

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

COUNTY OF INYO,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 1:06-CV-
	)	01502-AWI-DLB
DEPARTMENT OF THE INTERIOR, DIRK	)	
KEMPTHORNE, in his capacity as	)	
Secretary of the United States	)	
Department of the Interior, NATIONAL	)	
PARK SERVICE, MARY A. BOMAR, in her	)	
capacity as Director, National Park	)	
Service, JAMES T. REYNOLDS, in his	)	
capacity as Superintendent, Death	)	
Valley National Park,	)	
	)	
Defendants, and	)	
	)	
SIERRA CLUB, et al.,	)	
	)	
Defendants-Intervenors.	)	
	)	

DEPOSITION OF BERNARD T. PEDERSEN

163 May Street  
Bishop, California  
Wednesday, June 9, 2010; 9:52 a.m.  
Death Valley, California  
Thursday, June 10, 2010

JERI BETH RICH  
Certified Shorthand Reporter, CSR No. 4670  
Post Office Box 1481, Bishop, California 93515-1481  
(760) 872-4442

1 APPEARANCES:

2

3 FOR THE PLAINTIFF:

4 INYO COUNTY OFFICE OF THE COUNTY COUNSEL  
5 BY: RALPH H. KELLER  
6 County Counsel  
7 Post Office Box M  
8 224 North Edwards Street  
9 Independence, California 93526  
10 (760) 878-0229

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9 FOR THE DEFENDANT DEPARTMENT OF THE INTERIOR:

10 U.S. DEPARTMENT OF JUSTICE  
11 ENVIRONMENTAL & NATURAL RESOURCES DIVISION  
12 BY: BRUCE D. BERNARD  
13 Trial Attorney  
14 General Litigation Section  
15 1961 Stout Street, 8th Floor  
16 Denver, Colorado 80294  
17 (303) 844-1361

14

15 FOR THE DEFENDANT/INTERVENORS SIERRA CLUB:

16 EARTHJUSTICE  
17 BY: EDWARD B. ZUKOSKI  
18 Staff Attorney  
19 1631 Glenarm Place, Suite 300  
20 Denver, Colorado 80202-4303  
21 (303) 623-9466

19

20

21 ALSO PRESENT:

21

22 JOE AUGUSTINE TILMAN, National Park Service

22

23 AINSLEY HOLESO, National Park Service

23

24

25

1 criteria for inclusion of a road into the County's  
2 Maintained Mileage System?

3 A. Well, currently it needs to meet certain  
4 design requirements and be considered by the Board  
5 based on merits of the road and proposed use, et  
6 cetera.

7 Q. So you said it needs to meet certain design  
8 criteria?

9 A. Currently, yes.

10 Q. And when did -- that sounds like that may be a  
11 new requirement?

12 A. Well, it's -- it's -- I guess it -- I don't  
13 know that "new" is the proper term. It probably has  
14 always had to meet certain standards but the standards  
15 are modified over time. I couldn't tell you when the  
16 current standards were adopted.

17 But as far as pavement width, design,  
18 vertical/horizontal alignments, et cetera, that's  
19 usually the criteria that, before we bring a road  
20 before the Board for considerations for adoption, we  
21 need to ensure that it meets that criteria.

22 Q. Does the County's Maintained Mileage System  
23 include both the primary and secondary roads?

24 A. Would you define "primary" and "secondary"?

25 Q. Well, I was going to ask you to help me with

1 that.

2 A. We have paved and unpaved roads, if that's  
3 what you're referring to. We have about 550 miles of  
4 paved road and approximately an equal number of unpaved  
5 roads within the County Maintained System.

6 Q. Look at, if you would, please, Resolution  
7 Number 48-8, which is attached to Exhibit A-1 to your  
8 declaration.

9 In the first "Whereas" clause, it says the  
10 Board of Supervisors of the County of Inyo, State of  
11 California, has adopted maps of the County primary road  
12 system which also show the secondary roads of the  
13 County road system.

