27-12-22 (1963).

Acceptance of the Sand Dune Road R.S. 2477 Right-of-Way By Public Use Prior to 1976.

227. The Sand Dune road has long served as a public highway providing access across public lands, to other Kane County roads, to the State of Arizona, and to land conveyed into private ownership.

228. Witnesses with personal knowledge of the history of the Sand Dune road confirm public use on a continuous basis for more than ten years prior to October 21, 1976 and dating back as early as the early 1950's consisting of general public travel and for purposes of mining and mineral exploration, hunting, livestock operations, wood gathering, post cutting, camping, tourism, movie production and recreation continuing through 1976 and to the present.

229. Witnesses with personal knowledge of the history of the Sand Dune road confirm public use of the road on a continuous basis for more than ten years prior to October 21, 1976 by means of jeeps, ATV's, automobiles, trucks, cattle trucks, semi-trucks, maintenance vehicles, commercial vehicles, motorcycles, road maintenance vehicles, sheep wagons, horse and cattle, and drilling rigs.

230. Currently known reputation in the community is that the Sand Dune road has been open for all to come and go as they pleased since at least as early as the late 1800's and continuing through the present.

231. The Sand Dune road was used on a continuous and nonexclusive basis as a public thoroughfare for decades prior to October 21, 1976.

232. The Sand Dune road traverses a valid and perfected R.S.2477 public highway right-of-way sufficient in scope for vehicle travel and includes that which is reasonable and necessary to meet the exigencies of these types of travel according to safe engineering practices that protect the public, the road, and prevent undue degradation of the adjacent land.

233. Public motor vehicle use of the Sand Dune road as a public thoroughfare traversing unreserved public lands on a continuous basis for a period in excess of ten years prior to October 21, 1976 confirms acceptance of the grant of R.S. 2477 public highway rights-of-way for the Sand Dune road.

234. Kane County is entitled to an order of this Court quieting title to its R.S. 2477 public highway right-of-way for the Sand Dune road described herein.

FIFTH CAUSE OF ACTION — QUIET TITLE
HANCOCK ROAD

235. Kane County incorporates herein and realleges each of the foregoing paragraphs 1 through 118.

Description of Hancock Road R.S. 2477 Right-of-Way

236. The Hancock road is designated as Kane County road number K1100. *See* Exhibit 4.

237. The Hancock road K1100 commences where it intersects the Sand Dune road in the SENE of section 14, Township 43 South, Range 8 West, S.L.M., and proceeds in a northeasterly direction, approximately 9.43 miles, to where it ends upon intersecting with Utah State Highway 89 in the SENW of section 19, Township 42 South, Range 6 West, S.L.M. *See* Attachments 1 and 3 of Exhibit 4.

238. The specific right-of-way for the Hancock road on public lands claimed herein is fully described in Attachment 4 of Exhibit 4, as well as Appendix A to Attachment 4.

239. The right-of-way for the Hancock road claimed herein on public lands includes that which is reasonable

and necessary to ensure safe travel and passage of vehicles on a two lane road, and including a width of 66 feet (33 feet from the centerline descriptions provided herein).

Maps Depicting the Hancock Road R.S. 2477 Right-of-Way

240. The specific length, course and location of Kane County's Hancock road has long appeared on USGS maps.

241. The northernmost portions of the Hancock road has [sic] appeared on a USGS Kanab, Utah 15 minute topographic map since at least 1957. *See* Exhibit 18. In addition, the southern portion of the Hancock road has also appeared on USGS Yellowjacket Canyon, Utah-Ariz. 7.5 minute quadrangle map since at least 1985. *See* Exhibit 19. These attached maps include Kane County's former road numbering designation for the Hancock road, which is #788.

242. All but the most southern portion of the Hancock road, where it intersects the Sand Dune road, has appeared on a Kane County General Highway map as early as 1950 as a county highway.

243. The entire Hancock road has appeared on a Kane County General Highway map as early as 1965 as a county highway.

244. Pre-1976 aerial photography confirms the historical existence of the Hancock road as located on the land and following its historical course. More recent aerial photography continues to show this road as it has historically existed.

**Acceptance of the Hancock Road R.S. 2477 Right-of-Way
Prior to October 21, 1976.**

245. Prior to October 21, 1976, Kane County and the public accepted the congressional grant of an R.S. 2477 public highway right-of-way for the Hancock road on unreserved public lands as set forth herein. This grant of a right-of-way includes access to the road.

246. The public highway right-of-way accepted and perfected for the Hancock road includes the road as claimed herein. See Exhibit 4.

247. The scope of the public highway right-of-way accepted and perfected for the Hancock road includes that which is reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road according to applicable AASHTO standards. This includes a minimum right-of-way width of 66 feet (33 feet from the centerline descriptions provided herein).

248. The entire Hancock road was officially designated as a Kane County highway on Kane County's General Highway map as early as 1965.

249. Kane County's designation of the Hancock road as a county road as early as 1965 confirmed that this road was accepted "as [a] county road[] . . . under the jurisdiction and control of the county commissioners" of Kane County. Utah Code Ann. § 27-12-22 (1963).

250. Kane County designated and accepted the Hancock road as a county road crossing an R.S. 2477 right-of-way no later than 1965, and thereafter continued to construct, maintain and improve the Hancock road using public funds pursuant to the governmental authority of the Kane County Commission.

251. From at least the mid-1960's and prior to 1976, Kane County road personnel constructed, maintained, and improved the Hancock road using public funds. From at least the 1960's and continuing past 1976, Kane County road crews conducted routine maintenance of this road generally twice a year and regularly repaired sections of the road that wore down or became damaged. In the 1990's, Kane County paved the entire length of the Hancock road.

252. Upon information and belief, at various times prior to 1976 and thereafter, Utah Department of Transportation personnel inspected this road to ensure that its construction levels met the requirements of State law for continued appropriations to maintain this road as a county road (General Highways) conducive to regular travel by two-wheel drive vehicles.

253. Kane County's designation of the Hancock road as a Kane County road (General Highways) and expenditure of public funds on this road on or before 1965 constituted formal acceptance of the congressional grant of an R.S. 2477 right-of-way for this public highway pursuant to State law codified in Utah Code Ann. § 27-12-22 (1963).

Acceptance of the Hancock Road R.S. 2477 Right-of-Way By Public Use Prior to 1976.

254. The Hancock road has long served as a public highway providing access across public lands, to other Kane County roads, and to private property and the State of Arizona.

255. Witnesses with personal knowledge of the history of the Hancock road confirm public use on a continuous basis for more than ten years prior to October 21,

1976 and dating back as early as the early 1960's consisting of general public travel for purposes of road maintenance, hunting, livestock operations, rock hounding, sightseeing, camping, and recreation continuing through 1976 and to the present. The road was also traveled by government employees.

256. Witnesses with personal knowledge of the history of the Hancock road confirm public use of the road on a continuous basis for more than ten years prior to October 21, 1976 by means of automobiles, jeeps, ATV's, motor homes, maintenance vehicles, commercial trucks, pickup trucks, cattle trucks, Kane County road equipment, *i.e.* trucks and graders.

257. Currently known reputation in the community is that the Hancock road has been open for all to come and go as they pleased since at least the early 1900's and continuing through the present.

258. The Hancock road was used on a continuous and nonexclusive basis as a public thoroughfare for decades prior to October 21, 1976.

259. The Hancock road traverses a valid and perfected R.S.2477 public highway right-of-way sufficient in scope for vehicle travel and includes that which is reasonable and necessary to meet the exigencies of these types of travel according to safe engineering practices that protect the public, the road, and prevent undue degradation of the adjacent land.

260. Public motor vehicle use of the Hancock road as a public thoroughfare traversing unreserved public lands on a continuous basis for a period in excess of ten years prior to October 21, 1976 confirms acceptance of the

grant of an R.S. 2477 public highway right-of-way for the Hancock road.

261. Kane County is entitled to an order of this Court quieting title to its R.S. 2477 public highway right-of-way for the Hancock road described herein.

SIXTH CAUSE OF ACTION — QUIET TITLE
SWALLOW PARK/PARK WASH ROAD

262. Kane County incorporates herein and realleges each of the foregoing paragraphs 1 through 118.

Description of Swallow Park/Park Wash Road R.S. 2477 Right-of-Way

263. The Swallow Park/Park Wash road is designated as Kane County road number K4360. *See* Exhibit 5A.

264. The Swallow Park/Park Wash road K4360 commences at the intersection of the Swallow Park/Park Wash road and the North Swag road in the NE of section 9, Township 40 South, Range 3 West, S.L.M., and proceeds in a northwesterly direction to where it ends upon intersecting the Skutumpah road in the center of section 19, Township 39 South, Range 3 West, S.L.M. *See* Exhibit 5A.

265. The specific right-of-way for the Swallow Park/Park Wash road claimed herein includes three separate segments on public lands. These three segments of the Swallow Park/Park Wash road are shown in red on the centerline map of the Swallow Park/Park Wash and North Swag road. *See* Exhibit 5A. (The Swallow Park/Park Wash road is the northern section of the road, RD130624, shown on Exhibit 5A.) The specific NAD83 mapping grade GPS data used to plot the centerline and course of the three segments of the Swallow Park/Park

Wash road is attached as Exhibit 5B and incorporated herein. The general location of each segment is as follows:

- a. The southern, and longest, segment of the Swallow Park/Park Wash road commences at the intersection of the Swallow Park/Park Wash road with the North Swag road in the NE quarter section of section 9, Township 40 South, Range 3 West, S.L.M. This segment of the Swallow Park/Park wash road ends in the NE corner of section 32 and the NW corner of Section 31, Township 39 South, Range 3 West, S.L.M.
- b. The middle segment of the Swallow Park/Park Wash road is approximately 400 feet in length and commences and ends in the center of the NE section of section 30, Township 39 South, Range 3 West, S.L.M.
- c. The final segment of the Swallow Park/Park Wash road commences in the SWSE section 19, Township 39 South, Range 3 West, S.L.M.

266. The right-of-way for the Swallow Park/Park Wash road claimed herein on public lands includes that which is reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road, and including a width of 66 feet (33 feet from the centerline descriptions provided herein).

Maps Depicting the Swallow Park/Park Wash R.S. 2477 Right-of-Way

267. The specific length, course and location of Kane County's Swallow Park/Park Wash road has long appeared on USGS maps.

268. The Swallow Park/Park Wash road has appeared on a USGS Deer Spring Point, Utah 7.5 minute quadrangle map since at least 1966. *See* Exhibit 14. This attached map includes Kane County's former road numbering designations for the Swallow Park/Park Wash road, which is #236.

269. The northernmost section of the Swallow Park/Park Wash road has appeared on a Kane County General Highway map dated 1965 as a county highway.

270. Pre-1976 aerial photography confirms the historical existence of the Swallow Park/Park Wash road as located on the land and following its historical course. More recent aerial photography continues to show this road as it has historically existed.

Acceptance of the Swallow Park/Park Wash Road R.S. 2477 Right-of-Way Prior to October 21, 1976.

271. Prior to October 21, 1976, Kane County and the public accepted the congressional grant of an R.S. 2477 public highway right-of-way for the Swallow Park/Park Wash road on unreserved public lands as set forth herein. This grant of a right-of-way includes access to the road.

272. The public highway right-of-way accepted and perfected for the Swallow Park/Park Wash road includes the road as claimed herein. *See* Exhibit 5A.

273. The scope of the public highway right-of-way accepted and perfected for the Swallow Park/Park Wash road includes that which is reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road according to applicable AASHTO standards. This includes a right-of-way width of 66 feet (33 feet from the centerline descriptions provided herein).

274. The northernmost portion of the Swallow Park/Park Wash road was officially designated as a Kane County highway on Kane County's General Highway map as early as 1965.

275. Kane County's designation of the northernmost portion of the Swallow Park/Park Wash road as a county road as early as 1965 confirmed that this segment of the road was accepted "as [a] county road[] . . . under the jurisdiction and control of the county commissioners" of Kane County. Utah Code Ann. § 27-12-22 (1963).

276. Kane County designated and accepted the northernmost segment of the Swallow Park/Park Wash road as a county road and its R.S. 2477 right-of-way no later than 1965, and thereafter continued to construct, maintain and improve that portion of the Swallow Park/Park Wash road using public funds pursuant to the governmental authority of the Kane County Commission.

277. From at least the mid-1960's and prior to 1976, Kane County road personnel constructed, maintained, and improved the northernmost segment of the Swallow Park/Park Wash road using public funds. From at least the mid-1960's and continuing past 1976, Kane County road crews conducted routine maintenance of this road segment generally twice a year.

278. Upon information and belief, at various times prior to 1976 and thereafter, Utah Department of Transportation personnel inspected this northernmost segment of road to ensure that its construction levels met the requirements of State law for continued appropriations to maintain this road as a county road (General

Highways) conducive to regular travel by two-wheel drive vehicles.

279. Kane County's designation of the Swallow Park/Park Wash road as a Kane County road (General Highways) and expenditure of public funds on this road on or before 1965 constituted formal acceptance of the congressional grant of R.S. 2477 rights-of-way for this public highway pursuant to State law codified in Utah Code Ann. § 27-12-22 (1963).

Acceptance of the Swallow Park/Park Wash Road R.S. 2477 Right-of-Way By Public Use Prior to 1976.

280. The entire length of the Swallow Park/Park Wash road has long served as a public highway providing access across public lands and to land conveyed into private ownership.

281. Witnesses with personal knowledge of the history of the Swallow Park/Park Wash road confirm public use on a continuous basis for more than ten years prior to October 21, 1976 and dating back as early as the late 1940's consisting of general public travel for purposes of road maintenance, hiking, hunting, to access private property, installation and maintenance of a water pipeline, livestock operations, logging, wood gathering, trapping, post cutting, sightseeing, camping, and recreation. The road was also traveled by government employees.

282. Witnesses with personal knowledge of the history of the Swallow Park/Park Wash road confirm public use of the road on a continuous basis for more than ten years prior to October 21, 1976 by means of mountain bikes, horse, truck, camping trailers, logging equip-

ment, road maintenance equipment, recreational vehicles, automobiles, pickup trucks, cattle trucks, Kane County road equipment, *i.e.* trucks and graders.

283. Currently known reputation in the community is that the Swallow Park/Park Wash road was open for all to come and go as they pleased since as early as the 1900's. Upon information and belief, public travel on this road continued or continues, despite this road being designated as a road available for BLM administrative purposes in the Plan in 2000.

284. The Swallow Park/Park Wash road was used on a continuous and nonexclusive basis as a public thoroughfare for decades prior to October 21, 1976.

285. The Swallow Park/Park Wash road traverses a valid and perfected R.S.2477 public highway right-of-way sufficient in scope for vehicle travel and includes that which is reasonable and necessary to meet the exigencies of these types of travel according to safe engineering practices that protect the public, the road, and prevent undue degradation of the adjacent land.

286. Public motor vehicle use of the Swallow Park/Park Wash road as a public thoroughfare traversing unreserved public lands on a continuous basis for a period in excess of ten years prior to October 21, 1976 confirms acceptance of the grant of an R.S. 2477 public highway right-of-way for the Swallow Park/Park Wash road.

287. Kane County is entitled to an order of this Court quieting title to its R.S. 2477 public highway right-of-way for the Swallow Park/Park Wash road described herein.

SEVENTH CAUSE OF ACTION — QUIET TITLE
NORTH SWAG ROAD

288. Kane County incorporates herein and realleges each of the foregoing paragraphs 1 through 118.

Description of North Swag Road R.S. 2477 Right-of-Way

289. The North Swag road is designated as Kane County road number K4370.

290. The North Swag road K4370 commences at the intersection of the Kitchen Corral road, Kane County road number 4200, in the SWNW section 30, Township 40 South, Range 2 West, S.L.M., and proceeds in a northwesterly direction to where it ends upon intersecting the Swallow Park/Park Wash road in the NE of section 10, Township 40 South, Range 3 West, S.L.M.

291. The specific right-of-way for the North Swag road claimed herein is shown in red on the centerline map of the Swallow Park/Park Wash and North Swag road [sic]. *See* Exhibit 5A. (The North Swag road is the southern section of the road, RD130626, shown on Exhibit 5A.) The specific NAD83 mapping grade GPS data used to plot the centerline and course of the North Swag road is attached hereto as Exhibit 5C.

292. The right-of-way for the North Swag road claimed herein on public lands includes that which is reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road, and including a width of 66 feet (33 feet from the centerline descriptions provided herein).

Maps Depicting the North Swag Road R.S. 2477 Right-of-Way

293. The specific length, course and location of Kane County's North Swag road has long appeared on USGS maps.

294. The North Swag road has appeared on a USGS Deer Range Point, Utah 7.5 minute quadrangle map since at least 1966. A copy of this map is attached as Exhibit 21 and incorporated herein. This attached map includes Kane County's former road numbering designations for the North Swag road, which is #236.

295. Pre-1976 aerial photography confirms the historical existence of the North Swag road as located on the land and following its historical course. More recent aerial photography continues to show this road as it has historically existed.

Acceptance of the North Swag Road R.S. 2477 Right-of-Way Prior to October 21, 1976.

296. Prior to October 21, 1976, Kane County and the public accepted the congressional grant of an R.S. 2477 public highway right-of-way for the North Swag road on unreserved public lands as set forth herein. This grant of a right-of-way includes access to the road.

297. The public highway right-of-way accepted and perfected for the North Swag road includes the road as claimed herein. *See* Exhibits 5A and 5C.

298. The scope of the public highway right-of-way accepted and perfected for the North Swag road includes that which is reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road

according to applicable AASHTO standards. This includes a right-of-way width of 66 feet (33 feet from the centerline descriptions provided herein).

299. From at least the late 1940's and prior to 1976, the North Swag road received periodic mechanical construction and maintenance by bulldozer and grader.

Acceptance of the North Swag Road R.S. 2477 Right-of-Way By Public Use Prior to 1976.

300. The North Swag road has long served as a public highway providing access across public lands, to provide access to other Kane County roads, and to access land conveyed into private ownership.

301. Witnesses with personal knowledge of the history of the North Swag road confirm public use on a continuous basis for more than ten years prior to October 21, 1976 and dating back as early as the late 1940's consisting of general public travel for purposes of road maintenance, hiking, hunting, to access private property, installation and maintenance of a water pipeline, livestock operations, logging, wood gathering, trapping, post cutting, sightseeing, camping, and recreation continuing through 1976. The road was also traveled by government employees. Upon information and belief, several of these uses continue through the present even though this road does not appear on Map 2 of the Plan.

302. Witnesses with personal knowledge of the history of the North Swag road confirm public use of the road on a continuous basis for more than ten years prior to October 21, 1976 by means of mountain bikes, horse, truck, camping trailers, logging equipment, road maintenance equipment, recreational vehicles, automobiles, and pickup trucks.

303. Currently known reputation in the community is that the North Swag road has been open for all to come and go as they pleased since as early as the 1900's and continuing through the present.

304. The North Swag road was used on a continuous and nonexclusive basis as a public thoroughfare for decades prior to October 21, 1976.

305. The North Swag road traverses a valid and perfected R.S.2477 public highway right-of-way sufficient in scope for vehicle travel and includes that which is reasonable and necessary to meet the exigencies of these types of travel according to safe engineering practices that protect the public, the road, and prevent undue degradation of the adjacent land.

306. Public motor vehicle use of the North Swag road as a public thoroughfare traversing unreserved public lands on a continuous basis for a period in excess of ten years prior to October 21, 1976 confirms acceptance of the grant of an R.S. 2477 public highway right-of-way for the North Swag road.

307. Kane County is entitled to an order of this Court quieting title to its R.S. 2477 public highway right-of-way for the North Swag road described herein.

EIGHTH CAUSE OF ACTION — QUIET TITLE
NIPPLE LAKE ROAD

308. Kane County incorporates herein and realleges each of the foregoing paragraphs 1 through 118.

Description of the Nipple Lake Road R.S. 2477 Right-of-Way

309. The Nipple Lake road is designated as Kane County road number K4290. See Exhibit 6.

310. The Nipple Lake road K4290 commences in the NESW of section 30, Township 40 South, Range 2 West, S.L.M., and proceeds in a northeasterly direction, approximately .4 miles, to where it ends at the intersection of the North Swag road and Kane County's Kitchen Corral road (K4200) in the SWNW section 30, Township 40 South, Range 2 West, S.L.M. See Attachment 1, 3 and 4 of Exhibit 6.

311. The specific right-of-way for the Nipple Lake road on public lands claimed herein is fully described in Appendix A to Attachment 4 of Exhibit 6.

312. The right-of-way for the Nipple Lake road claimed herein on public lands includes that which is reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road, and including a width of 66 feet (33 feet from the centerline descriptions provided herein).

Maps Depicting the Nipple Lake Road R.S. 2477 Right-of-Way

313. The specific length, course and location of Kane County's Nipple Lake road has long appeared on USGS maps.

314. The Nipple Lake roads has appeared on a USGS Deer Range Point, Utah 7.5 minute quadrangle map since at least 1966. See Exhibit 21. This attached map includes Kane County's former road numbering designation for the Nipple Lake road, which is #610.

315. The Nipple Lake road has also appeared on a Kane County General Highway map dated 1975 as a county highway.

316. Pre-1976 aerial photography confirms the historical existence of the Nipple Lake road as located on the land and following its historical course. More recent aerial photography continues to show this road as it has historically existed.

Acceptance of the Nipple Lake Road R.S. 2477 Right-of-Way Prior to October 21, 1976.

317. Prior to October 21, 1976, Kane County and the public accepted the congressional grant of an R.S. 2477 public highway right-of-way for the Nipple Lake road on unreserved public lands as set forth herein. This grant of a right-of-way includes access to the road.

318. The public highway right-of-way accepted and perfected for the Nipple lake road includes the road as claimed herein. *See* Exhibit 6.

319. The scope of the public highway right-of-way accepted and perfected for the Nipple Lake road includes that which is reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road according to applicable AASHTO standards. This includes a right-of-way width of 66 feet (33 feet from the centerline descriptions provided herein).

320. The entire Nipple Lake road was officially designated as a Kane County highway on Kane County's General Highway map as early as 1975.

321. Kane County's designation of the Nipple Lake road as a county road as early as 1975 confirmed that this road was accepted "as [a] county road[] . . . under the jurisdiction and control of the county commissioners" of Kane County. *See e.g.* Utah Code Ann. § 27-12-22 (1963).

322. Kane County designated and accepted the Nipple Lake road as a county road and the R.S. 2477 right-of-way no later than 1975, and thereafter continued to construct, maintain and improve the Nipple Lake road using public funds pursuant to the governmental authority of the Kane County Commission.

323. From at least the late 1960's and prior to 1976, Kane County road personnel constructed, maintained, and improved the Nipple Lake road using public funds. From at least 1975 and continuing past 1976, Kane County road crews conducted routine maintenance of this road.

324. Upon information and belief, at various times after 1976, Utah Department of Transportation personnel inspected this road to ensure that its construction levels met the requirements of State law for continued appropriations to maintain this road as a county roads (General Highways) conducive to regular travel by two-wheel drive vehicles.

325. Kane County's designation of the Nipple Lake road as a Kane County road (General Highways) and expenditure of public funds on this road on or before 1975 constituted formal acceptance of the congressional grant of R.S. 2477 rights-of-way for these public highways pursuant to State law. *See e.g.* Utah Code Ann. § 27-12-22 (1963).

Acceptance of the Nipple Lake Road R.S. 2477 Right-of-Way By Public Use Prior to 1976.

326. The Nipple Lake road has long served as a public highway providing access across public lands and to land conveyed into private ownership.

327. Witnesses with personal knowledge of the history of the Nipple Lake road confirm public use on a continuous basis for more than ten years prior to October 21, 1976 and dating back as early as the mid-1960's consisting of general public travel for purposes including road maintenance, hunting, livestock operations, and recreation continuing through 1976 and to the present. The road was also traveled by government employees.

328. Witnesses with personal knowledge of the history of the Nipple Lake road confirm public use of the road on a continuous basis for more than ten years prior to October 21, 1976 by means of road maintenance equipment, four wheel drive vehicles, ATV's, trucks, jeeps, recreational vehicles, automobiles, and pickup trucks.

329. Currently known reputation in the community is that the Nipple Lake road has been open for all to come and go as they pleased since as early as the early 1900's and continuing through the present.

330. The Nipple Lake road was used on a continuous and nonexclusive basis as a public thoroughfare for more than ten years prior to October 21, 1976.

331. The Nipple Lake road traverses a valid and perfected R.S.2477 public highway right-of-way sufficient in scope for vehicle travel and includes that which is reasonable and necessary to meet the exigencies of these types of travel according to safe engineering practices that protect the public, the road, and prevent undue degradation of the adjacent land.

332. Public motor vehicle use of the Nipple Lake road as a public thoroughfare traversing unreserved public lands on a continuous basis for a period in excess of ten years prior to October 21, 1976 confirms acceptance of

the grant of an R.S. 2477 public highway right-of-way for the Nipple Lake road.

333. Kane County is entitled to an order of this Court quieting title to its R.S. 2477 public highway right-of-way for the Nipple Lake road described herein.

NINTH CAUSE OF ACTION — QUIET TITLE
CAVE LAKES ROADS

334. Kane County incorporates herein and realleges each of the foregoing paragraphs 1 through 118.

Description of the Cave Lakes Roads R.S. 2477 Rights-of-Way

335. The Cave Lakes roads are designated as Kane County road numbers K1070, K1075, K1087 and K1088. *See* Exhibit 7A.

336. The Cave Lakes road K1070 commences at the NWNE of section 2, Township 43 South, Range 7 West, S.L.M., and proceeds in a northwesterly direction, to where it ends upon intersecting the Hancock road in the SENE of section 34, Township 42 South, Range 7 West, S.L.M.

337. The specific right-of-way for the Cave Lakes K1070 road claimed herein is shown in red on the centerline map of the Cave Lakes roads (RD130016). *See* Exhibit 7A. The specific NAD83 mapping grade GPS data used to plot the centerline and course of the Cave Lakes K1070 road is attached hereto as Exhibit 7B.

338. The Cave Lakes road K1075 commences at the NESE of section 35, Township 42 South, Range 7 West, S.L.M., and proceeds in a northwesterly direction, to where it ends upon intersecting the Hancock road in the

SENE of section 34, Township 42 South, Range 7 West, S.L.M.

339. The specific right-of-way for the Cave Lakes K1075 road claimed herein is shown in red on the centerline map of the Cave Lakes roads (RD130017). *See* Exhibit 7A. The specific NAD83 mapping grade GPS data used to plot the centerline and course of the Cave Lakes K1075 road is attached hereto as Exhibit 7C.

340. The Cave Lakes road K1087 commences in the SESE of section 24, Township 42 South, Range 7 West, S.L.M., and proceeds in a northwesterly direction, to where it ends upon intersecting the Hancock road in the NESW of section 34, Township 42 South, Range 7 West, S.L.M.

341. The specific right-of-way for the Cave Lakes K1087 road claimed herein is shown in red on the centerline map of the Cave Lakes roads (RD131143). *See* Exhibit 7A. The specific NAD83 mapping grade GPS data used to plot the centerline and course of the Cave Lakes K1087 road is attached hereto as Exhibit 7D.

342. The Cave Lakes road K1088 commences in the SWNE of section 25, Township 42 South, Range 7, S.L.M., and proceeds in a northwesterly direction, to where it ends upon intersecting the Cave Lakes road K1087 in the SWSE of section 24, Township 42 South, Range 7 West, S.L.M.

343. The specific right-of-way for the Cave Lakes road K1088 claimed herein is shown in red on the centerline map of the Cave Lakes roads (RD131144). *See* Exhibit 7A. The specific NAD83 mapping grade GPS data used to plot the centerline and course of the Cave Lakes K1088 road is attached hereto as Exhibit 7E.

344. The right-of-way for the four Cave Lakes road claimed herein on public lands includes that which is reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road, and including a width of 66 feet (33 feet from the centerline descriptions provided herein).

Maps Depicting the Cave Lakes Road R.S. 2477 Right-of-Way

345. Portions of Kane County's Cave Lakes roads have long appeared on USGS maps.

346. The northernmost segment of Cave Lakes road K1087 appears on the USGS Kanab, Utah-Ariz. 15 minute topographic map since at least 1957. See Exhibit 18. This attached map includes Kane County's former road numbering designations for the Cave Lakes road K1087, which is #789.

347. The Cave Lakes roads K1070 and K1075 appear on the USGS Kanab, Utah-Arizona 7.5 minute quadrangle since at least 1985. A copy of the USGS Kanab, Utah-Ariz. 1985 map is attached as Exhibit 22 and incorporated herein. This attached map includes Kane County's former road numbering designations for the Cave Lakes roads K1070, which is #991, and K1075, which is #988.

348. Pre-1976 aerial photography confirms the historical existence of the Cave Lakes roads as located on the land and following their historical courses. More recent aerial photography continues to show these roads as they have historically existed.

Acceptance of the Cave Lakes Roads R.S. 2477 Rights-of-Way By Public Use Prior to 1976.

349. Prior to October 21, 1976, Kane County and the public accepted the congressional grant of an R.S. 2477 public highway right-of-way for the four Cave Lakes roads on unreserved public lands as set forth herein. This grant of a right-of-way includes access to the road.

350. The public highway rights-of-way accepted and perfected for the Cave Lakes roads includes the four roads as claimed herein. *See* Exhibits 7A-7E.

351. The scope of the public highway right-of-way accepted and perfected for the Cave Lakes roads includes that which is reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road according to applicable AASHTO standards. This includes a right-of-way width of 66 feet (33 feet from the centerline descriptions provided herein).

352. The Cave Lakes roads have long served as public highways providing access across public lands and to land conveyed into private ownership.

353. Witnesses with personal knowledge of the history of the Cave Lakes roads confirm public use on a continuous basis for Cave Lakes road K1070 for more than ten years prior to October 21, 1976, commencing at least by 1960, consisting of road maintenance and general public travel for purposes of livestock operations, wood gathering, cutting posts, hunting, sightseeing, rock hounding, and recreation continuing through 1976 and to the present.

354. Witnesses with personal knowledge of the history of the Cave Lakes road K1070 confirm public use of the road on a continuous basis for more than ten years

prior to October 21, 1976 by means of horses, jeeps, four-wheel drive vehicles, and pickup trucks.

355. Witnesses with personal knowledge of the history of the Cave Lakes roads confirm public use on a continuous basis for Cave Lakes road K1075 for more than ten years prior to October 21, 1976 and dating back as early as the 1940's, consisting of general public travel for purposes hunting, livestock operations, accessing water and private land, cutting posts, fence building, wood gathering, sightseeing, and recreation continuing through 1976 and to the present.

356. Witnesses with personal knowledge of the history of the Cave Lakes K1075 road confirm public use of the road on a continuous basis for more than ten years prior to October 21, 1976 by means of horses, sheep wagon pulled by a pickup truck, jeeps, two-ton cattle truck, bull dozer, tractor and pickup trucks.

357. Witnesses with personal knowledge of the history of the Cave Lakes roads confirm public use on a continuous basis for Cave Lakes road K1087 for more than ten years prior to October 21, 1976 and dating back as early as 1960, consisting of general public travel for purposes of hunting and recreation continuing through 1976 and to the present.

358. Witnesses with personal knowledge of the history of the Cave Lakes road K1087 confirm public use of the road on a continuous basis for more than ten years prior to October 21, 1976 by means of pickup trucks.

359. Witnesses with personal knowledge of the history of the Cave Lakes roads confirm public use on a continuous basis for Cave Lakes road K1088 for more than ten years prior to October 21, 1976, consisting of

general public travel for purposes of recreation, ranching and wood cutting continuing through 1976 and to the present.

360. Witnesses with personal knowledge of the history of the Cave Lakes road K1088 confirm public use of the road on a continuous basis for more than ten years prior to October 21, 1976 by means of pickup trucks.

361. The Cave Lake roads were used on a continuous and nonexclusive basis as public thoroughfares for more than ten years prior to October 21, 1976.

362. The Cave Lake roads cross valid and perfected R.S.2477 public highway rights-of-way sufficient in scope for vehicle travel and include that which is reasonable and necessary to meet the exigencies of these types of travel according to safe engineering practices that protect the public, the road, and prevent undue degradation of the adjacent land.

363. Public motor vehicle use of the Cave Lakes roads as public thoroughfares traversing unreserved public lands on a continuous basis for a period in excess of ten years prior to October 21, 1976 confirms acceptance of the grant of R.S. 2477 public highway rights-of-way for the Cave Lakes roads.

364. Kane County is entitled to an order of this Court quieting title to its R.S. 2477 public highway rights-of-way for the Cave Lakes roads described herein.

PRAYER FOR RELIEF

WHEREFORE, Kane County requests relief against the United States of America as follows:

1. On its First Cause of Action—Mill Creek road, an order quieting title in and to the R.S. 2477 public highway right-of-way for the Mill Creek road (K4400 Segment 1, K4400 Segment 2, K4410 Segment 3, and K4405 Segment 4, described in Exhibits 1A through 1E) as pleaded herein;

2. On its Second Cause of Action—Bald Knoll road, an order quieting title in and to the R.S. 2477 public highway right-of-way for the Bald Knoll road (K3930A Segment 1, K3935 Segment 2, K3935 Segment 3, and K3935 Segment 4, described in Exhibits 1A, and 1F through 1J) as pleaded herein;

3. On its Third Cause of Action—Skutumpah road, an order quieting title in and to the R.S. 2477 public highway right-of-way for the Skutumpah road (Segments 1, 3, 5, 7, 9, 11 & 13, described in Exhibit 2) as pleaded herein;

4. On its Fourth Cause of Action—Sand Dune road, an order quieting title in and to the R.S. 2477 public highway right-of-way for the Sand Dune road (Segments 1, 3, 5, 7, 9, 11, 13, 15, 16, & 17, described in Exhibit 3) as pleaded herein;

5. On its Fifth Cause of Action—Hancock road, an order quieting title in and to the R.S. 2477 public highway right-of-way for the Hancock road (described in Exhibit 4) as pleaded herein;

6. On its Sixth Cause of Action—Swallow Park/Park Wash road, an order quieting title in and to the R.S. 2477

public highway right-of-way for the Swallow Park/Park Wash road (three segments described in Exhibits 5A and 5B) as pleaded herein;

7. On its Seventh Cause of Action—North Swag road, an order quieting title in and to the R.S. 2477 public highway right-of-way for the North Swag road (described in Exhibit 5A and 5C) as pleaded herein;

8. On its Eighth Cause of Action—Nipple Lake road, an order quieting title in and to the R.S. 2477 public highway right-of-way for the Nipple Lake road (described in Exhibit 6) as pleaded herein; and

9. On its Ninth Cause of Action—Cave Lakes roads, an order quieting title in and to the R.S. 2477 public highway rights-of way for the four Cave Lakes roads (described in Exhibits 7A through 7E) as pleaded herein.

10. An order awarding costs, fees and attorneys fees to the extent permitted by law; and

11. An order granting such further and other relief as may be appropriate.

RESPECTFULLY SUBMITTED this 20th day of Feb., 2009.

HOLME ROBERTS & OWEN LLP
/s/ SHAWN WELCH
SHAWN T. WELCH
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226a

Plaintiff's Address:

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Kanab, Utah 84741

INDEX TO EXHIBITS

- Exhibit 1A — Mill Creek and Bald Knoll Road GPS Map
- Exhibit 1B — Mill Creek K4400 Segment 1
- Exhibit 1C — Mill Creek K4400 Segment 2
- Exhibit 1D — Mill Creek K4400 Segment 3
- Exhibit 1E — Mill Creek K4400 Segment 4
- Exhibit 1F — Bald Knoll Segment 1 aka Old Leach Ranch
- Exhibit 1G — Bald Knoll Segment 2
- Exhibit 1H — Bald Knoll Segment 3
- Exhibit 1J — Bald Knoll Segment 4
- Exhibit 2 — Skutumpah Road
- Exhibit 3 — Sand Dune Road
- Exhibit 4 — Hancock Road
- Exhibit 5A — Swallow Park/Park Wash and North Swag Roads
- Exhibit 5B — Swallow Park/Park Wash Road
- Exhibit 5C — North Swag Road
- Exhibit 6 — Nipple Lake Road
- Exhibit 7A — Cave Lakes Roads Map
- Exhibit 7B — Cave Lakes Road K1070
- Exhibit 7C — Cave Lakes Road K1075
- Exhibit 7D — Cave Lakes Road K1087
- Exhibit 7E — Cave Lakes Road K1088
- Exhibit 8 — Bald Knoll Initial Improvements
- Exhibit 9 — Bald Knoll FLPMA Title V Right-of-way
- Exhibit 10 — Mill Creek Initial Improvements
- Exhibit 11 — K4400, K4405 and K4410 Detail Map
- Exhibit 12 — USGS Skutumpah Creek Map dated 1966
- Exhibit 13 — USGS Bald Knoll Map dated 1966

- Exhibit 14 — USGS Deer Spring Point Map dated 1966
- Exhibit 15 — USGS Rainbow Point Map dated 1966
- Exhibit 16 — USGS Bull Valley Gorge Map dated 1966
- Exhibit 17 — USGS Cannonville Map dated 1966
- Exhibit 18 — USGS Kanab Map dated 1957
- Exhibit 19 — USGS Yellowjacket Canyon Map dated 1985
- Exhibit 20 — USGS Elephant Butte Map dated 1980
- Exhibit 21 — USGS Deer Range Point Map dated 1966
- Exhibit 22 — USGS Kanab Map dated 1985

APPENDIX H

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

Case No. 2:08-cv-00315-CW

KANE COUNTY, PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

Filed: Nov. 13, 2009

**ANSWER OF UNITED STATES TO PLAINTIFF'S
FIRST AMENDED COMPLAINT**

Defendant, the United States of America, by and through its legal counsel, hereby submits its Answer to Plaintiff's First Amended Complaint ("Amended Complaint"), dated and filed February 20, 2008. The numbered paragraphs of the Answer correspond to the numbered paragraphs of the Amended Complaint.

JURISDICTION AND VENUE

1. The allegations of Paragraph 1 are a characterization of Plaintiff's action to which no responsive pleading is required.

2. The allegations of Paragraph 2 are legal conclusions based on 28 U.S.C. §§ 2409a and 1346(f), which speak for themselves and are the best evidence of their contents and therefore no responsive pleading is re-

quired. The allegations of Paragraph 2 are also a characterization of Plaintiff's action to which no responsive pleading is required.

3. The United States admits that the lands which are the subject of this lawsuit are located within Kane County, State of Utah. The remaining allegations of Paragraph 3 are legal conclusions based on 28 U.S.C. § 1391(e), which speaks for itself and is the best evidence of its contents, and therefore no responsive pleading is required.

4. The allegations in Paragraph 4 constitute a legal conclusion to which no responsive pleading is required.

PARTIES

5. The allegations of Paragraph 5 are legal conclusions based on Utah Code Ann. § 17-50-302(2), which speaks for itself and is the best evidence of its contents, and therefore no responsive pleading is required.

6. The allegations of Paragraph 6 are legal conclusions based on Utah Code Ann. §§ 17-50-309, 72-3-103, 72-5-103, and 72-5-302, which speak for themselves and are the best evidence of their contents and therefore no responsive pleading is required.

7. The United States admits that it is the owner of the federal public land underlying all or portions of the alleged roads and right-of-ways that are the subject of the Amended Complaint. The United States lacks sufficient information to form a belief as to the truth of the allegation that its lands are subject to the roads and rights-of-way claimed in this action, and therefore denies the same.

BACKGROUND ALLEGATIONS

8. The allegations of Paragraph 8 refer to and quote Revised Statute 2477 (hereinafter, “R.S. 2477”) which speaks for itself and is the best evidence of its contents and therefore no responsive pleading is required.

9. The allegations of Paragraph 9 are legal conclusions to which no responsive pleading is required.

10. The allegations of Paragraph 10 are legal conclusions to which no responsive pleading is required. Further, to the extent the allegations purport to set forth statements from S. Utah Wilderness Alliance v. Bureau of Land Management, 425 F.3d 735 (10th Cir. 2005), such decision speaks for itself.

11. The allegations of Paragraph 11 are legal conclusions to which no responsive pleading is required.

12. The allegations of Paragraph 12 are legal conclusions to which no responsive pleading is required.

13. The allegations of Paragraph 13 are legal conclusions to which no responsive pleading is required.

14. The allegations of Paragraph 14 are legal conclusions to which no responsive pleading is required.

15. The allegations of Paragraph 15 are legal conclusions to which no responsive pleading is required.

16. The allegations of Paragraph 16 are legal conclusions to which no responsive pleading is required.

17. The allegations of Paragraph 17 are legal conclusions to which no responsive pleading is required. Further, to the extent the allegations purport to describe the content of provisions of the Federal Land Policy and Management Act (“FLPMA”), such provisions speak for

themselves and are the best evidence of their contents and therefore no responsive pleading is required.

18. The allegations of Paragraph 18 are legal conclusions to which no responsive pleading is required. Further, to the extent the allegations purport to describe the content of provisions of the FLPMA, such provisions speak for themselves and are the best evidence of their contents, and therefore no responsive pleading is required.

19. The allegations of Paragraph 19 are legal conclusions to which no responsive pleading is required.

20. The allegations of Paragraph 20 are overly broad and without the context necessary to permit a specific response.

21. The allegations of Paragraph 21 are overly broad and without the context necessary to permit a specific response. The United States admits that the United States Department of Interior has issued regulations in the past which address the application of state law to the granting of a right of way under R.S. 2477.

22. The United States admits that the Department of the Interior has adopted regulations and policies regarding R.S. 2477. Further, the references to “[a]cross the years” and “numerous regulations and policies” are too vague and general to permit a specific response. The remaining allegations of Paragraph 22 state legal conclusions to which no responsive pleading is required and are overly broad and without the context necessary to permit a specific response.

23. Paragraph 23 purportedly quotes a 1939 Department of the Interior regulation (43 C.F.R. § 244.55) (1939), which speaks for itself and is the best evidence

of its contents and therefore no responsive pleading is required.

24. Paragraph 24 purportedly quotes a 1963 Department of the Interior regulation (43 C.F.R. § 244.58) (1963), which speaks for itself and is the best evidence of its contents and therefore no responsive pleading is required.

25. Paragraph 25 purportedly quotes from two 1974 Department of the Interior regulations (43 C.F.R. §§ 2822.1-1 and 2822.2-1) (1974), which speak for themselves and are the best evidence of their contents and therefore no responsive pleading is required.

26. Paragraph 26 purportedly quotes from a 1986 version of the BLM Manual (Rel 2-229), which speaks for itself and is the best evidence of its contents and therefore no responsive pleading is required.

27. The allegations of Paragraph 27 are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that, among other things, the scope of the claimed rights of way, if established, is that which is reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road, including a 66 foot right of way (33 feet from the centerline descriptions provided in the Amended Complaint), and therefore denies the same.

28. The allegations of Paragraph 28 are legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States denies that the scope of an established right of way necessarily includes that which is reasonable and

necessary to accommodate two lanes of travel according to safe highway engineering practice.

29. The allegations of Paragraph 29 are legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 29 and therefore denies the same.

30. The allegations of Paragraph 30 are legal conclusions based on Utah Code Ann. §§ 72-2-103 (current) and 27-12-22 (1963), which speak for themselves and are the best evidence of their contents and therefore no responsive pleading is required. The United States further denies that the cited statutory provisions by their terms govern the acceptance of a public right of way grant under R.S. 2477.

