

ATTACHMENT 2

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

COUNTY OF INYO,	)	No. 1:06-cv-1502-AWI-DLB
)	
Plaintiff,	)	DECLARATION OF LEONARD
	)	HUARTE, INYO COUNTY
vs.	)	EQUIPMENT OPERATOR, IN
	)	SUPPORT OF INYO COUNTY'S
DEPARTMENT OF INTERIOR, et al.,	)	MOTION FOR SUMMARY JUDGMENT
	)	AND INYO COUNTY'S OPPOSITION
Defendants, and	)	TO DEFENDANTS' CROSS-MOTION
	)	FOR SUMMARY JUDGMENT
SIERRA CLUB, et al.,)	
	)	HEARING DATE: January 10, 2011
Defendant-Intervenors.	)	HEARING TIME: 1:30 p.m.
	)	COURTROOM: 2

JUDGE: Honorable Anthony W. Ishii

TRIAL DATE: Not Set

The undersigned, LEONARD HUARTE, declares as follows:

1. I am an adult, over the age of 18 years, and have personal knowledge of the matters set forth herein.

3. I was born in January 1948, in Bishop, California, and except for relatively short periods while away at school, etc., have lived in the Bishop, California area since birth. I am generally familiar with the mountain and desert areas of Inyo County by way of my employment as an Equipment Operator with Inyo County, and the grading of various roads in various areas of the county, and by way of my hunting, fishing, and hiking and related outdoor activities in the mountain and desert areas of the county for more than 45 years.

5. In fact, on March 5, 2008, I had a misunderstanding about which road was/is being referred to in this matter as Last Chance Road. At that time, I understood Last Chance Road to be a different road (different from the one of interest here), and understood it to be one going generally southerly in direction from Willow Spring Road, and going to what I understood was called the old Last Chance Mine. I subsequently learned that the road known as Last Chance Road in this case is the road leading to the rim of Last Chance Canyon. There are several trails or roads that lead off of Willow Spring Road in the same general southeasterly direction in the area that is of interest.

1 6. After the March 5, 2008, session of my deposition, and prior to the July 9, 2010
2 session of my deposition, I was riding out to what I still believed was Last Chance Road with
3 my supervisor, Mr. Jeff Anderson. Mr. Randy Keller and Mr. Ted Pedersen were following us
4 in a separate vehicle. As I understand it, this was in or about December 2009. As we
5 approached what I now know to be the actual Last Chance Road that is of interest in this case,
6 and as a matter of conversation as we approached the road, I pointed to the road and told Mr.
7 Anderson that in the early 1970's I believed I used to grade that "little road." When we arrived
8 at what I then thought was Last Chance Road (further to the northeast), there was a brief
9 discussion on why I had slowed, and I told Mr. Keller and Mr. Pedersen what I had told Mr.
10 Andersen. Later that day we all went to the road I told Mr. Anderson I used to grade and
11 walked portions of it.

12 7. Seeing that little road that day refreshed my memory of my grading the road in
13 the early 1970's. When I say early 1970's, I mean from 1970/1971 to 1975.

14 8. The second and third sessions of my deposition were taken on July 9 and 10,
15 2010, respectively. There were numerous people around, and particularly during the July 10
16 session of my deposition, the process was rather confusing and made it difficult to concentrate
17 and think back those approximately 35-40 years ago that were being inquired about. We were
18 on a walking deposition, along Last Chance Road, and 3 or 4 depositions were being taken
19 simultaneously, with tag-team type of questioning by multiple lawyers of each deponent, in
20 turn, at various times and at various locations along Last Chance Road, with everyone hearing
21 what everyone else was saying, and carrying on other conversations. Additionally, there were
22 some engineers, map makers or others present, taking measurements, taking GPS readings,
23 talking to each other about this characteristic or that characteristic, and generally keeping
24 things unfocused, at least for me. The ability to concentrate on my own thoughts and
25 testimony was quite difficult, after hearing what others would say about what I had either just
26 talked about or was about to talk about, and while we were walking, and talking, and stopping

1 and standing and observing and explaining, and others were talking about other things
2 involved in their mapping, observations, and matters of interest to them.

3 9. Since then, I have had opportunity to refresh my memory by returning to Last
4 Chance Road without the commotion and confusion of all the other people there, and the
5 ongoing multiple tag-team type of depositions and questioning, and multiple questions on and
6 off the record, and multiple conversations related and unrelated to the questions being asked of
7 me. As a result, I believe I can clear up any confusion left by prior questioning, and therefore
8 present the following.