14 So do those terms have meaning to you in that  
15 context?

16 A. I would think the primary roads would be roads  
17 of higher importance than the secondary road system.  
18 In today's language, one would -- I would probably use  
19 a term of a collector, major collector, for primary  
20 roads and something less than that for secondary roads.  
21 I think it's just a level of importance that they're  
22 referring to.

23 Q. If you would look at the next page, which  
24 is -- of that attachment, so page number -- it's  
25 Exhibit A-2. And we have Resolution Number 48-9 at

1 A. Well, there are cul-de-sac roads that go out  
2 and end at locations. I think we do have roads similar  
3 to that, yes. I think Last Chance Road is a very good  
4 example of one that does.

5 Q. That does --

6 A. Goes out and ends.

7 Q. Okay. For the County to accept a road into  
8 its Maintained System, does the road need to have been  
9 a constructed road?

10 A. I -- again, I would rather -- I would need to  
11 research that. But I believe that most roads that  
12 were -- that are in our system are in existence and  
13 were created in one form or another at one time.

14 Q. Do you know what the effect would be of a  
15 resolution adopted by the County supervisors  
16 identifying a road that doesn't exist anywhere?

17 A. Could you repeat that?

18 Q. Yeah.

19 Do you know what the effect would be of a  
20 resolution adopted by the County supervisors that  
21 identifies and purports to take into the County  
22 Maintained System a road that doesn't -- does not in  
23 fact exist on the ground?

24 A. Effect on what?

25 Q. Would it be effective in terms of accepting

1 that identified road into the County Maintained System?

2 A. I believe the Board could adopt or could  
3 accept dedication of right of way for a future road. I  
4 don't know that it would be -- and I'm speaking in  
5 today's terms -- we would not accept it into the  
6 Maintained -- I do not believe we would accept it into  
7 the Maintained System until it was constructed or  
8 created. I don't know if that answers your question.

9 Q. Yeah. That's helpful.

10 Can you turn to the Road System Map for --  
11 that includes the Last Chance Road North?

12 A. I think all of these -- all of these do.

13 Q. Okay. So we are looking at the map sheet from  
14 the Road System Maps, which is dated 1993, and  
15 indicates that it is sheet two of 23 and includes the  
16 area around what we will call Last Chance Road North.

17 MR. ZUKOSKI: Can we go off the record for a  
18 second?

19 (A discussion was held off the record.)

20 (Exhibit 12 was marked for Identification.)

21 MR. BERNARD: Back on.

22 Q. (BY MR. BERNARD) So, Mr. Pedersen, you now  
23 have in front of you what has been marked as deposition  
24 Exhibit 12, which is this same County Road System Map  
25 from 1993, sheet two of 23 (sic). You now have a hard

1 legal question that I don't know that I'm prepared to  
2 answer.

3 From my perspective, what I look at as far as  
4 Maintained Mileage is the road maps and the Road Tabs  
5 with respect to what is identified and certified with  
6 the State of California as the Maintained Mileage.

7 Q. The County Road Register -- we have the  
8 original, this here on the table -- do you know when  
9 this was prepared?

10 A. No, I do not.

11 Q. Do you know --

12 A. Originally prepared?

13 Q. Yes.

14 A. No, I do not.

15 Q. Do you know if it was updated along the way  
16 after it was originally prepared?

17 A. Well, apparently it was at some point, based  
18 on the footnotes.

19 Q. Okay.

20 A. Or portions thereof.

21 Q. Okay. So the footnote's referencing 1948  
22 resolution.

23 Okay. And with respect to Resolution 48-9 at  
24 page A-2 of your declaration, I believe you said the  
25 County does not have the map referenced in that

1 Q. Yeah, I believe you do. Let's see.

2 Paragraph seven. You say the USGS Last Chance  
3 Mountain map from 1987 --

4 A. Uh-huh.

5 Q. -- right?

6 Okay. So is the County claiming a right of  
7 way for the road as you've identified it on the ground  
8 and as you believe it corresponds to the 1987 map?

9 A. Are we claiming a right of way? I think we're  
10 claiming that it is a County-maintained road. And --  
11 and I think there's a path that's definable.