31. The United States lacks sufficient knowledge regarding whether Kane County designated the so-called Mill Creek, Bald Knoll, Skutumpah, Sand Dune, Hancock, Nipple Lake, and portions of the Swallow Park/Park Wash routes or roads as public highways and expended public funds to construct and maintain these roads prior to October 21, 1976, and therefore denies the same. The remaining allegations of Paragraph 31 consist of legal conclusions to which no responsive pleading is required.

32. The allegations of Paragraph 32 are legal conclusions based on Utah Code Ann. § 72-5-104, which speaks for itself and is the best evidence of its contents and therefore no responsive pleading is required.

33. The allegations of Paragraph 33 are legal conclusions to which no responsive pleading is required. To

the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 33 and therefore denies the same.

34. The allegations of Paragraph 34 are legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 34 and therefore denies the same.

35. The allegations of Paragraph 35 are legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 35 and therefore denies the same.

**THE MILL CREEK, BALD KNOLL, SKUTUMPAH,
SAND DUNE, HANCOCK, SWALLOW PARK/PARK
WASH, NORTH SWAG, NIPPLE LAKE, AND CAVE
LAKES ROADS**

36. The United States admits that the so-called Mill Creek and Bald Knoll roads, as described in the Amended Complaint, are located in western Kane County, Utah.

37. The United States denies the first sentence in Paragraph 37, and admits that the so-called Mill Creek and Bald Knoll roads collectively cross private and public lands within the following townships: T40S, R4.5W, SLM; T40S, R5W, SLM; T41S, R4.5W, S.L.M. The United States admits that Exhibit 1A to the Amended Complaint purports to show the course and location of the so-called Mill Creek and Bald Knoll roads, but lacks

sufficient information to form a belief as to whether Exhibit 1A precisely sets forth the course and location of such roads and, therefore, denies the allegations of the second sentence of Paragraph 37.

38. The United States admits the allegations in Paragraph 38.

39. The United States denies the allegations of the first sentence of Paragraph 39 and admits that the Skutumpah Road crosses public and private lands occurring variously within the following townships: T38S, R2W, SLM; T38S, R3W, SLM; T39S, R3W, SLM; T39S, R4W, SLM; T40S, R4W, SLM; T40S, R4½W, SLM; T41S, R4½W, SLM; T41S, R5W, SLM. The United States admits that Attachment 1 of Exhibit 2 to the Amended Complaint purports to show the course and location of the Skutumpah road, but lacks sufficient information to form a belief as to whether Attachment 1 of Exhibit 2 precisely sets forth the course and location of such road and, therefore, denies the allegations of the second sentence of Paragraph 39.

40. The United States admits the allegations in Paragraph 40.

41. The United States denies the allegations of the first sentence of Paragraph 41 and admits that the Sand Dune road crosses private, Utah School and Institutional Trust Administration (“SITLA”), and public lands occurring variously within T44S, R9W, SLM; T43S, R9W, SLM; T43S, R8W, SLM; T43S, R7W, SLM; T42S, R7W, SLM. The United States admits that Attachment 1 of Exhibit 3 to the Amended Complaint purports to show the course and location of the Sand Dune road, but lacks sufficient information to form a belief as to

whether Attachment 1 of Exhibit 3 precisely sets forth the course and location of such road and, therefore, denies the allegations of the second sentence of Paragraph 41.

42. The United States admits the allegations in Paragraph 42.

43. The United States denies the allegations in Paragraph 43, and admits that the Hancock road crosses public land occurring within T43S, R8W, SLM; T43S, R7W, SLM; T42S, R7W, SLM; T42S, R6W, SLM. The United States admits that Attachment 1 of Exhibit 4 to the Amended Complaint purports to show the course and location of the Hancock road, but lacks sufficient information to form a belief as to whether Attachment 1 of Exhibit 4 precisely sets forth the course and location of such road and, therefore, denies the allegations of the second sentence of Paragraph 43.

44. The United States admits that the so-called Swallow Park/Park Wash, North Swag, and Nipple Lake routes, as described in the Amended Complaint, are located in western Kane County, Utah. The United States denies that such routes constitute roads for some or all of their course.

45. The United States denies the first sentence of Paragraph 45 and admits that the so-called Swallow Park/Park Wash route crosses private and public lands within Township 39 and 40 South, Range 3 west, S.L.M. The United States denies the second sentence and admits that the so-called North Swag route, as described in the Amended Complaint, crosses public lands within T40S, R3W, S.L.M., and that the so-called Nipple Lake route, as described in the Amended Complaint, crosses

public lands within T40S, R2W, S.L.M. The United States admits that Exhibit 5A to the Amended Complaint purports to show the course and location of the so-called Swallow Park/Park Wash and North Swag routes, but lacks sufficient information to form a belief as to whether Exhibit 5A precisely sets forth the course and location of such routes and therefore, denies the allegations of the third sentence of Paragraph 45. The United States admits that Attachment 1 to Exhibit 6 to the Amended Complaint purports to show the course and location of the so-called Nipple Lake route, but lacks sufficient information to form a belief as to whether Attachment 1 to Exhibit 6 precisely sets forth the course and location of such route and, therefore denies the allegations of the fourth sentence of Paragraph 45.

46. The United States admits that the so-called four Cave Lakes routes, as identified in the Amended Complaint, are located in southwestern Kane County, Utah.

47. The United States denies the first sentence of Paragraph 47, and admits that the four so-called Cave Lakes routes, as described in the Amended Complaint, cross public land in T42S, R7W, S.L.M. The United States admits that Exhibit 7A to the Amended Complaint purports to show the course and location of the four so-called Cave Lakes routes, but lacks sufficient information to form a belief as to whether Exhibit 7A precisely sets forth the course and location of such roads and, therefore, denies the allegations of the second sentence of Paragraph 47. With respect to the third sentence of Paragraph 47, the United States admits that Exhibit 7A includes the following numbers: RD130016, RD130017, RD131143, and RD 1311444 (not RD121144 as alleged), and lacks sufficient information to form a

belief as to the truth of the remaining allegations of the sentence and therefore denies the same.

48. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 48 and therefore denies the same.

49. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 49 and therefore denies the same.

50. The United States lacks sufficient information to form a belief as to the truth of the allegations in the first sentence of Paragraph 50 and therefore denies the same. The second sentence of Paragraph 50 constitutes a characterization of Plaintiff's claims, and therefore no responsive pleading is required.

THE MILL CREEK ROAD AND BALD KNOLL ROADS

51. The United States admits that the Kane County Commission sent a letter dated June 16, 2006 to the Kanab Field Office, United States Bureau of Land Management (BLM), which letter speaks for itself, is the best evidence of its contents, and requires no further responsive pleading. The United States denies the remaining allegations of Paragraph 51.

52. The United States admits that the Kane County Commission sent a letter dated June 16, 2006 to the Kanab Field Office, BLM, indicating that it proposed to make certain improvements to the Bald Knoll road. The letter speaks for itself, is the best evidence of its contents, and requires no further responsive pleading. The United States denies the remaining allegations of Paragraph 52.

53. The allegations of Paragraph 53 are legal conclusions to which no responsive pleading is required.

54. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 54 and therefore denies the same.

55. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 55 and therefore denies the same.

56. The allegations of the first sentence of Paragraph 56 are legal conclusions to which no responsive pleading is required. To the extent a responsive averment is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same. The United States lacks sufficient information to form a belief as to the truth of the allegations of the second sentence of Paragraph 56 and therefore denies the same. With respect to the allegations of the third sentence of Paragraph 56, the United States admits that a map providing indications of various road improvements is attached as Exhibit 8 to the Amended Complaint. The United States lacks sufficient information to form a belief as to whether such proposed improvements conform to AASHTO standards, and therefore denies the same.

57. The allegations of Paragraph 57 concerning “the topography of the land near the intersection” are too vague and general and do not provide the context necessary to permit a specific response. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same. The

United States lacks sufficient information to form a belief as to the truth of the remaining allegations of Paragraph 57 and therefore denies the same.

58. The allegations of Paragraph 58 are too vague and general and do not provide the context necessary to permit a specific response.

59. The United States admits the allegations in Paragraph 59.

60. The United States admits that it issued Right-of-Way Grant, Serial Number UTU-82147 (“the Grant”), granting a FLPMA Title V right-of-way, on or about March 6, 2007 and a copy of such grant is attached to the Amended Complaint as Exhibit 9.

61. The United States admits the allegations in Paragraph 61, and further states that the Grant speaks for itself.

62. The allegations of Paragraph 62 are too vague and general and do not provide the context necessary to permit a specific response. Further, the United States avers that the Grant speaks for itself, and therefore denies any allegations that are inconsistent therewith, including any allegation that the Grant acted to “adopt” or “incorporate” any of Kane County’s proposed improvements for that portion of the Bald Knoll road not covered by the Grant.

63. The United States admits that right-of-way UTU-45699 was authorized and issued to the Kane County Road Department on August 15, 1980. The United States lacks sufficient information to form a belief as to the truth of the remaining allegations of Paragraph 63 and therefore denies the same.

64. The allegations of the first sentence of Paragraph 64 are legal conclusions to which no responsive pleading is required. To the extent a responsive averment is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same. The United States lacks sufficient information to form a belief as to the truth of the allegations of the second sentence of Paragraph 64 and therefore denies the same. With respect to the allegations of the third sentence of Paragraph 64, the United States admits that a map providing indications of various proposed improvements is attached as Exhibit 10 to the Amended Complaint. The United States lacks sufficient information to form a belief as to whether such improvements conform to AASHTO standards and therefore denies the same.

65. The United States lacks sufficient information to form a belief as to the truth of the allegations of the first sentence of Paragraph 65 and the allegations concerning Plaintiff's intent in the third sentence of Paragraph 65 and therefore denies the same. The United States admits that an engineer report is attached to the Grant attached to the Amended Complaint as Exhibit 9. Further, the United States avers that the Grant and engineer report speak for themselves, and therefore denies any allegations that are inconsistent therewith, including any allegation that the Grant acted to "adopt" or "incorporate" any of Kane County's proposed improvements for that portion of the Bald Knoll road not covered by the Grant or that the Grant adopted the applicable AASHTO standards for the rerouted portion of the Bald Knoll road.

66. The United States admits that the Kane County Commission sent a letter dated June 16, 2006 to the Kanab Field Office, BLM, requesting that BLM management conduct an initial determination of whether proposed improvements to the Bald Knoll road were within the scope of the County's asserted right of way. The United States avers that the letter speaks for itself, and is the best evidence of its contents. The United States denies the remaining allegations of Paragraph 66.

67. The United States admits that in July 2007, the BLM Utah State Office made a preliminary nonbinding determination, for its management purposes only, that the Bald Knoll Road (to the extent identified and referred to in the determination) was a R.S. 2477 right-of-way, which determination it subsequently published. The preliminary determination speaks for itself. The United States denies the remaining allegations of Paragraph 67.

68. The United States denies the allegations in Paragraph 68 and admits that BLM has not issued a final nonbinding determination as to whether the Bald Knoll road is a R.S. 2477 right of way.

69. The United States denies the allegations of Paragraph 69.

70. The United States admits that Kane County informed BLM that it desired to make improvements on Bald Knoll road by letter dated June 16, 2006. The United States admits that Kane County indicated to BLM by letter dated August 9, 2006, that it desired to make improvements on the Mill Creek road. The United States lacks sufficient knowledge regarding whether

Plaintiff's proposed improvements were "needed," and therefore denies the same.

71. The United States admits that Kane County requested that BLM make an initial determination as to whether proposed improvements were within the scope of its asserted R.S. 2477 right of way on Bald Knoll road by letter dated June 16, 2006. The United States admits that Kane County indicated to BLM by letter dated August 9, 2006, that it desired to make improvements on the Mill Creek road, but denies that the letter expressly requested that BLM make an initial determination regarding the proposed improvements. The allegation that Kane County holds "congressionally granted public highway rights-of-way" is a legal conclusion to which no responsive pleading is required.

72. The United States denies the allegations in Paragraph 72, and admits that BLM has not, to this point, identified to Kane County any concerns that the proposed improvements may have on the adjacent public lands.

73. The allegations of Paragraph 73 are legal conclusions to which no responsive pleading is required.

74. The allegations of Paragraph 74 are legal conclusions to which no responsive pleading is required.

75. The allegations of Paragraph 75 are legal conclusions to which no responsive pleading is required.

76. The allegations of Paragraph 76 are legal conclusions to which no responsive pleading is required. To the extent a responsive averment is required, the United States denies the allegations in Paragraph 76.

77. The United States admits the allegations in the first sentence in Paragraph 77. The allegations of the second and third sentences of Paragraph 77 purport to characterize the legal effect of the RMP, which speaks for itself and is the best evidence of its contents, and therefore no responsive pleading is required. The allegations of the fourth sentence in Paragraph 77 constitute legal conclusions to which no responsive pleading is required. To the extent a responsive averment is required, the United States denies the allegations of the fourth sentence of Paragraph 77.

78. The allegations of the first two sentences in Paragraph 78 characterize and purport to quote from a BLM memorandum dated December 20, 2006, which speaks for itself, and is the best evidence of its contents, and to which no responsive pleading is required. Nonetheless, the United States specifically denies the allegations of the first and second sentences that purport to characterize the Utah State office's intent and directions to its land use planners. The allegations of the last sentence of Paragraph 78 are too vague and general and do not provide the context necessary to permit a specific response. To the extent a response is required, the allegations in the last sentence of Paragraph 78 are denied.

79. The allegations in Paragraph 79 are legal conclusions to which no responsive pleading is required. To the extent a response is required, the United States denies the allegations in Paragraph 79.

THE SKUTUMPAH ROAD

80. The United States denies the allegations in the first sentence of Paragraph 80 and admits that the BLM

completed an administrative determination in January of 2000 in which it determined that the Skutumpah road satisfied the applicable requirements for an R.S. 2477 right-of-way. The remaining allegations of Paragraph 78 refer to and are based on S. Utah Wilderness Alliance v. Bureau of Land Management, 425 F.3d 735 (10th Cir. 2005), which speaks for itself and is the best evidence of its contents and therefore no responsive pleading is required.

81. With regard to the allegations of Paragraph 81, the United States admits that the United States District Court for the District of Utah issued a decision in The Wilderness Society v. Kane County, Case No. 2:05-CV-854-TC, 560 F. Supp. 2d 1147 (D. Utah) on May 16, 2008, which was affirmed in The Wilderness Society v. Kane County, 581 F.3d 1198 (10th Cir. 2009). The United States further states that the district court decision speaks for itself and is the best evidence of its contents and therefore no responsive pleading is required.

82. The allegations of Paragraph 82 refer to, quote from, and interpret the May 16, 2008 decision in The Wilderness Society v. Kane County, Case No. 2:05-CV-854-TC, 560 F. Supp. 2d 1147 (D. Utah), which speaks for itself and is the best evidence of its contents and therefore no responsive pleading is required. However, the United States expressly denies the accuracy of Plaintiff's characterization of the holding set forth in the decision.

83. The United States admits the allegations in Paragraph 83.

84. The allegations in Paragraph 84 purport to quote from and characterize the legal effect of the Grand

Staircase-Escalante National Monument Plan (MMP), which speaks for itself and is the best evidence of its contents, and therefore no further responsive pleading is required.

85. The United States admits the allegations of the first sentence in Paragraph 85. The allegations in the second sentence of Paragraph 85 purport to characterize the legal effect of the RMP, which speaks for itself and is the best evidence of its contents, and therefore no responsive pleading is required. The United States admits the allegations of the third sentence of Paragraph 85. The allegations of the fourth sentence of Paragraph 85 are unduly speculative and require no responsive pleading. To the extent a response is required, the United States denies the allegations of the fourth sentence.

86. The allegations in the first two sentences in Paragraph 86 characterize and purport to quote from a BLM memorandum dated December 20, 2006, which speaks for itself, and is the best evidence of its contents. The United States specifically denies the allegations of the first and second sentences that purport to characterize the Utah State office's intent and directions to its land use planners. The allegations of the last sentence of Paragraph 86 are too vague and general and do not provide the context necessary to permit a specific response. To the extent a response is required, the allegations in the last sentence of Paragraph 86 are denied.

87. Given the lack of detail in Paragraph 87, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 87 and therefore denies the same.

88. The allegations in Paragraph 88 are legal conclusions to which no responsive pleading is required. To the extent a response is required, the United States denies the allegations in Paragraph 88.

89. The allegations of Paragraph 89, including the vague and general descriptions of the Skutumpah road as being “heavily traveled” and a “higher speed” road requiring “significant routine maintenance” are overly broad and without the context necessary to permit a specific response. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same, except that the United States admits that the Skutumpah road receives vehicle use and requires periodic maintenance.

90. The United States denies that the Department of the Interior has recently asserted that Kane County has no R.S. 2477 right-of-way, including for the Skutumpah road. The remaining allegations in Paragraph 90 are legal conclusions to which no responsive pleading is required. To the extent a response is required, the United States denies the allegations of Paragraph 90.

THE SAND DUNE AND HANCOCK ROADS

91. The United States admits the allegations of Paragraph 91.

92. The allegations of Paragraph 92 are legal conclusions to which no responsive pleading is required.

93. The United States admits the allegations of the first sentence in Paragraph 93. The allegations in the second and fifth sentence of Paragraph 93 purport to characterize the legal effect of the RMP, which speaks for itself and is the best evidence of its contents, and

therefore no responsive pleading is required. The United States denies the third and fourth sentences of Paragraph 93, and admits that the Hancock and Sand Dune roads are not shown on the RMP's Map 10.

94. The allegations in the first two sentences in Paragraph 94 characterize and purport to quote from a BLM memorandum dated December 20, 2006, which speaks for itself, and is the best evidence of its contents. The United States specifically denies the allegations of the first and second sentences that purport to characterize the Utah State office's intent and directions to its land use planners. The allegations of the last sentence of Paragraph 94 are too vague and general and do not provide the context necessary to permit a specific response. To the extent a response is required, the allegations in the last sentence of Paragraph 94 are denied.

95. The allegations of Paragraph 95 are unduly speculative and require no responsive pleading. To the extent a response is required, the United States denies the allegations.

96. The allegations of Paragraph 96 are legal conclusions to which no responsive pleading is required. To the extent a response is required, the United States denies the allegations of Paragraph 96.

97. The United States denies the allegations in Paragraph 97.

98. The United States denies that the Department of the interior has recently asserted that Kane County has no R.S. 2477 right-of-way, including for the Sand Dune and Hancock roads. The remaining allegations in Paragraph 98 are legal conclusions to which no responsive pleading is required. To the extent a response

is required, the United States denies the remaining allegations of Paragraph 98.

THE SWALLOW PARK/PARK WASH, NORTH SWAG, AND NIPPLE LAKE ROADS

99. With regard to the allegations in Paragraph 99, the United States admits that the so-called Swallow Park/Park Wash route, as described by the Amended Complaint, connects with the Skutumpah road, and that the so-called North Swag route, as described by the Amended Complaint, connects with the so-called Swallow Park/Park Wash route and a road identified as K4200 (Kitchen Corral Road) which in turn connects to State Highway 89. The United States lacks sufficient information to form a belief regarding any “access” which is provided by the route, and therefore denies such allegation.

100. With regard to the allegations of Paragraph 100, the United States admits that the so-called Nipple Lake route, as described by the Amended Complaint, connects to a road identified as K4200 (Kitchen Corral Road) on the north and terminates on private land within section 30, T40S, R2W, SLM, on which a ranch is located. The United States lacks sufficient information sufficient to form a belief regarding any “access” to the ranch which is provided by the route, and therefore denies such allegation.

101. The United States admits that Kane County records identify the so-called Nipple Lake route and a portion of the so-called Swallow Park/Park Wash routes as Kane County Class B roads. The allegations that the routes “received routine maintenance and have improved travel surfaces” are vague, and the United States lacks

sufficient information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 101 and therefore denies the same.

102. The United States admits that Kane County records identify portions of the so-called Swallow Park/Park Wash routes and the so-called North Swag route as Kane County Class D roads. The remaining allegations relating to “unimproved traveling surfaces” are vague, and the United States lacks sufficient information to form a belief as to the truth of the remaining allegations of Paragraph 102 and therefore denies the same.

103. The United States denies the allegations of the first sentence of Paragraph 103, and admits the Nipple Lake, Swallow Park/Park Wash, and North Swag routes, as described by the Amended Complaint, lie within the Grand Staircase-Escalante National Monument (“GSENM”). The United States admits the allegations of the second sentence of Paragraph 103. The United States generally admits the allegations of the third sentence, but further states that such allegations refer to and are based on the MMP, which speaks for itself and is the best evidence of its contents.

104. The allegations of Paragraph 104 purport to describe the content and effect of the MMP, which speaks for itself and is the best evidence of its contents, and therefore no further responsive pleading is required.

105. The United States generally admits the allegations of Paragraph 105, but further states that the allegations refer to and are based on the MMP, which speaks for itself and is the best evidence of its contents.

106. The allegations of Paragraph 106 are vague and without context sufficient to allow for a response. The United States admits that the above-referenced Map 2 does not depict portions of the so-called Swallow Park/Park Wash route and does not depict the so-called North Swag and Nipple Lake routes, all as described in the Amended Complaint. The United States further states that the MMP speaks for itself and is the best evidence of its contents.

107. The allegations of Paragraph 107 refer to and are based on the May 16, 2008 decision in The Wilderness Society v. Kane County, Case No. 2:05-CV-854-TC, 560 F. Supp. 2d 1147 (D. Utah), which speaks for itself and is the best evidence of its contents and to which no responsive pleading is required. Nonetheless, the United States expressly denies the accuracy of Plaintiff's characterization of the decision.

108. The United States denies the allegations of Paragraph 108.

109. The United States denies that the Department of the Interior has recently asserted, that Kane County has no R.S. 2477 right-of-way, including for the Swallow Park/Park Wash, North Swag, and Nipple Lake roads, and further states that the MMP speaks for itself and is the best evidence of its contents. The remaining allegations in Paragraph 109 are legal conclusions to which no responsive pleading is required. To the extent a response is required, the United States denies the allegations of Paragraph 109.

THE CAVE LAKE ROADS

110. With regards to the allegations in Paragraph 110, the United States admits that certain of the so-

called Cave Lakes routes, as described in the Amended Complaint, connect with the Hancock road and terminate on private land. The United States otherwise lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 110 and therefore denies the same.

111. The United States denies the allegations in Paragraph 111 and admits that it issued Right-of-Way Grants, Serial Numbers UTU-82998, UTU-82999, and UTU-83004 (“Grants”) granting FLPMA Title V right-of-ways, on or about July 25, 2008 to Cave Lakes Canyon LLC. The United States further states that the Grants speak for themselves and are the best evidence of their contents and to which no responsive pleading is required. The allegation that such routes are Kane County’s roads constitutes a legal conclusion to which no response is required.

112. The allegations of Paragraph 112 refer to and are based on above-referenced Grants, which speak for themselves and are the best evidence of their contents and to which no responsive pleading is required. Nonetheless, the United States denies that the Grants expressly acknowledge that Kane County claims to own public highway rights-of-way for the roads they affect.

113. The United States denies the allegations of Paragraph 113.

114. The allegations in Paragraph 114 are legal conclusions to which no responsive pleading is required. To the extent a response is required, the United States denies the allegations of Paragraph 114.

115. The United States admits the allegations of the first sentence in Paragraph 115. The allegations in the

second and third sentences of Paragraph 115 purport to characterize the legal effect of the RMP, which speaks for itself and is the best evidence of its contents, and therefore no responsive pleading is required. The allegations of the fourth sentence of Paragraph 115 constitute a legal conclusion to which no responsive pleading is required. To the extent a response is required, the United States denies the allegations of fourth sentence of Paragraph 115.

116. The allegations in the first two sentences in Paragraph 116 characterize and purport to quote from a BLM memorandum dated December 20, 2006, which speaks for itself, and is the best evidence of its contents. The United States specifically denies the allegations of the first and second sentences that purport to characterize the Utah State office's intent and directions to its land use planners. The allegations of the last sentence of Paragraph 94 [sic] are too vague and general and do not provide the context necessary to permit a specific response. To the extent a response is required, the allegations in the last sentence of Paragraph 94 [sic] are denied.

117. The United States denies the allegations of the first sentence, and admits that the County sent a letter dated December 16, 2008 to the Secretary of the Interior and the managers of the BLM Kanab Field Office, the Monument, and the Glen Canyon Recreation Area requesting a meeting to "coordinate mutual road maintenance and public safety responsibilities," which letter speaks for itself and is the best evidence of its content, and therefore no further response is required. The United States denies the allegations of the second sentence of Paragraph 117, and admits that no meeting between the managers of the KFO, GSENM, and Glen

Canon Recreation Area occurred in December 2008 regarding snow removal.

118. The allegations in Paragraph 118 are legal conclusions to which no responsive pleading is required. To the extent a response is required, the United States denies the allegations of Paragraph 118.

FIRST CAUSE OF ACTION

[Mill Creek Road]

119. The United States incorporates by reference its responses to the allegations of Paragraphs 1 to 118.

120. The United States admits that certain Kane County records identify the Mill Creek road as Kane County road number K4400. The United States denies that the Mill Creek road, the Tenny Creek road, and the Oak Canyon road constitute a single road.

121. The United States admits that Mill Creek road commences at its intersection with the Skutumpah Road on private land in the NW quarter of section 5, Township 41 South, Range 4.5 West, S.L.M, and that it generally proceeds in a northerly direction. The United States lacks sufficient information to form a belief as to the terminus of the Mill Creek road, and therefore denies the remaining allegations of Paragraph 121. The United States further denies that the Mill Creek road has three separate termini.

122. Paragraph 122 is not a factual allegation but rather constitutes Plaintiff's description of its claims, and therefore no responsive pleading is required. To the extent the paragraph incorporates or implies factual allegations, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 122 and therefore denies the same.

123. With respect to Paragraph 123, the United States admits that certain private lands, identified as lots 1, 2 and 3, NE1/4, E1/2SW1/4, N1/2SE1/4, and SW1/4SE1/4, section 34, T. 39 S., R 4.5 W, S.L.M., were conveyed out of Federal ownership on June 10, 1937 as Stock Raising Homestead Patent 1090548. The United States lacks sufficient information to form a belief as to the truth of the remaining allegations of Paragraph 123 and therefore denies the same.

124. With respect to Paragraph 124, the United States admits that certain private lands, identified as lot 2, section 5, T. 40 S., R 4.5 W, S.L.M., were conveyed out of Federal ownership on May 23, 1923 as Homestead Patent 900384. The United States lacks sufficient information to form a belief as to the truth of the remaining allegations of Paragraph 124 and therefore denies the same.

125. With respect to Paragraph 125, the United States admits that certain private lands, identified as lots 4, 5, 6, and 7, and E1/2SW1/4, section 6, T. 40 S., R. 4 1/2 W., S.L.M., were conveyed out of Federal ownership on August 8, 1957 as Private Exchange Patent 1173972. The United States lacks sufficient information to form a belief as to the truth of the remaining allegations and therefore denies the same.

126. Paragraph 126 is not a factual allegation but rather constitutes Plaintiff's description of the scope of its claims and of one of its exhibits, and therefore no responsive pleading is required. To the extent the paragraph incorporates or implies factual allegations, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 126 and therefore denies the same.

127. The allegations of Paragraph 127 are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that the scope of the claimed right of way, if established, is that reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road, including a 66 foot right of way (33 feet from the centerline descriptions provided in the Amended Complaint), and therefore denies the same.

128. The use of the phrase “has long appeared” in the allegations of Paragraph 128 renders the allegations too vague and general and without the context necessary to permit a specific response. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

129. The United States denies the allegations of the first sentence in Paragraph 129 and admits that the 1966 Skutumpah Creek, Utah 7.5 minute quadrangle map issued by the United States Geological Survey (“USGS”) shows unimproved dirt roads in the general vicinity of the routes described in Paragraphs 121 and 122. As to the allegations in the second sentence, the United States admits that a copy of a map entitled “Skutumpah Creek, Utah,” which appears to be published in its original form by the USGS, is attached to the Amended Complaint as Exhibit 12. However, the United States denies that Exhibit 12 constitutes, in its present form, a true and correct copy of a USGS map as it contains markings and notations which appear to have been made by someone other than the USGS. As to the allegations of the third sentence, the United States lacks sufficient information

to form a belief as to the truth of such allegations and therefore denies the same.

130. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 130 and therefore denies the same.

131. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 131 and therefore denies the same.

132. The allegations of Paragraph 132 contain legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

133. The allegations of Paragraph 133 contain legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

134. The allegations of Paragraph 134 are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that the scope of the claimed right of way, if established, is that reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road, including a 66 foot right of way (33 feet from the centerline descriptions provided in the Amended Complaint), and therefore denies the same.

135. The United States admits that on the 1965 General Highway Map, Kane County, Utah, unnamed roads

appear in the general vicinity of the claimed Mill Creek, Tenny Creek, and Oak Canyon routes as described in the Amended Complaint. The United States otherwise lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 135, and therefore denies the same.

136. With regards to the allegations in the first sentence of Paragraph 136, the United States admits that on the 1956 Kane County General Highway map unnamed roads appear in the general vicinity of the claimed Mill Creek, Tenny Creek, and Oak Canyon routes as described in the Amended Complaint. The United States lacks sufficient information to form a belief as to the truth of the remaining allegations of the first sentence of Paragraph 136 and therefore denies the same. With respect to the second sentence of Paragraph 136, the United States admits that on the 1965 General Highway Map, Kane County, Utah, an unnamed road appears in the general vicinity of the segments of the Mill Creek road as described in the Amended Complaint. The United States otherwise lacks sufficient information to form a belief as to the truth of the allegations of the second sentence of Paragraph 136, and therefore denies the same.

137. The allegations of Paragraph 137 are legal conclusions based on Utah Code Ann. § 27-12-22, which speaks for itself and is the best evidence of its contents and therefore no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegation that Kane County designated the Mill Creek roads as a county road in 1965, and therefore denies the same.

138. The allegations of Paragraph 138 that Plaintiff “accepted this county road” are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 138 and therefore denies the same.

139. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 139 and therefore denies the same.

140. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 140 and therefore denies the same.

141. The allegations of Paragraph 141 are legal conclusions based on Utah Code Ann. § 27-12-22, which speaks for itself and is the best evidence of its contents and therefore no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that Kane County designated the Mill Creek road as a Kane County road (General Highways) and expended public funds on this road on or before 1965, and therefore denies the same.

142. The United States admits that in July 1977 the BLM and Plaintiff signed a document entitled “Memorandum of Understanding to Clarify Road Construction & Maintenance Responsibilities in Kane County between The Bureau of Land Management and the Kane County Commission,” (hereinafter “MOU”) which speaks for itself and is the best evidence of its contents and therefore no responsive pleading is required. The United States nonetheless affirmatively denies the allegation that the

MOU confirms that any alleged rights-of-way for the Mill Creek road included a right-of-way width of 66 feet.

143. The allegations of Paragraph 143 contain legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

144. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 144 and therefore denies the same.

145. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 145 and therefore denies the same.

146. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 146 and therefore denies the same.

147. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 147 and therefore denies the same.

148. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 148 and therefore denies the same.

149. The allegations of Paragraph 149 are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that the scope of the claimed rights of way, if established, are sufficient in scope for vehicle travel and include that which is reasonable and necessary to meet the exigencies of such vehicle travel according to safe engineering

practices that protect the public, the road, and prevent undue degradation of the adjacent land, and therefore denies the same.

150. The allegations of Paragraph 150 are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that there existed public motor vehicle use of the Mill Creek road as a public thoroughfare on a continuous basis for a period in excess of ten years prior to October 21, 1976, and therefore denies the same.

151. The allegations of Paragraph 151 contain legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

SECOND CAUSE OF ACTION
[Bald Knoll Road]

152. The United States incorporates by reference its responses to the allegations of Paragraphs 1 to 118.

153. The United States admits that certain Kane County records identify Bald Knoll Road as road K3935.

154. The United States lacks sufficient information to form a belief as to the truth of the first sentence of the allegations of Paragraph 154 and therefore denies the same. The United States denies that the Bald Knoll road commences in the NENW of section 3, Township 41 South, Range 5 West, S.L.M., at the boundary of private land, and admits the remaining allegations of the second sentence of Paragraph 154. The United States

admits the allegations of the third and fourth sentences of Paragraph 154.

155. Paragraph 155 is not a factual allegation but rather constitutes Plaintiff's description of its claims, and therefore no responsive pleading is required. To the extent the paragraph incorporates or implies factual allegations, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 155 and therefore denies the same.

156. With regards to Paragraph 156, the United States admits that certain private lands, identified as SE1/4SE1/4, section 15, and NW1/4NE1/4, section 22, T. 40 S., R 5 W, S.L.M., were conveyed out of Federal ownership on October 23, 1928 as Homestead Patent 1020257. The United States lacks sufficient information to form a belief as to the truth of the remaining allegations of Paragraph 156 and therefore denies the same.

157. Paragraph 157 is not a factual allegation but rather constitutes Plaintiff's description of its claims, and therefore no responsive pleading is required. To the extent the paragraph incorporates or implies factual allegations, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 157 and therefore denies the same.

158. The allegations of Paragraph 158 are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that the scope of the claimed right of way, if established, is that reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road, including a 66 foot

right of way (33 feet from the centerline descriptions provided in the Amended Complaint), and therefore denies the same.

159. The use of the phrase “has long appeared” in the allegations of Paragraph 159 renders the allegations too vague and general and without the context necessary to permit a specific response. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

160. The United States denies the allegations of the first sentence of Paragraph 160, and admits that the 1966 Skumtumpah Creek, Utah and Bald Knoll, Utah 7.5 minute quadrangle maps issued by the USGS, together show unimproved dirt roads in the general vicinity of the roads described in Paragraphs 154 and 155. As to the allegations of the second sentence, the United States admits that a map entitled “Bald Knoll, Utah,” which appears to be published in its original form by the USGS, is attached to the Amended Complaint as Exhibit 13. However, the United States denies that Exhibit 13 constitutes, in its present form, a true and correct copy of a USGS map as it contains markings and notations which appear to have been made by someone other than the USGS. As to the allegations of the third sentence, the United States lacks sufficient information to form a belief as to the truth of such allegations and therefore denies the same.

161. Given the illegibility of Exhibit 13, and given the markings and notations on it from some unknown source, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 161 and therefore denies the same.

162. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 162 and therefore denies the same.

163. The allegations of Paragraph 163 contain legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

164. The allegations of Paragraph 164 contain legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

165. The allegations of Paragraph 165 are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that the scope of the claimed right of way, if established, is that reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road, including a 66 foot right of way (33 feet from the centerline descriptions provided in the Amended Complaint), and therefore denies the same.

166. The United States admits that on the 1965 General Highway Map, Kane County, Utah, an unnamed road appears in the general vicinity of some of the segments of the Bald Knoll road as described in the Amended Complaint. The United States otherwise lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 166, and therefore denies the

same. As to the footnote to Paragraph 166, the United States lacks knowledge sufficient to form a belief as to the truth of the allegations of the first sentence and denies the same. The United States denies the allegations of the second sentence in the footnote.

167. The allegations of Paragraph 167 are legal conclusions based on Utah Code Ann. § 27-12-22, which speaks for itself and is the best evidence of its contents and to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegation that Kane County designated the Mill Creek road as a county road in 1965, and therefore denies the same.

168. The allegations of Paragraph 168 that Plaintiff “accepted this county road” are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 168 and therefore denies the same.

169. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 169 and therefore denies the same.

170. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 170 and therefore denies the same.

171. The allegations of Paragraph 171 are legal conclusions based on Utah Code Ann. § 27-12-22, which speaks for itself and is the best evidence of its contents and therefore no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that Kane County designated the Bald Knoll road as a Kane County

road (General Highways) and expended public funds on this road on or before 1965, and therefore denies the same.

172. The United States admits that in July 1977 the BLM and Plaintiff signed a document entitled “Memorandum of Understanding to Clarify Road Construction & Maintenance Responsibilities in Kane County between The Bureau of Land Management and the Kane County Commission,” (hereinafter “MOU”) which speaks for itself and is the best evidence of its contents and therefore no responsive pleading is required. The United States nonetheless affirmatively denies the allegation that the MOU confirms that any alleged rights-of-way for the Bald Knoll road included a right-of-way width of 66 feet. The United States lacks sufficient information to form a belief as to the truth of the allegation that the Bald Knoll road was formerly designated the Thompson Creek road, and therefore denies the same.

173. The use of the phrase “has long served” in the allegations of Paragraph 173 renders the allegations too vague and general and without the context necessary to permit a specific response. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 173 and therefore denies the same.

174. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 174 and therefore denies the same.

175. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 175 and therefore denies the same.

176. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 176 and therefore denies the same.

177. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 177 and therefore denies the same.

178. The allegations of Paragraph 178 are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that the scope of the claimed rights of way, if established, are sufficient in scope for vehicle travel and include that which is reasonable and necessary to meet the exigencies of such vehicle travel according to safe engineering practices that protect the public, the road, and prevent undue degradation of the adjacent land, and therefore denies the same.

179. The allegations of Paragraph 179 are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that there existed public motor vehicle use of the Bald Knoll road as a public thoroughfare on a continuous basis for a period in excess of ten years prior to October 21, 1976, and therefore denies the same.

180. The allegations of Paragraph 180 contain legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

THIRD CAUSE OF ACTION
[Skutumpah Road]

181. The United States incorporates by reference its responses to the allegations of Paragraphs 1 to 118.

182. The United States admits that certain Kane County records identify the Skutumpah road as Road K5000.

183. Assuming that the reference to “Range 5 S.L.M.” in the third line of Paragraph 183 is intended to refer to “Range 5 West,” the United States generally admits the allegations of the Paragraph, except for the mileage allegation, as the United States lacks sufficient information to form a belief as to the truth of that allegation and therefore denies the same.

184. Paragraph 184 is not a factual allegation but rather constitutes Plaintiff’s description of its claims, and therefore no responsive pleading is required. To the extent the paragraph incorporates or implies factual allegations, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 184 and therefore denies the same.

185. The allegations of Paragraph 185 are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that the scope of the claimed right of way, if established, is that reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road, including a 66 foot right of way (33 feet from the centerline descriptions provided in the Amended Complaint), and therefore denies the same.

186. The use of the phrase “has long appeared” in the allegations of Paragraph 186 renders the allegations too vague and general and without the context necessary to permit a specific response. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

187. With respect to the allegations of the first and third sentences of Paragraph 187, the United States admits that the 1966 Skutumpah Creek, Utah 7.5 minute quadrangle map, the 1966 Deer Springs Point, Utah 7.5 minute quadrangle map, the 1966 Bull Valley Gorge, Utah 7.5 minute quadrangle map, and the 1966 Cannonville, Utah 7.5 minute quadrangle map, issued by the USGS, show unimproved dirt roads in the general vicinity of the route described in Paragraph 183. With respect to the allegations of the fourth sentence, the United States admits that maps entitled “Skumtumpah Creek, Utah,” “Deer Springs Point, Utah,” “Bull Valley Gorge, Utah,” and “Cannonville, Utah,” which appear to be published in their original forms by the USGS, are attached to the Amended Complaint as Exhibits 12 and 14-17. However, the United States denies that Exhibits 12 and 14-17 constitute, in their present form, true and correct copies of USGS maps as they contains markings and notations which appear to have been made by someone other than the USGS. With respect to the allegations of the second sentence of Paragraph 187, the United States lacks sufficient information to form a belief as to the truth of such allegations and therefore denies the same.

188. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 188 and therefore denies the same.

189. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 189 and therefore denies the same.

190. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 190 and therefore denies the same.

191. The allegations of Paragraph 191 contain legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

192. The allegations of Paragraph 192 contain legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

193. The allegations of Paragraph 193 are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that the scope of the claimed right of way, if established, is that reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road, including a 66 foot right of way (33 feet from the centerline descriptions provided in the Amended Complaint), and therefore denies the same.

194. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 194 and therefore denies the same.

195. The allegations of Paragraph 195 are legal conclusions based on Utah Code Ann. § 27-12-22, which speaks for itself and is the best evidence of its contents and therefore no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegation that Kane County designated the Skutumpah road as a county road as early as 1950, and therefore denies the same

196. The allegations of Paragraph 196 that Plaintiff “accepted the Skutumpah road as a county road and the R.S. 2477 right-of-way” are legal conclusions to which no responsive pleading is required. The United States lacks sufficient information to form a belief as to the truth of the remaining allegations of Paragraph 196 and therefore denies the same.

197. The United States lacks sufficient information to form a belief as to the truth of the allegations of the first and second sentences of Paragraph 197 and therefore denies the same. The United States denies the allegations of the third sentence of Paragraph 197, and admits that some sections of the Skutumpah road are prone to washouts that require periodic repairs.

198. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 198 and therefore denies the same.

199. The allegations of Paragraph 199 are legal conclusions based on Utah Code Ann. § 27-12-22, which speaks for itself and is the best evidence of its contents

and therefore no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that Kane County designated the Skutumpah road as a Kane County road (General Highways) and expended public funds on this road on or before 1950, and therefore denies the same.

200. The United States admits that in July 1977 the BLM and Plaintiff signed a document entitled “Memorandum of Understanding to Clarify Road Construction & Maintenance Responsibilities in Kane County between The Bureau of Land Management and the Kane County Commission,” (hereinafter “MOU”) which speaks for itself and is the best evidence of its contents and therefore no responsive pleading is required. The United States nonetheless affirmatively denies the allegation that the MOU confirms that any alleged rights-of-way for the Skutumpah road included a right-of-way width of 66 feet.

201. The use of the phrase “has long served” in the allegations of Paragraph 201 renders the allegations too vague and general and without the context necessary to permit a specific response. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 201 and therefore denies the same.

202. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 202 and therefore denies the same

203. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 203 and therefore denies the same.

204. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 204 and therefore denies the same.

205. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 205 and therefore denies the same.

206. The allegations of Paragraph 206 are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that the scope of the claimed rights of way, if established, are sufficient in scope for vehicle travel and include that which is reasonable and necessary to meet the exigencies of such vehicle travel according to safe engineering practices that protect the public, the road, and prevent undue degradation of the adjacent land, and therefore denies the same.

207. The allegations of Paragraph 207 are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that there existed public motor vehicle use of the Skutumpah road as a public thoroughfare on a continuous basis for a period in excess of ten years prior to October 21, 1976, and therefore denies the same.

208. The allegations of Paragraph 208 contain legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

FOURTH CAUSE OF ACTION
[Sand Dune road]

209. The United States incorporates by reference its responses to the allegations of Paragraphs 1 to 118.

210. The United States admits that certain Kane County records identify the Sand Dune road as Road K1000.

211. The United States generally admits the allegations of Paragraph 211, except for the mileage allegation, as the United States lacks sufficient information to form a belief as to the truth of that allegation and therefore denies the same.

212. Paragraph 212 is not a factual allegation but rather constitutes Plaintiff's description of its claims, and therefore no responsive pleading is required. To the extent the paragraph incorporates or implies factual allegations, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 212 and therefore denies the same.

213. The allegations of Paragraph 213 are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that the scope of the claimed right of way, if established, is that reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road, including a 66 foot right of way (33 feet from the centerline descriptions provided in the Amended Complaint), and therefore denies the same.