9 10. I now know that the Last Chance Road that is at issue in this case is the road
10 marked from point E to point G on Exhibit 2 to my March 5, 2008, deposition, a portion of
11 which is attached to this declaration as Exhibit 1. I cannot recall where point F was or is, and
12 do not see it on the Exhibit. Nevertheless, at the time of my March 5, 2008, deposition, I did
13 not have that road – from point E to point G – in my mind or pictured or “connected” to my
14 memory with regard to grading that road in the early 1970’s. I may have been picturing the
15 road marked from point A to point C, or one of the two roads departing at point C, or the road
16 at Point B, or one of the two roads departing point D, or another road somewhere else, I just
17 cannot now recall.

18 11. Some of my confusion is reflected in my deposition testimony at pages 15
19 through 18 of the March 5, 2008, transcript. These pages of the transcript are attached to this
20 declaration as Exhibit 2, and I was then testifying upon reviewing the Exhibit 1 map, after I
21 was provided someone else’s reading glasses so I could see better.

22 12. Upon refreshing my memory by revisiting the correct site, and reflecting without
23 the commotion and confusion of the earlier visit, and testimony of others concurrently with
24 mine, and as stated in my deposition of July 9-10, 2010, I did in fact grade the Last Chance
25 Road which is at issue in this case (from point E to point G on Exhibit 1) in the early 1970’s –
26 and by that I mean somewhere during the approximate six-year period of 1970/1971 to 1975
27 (1970; 1971; 1972; 1973; 1974; 1975). I do not recall the exact years. I graded that road at

1 least three separate times in at least three separate years during this six-year period in the
2 performance of my duties as an employee of Inyo County and its road department.

3 13. The road was a good and very usable road at the time. In fact, I could and did
4 drive up that road in a two-wheel drive pick-up without difficulty. To give some visual
5 evidence of the road, portions of the road, as it exists today (35+ years later), are shown in the
6 two photographs of the road which are attached to this Declaration as Exhibits 3 and 4. These
7 photographs were taken on November 17, 2010, when I last visited the site. Also attached to
8 this declaration, as Exhibits 5 and 6, are two photographs from the lookout point at the top of
9 Last Chance Road showing the magnificent view of the surrounding mountains and desert.
10 Exhibit 5 looks to the southeast; and Exhibit 6 looks the opposite direction, to the northwest.
11 Each of these photographs was taken on November 17, 2010.

12 14. The circumstances that led to my grading Last Chance Road those times in the
13 1970 – 1975 time period were these. When I hired on with Inyo County, the foreman was
14 Rube (Rubin?) Rossi; and the four older and experienced men on the crew were Tiny Gates,
15 Wende Lee, Johns Leigh, and Ferris Hedrick. I may have the spelling of some of these names
16 incorrect, but that is how I think they are spelled.

17 15. For my training after initially hiring on, the foreman, Rube Rossi, told which ever
18 of the older and experienced men I was assigned to that day to take me out to that day's work
19 site or area, show me what to do, and teach and supervise my work. This is how I was taught
20 and trained to do my job. It was in essence on-the-job training. I learned and did road
21 patching, etc., along with learning to operate the various equipment – loaders, graders, and
22 other equipment. One or more of these men, I cannot remember specifically which, since I
23 worked under each of them and their supervision from time to time, instructed me that the road
24 we are now calling Last Chance Road was a county road, that it was part of our work
25 assignment, and instructed me to grade it. The supervisor would then go off and do other
26 work, and return later to see how I had done, and offer advice and training on what was good,
27 what could be done better, and how, answer my questions, etc. Later on, in the early 1970's,

1 when I worked on my own without the direct supervision of the older men, I continued to
2 grade the road as I was assigned to do so. I did not grade any road that I was not told to grade
3 by a supervisor; and thus I can and do state that I did not ever grade Last Chance Road without
4 being instructed to do so, as the day's or week's work, without being so instructed by a
5 foreman or supervisor.

6 16. For the next paragraphs of this declaration, I will address the Last Chance Road
7 that is the subject of this matter in three separate segments. They are, respectively, the
8 Intersection Segment, the Wash Segment, and the Terminus Segment. Each of these segments
9 is shown on the enlarged portion of Exhibit 2 to my March 5, 2008, deposition transcript
10 which is attached to this declaration as Exhibit 7.

11 17. Regarding the Intersection Segment, I cannot recall specifically whether I went
12 through the Intersection Segment, to the beginning of the Wash Segment, by way of a 90-
13 degree turn to the southeast off of Willow Springs Road, or by way of the more gradual road
14 entry shown on the map that is Exhibit 7. It was clearly one or the other; and upon reflection,
15 my best testimony is that it was most likely the more gradual entry shown by the map makers
16 of the 1980 USGS, NOS/NOAA map shown on Exhibit 7.