12 Q. Okay. In the -- this lawsuit involves the  
13 County's claim that it has a right of way for the road.

14 A. Uh-huh.

15 Q. So is the right of way that the County is  
16 claiming a right of way for this road as you located it  
17 on the ground?

18 A. Yes, I believe so.

19 Q. Okay. And you --

20 A. I don't know that I've seen that document.  
21 But that's my understanding, that that is our claim,  
22 that we have a road, we've maintained it in the past,  
23 and it's part of our Maintained System.

24 Q. Let's see. And back in paragraph six you say,  
25 "The road is as reflected on Exhibit C to this



1 A. Yes.

2 Q. Okay. As far as filing a claim with the  
3 federal government or filing a lawsuit and making  
4 claims on behalf of the County, who would be  
5 responsible for doing that?

6 A. Well, the Board of Supervisors and yourself.

7 MR. KELLER: I don't have any other questions.

8 MR. BERNARD: Just a couple more.

9

10 EXAMINATION

11 BY MR. BERNARD:

12 Q. So you testified in response to questions from  
13 Mr. Keller that the County can accept roads into its  
14 system that may not be in existence; correct?

15 A. As long as there's provisions to construct  
16 those roads through a development agreement-type  
17 process.

18 Q. So the 1948 resolutions, they could  
19 potentially have taken roads into the County system  
20 that were not in existence; is that right?

21 A. I guess in 1948 anything is -- there's a  
22 potential for that.

23 Q. And the Road Tabulations and the Road  
24 Register, there could be roads reflected in those  
25 documents that are not in existence; is that correct?

1           A.    I assume that's a possibility.  But I would  
2 think, at this point, that they reflect roads that are  
3 or were in existence or were at some point.

4           Q.    Well, we know that the register page that's  
5 attached to your declaration as Exhibit B, I believe --  
6 yes, B -- reflects a road that -- a road that is shown  
7 in the register that -- the entirety of which does  
8 not -- did not or does not exist, do we not?

9           A.    Which road are you referring to?

10          Q.    Yeah.  Exhibit B to your declaration.

11          A.    Uh-huh.

12          Q.    The Road Register page for Last Chance Road  
13 Number 2046.

14          A.    Uh-huh.

15          Q.    Okay.  It indicates a road in length of 4.0  
16 miles; correct?

17          A.    Yes.

18          Q.    Do you have any information that a road --  
19 such a road ever existed?

20          A.    No.

21          Q.    Okay.  So, again, the Road Register could  
22 reflect roads in the County system that don't in fact  
23 physically exist; is that correct?

24          A.    That's possible.  I don't know what existed in  
25 1948 but it may not exist today.

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REPORTER'S CERTIFICATE

I, JERI BETH RICH, CSR NO. 4670, Certified  
Shorthand Reporter, certify:

That the foregoing proceedings were taken  
before me at the time and place therein set forth, at  
which time the witness was put under oath by me;

That the testimony of the witness and all  
objections made at the time of the examination were  
recorded stenographically by me and were thereafter  
transcribed;

That the foregoing is a true and correct  
transcript of my shorthand notes so taken.

I further certify that I am not a relative or  
employee of any attorney or of any of the parties, nor  
financially interested in the action.

I declare under penalty of perjury under the  
laws of the State of California that the foregoing is  
true and correct.

Dated this                      day of                      , 2010.

JERI BETH RICH, CSR NO. 4670

1 REPORTER'S CERTIFICATION OF CERTIFIED COPY

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6 I, JERI BETH RICH, CSR NO. 4670, Certified Shorthand  
7 Reporter in the State of California, certify that the foregoing  
8 pages 1 through 141 constitute a true and correct copy of the  
9 original deposition of BERNARD T. PEDERSEN taken on Wednesday,  
10 June 9, 2010, and Thursday, June 10, 2010.

11 I declare under penalty of perjury under the laws of  
12 the State of California that the foregoing is true and correct.

13 Dated this                    day of                    , 2010.

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17 JERI BETH RICH, CSR NO. 4670

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