214. The use of the phrase "has long appeared" in the allegations of Paragraph 214 renders the allegations too vague and general and without the context necessary

to permit a specific response. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

215. With respect to the allegations of the first, third, and fifth sentences of Paragraph 215, the United States admits that the Kanab, Utah 7.5 minute quadrangle map, the Yellowjacket Canyon, Utah 7.5 minute quadrangle map, and the Elephant Butte, Utah 7.5 minute quadrangle map, issued by the USGS, show unimproved dirt roads in the general vicinity of the route described in Paragraph 211. With respect to the allegations of the second, fourth, and sixth sentences of Paragraph 215, the United States admits that maps entitled “Kanab, Utah,” “Yellowjacket Canyon, Utah,” and “Elephant Butte, Utah,” which appear to be published in their original forms by the USGS, are attached to the Amended Complaint as Exhibits 18-20. However, the United States denies that Exhibits 18-20 constitute, in their present form, true and correct copies of USGS maps as they contains markings and notations which appear to have been made by someone other than the USGS. As to the allegations of the seventh sentence of Paragraph 215, the United States lacks sufficient information to form a belief as to the truth of such allegations and therefore denies the same.

216. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 216 and therefore denies the same.

217. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 217 and therefore denies the same.

218. The allegations of Paragraph 218 contain legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

219. The allegations of Paragraph 219 contain legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

220. The allegations of Paragraph 220 are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that the scope of the claimed right of way, if established, is that reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road, including a 66 foot right of way (33 feet from the centerline descriptions provided in the Amended Complaint), and therefore denies the same.

221. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 221 and therefore denies the same.

222. The allegations of Paragraph 222 are legal conclusions based on Utah Code Ann. § 27-12-22, which speaks for itself and is the best evidence of its contents and to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegation that Kane County designated the entire Sand Dune road as a

county road as early as 1950, and therefore denies the same

223. The allegations of Paragraph 223 that Plaintiff “accepted the Sand Dune road as a country road and its R.S. 2477 right-of-way” are legal conclusions to which no responsive pleading is required. The United States lacks sufficient information to form a belief as to the truth of the remaining allegations of Paragraph 223 and therefore denies the same.

224. The United States lacks sufficient information to form a belief as to the truth of the allegations of the first, second, and third sentences of Paragraph 224 and therefore denies the same. The use of the phrase “high speed” in the allegations of the fourth sentence of Paragraph 224 renders the allegations too vague and general and without the context necessary to permit a specific response. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

225. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 225 and therefore denies the same.

226. The allegations of Paragraph 226 are legal conclusions based on Utah Code Ann. § 27-12-22, which speaks for itself and is the best evidence of its contents and therefore no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that Kane County designated the Sand Dune road as a Kane County road (General Highways) and expended public

funds on this road on or before 1950, and therefore denies the same.

227. The allegations of Paragraph 227 contain legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

228. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 228 and therefore denies the same

229. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 229 and therefore denies the same.

230. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 230 and therefore denies the same.

231. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 231 and therefore denies the same.

232. The allegations of Paragraph 232 are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that the scope of the claimed rights of way, if established, are sufficient in scope for vehicle travel and include that which is reasonable and necessary to meet the exigencies of such vehicle travel according to safe engineering practices that protect the public, the road, and prevent undue degradation of the adjacent land, and therefore denies the same.

233. The allegations of Paragraph 233 are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that there existed public motor vehicle use of the Sand Dune road as a public thoroughfare on a continuous basis for a period in excess of ten years prior to October 21, 1976, and therefore denies the same.

234. The allegations of Paragraph 234 contain legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

FIFTH CAUSE OF ACTION

[Hancock road]

235. The United States incorporates by reference its responses to the allegations of Paragraphs 1 to 118.

236. The United States admits that certain Kane County records identify the Hancock road as Road K1100.

237. The United States generally admits the allegations of Paragraph 237, except for the mileage allegation, as the United States lacks sufficient information to form a belief as to the truth of that allegation and therefore denies the same.

238. Paragraph 238 is not a factual allegation but rather constitutes Plaintiff's description of its claims, and therefore no responsive pleading is required. To the extent the paragraph incorporates or implies factual allegations, the United States lacks sufficient information

to form a belief as to the truth of the allegations of Paragraph 238 and therefore denies the same.

239. The allegations of Paragraph 239 are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that the scope of the claimed right of way, if established, is that reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road, including a 66 foot right of way (33 feet from the centerline descriptions provided in the Amended Complaint), and therefore denies the same.

240. The use of the phrase “has long appeared” in the allegations of Paragraph 240 renders the allegations too vague and general and without the context necessary to permit a specific response. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

241. The United States admits that the Kanab, Utah 7.5 minute quadrangle map, and the Yellowjacket Canyon, Utah 7.5 minute quadrangle map, issued by the USGS, show unimproved dirt roads in the general vicinity of the route described in Paragraph 237. The United States admits that copies of maps entitled “Kanab, Utah,” and “Yellowjacket Canyon, Utah,” which appears to have been published in their original form by the USGS, are attached to the Amended Complaint as Exhibits 18 and 19. However, the United States denies that Exhibits 18 and 19 constitute, in their present form, true and correct copies of USGS maps as they contain markings and notations which appear to have been made by someone other than the USGS. As to the allegations

of the third sentence of Paragraph 241, the United States lacks sufficient information to form a belief as to the truth of such allegations and therefore denies the same.

242. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 242 and therefore denies the same.

243. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 243 and therefore denies the same.

244. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 244 and therefore denies the same.

245. The allegations of Paragraph 245 contain legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

246. The allegations of Paragraph 246 contain legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

247. The allegations of Paragraph 247 are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that the scope of the claimed right of way, if established, is that reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road, including a 66 foot

right of way (33 feet from the centerline descriptions provided in the Amended Complaint), and therefore denies the same.

248. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 248 and therefore denies the same.

249. The allegations of Paragraph 249 are legal conclusions based on Utah Code Ann. § 27-12-22, which speaks for itself and is the best evidence of its contents and therefore no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegation that Kane County designated the Hancock road as a county road as early as 1965, and therefore denies the same

250. The allegations of Paragraph 250 that Plaintiff “accepted the Hancock road as a county road crossing an R.S. 2477 right-of-way” are legal conclusions to which no responsive pleading is required. The United States lacks sufficient information to form a belief as to the truth of the remaining allegations of Paragraph 250 and therefore denies the same.

251. The United States lacks sufficient information to form a belief as to the truth of the allegations of the first and second sentences of Paragraph 251 and therefore denies the same. The United States admits the allegations of the third sentence of Paragraph 251.

252. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 252 and therefore denies the same.

253. The allegations of Paragraph 253 are legal conclusions based on Utah Code Ann. § 27-12-22, which speaks for itself and is the best evidence of its contents

and therefore no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that Kane County designated the Hancock road as a Kane County road (General Highways) and expended public funds on this road on or before 1965, and therefore denies the same.

254. The use of the phrase “has long served” in the allegations of Paragraph 254 renders the allegations too vague and general and without the context necessary to permit a specific response. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 254 and therefore denies the same.

255. The United States lacks sufficient information to form a belief as to the truth of the allegations of the first sentence of Paragraph 255 and therefore denies the same. The use of the phrase “government employees” in the allegations of the second sentence of Paragraph 255 renders the allegations too vague and general and without the context necessary to permit a specific response. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

256. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 256 and therefore denies the same

257. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 257 and therefore denies the same.

258. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 258 and therefore denies the same.

259. The allegations of Paragraph 259 are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that the scope of the claimed rights of way, if established, are sufficient in scope for vehicle travel and include that which is reasonable and necessary to meet the exigencies of such vehicle travel according to safe engineering practices that protect the public, the road, and prevent undue degradation of the adjacent land, and therefore denies the same.

260. The allegations of Paragraph 260 are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that there existed public motor vehicle use of the Hancock road as a public thoroughfare on a continuous basis for a period in excess of ten years prior to October 21, 1976, and therefore denies the same.

261. The allegations of Paragraph 261 contain legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

SIXTH CAUSE OF ACTION

[Swallow Park/Park Wash road]

262. The United States incorporates by reference its responses to the allegations of Paragraphs 1 to 118.

263. The United States admits that certain Kane County records identify the so-called Swallow Park/Park Wash route as Road K4360.

264. The United States denies the allegations of Paragraph 264 and admits that the so-called Swallow Park/Park Wash route, as described in the Amended Complaint, commences in section 9, T40S, R3W, S.L.M., at the intersection of the so-called North Swag route, and generally proceeds in a northwesterly direction to section 19, T39S, R3W, S.L.M., at the intersection with the Skutumpah road.

265. Paragraph 265 is not a factual allegation but rather constitutes Plaintiff's description of its claims, and therefore no responsive pleading is required. To the extent the paragraph incorporates or implies factual allegations, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 265 and therefore denies the same.

266. The allegations of Paragraph 266 are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that the scope of the claimed right of way, if established, is that reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road, including a 66 foot right of way (33 feet from the centerline descriptions provided in the Amended Complaint), and therefore denies the same.

267. The use of the phrase "has long appeared" in the allegations of Paragraph 267 renders the allegations too vague and general and without the context necessary

to permit a specific response. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

268. The United States admits that the Deer Spring Point, Utah 7.5 minute quadrangle map issued by the USGS shows unimproved dirt roads in the general vicinity of the route described in Paragraph 264. The United States admits that a copy of a map entitled “Deer Spring Point, Utah,” which appears to have been published in its original form by the USGS, is attached to the Amended Complaint as Exhibit 14. However, the United States denies that Exhibit 14 constitutes, in its present form, a true and correct copy of a USGS map as it contains markings and notations which appear to have been made by someone other than the USGS. As to the allegations of the second sentence of Paragraph 268, the United States lacks sufficient information to form a belief as to the truth of such allegations and therefore denies the same.

269. The United States denies the allegations in Paragraph 269 and admits that on the 1965 General Highway Map, Kane County, Utah, an unnamed road appears in the general vicinity of the northernmost portion of the claimed Swallow Park/Park Wash route as described in the Amended Complaint.

270. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 270 and therefore denies the same.

271. The allegations of Paragraph 271 contain legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the

United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

272. The allegations of Paragraph 272 contain legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

273. The allegations of Paragraph 273 are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that the scope of the claimed right of way, if established, is that reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road, including a 66 foot right of way (33 feet from the centerline descriptions provided in the Amended Complaint), and therefore denies the same.

274. The United States admits that on the 1965 General Highway Map, Kane County, Utah, an unnamed road appears in the general vicinity of the northernmost portion of the claimed Swallow Park/Park Wash route as described in the Amended Complaint. The United States otherwise lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 274, and therefore denies the same.

275. The allegations of Paragraph 275 are legal conclusions based on Utah Code Ann. § 27-12-22, which speaks for itself and is the best evidence of its contents and therefore no responsive pleading is required. Further, the United States lacks sufficient information to

form a belief as to the truth of the allegation that Kane County designated the Swallow Wash/Park Wash road as a county road as early as 1965, and therefore denies the same

276. The allegations of Paragraph 276 that Plaintiff “accepted the northernmost segment of the Swallow Park/Park Wash road as a county road and its R.S. 2477 right-of-way” are legal conclusions to which no responsive pleading is required. The United States lacks sufficient information to form a belief as to the truth of the remaining allegations of Paragraph 276 and therefore denies the same.

277. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 277 and therefore denies the same.

278. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 278 and therefore denies the same.

279. The allegations of Paragraph 279 are legal conclusions based on Utah Code Ann. § 27-12-22, which speaks for itself and is the best evidence of its contents and therefore no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that Kane County designated the so-called Swallow Park/Park Wash route as a Kane County road (General Highways) and expended public funds on this road on or before 1965, and therefore denies the same.

280. The use of the phrase “has long served” in the allegations of Paragraph 280 renders the allegations too vague and general and without the context necessary to permit a specific response. To the extent a responsive

pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 280 and therefore denies the same.

281. The United States lacks sufficient information to form a belief as to the truth of the allegations of the first sentence of Paragraph 281 and therefore denies the same. The use of the phrase “government employees” in the allegations of the second sentence of Paragraph 281 renders the allegations too vague and general and without the context necessary to permit a specific response. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

282. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 282 and therefore denies the same.

283. The United States admits that a portion of the so-called Swallow Park/Park Wash route has been designated for administrative use only in the MMP. The United States lacks sufficient information to form a belief as to the truth of the remaining allegations of Paragraph 283 and therefore denies the same.

284. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 284 and therefore denies the same.

285. The allegations of Paragraph 285 are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that the scope of the claimed rights of way, if established, are sufficient in scope for vehicle travel and include that

which is reasonable and necessary to meet the exigencies of such vehicle travel according to safe engineering practices that protect the public, the road, and prevent undue degradation of the adjacent land, and therefore denies the same.

286. The allegations of Paragraph 286 are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that there existed public motor vehicle use of the claimed Swallow Park/Park Wash route as a public thoroughfare on a continuous basis for a period in excess of ten years prior to October 21, 1976, and therefore denies the same.

287. The allegations of Paragraph 287 contain legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same

SEVENTH CAUSE OF ACTION

[North Swag road]

288. The United States incorporates by reference its responses to the allegations of Paragraphs 1 to 118.

289. The United States admits that certain Kane County records identify the so-called North Swag route as Road K4370.

290. The United States denies the allegations of Paragraph 290, and admits that the so-called North Swag route, as described in the amended complaint, commences generally in section 30, T40S, R2W, S.L.M., and generally proceeds in a northwesterly direction, but lacks sufficient information to form a belief as to the truth of the

remaining allegations of Paragraph 290 and therefore denies the same.

291. Paragraph 291 is not a factual allegation but rather constitutes Plaintiff's description of its claims, and therefore no responsive pleading is required. To the extent the paragraph incorporates or implies factual allegations, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 291 and therefore denies the same.

292. The allegations of Paragraph 292 are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that the scope of the claimed right of way, if established, is that reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road, including a 66 foot right of way (33 feet from the centerline descriptions provided in the Amended Complaint), and therefore denies the same.

293. The use of the phrase "has long appeared" in the allegations of Paragraph 293 renders the allegations too vague and general and without the context necessary to permit a specific response. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

294. The United States admits that the Deer Spring Point, Utah 7.5 minute quadrangle map issued by the USGS shows unimproved dirt roads in the general vicinity of the route described in Paragraph 290. The United States admits that a copy of a map, entitled "Deer Spring Point, Utah," which appears to have been

published in its original form by the USGS, is attached to the Amended Complaint as Exhibit 21. However, the United States denies that Exhibit 21 constitutes, in its present form, a true and correct copy of a USGS map as it contains markings and notations which appear to have been made by someone other than the USGS. As to the allegations of the third sentence of Paragraph 294, the United States lacks sufficient information to form a belief as to the truth of such allegations and therefore denies the same.

295. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 295 and therefore denies the same.

296. The allegations of Paragraph 296 contain legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

297. The allegations of Paragraph 297 contain legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

298. The allegations of Paragraph 298 are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that the scope of the claimed rights of way, if established, are sufficient in scope for vehicle travel and include that

which is reasonable and necessary to meet the exigencies of such vehicle travel according to safe engineering practices that protect the public, the road, and prevent undue degradation of the adjacent land, and therefore denies the same.

299. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 299 and therefore denies the same.

300. The use of the phrase “has long served” in the allegations of Paragraph 300 renders the allegations too vague and general and without the context necessary to permit a specific response. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 300 and therefore denies the same.

301. The United States lacks sufficient information to form a belief as to the truth of the allegations of the first sentence of Paragraph 301 and therefore denies the same. The use of the phrase “government employees” in the allegations of the second sentence of Paragraph 301 renders the allegations too vague and general and without the context necessary to permit a specific response. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations of the second sentence of Paragraph 301 and therefore denies the same. The United States admits the allegations of the third sentence of Paragraph 301 that the so-called North Swag route does not appear on Map 2 of the MMP but lacks sufficient information to form a belief as to the truth of the remaining allegations of the sentence and therefore denies the same.

302. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 302 and therefore denies the same.

303. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 303 and therefore denies the same.

304. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 304 and therefore denies the same.

305. The allegations of Paragraph 305 are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that the scope of the claimed rights of way, if established, are sufficient in scope for vehicle travel and include that which is reasonable and necessary to meet the exigencies of such vehicle travel according to safe engineering practices that protect the public, the road, and prevent undue degradation of the adjacent land, and therefore denies the same.

306. The allegations of Paragraph 306 are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that there existed public motor vehicle use of the so-called North Swag route as a public thoroughfare on a continuous basis for a period in excess of ten years prior to October 21, 1976, and therefore denies the same.

307. The allegations of Paragraph 307 contain legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the

United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

EIGHTH CAUSE OF ACTION

[Nipple Lake road]

308. The United States incorporates by reference its responses to the allegations of Paragraphs 1 to 118.

309. The United States admits that certain Kane County records identify the so-called Nipple Lake route, as described in the Amended Complaint, as Road K4290.

310. The United States denies the allegations of Paragraph 310 and admits that the so-called Nipple Lake route, as described in the Amended Complaint, occurs in section 30, T40S, R2W.

311. Paragraph 311 is not a factual allegation but rather constitutes Plaintiff's description of its claims, and therefore no responsive pleading is required. To the extent the paragraph incorporates or implies factual allegations, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 311 and therefore denies the same.

312. The allegations of Paragraph 312 are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that the scope of the claimed right of way, if established, is that reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road, including a 66 foot right of way (33 feet from the centerline descriptions provided in the Amended Complaint), and therefore denies the same.

313. The use of the phrase “has long appeared” in the allegations of Paragraph 313 renders the allegations too vague and general and without the context necessary to permit a specific response. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

314. The United States admits that the Deer Spring Point, Utah 7.5 minute quadrangle map issued by the USGS shows unimproved dirt roads in the general vicinity of the route described in Paragraph 310. The United States admits that a copy of a map entitled “Deer Spring, Utah,” which appears to have been published in its original form by the USGS, is attached to the Amended Complaint as Exhibit 21. However, the United States denies that Exhibit 21 constitutes, in its present form, a true and correct copy of a USGS map as it contains markings and notations which appear to have been made by someone other than the USGS. As to the allegations of the second sentence of Paragraph 314, the United States lacks sufficient information to form a belief as to the truth of such allegations and therefore denies the same.

315. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 315 and therefore denies the same.

316. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 316 and therefore denies the same.

317. The allegations of Paragraph 317 contain legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the

United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

318. The allegations of Paragraph 318 contain legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

319. The allegations of Paragraph 319 are legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that the scope of the claimed right of way, if established, is that reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road, including a 66 foot right of way (33 feet from the centerline descriptions provided in the Amended Complaint), and therefore denies the same.

320. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 320 and therefore denies the same.

321. The allegations of Paragraph 321 are legal conclusions based on Utah Code Ann. § 27-12-22, which speaks for itself and is the best evidence of its contents and therefore no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegation that Kane County designated the claimed Nipple Lake road as a

county road as early as 1975, and therefore denies the same

322. The allegation in Paragraph 322 that Kane County “accepted the Nipple Lake road as a county road and the R.S. 2477 right-of-way” is a legal conclusion to which no responsive pleading is required. The United States lacks sufficient information to form a belief as to the truth of the remaining allegations of Paragraph 322 and therefore denies the same.

323. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 323 and therefore denies the same.

324. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 324 and therefore denies the same.

325. The allegations of Paragraph 325 are legal conclusions based on Utah Code Ann. § 27-12-22, which speaks for itself and is the best evidence of its contents and therefore no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that Kane County designated the so-called Nipple Lake route as a Kane County road (General Highways) and expended public funds on this road on or before 1975, and therefore denies the same.

326. The use of the phrase “has long served” in the allegations of Paragraph 326 renders the allegations too vague and general and without the context necessary to permit a specific response. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 326 and therefore denies the same.

327. The United States lacks sufficient information to form a belief as to the truth of the allegations of the first sentence of Paragraph 327 and therefore denies the same. The use of the phrase “government employees” in the allegations of the second sentence of Paragraph 327 renders the allegations too vague and general and without the context necessary to permit a specific response. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

328. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 328 and therefore denies the same

329. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 329 and therefore denies the same.

330. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 330 and therefore denies the same.

331. The allegations of Paragraph 331 are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that the scope of the claimed rights of way, if established, are sufficient in scope for vehicle travel and include that which is reasonable and necessary to meet the exigencies of such vehicle travel according to safe engineering practices that protect the public, the road, and prevent undue degradation of the adjacent land, and therefore denies the same.

332. The allegations of Paragraph 332 are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that there existed public motor vehicle use of the so-called Nipple Lake route as a public thoroughfare on a continuous basis for a period in excess of ten years prior to October 21, 1976, and therefore denies the same.

333. The allegations of Paragraph 333 contain legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same

NINTH CAUSE OF ACTION

[Cave Lakes roads]

334. The United States incorporates by reference its responses to the allegations of Paragraphs 1 to 118.

335. The United States admits that certain Kane County records identify the so-called Cave Lake routes as K1070, K1075, K1087, and K1088.

336. The United States denies the allegations in Paragraph 336, and admits that the so-called Cave Lakes route identified in certain of Kane County's records as K1070, as described in the Amended Complaint, is located generally in sections 34 and 35, T42S, R7W, SLM, and intersects the Hancock road in section 34, T42S, R7W, SLM. The United States lacks sufficient information to form a belief as to the truth of the remaining allegations of Paragraph 336 and therefore denies the same.

337. Paragraph 337 is not a factual allegation but rather constitutes Plaintiff's description of its claims, and therefore no responsive pleading is required. To the extent the paragraph incorporates or implies factual allegations, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 337 and therefore denies the same.

338. The United States denies the allegations in Paragraph 338 and admits that the so-called Cave Lakes route identified in certain of Kane County's records as K1075, and as described in the Amended Complaint, is located generally in sections 34 and 35, T42S, R7W, SLM, and intersects the Hancock road in section 34, T42S, R7W, SLM. The United States lacks sufficient information to form a belief as to the truth of the remaining allegations of Paragraph 338 and therefore denies the same.

339. Paragraph 339 is not a factual allegation but rather constitutes Plaintiff's description of its claims, and therefore no responsive pleading is required. To the extent the paragraph incorporates or implies factual allegations, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 339 and therefore denies the same.

340. The United States admits that the so-called Cave Lakes route K1087 as described in the Amended Complaint is located generally in sections 24, T42S, R7W, SLM, and denies that it connects to Hancock Road in section 34, T42S, R7W, SLM.

341. Paragraph 341 is not a factual allegation but rather constitutes Plaintiff's description of its claims, and therefore no responsive pleading is required. To the

extent the paragraph incorporates or implies factual allegations, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 341 and therefore denies the same.

342. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 342 and therefore denies the same.

343. Paragraph 343 is not a factual allegation but rather constitutes Plaintiff's description of its claims, and therefore no responsive pleading is required. To the extent the paragraph incorporates or implies factual allegations, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 343 and therefore denies the same.

344. The allegations of Paragraph 344 are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that the scope of the claimed right of way, if established, is that reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road, including a 66 foot right of way (33 feet from the centerline descriptions provided in the Amended Complaint), and therefore denies the same.

345. The use of the phrase "has long appeared" in the allegations of Paragraph 345 renders the allegations too vague and general and without the context necessary to permit a specific response. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

346. The United States admits that the Kanab, Utah-Arizona 7.5 minute quadrangle map issued by the USGS shows unimproved dirt roads in the general vicinity of the route described in Paragraph 340. The United States admits that a copy of a map entitled “Kanab, Utah-Arizona,” which appears to have been published in its original form by the USGS, is attached to the Amended Complaint as part of Exhibit 22. However, the United States denies that such map constitutes, in its present form, a true and correct copy of a USGS map as it contains markings and notations which appear to have been made by someone other than the USGS. As to the allegations of the second sentence of Paragraph 346, the United States lacks sufficient information to form a belief as to the truth of such allegations and therefore denies the same.

347. The United States admits that the Kanab, Utah-Arizona 7.5 minute quadrangle map issued by the USGS shows unimproved dirt roads in the general vicinity of the routes described in Paragraphs 336 and 338. The United States admits that a copy of a map entitled “Kanab, Utah-Arizona,” which appears to have been published in its original form by the USGS, is attached to the Amended Complaint as part of Exhibit 22. However, the United States denies that such map constitutes, in its present form, a true and correct copy of a USGS map as it contains markings and notations which appear to have been made by someone other than the USGS. As to the allegations of the second sentence of Paragraph 347, the United States lacks sufficient information to form a belief as to the truth of such allegations and therefore denies the same.

348. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 348 and therefore denies the same.

349. The allegations of Paragraph 349 contain legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

350. The allegations of Paragraph 350 contain legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

351. The allegations of Paragraph 351 are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that the scope of the claimed right of way, if established, is that reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road, including a 66 foot right of way (33 feet from the centerline descriptions provided in the Amended Complaint), and therefore denies the same.

352. The use of the phrase “has long served” in the allegations of Paragraph 352 renders the allegations too vague and general and without the context necessary to permit a specific response. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 352 and therefore denies the same.

353. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 353 and therefore denies the same.

354. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 354 and therefore denies the same

355. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 355 and therefore denies the same.

356. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 356 and therefore denies the same.

357. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 357 and therefore denies the same.

358. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 358 and therefore denies the same

359. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 359 and therefore denies the same.

360. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 360 and therefore denies the same.

361. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 361 and therefore denies the same.

362. The allegations of Paragraph 362 are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information

to form a belief as to the truth of the allegations that the scope of the claimed rights of way, if established, are sufficient in scope for vehicle travel and include that which is reasonable and necessary to meet the exigencies of such vehicle travel according to safe engineering practices that protect the public, the road, and prevent undue degradation of the adjacent land, and therefore denies the same.

363. The allegations of Paragraph 363 are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations that there existed public motor vehicle use of the so-called Cave Lakes routes as public thoroughfares on a continuous basis for a period in excess of ten years prior to October 21, 1976, and therefore denies the same.

364. The allegations of Paragraph 364 contain legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

REQUEST FOR RELIEF

The allegations set forth in paragraphs 1 to 11 of this section are requests for relief to which no responses are required.

GENERAL DENIAL

To the extent that any allegations of the Amended Complaint have not been admitted or specifically responded to, the United States denies such allegations.

FIRST DEFENSE

The Court lacks jurisdiction over the subject matter of this action due to Plaintiff's failure to satisfy the "particularity" requirement of the Quiet Title Act and thereby invoke a waiver of the United States' sovereign immunity under the Act.

SECOND DEFENSE

The Court lacks jurisdiction over the subject matter of this action due to Plaintiff's failure to allege facts sufficient to show that it can satisfy the statute of limitations set forth in the Quiet Title Act.

THIRD DEFENSE

The Court lacks jurisdiction over the subject matter of this action due to Plaintiff's failure to allege a justiciable case or controversy between the parties with respect to certain of Plaintiff's claims.

FOURTH DEFENSE

The Court lacks jurisdiction over the subject matter of this action due to Plaintiff's failure to satisfy the requirement that it demonstrate a disputed title to real property with respect to certain of Plaintiff's claims under the Quiet Title Act and thereby invoke a waiver of the United States' sovereign immunity under the Act.

FIFTH DEFENSE

Plaintiff has failed to state a claim upon which relief can be granted.

SIXTH DEFENSE

Plaintiff has failed to join indispensable parties under Rule 19 of the Federal Rules of Civil Procedure, including with respect to the claimed rights-of-way that cross private land.

SEVENTH DEFENSE

Plaintiff's claims may be barred by the statute of limitations in the Quiet Title Act.

WHEREFORE, having fully answered, the United States prays that this action be dismissed, that judgment be entered for the United States, and that the Court grant such other and further relief as it may deem just and appropriate.

RESPECTFULLY SUBMITTED this 13th day of Nov., 2009.

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Acting Assistant Attorney General

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APPENDIX I

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

Case No. 2:08-CV-0315 CW

KANE COUNTY, UTAH, A POLITICAL SUBDIVISION,
PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANTS
STATE OF UTAH, INTERVENOR-PLAINTIFF

Filed: Apr. 29, 2010

INTERVENOR'S COMPLAINT TO QUIET TITLE

Intervenor-Plaintiff State of Utah ("State"), for claims against Defendants, alleges as follows:

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 Section 8 of the Mining Act of 1866, 14 Stat. 251, 253, later codified as Revised Statutes 2477 and as 43 U.S.C. § 932 (repealed October 21, 1976 with savings provisions recognizing validity of rights-of-way already established) (hereinafter "R.S. 2477").

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). On or about June 14, 2000, the State of Utah filed a Notice of Intent to Sue with the Secretary of Interior over certain R.S. 2477 rights-of-way, including the all of the roads in this action in Kane County, with the exception of the Caves Lakes No. 4 road. A copy of this letter is attached as Exhibit 1. Thus, to the extent a Notice of Intent to Sue is required for a state to intervene in an ongoing legal action, the State of Utah has complied with the Quiet Title Act.

3. Venue is proper under 28 U.S.C. § 1391(e) inasmuch as the lands at 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. The State and the several Utah Counties are joint owners of R.S. 2477 rights-of-way in Utah. UTAH CODE ANN. §§ 72-5-302(2) and 72-5-103(2)(b).

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

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

7. R.S. 2477, originally enacted as Section 8 of the Mining Act of 1866, provides as follows:

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.

8. 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.

9. 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).

10. R.S. 2477 was a congressional and self-executing grant; ratification or approval by the federal government was not required to perfect an R.S. 2477 right-of-way. *SUWA v. BLM*, 425 F.3d 735, 741 (10th Cir. 2005); *Sierra Club v. Hodel*, 848 F. 2d 1068, 1083-84 (10th Cir. 1988).

11. Federal law borrows from state law to determine the perfection and scope of an R.S. 2477 right-of-way. *SUWA v. BLM*, 425 F.3d 735, 763 (10th Cir. 2005).

12. In Utah, an R.S. 2477 right-of-way may be established (“perfected”) by public use for a period of ten years without formal action by any public authority (UTAH CODE ANN. § 72-5-104), or by affirmative non-

federal governmental action indicating an intent to accept the grant, including but not limited to construction or maintenance of a road.

13. The scope of an R.S. 2477 right-of-way includes reasonable and necessary uses to which the right-of-way has been put. *Hodel*, 846 F.2d at 1083-84 (affirming the District Court's "reasonable and necessary" definition); *United States v. Garfield County*, 122 F. Supp. 2d 1201, 1229-30 (D. Utah 2000) (recognizing the "reasonable and necessary" standard).

14. Such areas along the roadway beyond the actual beaten path as are reasonable and necessary to provide safe travel on the road, including lands on which attendant accouterments such as drainage ditches and culverts existed as of the date of the reservation of the subject lands adjacent to the road, or reasonably and necessarily are added after that date to accommodate increased travel for pre-existing uses, 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 1083-84.

15. 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. *Id.* at 1083, 1086 n.16.

16. 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.

17. 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.

18. FLPMA section 701(h) provides:

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

19. 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.

20. In 1939, DOI regulations provided:

[R.S. 2477 (43 U.S.C. 932)] becomes effective upon the construction or establishing of high-ways, 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).

21. “Normal Maintenance Activities” as used in this complaint means routine maintenance involving use of appropriate equipment to conduct reasonable and necessary activities to maintain the road (*Hodel*, 846 F.2d at 1083, 1086 n.16) including, but not limited to reasonable and necessary activities of the following types:

- a. Making minor deviations in the road for safety purposes;

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- b. Grooming the 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, if any, 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; and,
- n. Repairing washouts.

22. 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.

23. With the State's consent, Utah counties have performed Normal Maintenance Activities on thousands of miles of roads for decades. These activities are gen-

erally conducted on an “as needed” basis, taking into account the County’s financial resources available for that purpose.

ACCEPTANCE AND SCOPE OF KANE COUNTY
AND THE STATE OF UTAH’S R.S. 2477
RIGHTS-OF-WAY

24. After 1866 and prior to the repeal of R.S. 2477 on October 21, 1976, Kane County and the State of Utah, by and on behalf of the public, accepted R.S. 2477 rights-of-way for the Mill Creek, Bald Knoll, Skutumpah, Sand Dune, Hancock, Swallow Park/Park Wash, North Swag, Nipple Lake, and the four Cave Lakes roads described herein on public lands not reserved for public uses. As public land grants, the owner of these rights-of-way has the right to access and use these property interests.

25. At the relevant times, State law provided that a public highway right-of-way was dedicated and accepted under the jurisdiction and control of the local highway authority (Kane County and the State of Utah) by designating the road as a county highway and expending public funds to construct and maintain the road. *See* UTAH CODE ANN. § 72-3-103 (prior law in accord); *see also* UTAH CODE ANN. § 27-12-22 (1963).

26. As shown herein, the R.S. 2477 public highway rights-of-way for the Mill Creek Bald Knoll, Skutumpah, Sand Dune, Hancock, Nipple Lake, and portions of the Swallow Park/Park Wash roads were accepted by Kane County and the State of Utah’s designation of these roads as county highways and expending public funds to construct and maintain these roads prior to October 21, 1976.

27. At the relevant times herein State law provided that a public highway right-of-way is “dedicated and abandoned to the use of the public when it has been continuously used as a public thoroughfare for a period of ten years.” UTAH CODE ANN. § 72-5-104 (prior law in accord).

28. As shown herein, the R.S. 2477 public highway rights-of-way for the Mill Creek Bald Knoll, Skutumpah, Sand Dune, Hancock, Swallow Park/Park Wash, North Swag, Nipple Lake, and the four Cave Lakes roads were accepted by continuous use as public thoroughfares for period in excess of ten years prior to October 21, 1976.

29. Kane County and the State of Utah’s vested public highway rights-of-way for the Mill Creek, Bald Knoll, Skutumpah, Sand Dune, Hancock, Swallow Park/Park Wash, North Swag, Nipple Lake, and the four Cave Lakes roads continue as valid existing rights until abandoned by Kane County and the State of Utah. *See* UTAH CODE ANN. §§ 72-5-103 - 105, 305.

30. Kane County and the State of Utah have not abandoned the public highway rights-of-way for the Mill Creek, Bald Knoll, Skutumpah, Sand Dune, Hancock, Swallow Park/Park Wash, North Swag, Nipple Lake, and the four Cave Lakes roads claimed herein.

**THE MILL CREEK, BALD KNOLL, SKUTUMPAH,
SAND DUNE, HANCOCK, SWALLOW PARK/PARK
WASH, NORTH SWAG, NIPPLE LAKE AND CAVE
LAKES ROADS**

31. The Mill Creek and Bald Knoll roads are located in western Kane County, Utah.

32. The Mill Creek and Bald Knoll roads cross private and public lands within Townships 40 and 41 South,

Range 4.5 and 5 West, S.L.M. The course and location of the Mill Creek and Bald Knoll roads are shown on Exhibit 1A attached and incorporated herein.

33. The Skutumpah road is located in western Kane County.

34. The Skutumpah road crosses private and public lands within Townships 38, 39, 40 and 41 South, Range 2, 3, 4, 4.5 and 5, S.L.M. The course and location of the Skutumpah road is shown on Attachment 1 of Exhibit 2 to Plaintiff's Amended Complaint and incorporated herein.

35. The Sand Dune road is located in southwestern Kane County.

36. The Sand Dune road crosses private, Utah School and Institutional Trust Land Administration ("SITLA"), and public lands with Township 42, 43, and 44 South, Range 7, 8, and 9 West, S.L.M. The course and location of the Sand Dune road is shown on Attachment 1 of Exhibit 3 to Plaintiff's Amended Complaint and incorporated herein.

37. The Hancock road is located in southwestern Kane County.

38. The Hancock road crosses public lands within Township 42 and 43 South, Range 6, 7, and 8 West, S.L.M. The course and location of the Hancock road is shown on Attachment 1 of Exhibit 4 to Plaintiff's Amended Complaint and incorporated herein.

39. The Swallow Park/Park Wash road, North Swag road, and Nipple Lake roads are located in western Kane County.

40. The Swallow Park/Park Wash road crosses private and public lands within Township 39 and 40 South, Range 2 West, S.L.M. The North Swag road and the Nipple Lake roads cross public lands within Township 40 South, Range 2 and 3 West, S.L.M. The course and location of the Swallow Park/Park Wash road and the North Swag road are shown on Exhibit 5A attached and incorporated herein. The course and location of the Nipple Lake road is shown on Attachment 1 to Exhibit 6 to Plaintiff's Amended Complaint and incorporated herein. The four Cave Lakes roads are located in southwestern Kane County.

41. The four Cave Lakes roads cross public lands within Township 42 South, Range 7 West, S.L.M. The course and location of the four Cave Lakes roads are shown on Exhibit 7A to Plaintiff's Amended Complaint and incorporated herein. As shown in Exhibit 7A, these roads are also designated RD130016, RD130017, RD131143 and RD121144.

42. The surveyed centerline of the Bald Knoll, Mill Creek, Swallow Park/Park Wash, North Swag and Cave Lakes roads are shown on maps of each road attached as Exhibits 1A, 5A and 7A, respectively, and were plotted using NAD83 mapping grade Global Positioning Survey ("GPS") data collected by Kane County road personnel. This centerline data has been verified, confirmed by on the ground inspection and reference to pre-1976 aerial photography, and overlaid upon United States Geological Survey topographic maps.

43. The surveyed centerline of the Skutumpah, Sand Dune, Hancock, and Nipple Lake roads are shown on maps of each road attached as Attachment 1 to Exhibits

2 (Skutumpah), 3 (Sand Dune), 4 (Hancock), and 6 (Nipple Lake) to Plaintiff's Amended Complaint and incorporated herein. The information and documentation relevant to the Skutumpah, Sand Dune, Hancock, and Nipple Lake roads was collected by Kane County personnel and compiled by the State of Utah pursuant to UTAH CODE ANN. § 72-5-309—310.

44. The road segments claimed herein for the Bald Knoll, Mill Creek, Skutumpah, Sand Dune, and Swallow Park/Park Wash and described in the GPS data, attached hereto as Exhibits 1A (Mill Creek and Bald Knoll), 2 (Skutumpah), 3 (Sand Dune), and 5B (Swallow Park/Park Wash), include only those portions of the roads crossing public lands. The segments of these roads crossing private or SITLA lands are not at issue, are not contested, and are not claimed herein.

FIRST CAUSE OF ACTION — QUIET TITLE
MILL CREEK ROAD

45. The State of Utah incorporates herein and realleges each of the foregoing paragraphs.

Description of Mill Creek Road R.S. 2477 Right-of-Way.

46. The Mill Creek road is designated as Kane County road number K4400. The Mill Creek road claimed herein includes segments also known as the Tenny Creek road K4410 and the Oak Canyon road K4405. See Exhibit 1A. to Plaintiff's Amended Complaint and incorporated herein

47. The south end of the Mill Creek road K4400 commences at its intersection with the Skutumpah road on private land in the NW quarter of section 5, Township 41 South, Range 4.5 West, S.L.M., and proceeds in a northerly direction a little over six miles to its end at three

gates on private property in the SWSE of section 34, Township 39 South, Range 4.5 West, in the NWNE of section 5, Township 40 South, Range 4.5 West, S.L.M., and in the SESW of section 6, Township 40 South, Range 4.5 West, S.L.M. See Exhibit 1A to Plaintiff's Amended Complaint and incorporated herein.

48. The specific right-of-way for the Mill Creek road on public lands claimed herein includes:

a. K4400 Segment 1, consisting of .44 miles more or less commencing in the NESE of section 29, Township 40 South, Range 4.5 West, S.L.M., and ending in the SENE of section 29, Township 40 South, Range 4.5 West, S.L.M. The NAD83 mapping grade GPS data plotting the centerline and course of the Mill Creek road K4400 Segment 1 right-of-way claimed herein is attached as Exhibit 1B to Plaintiff's Amended Complaint and incorporated herein.

b. K4400 Segment 2, consisting of 4.01 miles more or less commencing in the SENE of section 20, Township 40 South Range 4.5 West, S.L.M., proceeding northerly across sections 20, 17, 8, 5 and 6, and ending at a gate on private property in the SWSE of section 34, Township 39 South, Range 4.5 West, S.L.M. The NAD83 mapping grade GPS data plotting the precise centerline course of the Mill Creek road K4400 Segment 2 right-of-way claimed herein is attached hereto as Exhibit 1C to Plaintiff's Amended Complaint and incorporated herein.

c. K4410 Segment 3, also known as the Tenny Creek road, consisting of .4705 miles more or less commencing at its intersection with the previously described main Mill Creek road K4400 Segment 2 in the SWSE of section 5, Township 40 South, Range 4.5 West, S.L.M., and

proceeding north to its end at a gate on private property in the NWNE of section 5, Township 40 South, Range 4.5 West., S.L.M. The NAD83 mapping grade GPS data plotting the centerline course of this segment of right-of-way claimed herein is attached hereto as Exhibit 1D to Plaintiff's Amended Complaint and incorporated herein.

d. K4405 Segment 4, also known as the Oak Canyon road, consisting of .6629 miles more or less commencing at its intersection with the previously described main Mill Creek road K4400 Segment 2 in the SENE of section 6, Township 40 South, Range 4.5 West, S.L.M., and proceeding southwesterly to its end at a gate on private property in the SESW of section 6, Township 40 South, Range 4.5 West., S.L.M. The NAD83 mapping grade GPS data plotting the centerline course of this segment of right-of-way claimed herein is attached hereto as Exhibit 1E to Plaintiff's Amended Complaint and incorporated herein.

49. The Mill Creek road K4400 Segment 1 and 2 provide access across public lands and access to private property that was conveyed into private ownership by the United States on June 10, 1937.

50. The Mill Creek road K4410 Segment 3, also known as the Tenny Creek road, provides access across public lands and access to private property that was conveyed into private ownership by the United States on March 23, 1923.

51. The Mill Creek road K4405 Segment 4, also known as the Oak Canyon road, provides access across public lands and access to private property that was conveyed

into private ownership by the United States on August 8, 1957.

52. The right-of-way for the Mill Creek road claimed herein includes K4400 Segments 1 and 2, K4410 Segment 3, and K4405 Segment 4 on public lands owned by the United States. An enhanced detail map plotting the GPS centerline of the intersection and course of K4400 Segment 2, K4410 Segment 3, and K4405 Segment 4 is attached as Exhibit 11 and incorporated herein.

53. The right-of-way for the Mill Creek road claimed herein on public lands includes that which is reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road, and including a width of 66 feet (33 feet from the centerline descriptions provided herein).

Maps Depicting Mill Creek Road R.S. 2477 Right-of-Way

54. The specific length, course and location of Kane County's Mill Creek road have long appeared on United States Geological Survey ("USGS") maps.

55. The entire Mill Creek road (including each of the specific segments claimed herein) has appeared on a USGS Skutumpah Creek, Utah 7.5 minute quadrangle map since at least 1966 (as surveyed in 1964). A copy of this map is attached as Exhibit 12 to Plaintiff's Amended Complaint and incorporated herein. This attached map includes Kane County's former road numbering designations for the Mill Creek road, which are #216, #214, and #546.

56. The northernmost end of the Mill Creek road further appears on a United States Department of Agriculture Dixie National Forest map dated 1963.

57. Pre-1976 aerial photography confirms the historical existence of the Mill Creek road as located on the land and following its historical course. More recent aerial photography continues to show the road as it has historically existed.

Acceptance of the Mill Creek Road R.S. 2477 Right-of-Way Prior to October 21, 1976.

58. Prior to October 21, 1976, Kane County, the State of Utah and the public accepted the congressional grant of an R.S. 2477 public highway right-of-way for the Mill Creek road on unreserved public lands as set forth herein. This grant of a right-of-way includes access to the road.

59. The public highway right-of-way accepted and perfected for the Mill Creek road includes K4400 Segment 1, K4400 Segment 2, K4410 Segment 3, and K4405 Segment 4 as described herein on lands owned by the United States.

60. The scope of the public highway right-of-way accepted and perfected for the Mill Creek road includes that which is reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road according to applicable AASHTO standards. This includes a right-of-way width of 66 feet (33 feet from the centerline descriptions provided herein). All of Kane County's proposed improvements to the Mill Creek road are within the scope of its public highway right-of-way for the Mill Creek road.

61. The entire Mill Creek road (including the specific segments claimed herein) was officially designated as a Kane County highway on Kane County's General Highway map in 1965.

62. Segments of the Mill Creek road appear on earlier Kane County General Highway maps, including those published in 1956. However, the entirety of the Mill Creek road was first designated as a county highway on the 1965 Kane County General Highway map.

63. Kane County's designation of the Mill Creek road as a county road in 1965 confirmed that these roads were accepted "as county roads . . . under the jurisdiction and control of the county commissioners" of Kane County. UTAH CODE ANN. § 27-12-22 (1963).

64. Kane County, the State of Utah and the general public designated and accepted this county road and the R.S. 2477 right-of-way no later than 1965, and thereafter continued to construct, maintain and improve the Mill Creek road using public funds pursuant to the governmental authority of the Kane County Commission.

65. From at least the 1960's and prior to 1976, Kane County road personnel constructed, maintained and improved the Mill Creek road and installed culverts, water bars, and cattle guards on them using public funds. The location of some of these cattle guards and culverts are shown on Exhibit 1A. From at least the 1960's and continuing past 1976, Kane County road crews conducted routine maintenance of this road generally twice a year and regularly repaired those sections of the road that are prone to washouts and headcutting.

66. Kane County's designation of the Mill Creek road as a Kane County road (General Highways) and expenditure of public funds on this road on or before 1965 constituted formal acceptance of the congressional grant

of R.S. 2477 right-of-way for this public highway pursuant to State law codified in UTAH CODE ANN. § 27-12-22 (1963).

67. In 1977, the United States Bureau of Land Management and Kane County signed a memorandum confirming that county roads, including the Mill Creek road, included a right-of-way width of 66 feet.

Acceptance of the Mill Creek Road R.S. 2477 Right-of-Way By Public Use Prior to 1976.

68. The Mill Creek road has long served as a public highway providing access across public lands and to land conveyed into private ownership in 1937 (K4400 Segments 1 and 2), 1923 (K4410 Segment 3), and 1957 (K4405 Segment 4).

69. Witnesses with personal knowledge of the history of the Mill Creek road confirm public use on a continuous basis for more than ten years prior to October 21, 1976 and dating back to at least the 1940's consisting of general public travel for purposes of accessing private land, mineral exploration, hunting, livestock operations, wood gathering, camping, and recreation, and continuing through 1976 and to the present.

70. Witnesses with personal knowledge of the history of the Mill Creek road confirm public use of the road on a continuous basis for more than ten years prior to October 21, 1976 by means of car, jeep, 2-ton trucks, cattle trucks, pickup trucks, team and wagon, and bicycles.

71. The reputation in the community is that the Mill Creek road has been open for all to come and go as they please since at least as early as the 1930's and continuing through the present.

72. The Mill Creek road was used on a continuous and nonexclusive basis as public thoroughfare for decades prior to October 21, 1976.

73. The Mill Creek road traverses a valid and perfected R.S.2477 public highway right-of-way sufficient in scope for vehicle travel and includes that which is reasonable and necessary to meet the exigencies of these types of travel according to safe engineering practices that protect the public, the road, and prevent undue degradation of the adjacent land.

74. Public motor vehicle use of the Mill Creek road as a public thoroughfare traversing unreserved public lands on a continuous basis for a period in excess of ten years prior to October 21, 1976 confirms acceptance of the grant of R.S. 2477 public highway right-of-way for the Mill Creek road.

75. Kane County and the State of Utah are entitled to an order of this Court quieting title to their R.S. 2477 public highway right-of-way for the Mill Creek road described herein.

SECOND CAUSE OF ACTION — QUIET TITLE
BALD KNOLL ROAD

76. The State of Utah incorporates herein and realleges each of the foregoing paragraphs 1 through 75.

Description of Bald Knoll Road R.S. 2477 Right-of-Way

77. The Bald Knoll road is designated as Kane County road K3935. See Exhibit 1A to Plaintiff's Amended Complaint, incorporated herein.

78. The Bald Knoll road has at times been referred to as the "Coal Road" or mislabeled as the "Thompson Creek Road". The west end of the Bald Knoll road

commences in the NENW of section 3, Township 41 South, Range 5 West, S.L.M., at the boundary of private land and proceeds northwesterly across public lands to the intersection of the main Bald Knoll road in the SWSE of section 34, Township 40 South, Range 5 West, S.L.M. From this intersection, the Bald Knoll road travels northerly and then easterly to its end at an intersection with the Mill Creek road K4400 Segment 2 in the NENE of section 17, Township 40 South, Range 4.5 West, S.L.M. The total length of the Bald Knoll road is a little over nine miles. See Exhibit 1A to Plaintiff's Amended Complaint.

79. The specific right-of-way for the Bald Knoll road K3935 on public lands claimed herein includes:

a. K3930A Segment 1 (also known as the Old Leach Ranch Segment), consisting of .36 miles more or less commencing in the NENW of section 3, Township 41 South, Range 5 West, S.L.M., at the boundary of private land and ending at an intersection in the SESW of section 34, Township 40 South, Range 5 West, S.L.M. The NAD83 mapping grade GPS data plotting the centerline course of this segment of the right-of-way claimed herein is attached as Exhibit 1F to Plaintiff's Amended Complaint and incorporated by reference.

b. K3935 Segment 2 consisting of 3.29 miles more or less commencing at an intersection in the SESW of section 34, Township 40 South, Range 5 West, S.L.M., and ending at the boundary of private property in the NWNE of section 22, Township 40 South, Range 5 West, S.L.M. The NAD83 mapping grade GPS data plotting the centerline course of this segment of the right-of-way claimed herein is attached as Exhibit 1G to Plaintiff's Amended Complaint and incorporated by reference.

c. K3935 Segment 3 consisting of .24 miles more or less commencing at the boundary of private property in the NENE of section 22, Township 40 South, Range 5 West, S.L.M., and ending at the boundary of private property in the SESE of section 15, Township 40 South, Range 5 West, S.L.M. The NAD83 mapping grade GPS data plotting the centerline course of this segment of the right-of-way claimed herein is attached as Exhibit 1H to Plaintiff's Amended Complaint and incorporated by reference.

d. K3935 Segment 4 consisting of 5.15 miles more or less commencing at the boundary of private property in the SWSW of section 14, Township 40 South, Range 5 West, S.L.M., and ending at its intersection with the Mill Creek road K4400 Segment 2 in the NENE of section 17, Township 40 South, Range 4.5 West, S.L.M. The NAD83 mapping grade GPS data plotting the centerline course of this segment of the right-of-way claimed herein is attached as Exhibit 1J to Plaintiff's Amended Complaint and incorporated by reference.

80. The parcel of private property accessed by Bald Knoll road K3935 Segments 2 and 3, and from which K3935 Segment 4 departs, was conveyed into private ownership by the United States on October 23, 1928.

81. The right-of-way for the Bald Knoll road claimed herein includes K3930A Segment 1, K3935 Segment 2, K3935 Segment 3, and K3935 Segment 4 on public lands owned by the United States.

82. The right-of-way for the Bald Knoll road claimed herein on public lands includes that which is reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road, and including a width of 66 feet

(33 feet from the centerline descriptions provided herein).

Maps Depicting the Bald Knoll Road R.S. 2477 Right-of-Way

83. The specific length, course and location of Kane County's Bald Knoll road have long appeared on USGS maps.

84. The entire Bald Knoll road (including each of the specific segments claimed herein) has appeared on the Skutumpah Creek map (Exhibit 12 to Plaintiff's Amended Complaint) and on the USGS Bald Knoll, Utah 7.5 minute quadrangle map since at least 1966 (as surveyed in 1964). A copy of the Bald Knoll map is attached as Exhibit 13 to Plaintiff's Amended Complaint and incorporated by reference. The Bald Knoll map includes Kane County's former road numbering designations for the Bald Knoll road, which are #500, #515, #514 and #513.

85. Of particular note, the 1966 Bald Knoll map (Exhibit 13) specifically shows the historical existence and course of K3930A Segment 1 (also known as the Old Leach Ranch Segment), as commencing in section 3, Township 41 South, Range 5 West, S.L.M., and proceeding northwesterly as former Kane County road number 500 to its intersection with former Kane County road number 515 in section 34, Township 40 South, Range 5 West, S.L.M.

86. Pre-1976 aerial photography confirms the historical existence of the Bald Knoll road as located on the land and following its historic course. More recent aerial photography continues to show this road as it has historically existed.

Acceptance of the Bald Knoll Road R.S. 2477 Right-of-Way Prior to October 21, 1976.

87. Prior to October 21, 1976, Kane County and the public accepted the congressional grant of an R.S. 2477 public highway right-of-way for the Bald Knoll road on unreserved public lands as set forth herein. This grant of a right-of-way includes access to the road.

88. The public highway right-of-way accepted and perfected for the Bald Knoll road includes K3930A Segment 1, K3935 Segment 2, K3935 Segment 3, and K3935 Segment 4 on lands owned by the United States.

89. The scope of the public highway right-of-way accepted and perfected for the Bald Knoll road includes that which is reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road according to applicable AASHTO standards. This includes a right-of-way width of 66 feet (33 feet from the centerline descriptions provided herein). All of Kane County's proposed improvements to the Bald Knoll road are within the scope of its public highway right-of-way for the Bald Knoll road.

90. The entire Bald Knoll road (including the specific segments claimed herein) was officially designated as a Kane County general highway on Kane County's General Highway map in 1965.¹

91. Kane County's designation of the Bald Knoll road as a county road by 1965 confirmed that this road was

¹ Portions of K3935 Segment 2, 3 and 4 were improperly drawn on Kane County's General Highway maps in 1965 as an apparent carryover mapping error from a similar 1956 map. These mapping errors have since been confirmed and corrected.

accepted “as [a] county road[] . . . under the jurisdiction and control of the county commissioners” of Kane County. UTAH CODE ANN. § 27-12-22 (1963).

92. Kane County designated and accepted this county road and its R.S. 2477 right-of-way no later than 1965, and thereafter continued to construct, maintain and improve the Bald Knoll road using public funds pursuant to the governmental authority of the Kane County Commission.

93. From at least the 1960’s and prior to 1976, Kane County road personnel constructed, maintained and improved the Bald Knoll road and installed culverts, water bars, and cattle guards on it using public funds. The location of some of these cattle guards and culverts are shown on Exhibit 1A. From at least the 1960’s and continuing past 1976, Kane County road crews conducted routine maintenance of this road generally twice a year and regularly repaired sections of the road that are prone to washouts and headcutting.

94. Kane County’s designation of the Bald Knoll road as a Kane County road and expenditure of public funds on this road on or before 1965 constituted formal acceptance of the congressional grant of R.S. 2477 rights-of-way for this public highway pursuant to State law codified in UTAH CODE ANN. § 27-12-22 (1963).

95. In 1977, the United States Bureau of Land Management and Kane County signed a memorandum confirming that county roads, including the Bald Knoll road (then designated as the Thompson Creek road), included a right-of-way width of 66 feet.

Acceptance of the Bald Knoll Road R.S. 2477 Right-of-Way By Public Use Prior to 1976.

96. The Bald Knoll road has long served as a public highway providing access across public lands and to land conveyed into private ownership in 1928.

97. Witnesses with personal knowledge of the history of the Bald Knoll road confirm public use on a continuous basis for more than ten years prior to October 21, 1976 and dating back to at least 1942 consisting of general public travel for purposes of accessing private land, mining and mineral exploration, hunting, livestock operations, wood gathering, camping, and recreation continuing through 1976 to the present.

98. Witnesses with personal knowledge of the history of the Bald Knoll road confirm public use of the road on a continuous basis for more than ten years prior to October 21, 1976 by means of horse, all terrain vehicle, car, jeep, 2-ton trucks, semi-truck, D-9 Cat, tractor, cattle truck, and pickup truck.

99. The reputation in the community is that the Bald Knoll road has been open for all to come and go as they please since at least the early 1900's and continuing through the present.

100. The Bald Knoll road was used on a continuous and nonexclusive basis as public thoroughfare for decades prior to October 21, 1976.

101. The Bald Knoll road traverses a valid and perfected R.S.2477 public highway right-of-way sufficient in scope for vehicle travel and includes that which is reasonable and necessary to meet the exigencies of these types of travel according to safe engineering practices

that protect the public, the road, and prevent undue degradation of the adjacent land.

102. Public motor vehicle use of the Bald Knoll road as a public thoroughfare traversing unreserved public lands on a continuous basis for a period in excess of ten years prior to October 21, 1976 confirms acceptance of the grant of a R.S. 2477 public highway right-of-way for the Bald Knoll road.

103. Kane County and the State of Utah are entitled to an order of this Court quieting title to their R.S. 2477 public highway right-of-way for the Bald Knoll road described herein.

THIRD CAUSE OF ACTION — QUIET TITLE
SKUTUMPAH ROAD

104. The State of Utah incorporates herein and realleges each of the foregoing paragraphs 1 through 103.

Description of Skutumpah Road R.S. 2477 Right-of-Way

105. The Skutumpah road is designated as Kane County road number K5000. *See* Exhibit 2 to Plaintiff's Amended Complaint, incorporated by reference.

106. The Skutumpah road K5000 commences at the intersection of the Skutumpah road and Kane County road number K3000 in the NESE of section 11, Township 41 South, Range 5 S.L.M., and proceeds in a northeasterly direction, approximately 32.73 miles, to where it ends in the SENW of section 6, Township 38 South, Range 2 West, S.L.M. *See* Attachment 1 to Exhibit 2 to Plaintiff's Amended Complaint.

107. The specific right-of-way for the Skutumpah road claimed herein includes seven (7) separate segments on public lands, *see* Attachment 4 of Exhibit 2 to

Plaintiff's Amended Complaint, specifically described therein, and as follows:

- a. Segment 1 of the Skutumpah road is approximately 2.61 miles;
- b. Segment 3 of the Skutumpah road is approximately 7.33 miles;
- c. Segment 5 of the Skutumpah road is approximately .27 miles;
- d. Segment 7 of the Skutumpah road is approximately 3.73 miles;
- e. Segment 9 of the Skutumpah road is approximately 2.01 miles;
- f. Segment 11 of the Skutumpah road is approximately 6.84 miles;
- g. Segment 13 of the Skutumpah road is approximately 5.43 miles;

108. The right-of-way for the Skutumpah road claimed herein on public lands includes that which is reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road, and including a width of 66 feet (33 feet from the centerline descriptions provided herein).

Maps Depicting the Skutumpah Road R.S. 2477 Right-of-Way

109. The specific length, course and location of Kane County's Skutumpah road have long appeared on USGS maps.

110. The southernmost end of the Skutumpah road has appeared on a USGS Skutumpah Creek, Utah 7.5

minute quadrangle map since at least 1966 (as surveyed in 1964). *See* Exhibit 12 to Plaintiff's Amended Complaint. This attached map includes Kane County's former road numbering designations for the Skutumpah road, which is #50. The remainder of the Skutumpah road has appeared on the USGS Deer Springs Point, Utah 7.5 minute quadrangle map dated 1966, the USGS Rainbow Point, Utah 7.5 minute quadrangle map dated 1966, the USGS Bull Valley Gorge, Utah 7.5 minute quadrangle map dated 1966, and the USGS Cannonville, Utah 7.5 minute quadrangle map dated 1966. Copies of these maps are attached as Exhibits 14-17, to Plaintiff's Amended Complaint and incorporated by reference.

111. The Skutumpah road has appeared on Kane County General Highway Maps as a county highway since at least 1950.

112. In addition, the entire Skutumpah road has appeared on the Froiseth's Territory of Utah Map dated 1878.

113. Pre-1976 aerial photography confirms the historical existence of the Skutumpah road as located on the land and following its historical course. More recent aerial photography continues to show this road as it has historically existed.

Acceptance of the Skutumpah Road R.S. 2477 Right-of-Way Prior to October 21, 1976.

114. Prior to October 21, 1976, Kane County and the public accepted the congressional grant of an R.S. 2477 public highway right-of-way for the Skutumpah road on unreserved public lands as set forth herein. This grant of a right-of-way includes access to the road.

115. The public highway right-of-way accepted and perfected for the Skutumpah road includes the seven (7) segments claimed herein on lands owned by the United States. *See* Exhibit 2 to Plaintiff's Amended Complaint.

116. The scope of the public highway right-of-way accepted and perfected for the Skutumpah road includes that which is reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road according to applicable AASHTO standards. This includes a right-of-way width of 66 feet (33 feet from the centerline descriptions provided herein).

117. The entire Skutumpah road (including the specific segments claimed herein) was officially designated as a Kane County highway on Kane County's General Highway map as early as 1950.

118. Kane County's designation of the Skutumpah road as a county road as early as 1950 confirmed that this road was accepted "as [a] county road[] . . . under the jurisdiction and control of the county commissioners" of Kane County. UTAH CODE ANN. § 27-12-22 (1963).

119. Kane County designated and accepted the Skutumpah road as a county road and the R.S. 2477 right-of-way no later than 1950, and thereafter continued to construct, maintain and improve the Skutumpah road using public funds pursuant to the governmental authority of the Kane County Commission.

120. From at least the 1950's and prior to 1976, Kane County road personnel constructed, maintained and improved the Skutumpah road and installed culverts, water bars, and cattle guards on it using public funds.

From at least the 1950's and continuing past 1976, Kane County road crews conducted routine maintenance of this road several times each year and regularly repair sections of the road that become worn, potholed, and washboarded. Some sections of the Skutumpah road are prone to washouts that require regular repairs.

121. Kane County's designation of the Skutumpah road as a Kane County road (General Highways) and expenditure of public funds on this road on or before 1950 constituted formal acceptance of the congressional grant of an R.S. 2477 right-of-way for this public highway pursuant to State law codified in UTAH CODE ANN. § 27-12-22 (1963).

122. In 1977, the United States Bureau of Land Management and Kane County signed a memorandum confirming that county roads, including the Skutumpah road, included a right-of-way width of 66 feet.

Acceptance of the Skutumpah Road R.S. 2477 Right-of-Way By Public Use Prior to 1976.

123. The Skutumpah road has long served as a public highway providing access across public lands and to land conveyed into private ownership.

124. Witnesses with personal knowledge of the history of the Skutumpah road confirm public use on a continuous basis for more than ten years prior to October 21, 1976 and dating back to at least 1942 consisting of general public travel for purposes of general travel, accessing private land, mining and mineral exploration, hunting, livestock operations, wood gathering, camping, and recreation continuing through 1976 and to the present.

125. Witnesses with personal knowledge of the history of the Skutumpah road confirm public use of the road on a continuous basis for more than ten years prior to October 21, 1976 by means of car, jeeps and other four wheel drive vehicles, ATV's, team & wagon, sheep wagon, horse back, bicycles, cattle trucks, motor homes, maintenance vehicles, and road graders.

126. The reputation in the community is that the Skutumpah road has been open for all to come and go as they please since at least as early as the late 1800's and continuing through the present.

127. The Skutumpah road was used on a continuous and nonexclusive basis as a public thoroughfare for decades prior to October 21, 1976.

128. The Skutumpah road traverses a valid and perfected R.S.2477 public highway right-of-way sufficient in scope for vehicle travel and includes that which is reasonable and necessary to meet the exigencies of these types of travel according to safe engineering practices that protect the public, the road, and prevent undue degradation of the adjacent land.

129. Public motor vehicle use of the Skutumpah road as a public thoroughfare traversing unreserved public lands on a continuous basis for a period in excess of ten years prior to October 21, 1976 confirms acceptance of the grant of an R.S. 2477 public highway right-of-way for the Skutumpah road.

130. Kane County and the State of Utah are entitled to an order of this Court quieting title to their R.S. 2477 public highway right-of-way for the Skutumpah road described herein.

FOURTH CAUSE OF ACTION — QUIET TITLE
SAND DUNE ROAD

131. The State of Utah incorporates herein and realleges each of the foregoing paragraphs 1 through 130.

Description of Sand Dune Road R.S. 2477 Right-of-Way

132. The Sand Dune road is designated as Kane County road number K1000. *See* Exhibit 3 to Plaintiff's Amended Complaint and incorporated by reference herein.

133. The Sand Dune road K1000 commences at the southern border of the State of Utah near the SWNW of section 9, Township 44 South, Range 9, S.L.M., and proceeds in a northeasterly direction, approximately 19.96 miles, to where it ends upon intersecting with Utah State Highway 89 in the NWSE of section 5, Township 42 South, Range 7 West, S.L.M. *See* Attachment 1 to Exhibit 3 to Plaintiff's Amended Complaint.

134. The specific right-of-way for the Sand Dune road claimed herein includes ten (10) separate segments on public lands, *see* Attachment 4 of Exhibit 3 to Plaintiff's Amended Complaint, specifically described therein, and as follows:

- a. Segment 1 of the Sand Dune road is approximately 2.41 miles;
- b. Segment 3 of the Sand Dune road is approximately .15 miles;
- c. Segment 5 of the Sand Dune road is approximately .99 miles;
- d. Segment 7 of the Sand Dune road is approximately .81 miles;

- e. Segment 9 of the Sand Dune road is approximately .04 miles;
- f. Segment 11 of the Sand Dune road is approximately .06 miles;
- g. Segment 13 of the Sand Dune road is approximately 2.57 miles;
- h. Segment 15 of the Sand Dune road is approximately 6.33 miles;
- i. Segment 16 of the Sand Dune road is approximately .19 miles; and
- j. Segment 17 of the Sand Dune road is approximately .29 miles.

135. The right-of-way for the Sand Dune road claimed herein on public lands includes that which is reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road, and including a width of 66 feet (33 feet from the centerline descriptions provided herein).

Maps Depicting the Sand Dune Road R.S. 2477 Right-of-Way

136. The specific length, course and location of Kane County's Sand Dune road have long appeared on USGS maps.

137. The northernmost portions of the Sand Dune road have appeared on a USGS Kanab, Utah 15 minute topographic map since at least 1957. A copy of this map is attached as Exhibit 18 to Plaintiff's Amended Complaint and incorporated herein. In addition, the center portion of the Sand Dune road has also appeared on a USGS Yellowjacket Canyon, Utah-Ariz. 7.5 minute

quadrangle map since at least 1985. A copy of this map is attached as Exhibit 19 to Plaintiff's Amended Complaint and incorporated herein. The southernmost section of the Sand Dune road has appeared on USGS Elephant Butte, Utah 7.5 quadrangle map since at least 1980. A copy of this map is attached as Exhibit 20 to Plaintiff's Amended Complaint and incorporated herein. These USGS maps include Kane County's former road numbering designation for the Sand Dune Road, which is #740.

138. The Sand Dune road has appeared on a Kane County General Highway map as early as 1950 as a county highway.

139. Pre-1976 aerial photography confirms the historical existence of the Sand Dune road as located on the land and substantially following its historical course. More recent aerial photography continues to show this road as it historically existed.

Acceptance of the Sand Dune Road R.S. 2477 Right-of-Way Prior to October 21, 1976.

140. Prior to October 21, 1976, Kane County and the public accepted the congressional grant of an R.S. 2477 public highway right-of-way for the Sand Dune road on unreserved public lands as set forth herein. This grant of a right-of-way includes access to the road.

141. The public highway right-of-way accepted and perfected for the Sand Dune road includes the road as claimed herein. See Exhibit 3 to Plaintiff's Amended Complaint.

142. The scope of the public highway right-of-way accepted and perfected for the Sand Dune road includes that which is reasonable and necessary to ensure safe

travel and passage of vehicles on a two lane road according to applicable AASHTO standards. This includes a minimum right-of-way width of 66 feet (33 feet from the centerline descriptions provided herein).

143. The entire Sand Dune road was officially designated as a Kane County highway on Kane County's General Highway map as early as 1950.

144. Kane County's designation of the Sand Dune road as a county road as early as 1950 confirmed that this road was accepted "as [a] county road[] . . . under the jurisdiction and control of the county commissioners" of Kane County. UTAH CODE ANN. § 27-12-22 (1963).

145. Kane County designated and accepted the Sand Dune road as a county road and its R.S. 2477 right-of-way no later than 1950, and thereafter continued to construct, maintain and improve the Sand Dune road using public funds pursuant to the governmental authority of the Kane County Commission.

146. From at least the 1950's and prior to 1976, Kane County road personnel constructed, maintained, and improved the Sand Dune road and installed culverts, water bars, and cattle guards on it using public funds. From at least the 1950's, Kane County road crews conducted routine maintenance of this road generally twice a year and regularly repaired sections of the road. In the 1960's, Kane County paved the northern half of the Sand Dune road, and later paved the entire length of this road. The Sand Dune road continues to serve as a high speed Kane County public highway.

147. Kane County's designation of the Sand Dune road as a Kane County road (General Highways) and expenditure of public funds on this road on or before 1950 constituted formal acceptance of the congressional grant of an R.S. 2477 right-of-way for this public highway pursuant to State law codified in UTAH CODE ANN. § 27-12-22 (1963).

Acceptance of the Sand Dune Road R.S. 2477 Right-of-Way By Public Use Prior to 1976.

148. The Sand Dune road has long served as a public highway providing access across public lands, to other Kane County roads, to the State of Arizona, and to land conveyed into private ownership.

149. Witnesses with personal knowledge of the history of the Sand Dune road confirm public use on a continuous basis for more than ten years prior to October 21, 1976 and dating back as early as the early 1950's consisting of general public travel and for purposes of mining and mineral exploration, hunting, livestock operations, wood gathering, post cutting, camping, tourism, movie production and recreation continuing through 1976 and to the present.

150. Witnesses with personal knowledge of the history of the Sand Dune road confirm public use of the road on a continuous basis for more than ten years prior to October 21, 1976 by means of jeeps, ATV's, automobiles, trucks, cattle trucks, semi-trucks, maintenance vehicles, commercial vehicles, motorcycles, road maintenance vehicles, sheep wagons, horse and cattle, and drilling rigs.

151. The reputation in the community is that the Sand Dune road has been open for all to come and go as

they pleased since at least as early as the late 1800's and continuing through the present.

152. The Sand Dune road was used on a continuous and nonexclusive basis as a public thoroughfare for decades prior to October 21, 1976.

153. The Sand Dune road traverses a valid and perfected R.S.2477 public highway right-of-way sufficient in scope for vehicle travel and includes that which is reasonable and necessary to meet the exigencies of these types of travel according to safe engineering practices that protect the public, the road, and prevent undue degradation of the adjacent land.

154. Public motor vehicle use of the Sand Dune road as a public thoroughfare traversing unreserved public lands on a continuous basis for a period in excess of ten years prior to October 21, 1976 confirms acceptance of the grant of R.S. 2477 public highway rights-of-way for the Sand Dune road.

155. Kane County and the State of Utah are entitled to an order of this Court quieting title to their R.S. 2477 public highway right-of-way for the Sand Dune road described herein.

FIFTH CAUSE OF ACTION — QUIET TITLE
HANCOCK ROAD

156. The State of Utah incorporates herein and realleges each of the foregoing paragraphs 1 through 155.

Description of Hancock Road R.S. 2477 Right-of-Way

157. The Hancock road is designated as Kane County road number K1100. *See* Exhibit 4 to Plaintiff's Amended Complaint and incorporated by reference herein.

158. The Hancock road K1100 commences where it intersects the Sand Dune road in the SENE of section 14, Township 43 South, Range 8 West, S.L.M., and proceeds in a northeasterly direction, approximately 9.43 miles, to where it ends upon intersecting with Utah State Highway 89 in the SENW of section 19, Township 42 South, Range 6 West, S.L.M. *See* Attachments 1 and 3 of Exhibit 4 to Plaintiff's Amended Complaint.

159. The specific right-of-way for the Hancock road on public lands claimed herein is fully described in Attachment 4 of Exhibit 4, as well as Appendix A to Attachment 4 to Plaintiff's Amended Complaint.

160. The right-of-way for the Hancock road claimed herein on public lands includes that which is reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road, and including a width of 66 feet (33 feet from the centerline descriptions provided herein).

Maps Depicting the Hancock Road R.S. 2477 Right-of-Way

161. The specific length, course and location of Kane County's Hancock road have long appeared on USGS maps.

162. The northernmost portions of the Hancock road have appeared on a USGS Kanab, Utah 15 minute topographic map since at least 1957. *See* Exhibit 18 to Plaintiff's Amended Complaint, incorporated herein. In addition, the southern portion of the Hancock road has also appeared on USGS Yellowjacket Canyon, Utah-Ariz. 7.5 minute quadrangle map since at least 1985. *See* Exhibit 19 to Plaintiff's Amended Complaint, incorporated herein. These attached maps include Kane County's

former road numbering designation for the Hancock road, which is #788.

163. All but the most southern portion of the Hancock road, where it intersects the Sand Dune road, has appeared on a Kane County General Highway map as early as 1950 as a county highway.

164. The entire Hancock road has appeared on a Kane County General Highway map as early as 1965 as a county highway.

165. Pre-1976 aerial photography confirms the historical existence of the Hancock road as located on the land and following its historical course. More recent aerial photography continues to show this road as it historically existed.

Acceptance of the Hancock Road R.S. 2477 Right-of-Way Prior to October 21, 1976.

166. Prior to October 21, 1976, Kane County and the public accepted the congressional grant of an R.S. 2477 public highway right-of-way for the Hancock road on unreserved public lands as set forth herein. This grant of a right-of-way includes access to the road.

167. The public highway right-of-way accepted and perfected for the Hancock road includes the road as claimed herein. *See* Exhibit 4 to Plaintiff's Amended Complaint.

168. The scope of the public highway right-of-way accepted and perfected for the Hancock road includes that which is reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road according to applicable AASHTO standards. This includes a

minimum right-of-way width of 66 feet (33 feet from the centerline descriptions provided herein).

169. The entire Hancock road was officially designated as a Kane County highway on Kane County's General Highway map as early as 1965.

170. Kane County's designation of the Hancock road as a county road as early as 1965 confirmed that this road was accepted "as [a] county road[] . . . under the jurisdiction and control of the county commissioners" of Kane County. UTAH CODE ANN. § 27-12-22 (1963).

171. Kane County designated and accepted the Hancock road as a county road crossing an R.S. 2477 right-of-way no later than 1965, and thereafter continued to construct, maintain and improve the Hancock road using public funds pursuant to the governmental authority of the Kane County Commission.

172. From at least the mid-1960's and prior to 1976, Kane County road personnel constructed, maintained, and improved the Hancock road using public funds. From at least the 1960's and continuing past 1976, Kane County road crews conducted routine maintenance of this road generally twice a year and regularly repaired sections of the road that wore down or became damaged. In the 1990's, Kane County paved the entire length of the Hancock road.

173. Kane County's designation of the Hancock road as a Kane County road (General Highways) and expenditure of public funds on this road on or before 1965 constituted formal acceptance of the congressional grant of

an R.S. 2477 right-of-way for this public highway pursuant to State law codified in UTAH CODE ANN. § 27-12-22 (1963).

**Acceptance of the Hancock Road R.S. 2477 Right-of-Way
By Public Use Prior to 1976.**

174. The Hancock road has long served as a public highway providing access across public lands, to other Kane County roads, to private property and to the State of Arizona.

175. Witnesses with personal knowledge of the history of the Hancock road confirm public use on a continuous basis for more than ten years prior to October 21, 1976 and dating back as early as the early 1960's consisting of general public travel for purposes of road maintenance, hunting, livestock operations, rock hounding, sightseeing, camping, and recreation continuing through 1976 to the present. The road was also traveled by government employees.

176. Witnesses with personal knowledge of the history of the Hancock road confirm public use of the road on a continuous basis for more than ten years prior to October 21, 1976 by means of automobiles, jeeps, ATV's, motor homes, maintenance vehicles, commercial trucks, pickup trucks, cattle trucks and Kane County road equipment, *i.e.* trucks and graders.

177. The reputation in the community is that the Hancock road has been open for all to come and go as they pleased since at least the early 1900's and continuing through the present.

178. The Hancock road was used on a continuous and nonexclusive basis as a public thoroughfare for decades prior to October 21, 1976.

179. The Hancock road traverses a valid and perfected R.S.2477 public highway right-of-way sufficient in scope for vehicle travel and includes that which is reasonable and necessary to meet the exigencies of these types of travel according to safe engineering practices that protect the public, the road, and prevent undue degradation of the adjacent land.

180. Public motor vehicle use of the Hancock road as a public thoroughfare traversing unreserved public lands on a continuous basis for a period in excess of ten years prior to October 21, 1976 confirms acceptance of the grant of an R.S. 2477 public highway right-of-way for the Hancock road.

181. Kane County and the State of Utah are entitled to an order of this Court quieting title to their R.S. 2477 public highway right-of-way for the Hancock road described herein.

SIXTH CAUSE OF ACTION — QUIET TITLE
SWALLOW PARK/PARK WASH ROAD

182. Kane County incorporates herein and realleges each of the foregoing paragraphs 1 through 181.

Description of Swallow Park/Park Wash Road R.S. 2477
Right-of-Way

183. The Swallow Park/Park Wash road is designated as Kane County road number K4360. *See Exhibit 5A to Plaintiff's Amended Complaint, incorporated herein by reference.*

184. The Swallow Park/Park Wash road K4360 commences at the intersection of the Swallow Park/Park Wash road and the North Swag road in the NE of section 9, Township 40 South, Range 3 West, S.L.M., and

proceeds in a northwesterly direction to where it ends upon intersecting the Skutumpah road in the center of section 19, Township 39 South, Range 3 West, S.L.M. *See* Exhibit 5A to Plaintiff's Amended Complaint.

185. The specific right-of-way for the Swallow Park/Park Wash road claimed herein includes three separate segments on public lands. These three segments of the Swallow Park/Park Wash road are shown in red on the centerline map of the Swallow Park/Park Wash and North Swag road. *See* Exhibit 5A of Plaintiff's Amended Complaint (The Swallow Park/Park Wash road is the northern section of the road, RD130624, shown on Exhibit 5A). The specific NAD83 mapping grade GPS data used to plot the centerline and course of the three segments of the Swallow Park/Park Wash road is attached as Exhibit 5B to Plaintiff's Amended Complaint and incorporated herein. The general location of each segment is as follows:

- a. The southern, and longest, segment of the Swallow Park/Park Wash road commences at the intersection of the Swallow Park/Park Wash road with the North Swag road in the NE quarter section of section 9, Township 40 South, Range 3 West, S.L.M. This segment of the Swallow Park/Park wash road ends in the NE corner of section 32 and the NW corner of Section 31, Township 39 South, Range 3 West, S.L.M.
- b. The middle segment of the Swallow Park/Park Wash road is approximately 400 feet in length and commences and ends in the center of the NE section of section 30, Township 39 South, Range 3 West, S.L.M.

c. The final segment of the Swallow Park/Park Wash road commences in the SWSE section 19, Township 39 South, Range 3 West, S.L.M.

186. The right-of-way for the Swallow Park/Park Wash road claimed herein on public lands includes that which is reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road, and including a width of 66 feet (33 feet from the centerline descriptions provided herein).

Maps Depicting the Swallow Park/Park Wash R.S. 2477 Right-of-Way

187. The specific length, course and location of Kane County's Swallow Park/Park Wash road have long appeared on USGS maps.

188. The Swallow Park/Park Wash road has appeared on a USGS Deer Spring Point, Utah 7.5 minute quadrangle map since at least 1966. *See* Exhibit 14 to Plaintiff's Amended Complaint, incorporated herein. This attached map to Plaintiff's Amended Complaint includes Kane County's former road numbering designations for the Swallow Park/Park Wash road, which is #236.

189. The northernmost section of the Swallow Park/Park Wash road has appeared as a county highway on a Kane County General Highway map dated 1965.

190. Pre-1976 aerial photography confirms the historical existence of the Swallow Park/Park Wash road as located on the land and following its historical course. More recent aerial photography continues to show this road as it historically existed.

Acceptance of the Swallow Park/Park Wash Road R.S. 2477 Right-of-Way Prior to October 21, 1976.

191. Prior to October 21, 1976, Kane County and the public accepted the congressional grant of an R.S. 2477 public highway right-of-way for the Swallow Park/Park Wash road on unreserved public lands as set forth herein. This grant of a right-of-way includes access to the road.

192. The public highway right-of-way accepted and perfected for the Swallow Park/Park Wash road includes the road as claimed herein. See Exhibit 5A to Plaintiff's Amended Complaint.

193. The scope of the public highway right-of-way accepted and perfected for the Swallow Park/Park Wash road includes that which is reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road according to applicable AASHTO standards. This includes a right-of-way width of 66 feet (33 feet from the centerline descriptions provided herein).

194. The northernmost portion of the Swallow Park/Park Wash road was officially designated as a Kane County highway on Kane County's General Highway map as early as 1965.

195. Kane County's designation of the northernmost portion of the Swallow Park/Park Wash road as a county road as early as 1965 confirmed that this segment of the road was accepted "as [a] county road[] . . . under the jurisdiction and control of the county commissioners" of Kane County. UTAH CODE ANN. § 27-12-22 (1963).

196. Kane County designated and accepted the northernmost segment of the Swallow Park/Park Wash road

as a county road and its R.S. 2477 right-of-way no later than 1965, and thereafter continued to construct, maintain and improve that portion of the Swallow Park/Park Wash road using public funds pursuant to the governmental authority of the Kane County Commission.

197. From at least the mid-1960's and prior to 1976, Kane County road personnel constructed, maintained, and improved the northernmost segment of the Swallow Park/Park Wash road using public funds. From at least the mid-1960's and continuing past 1976, Kane County road crews conducted routine maintenance of this road segment generally twice a year.

198. Kane County's designation of the Swallow Park/Park Wash road as a Kane County road (General Highways) and expenditure of public funds on this road on or before 1965 constituted formal acceptance of the congressional grant of R.S. 2477 rights-of-way for this public highway pursuant to State law codified in UTAH CODE ANN. § 27-12-22 (1963).

Acceptance of the Swallow Park/Park Wash Road R.S. 2477 Right-of-Way By Public Use Prior to 1976.

199. The entire length of the Swallow Park/Park Wash road has long served as a public highway providing access across public lands and to land conveyed into private ownership.

200. Witnesses with personal knowledge of the history of the Swallow Park/Park Wash road confirm public use on a continuous basis for more than ten years prior to October 21, 1976 and dating back as early as the late 1940's consisting of general public travel for purposes of road maintenance, hiking, hunting, to access private

property, installation and maintenance of a water pipeline, livestock operations, logging, wood gathering, trapping, post cutting, sightseeing, camping, and recreation. The road was also traveled by government employees.

201. Witnesses with personal knowledge of the history of the Swallow Park/Park Wash road confirm public use of the road on a continuous basis for more than ten years prior to October 21, 1976 by means of mountain bikes, horse, truck, camping trailers, logging equipment, road maintenance equipment, recreational vehicles, automobiles, pickup trucks, cattle trucks, Kane County road equipment, *i.e.* trucks and graders.

202. The reputation in the community is that the Swallow Park/Park Wash road was open for all to come and go as they please since as early as the 1900's. Upon information and belief, public travel on this road continued or continues, despite this road being designated as a road available for BLM administrative purposes in the Plan in 2000.

203. The Swallow Park/Park Wash road was used on a continuous and nonexclusive basis as a public thoroughfare for decades prior to October 21, 1976.

204. The Swallow Park/Park Wash road traverses a valid and perfected R.S.2477 public highway right-of-way sufficient in scope for vehicle travel and includes that which is reasonable and necessary to meet the exigencies of these types of travel according to safe engineering practices that protect the public, the road, and prevent undue degradation of the adjacent land.

205. Public motor vehicle use of the Swallow Park/Park Wash road as a public thoroughfare traversing unreserved public lands on a continuous basis for a period

in excess of ten years prior to October 21, 1976 confirms acceptance of the grant of an R.S. 2477 public highway right-of-way for the Swallow Park/Park Wash road.

206. Kane County and the State of Utah are entitled to an order of this Court quieting title to their R.S. 2477 public highway right-of-way for the Swallow Park/Park Wash road described herein.

SEVENTH CAUSE OF ACTION — QUIET TITLE
NORTH SWAG ROAD

207. The State of Utah incorporates herein and realleges each of the foregoing paragraphs 1 through 206.

Description of North Swag Road R.S. 2477 Right-of-Way

208. The North Swag road is designated as Kane County road number K4370.

209. The North Swag road K4370 commences at the intersection of the Kitchen Corral road, Kane County road number 4200, in the SWNW section 30, Township 40 South, Range 2 West, S.L.M., and proceeds in a northwesterly direction to where it ends upon intersecting the Swallow Park/Park Wash road in the NE of section 10, Township 40 South, Range 3 West, S.L.M.

210. The specific right-of-way for the North Swag road claimed herein is shown in red on the centerline map of the Swallow Park/Park Wash and North Swag road. *See* Exhibit 5A to Plaintiff's Amended Complaint, incorporated by reference herein (The North Swag road is the southern section of the road, RD130626, shown on Exhibit 5A). The specific NAD83 mapping grade GPS data used to plot the centerline and course of the North Swag road is attached as Exhibit 5C to Plaintiff's

Amended Complaint and incorporated by reference herein.

211. The right-of-way for the North Swag road claimed herein on public lands includes that which is reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road, and including a width of 66 feet (33 feet from the centerline descriptions provided herein).

Maps Depicting the North Swag Road R.S. 2477 Right-of-Way

212. The specific length, course and location of Kane County's North Swag road have long appeared on USGS maps.

213. The North Swag road has appeared on a USGS Deer Range Point, Utah 7.5 minute quadrangle map since at least 1966. A copy of this map is attached as Exhibit 21 and incorporated herein. This attached map includes Kane County's former road numbering designations for the North Swag road, which is #236.

214. Pre-1976 aerial photography confirms the historical existence of the North Swag road as located on the land and following its historical course. More recent aerial photography continues to show this road as it historically existed.

Acceptance of the North Swag Road R.S. 2477 Right-of-Way Prior to October 21, 1976.

215. Prior to October 21, 1976, Kane County and the public accepted the congressional grant of an R.S. 2477 public highway right-of-way for the North Swag road on unreserved public lands as set forth herein. This grant of a right-of-way includes access to the road.

216. The public highway right-of-way accepted and perfected for the North Swag road includes the road as claimed herein. See Exhibits 5A and 5C to Plaintiff's Amended Complaint.

217. The scope of the public highway right-of-way accepted and perfected for the North Swag road includes that which is reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road according to applicable AASHTO standards. This includes a right-of-way width of 66 feet (33 feet from the centerline descriptions provided herein).

218. From at least the late 1940's and prior to 1976, the North Swag road received periodic mechanical construction and maintenance by bulldozer and grader.

Acceptance of the North Swag Road R.S. 2477 Right-of-Way By Public Use Prior to 1976.

219. The North Swag road has long served as a public highway providing access across public lands, to provide access to other Kane County roads, and to access land conveyed into private ownership.

220. Witnesses with personal knowledge of the history of the North Swag road confirm public use on a continuous basis for more than ten years prior to October 21, 1976 and dating back as early as the late 1940's consisting of general public travel for purposes of road maintenance, hiking, hunting, to access private property, installation and maintenance of a water pipeline, livestock operations, logging, wood gathering, trapping, post cutting, sightseeing, camping, and recreation continuing through 1976. The road was also traveled by government employees. Upon information and belief, several

of these uses continue through the present even though this road does not appear on Map 2 of the Plan.

221. Witnesses with personal knowledge of the history of the North Swag road confirm public use of the road on a continuous basis for more than ten years prior to October 21, 1976 by means of mountain bikes, horse, truck, camping trailers, logging equipment, road maintenance equipment, recreational vehicles, automobiles, and pickup trucks.

222. The reputation in the community is that the North Swag road has been open for all to come and go as they please since as early as the 1900's and continuing through the present.

223. The North Swag road was used on a continuous and nonexclusive basis as a public thoroughfare for decades prior to October 21, 1976.

224. The North Swag road traverses a valid and perfected R.S.2477 public highway right-of-way sufficient in scope for vehicle travel and includes that which is reasonable and necessary to meet the exigencies of these types of travel according to safe engineering practices that protect the public, the road, and prevent undue degradation of the adjacent land.

225. Public motor vehicle use of the North Swag road as a public thoroughfare traversing unreserved public lands on a continuous basis for a period in excess of ten years prior to October 21, 1976 confirms acceptance of the grant of an R.S. 2477 public highway right-of-way for the North Swag road.

226. Kane County and the State of Utah are entitled to an order of this Court quieting title to their R.S. 2477

public highway right-of-way for the North Swag road described herein.

EIGHTH CAUSE OF ACTION — QUIET TITLE
NIPPLE LAKE ROAD

227. The State of Utah incorporates herein and realleges each of the foregoing paragraphs 1 through 226.

Description of the Nipple Lake Road R.S. 2477 Right-of-Way

228. The Nipple Lake road is designated as Kane County road number K4290. *See* Exhibit 6 to Kane County's Amended Complaint, incorporated herein by reference.

229. The Nipple Lake road K4290 commences in the NESW of section 30, Township 40 South, Range 2 West, S.L.M., and proceeds in a northeasterly direction, approximately .4 miles, to where it ends at the intersection of the North Swag road and Kane County's Kitchen Corral road (K4200) in the SWNW section 30, Township 40 South, Range 2 West, S.L.M. *See* Attachment 1, 3 and 4 of Exhibit 6 to Plaintiff's Amended Complaint.

230. The specific right-of-way for the Nipple Lake road on public lands claimed herein is fully described in Appendix A to Attachment 4 of Exhibit 6 to Plaintiff's Amended Complaint.

231. The right-of-way for the Nipple Lake road claimed herein on public lands includes that which is reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road, and including a width of 66 feet (33 feet from the centerline descriptions provided herein).

Maps Depicting the Nipple Lake Road R.S. 2477 Right-of-Way

232. The specific length, course and location of Kane County's Nipple Lake road have long appeared on USGS maps.

233. The Nipple Lake road has appeared on a USGS Deer Range Point, Utah 7.5 minute quadrangle map since at least 1966. *See* Exhibit 21 of Plaintiff's Amended Complaint, incorporated herein. This map includes Kane County's former road numbering designation for the Nipple Lake road, which is #610.

234. The Nipple Lake road has also appeared on a Kane County General Highway map dated 1975 as a county highway.

235. Pre-1976 aerial photography confirms the historical existence of the Nipple Lake road as located on the land and following its historical course. More recent aerial photography continues to show this road as it historically existed.

Acceptance of the Nipple Lake Road R.S. 2477 Right-of-Way Prior to October 21, 1976.

236. Prior to October 21, 1976, Kane County and the public accepted the congressional grant of an R.S. 2477 public highway right-of-way for the Nipple Lake road on unreserved public lands as set forth herein. This grant of a right-of-way includes access to the road.

237. The public highway right-of-way accepted and perfected for the Nipple lake road includes the road as claimed herein. *See* Exhibit 6 to Plaintiff's Amended Complaint.

238. The scope of the public highway right-of-way accepted and perfected for the Nipple Lake road includes that which is reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road according to applicable AASHTO standards. This includes a right-of-way width of 66 feet (33 feet from the centerline descriptions provided herein).

239. The entire Nipple Lake road was officially designated as a Kane County highway on Kane County's General Highway map as early as 1975.

240. Kane County's designation of the Nipple Lake road as a county road as early as 1975 confirmed that this road was accepted "as [a] county road[] . . . under the jurisdiction and control of the county commissioners" of Kane County. *See e.g.* UTAH CODE ANN. § 27-12-22 (1963).

241. Kane County designated and accepted the Nipple Lake road as a county road and its R.S. 2477 right-of-way no later than 1975, and thereafter continued to construct, maintain and improve the Nipple Lake road using public funds pursuant to the governmental authority of the Kane County Commission.

242. From at least the late 1960's and prior to 1976, Kane County road personnel constructed, maintained, and improved the Nipple Lake road using public funds. From at least 1975 and continuing past 1976, Kane County road crews conducted routine maintenance of this road.

243. Kane County's designation of the Nipple Lake road as a Kane County road (General Highways) and expenditure of public funds on this road on or before 1975 constituted formal acceptance of the congressional

grant of R.S. 2477 rights-of-way for these public highways pursuant to State law. *See e.g.* UTAH CODE ANN. § 27-12-22 (1963).

Acceptance of the Nipple Lake Road R.S. 2477 Right-of-Way By Public Use Prior to 1976.

244. The Nipple Lake road has long served as a public highway providing access across public lands and to land conveyed into private ownership.

245. Witnesses with personal knowledge of the history of the Nipple Lake road confirm public use on a continuous basis for more than ten years prior to October 21, 1976 and dating back as early as the mid-1960's consisting of general public travel for purposes including road maintenance, hunting, livestock operations, and recreation continuing through 1976 and to the present. The road was also traveled by government employees.

246. Witnesses with personal knowledge of the history of the Nipple Lake road confirm public use of the road on a continuous basis for more than ten years prior to October 21, 1976 by means of road maintenance equipment, four wheel drive vehicles, ATV's, trucks, jeeps, recreational vehicles, automobiles, and pickup trucks.

247. The reputation in the community is that the Nipple Lake road has been open for all to come and go as they please since as early as the early 1900's and continuing through the present.

248. The Nipple Lake road was used on a continuous and nonexclusive basis as a public thoroughfare for more than ten years prior to October 21, 1976.

249. The Nipple Lake road traverses a valid and perfected R.S.2477 public highway right-of-way sufficient in scope for vehicle travel and includes that which is reasonable and necessary to meet the exigencies of these types of travel according to safe engineering practices that protect the public, the road, and prevent undue degradation of the adjacent land.

250. Public motor vehicle use of the Nipple Lake road as a public thoroughfare traversing unreserved public lands on a continuous basis for a period in excess of ten years prior to October 21, 1976 confirms acceptance of the grant of an R.S. 2477 public highway right-of-way for the Nipple Lake road.

251. Kane County and the State of Utah are entitled to an order of this Court quieting title to their R.S. 2477 public highway right-of-way for the Nipple Lake road described herein.

NINTH CAUSE OF ACTION — QUIET TITLE
CAVE LAKES ROADS

252. The State of Utah incorporates herein and realleges each of the foregoing paragraphs 1 through 251.

Description of the Cave Lakes Roads R.S. 2477 Rights-of-Way

253. The Cave Lakes roads are designated as Kane County road numbers K1070, K1075, K1087 and K1088. *See* Exhibit 7A to Plaintiff's Amended Complaint, incorporated herein.

254. The Cave Lakes road K1070 commences at the NWNE of section 2, Township 43 South, Range 7 West, S.L.M., and proceeds in a northwesterly direction, to where it ends upon intersecting the Hancock road in the

SENE of section 34, Township 42 South, Range 7 West, S.L.M.

255. The specific right-of-way for the Cave Lakes K1070 road claimed herein is shown in red on the centerline map of the Cave Lakes roads (RD130016). *See* Exhibit 7A to Plaintiff's Amended Complaint. The specific NAD83 mapping grade GPS data used to plot the centerline and course of the Cave Lakes K1070 road is attached as Exhibit 7B to Plaintiff's Amended Complaint and incorporated herein.

256. The Cave Lakes road K1075 commences at the NESE of section 35, Township 42 South, Range 7 West, S.L.M., and proceeds in a northwesterly direction, to where it ends upon intersecting the Hancock road in the SENE of section 34, Township 42 South, Range 7 West, S.L.M.

257. The specific right-of-way for the Cave Lakes K1075 road claimed herein is shown in red on the centerline map of the Cave Lakes roads (RD130017). *See* Exhibit 7A to Plaintiff's Amended Complaint. The specific NAD83 mapping grade GPS data used to plot the centerline and course of the Cave Lakes K1075 road is attached as Exhibit 7C to Plaintiff's Amended Complaint and incorporated herein.

258. The Cave Lakes road K1087 commences in the SESE of section 24, Township 42 South, Range 7 West, S.L.M., and proceeds in a northwesterly direction, to where it ends upon intersecting the Hancock road in the NESW of section 34, Township 42 South, Range 7 West, S.L.M.

259. The specific right-of-way for the Cave Lakes K1087 road claimed herein is shown in red on the centerline map of the Cave Lakes roads (RD131143). *See* Exhibit 7A. The specific NAD83 mapping grade GPS data used to plot the centerline and course of the Cave Lakes K1087 road is attached as Exhibit 7D to Plaintiff's Amended Complaint and incorporated herein.

260. The Cave Lakes road K1088 commences in the SWNE of section 25, Township 42 South, Range 7, S.L.M., and proceeds in a northwesterly direction, to where it ends upon intersecting the Cave Lakes road K1087 in the SWSE of section 24, Township 42 South, Range 7 West, S.L.M.

261. The specific right-of-way for the Cave Lakes road K1088 claimed herein is shown in red on the centerline map of the Cave Lakes roads (RD131144). *See* Exhibit 7A to Plaintiff's Amended Complaint. The specific NAD83 mapping grade GPS data used to plot the centerline and course of the Cave Lakes K1088 road is attached as Exhibit 7E to Plaintiff's Amended Complaint and incorporated herein.

262. The right-of-way for the four Cave Lakes road claimed herein on public lands includes that which is reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road, and including a width of 66 feet (33 feet from the centerline descriptions provided herein).

Maps Depicting the Cave Lakes Road R.S. 2477 Right-of-Way

263. Portions of Kane County's Cave Lakes roads have long appeared on USGS maps.

264. The northernmost segment of Cave Lakes road K1087 appears on the USGS Kanab, Utah-Ariz. 15 minute topographic map since at least 1957. *See* Exhibit 18 to Plaintiff's Amended Complaint, incorporated herein. This attached map includes Kane County's former road numbering designations for the Cave Lakes road K1087, which is #789.

265. The Cave Lakes roads K1070 and K1075 appear on the USGS Kanab, Utah-Arizona 7.5 minute quadrangle since at least 1985. A copy of the USGS Kanab, Utah-Ariz. 1985 map is attached as Exhibit 22 to Plaintiff's Amended Complaint and incorporated herein. This map includes Kane County's former road numbering designations for the Cave Lakes roads K1070, which is #991, and K1075, which is #988.

266. Pre-1976 aerial photography confirms the historical existence of the Cave Lakes roads as located on the land and following their historical courses. More recent aerial photography continues to show these roads as they have historically existed.

Acceptance of the Cave Lakes Roads R.S. 2477 Rights-of-Way By Public Use Prior to 1976.

267. Prior to October 21, 1976, Kane County and the public accepted the congressional grant of an R.S. 2477 public highway right-of-way for the four Cave Lakes roads on unreserved public lands as set forth herein. This grant of a right-of-way includes access to the roads.

268. The public highway rights-of-way accepted and perfected for the Cave Lakes roads includes the four roads as claimed herein. *See* Exhibits 7A - 7E to Plaintiff's Amended Complaint.

269. The scope of the public highway right-of-way accepted and perfected for the Cave Lakes roads includes that which is reasonable and necessary to ensure safe travel and passage of vehicles on a two lane road according to applicable AASHTO standards. This includes a right-of-way width of 66 feet (33 feet from the centerline descriptions provided herein).

270. The Cave Lakes roads have long served as public highways providing access across public lands and to land conveyed into private ownership.

271. Witnesses with personal knowledge of the history of the Cave Lakes roads confirm public use on a continuous basis for Cave Lakes road K1070 for more than ten years prior to October 21, 1976, commencing at least by 1960, consisting of road maintenance and general public travel for purposes of livestock operations, wood gathering, cutting posts, hunting, sightseeing, rock hounding, and recreation continuing through 1976 to the present.

272. Witnesses with personal knowledge of the history of the Cave Lakes road K1070 confirm public use of the road on a continuous basis for more than ten years prior to October 21, 1976 by means of horses, jeeps, four-wheel drive vehicles, and pickup trucks.

273. Witnesses with personal knowledge of the history of the Cave Lakes roads confirm public use on a continuous basis for Cave Lakes road K1075 for more than ten years prior to October 21, 1976 and dating back as early as the 1940's, consisting of general public travel for purposes hunting, livestock operations, accessing water and private land, cutting posts, fence building,

wood gathering, sightseeing, and recreation continuing through 1976 and to the present.

274. Witnesses with personal knowledge of the history of the Cave Lakes K1075 road confirm public use of the road on a continuous basis for more than ten years prior to October 21, 1976 by means of horses, sheep wagon pulled by a pickup truck, jeeps, two-ton cattle truck, bull dozer, tractor and pickup trucks.

275. Witnesses with personal knowledge of the history of the Cave Lakes roads confirm public use on a continuous basis for Cave Lakes road K1087 for more than ten years prior to October 21, 1976 and dating back as early as 1960, consisting of general public travel for purposes of hunting and recreation continuing through 1976 and to the present.

276. Witnesses with personal knowledge of the history of the Cave Lakes road K1087 confirm public use of the road on a continuous basis for more than ten years prior to October 21, 1976 by means of pickup trucks.

277. Witnesses with personal knowledge of the history of the Cave Lakes roads confirm public use on a continuous basis for Cave Lakes road K1088 for more than ten years prior to October 21, 1976, consisting of general public travel for purposes of recreation, ranching and wood cutting continuing through 1976 and to the present.

278. Witnesses with personal knowledge of the history of the Cave Lakes road K1088 confirm public use of the road on a continuous basis for more than ten years prior to October 21, 1976 by means of pickup trucks.

279. The Cave Lake roads were used on a continuous and nonexclusive basis as public thoroughfares for more than ten years prior to October 21, 1976.

280. The Cave Lake roads cross valid and perfected R.S.2477 public highway rights-of-way sufficient in scope for vehicle travel and include that which is reasonable and necessary to meet the exigencies of these types of travel according to safe engineering practices that protect the public, the road, and prevent undue degradation of the adjacent land.

281. Public motor vehicle use of the Cave Lakes roads as public thoroughfares traversing unreserved public lands on a continuous basis for a period in excess of ten years prior to October 21, 1976 confirms acceptance of the grant of R.S. 2477 public highway rights-of-way for the Cave Lakes roads.

282. Kane County and the State of Utah are entitled to an order of this Court quieting title to their R.S. 2477 public highway rights-of-way for the Cave Lakes roads described herein.

PRAYER FOR RELIEF

WHEREFORE, the State of Utah requests relief against the United States of America as follows:

1. On its First Cause of Action—Mill Creek road, an order quieting title in and to the R.S. 2477 public highway right-of-way for the Mill Creek road (K4400 Segment 1, K4400 Segment 2, K4410 Segment 3, and K4405 Segment 4, described in Exhibits 1A through 1E to Plaintiff's Amended Complaint) as pleaded herein;

2. On its Second Cause of Action—Bald Knoll road, an order quieting title in and to the R.S. 2477 public

highway right-of-way for the Bald Knoll road (K3930A Segment 1, K3935 Segment 2, K3935 Segment 3, and K3935 Segment 4, described in Exhibits 1A, and 1F through 1J to Plaintiff's Amended Complaint) as pleaded herein;

3. On its Third Cause of Action—Skutumpah road, an order quieting title in and to the R.S. 2477 public highway right-of-way for the Skutumpah road (Segments 1, 3, 5, 7, 9, 11 & 13, described in Exhibit 2 to Plaintiff's Amended Complaint) as pleaded herein;

4. On its Fourth Cause of Action—Sand Dune road, an order quieting title in and to the R.S. 2477 public highway right-of-way for the Sand Dune road (Segments 1, 3, 5, 7, 9, 11, 13, 15, 16, & 17, described in Exhibit 3 to Plaintiff's Amended Complaint) as pleaded herein;

5. On its Fifth Cause of Action—Hancock road, an order quieting title in and to the R.S. 2477 public highway right-of-way for the Hancock road (described in Exhibit 4 to Plaintiff's Amended Complaint) as pleaded herein;

6. On its Sixth Cause of Action—Swallow Park/Park Wash road, an order quieting title in and to the R.S. 2477 public highway right-of-way for the Swallow Park/Park Wash road (three segments described in Exhibits 5A and 5B to Plaintiff's Amended Complaint) as pleaded herein;

7. On its Seventh Cause of Action—North Swag road, an order quieting title in and to the R.S. 2477 public highway right-of-way for the North Swag road (described in Exhibit 5A and 5C to Plaintiff's Amended Complaint) as pleaded herein;

8. On its Eighth Cause of Action—Nipple Lake road, an order quieting title in and to the R.S. 2477 public highway right-of-way for the Nipple Lake road (described in Exhibit 6 to Plaintiff’s Amended Complaint) as pleaded herein; and

9. On its Ninth Cause of Action—Cave Lakes roads, an order quieting title in and to the R.S. 2477 public highway rights-of way for the four Cave Lakes roads (described in Exhibits 7A through 7E to Plaintiff’s Amended Complaint) as pleaded herein.

10. An order awarding costs, fees and attorneys fees to the extent permitted by law; and

11. An order granting such further and other relief as may be appropriate.

Respectfully submitted this 29th day of Apr., 2010.

/s/ HARRY H. SOUVALL
Assistant Attorney General

APPENDIX J

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

Case No. 2:08-cv-315-CW

KANE COUNTY, PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

Filed: Aug. 16, 2010

**ANSWER OF UNITED STATES TO INTERVENOR-
PLAINTIFF STATE OF UTAH'S COMPLAINT
IN QUIET TITLE**

Defendant, the United States of America, by and through its legal counsel, hereby submits its Answer to Intervenor's Complaint to Quiet Title ("Complaint"), dated and filed by Intervenor-Plaintiff State of Utah ("State" or "Utah") on April 29, 2010, and served on Defendant on July 15, 2010. The numbered paragraphs of the Answer correspond to the numbered paragraphs of the Complaint.

INTRODUCTION

1. The allegations of Paragraph 1 are a characterization of the State's action to which no responsive pleading is required. The allegations of Paragraph 1 also refer to a federal statute commonly known as "R.S. 2477,"

which speaks for itself and is the best evidence of its contents and to which no responsive pleading is required.

JURISDICTION AND VENUE

2. The allegations of Paragraph 2 are legal conclusions based on 28 U.S.C. §§ 1346(f) and 2409a, which speak for themselves and are the best evidence of their contents and to which no responsive pleading is required. Defendant admits the allegations of the second sentence and third sentences of Paragraph 2. The allegations of the fourth sentence of Paragraph 2 are legal conclusions to which no responsive pleading is required.

3. The United States admits that the lands which are the subject of this lawsuit are located in Utah. The remaining allegations of Paragraph 3 are legal conclusions based on 28 U.S.C. § 1391(e), which speaks for itself and is the best evidence of its contents, and to which no responsive pleading is required.

PARTIES

4. The United States admits that Utah was admitted to the Union on or about January 4, 1896. The remaining allegations in Paragraph 4 constitute legal conclusions to which no responsive pleading is required.

5. The allegations of Paragraph 5 are legal conclusions based on Utah Code Ann. § 72-5-302(2) and 72-5-103(2)(b), which speak for themselves and are the best evidence of their contents, and to which no responsive pleading is required.

6. With respect to the allegations in Paragraph 6, the United States admits that it is the federal government and that it is the owner of the federal public land underlying all or portions of the alleged right-of-ways

that are the subject of the Complaint. The reference to “highways relevant to this action” is a legal conclusion to which no responsive pleading is required.

BACKGROUND ALLEGATIONS

7. The allegations of Paragraph 7 refer to and quote Revised Statute 2477 (hereinafter, “R.S. 2477”) which speaks for itself and is the best evidence of its contents and to which no responsive pleading is required.

8. The allegations of Paragraph 8 are legal conclusions to which no responsive pleading is required.

9. The allegations of Paragraph 9 are legal conclusions based on certain provisions of the Federal Land Policy and Management Act (“FLPMA”), which speak for themselves and are the best evidence of their contents and therefore to which no responsive pleading is required.

10. The allegations of Paragraph 10 are legal conclusions to which no responsive pleading is required. Further, to the extent the allegations purport to set forth statements from S. Utah Wilderness Alliance v. Bureau of Land Management, 425 F.3d 735 (10th Cir. 2005) and Sierra Club v. Hodel, 848 F.2d 1068 (10th Cir. 1988), such decisions speak for themselves and are the best evidence of their contents and no responsive pleading is required.

11. The allegations of Paragraph 11 are legal conclusions to which no responsive pleading is required. Further, to the extent the allegations purport to set forth statements from S. Utah Wilderness Alliance v. Bureau of Land Management, 425 F.3d 735 (10th Cir. 2005), such decision speaks for itself and is the best evidence of its content and no responsive pleading is required.

12. The allegations of Paragraph 12 are legal conclusions to which no responsive pleading is required.

13. The allegations of Paragraph 13 are legal conclusions to which no responsive pleading is required. Further, to the extent the allegations purport to set forth statements from S. Utah Wilderness Alliance v. Bureau of Land Management, 425 F.3d 735 (10th Cir. 2005) and United States v. Garfield County, 122 F. Supp. 2d 1201, 1229-30 (D. Utah 2000), such decisions speak for themselves and are the best evidence of their contents and no responsive pleading is required.

14. The allegations of Paragraph 14 are legal conclusions to which no responsive pleading is required. Further, to the extent the allegations purport to set forth statements from Sierra Club v. Hodel, 848 F.2d 1068 (10th Cir. 1988), such decision speaks for itself and is the best evidence of its content and no responsive pleading is required.

15. The allegations of Paragraph 15 are legal conclusions to which no responsive pleading is required. Further, to the extent the allegations purport to set forth statements from Sierra Club v. Hodel, 848 F.2d 1068 (10th Cir. 1988), such decision speaks for itself and is the best evidence of its content and no responsive pleading is required.

16. The allegations of Paragraph 16 are legal conclusions to which no responsive pleading is required. Further, to the extent the allegations purport to describe the content of provisions of the FLPMA, such provisions speak for themselves and are the best evidence of their contents and to which no responsive pleading is required.

17. Paragraph 17 purportedly quotes Section 701(a) of FLPMA, which speaks for itself and is the best evidence of its contents and to which no responsive pleading is required.

18. Paragraph 18 purportedly quotes Section 701(h) of FLPMA, which speaks for itself and is the best evidence of its contents and to which no responsive pleading is required.

19. Paragraph 19 purportedly quotes Section 509(a) of FLPMA, which speaks for itself and is the best evidence of its contents and to which no responsive pleading is required.

20. Paragraph 20 purportedly quotes a 1939 Department of the Interior regulation (43 C.F.R. § 244.55) (1939), which speaks for itself and is the best evidence of its contents and to which no responsive pleading is required.

21. The allegations of Paragraph 21 appear to define a term for purposes of the Complaint, and to which no responsive pleading is required. Additionally, to the extent such definition entails allegations that constitute legal conclusions, no responsive pleading is required. Further, to the extent the allegations purport to set forth statements from Sierra Club v. Hodel, 848 F.2d 1068 (10th Cir. 1988), such decision speaks for itself and is the best evidence of its content and no responsive pleading is required.

22. The allegations of Paragraph 22 are overly broad and without the context necessary to permit a specific response. In addition, to the extent the term “Normal Maintenance Activities incorporates a legal conclusion, no response is required.

23. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 23 and therefore denies the same.

**ACCEPTANCE AND SCOPE OF KANE COUNTY AND
THE STATE OF UTAH'S R.S. 2477 RIGHTS-OF-WAY**

24. The allegations of Paragraph 24 are legal conclusions to which no responsive pleading is required.

25. The allegations of Paragraph 25 are legal conclusions based on Utah Code Ann. §§ 72-2-103 (current) and 27-12-22 (1963), which speak for themselves and are the best evidence of their contents and to which no responsive pleading is required.

26. The allegations in Paragraph 26 constitute legal conclusions to which no responsive pleading is required.

27. The allegations of Paragraph 27 are legal conclusions based on Utah Code Ann. § 72-5-104, which speaks for itself and is the best evidence of its contents and to which no responsive pleading is required.

28. The allegations of Paragraph 28 are legal conclusions to which no responsive pleading is required.

29. The allegations of Paragraph 29 are legal conclusions to which no responsive pleading is required.

30. The allegations of Paragraph 30 are legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States denies the allegation as to the Old Leach Ranch road portion of the claimed Bald Knoll right-of-way, and admits that Kane County did not formally abandon any interest that it may hold in the remaining claimed rights-of-way.

**THE MILL CREEK, BALD KNOLL, SKUTUMPAH,
SAND DUNE, HANCOCK, SWALLOW PARK/PARK
WASH, NORTH SWAG, NIPPLE LAKE, AND CAVE
LAKES ROADS**

31. The United States admits that the so-called Mill Creek and Bald Knoll roads, as described in the Complaint, are located in western Kane County, Utah.

32. The United States denies the first sentence in Paragraph 32, and admits that the so-called Mill Creek and Bald Knoll roads collectively cross private and public lands within the following townships: T40S, R4.5W, SLM; T40S, R5W, SLM; T41S, R4.5W, S.L.M. The United States denies that there is an Exhibit 1A attached to the Complaint and therefore, denies the allegations of the second sentence of Paragraph 32.

33. The United States admits the allegations in Paragraph 33.

34. The United States denies the allegations of the first sentence of Paragraph 34 and admits that the Skutumpah Road crosses public and private lands occurring variously within the following townships: T38S, R2W, SLM; T38S, R3W, SLM; T39S, R3W, SLM; T39S, R4W, SLM; T40S, R4W, SLM; T40S, R4½W, SLM; T41S, R4½W, SLM; T41S, R5W, SLM. The United States admits that Attachment 1 of Exhibit 2 to plaintiff Kane County's First Amended Complaint purports to show the actual course and location of the Skutumpah road, but lacks sufficient information to form a belief as to whether Attachment 1 of Exhibit 2 to Kane County's First Amended Complaint precisely sets forth the actual course and location of such road and, therefore, denies the allegations of the second sentence of Paragraph 34.

35. The United States admits the allegations in Paragraph 35.

36. The United States denies the allegations of the first sentence of Paragraph 36 and admits that the Sand Dune road crosses private, Utah School and Institutional Trust Administration (“SITLA”), and public lands occurring variously within T44S, R9W, SLM; T43S, R9W, SLM; T43S, R8W, SLM; T43S, R7W, SLM; T42S, R7W, SLM. The United States admits that Attachment 1 of Exhibit 3 to Kane County’s First Amended Complaint purports to show the course and location of the Sand Dune road, but lacks sufficient information to form a belief as to whether Attachment 1 of Exhibit 3 to Kane County’s First Amended Complaint precisely sets forth the actual course and location of such road and, therefore, denies the allegations of the second sentence of Paragraph 36.

37. The United States admits the allegations in Paragraph 37.

38. The United States denies the allegations in Paragraph 38, and admits that the Hancock road crosses public land occurring within T43S, R8W, SLM; T43S, R7W, SLM; T42S, R7W, SLM; T42S, R6W, SLM. The United States admits that Attachment 1 of Exhibit 4 to Kane County’s First Amended Complaint purports to show the course and location of the Hancock road, but lacks sufficient information to form a belief as to whether Attachment 1 of Exhibit 4 to Kane County’s First Amended Complaint precisely sets forth the actual course and location of such road and, therefore, denies the allegations of the second sentence of Paragraph 38.

39. The United States admits that the so-called Swallow Park/Park Wash, North Swag, and Nipple Lake routes, as described in the Complaint, are located in western Kane County, Utah. The United States denies that such routes constitute roads for some or all of their course.

40. The United States denies the first sentence of Paragraph 45 and admits that the so-called Swallow Park/Park Wash route crosses private and public lands within Township 39 and 40 South, Range 3 West, S.L.M. The United States denies the second sentence and admits that the so-called North Swag route, as described in the Complaint, crosses public lands within T40S, R3W, S.L.M., and that the so-called Nipple Lake route, as described in the Complaint, crosses public lands within T40S, R2W, S.L.M. The United States denies that an Exhibit 5A is attached to the Complaint, and therefore denies the third sentence of Paragraph 40. The United States admits that Attachment 1 to Exhibit 6 to Kane County's First Amended Complaint purports to show the course and location of the so-called Nipple Lake route, but lacks sufficient information to form a belief as to whether Attachment 1 to Exhibit 6 to Kane County's First Amended Complaint precisely sets forth the actual course and location of such route and, therefore denies the allegations of the fourth sentence of Paragraph 40. With respect to the last sentence of Paragraph 40, the United States admits that the so-called four Cave Lakes routes, as identified in the Complaint, are located in southwestern Kane County, Utah.

41. The United States denies the first sentence of Paragraph 41, and admits that the four so-called Cave

Lakes routes, as described in the Complaint, cross public land in T42S, R7W, S.L.M. The United States admits that Exhibit 7A to Kane County's First Amended Complaint purports to show the course and location of the four so-called Cave Lakes routes, but lacks sufficient information to form a belief as to whether Exhibit 7A to Kane County's First Amended Complaint precisely sets forth the actual course and location of such roads and, therefore, denies the allegations of the second sentence of Paragraph 41. With respect to the third sentence of Paragraph 41, the United States admits that Exhibit 7A to Kane County's First Amended Complaint is a map which includes the following number that appear to designate certain routes: RD130016, RD130017, RD131143, and RD 1311444 (not RD121144 as alleged), and lacks sufficient information to form a belief as to the truth of the remaining allegations of the sentence and therefore denies the same.

42. The United States denies that maps are attached as Exhibits 1A, 5A, and 7A. The United States otherwise lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 42 and therefore denies the same.

43. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 43 and therefore denies the same.

44. The United States denies that Exhibits 1A, 2, 3, and 5B are attached to the Complaint. The second sentence of Paragraph 44 constitutes a characterization of the State's claims, and to which no responsive pleading is required.

FIRST CAUSE OF ACTION — QUIET TITLE
MILL CREEK

45. The United States incorporates by reference its responses to the allegations of Paragraphs 1 to 44.

46. The United States admits that certain Kane County records identify the Mill Creek road as Kane County road number K4400. The United States denies that the Mill Creek road, the Tenny Creek road, and the Oak Canyon road constitute a single road. The remaining allegations of Paragraph 46 constitute a characterization of the State's claim to which no responsive pleading is required.

47. The United States admits that Mill Creek road K4400 commences at its intersection with the Skutumpah Road on private land in the NW quarter of section 5, Township 41 South, Range 4.5 West, S.L.M, and that it generally proceeds in a northerly direction. The United States lacks sufficient information to form a belief as to the terminus of the Mill Creek road, and therefore denies the allegations of Paragraph 47 concerning the same. The United States further denies that the Mill Creek road has three separate termini. The remaining allegations of Paragraph 47 constitute a characterization of the State's claim to which no responsive pleading is required.

48. Paragraph 48 is not a factual allegation but rather constitutes Plaintiff's description of its claims, and to which no responsive pleading is required. To the extent the paragraph incorporates or implies factual allegations, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 48 and therefore denies the same.

49. With respect to Paragraph 49, the United States admits that the claimed road segments, as described in the Complaint, appear to be located over certain public lands, and to connect to certain private lands, identified as lots 1, 2 and 3, NE1/4, E1/2SW1/4, N1/2SE1/4, and SW1/4SE1/4, section 34, T. 39 S., R 4.5 W, S.L.M., which were conveyed out of Federal ownership on June 10, 1937 as Stock Raising Homestead Patent 1090548. The United States lacks sufficient information to form a belief as to the truth of the remaining allegations of Paragraph 49 and therefore denies the same.

50. With respect to Paragraph 50, the United States admits that the claimed road segments, as described in the Complaint, appear to be located over certain public lands, and to connect to certain private lands, identified as lot 2, section 5, T. 40 S., R 4.5 W, S.L.M., which were conveyed out of Federal ownership on May 23, 1923 as Homestead Patent 900384. The United States lacks sufficient information to form a belief as to the truth of the remaining allegations of Paragraph 50 and therefore denies the same.

51. With respect to Paragraph 51, the United States admits that the claimed road segments, as described in the Complaint, appear to be located over certain public lands, and to connect to certain private lands,, identified as lots 4, 5, 6, and 7, and E1/2SW1/4, section 6, T. 40 S., R. 41/2 W., S.L.M., which were conveyed out of Federal ownership on August 8, 1957 as Private Exchange Patent 1173972. The United States lacks sufficient information to form a belief as to the truth of the remaining allegations and therefore denies the same.

52. The first sentence in paragraph 52 is not a factual allegation but rather constitutes the State's description of the scope of its claims, and to which no responsive pleading is required. The United States denies that an enhanced detail map is attached as Exhibit 11.

53. The allegations of Paragraph 53 are legal conclusions to which no responsive pleading is required. Further, the United States denies that the scope of the claimed right of way, if established, includes a 66 foot right of way.

54. The use of the phrase "have long appeared" in the allegations of Paragraph 54 renders the allegations too vague and general and without the context necessary to permit a specific response. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

55. The United States denies the allegations of the first sentence in Paragraph 55 and admits that the 1966 Skutumpah Creek, Utah 7.5 minute quadrangle map issued by the United States Geological Survey ("USGS") shows unimproved dirt roads in the general vicinity of the routes described in Paragraph 48. As to the allegations in the second sentence, the United States admits that a copy of a map entitled "Skutumpah Creek, Utah," which appears to be published in its original form by the USGS, is attached to Kane County's First Amended Complaint as Exhibit 12. However, the United States denies that Exhibit 12 constitutes, in its present form, a true and correct copy of a USGS map as it contains markings and notations which appear to have been made by someone other than the USGS. As to the allegations of

the third sentence, the United States lacks sufficient information to form a belief as to the truth of such allegations and therefore denies the same.

56. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 56 and therefore denies the same.

57. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 57 and therefore denies the same.

58. The allegations of Paragraph 58 are comprised of legal conclusions to which no responsive pleading is required.

59. The allegations of Paragraph 59 are comprised of legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

60. The allegations of Paragraph 60 are legal conclusions to which no responsive pleading is required. Further, the allegations concerning “Kane County’s proposed improvements” are overly vague and general and without the context necessary to permit a specific response, and the United States denies that the scope of the claimed right of way, if established, includes a 66 foot right of way.

61. The allegations of Paragraph 61 are legal conclusions to which no responsive pleading is required.

62. With regards to the allegations in the first sentence of Paragraph 62, the United States admits that on the 1956 Kane County General Highway map unnamed

roads appear in the general vicinity of the claimed Mill Creek, Tenny Creek, and Oak Canyon routes as described in the Complaint. The United States lacks sufficient information to form a belief as to the truth of the remaining allegations of the first sentence of Paragraph 62 and therefore denies the same. With respect to the second sentence of Paragraph 62, the United States admits that on the 1965 General Highway Map, Kane County, Utah, an unnamed road appears in the general vicinity of the segments of the Mill Creek road as described in the Complaint. The United States otherwise lacks sufficient information to form a belief as to the truth of the allegations of the second sentence of Paragraph 62, and therefore denies the same.

63. The allegations of Paragraph 63 are legal conclusions based on Utah Code Ann. § 27-12-22, which speaks for itself and is the best evidence of its contents and to which no responsive pleading is required.

64. The allegations of Paragraph 64 that the plaintiffs and the general public “designated and accepted this county road and the R.S. 2477 right-of-way” are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the remaining allegations of Paragraph 64 and therefore denies the same.

65. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 65 and therefore denies the same.

66. The allegations of Paragraph 66 are legal conclusions based on Utah Code Ann. § 27-12-22 (1963), which

speaks for itself and is the best evidence of its contents and to which no responsive pleading is required.

67. The United States admits that in July 1977 the BLM and Kane County signed a document entitled “Memorandum of Understanding to Clarify Road Construction & Maintenance Responsibilities in Kane County between The Bureau of Land Management and the Kane County Commission,” (hereinafter “MOU”) which speaks for itself and is the best evidence of its contents and to which no responsive pleading is required. The United States nonetheless affirmatively denies the allegation that the MOU confirms that any alleged rights-of-way for the Mill Creek road included a right-of-way width of 66 feet.

68. The use of the phrase “has long served” in the allegations of Paragraph 68 renders the allegations too vague and general and without the context necessary to permit a specific response. The remaining allegations concerning the alleged status as a public highway constitutes a legal conclusion to which no responsive pleading is required. The allegations regarding access across public lands and to certain private lands are duplicative to those in paragraphs 49, 50, and 51, and the United States’ responses thereto are incorporated by reference.

69. The allegations of Paragraph 69 concerning the alleged “public use” on a “continuous basis” of the claimed route constitute legal conclusions to which no responsive pleading is required. The remaining allegations of Paragraph 69 characterize testimony of certain unidentified witnesses, which testimony is the best evidence of its contents and to which no responsive pleading is required, and the allegations do not give sufficient context to permit a specific response.

70. The allegations of Paragraph 70 concerning the alleged “public use” on a “continuous basis” of the claimed route constitute legal conclusions to which no responsive pleading is required. The remaining allegations of Paragraph 70 characterize testimony of certain unidentified witnesses, which testimony is the best evidence of its contents and to which no responsive pleading is required, and the allegations do not give sufficient context to permit a specific response.

71. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 71 and therefore denies the same.

72. The allegations of Paragraph 72 constitute legal conclusions to which no responsive pleading is required.

73. The allegations of Paragraph 73 are legal conclusions to which no responsive pleading is required.

74. The allegations of Paragraph 74 are legal conclusions to which no responsive pleading is required.

75. The allegations of Paragraph 75 are legal conclusions to which no responsive pleading is required.

SECOND CAUSE OF ACTION — QUIET TITLE
BALD KNOLL ROAD

76. The United States incorporates by reference its responses to the allegations of Paragraphs 1 to 75.

77. The United States admits that certain Kane County records identify Bald Knoll Road as road K3935.

78. The United States lacks sufficient information to form a belief as to the truth of the first sentence of the allegations of Paragraph 78 and therefore denies the same. The United States denies that the Bald Knoll

road commences in the NENW of section 3, Township 41 South, Range 5 West, S.L.M., at the boundary of private land, and admits the remaining allegations of the second sentence of Paragraph 78. The United States admits the allegations of the third and fourth sentences of Paragraph 78.

79. Paragraph 79 is not a factual allegation but rather constitutes Plaintiff's description of its claims, and to which no responsive pleading is required. To the extent the paragraph incorporates or implies factual allegations, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 79 and therefore denies the same.

80. With regards to Paragraph 80, the United States admits that certain private lands, identified as SE1/4SE1/4, section 15, and NW1/4NE1/4, section 22, T. 40 S., R 5 W, S.L.M., were conveyed out of Federal ownership on October 23, 1928 as Homestead Patent 1020257. The United States lacks sufficient information to form a belief as to the truth of the remaining allegations of Paragraph 80 and therefore denies the same.

81. Paragraph 81 is not a factual allegation but rather constitutes Plaintiff's description of its claims, and to which no responsive pleading is required. To the extent the paragraph incorporates or implies factual allegations, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 81 and therefore denies the same.

82. The allegations of Paragraph 82 are legal conclusions to which no responsive pleading is required. Further, the United States denies that the scope of the

claimed right of way, if established, includes a 66 foot right of way.

83. The use of the phrase “have long appeared” in the allegations of Paragraph 83 renders the allegations too vague and general and without the context necessary to permit a specific response. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

84. The United States denies the allegations of the first sentence of Paragraph 84, and admits that the 1966 Skumtumpah Creek, Utah and Bald Knoll, Utah 7.5 minute quadrangle maps issued by the USGS, together show unimproved dirt roads in the general vicinity of the roads described in Paragraphs 78 and 79. As to the allegations of the second sentence, the United States admits that a map entitled “Bald Knoll, Utah,” which appears to be published in its original form by the USGS, is attached to the Kane County’s First Amended Complaint as Exhibit 13. However, the United States denies that Exhibit 13 constitutes, in its present form, a true and correct copy of a USGS map as it contains markings and notations which appear to have been made by someone other than the USGS. As to the allegations of the third sentence, the United States lacks sufficient information to form a belief as to the truth of such allegations and therefore denies the same.

85. Given the illegibility of Exhibit 13, and given the markings and notations on it from some unknown source, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 85 and therefore denies the same.

86. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 86 and therefore denies the same.

87. The allegations of Paragraph 87 are comprised of legal conclusions to which no responsive pleading is required.

88. The allegations of Paragraph 88 are comprised of legal conclusions to which no responsive pleading is required.

89. The allegations of Paragraph 89 are legal conclusions to which no responsive pleading is required. Further, the allegations concerning “Kane County’s proposed improvements” are overly vague and general and without the context necessary to permit a specific response, and the United States denies that the scope of the claimed right of way, if established, includes a 66 foot right of way (33 feet from the centerline descriptions provided in the Complaint), and therefore denies the same.

90. The allegations of Paragraph 90 are legal conclusions to which no responsive pleading is required. As to the footnote to Paragraph 90, the United States lacks knowledge sufficient to form a belief as to the truth of the allegations of the first sentence and denies the same. The United States denies the allegations of the second sentence in the footnote.

91. The allegations of Paragraph 91 are legal conclusions based on Utah Code Ann. § 27-12-22, which speaks for itself and is the best evidence of its contents and to which no responsive pleading is required.

92. The allegations of Paragraph 92 that Plaintiff “accepted this county road and the R.S. 2477 right-of-

way” are legal conclusions to which no responsive pleading is required. Further, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 92 and therefore denies the same.

93. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 93 and therefore denies the same.

94. The allegations of Paragraph 94 are legal conclusions based on Utah Code Ann. § 27-12-22, which speaks for itself and is the best evidence of its contents and to which no responsive pleading is required.

95. The United States admits that in July 1977 the BLM and Plaintiff signed a document entitled “Memorandum of Understanding to Clarify Road Construction & Maintenance Responsibilities in Kane County between The Bureau of Land Management and the Kane County Commission,” (hereinafter “MOU”) which speaks for itself and is the best evidence of its contents and to which no responsive pleading is required. The United States nonetheless affirmatively denies the allegation that the MOU confirms that any alleged rights-of-way for the Bald Knoll road included a right-of-way width of 66 feet. The United States lacks sufficient information to form a belief as to the truth of the allegation that the Bald Knoll road was formerly designated the Thompson Creek road, and therefore denies the same.

96. The use of the phrase “has long served” in the allegations of Paragraph 96 renders the allegations too vague and general and without the context necessary to permit a specific response. The remaining allegations

concerning the alleged status as a public highway constitutes a legal conclusion to which no responsive pleading is required. The allegations regarding access across public lands and to certain private lands are duplicative to those in paragraph 80, and the United States' responses thereto are incorporated by reference

97. The allegations of Paragraph 97 concerning the alleged "public use" on a "continuous basis" of the claimed route constitute legal conclusions to which no responsive pleading is required. The remaining allegations of Paragraph 97 characterize testimony of certain unidentified witnesses, which testimony is the best evidence of its contents and to which no responsive pleading is required, and the allegations do not give sufficient context to permit a specific response.

98. The allegations of Paragraph 98 concerning the alleged "public use" on a "continuous basis" of the claimed route constitute legal conclusions to which no responsive pleading is required. The remaining allegations of Paragraph 98 characterize testimony of certain unidentified witnesses, which testimony is the best evidence of its contents and to which no responsive pleading is required, and the allegations do not give sufficient context to permit a specific response.

99. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 99 and therefore denies the same.

100. The allegations of Paragraph 100 constitute legal conclusions to which no responsive pleading is required.

101. The allegations of Paragraph 101 are legal conclusions to which no responsive pleading is required.

102. The allegations of Paragraph 102 are legal conclusions to which no responsive pleading is required.

103. The allegations of Paragraph 103 are comprised of legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

THIRD CAUSE OF ACTION — QUIET TITLE
SKUTUMPAH ROAD

104. The United States incorporates by reference its responses to the allegations of Paragraphs 1 to 103.

105. The United States admits that certain Kane County records identify the Skutumpah road as Road K5000.

106. Assuming that the reference to “Range 5 S.L.M.” in the third line of Paragraph 106 is intended to refer to “Range 5 West,” the United States generally admits the allegations of the Paragraph, except for the mileage allegation, as the United States lacks sufficient information to form a belief as to the truth of that allegation and therefore denies the same.

107. Paragraph 107 is not a factual allegation but rather constitutes Plaintiff’s description of its claims, and to which no responsive pleading is required. To the extent the paragraph incorporates or implies factual allegations, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 107 and therefore denies the same.

108. The allegations of Paragraph 108 are legal conclusions to which no responsive pleading is required.

Further, the United States denies that the scope of the claimed right of way, if established, includes a 66 foot right of way for its entire course.

109. The use of the phrase “have long appeared” in the allegations of Paragraph 109 renders the allegations too vague and general and without the context necessary to permit a specific response. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

110. With respect to the allegations of the first and third sentences of Paragraph 110, the United States admits that the 1966 Skutumpah Creek, Utah 7.5 minute quadrangle map, the 1966 Deer Springs Point, Utah 7.5 minute quadrangle map, the 1966 Bull Valley Gorge, Utah 7.5 minute quadrangle map, and the 1966 Cannonville, Utah 7.5 minute quadrangle map, issued by the USGS, show unimproved dirt roads in the general vicinity of the route described in Paragraph 106. With respect to the allegations of the fourth sentence, the United States admits that maps entitled “Skumtumpah Creek, Utah,” “Deer Springs Point, Utah,” “Bull Valley Gorge, Utah,” and “Cannonville, Utah,” which appear to be published in their original forms by the USGS, are attached to Kane County’s First Amended Complaint as Exhibits 12 and 14-17. However, the United States denies that Exhibits 12 and 14-17 constitute, in their present form, true and correct copies of USGS maps as they contains markings and notations which appear to have been made by someone other than the USGS. With respect to the allegations of the second sentence of Para-

graph 110, the United States lacks sufficient information to form a belief as to the truth of such allegations and therefore denies the same.

111. The United States admits the allegations in paragraph 111.

112. The United States admits the allegations of Paragraph 112.

113. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 113 and therefore denies the same.

114. The allegations of Paragraph 114 are comprised of legal conclusions to which no responsive pleading is required.

115. The allegations of Paragraph 115 are comprised of legal conclusions to which no responsive pleading is required.

116. The allegations of Paragraph 116 are legal conclusions to which no responsive pleading is required. Further, the United States denies that the scope of the claimed right of way, if established, includes a 66 foot right of way.

117. The allegations of Paragraph 117 are legal conclusions to which no responsive pleading is required.

118. The allegations of Paragraph 118 are legal conclusions based on Utah Code Ann. § 27-12-22, which speaks for itself and is the best evidence of its contents and to which no responsive pleading is required.

119. The allegations of Paragraph 119 that Plaintiff “accepted the Skutumpah road as a county road and the R.S. 2477 right-of-way” are legal conclusions to which no

responsive pleading is required. The United States lacks sufficient information to form a belief as to the truth of the remaining allegations of Paragraph 119 and therefore denies the same.

120. The United States lacks sufficient information to form a belief as to the truth of the allegations of the first and second sentences of Paragraph 120 and therefore denies the same. The United States denies the allegations of the third sentence of Paragraph 120, and admits that some sections of the Skutumpah road are prone to washouts that require periodic repairs.

121. The allegations of Paragraph 121 are legal conclusions based on Utah Code Ann. § 27-12-22, which speaks for itself and is the best evidence of its contents and to which no responsive pleading is required.

122. The United States admits that in July 1977 the BLM and Plaintiff signed a document entitled “Memorandum of Understanding to Clarify Road Construction & Maintenance Responsibilities in Kane County between The Bureau of Land Management and the Kane County Commission,” (hereinafter “MOU”) which speaks for itself and is the best evidence of its contents and to which no responsive pleading is required. The United States nonetheless affirmatively denies the allegation that the MOU confirms that any alleged rights-of-way for the Skutumpah road included a right-of-way width of 66 feet.

123. The use of the phrase “has long served” in the allegations of Paragraph 123 renders the allegations too vague and general and without the context necessary to permit a specific response. The remaining allegations

concerning the alleged status as a public highway constitutes a legal conclusion to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 123 and therefore denies the same.

124. The allegations of Paragraph 124 concerning the alleged “public use” on a “continuous basis” of the claimed route constitute legal conclusions to which no responsive pleading is required. The remaining allegations of Paragraph 124 characterize testimony of certain unidentified witnesses, which testimony is the best evidence of its contents and to which no responsive pleading is required, and the allegations do not give sufficient context to permit a specific response.

125. The allegations of Paragraph 125 concerning the alleged “public use” on a “continuous basis” of the claimed route constitute legal conclusions to which no responsive pleading is required. The remaining allegations of Paragraph 125 characterize testimony of certain unidentified witnesses, which testimony is the best evidence of its contents and to which no responsive pleading is required, and the allegations do not give sufficient context to permit a specific response. e. [sic]

126. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 126 and therefore denies the same.

127. The allegations of Paragraph 127 constitute legal conclusions to which no responsive pleading is required.

128. The allegations of Paragraph 128 are legal conclusions to which no responsive pleading is required.

129. The allegations of Paragraph 129 are legal conclusions to which no responsive pleading is required.

130. The allegations of Paragraph 130 are comprised of legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

FOURTH CAUSE OF ACTION — QUIET TITLE
SAND DUNE ROAD

131. The United States incorporates by reference its responses to the allegations of Paragraphs 1 to 130.

132. The United States admits that certain Kane County records identify the Sand Dune road as Road K1000.

133. The United States generally admits the allegations of Paragraph 133, except for the mileage allegation, as the United States lacks sufficient information to form a belief as to the truth of that allegation and therefore denies the same.

134. Paragraph 134 is not a factual allegation but rather constitutes Plaintiff's description of its claims, and to which no responsive pleading is required. To the extent the paragraph incorporates or implies factual allegations, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 134 and therefore denies the same.

135. The allegations of Paragraph 135 are legal conclusions to which no responsive pleading is required. Further, the United States denies that the scope of the

claimed right of way, if established, includes a 66 foot right of way.

136. The use of the phrase “have long appeared” in the allegations of Paragraph 136 renders the allegations too vague and general and without the context necessary to permit a specific response. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

137. With respect to the allegations of the first, third, and fifth sentences of Paragraph 137, the United States admits that the Kanab, Utah 7.5 minute quadrangle map, the Yellowjacket Canyon, Utah 7.5 minute quadrangle map, and the Elephant Butte, Utah 7.5 minute quadrangle map, issued by the USGS, show unimproved dirt roads in the general vicinity of the route described in Paragraph 133. With respect to the allegations of the second, fourth, and sixth sentences of Paragraph 137, the United States admits that maps entitled “Kanab, Utah,” “Yellowjacket Canyon, Utah,” and “Elephant Butte, Utah,” which appear to be published in their original forms by the USGS, are attached to Kane County’s First Amended Complaint as Exhibits 18-20. However, the United States denies that Exhibits 18-20 constitute, in their present form, true and correct copies of USGS maps as they contains markings and notations which appear to have been made by someone other than the USGS. As to the allegations of the seventh sentence of Paragraph 137, the United States lacks sufficient information to form a belief as to the truth of such allegations and therefore denies the same.

138. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 138 and therefore denies the same.

139. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 139 and therefore denies the same.

140. The allegations of Paragraph 140 are comprised of legal conclusions to which no responsive pleading is required.

141. The allegations of Paragraph 141 are comprised of legal conclusions to which no responsive pleading is required.

142. The allegations of Paragraph 142 are legal conclusions to which no responsive pleading is required. Further, the United States denies that the scope of the claimed right of way, if established, includes a 66 foot right of way.

143. The allegations of Paragraph 143 are legal conclusions to which no responsive pleading is required.

144. The allegations of Paragraph 144 are legal conclusions based on Utah Code Ann. § 27-12-22, which speaks for itself and is the best evidence of its contents and to which no responsive pleading is required.

145. The allegations of Paragraph 145 that Plaintiff “accepted the Sand Dune road as a country road and its R.S. 2477 right-of-way” are legal conclusions to which no responsive pleading is required. The United States lacks sufficient information to form a belief as to the truth of the remaining allegations of Paragraph 145 and therefore denies the same.

146. The United States lacks sufficient information to form a belief as to the truth of the allegations of the first, second, and third sentences of Paragraph 146 and therefore denies the same. The use of the phrase “high speed” in the allegations of the fourth sentence of Paragraph 146 renders the allegations too vague and general and without the context necessary to permit a specific response. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

147. The allegations of Paragraph 147 are legal conclusions based on Utah Code Ann. § 27-12-22, which speaks for itself and is the best evidence of its contents and to which no responsive pleading is required.

148. The use of the phrase “have long appeared” in the allegations of Paragraph 148 renders the allegations too vague and general and without the context necessary to permit a specific response. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

149. The allegations of Paragraph 149 concerning the alleged “public use” on a “continuous basis” of the claimed route constitute legal conclusions to which no responsive pleading is required. The remaining allegations of Paragraph 149 characterize testimony of certain unidentified witnesses, which testimony is the best evidence of its contents and to which no responsive pleading is required, and the allegations do not give sufficient context to permit a specific response.

150. The allegations of Paragraph 150 concerning the alleged “public use” on a “continuous basis” of the claimed route constitute legal conclusions to which no responsive pleading is required. The remaining allegations of Paragraph 150 characterize testimony of certain unidentified witnesses, which testimony is the best evidence of its contents and to which no responsive pleading is required, and the allegations do not give sufficient context to permit a specific response.

151. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 151 and therefore denies the same.

152. The allegations of Paragraph 72 [sic] constitute legal conclusions to which no responsive pleading is required.

153. The allegations of Paragraph 153 are legal conclusions to which no responsive pleading is required.

154. The allegations of Paragraph 154 are legal conclusions to which no responsive pleading is required.

155. The allegations of Paragraph 155 are comprised of legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

FIFTH CAUSE OF ACTION — QUIET TITLE
HANCOCK ROAD

156. The United States incorporates by reference its responses to the allegations of Paragraphs 1 to 155.

157. The United States admits that certain Kane County records identify the Hancock road as Road K1100.

158. The United States generally admits the allegations of Paragraph 158, except for the mileage allegation, as the United States lacks sufficient information to form a belief as to the truth of that allegation and therefore denies the same.

159. Paragraph 159 is not a factual allegation but rather constitutes Plaintiff's description of its claims, and to which no responsive pleading is required. To the extent the paragraph incorporates or implies factual allegations, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 159 and therefore denies the same.

160. The allegations of Paragraph 160 are legal conclusions to which no responsive pleading is required. Further, the United States denies that the scope of the claimed right of way, if established, includes a 66 foot right of way.

161. The use of the phrase "have long appeared" in the allegations of Paragraph 161 renders the allegations too vague and general and without the context necessary to permit a specific response. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

162. The United States admits that the Kanab, Utah 7.5 minute quadrangle map, and the Yellowjacket Canyon, Utah 7.5 minute quadrangle map, issued by the USGS, show unimproved dirt roads in the general vicinity of the route described in Paragraph 162. The United States admits that copies of maps entitled "Kanab, Utah," and "Yellowjacket Canyon, Utah," which appears to have been published in their original

form by the USGS, are attached to Kane County's First Amended Complaint as Exhibits 18 and 19. However, the United States denies that Exhibits 18 and 19 constitute, in their present form, true and correct copies of USGS maps as they contain markings and notations which appear to have been made by someone other than the USGS. As to the allegations of the third sentence of Paragraph 162, the United States lacks sufficient information to form a belief as to the truth of such allegations and therefore denies the same.

163. The United States admits the allegations of Paragraph 163.

164. The United States admits the allegations of Paragraph 164.

165. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 165 and therefore denies the same.

166. The allegations of Paragraph 166 are comprised of legal conclusions to which no responsive pleading is required.

167. The allegations of Paragraph 167 are comprised of legal conclusions to which no responsive pleading is required.

168. The allegations of Paragraph 168 are legal conclusions to which no responsive pleading is required. Further, the United States denies that the scope of the claimed right of way, if established, includes a 66 foot right of way.

169. The allegations of Paragraph 169 are legal conclusions to which no responsive pleading is required.

170. The allegations of Paragraph 170 are legal conclusions based on Utah Code Ann. § 27-12-22, which speaks for itself and is the best evidence of its contents and to which no responsive pleading is required.

171. The allegations of Paragraph 171 that Plaintiff “accepted the Hancock road as a county road crossing an R.S. 2477 right-of-way” are legal conclusions to which no responsive pleading is required. The United States lacks sufficient information to form a belief as to the truth of the remaining allegations of Paragraph 171 and therefore denies the same.

172. The United States lacks sufficient information to form a belief as to the truth of the allegations of the first and second sentences of Paragraph 172 and therefore denies the same. The United States admits the allegations of the third sentence of Paragraph 172.

173. The allegations of Paragraph 173 are legal conclusions based on Utah Code Ann. § 27-12-22, which speaks for itself and is the best evidence of its contents and to which no responsive pleading is required.

174. The use of the phrase “has long served” in the allegations of Paragraph 174 renders the allegations too vague and general and without the context necessary to permit a specific response. The remaining allegations concerning the alleged status as a public highway constitutes a legal conclusion to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 174 and therefore denies the same.

175. The allegations in the first sentence of Paragraph 175 concerning the alleged “public use” on a “continuous basis” of the claimed route constitute legal conclusions to which no responsive pleading is required. The remaining allegations in the first sentence of Paragraph 175 characterize testimony of certain unidentified witnesses, which testimony is the best evidence of its contents and to which no responsive pleading is required, and the allegations do not give sufficient context to permit a specific response. The use of the phrase “government employees” and lack of a timeframe in the allegations of the second sentence of Paragraph 175 renders the allegations too vague and general and without the context necessary to permit a specific response.

176. The allegations of Paragraph 176 concerning the alleged “public use” on a “continuous basis” of the claimed route constitute legal conclusions to which no responsive pleading is required. The remaining allegations of Paragraph 176 characterize testimony of certain unidentified witnesses, which testimony is the best evidence of its contents and to which no responsive pleading is required, and the allegations do not give sufficient context to permit a specific response.

177. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 177 and therefore denies the same.

178. The allegations of Paragraph 178 constitute legal conclusions to which no responsive pleading is required.

179. The allegations of Paragraph 179 are legal conclusions to which no responsive pleading is required.

180. The allegations of Paragraph 180 are legal conclusions to which no responsive pleading is required.

181. The allegations of Paragraph 181 are comprised of legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

SIXTH CAUSE OF ACTION — QUIET TITLE
SWALLOW PARK/PARK WASH ROAD

182. The United States incorporates by reference its responses to the allegations of Paragraphs 1 to 181.

183. The United States admits that certain Kane County records identify the so-called Swallow Park/Park Wash route as Road K4360.

184. The United States denies the allegations of Paragraph 184 and admits that the so-called Swallow Park/Park Wash route, as described in the Complaint, commences in section 9, T40S, R3W, S.L.M., at the intersection of the so-called North Swag route, and generally proceeds in a northwesterly direction to section 19, T39S, R3W, S.L.M., at the intersection with the Skutumpah road.

185. Paragraph 185 is not a factual allegation but rather constitutes Plaintiff's description of its claims, and to which no responsive pleading is required. To the extent the paragraph incorporates or implies factual allegations, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 185 and therefore denies the same.

186. The allegations of Paragraph 186 are legal conclusions to which no responsive pleading is required. Further, the United States denies that the scope of the claimed right of way, if established, includes a 66 foot right of way.

187. The use of the phrase “have long appeared” in the allegations of Paragraph 187 renders the allegations too vague and general and without the context necessary to permit a specific response. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

188. The United States admits that the Deer Spring Point, Utah 7.5 minute quadrangle map issued by the USGS shows unimproved dirt roads in the general vicinity of the route described in Paragraph 184. The United States admits that a copy of a map entitled “Deer Spring Point, Utah,” which appears to have been published in its original form by the USGS, is attached to Kane County’s First Amended Complaint as Exhibit 14. However, the United States denies that Exhibit 14 constitutes, in its present form, a true and correct copy of a USGS map as it contains markings and notations which appear to have been made by someone other than the USGS. As to the allegations of the second sentence of Paragraph 188, the United States lacks sufficient information to form a belief as to the truth of such allegations and therefore denies the same.

189. The United States admits that on the 1965 General Highway Map, Kane County, Utah, an unnamed road appears in the general vicinity of the northernmost portion of the claimed Swallow Park/Park Wash route as described in the Complaint.

190. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 190 and therefore denies the same.

191. The allegations of Paragraph 191 are comprised of legal conclusions to which no responsive pleading is required.

192. The allegations of Paragraph 192 are comprised of legal conclusions to which no responsive pleading is required.

193. The allegations of Paragraph 193 are legal conclusions to which no responsive pleading is required. Further, the United States denies that the scope of the claimed right of way, if established, includes a 66 foot right of way.

194. The allegations of Paragraph 194 are legal conclusions to which no responsive pleading is required.

195. The allegations of Paragraph 195 are legal conclusions based on Utah Code Ann. § 27-12-22, which speaks for itself and is the best evidence of its contents and to which no responsive pleading is required.

196. The allegations of Paragraph 196 that Plaintiff “accepted the northernmost segment of the Swallow Park/Park Wash road as a county road and its R.S. 2477 right-of-way” are legal conclusions to which no responsive pleading is required. The United States lacks sufficient information to form a belief as to the truth of the remaining allegations of Paragraph 196 and therefore denies the same.

197. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 197 and therefore denies the same.

198. The allegations of Paragraph 198 are legal conclusions based on Utah Code Ann. § 27-12-22, which speaks for itself and is the best evidence of its contents and to which no responsive pleading is required.

199. The use of the phrase “has long served” in the allegations of Paragraph 199 renders the allegations too vague and general and without the context necessary to permit a specific response. The remaining allegations concerning the alleged status as a public highway constitutes a legal conclusion to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 280 [sic] and therefore denies the same.

200. The allegations in the first sentence of Paragraph 200 concerning the alleged “public use” on a “continuous basis” of the claimed route constitute legal conclusions to which no responsive pleading is required. The remaining allegations in the first sentence of Paragraph 200 characterize testimony of certain unidentified witnesses, which testimony is the best evidence of its contents and to which no responsive pleading is required, and the allegations do not give sufficient context to permit a specific response. The use of the phrase “government employees” and the lack of a time frame in the allegations of the second sentence of Paragraph 200 renders the allegations too vague and general and without the context necessary to permit a specific response.

201. The allegations of Paragraph 201 concerning the alleged “public use” on a “continuous basis” of the claimed route constitute legal conclusions to which no responsive pleading is required. The remaining alle-

gations of Paragraph 201 characterize testimony of certain unidentified witnesses, which testimony is the best evidence of its contents and to which no responsive pleading is required, and the allegations do not give sufficient context to permit a specific response.

202. The United States admits that a portion of the so-called Swallow Park/Park Wash route has been designated for administrative use only in the Grand Staircase Escalante National Monument Management Plan (“MMP.”) The United States lacks sufficient information to form a belief as to the truth of the remaining allegations of Paragraph 202 and therefore denies the same.

203. The allegations of Paragraph 203 constitute legal conclusions to which no responsive pleading is required.

204. The allegations of Paragraph 204 are legal conclusions to which no responsive pleading is required.

205. The allegations of Paragraph 205 are legal conclusions to which no responsive pleading is required.

206. The allegations of Paragraph 206 are comprised of legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same

SEVENTH CAUSE OF ACTION — QUIET TITLE
NORTH SWAG ROAD

207. The United States incorporates by reference its responses to the allegations of Paragraphs 1 to 206.

208. The United States admits that certain Kane County records identify the so-called North Swag route as Road K4370.

209. The United States denies the allegations of Paragraph 209, and admits that the so-called North Swag route, as described in the Complaint, commences generally in section 30, T40S, R2W, S.L.M., and generally proceeds in a northwesterly direction, but lacks sufficient information to form a belief as to the truth of the remaining allegations of Paragraph 209 and therefore denies the same.

210. Paragraph 210 is not a factual allegation but rather constitutes Plaintiff's description of its claims, and to which no responsive pleading is required. To the extent the paragraph incorporates or implies factual allegations, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 210 and therefore denies the same.

211. The allegations of Paragraph 211 are legal conclusions to which no responsive pleading is required. Further, the United States denies that the scope of the claimed right of way, if established, includes a 66 foot right of way.

212. The use of the phrase "have long appeared" in the allegations of Paragraph 212 renders the allegations too vague and general and without the context necessary to permit a specific response. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

213. The United States admits that the Deer Spring Point, Utah 7.5 minute quadrangle map issued by the

USGS shows unimproved dirt roads in the general vicinity of the route described in Paragraph 213. The United States admits that a copy of a map, entitled “Deer Spring Point, Utah,” which appears to have been published in its original form by the USGS, is attached to Kane County’s First Amended Complaint as Exhibit 21. However, the United States denies that Exhibit 21 constitutes, in its present form, a true and correct copy of a USGS map as it contains markings and notations which appear to have been made by someone other than the USGS. As to the allegations of the third sentence of Paragraph 213, the United States lacks sufficient information to form a belief as to the truth of such allegations and therefore denies the same.

214. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 214 and therefore denies the same.

215. The allegations of Paragraph 215 are comprised of legal conclusions to which no responsive pleading is required.

216. The allegations of Paragraph 216 are comprised of legal conclusions to which no responsive pleading is required.

217. The allegations of Paragraph 217 are legal conclusions to which no responsive pleading is required.

218. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 218 and therefore denies the same.

219. The use of the phrase “has long served” in the allegations of Paragraph 300 [sic] renders the allegations too vague and general and without the context necessary to permit a specific response. The remaining allegations

concerning the alleged status as a public highway constitutes a legal conclusion to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 219 and therefore denies the same.

220. The allegations in the first sentence of Paragraph 220 concerning the alleged “public use” on a “continuous basis” of the claimed route constitute legal conclusions to which no responsive pleading is required. The remaining allegations in the first sentence of Paragraph 220 characterize testimony of certain unidentified witnesses, which testimony is the best evidence of its contents and to which no responsive pleading is required, and the allegations do not give sufficient context to permit a specific response. The use of the phrase “government employees” and lack of a time frame in the allegations of the second sentence of Paragraph 220 renders the allegations too vague and general and without the context necessary to permit a specific response. The United States admits the allegations of the third sentence of Paragraph 220 that the so-called North Swag route does not appear on Map 2 of the MMP but lacks sufficient information to form a belief as to the truth of the remaining allegations of the sentence and therefore denies the same.

221. The allegations of Paragraph 221 concerning the alleged “public use” on a “continuous basis” of the claimed route constitute legal conclusions to which no responsive pleading is required. The remaining allegations of Paragraph 221 characterize testimony of certain unidentified witnesses, which testimony is the best evidence of its contents and to which no responsive

pleading is required, and the allegations do not give sufficient context to permit a specific response.

222. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 222 and therefore denies the same.

223. The allegations of Paragraph 223 constitute legal conclusions to which no responsive pleading is required.

224. The allegations of Paragraph 224 are legal conclusions to which no responsive pleading is required.

225. The allegations of Paragraph 225 are legal conclusions to which no responsive pleading is required.

226. The allegations of Paragraph 226 are comprised of legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

EIGHTH CAUSE OF ACTION — QUIET TITLE
NIPPLE LAKE ROAD

227. The United States incorporates by reference its responses to the allegations of Paragraphs 1 to 226.

228. The United States admits that certain Kane County records identify the so-called Nipple Lake route, as described in the Complaint, as Road K4290.

229. The United States denies the allegations of Paragraph 229 and admits that the so-called Nipple Lake route, as described in the Complaint, occurs in section 30, T40S, R2W.

230. Paragraph 230 is not a factual allegation but rather constitutes Plaintiff's description of its claims, and to which no responsive pleading is required. To the extent the paragraph incorporates or implies factual allegations, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 230 and therefore denies the same.

231. The allegations of Paragraph 231 are legal conclusions to which no responsive pleading is required. Further, the United States denies that the scope of the claimed right of way, if established, includes a 66 foot right of way.

232. The use of the phrase "have long appeared" in the allegations of Paragraph 232 renders the allegations too vague and general and without the context necessary to permit a specific response. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

233. The United States admits that the Deer Spring Point, Utah 7.5 minute quadrangle map issued by the USGS shows unimproved dirt roads in the general vicinity of the route described in Paragraph 229. The United States admits that a copy of a map entitled "Deer Spring, Utah," which appears to have been published in its original form by the USGS, is attached to Kane County's First Amended Complaint as Exhibit 21. However, the United States denies that Exhibit 21 constitutes, in its present form, a true and correct copy of a USGS map as it contains markings and notations which appear to have been made by someone other than the USGS. As to the allegations of the second sentence of Paragraph 233, the

United States lacks sufficient information to form a belief as to the truth of such allegations and therefore denies the same.

234. The United States admits the allegations of Paragraph 234.

235. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 235 and therefore denies the same.

236. The allegations of Paragraph 236 are comprised of legal conclusions to which no responsive pleading is required.

237. The allegations of Paragraph 237 are comprised of legal conclusions to which no responsive pleading is required.

238. The allegations of Paragraph 238 are legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same. Further, the United States denies that the scope of the claimed right of way, if established, includes a 66 foot right of way.

239. The allegations of Paragraph 239 are legal conclusions to which no responsive pleading is required.

240. The allegations of Paragraph 240 are legal conclusions based on Utah Code Ann. § 27-12-22, which speaks for itself and is the best evidence of its contents and to which no responsive pleading is required.

241. The allegation in Paragraph 241 that Kane County “accepted the Nipple Lake road as a county road and the R.S. 2477 right-of-way” is a legal conclusion to

which no responsive pleading is required. The United States lacks sufficient information to form a belief as to the truth of the remaining allegations of Paragraph 241 and therefore denies the same.

242. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 242 and therefore denies the same.

243. The allegations of Paragraph 243 are legal conclusions based on Utah Code Ann. § 27-12-22, which speaks for itself and is the best evidence of its contents and to which no responsive pleading is required.

244. The use of the phrase “has long served” in the allegations of Paragraph 244 renders the allegations too vague and general and without the context necessary to permit a specific response. The remaining allegations concerning the alleged status as a public highway constitutes a legal conclusion to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 244 and therefore denies the same.

245. The allegations in the first sentence of Paragraph 245 concerning the alleged “public use” on a “continuous basis” of the claimed route constitute legal conclusions to which no responsive pleading is required. The remaining allegations in the first sentence of Paragraph 245 characterize testimony of certain unidentified witnesses, which testimony is the best evidence of its contents and to which no responsive pleading is required, and the allegations do not give sufficient context to permit a specific response. The use of the phrase “govern-

ment employees” and the lack of a time frame in the allegations of the second sentence of Paragraph 245 renders the allegations too vague and general and without the context necessary to permit a specific response.

246. The allegations of Paragraph 246 concerning the alleged “public use” on a “continuous basis” of the claimed route constitute legal conclusions to which no responsive pleading is required. The remaining allegations of Paragraph 246 characterize testimony of certain unidentified witnesses, which testimony is the best evidence of its contents and to which no responsive pleading is required, and the allegations do not give sufficient context to permit a specific response.

247. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 247 and therefore denies the same.

248. The allegations of Paragraph 248 constitute legal conclusions to which no responsive pleading is required.

249. The allegations of Paragraph 249 are legal conclusions to which no responsive pleading is required.

250. The allegations of Paragraph 250 are legal conclusions to which no responsive pleading is required.

251. The allegations of Paragraph 251 are comprised of legal conclusions to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same

NINTH CAUSE OF ACTION — QUIET TITLE
CAVE LAKES ROADS

252. The United States incorporates by reference its responses to the allegations of Paragraphs 1 to 251.

253. The United States admits that certain Kane County records identify the so-called Cave Lake routes as K1070, K1075, K1087, and K1088.

254. The United States denies the allegations in Paragraph 254, and admits that the so-called Cave Lakes route identified in certain of Kane County's records as K1070, as described in the Complaint, is located generally in sections 34 and 35, T42S, R7W, SLM, and intersects the Hancock road in section 34, T42S, R7W, SLM. The United States lacks sufficient information to form a belief as to the truth of the remaining allegations of Paragraph 254 and therefore denies the same

255. Paragraph 255 is not a factual allegation but rather constitutes Plaintiff's description of its claims, and to which no responsive pleading is required. To the extent the paragraph incorporates or implies factual allegations, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 255 and therefore denies the same.

256. The United States denies the allegations in Paragraph 256 and admits that the so-called Cave Lakes route identified in certain of Kane County's records as K1075, and as described in the Complaint, is located generally in sections 34 and 35, T42S, R7W, SLM, and intersects the Hancock road in section 34, T42S, R7W, SLM. The United States lacks sufficient information to form a belief as to the truth of the remaining allegations of Paragraph 256 and therefore denies the same.

257. Paragraph 257 is not a factual allegation but rather constitutes Plaintiff's description of its claims, and to which no responsive pleading is required. To the extent the paragraph incorporates or implies factual allegations, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 257 and therefore denies the same.

258. The United States admits that the so-called Cave Lakes route K1087 as described in the Complaint is located generally in sections 24, T42S, R7W, SLM, and denies that it connects to Hancock Road in section 34, T42S, R7W, SLM.

259. Paragraph 259 is not a factual allegation but rather constitutes Plaintiff's description of its claims, and to which no responsive pleading is required. To the extent the paragraph incorporates or implies factual allegations, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 259 and therefore denies the same.

260. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 260 and therefore denies the same.

261. Paragraph 261 is not a factual allegation but rather constitutes Plaintiff's description of its claims, and to which no responsive pleading is required. To the extent the paragraph incorporates or implies factual allegations, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 261 and therefore denies the same.

262. The allegations of Paragraph 262 are legal conclusions to which no responsive pleading is required. Further, the United States denies that the scope of the

claimed right of way, if established, includes a 66 foot right of way.

263. The use of the phrase “have long appeared” in the allegations of Paragraph 263 renders the allegations too vague and general and without the context necessary to permit a specific response. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

264. The United States admits that the Kanab, Utah-Arizona 7.5 minute quadrangle map issued by the USGS shows unimproved dirt roads in the general vicinity of the route described in Paragraph 264. The United States admits that a copy of a map entitled “Kanab, Utah-Arizona,” which appears to have been published in its original form by the USGS, is attached to Kane County’s First Amended Complaint as part of Exhibit 22. However, the United States denies that such map constitutes, in its present form, a true and correct copy of a USGS map as it contains markings and notations which appear to have been made by someone other than the USGS. As to the allegations of the second sentence of Paragraph 264, the United States lacks sufficient information to form a belief as to the truth of such allegations and therefore denies the same.

265. The United States admits that the Kanab, Utah-Arizona 7.5 minute quadrangle map issued by the USGS shows unimproved dirt roads in the general vicinity of the routes described in Paragraphs 254 and 256. The United States admits that a copy of a map entitled “Kanab, Utah-Arizona,” which appears to have been published in its original form by the USGS, is attached to Kane County’s First Amended Complaint as part of

Exhibit 22. However, the United States denies that such map constitutes, in its present form, a true and correct copy of a USGS map as it contains markings and notations which appear to have been made by someone other than the USGS. As to the allegations of the second sentence of Paragraph 265, the United States lacks sufficient information to form a belief as to the truth of such allegations and therefore denies the same.

266. The United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 266 and therefore denies the same.

267. The allegations of Paragraph 267 are comprised of legal conclusions to which no responsive pleading is required.

268. The allegations of Paragraph 268 are comprised of legal conclusions to which no responsive pleading is required.

269. The allegations of Paragraph 269 are legal conclusions to which no responsive pleading is required. Further, the United States denies that the scope of the claimed right of way, if established, includes a 66 foot right of way.

270. The use of the phrase “has long served” in the allegations of Paragraph 270 renders the allegations too vague and general and without the context necessary to permit a specific response. The remaining allegations concerning the alleged status as a public highway constitutes a legal conclusion to which no responsive pleading is required. To the extent a responsive pleading is required, the United States lacks sufficient information to form a belief as to the truth of the allegations of Paragraph 270 and therefore denies the same.

271. The allegations of Paragraph 271 concerning the alleged “public use” on a “continuous basis” of the claimed route constitute legal conclusions to which no responsive pleading is required. The remaining allegations of Paragraph 271 characterize testimony of certain unidentified witnesses, which testimony is the best evidence of its contents and to which no responsive pleading is required, and the allegations do not give sufficient context to permit a specific response.

272. The allegations of Paragraph 272 concerning the alleged “public use” on a “continuous basis” of the claimed route constitute legal conclusions to which no responsive pleading is required. The remaining allegations of Paragraph 272 characterize testimony of certain unidentified witnesses, which testimony is the best evidence of its contents and to which no responsive pleading is required, and the allegations do not give sufficient context to permit a specific response.

273. The allegations of Paragraph 273 concerning the alleged “public use” on a “continuous basis” of the claimed route constitute legal conclusions to which no responsive pleading is required. The remaining allegations of Paragraph 273 characterize testimony of certain unidentified witnesses, which testimony is the best evidence of its contents and to which no responsive pleading is required, and the allegations do not give sufficient context to permit a specific response.

274. The allegations of Paragraph 274 concerning the alleged “public use” on a “continuous basis” of the claimed route constitute legal conclusions to which no responsive pleading is required. The remaining allegations of Paragraph 274 characterize testimony of certain unidentified witnesses, which testimony is the best

evidence of its contents and to which no responsive pleading is required, and the allegations do not give sufficient context to permit a specific response.

275. The allegations of Paragraph 275 concerning the alleged “public use” on a “continuous basis” of the claimed route constitute legal conclusions to which no responsive pleading is required. The remaining allegations of Paragraph 275 characterize testimony of certain unidentified witnesses, which testimony is the best evidence of its contents and to which no responsive pleading is required, and the allegations do not give sufficient context to permit a specific response.

276. The allegations of Paragraph 276 concerning the alleged “public use” on a “continuous basis” of the claimed route constitute legal conclusions to which no responsive pleading is required. The remaining allegations of Paragraph 276 characterize testimony of certain unidentified witnesses, which testimony is the best evidence of its contents and to which no responsive pleading is required, and the allegations do not give sufficient context to permit a specific response.

277. The allegations of Paragraph 277 concerning the alleged “public use” on a “continuous basis” of the claimed route constitute legal conclusions to which no responsive pleading is required. The remaining allegations of Paragraph 277 characterize testimony of certain unidentified witnesses, which testimony is the best evidence of its contents and to which no responsive pleading is required, and the allegations do not give sufficient context to permit a specific response.

278. The allegations of Paragraph 278 concerning the alleged “public use” on a “continuous basis” of the

claimed route constitute legal conclusions to which no responsive pleading is required. The remaining allegations of Paragraph 278 characterize testimony of certain unidentified witnesses, which testimony is the best evidence of its contents and to which no responsive pleading is required, and the allegations do not give sufficient context to permit a specific response.

279. The allegations of Paragraph 279 constitute legal conclusions to which no responsive pleading is required.

280. The allegations of Paragraph 2801 [sic] are legal conclusions to which no responsive pleading is required.

281. The allegations of Paragraph 281 are legal conclusions to which no responsive pleading is required.

282. The allegations of Paragraph 282 are comprised of legal conclusions to which no responsive pleading is required.

REQUEST FOR RELIEF

The allegations set forth in paragraphs 1 to 11 of this section are requests for relief to which no responses are required.

GENERAL DENIAL

To the extent that any allegations of the Complaint have not been admitted or specifically responded to, the United States denies such allegations.

FIRST DEFENSE

The Court lacks jurisdiction over the subject matter of this action due to Plaintiff State of Utah's failure to allege facts sufficient to show that it can satisfy the statute of limitations set forth in the Quiet Title Act.

SECOND DEFENSE

The Court lacks jurisdiction over the subject matter of this action due to the lack of a justiciable case or controversy between the parties with respect to certain of Plaintiff State of Utah's claims.

THIRD DEFENSE

The Court lacks jurisdiction over the subject matter of this action due to Plaintiff's failure to satisfy the requirement that it demonstrate a disputed title to real property with respect to certain of Plaintiff State of Utah's claims under the Quiet Title Act and thereby invoke a waiver of the United States' sovereign immunity under the Act.

FOURTH DEFENSE

Plaintiff State of Utah has failed to state a claim upon which relief can be granted.

FIFTH DEFENSE

Plaintiff State of Utah has failed to join indispensable parties under Rule 19 of the Federal Rules of Civil Procedure, including with respect to the claimed rights-of-way that cross private land.

SIXTH DEFENSE

Plaintiff State of Utah's claims may be barred by the statute of limitations.

SEVENTH DEFENSE

The Court lacks jurisdiction over Plaintiff State of Utah's Ninth Claim to the extent it failed to satisfy the 180-day notice requirement set forth in the Quiet Title Act with respect to one of the Cave Lakes roads.

WHEREFORE, having fully answered, the United States prays that this action be dismissed, that judgment be entered for the United States, and that the Court grant such other and further relief as it may deem just and appropriate.

RESPECTFULLY SUBMITTED this 16th day of Aug., 2010.

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APPENDIX K

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

Case No. 2:08-cv-00315-CW

KANE COUNTY, UTAH AND STATE OF UTAH, PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANT

AND

SOUTHERN UTAH WILDERNESS ALLIANCE, AND
THE WILDERNESS SOCIETY,
PROPOSED INTERVENOR-DEFENDANTS

Filed: Dec. 27, 2017

**MOTION TO INTERVENE AS DEFENDANTS AND
MEMORANDUM IN SUPPORT**

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Pursuant to Rule 24 of the Federal Rules of Civil Procedure, the Southern Utah Wilderness Alliance and The Wilderness Society (collectively, “SUWA”), by and through undersigned counsel, respectfully submit this Motion to Intervene as Defendants and Memorandum in Support. Pursuant to Rule 24(c), proposed Answers to Plaintiffs’ operative Complaints are attached hereto as Exhibits A and B.

RELIEF SOUGHT AND GROUNDS FOR MOTION

SUWA hereby moves to intervene as of right in this action under Rule 24(a) of the Federal Rules of Civil Procedure. SUWA more than adequately satisfies the legal requirements for intervention as of right. SUWA’s interests are not likely to be adequately represented by the United States in this litigation, particularly given the recent change in administration and the fact that the United States has entered into active settlement discussions in this case (but has not responded to SUWA’s requests for information about and involvement in such discussions). The landscape has thus changed significantly since SUWA last moved to intervene, and as a result of those changes SUWA should be granted full intervenor status. SUWA respectfully requests that the

Court grant this Motion and recognize SUWA as an intervenor-defendant as of right.

INTRODUCTION

SUWA moved to intervene at the outset of this case to protect its undisputed interest in federal public lands threatened by R.S. 2477 rights-of-way in Kane County. This Court denied the motion, and the Tenth Circuit affirmed solely on the ground that SUWA had “failed to establish, at [that] stage of the litigation, that the federal government will not adequately protect its interest.” *Kane Cnty. v. United States*, 597 F.3d 1129, 1135 (10th Cir. 2010).¹ The appeals court explained that “the federal government ‘ha[d] displayed no reluctance [in these proceedings], at least so far as the record before [it] show[ed], to claim full title to’ the roads at issue.” *Id.* (quoting *San Juan Cnty. Utah v. United States*, 503 F.3d 1163, 1206 (10th Cir. 2007) (en banc) (opinion of Hartz, J.)). Moreover, the Tenth Circuit presumed that the proceeding would determine only title, and not “a ‘nuanced’ determination encompassing ‘not only whether there w[as] any right-of-way, but also the nature and scope of that right-of-way if it d[id] exist.’” *Id.* at 1134 (quoting *San Juan Cnty.*, 503 F.3d at 1228 (opinion of Ebel, J.)). Since this Court and the Tenth Circuit previously considered the issue of intervention, the nature of this proceeding, as well as the United States’ litigation position, have both changed. The case has been remanded for this Court to reconsider its scope determinations for the Skutumpah, Swallow Park, and North Swag roads. Further, the United

¹ The Tenth Circuit also summarily denied a later motion to intervene on appeal. *See* Order, Appeal Nos. 13-4108, 13-4109 & 13-4110 (10th Cir. Sept. 2, 2014).

States, the State of Utah (the “State”), and Kane County (the “County”) have begun settlement discussions to resolve these scope issues. These changes in circumstance have eliminated the bases for previous denials of SUWA’s intervention. As explained more fully below, SUWA is now entitled to intervene as of right.

APPLICANTS FOR INTERVENTION

The Southern Utah Wilderness Alliance is a non-profit corporation with thousands of members throughout the United States, many of whom live and recreate in Utah. The Alliance is dedicated to preserving the outstanding wilderness and other sensitive public lands at the heart of the Colorado Plateau, as well as encouraging management and preservation of those lands in their natural state. *See* Decl. of Ray Bloxham ¶ 6 (attached as Exhibit C) (hereinafter “Bloxham Decl.”); Decl. of Kya Marienfeld ¶ 3 (attached as Exhibit D) (hereinafter “Marienfeld Decl.”). SUWA has undertaken many efforts to protect the lands at issue in this litigation, such as aiding the Utah Wilderness Coalition in its efforts to pass America’s Red Rock Wilderness Act, which would designate as wilderness approximately nine million acres of Utah lands managed by the U.S. Bureau of Land Management (“BLM lands”), including the areas bordering or containing the alleged R.S. 2477 rights-of-way at issue here, Bloxham Decl. ¶¶ 6-7. And it has worked for decades to eliminate damage from motor vehicle use in Kane County. *See, e.g., S. Utah Wilderness All. v. Bureau of Land Mgmt.*, 425 F.3d 735, 742 (10th Cir. 2005), *as amended on denial of reh'g* (Jan. 6, 2006) (discussing SUWA’s efforts to stop damage from Kane County’s road maintenance and construction of al-

leged R.S. 2477 rights-of-way). Furthermore, Southern Utah Wilderness Alliance members and staff use and enjoy BLM lands in Kane County—including the particular federal public lands at issue in this case—for a variety of purposes, including photography, recreation, and aesthetic appreciation. Bloxham Decl. ¶ 12; Marienfeld Decl. ¶ 6.

The Wilderness Society (“TWS”) is a non-profit national membership organization founded in 1935. Through public education and advocacy, TWS works to protect America’s wilderness and to develop a nationwide network of wild lands. Bloxham Decl. ¶ 8. TWS plays an active role in the conservation community’s efforts to protect Utah’s remaining wilderness character lands. *Id.* It also conducts public education campaigns about the value of America’s remaining wild lands, the threats to those lands, and the public’s opportunity to take part in the management decisions by the BLM and others that will decide the fate of those lands. *Id.*

BACKGROUND

Kane County brought this action under the Quiet Title Act (“QTA”), 28 U.S.C. § 2409a, seeking to adjudicate title and determine scope to fifteen routes traversing or bordering BLM-managed federal public lands in southern Utah under R.S. 2477. The three R.S. 2477 rights-of-way subject to the Tenth Circuit’s remand order implicate four categories of federal public lands in which SUWA has a particular interest: (1) wilderness study areas (“WSAs”), which are lands recognized by BLM in the 1980s as having wilderness values and are protected by law and the agency’s own management plans;² (2)

² See 43 U.S.C. § 1782.

Utah Wilderness Coalition-proposed wilderness areas (“UWC areas”), which are lands inventoried by the Utah Wilderness Coalition and determined by conservationists to have wilderness character; (3) lands with wilderness characteristics (“LWCs”), which are lands the BLM has determined to have wilderness character, apart from WSAs; and (4) lands designated as part of the Grand Staircase-Escalante National Monument,³ including those closed to motor vehicles by a 1999 Management Plan.⁴

The use and maintenance of R.S. 2477 rights-of-way have potentially damaging impacts on public resources and land management. In a 1993 report to Congress, the U.S. Department of the Interior (“DOI”) acknowledged that “[r]ecognition and use of R.S. 2477 rights-of-way could interfere with and prevent effective management of the individual and common objectives of the affected [land management] agencies.” Dep’t of the Interior, Report to Congress on R.S. 2477 at 35 (June 1993) (hereinafter “DOI Report”; attached as Exhibit E). DOI further concluded that “road-widening may directly impact natural resources contiguous to the right-of-way.” *Id.* Additionally, road improvements “could lead to direct impacts resulting from better access to, and increased use of, sensitive locations.” *Id.* The report stated that these concerns are heightened when wilderness values are impacted by R.S. 2477 right-of-way claims. *Id.* at 38.

³ See Proclamation 6920: Establishment of the Grand Staircase-Escalante National Monument, 61 Fed. Reg. 50, 223 (Sept. 18, 1996),

⁴ Notice of Availability: Grand Staircase-Escalante National Monument Approved Management Plan and Record of Decision, 65 Fed. Reg. 10,819 (Feb. 29, 2000).

To defend its interests in these lands against the County's claimed R.S. 2477 rights-of-way, SUWA moved to intervene at the outset of this case. See *Kane Cnty. v. United States*, Case No. 2:08-CV-315, 2009 WL 959804 (D. Utah Apr. 6, 2009). The Court denied SUWA's motion on the grounds that (1) "the only issue in this case is whether Kane County can establish that it holds title to the roads at issue," and SUWA is not a title-holder, and (2) the United States' assertion that "it has been and will be vigorous in defending its claim to the legitimate title to the roads." *Id.* at *2 to *3. The Tenth Circuit affirmed on only the second basis—that the United States would adequately represent SUWA's interests. Consistent with the majority conclusion in *San Juan County*, the Tenth Circuit assumed that SUWA had a valid interest that may be impaired by the disposition of the County's claims; but it nonetheless held that SUWA had "failed to establish, at [that] stage of the litigation, that the federal government will not adequately protect its interest." *Kane Cnty.*, 597 F.3d at 1135. The court noted that, "as was the case in *San Juan County*, the federal government 'ha[d] displayed no reluctance [in these proceedings], at least so far as the record before [it] show[ed], to claim full title to' the roads at issue, and 'SUWA ha[d] provided no basis to predict that the [federal government] will fail to present . . . an argument on the merits that SUWA would make.'" *Id.* (quoting *San Juan Cnty.*, 503 F.3d at 1206).⁵

In the district court proceedings that followed the denial of intervention, the Court found that the State and

⁵ As explained *infra*, the Tenth Circuit concluded that for purposes of that motion to intervene SUWA had waived the issue of the scope of the rights-of-way.

County held title to twelve of the fifteen claims, including the claims for the Skutumpah, Swallow Park, and North Swag roads. See Mem. Decision & Order, *Kane Cnty. v. United States*, Case No. 2:08-cv-00315-CW (D. Utah June 21, 2011), ECF No. 160; *Kane Cnty. v. United States*, Case No. 2:08-cv-00315, 2013 WL 1180764 (D. Utah Mar. 20, 2013). The United States and the State and County cross-appealed the final orders to the Tenth Circuit, which affirmed in part and reversed in part. *Kane Cnty. v. United States*, 772 F.3d 1205, 1225 (10th Cir. 2014). Relevant here, the Tenth Circuit reversed this Court's determination of the scope of the Skutumpah, Swallow Park, and North Swag roads for two reasons: (1) the width determinations were not based on what was reasonable and necessary based on proven pre-1976 uses, and (2) the width determinations allowed for unspecified future improvements. *Id.* at 1223-25. The Tenth Circuit remanded the width determinations to this Court, where they remain the final unresolved issue in the case. *Id.* at 1225.

On September 5, 2017, this Court ordered "supplemental briefing informing the court of the effect of the Tenth Circuit's decision in this case," and to "inform the court of the issues that remain to be resolved and whether those issues can be decided on the existing record or if further fact finding is necessary." Order, *Kane Cnty. (1) v. United States*, 2:08-cv-00315-CW (D. Utah Sept. 5, 2017), ECF No. 293. On September 15, 2017, the State, County, and United States filed a Joint Motion to Stay the September 5 Order for supplemental briefing because the parties are currently engaged in settlement discussions "regarding the scope of the R.S. 2477 rights-of-way for the North Swag, Swallow Park, and Skutumpah Roads." Joint Mot. for Stay at 2, *Kane*

Cnty. v. United States, 2:08-cv-003150-CW (D. Utah Sept. 15, 2017), ECF No. 294. The Joint Motion indicated that settlement discussions had already begun, and that the parties “are optimistic that they may be able to reach agreement regarding the effect of the Tenth Circuit Court’s decision in this case and resolve the issues that remain before the Court.” *Id.* On September 18, 2017, this Court granted the Joint Motion, and stayed proceedings until January 5, 2018. Order, *Kane Cnty. v. United States*, 2:08-cv-00315-CW (D. Utah Sept. 18, 2017), ECF No. 296.

On November 30, 2017, counsel for SUWA sent a letter to counsel for each of the parties asking for reasonable notice of any settlement discussions and an opportunity to attend and participate in such discussions. See Letter from S. Bloch, SUWA, to A. Rampton *et al.* (attached as Exhibit F). SUWA asked that the parties respond by December 7 whether they would mutually agree to this request. As of the date of this filing, no response has been received.

ARGUMENT

I. SUWA IS ENTITLED TO INTERVENTION AS OF RIGHT.

A party is entitled to intervene as of right when it can establish the following four factors:

- (1) the application is “timely;”
- (2) “the applicant claims an interest relating to the property or transaction which is the subject of the action;”
- (3) the applicant’s interest “may as a practical matter” be “im-pair[ed] or impede[d];” and
- (4) “the applicant’s interest is not adequately represented by existing parties.”

Coal. of Ariz./N.M. Counties for Stable Econ. Growth v. U.S. Dep't of Interior, 100 F.3d 837, 840 (10th Cir. 1996) [hereinafter "*Coalition of Counties*"] (quoting Fed. R. Civ. P. 24(a)(2)).

The intervention standards "are not rigid, technical requirements," *San Juan Cnty.*, 503 F.3d at 1195, and should be viewed in light of the Tenth Circuit's "somewhat liberal line in allowing intervention." *Nat'l Farm Lines v. Interstate Commerce Comm'n*, 564 F.2d 381, 384 (10th Cir. 1977). The Court's focus should be on the "practical" effect the litigation would have on the proposed intervenor, and consider the factors in a "blended" fashion. *San Juan Cnty.*, 503 F.3d at 1188-89, 1193, 1195-96. The "requirements for intervention may be relaxed in cases raising significant public interests," and the environmental concerns involved in this case have been recognized as warranting such relaxed treatment. *Id.* at 1201 (citing *Cascade Natural Gas Corp. v. El Paso Natural Gas Corp.*, 386 U.S. 129, 136 (1967)).

A. SUWA's Interests in the Lands at Issue Support Intervention as of Right.

An applicant for intervention must establish "an interest relating to the property . . . which is the subject of the action." *Utah Ass'n of Counties v. Clinton*, 255 F.3d 1246, 1249 (10th Cir. 2001) (quoting Fed. R. Civ. P. 24(a)(2)). The applicant need not claim a legal interest *in the disputed property itself*; rather, it need only claim an interest *relating* to that property. See *San Juan Cnty.*, 503 F.3d at 1200; *Utah Ass'n of Counties*, 255 F.3d at 1252. SUWA's interests clearly relate to the property at issue on remand.

The Tenth Circuit has acknowledged that “organizations whose purpose is the protection and conservation of wildlife and its habitat have a protectable interest in litigation that threatens those goals.” *Utah Ass’n of Counties*, 255 F.3d at 1252; *see also W. Energy Alliance v. Zinke*, Case No. 17-2005, slip op. at 12 (10th Cir. Dec. 18, 2017) (attached as Exhibit G) (acknowledging as sufficient interest for intervention as of right SUWA’s and other conservation groups’ “record of advocacy for the protection of public lands”). Consistent with this view, in *San Juan County*, the court declared “it indisputable that SUWA’s environmental concern is a legally protectable interest.” 503 F.3d at 1199. In reaching this conclusion, the *San Juan County* court noted that SUWA members regularly visited the property at issue “for conservation, aesthetic, scientific and recreational purposes”; that SUWA “ha[d] been a determined advocate for restricting vehicular access to” the land at issue; and that SUWA’s prior advocacy had played a role in the protection the land enjoyed at that time. 503 F.3d at 1199. The court further noted that SUWA did not claim title to the right-of-way at issue, but it held this fact to be immaterial, as Rule 24(a)(2) required only that SUWA claim an interest *relating to* that property. *Id.* at 1200. In other words, the “interest” factor of the intervention standard does not require that SUWA stand in the same position as the United States and be able to assert the same legal interests; instead, this factor is applied flexibly, and is satisfied by interests SUWA undisputedly has.

Specifically, SUWA’s environmental concern is the same here as it was in *San Juan County*: “the potential damage to the environment arising from vehicular traffic” in the BLM lands surrounding the County’s

claimed rights-of-way. 503 F.3d at 1199. Similar efforts on the part of SUWA and its members substantiate this concern. SUWA's members regularly visit the BLM lands surrounding the County's claimed rights-of-way for aesthetic, health, and recreational purposes. *See, e.g.*, Bloxham Decl. ¶ 12. And for years SUWA has actively advocated for federal and other protections for these lands. *See, e.g., id.* ¶¶ 2-8. SUWA has legally protectable interests relating to the County's R.S. 2477 rights-of-way over these lands, which are more than adequate to satisfy this factor and support SUWA's request for intervention as of right.

B. The Outcome of This Action, By Settlement or Otherwise, Regarding the Scope of the State and County's R.S. 2477 Rights-of-Way May Impair SUWA's Interests.

To intervene as of right, SUWA must also "demonstrate that the disposition of this action may as a practical matter impair or impede [its] ability to protect [its] interest." *Utah Ass'n of Counties*, 255 F.3d at 1253. Yet "[a] would-be intervenor must show only that impairment of its substantial legal interest is *possible* if intervention is denied." *Id.* (emphasis added).

SUWA's interests, including its interest in the scope of the rights-of-way being limited to pre-1976 uses and widths that do not exceed the disturbed roadbed, may be impaired if SUWA is denied intervention. Any scope settlement that is not tightly correlated with reliable evidence as to pre-1976 uses and widths necessarily impairs SUWA's interests and expands the scope of the State and County's rights-of-way beyond their legal entitlement.

Further, a settlement regarding the scope of the State and County's three R.S. 2477 rights-of-way could irreparably impair SUWA's conservation interests in at least three significant ways. First, any settlement outcome that provides the County or State with rights to use or maintain any of the three routes beyond their current footprint would almost certainly result in damage to natural resources (*i.e.*, soils and vegetation) and the environment within the Grand Staircase-Escalante National Monument, the Paria-Hackberry WSA, and other lands with wilderness characteristics. Bloxham Decl. ¶¶ 12-14. Second, an adverse settlement could encourage or at the very least open the door for illegal off-route vehicle use by making vehicle access to remote, sensitive areas easier. This would be particularly so for the North Swag Road because it extends deep into the Paria-Hackberry WSA. Such use would degrade the surrounding wilderness, wildlife, and other resources that SUWA has long fought to protect. *Id.* ¶¶ 2-8, 12-15; *see, e.g.*, DOI Report at 35, 38. Third, a settlement regarding scope could impede SUWA's ability to secure wilderness protection of the surrounding lands from Congress—one of SUWA's most fundamental goals. The BLM manages WSAs in part to protect their roadless nature; by introducing wider, maintained roads in these areas, the County could undermine the management goals SUWA has already achieved, as well as for other non-WSA lands with wilderness characteristics it continues to strive for through the passage of America's Red Rock Wilderness Act. *See* Bloxham Decl. ¶¶ 3, 6, 15; *see Utah v. United States*, No. 05-cv-714, 2008 WL 4170017, at *4 (D. Utah Sept. 3, 2008) ("A ruling on the merits favoring plaintiffs . . . would change the land management ability of the federal agency as to those

routes, and may reduce the chance that the federal land would retain its wilderness characteristics.”). For these reasons, a settlement threatens to impair SUWA’s legally protectable interest in the lands burdened by the Skutumpah, Swallow Park, and North Swag rights-of-way.

C. The United States May Not Adequately Represent SUWA’s Interests.

Once a movant establishes possible impairment of an interest relating to the property at issue, the movant is entitled to intervene on a timely motion “unless existing parties adequately represent that interest.” Fed. R. Civ. P. 24(a)(2). The inadequate representation requirement “is satisfied if the applicant shows that the representation of his interest ‘may be’ inadequate; and the burden of making that showing should be treated as minimal.” *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972); see also *WildEarth Guardians*, 604 F.3d at 1200. To satisfy this minimal burden, “[t]he possibility that the interests of the applicant and the parties may diverge ‘need not be great.’” *Utah Ass’n of Counties*, 255 F.3d at 1254 (quoting *Nat. Res. Def. Council v. U.S. Nuclear Reg. Comm’n*, 578 F.2d 1341, 1346 (10th Cir. 1978)).

When SUWA sought to intervene at the outset of this case in 2008, its sole barrier to doing so was the finding that the United States would adequately represent its interests. This Court based its denial on the assumption that “the only issue to be resolved” was whether the United States or the County held title to the claims. *Kane Cnty.*, 2009 WL 959804, at *3. The Tenth Circuit, after concluding for purposes of that motion that SUWA had waived issues regarding scope, determined that the

United States had shown “no reluctance” to claim full title to the roads, and that SUWA had provided “no basis to predict that the [federal government] will fail to present . . . an argument on the merits that SUWA would make.” *Kane Cnty.*, 597 F.3d at 1135 (quoting *San Juan Cnty.*, 503 F.3d at 1206). *These predicates against intervention are all now gone.*

The current proceedings center exclusively on the scope of R.S. 2477 rights-of-way, not a binary determination of their title. And the United States is actively seeking to settle the matter of scope with the State and County, a reversal from its prior position of vigorously defending against the claims. For these reasons, SUWA can no longer rely on the United States to adequately represent its conservation interest in these remanded proceedings.

1. The Current Proceedings Involve the Scope and Nature of the Skutumpah, Swallow Park, and North Swag Rights-of-Way, Not Binary Determinations of Title.

The Tenth Circuit has repeatedly recognized that the United States’ role in representing the broad interests of the general public may preclude it from adequately representing a prospective intervenor’s narrower interest, such as SUWA’s conservation interest here. *See San Juan Cnty.*, 503 F.3d at 1204, 1227; *Utahns for Better Transp.*, 295 F.3d at 1117; *Utah Ass’n of Counties*, 255 F.3d at 1255-56; *Coalition of Counties*, 100 F.3d at 845-46; *Nat’l Farm Lines*, 564 F.2d at 383-84. This is especially true with respect to these remand proceedings to determine the scope and nature of adjudicated R.S. 2477 rights-of-way. Judge Ebel, writing for a four-judge plurality in *San Juan County*, recognized

that R.S. 2477 cases necessitate a “nuanced” determination of “not only whether there is any right of way, but also the nature and scope of that right of way if it did exist.” 503 F.3d at 1228. Conservation groups will always “want any right of way that does exist to be drawn as narrowly as possible,” and the interests of the United States “will involve a much broader range of interests.” *Id.* at 1228-29. Thus, the “potential and even likelihood of a conflict between the positions of the United States and [conservation groups] cannot be avoided” at the scope phase of this case. *Id.* at 1229.

Neither this Court nor the Tenth Circuit has yet had an opportunity to address Judge Ebel’s concurrence or the inevitable conflict regarding the scope of rights-of-way. This Court’s earlier decision relied on “SUWA’s concession at oral argument” on its prior motion to intervene “that the only issue to be resolved” in the original proceeding was “whether the United States or Kane County holds title.” *Kane Cnty.*, 2009 WL 959804, at *2 to *3. The Tenth Circuit likewise relied on this concession for its holding that the United States would adequately represent SUWA’s interests: “any argument” regarding potential scope “has, for the purposes of this appeal, been waived.” *Kane Cnty.*, 597 F.3d at 1135. This is no longer the case.

Now, the proceedings focus exclusively on matters of scope, and require precisely the “nuanced” determination warranting intervention. On remand, and in accordance with its interest in the conservation and protective management of the servient estate, SUWA would seek the narrowest possible determination of width of the adjudicated roads, as well as the most restrictive conditions on the allowable maintenance and use within

the rights-of-way, that is consistent with reliable evidence concerning pre-1976 uses and widths. The United States, on the other hand, will be required to weigh various considerations, including “competing policy, economic, political, legal and environmental factors.” *San Juan Cnty.*, 503 F.3d at 1229. These factors will go far beyond, and may directly conflict with, SUWA’s focused conservation interest.

2. Ongoing Settlement Discussions Between the Parties Indicate that the United States Will Not Adequately Represent SUWA’s Interests.

The United States’ entry into settlement discussions with the State and County regarding the scope of these three rights-of-way further undercuts any argument that it adequately represents SUWA’s interests. “If [a] case is disposed of by settlement rather than by litigation, what the [defendant] perceives as being in its interest may diverge substantially from the [intervenors’] interests.” *Mille Lacs Band of Chippewa Indians v. State of Minn.*, 989 F.2d 994, 1001 (8th Cir. 1993). Accordingly, courts have allowed conservation groups to intervene in R.S. 2477 cases specifically to participate in settlement proceedings. *See, e.g., United States v. Carpenter*, 526 F.3d 1237, 1241 (9th Cir. 2008).

The United States has put itself in a position to make further concessions to the Plaintiffs *beyond* “competing policy, economic, political, legal and environmental factors” that preclude adequate representation of SUWA’s conservation interests. *San Juan Cnty.*, 503 F.3d at 1229. SUWA is entitled to intervene as of right in these proceedings to protect from the threat of settlement its “requisite interest in seeing that the wilderness

area be preserved for the use and enjoyment of [its] members.” *Carpenter*, 526 F.3d at 1240.

3. The United States’ Recent Policy Shifts in the Statewide R.S. 2477 Cases Shows that the United States Will Not Defend SUWA’s Conservation Interest.

When the United States is a party, “it is not realistic to assume that the agency’s programs will remain static or unaffected by unanticipated policy shifts.” *Utah Ass’n of Counties*, 255 F.3d at 1256 (quotation omitted). Indeed, the Tenth Circuit recently reversed a district court’s denial of SUWA’s and other conservation groups’ motion to intervene in a lawsuit against the Trump Administration based in part on “the change in the Administration[, which] raises the possibility of divergence of interest or a shift during the litigation.” *W. Energy Alliance*, Case No. 17-2005, slip op. at 20-21 (internal citations and quotations omitted) (noting “[t]his possibility has already manifested itself in other arenas,” and citing examples of the Trump Administration’s shifts on conservation issues). Such a policy shift has happened here since remand, as reflected in other related R.S. 2477 cases. Spurred by the change in presidential administrations, the State and United States began unilateral⁶ settlement discussions in April 2017 in the statewide R.S. 2477 cases, which involve more than 14,000 claimed rights-of-way. *See* Memo. To Acting Solicitor at 2, Settlement considerations in the Utah Quiet Title Act/R.S. 2477 cases (April 2017) (attached as Exhibit H) (discussing the State and United States’ agreement “to begin a

⁶ Earlier settlement discussions focusing specifically on Iron County included SUWA and The Wilderness Society as participants. *See* Exhibit H at 2.

dialogue to explore potential resolutions to the R.S. 2477 issue under this administration”). The United States’ position change in these cases matches its change here—from defending R.S. 2477 claims to bargaining them without SUWA’s involvement or participation. SUWA cannot rely on the United States to defend its focused interest in land protection at the same time the United States is scaling back its defense of thousands of R.S. 2477 claims.

D. SUWA’s Motion for Intervention Is Timely.

“The timeliness of a motion to intervene is assessed in light of all the circumstances, including the length of time since the applicant knew of his interest in the case, prejudice to the existing parties, prejudice to the applicant, and the existence of any unusual circumstances.” *Elliott Indus. Ltd. Partnership v. BP America Prod. Co.*, 407 F.3d 1091, 1103 (10th Cir. 2005) (quoting *Utah Ass’n of Counties*, 255 F.3d at 1250). This requirement “is not a tool of retribution to punish the tardy would-be intervenor, but rather a guard against prejudicing the original parties by the failure to apply sooner.” *Utah Ass’n of Counties*, 255 F.3d at 1250 (quoting *Sierra Club v. Espy*, 18 F.3d 1202, 1205 (5th Cir. 1994)). Accordingly, “courts should allow intervention ‘where no one would be hurt and greater justice could be attained.’” *Id.* (quoting *Sierra Club*, 18 F.3d at 1205).

Under this standard, SUWA’s motion is timely. As Judge Hartz recognized in *San Juan County*, the previous denial of intervention “does not forever foreclose SUWA from intervention.” 503 F.3d at 1207. “If developments after the original application undermine the presumption that the Federal Defendants would ade-

quately represent its interest, the matter may be revisited.” *Id.* As discussed above, the proceedings have changed—from a binary determination of title, the basis of previous denials of intervention,⁷ to scope determinations that directly threaten SUWA’s interests. Additionally, the United States’ shift to settlement of the remanded questions undercuts any assertion that it will adequately represent SUWA’s interests.

SUWA’s motion is also timely because it only learned that the United States and the State and County began settlement discussions in this case in September 2017, upon the filing of the Joint Motion for Stay. *Cf. United States v. Carpenter*, 298 F.3d 1122, 1125 (9th Cir. 2002). It has since sought informal involvement in those discussions, but has received no response from the United States, State or County. Moreover, the parties will not be prejudiced by SUWA’s intervention. They have not yet entered into a settlement or otherwise resolved the remanded questions. And SUWA is filing this Motion in advance of January 5, 2018, the date the Court’s stay on these proceedings ends. *See* ECF No. 296. SUWA’s Motion is timely, and it is entitled to intervene as of right.

⁷ SUWA does not concede that previously in these proceedings the United States adequately represented its interests. Rather, as explained herein, recent settlement discussions between the United States and the Plaintiffs have made perfectly clear that at this point in time the United States may not—and likely does not—adequately represent SUWA’s interests.

CONCLUSION

For the reasons set forth above, SUWA respectfully requests that this Court enter an order granting them intervention as of right as Defendants in this action.

DATED this 27th day of Dec., 2017.

/s/ JESS M. KRANNICH
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453a

Exhibit A

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

Case No. 2:08-cv-00315-CW

KANE COUNTY, UTAH AND STATE OF UTAH, PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANT

AND

SOUTHERN UTAH WILDERNESS ALLIANCE AND
THE WILDERNESS SOCIETY,
PROPOSED INTERVENOR-DEFENDANTS

Filed: Dec. 27, 2017

**PROPOSED INTERVENOR-DEFENDANT
SOUTHERN UTAH WILDERNESS ALLIANCE'S
ANSWER TO FIRST AMENDED COMPLAINT**

The Court has previously quieted title to several of the claimed R.S. 2477 routes in Plaintiff's First Amended Complaint, including the Skutumpah, North Swag, and Swallow Park routes. The Tenth Circuit affirmed the Court's decision as to title of these routes, but remanded for reconsideration of the routes' scope, *i.e.*, the disturbed area width of each route. Thus, on remand, the only issue SUWA believes requires adjudication is the scope of the Skutumpah, North Swag, and Swallow Park routes, and SUWA answers only the allegations in the First Amended Complaint related to that issue and those routes. To the extent SUWA does not specifically answer any allegation herein that remains at issue on

remand, SUWA lacks information sufficient to admit or deny such allegation(s) and therefore denies the same.

JURISDICTION AND VENUE

In response to the specific allegations of the Complaint, Proposed Intervenor-Defendant alleges as follows:

1. See explanation above.
2. See explanation above.
3. See explanation above.
4. See explanation above.

PARTIES AND INTEREST

5. See explanation above.
6. See explanation above.
7. See explanation above.

CONGRESSIONAL GRANT OF RIGHTS-OF-WAY FOR PUBLIC HIGHWAYS CROSSING PUBLIC LAND

8. See explanation above.
9. See explanation above.
10. See explanation above.
11. Paragraph 11 states a legal conclusion to which no response is required. To the extent a response is required, SUWA denies these allegations.
12. See explanation above.
13. See explanation above.

14. Paragraph 14 states a legal conclusion to which no response is required. To the extent a response is required, SUWA denies these allegations.

15. Paragraph 15 states a legal conclusion to which no response is required. To the extent a response is required, SUWA denies these allegations.

16. Paragraph 16 states a legal conclusion to which no response is required. To the extent a response is required, SUWA denies these allegations.

17. See explanation above.

18. See explanation above.

19. See explanation above.

20. See explanation above.

LONG-STANDING DEPARTMENT OF INTERIOR INTERPRETATION OF R.S. 2477

21. SUWA admits that the U.S. Department of Interior has promulgated past regulations related to R.S. 2477, and denies the remaining allegations in Paragraph 21.

22. See explanation above.

23. See explanation above.

24. See explanation above.

25. See explanation above.

26. See explanation above.

27. Paragraph 27 states a legal conclusion to which no response is required. To the extent a response is

required, SUWA denies these allegations. SUWA further denies that the scope of any right-of-way at issue is 66 feet in width.

28. Paragraph 28 states a legal conclusion to which no response is required. To the extent a response is required, SUWA denies these allegations.

ACCEPTANCE AND SCOPE OF KANE COUNTY'S R.S.

2477 RIGHTS-OF-WAY

- 29. See explanation above.
- 30. See explanation above.
- 31. See explanation above.
- 32. See explanation above.
- 33. See explanation above.
- 34. See explanation above.
- 35. See explanation above.

**THE MILL CREEK, BALD KNOLL, SKUTUMPAH,
SAND DUNE, HANCOCK, SWALLOW PARK/PARK
WASH, NORTH SWAG, NIPPLE LAKE AND
CAVE LAKES ROADS**

- 36. See explanation above.
- 37. See explanation above.
- 38. See explanation above.
- 39. See explanation above.
- 40. See explanation above.
- 41. See explanation above.
- 42. See explanation above.

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43. See explanation above.
44. See explanation above.
45. See explanation above.
46. See explanation above.
47. See explanation above.
48. See explanation above.
49. See explanation above.
50. See explanation above.

THE CASE OR CONTROVERSY

The Mill Creek and Bald Knoll Roads

51. See explanation above.
52. See explanation above.
53. See explanation above.
54. See explanation above.
55. See explanation above.
56. See explanation above.
57. See explanation above.
58. See explanation above.
59. See explanation above.
60. See explanation above.
61. See explanation above.
62. See explanation above.
63. See explanation above.
64. See explanation above.

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- 65. See explanation above.
- 66. See explanation above.
- 67. See explanation above.
- 68. See explanation above.
- 69. See explanation above.
- 70. See explanation above.
- 71. See explanation above.
- 72. See explanation above.
- 73. See explanation above.
- 74. See explanation above.
- 75. See explanation above.
- 76. See explanation above.
- 77. See explanation above.
- 78. See explanation above.
- 79. See explanation above.

The Skutumpah Road

- 80. See explanation above.
- 81. See explanation above.
- 82. See explanation above.
- 83. See explanation above.
- 84. See explanation above.
- 85. See explanation above.
- 86. See explanation above.
- 87. See explanation above.

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- 88. See explanation above.
- 89. See explanation above.
- 90. See explanation above.

The Sand Dune and Hancock Roads

- 91. See explanation above.
- 92. See explanation above.
- 93. See explanation above.
- 94. See explanation above.
- 95. See explanation above.
- 96. See explanation above.
- 97. See explanation above.
- 98. See explanation above.

The Swallow Park/Park Wash, North Swag, and Nipple Lake Roads

- 99. See explanation above.
- 100. See explanation above.
- 101. See explanation above.
- 102. See explanation above.
- 103. See explanation above.
- 104. See explanation above.
- 105. See explanation above.
- 106. See explanation above.
- 107. See explanation above.
- 108. See explanation above.

461a

109. See explanation above.

The Cave Lakes Roads

110. See explanation above.

111. See explanation above.

112. See explanation above.

113. See explanation above.

114. See explanation above.

115. See explanation above.

116. See explanation above.

117. See explanation above.

118. See explanation above.

FIRST CAUSE OF ACTION — QUIET TITLE
MILL CREEK ROAD

119. See explanation above.

Description of Mill Creek Road R.S. 2477 Right-of-Way

120. See explanation above.

121. See explanation above.

122. See explanation above.

123. See explanation above.

124. See explanation above.

125. See explanation above.

126. See explanation above.

127. See explanation above.

Maps Depicting Mill Creek Road R.S. 2477 Right-of-Way

- 128. See explanation above.
- 129. See explanation above.
- 130. See explanation above.
- 131. See explanation above.

Acceptance of the Mill Creek Road R.S. 2477 Right-of-Way Prior to October 21, 1976.

- 132. See explanation above.
- 133. See explanation above.
- 134. See explanation above.
- 135. See explanation above.
- 136. See explanation above.
- 137. See explanation above.
- 138. See explanation above.
- 139. See explanation above.
- 140. See explanation above.
- 141. See explanation above.
- 142. See explanation above.
- 143. See explanation above.

Acceptance of the Mill Creek Road R.S. 2477 Right-of-Way By Public Use Prior to 1976.

- 144. See explanation above.
- 145. See explanation above.
- 146. See explanation above.
- 147. See explanation above.

463a

148. See explanation above.

149. See explanation above.

150. See explanation above.

151. See explanation above.

SECOND CAUSE OF ACTION — QUIET TITLE
BALD KNOLL ROAD

152. See explanation above.

Description of Bald Knoll Road R.S. 2477 Right-of-Way

153. See explanation above.

154. See explanation above.

155. See explanation above.

156. See explanation above.

157. See explanation above.

158. See explanation above.

Maps Depicting the Bald Knoll Road R.S. 2477 Right-of-Way

159. See explanation above.

160. See explanation above.

161. See explanation above.

162. See explanation above.

Acceptance of the Bald Knoll Road R.S. 2477 Right-of-Way Prior to October 21, 1976.

163. See explanation above.

164. See explanation above.

165. See explanation above.

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- 166. See explanation above.
- 167. See explanation above.
- 168. See explanation above.
- 169. See explanation above.
- 170. See explanation above.
- 171. See explanation above.
- 172. See explanation above.

Acceptance of the Bald Knoll Road R.S. 2477 Right-of-Way By Public Use Prior to 1976.

- 173. See explanation above.
- 174. See explanation above.
- 175. See explanation above.
- 176. See explanation above.
- 177. See explanation above.
- 178. See explanation above.
- 179. See explanation above.
- 180. See explanation above.

**THIRD CAUSE OF ACTION — QUIET TITLE
SKUTUMPAH ROAD**

- 181. See explanation above.

Description of Skutumpah Road R.S. 2477 Right-of-Way

- 182. See explanation above.
- 183. See explanation above.
- 184. See explanation above.

185. Paragraph 185 states legal conclusions to which no response is required. To the extent a response is required, SUWA denies these allegations. SUWA further denies that the scope of the right-of-way is 66 feet in width.

Maps Depicting the Skutumpah Road R.S. 2477 Right-of-Way

186. See explanation above.

187. See explanation above.

188. See explanation above.

189. See explanation above.

190. See explanation above.

Acceptance of the Skutumpah Road R.S. 2477 Right-of-Way Prior to October 21, 1976.

191. See explanation above.

192. See explanation above.

193. Paragraph 193 states legal conclusions to which no response is required. To the extent a response is required, SUWA denies these allegations. SUWA further denies that the scope of the right-of-way is 66 feet in width.

194. See explanation above.

195. See explanation above.

196. See explanation above.

197. See explanation above.

198. See explanation above.

199. See explanation above.

200. SUWA lacks information sufficient to admit or deny the allegations in paragraph 200, and therefore denies the same.

Acceptance of the Skutumpah Road R.S. 2477 Right-of-Way By Public Use Prior to 1976.

201. See explanation above.

202. See explanation above.

203. See explanation above.

204. See explanation above.

205. See explanation above.

206. Paragraph 206 states legal conclusions to which no response is required. To the extent a response is required, SUWA denies these allegations.

207. See explanation above.

208. See explanation above.

**FOURTH CAUSE OF ACTION — QUIET TITLE
SAND DUNE ROAD**

209. See explanation above.

Description of Sand Dune Road R.S. 2477 Right-of-Way

210. See explanation above.

211. See explanation above.

212. See explanation above.

213. See explanation above.

Maps Depicting the Sand Dune Road R.S. 2477 Right-of-Way

214. See explanation above.

467a

215. See explanation above.

216. See explanation above.

217. See explanation above.

Acceptance of the Sand Dune Road R.S. 2477 Right-of-Way Prior to October 21, 1976.

218. See explanation above.

219. See explanation above.

220. See explanation above.

221. See explanation above.

222. See explanation above.

223. See explanation above.

224. See explanation above.

225. See explanation above.

226. See explanation above.

Acceptance of the Sand Dune Road R.S. 2477 Right-of-Way By Public Use Prior to 1976.

227. See explanation above.

228. See explanation above.

229. See explanation above.

230. See explanation above.

231. See explanation above.

232. See explanation above.

233. See explanation above.

234. See explanation above.

FIFTH CAUSE OF ACTION — QUIET TITLE
HANCOCK ROAD

235. See explanation above.

Description of Hancock Road R.S. 2477 Right-of-Way

236. See explanation above.

237. See explanation above.

238. See explanation above.

239. See explanation above.

Maps Depicting the Hancock Road R.S. 2477 Right-of-Way

240. See explanation above.

241. See explanation above.

242. See explanation above.

243. See explanation above.

244. See explanation above.

Acceptance of the Hancock Road R.S. 2477 Right-of-Way
Prior to October 21, 1976.

245. See explanation above.

246. See explanation above.

247. See explanation above. See explanation
above. [sic]

248. See explanation above.

249. See explanation above.

250. See explanation above.

251. See explanation above.

252. See explanation above.

253. See explanation above.

**Acceptance of the Hancock Road R.S. 2477 Right-of-Way
By Public Use Prior to 1976.**

254. See explanation above.

255. See explanation above.

256. See explanation above.

257. See explanation above.

258. See explanation above.

259. See explanation above.

260. See explanation above.

261. See explanation above.

**SIXTH CAUSE OF ACTION — QUIET TITLE
SWALLOW PARK/PARK WASH ROAD**

262. See explanation above.

**Description of Swallow Park/Park Wash Road R.S. 2477
Right-of-Way**

263. See explanation above.

264. See explanation above.

265. See explanation above.

266. Paragraph 266 states legal conclusions to which no response is required. To the extent a response is required, SUWA denies these allegations. SUWA further denies that the scope of the right-of-way is 66 feet in width.

**Maps Depicting the Swallow Park/Park Wash R.S. 2477
Right-of-Way**

- 267. See explanation above.
- 268. See explanation above.
- 269. See explanation above.
- 270. See explanation above.

**Acceptance of the Swallow Park/Park Wash Road R.S.
2477 Right-of-Way Prior to October 21, 1976.**

- 271. See explanation above.
- 272. See explanation above.
- 273. Paragraph 273 states legal conclusions to which no response is required. To the extent a response is required, SUWA denies these allegations. SUWA further denies that the scope of the right-of-way is 66 feet in width.

- 274. See explanation above.
- 275. See explanation above.
- 276. See explanation above.
- 277. See explanation above.
- 278. See explanation above.
- 279. See explanation above.

**Acceptance of the Swallow Park/Park Wash Road R.S.
2477 Right-of-Way By Public Use Prior to 1976.**

- 280. See explanation above.
- 281. See explanation above.
- 282. See explanation above.

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283. See explanation above.

284. See explanation above.

285. Paragraph 285 states legal conclusions to which no response is required. To the extent a response is required, SUWA denies these allegations.

286. See explanation above.

287. See explanation above.

**SEVENTH CAUSE OF ACTION — QUIET TITLE
NORTH SWAG ROAD**

288. See explanation above.

Description of North Swag Road R.S. 2477 Right-of-Way

289. See explanation above.

290. See explanation above.

291. See explanation above.

292. Paragraph 292 states legal conclusions to which no response is required. To the extent a response is required, SUWA denies these allegations. SUWA further denies that the scope of the right-of-way is 66 feet in width.

Maps Depicting the North Swag Road R.S. 2477 Right-of-Way

293. See explanation above.

294. See explanation above.

295. See explanation above.

Acceptance of the North Swag Road R.S. 2477 Right-of-Way Prior to October 21, 1976.

296. See explanation above.

297. See explanation above.

298. Paragraph 298 states legal conclusions to which no response is required. To the extent a response is required, SUWA denies these allegations. SUWA further denies that the scope of the right-of-way is 66 feet in width.

299. See explanation above.

Acceptance of the North Swag Road R.S. 2477 Right-of-Way By Public Use Prior to 1976.

300. See explanation above.

301. See explanation above.

302. See explanation above.

303. See explanation above.

304. See explanation above.

305. Paragraph 305 states legal conclusions to which no response is required. To the extent a response is required, SUWA denies these allegations.

306. See explanation above.

307. See explanation above.

**EIGHTH CAUSE OF ACTION — QUIET TITLE
NIPPLE LAKE ROAD**

308. See explanation above.

Description of the Nipple Lake Road R.S. 2477 Right-of-Way

309. See explanation above.

310. See explanation above.

311. See explanation above.

312. See explanation above.

Maps Depicting the Nipple Lake Road R.S. 2477 Right-of-Way

313. See explanation above.

314. See explanation above.

315. See explanation above.

316. See explanation above.

Acceptance of the Nipple Lake Road R.S. 2477 Right-of-Way Prior to October 21, 1976.

317. See explanation above.

318. See explanation above.

319. See explanation above.

320. See explanation above.

321. See explanation above.

322. See explanation above.

323. See explanation above.

324. See explanation above.

325. See explanation above.

Acceptance of the Nipple Lake Road R.S. 2477 Right-of-Way By Public Use Prior to 1976.

326. See explanation above.

327. See explanation above.

328. See explanation above.

329. See explanation above.

330. See explanation above.

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331. See explanation above.

332. See explanation above.

333. See explanation above.

NINTH CAUSE OF ACTION — QUIET TITLE
CAVE LAKES ROADS

334. See explanation above.

Description of the Cave Lakes Roads R.S. 2477 Rights-of-Way

335. See explanation above.

336. See explanation above.

337. See explanation above.

338. See explanation above.

339. See explanation above.

340. See explanation above.

341. See explanation above.

342. See explanation above.

343. See explanation above.

344. See explanation above.

Maps Depicting the Cave Lakes Roads R.S. 2477 Right-of-Way

345. See explanation above.

346. See explanation above.

347. See explanation above.

348. See explanation above.

Acceptance of the Cave Lakes Roads R.S. 2477 Rights-of-Way By Public Use Prior to 1976.

- 349. See explanation above.
- 350. See explanation above.
- 351. See explanation above.
- 352. See explanation above.
- 353. See explanation above.
- 354. See explanation above.
- 355. See explanation above.
- 356. See explanation above.
- 357. See explanation above.
- 358. See explanation above.
- 359. See explanation above.
- 360. See explanation above.
- 361. See explanation above.
- 362. See explanation above.
- 363. See explanation above.
- 364. See explanation above.

RESPONSE TO PLAINTIFF'S PRAYER FOR RELIEF

Proposed Intervenor-Defendant denies that Plaintiff is entitled to any of the remedies requested regarding scope of rights-of-way on any grounds, whether at law or in equity. Proposed Intervenor-Defendant denies any other allegations of the First Amended Complaint not specifically admitted herein, consistent with the explanation set forth above.

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DATED this ____ day of Dec., 2017.

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SOUTHERN UTAH WILDERNESS ALLIANCE
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Southern Utah Wilderness Alliance*

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Exhibit B

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

Case No. 2:08-cv-00315-CW

KANE COUNTY, UTAH, AND STATE OF UTAH, PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANT

AND

SOUTHERN UTAH WILDERNESS ALLIANCE, AND
THE WILDERNESS SOCIETY,
PROPOSED INTERVENOR-DEFENDANTS

Filed: Dec. 27, 2017

**PROPOSED INTERVENOR-DEFENDANT
SOUTHERN UTAH WILDERNESS ALLIANCE'S
ANSWER TO INTERVENOR'S COMPLAINT TO
QUIET TITLE**

The Court has previously quieted title to several of the claimed R.S. 2477 routes in Intervenor State of Utah's Complaint, including the Skutumpah, North Swag, and Swallow Park routes. The Tenth Circuit affirmed the Court's decision as to title of these routes, but remanded for reconsideration of the routes' scope, *i.e.*, the disturbed area width of each route. Thus, on remand, the only issue SUWA believes requires adjudication is the scope of the Skutumpah, North Swag, and Swallow Park routes, and SUWA answers only the allegations in Intervenor's Complaint related to that issue and those

routes. To the extent SUWA does not specifically answer any allegation herein that remains at issue on remand, SUWA lacks information sufficient to admit or deny such allegation(s) and therefore denies the same.

INTRODUCTION

In response to the specific allegations of the Complaint, Defendant alleges as follows:

1. See explanation above.

JURISDICTION AND VENUE

2. See explanation above.
3. See explanation above.

PARTIES

4. See explanation above.
5. See explanation above.
6. See explanation above.

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

7. See explanation above.
8. See explanation above.
9. See explanation above.
10. See explanation above.
11. Paragraph 11 states legal conclusions to which no response is required. To the extent a response is required, SUWA denies these allegations.
12. See explanation above.

13. Paragraph 13 states legal conclusions to which no response is required. To the extent a response is required, SUWA denies these allegations.

14. Paragraph 14 states legal conclusions to which no response is required. To the extent a response is required, SUWA denies these allegations.

15. Paragraph 15 states legal conclusions to which no response is required. To the extent a response is required, SUWA denies these allegations.

16. See explanation above.

17. See explanation above.

18. See explanation above.

19. See explanation above.

20. See explanation above.

21. See explanation above.

22. See explanation above.

23. See explanation above.

**ACCEPTANCE AND SCOPE OF KANE COUNTY AND
THE STATE OF UTAH'S R.S. 2477 RIGHTS-OF-WAY**

24. See explanation above.

25. See explanation above.

26. See explanation above.

27. See explanation above.

28. See explanation above.

29. See explanation above.

30. See explanation above.

**THE MILL CREEK, BALD KNOLL, SKUTUMPAH,
SAND DUNE, HANCOCK, SWALLOW PARK/PARK
WASH, NORTH SWAG, NIPPLE LAKE AND CAVE
LAKES ROADS**

31. See explanation above.
32. See explanation above.
33. See explanation above.
34. See explanation above.
35. See explanation above.
36. See explanation above.
37. See explanation above.
38. See explanation above.
39. See explanation above.
40. See explanation above.
41. See explanation above.
42. See explanation above.
43. See explanation above.
44. See explanation above.

**FIRST CAUSE OF ACTION — QUIET TITLE
MILL CREEK ROAD**

45. See explanation above.

Description of Mill Creek Road R.S. 2477 Right-of-Way

46. See explanation above.
47. See explanation above.
48. See explanation above.

- 49. See explanation above.
- 50. See explanation above.
- 51. See explanation above.
- 52. See explanation above.
- 53. See explanation above.

Maps Depicting Mill Creek Road R.S. 2477 Right-of-Way

- 54. See explanation above.
- 55. See explanation above.
- 56. See explanation above.
- 57. See explanation above.

Acceptance of the Mill Creek Road R.S. 2477 Right-of-Way Prior to October 21, 1976.

- 58. See explanation above.
- 59. See explanation above.
- 60. See explanation above.
- 61. See explanation above.
- 62. See explanation above.
- 63. See explanation above.
- 64. See explanation above.
- 65. See explanation above.
- 66. See explanation above.
- 67. SUWA lacks information sufficient to admit or deny the allegations in paragraph 67, and therefore denies the same.

Acceptance of the Mill Creek Road R.S. 2477 Right-of-Way By Public Use Prior to 1976.

- 68. See explanation above.
- 69. See explanation above.
- 70. See explanation above.
- 71. See explanation above.
- 72. See explanation above.
- 73. See explanation above.
- 74. See explanation above.
- 75. See explanation above.

**SECOND CAUSE OF ACTION — QUIET TITLE
BALD KNOLL ROAD**

- 76. See explanation above.

Description of Bald Knoll Road R.S. 2477 Right-of-Way

- 77. See explanation above.
- 78. See explanation above.
- 79. See explanation above.
- 80. See explanation above.
- 81. See explanation above.
- 82. See explanation above.

Maps Depicting the Bald Knoll Road R.S. 2477 Right-of-Way

- 83. See explanation above.
- 84. See explanation above.
- 85. See explanation above.

86. See explanation above.

Acceptance of the Bald Knoll Road R.S. 2477 Right-of-Way Prior to October 21, 1976.

87. See explanation above.

88. See explanation above.

89. See explanation above.

90. See explanation above.

91. See explanation above.

92. See explanation above.

93. See explanation above.

94. See explanation above.

95. SUWA lacks information sufficient to admit or deny the allegations in paragraph 95, and therefore denies the same.

Acceptance of the Bald Knoll Road R.S. 2477 Right-of-Way By Public Use Prior to 1976.

96. See explanation above.

97. See explanation above.

98. See explanation above.

99. See explanation above.

100. See explanation above.

101. See explanation above.

102. See explanation above.

103. See explanation above.

THIRD CAUSE OF ACTION — QUIET TITLE
SKUTUMPAH ROAD

104. See explanation above.

Description of Skutumpah Road R.S. 2477 Right-of-Way

105. See explanation above.

106. See explanation above.

107. See explanation above.

108. Paragraph 108 states legal conclusions to which no response is required. To the extent a response is required, SUWA denies these allegations. SUWA further denies that the scope of the right-of-way is 66 feet in width.

Maps Depicting the Skutumpah Road R.S. 2477 Right-of-Way

109. See explanation above.

110. See explanation above.

111. See explanation above.

112. See explanation above.

113. See explanation above.

Acceptance of the Skutumpah Road R.S. 2477 Right-of-Way Prior to October 21, 1976.

114. See explanation above.

115. See explanation above.

116. Paragraph 116 states legal conclusions to which no response is required. To the extent a response is

required, SUWA denies these allegations. SUWA further denies that the scope of the right-of-way is 66 feet in width.

117. See explanation above.

118. See explanation above.

119. See explanation above.

120. See explanation above.

121. See explanation above.

122. SUWA lacks information sufficient to admit or deny the allegations in paragraph 122, and therefore denies the same.

Acceptance of the Skutumpah Road R.S. 2477 Right-of-Way By Public Use Prior to 1976.

123. See explanation above.

124. See explanation above.

125. See explanation above.

126. See explanation above.

127. See explanation above.

128. Paragraph 128 states legal conclusions to which no response is required. To the extent a response is required, SUWA denies these allegations.

129. See explanation above.

130. See explanation above.

**FOURTH CAUSE OF ACTION — QUIET TITLE
SAND DUNE ROAD**

131. See explanation above.

Description of Sand Dune Road R.S. 2477 Right-of-Way

- 132. See explanation above.
- 133. See explanation above.
- 134. See explanation above.
- 135. See explanation above.

Maps Depicting the Sand Dune Road R.S. 2477 Right-of-Way

- 136. See explanation above.
- 137. See explanation above.
- 138. See explanation above.
- 139. See explanation above.

Acceptance of the Sand Dune Road R.S. 2477 Right-of-Way Prior to October 21, 1976.

- 140. See explanation above.
- 141. See explanation above.
- 142. See explanation above.
- 143. See explanation above.
- 144. See explanation above.
- 145. See explanation above.
- 146. See explanation above.
- 147. See explanation above.

Acceptance of the Sand Dune Road R.S. 2477 Right-of-Way By Public Use Prior to 1976.

- 148. See explanation above.
- 149. See explanation above.

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- 150. See explanation above.
- 151. See explanation above.
- 152. See explanation above.
- 153. See explanation above.
- 154. See explanation above.
- 155. See explanation above.

FIFTH CAUSE OF ACTION — QUIET TITLE
HANCOCK ROAD

- 156. See explanation above.

Description of Hancock Road R.S. 2477 Right-of-Way

- 157. See explanation above.
- 158. See explanation above.
- 159. See explanation above.
- 160. See explanation above.

Maps Depicting the Hancock Road R.S. 2477 Right-of-Way

- 161. See explanation above.
- 162. See explanation above.
- 163. See explanation above.
- 164. See explanation above.
- 165. See explanation above.

Acceptance of the Hancock Road R.S. 2477 Right-of-Way Prior to October 21, 1976.

- 166. See explanation above.
- 167. See explanation above.

- 168. See explanation above.
- 169. See explanation above.
- 170. See explanation above.
- 171. See explanation above.
- 172. See explanation above.
- 173. See explanation above.

**Acceptance of the Hancock Road R.S. 2477 Right-of-Way
By Public Use Prior to 1976.**

- 174. See explanation above.
- 175. See explanation above.
- 176. See explanation above.
- 177. See explanation above.
- 178. See explanation above.
- 179. See explanation above.
- 180. See explanation above.
- 181. See explanation above.

**SIXTH CAUSE OF ACTION — QUIET TITLE
SWALLOW PARK/PARK WASH ROAD**

- 182. See explanation above.

**Description of Swallow Park/Park Wash Road R.S. 2477
Right-of-Way**

- 183. See explanation above.
- 184. See explanation above.
- 185. See explanation above.

186. Paragraph 186 states legal conclusions to which no response is required. To the extent a response is required, SUWA denies these allegations. SUWA further denies that the scope of the right-of-way is 66 feet in width.

Maps Depicting the Swallow Park/Park Wash Road R.S. 2477 Right-of-Way

187. See explanation above.

188. See explanation above.

189. See explanation above.

190. See explanation above.

Acceptance of the Skutumpah Road R.S. 2477 Right-of-Way Prior to October 21, 1976.

191. See explanation above.

192. See explanation above.

193. Paragraph 193 states legal conclusions to which no response is required. To the extent a response is required, SUWA denies these allegations. SUWA further denies that the scope of the right-of-way is 66 feet in width.

194. See explanation above.

195. See explanation above.

196. See explanation above.

197. See explanation above.

198. See explanation above.

Acceptance of the Swallow Park/Park Wash Road R.S. 2477 Right-of-Way By Public Use Prior to 1976.

199. See explanation above.

200. See explanation above.

201. See explanation above.

202. See explanation above.

203. See explanation above.

204. Paragraph 204 states legal conclusions to which no response is required. To the extent a response is required, SUWA denies these allegations.

205. See explanation above.

206. See explanation above.

**SEVENTH CAUSE OF ACTION — QUIET TITLE
NORTH SWAG ROAD**

207. See explanation above.

Description of North Swag Road R.S. 2477 Right-of-Way

208. See explanation above.

209. See explanation above.

210. See explanation above.

211. Paragraph 211 states legal conclusions to which no response is required. To the extent a response is required, SUWA denies these allegations. SUWA further denies that the scope of the right-of-way is 66 feet in width.

Maps Depicting the North Swag Road R.S. 2477 Right-of-Way

212. See explanation above.

213. See explanation above.

214. See explanation above.

Acceptance of the North Swag Road R.S. 2477 Right-of-Way Prior to October 21, 1976.

215. See explanation above.

216. See explanation above.

217. Paragraph 217 states legal conclusions to which no response is required. To the extent a response is required, SUWA denies these allegations. SUWA further denies that the scope of the right-of-way is 66 feet in width.

218. See explanation above.

Acceptance of the North Swag Road R.S. 2477 Right-of-Way By Public Use Prior to 1976.

219. See explanation above.

220. See explanation above.

221. See explanation above.

222. See explanation above.

223. See explanation above.

224. Paragraph 224 states legal conclusions to which no response is required. To the extent a response is required, SUWA denies these allegations.

225. See explanation above.

226. See explanation above.

EIGHTH CAUSE OF ACTION — QUIET TITLE
NIPPLE LAKE ROAD

227. See explanation above

Description of Nipple Lake Road R.S. 2477 Right-of-Way

- 228. See explanation above.
- 229. See explanation above.
- 230. See explanation above.
- 231. See explanation above.

Maps Depicting the Nipple Lake Road R.S. 2477 Right-of-Way

- 232. See explanation above.
- 233. See explanation above.
- 234. See explanation above.
- 235. See explanation above.

Acceptance of the Nipple Lake Road R.S. 2477 Right-of-Way Prior to October 21, 1976.

- 236. See explanation above.
- 237. See explanation above.
- 238. See explanation above.
- 239. See explanation above.
- 240. See explanation above.
- 241. See explanation above.
- 242. See explanation above.
- 243. See explanation above.

Acceptance of the Nipple Lake Road R.S. 2477 Right-of-Way By Public Use Prior to 1976.

- 244. See explanation above.
- 245. See explanation above.

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- 246. See explanation above.
- 247. See explanation above.
- 248. See explanation above.
- 249. See explanation above.
- 250. See explanation above.
- 251. See explanation above.

NINTH CAUSE OF ACTION — QUIET TITLE
CAVE LAKES ROADS

- 252. See explanation above.

Description of the Cave Lakes Roads R.S. 2477 Right-of-Way

- 253. See explanation above.
- 254. See explanation above.
- 255. See explanation above.
- 256. See explanation above.
- 257. See explanation above.
- 258. See explanation above.
- 259. See explanation above.
- 260. See explanation above.
- 261. See explanation above.
- 262. See explanation above.

Maps Depicting the Caves Lakes Roads R.S. 2477 Right-of-Way

- 263. See explanation above.
- 264. See explanation above.

265. See explanation above.

266. See explanation above.

Acceptance of the Caves Lakes Roads R.S. 2477 Right-of-Way By Public Use Prior to 1976.

267. See explanation above.

268. See explanation above.

269. See explanation above.

270. See explanation above.

271. See explanation above.

272. See explanation above.

273. See explanation above.

274. See explanation above.

275. See explanation above.

276. See explanation above.

277. See explanation above.

278. See explanation above.

279. See explanation above.

280. See explanation above.

281. See explanation above.

282. See explanation above.

RESPONSE TO PLAINTIFF'S PRAYER FOR RELIEF

Proposed Intervenor-Defendant denies that Intervenor-Plaintiff is entitled to any of the remedies requested regarding scope of rights-of-way on any grounds, whether at law or in equity. Proposed Intervenor-Defendant de-

nies any other allegations of the Complaint not specifically admitted herein, consistent with the explanation set forth above.

DATED this _____ day of Dec., 2017.

MANNING CURTIS BRADSHAW & BEDNAR PLLC

Brent V. Manning
Jess M. Krannich
Mitch M. Longson

SOUTHERN UTAH WILDERNESS ALLIANCE
Stephen H.M. Bloch
Joseph J. Bushyhead

*Attorneys for Proposed Intervenor-Defendant
Southern Utah Wilderness Alliance*

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Exhibit C

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

Case No. 2:08-cv-00315-CW

KANE COUNTY, UTAH, AND STATE OF UTAH,
PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANTS
AND
SOUTHERN UTAH WILDERNESS ALLIANCE AND
THE WILDERNESS SOCIETY,
PROPOSED INTERVENOR-PLAINTIFF

DECLARATION OF RAY BLOXHAM

I, Ray Bloxham, declare under penalty of perjury as follows:

1. I have personal knowledge of each of the facts set forth below, and if called upon to do so, could and would testify regarding the following. This declaration is filed in support of the Southern Utah Wilderness Alliance's and The Wilderness Society's Motion to Intervene and Memorandum in Support in the above-captioned matter.

Background and Expertise

2. I am the Utah Field Director for the Southern Utah Wilderness Alliance ("SUWA") and have served in this and similar positions since 1999. I have also been an active member of SUWA since 1999. Prior to taking this position, from 1997-98, I surveyed lands managed by the federal Bureau of Land Management ("BLM") on

behalf of SUWA and the Utah Wilderness Coalition (“UWC”), a group of local, regional and national conservation organizations formed to promote the protection of Utah’s last remaining wild lands through legislation and advocacy work.

3. My survey and documentation work on BLM lands, together with similar work conducted by other volunteers and staff of the UWC organizations, was and continues to be used by SUWA and the UWC to evaluate the eligibility of areas for wilderness designation and inclusion in federal legislation known as America’s Red Rock Wilderness Act (“ARRWA”), H.R. 2044, S. 948, 115th Cong. (2017). This legislation would permanently protect from roads and development approximately nine million acres of BLM lands in Utah as part of the National Wilderness Preservation System, including BLM land in Kane County bounded and traversed by the Skutumpah, Swallow Park, and North Swag rights-of-way. This survey and documentation work identifies how these lands in ARRWA merit protection and satisfy the requirements of the National Wilderness Preservation System (defined roughly as tracts of land 5,000 acres or more in size, possessing outstanding opportunities for solitude, and/or primitive and unconfined opportunities for recreation and an essentially undeveloped and roadless condition). This work includes extensive photographs, maps, and narrative descriptions of these qualities as well documentation as any faint human incursions in these areas. This information is maintained in the SUWA offices in Salt Lake City and Moab, Utah.

4. My current work involves site visits to identify and document the characteristics of certain tracts of

BLM lands to determine whether the areas qualify for wilderness protection or are suitable for other types of protection. I also frequently meet with BLM staff to gather information about the resources present on the land and to gather information relating to the impacts of various proposals for use of the land. I spend considerable time on the ground documenting intrusions such as roads, road maintenance and expansion, and off road vehicle (“ORV”) impacts on lands considered by the BLM and/or the UWC to have wilderness characteristics. I have expertise in map reading, route finding, and land navigation using both paper and electronic maps. With this information, I actively urge BLM to protect wilderness quality lands from various impacts like roads and ORV use. I engage in advocacy work in connection with specific proposals for activities like road work (such as maintenance or improvements) or ORV events and trail proposals, as well as in connection with broader BLM planning efforts. Through this work, I am very familiar with the federal public lands encompassed by the Grand Staircase-Escalante National Monument, as well as the Monument management plan and travel plan. I am also familiar with the lands outside the Monument managed by the Kanab field Office, and governed by the Kanab Resource Management Plan (“RMP”), issued in 2008. This plan is the master plan governing which activities may take place in Kanab field office, along with where and when they may take place. The RMP also included a travel plan which identifies certain unpaved routes where motorized vehicle use is allowed on BLM lands. In the course of my work, I have become very familiar with this management plan and travel plan, as well as the conditions of BLM lands

within the Kanab Field Office. I have personally visited the federal public lands immediately surrounding the Skutumpah, Swallow Park, and North Swag rights-of-way on numerous occasions, most recently in October 2016.

5. From 2006-2012, I was an active member of the BLM's Utah Resource Advisory Council, a 15-member advisory panel appointed by the Secretary of Interior to provide advice and recommendations to the BLM on land use planning and management. The members of the council represent a cross section of public lands stakeholders including energy, tourism, and commercial recreation interests; environmental, archeological or historic interests; elected officials; and the public at large. The Council periodically conducted its meetings at various sites throughout the state, including areas where roads and ORV impacts had damaged the public lands and required more intensive regulation, and heard presentations about the resource impacts of such use. Based on that information, the council would deliberate and make recommendations to the BLM about how to resolve various resource and management issues. Through this experience I gained expertise about the destructive impacts roads and ORV use can cause on a range of natural resources.

SUWA's Organizational Interest

6. The Southern Utah Wilderness Alliance is a Utah non-profit membership organization. SUWA, based in Salt Lake City, Utah, has more than 15,000 members, many of whom reside and recreate in Utah. SUWA's mission is the preservation of the outstanding wilderness and other sensitive public lands at the heart of the Colorado Plateau, and advocacy for the protection of

these lands in their natural state for the benefit of all Americans. SUWA promotes local and national recognition of the region's unique character through research and public education. SUWA supports both administrative and legislative initiatives to protect federal public lands and it advocates for the permanent protection of BLM lands throughout the state in the National Wilderness Preservation System. SUWA works to ensure that areas already designated as wilderness, or which are proposed for such designation, are managed appropriately. SUWA seeks to ensure that the wild federal public lands at issue in this case are managed to preserve their natural and cultural values. SUWA also advocates for other protective designations, for example, in resource management plan development or in connection with individual agency decisions regarding specific project proposals. SUWA is an outspoken advocate for the protection of all Utah's federally-managed wilderness-quality lands and is widely recognized as a leader in the national effort to designate, through proposed legislation entitled the "America's Red Rock Wilderness Act," approximately nine million acres of Utah BLM lands as protected wilderness, including the lands traversed by or bordered by the Skutumpah, Swallow Park, and North Swag roads. The BLM frequently solicits SUWA's input and participation in the land use planning process for a variety of resource decisions, and SUWA actively participates in all levels of the BLM's decision-making process regarding the management of public lands.

7. SUWA has a particular interest in federally-managed wilderness quality lands and the threats to their wilderness character, including lands affected by the three R.S. 2477 rights-of-way at issue in this suit. SUWA's concerns include but are not limited to: damage from

ORV use; the effectiveness and lawfulness of BLM's proposed land management strategies; the need for enforcement of existing rules and regulations; and the impacts of motorized vehicles and roads on lands managed by the BLM. SUWA has provided the BLM with detailed photographic and written documentation regarding the impacts of roads and ORVs on federal public lands throughout the State of Utah, including Kane County, where the R.S. 2477 rights-of-way at issue in this action are located.

The Wilderness Society's Organizational Interest

8. I am also a member of The Wilderness Society (TWS). TWS is a non-profit national membership organization founded in 1935. TWS works to protect America's wilderness and to develop a network of wild lands through public education, scientific analysis, and advocacy. TWS' priority is to ensure that future generations will enjoy the clean air, water, wildlife, beauty, and opportunities for recreation and renewal that pristine deserts, mountain forests, and rivers provide. Protecting Utah's wilderness quality lands is a priority for TWS. Since 1935, TWS has worked to protect wilderness-quality lands across the United States. It was instrumental in advocating for and achieving passage of the Wilderness Act of 1964, and in the designation of millions of acres of wilderness across the Nation since then. TWS also has a continuing interest in ensuring the protection of wilderness-quality lands under the jurisdiction of the BLM, through the agency's land management planning processes. TWS actively supports passage of America's Red Rock Wilderness Act. TWS and SUWA work closely together to achieve these priorities.

Primitive and Wild Values of Kane County

9. The federal public lands within the original boundaries of the Grand Staircase-Escalante National Monument comprise a massive, remote, and undeveloped area. The BLM currently manages the bulk of this land first and foremost to protect its primitive, frontier state and pursuant to the 1999 Grand Staircase-Escalante National Monument Management Plan.

10. In addition to this management regime for the Monument, the BLM lands underlying or adjacent to the three rights-of-way at issue in this case include three categories of wilderness quality lands: (1) the Paria Hackberry wilderness study area (“WSA”)—land recognized by BLM in the 1980s as having wilderness values and are protected by law and the agency’s own management plans; (2) lands with wilderness characteristics (“LWCs”)—lands the BLM has determined to have wilderness character; and (3) Utah Wilderness Coalition-proposed wilderness areas (“UWC areas”)—lands inventoried by the Utah Wilderness Coalition and determined by conservationists to have wilderness character. While BLM manages WSAs to preserve their wild character, it does not manage its LWCs in the vicinity of the three rights-of-way for this same purpose. Likewise, UWC areas do not receive any special recognition or protections from the BLM. Lands within the original boundaries of the Grand Staircase-Escalante National Monument that are not proposed for wilderness or do not contain wilderness character are still primitive in nature and are protected from most forms of development.

11. The three rights-of-way still at issue in this case are within the boundaries of the Grand Staircase-

Escalante National Monument. Additionally, the Skutumpah Road borders portions of the Paria-Hackberry WSA and BLM-identified LWC, as well as additional lands proposed for wilderness designation by the UWC. The Swallow Park route is cherry-stemmed within the Paria-Hackberry WSA and also borders BLM-identified LWC. The North Swag route is located inside the Paria-Hackberry Wilderness Study Area, borders BLM-identified LWC, and is closed to public motorized use by the Monument management plan.

Impact on Conservation Interests

12. I enjoy hiking, camping, backpacking, climbing, viewing cultural resources (pre-historic and historic), bird watching, studying, contemplating solitude, photography, and other activities on lands within the Monument as well as on lands proposed for wilderness designation in ARWA. In the course of these activities, I have visited the Skutumpah, Swallow Park, and North Swag routes, as well as the wilderness-quality BLM lands surrounding these routes. I use and enjoy the specific areas within the original boundaries of the Grand Staircase-Escalante National Monument, the Paria-Hackberry WSA, and lands proposed for wilderness designation over which, or adjacent to which, the three routes run for health, recreational, spiritual, educational, aesthetic, and other purposes. I take great pleasure from my visits to this area—which occurred most recently in October of 2016—and intend to return as often as possible, but certainly within the next year. My enjoyment of these activities is dependent on quiet, natural settings without the sights, sounds and impacts associated with roads and off-road vehicle use. If the Skutumpah, Swallow Park, and North Swag routes are improved, widened or

graded beyond their current disturbed width, the federal public lands they traverse and/or border will be degraded and my enjoyment of these areas will be significantly reduced or eliminated.

13. I believe a determination on the nature and scope of the North Swag rights-of-way will almost certainly lead to the re-opening of fragile public lands within the Monument and the Paria-Hackberry wilderness study area to motorized vehicle use and damage. I believe a determination of the nature and scope of the Skutumpah and Swallow Park rights-of-way will increase motorized vehicle use of the roads and encourage illegal motorized vehicle use on adjacent lands. Such determinations and use will destroy the solitude, quiet, and natural and cultural resources in these areas. Further, my observation is that once routes are formally mapped, graded, graveled, paved, or otherwise improved, traffic dramatically increases, diminishing the area's primitive and wild character. I have also observed negative, indirect impacts from newly designated or improved roads including the proliferation of motorized vehicle trails, erosion, the spread of weeds, airborne dust, and damage to archaeological sites. All of these effects detract from and degrade the natural beauty and wilderness character of the public lands.

14. Further, a settlement agreement or judicial determination regarding the scope of these three rights-of-way in Kane County, which would permit Kane County to undertake road maintenance activities such as widening or rerouting, would result in the intrusion and expansion of road-related impacts into areas which are proposed for wilderness designation or which are currently protected as WSAs, and cause unavoidable resource

damage to the vegetation, soils, and other resources in newly-disturbed areas. Such an agreement or determination would also dramatically impact the primitive, remote character of the surrounding lands, where public lands are characterized by the lack of roads, ORV use, and other impacts, and which I prize for their primitive nature.

15. My interests would also be harmed by an agreement or judicial determination regarding the scope of these three rights-of-way because it would disqualify large areas of BLM lands from permanent wilderness protection, a goal that SUWA has sought to achieve for over thirty years.

Pursuant to 28 U.S.C. § 1746, I DECLARE, under penalty of perjury, that the foregoing is true and correct.

Signed this 21st day of Dec., 2017, in Salt Lake City, Utah.

/s/ RAY BLOXHAM
RAY BLOXHAM

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Exhibit D

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

Case No. 2:08-cv-00315-CW

KANE COUNTY, UTAH, AND STATE OF UTAH,
PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANTS
AND
SOUTHERN UTAH WILDERNESS ALLIANCE AND
THE WILDERNESS SOCIETY,
PROPOSED INTERVENOR-DEFENDANTS

DECLARATION OF KYA MARIENFELD

I, Kya Marienfeld, declare under penalty of perjury as follows:

1. I have personal knowledge of each of the facts set forth below, and if called upon to do so, could and would testify regarding the following. This declaration is filed in support of the Southern Utah Wilderness Alliance's and The Wilderness Society's Motion to Intervene and Memorandum in Support in the above-captioned matter.

2. I am a Wildlands Attorney for the Southern Utah Wilderness Alliance (SUWA) and have served in this position since 2015. This position requires me to spend considerable time on the ground documenting intrusions into lands recognized by both the Bureau of Land Management (BLM) and the Utah Wilderness Coalition (UWC) as having wilderness characteristics, as well as

lands currently proposed only by the UWC as having such wilderness qualities and other spectacular and sensitive public lands. I am also an active member of SUWA and have been a member since 2016.

3. SUWA, based in Salt Lake City, Utah, has approximately 15,000 members, many of whom reside in Utah. SUWA's mission is the preservation of the outstanding wilderness and other sensitive public lands at the heart of the Colorado Plateau, and the management of these lands in their natural state for the benefit of all Americans. SUWA seeks to protect the public lands of Utah and is a founding member of the UWC. SUWA promotes local and national recognition of the region's unique character through research and public education; supports both administrative and legislative initiatives to permanently protect Utah's wild places within the National Park and National Wilderness Preservation System or by other protective designations where appropriate; builds support for such initiatives on both the local and national level; and provides leadership within the conservation movement through uncompromising advocacy for wilderness preservation.

4. SUWA members and staff have a well-demonstrated interest in the preservation and protection of Utah's remarkable BLM-managed wilderness-quality public lands in Kane County, including those lands bordered and traversed by the Skutumpah, Swallow Park, and North Swag rights-of-way. SUWA's concerns include but are not limited to: damage from off-road vehicle (ORV) use; the effectiveness and lawfulness of BLM's proposed land management strategies; the need for enforcement of existing rules and regulations; and the impacts of motorized vehicles and roads on lands

managed by the BLM. SUWA is actively involved in protecting BLM lands, including those underlying and adjacent to the Skutumpah, Swallow Park, and North Swag rights-of-way, from such threats.

5. As a Wildlands Attorney, I routinely review various types of project and planning proposals under consideration by federal agencies, including the Bureau of Land Management (BLM), many of which affect BLM-managed public lands in Kane County with wilderness values. I am also the lead SUWA staff member for motorized vehicle issues in Kane County and spend considerable time in the field observing and documenting the impacts of motorized vehicle use on public lands. These impacts include soil erosion, loss of native plant and animal habitat, disturbance or destruction of archaeological artifacts, noise, airborne dust, damage to streams and water quality, and the creation of pioneered trails off of existing routes, all of which reduce the natural beauty and wilderness values prized by myself and SUWA members. SUWA has and continues to actively advocate for limitations on motorized use and trails where they conflict with wilderness values.

6. I have personally travelled on the Skutumpah Road and the BLM-managed public lands with wilderness character adjacent to it. I take great pleasure from my visits to this area which occurred most recently in March 2017—and intend to return as often as possible, and certainly within the next year. Along with other SUWA members and staff, I enjoy hiking, camping, birdwatching, study, contemplation, solitude, photography, and other activities on these lands. I use and enjoy these lands for health, recreational, spiritual, ed-

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ucational, aesthetic, and other purposes. My enjoyment of these activities is dependent on quiet, natural settings. If the Skutumpah Road is widened and improved beyond its current disturbed width, I believe the wilderness areas it traverses and borders will be degraded and my enjoyment of these lands will be significantly reduced or eliminated.

Pursuant to 28 U.S.C. § 1764, I DECLARE, under penalty of perjury, that the foregoing is true and correct.

Signed this 20th day of Dec., 2017, in Moab, Utah.

/s/ KYA MARIENFELD
KYA MARIENFELD

513a

Exhibit F

514a



southern
utah
wilderness
alliance

Nov. 30, 2017

VIA ELECTRONIC MAIL

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**Re: *Kane County (1) v. United States*, Case No.
2:08cv315-CW**

Dear Counsel:

I write on behalf of Southern Utah Wilderness Alliance and The Wilderness Society (collectively, "SUWA") to request that, in the event the parties in this matter decide to engage in any formal or informal settlement discussions regarding the scope of the Skutumpah, Swallow-Park/Park Wash, and North Swag R.S. 2477 rights-of-

way, SUWA and their undersigned counsel be provided reasonable advance notice of such discussions and the opportunity to attend and participate in such discussions. As you are well aware, SUWA has a significant, well-established and long-term interest in this matter. Please let me know by December 7, 2017, whether or not the parties will mutually agree to this request. Feel free to contact me if you have questions or would like to discuss this issue further.

Very Truly Yours,

SOUTHERN UTAH WILDERNESS ALLIANCE

/s/ STEPHEN BLOCH
STEPHEN BLOCH
*Attorney for Southern Utah Wilderness Alliance
and The Wilderness Society*

CC: Brent Manning
Jess Krannich

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Exhibit H

Protected from disclosure: attorney work product,
deliberative process

Memorandum

To: Acting Solicitor
From: Associate Solicitor, Division of Land Resources Regional Solicitor, Intermountain Region
Date: April __, 2017
Subject: Settlement considerations in the Utah Quiet Title Act/R.S. 2477 cases

This follows up on our meeting regarding the Quiet Title Act (QTA) cases pending in Utah federal court in which the State of Utah and 22 counties seek to quiet title to rights-of-way under R.S. 2477 for about 12,000 roads. This memorandum provides further background on the litigation and associated negotiations that have taken place in Utah to date, and summarizes various factors that should be considered in developing a potential settlement framework.

Background

Between 2005 and 2012, the State and counties filed 29 lawsuits under the QTA seeking title to R.S. 2477 rights-of-way throughout the state. The vast majority of the claims are on BLM-administered lands; approximately 60 claims are within NPS units. Two of these suits have been resolved, *Juab County 1*, which involved three claims on BLM land and was resolved in 2013 by negotiations recognizing parts of the claims, and *San Juan County* (often referred to as the Salt Creek case), which involved one claim in Canyonlands National Park

that was ultimately rejected by the Tenth Circuit in 2014.

Six cases in the Utah litigation are active, known as *Kane County 1, 2, 3 and 4*, and *Garfield County 1 and 2*. Pursuant to case management orders (CMOs), all remaining cases are currently stayed. However, as authorized by the CMOs, “preservation” depositions are currently being conducted in these cases throughout the state. The six active cases include approximately 1,520 road claims, a number of which are in the Grand Staircase Escalante National Monument, Wilderness Study Areas (WSAs), and the NPS-managed Capitol Reef National Park and Glen Canyon National Recreation Area.

During May-July 2015, the three judges assigned to the active cases collectively issued orders establishing a “bellwether” process to litigate a limited number of claims from *Kane 2, 3, and 4* and *Garfield 1 and 2* that involve unsettled legal issues to be identified by the court. The court indicated that its intent is to establish precedent that might allow for resolution of other claims without protracted litigation. In September 2015, After the parties submitted memoranda identifying their respective views as to the unsettled legal issues ~~in September 2015, but~~ the court has taken no further action to pursue the process.

Meanwhile, in April 2015, the three judges certified a question to the Utah Supreme Court asking whether a state law constituted a statute of limitations or statute of repose and indicating that, if the state law is a statute of repose, “then the R.S. 2477 Road cases pending before this court would be barred.” The Utah Supreme Court accepted the question and the matter was briefed, argued, and taken under advisement in April 2016. In

March 2017, the Utah Supreme Court asked for supplemental briefing, which was completed in April, and further oral argument is set for May 10.

There have been several attempts to settle some part of the R.S. 2477 litigation. The two efforts that have gotten the furthest are the *Juab County 1* negotiations mentioned above and the Iron County Pilot Project negotiations. The negotiations in *Juab County 1* began in February 2010 after intensive fact discovery (e.g., 23 depositions were undertaken). After 2½ years of intense discussions, plaintiffs (the State and Juab County), intervenors represented by Earthjustice (Southern Utah Wilderness Alliance (SUWA). The Wilderness Society (TWS), and Sierra Club), and BLM entered into a consent decree that recognized parts of three roads in and bordering a WSA as R.S. 2477 rights-of-way and established standards for maintenance and use. In exchange, plaintiffs relinquished other R.S. 2477 claims within the WSA and nearby areas and stipulated to a final judgment.

The Iron County Pilot Project negotiations began in December 2010 among BLM, Iron County, the Utah Association of Counties (UAC), the State of Utah, and an environmental coalition (led by SUWA and TWS). At that time, the County (or the State) had not filed its QTA complaint, but the parties agreed to attempt to create a process to settle the County's approximately 1,420 R.S. 2477 claims and, if successful, apply that process to other counties' claims. The parties jointly engaged a professional mediator and through sustained negotiations reached a conceptual agreement in August 2012, called the "Track 1" agreement, which identified the roads that the County would control consistent with its

R.S. 2477 claims on an “as is, where is” basis and the roads for which the County and State would be willing to drop their claims. Over the next two years the parties attempted to identify the legal mechanisms, or “tools,” that could be used to implement the “Track 1” agreement, a process referred to as “Track 2.” Although the parties tentatively agreed to use certain judicial and administrative tools, the negotiations broke down in January 2015 over details such as the relationship with on-going travel planning and the timing of the relinquishment of R.S. 2477 claims the County was willing to give up.

There were several subsequent communications during the previous administration between the State, UAC, and BLM regarding resuming negotiations, but they did not prove fruitful. On April 10, 2017, the Director of the Public Land Policy Coordination Office (PLPCO) of the State of Utah and the Utah State Director of BLM agreed to begin a dialogue to explore potential resolutions to the R.S. 2477 issue under this administration.

this administration.

Settlement framework factors

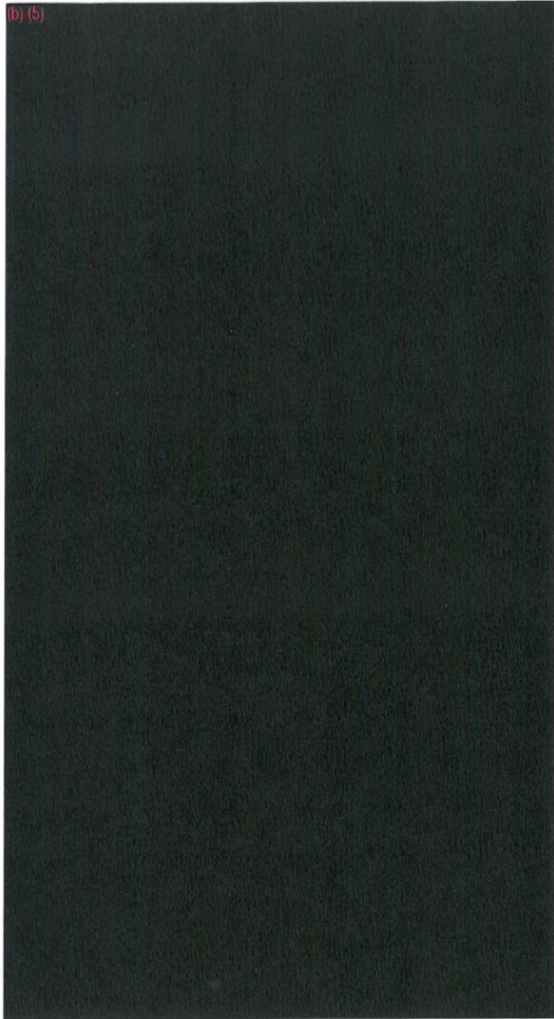
(b) (5)

Comment (BL1): Not sure this is needed.

Comment (BL2): (b) (5)

2

(b) (5)



Comment [MAG3]



Comment [BL4]: Does this para belong in the background section

523a

(b) (5)



APPENDIX L

1. 28 U.S.C. 2072 provides in pertinent part:

Rules of procedure and evidence; power to prescribe

(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals.

(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

* * * * *

2. The Rules Enabling Act, ch. 651, 48 Stat. 1064 (1934), provided:

Be it enacted * * * That the Supreme Court of the United States shall have the power to prescribe, by general rules, for the district courts of the United States and for the courts of the District of Columbia, the forms of process, writs, pleadings, and motions, and the practice and procedure in civil actions at law. Said rules shall neither abridge, enlarge, nor modify the substantive rights of any litigant. They shall take effect six months after their promulgation, and thereafter all laws in conflict therewith shall be of no further force or effect.

SEC. 2. The court may at any time unite the general rules prescribed by it for cases in equity with those in actions at law so as to secure one form of civil action and procedure for both: *Provided, however,* That in such union of rules the right of trial by jury as at common law

and declared by the seventh amendment to the Constitution shall be preserved to the parties inviolate. Such united rules shall not take effect until they shall have been reported to Congress by the Attorney General at the beginning of a regular session thereof and until after the close of such session.

3. Rule 8 of the Federal Rules of Civil Procedure provides in pertinent part:

General Rules of Pleading

(a) CLAIM FOR RELIEF. A pleading that states a claim for relief must contain:

(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

(b) DEFENSES; ADMISSIONS AND DENIALS.

(1) *In General.* In responding to a pleading, a party must:

(A) state in short and plain terms its defenses to each claim asserted against it; and

(B) admit or deny the allegations asserted against it by an opposing party.

* * * * *

4. Rule 17 of the Federal Rules of Civil Procedure provides in pertinent part:

Plaintiff and Defendant; Capacity; Public Officers

(a) REAL PARTY IN INTEREST.

(1) *Designation in General.* An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought:

- (A) an executor;
- (B) an administrator;
- (C) a guardian;
- (D) a bailee;
- (E) a trustee of an express trust;
- (F) a party with whom or in whose name a contract has been made for another's benefit; and
- (G) a party authorized by statute.

* * * * *

5. Rule 19 of the Federal Rules of Civil Procedure provides in pertinent part:

Required Joinder of Parties

(a) PERSONS REQUIRED TO BE JOINED IF FEASIBLE.

(1) *Required Party.* A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:

- (A) in that person's absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:

(i) as a practical matter impair or impede the person's ability to protect the interest; or

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

(2) *Joinder by Court Order.* If a person has not been joined as required, the court must order that the person be made a party. A person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an involuntary plaintiff.

(3) *Venue.* If a joined party objects to venue and the joinder would make venue improper, the court must dismiss that party.

(b) **WHEN JOINDER IS NOT FEASIBLE.** If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. * * * .

* * * * *

(c) **PLEADING THE REASONS FOR NONJOINDER.** When asserting a claim for relief, a party must state:

(1) the name, if known, of any person who is required to be joined if feasible but is not joined; and

(2) the reasons for not joining that person.

(d) **EXCEPTION FOR CLASS ACTIONS.** This rule is subject to Rule 23.

6. Rule 19 of the Federal Rules of Civil Procedure, 28 U.S.C. Appendix (1970), provided in pertinent part:

JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

(a) Persons to be joined if feasible.

A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action.

* * * * *

7. Rule 20 of the Federal Rules of Civil Procedure provides:

Permissive Joinder of Parties

(a) PERSONS WHO MAY JOIN OR BE JOINED.

(1) *Plaintiffs.* Persons may join in one action as plaintiffs if:

(A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all plaintiffs will arise in the action.

(2) *Defendants.* Persons—as well as a vessel, cargo, or other property subject to admiralty process in rem—may be joined in one action as defendants if:

(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all defendants will arise in the action.

(3) *Extent of Relief.* Neither a plaintiff nor a defendant need be interested in obtaining or defending against all the relief demanded. The court may grant judgment to one or more plaintiffs according to their rights, and against one or more defendants according to their liabilities.

(b) PROTECTIVE MEASURES. The court may issue orders—including an order for separate trials—to protect a party against embarrassment, delay, expense, or other prejudice that arises from including a person against whom the party asserts no claim and who asserts no claim against the party.

8. Rule 24 of the Federal Rules of Civil Procedure provides:

Intervention

(a) INTERVENTION OF RIGHT. On timely motion, the court must permit anyone to intervene who:

(1) is given an unconditional right to intervene by a federal statute; or

(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

(b) PERMISSIVE INTERVENTION.

(1) *In General.* On timely motion, the court may permit anyone to intervene who:

(A) is given a conditional right to intervene by a federal statute; or

(B) has a claim or defense that shares with the main action a common question of law or fact.

(2) *By a Government Officer or Agency.* On timely motion, the court may permit a federal or state governmental officer or agency to intervene if a party's claim or defense is based on:

(A) a statute or executive order administered by the officer or agency; or

(B) any regulation, order, requirement, or agreement issued or made under the statute or executive order.

(3) *Delay or Prejudice.* In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

(c) NOTICE AND PLEADING REQUIRED. A motion to intervene must be served on the parties as provided in Rule 5. The motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought.

9. Rule 24 of the Federal Rules of Civil Procedure, 28 U.S.C. Appendix (1970), provided:

(a) Intervention of right.

Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive intervention.

Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon

any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure.

A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute of the United States gives a right to intervene. When the constitutionality of an act of Congress affecting the public interest is drawn in question in any action to which the United States or an officer, agency, or employee thereof is not a party, the court shall notify the Attorney General of the United States as provided in Title 28, U.S.C., § 2403.

10. Rule 24 of the Federal Rules of Civil Procedure, 28 U.S.C. Appendix (1964), provided:

INTERVENTION

(a) Intervention of right.

Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the representation of the applicant's interest by existing parties is or may be inadequate and

the applicant is or may be bound by a judgment in the action; or (3) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property which is in the custody or subject to the control or disposition of the court or an officer thereof.

(b) Permissive Intervention.

Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure.

A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute of the United States gives a right to intervene. When the constitutionality of an act of Congress affecting the public interest is drawn in question in any action to

which the United States or an officer, agency, or employee thereof is not a party, the court shall notify the Attorney General of the United States as provided in Title 28, U.S.C, § 2403.

11. Rule 24 of the Federal Rules of Civil Procedure, 308 U.S. 690 (1937), provided:

Intervention

(a) INTERVENTION OF RIGHT. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action; or (3) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof.

(b) PERMISSIVE INTERVENTION. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) PROCEDURE. A person desiring to intervene shall serve a motion to intervene upon all parties affected thereby. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is

sought. The same procedure shall be followed when a statute of the United States gives a right to intervene. When the constitutionality of an act of Congress affecting the public interest is drawn in question in any action to which the United States or an officer, agency, or employee thereof is not a party, the court shall notify the Attorney General of the United States as provided in the Act of August 24, 1937, c. 754, § 1.

12. Rule 25 of the Federal Rules of Civil Procedure provides in pertinent part:

Substitution of Parties

(a) DEATH.

* * * * *

(b) INCOMPETENCY. * * * .

(c) TRANSFER OF INTEREST. If an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party. The motion must be served as provided in Rule 25(a)(3).

* * * * *