17 18. Regarding the Wash Segment shown on Exhibit 7, at all times when I graded that
18 segment, during the six-year period of 1970 – 1976, I graded the segment by grading the low
19 area of the wash as it went to the southeast from Willow Spring Road, at the bottom of the
20 wash. This is along the roadway, shown at the bottom of the wash, on the 1980 USGS,
21 NOS/NOAA map from which Exhibit 7 is taken. My training and my experience is and was to
22 grade the bottom of a wash such as this, as well as this wash in particular. I know that I did
23 not ever grade any portion of this wash in a manner that was inconsistent with my training and
24 experience, and that I graded the bottom of the wash as shown as the road on the Exhibit 7
25 map.

26 19. I understand that there has been some discussion of whether I graded to the left or
27 right of a large Pinion tree in a portion of the bottom of the Wash Segment shown on Exhibit

1 7. I do not recall the presence of any tree in the bottom of the wash that I had to grade around
2 when I graded the Wash Segment. My testimony at page 34 of the July 9, 2010, session of my
3 deposition is my best testimony on this matter. That testimony is as follows (Deposition of
4 Leonard Huarte, July 9, 2010, page 34), and a copy of this page of my deposition transcript is
5 attached as a part of Exhibit 8:

6 1 MR. ZUKOSKI: Do you remember -- do you
7 2 remember that tree being there 40 years ago at all?

8 3 THE WITNESS: Not really.

9 4 It's pretty good size now, though, that one
10 5 tree there. But I sure don't really remember it.

11 20. Regarding the third and final segment shown on Exhibit 7, the Terminus
12 Segment, this is the segment that goes up the hillside directly out of the wash (end of the Wash
13 Segment) to the top of the Terminus Segment, where I graded a vehicle turn-around area with
14 the grader I was using: There is only one way to reasonably connect the top, or southeast, end
15 of the Wash Segment with the top of the Terminus Segment, and that way is the roadway that
16 can be seen today, extending from the end of the Wash Segment to the top of the Terminus
17 Segment where I graded the turnaround. This is the same route that is shown by the map
18 makers of the 1980 USGS, NOS/NOAA map. Upon refreshing my memory and reviewing the
19 1980 USGS, NOS/NOAA map, and the road as shown thereon, and knowing the points I
20 connected in grading this route, and based on my training and experience in grading routes,
21 and other information regarding other peoples' (hunters'/other vehicles present from time to
22 time, etc.) use of this portion of the road, I can and do state that I graded from the end point of
23 the Wash Segment (the southeastern point of same) up to the turnaround via the road shown by
24 the map makers of the 1980 USGS, NOS/NOAA map from which Exhibit 7 has been prepared.
25 Also, I walked this Terminus Segment on November 17, 2010, and the roadway of the
26 Terminus Segment above-described can still be seen. A photograph of the Terminus Segment,
27

1 as it still exists on November 17, 2010, and as it rises up from the end of the Wash Segment to
2 the turn-around I graded at the southeast end of Last Chance Road, is attached as Exhibit 9.

3 21. Neither I, nor anyone else to my knowledge, did any grading along this route, that
4 is, from Willow Spring Road to the turnaround at the southeast end of Last Chance Road, after
5 1976.

6 22. On November 17, 2010, I measured the area where I graded the turnaround,
7 beginning at the top of Last Chance Road as shown by the government map makers on the
8 1980 USGS, NOS/NOAA map, and found the following: It is 71 feet from the top of the road
9 and area I graded to (the end of the road that is shown by the map makers on the map),
10 southeast to the canyon rim; and from top of the road and area I graded, I created a turnaround
11 of 52 feet by 42 feet (as measured by me on November 17, 2010), extending from the top of
12 the Last Chance Canyon road, extending to the northeast from the top of the road, as shown on
13 Exhibit 7. I obtained these measurements by visually observing where I graded; and then
14 measuring that area.

15 23. Selected additional portions of my July 2010 testimony, from the July 9-10
16 deposition transcript, that substantiate the information set forth in this declaration, are attached
17 as Exhibit 8 hereto, and they consist of pages 45-48, 54, 65, and 70-73.

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

20 DATED: November 20, 2010

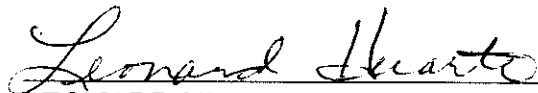

LEONARD HUARTE
Equipment Operator
County of Inyo

EXHIBIT 1

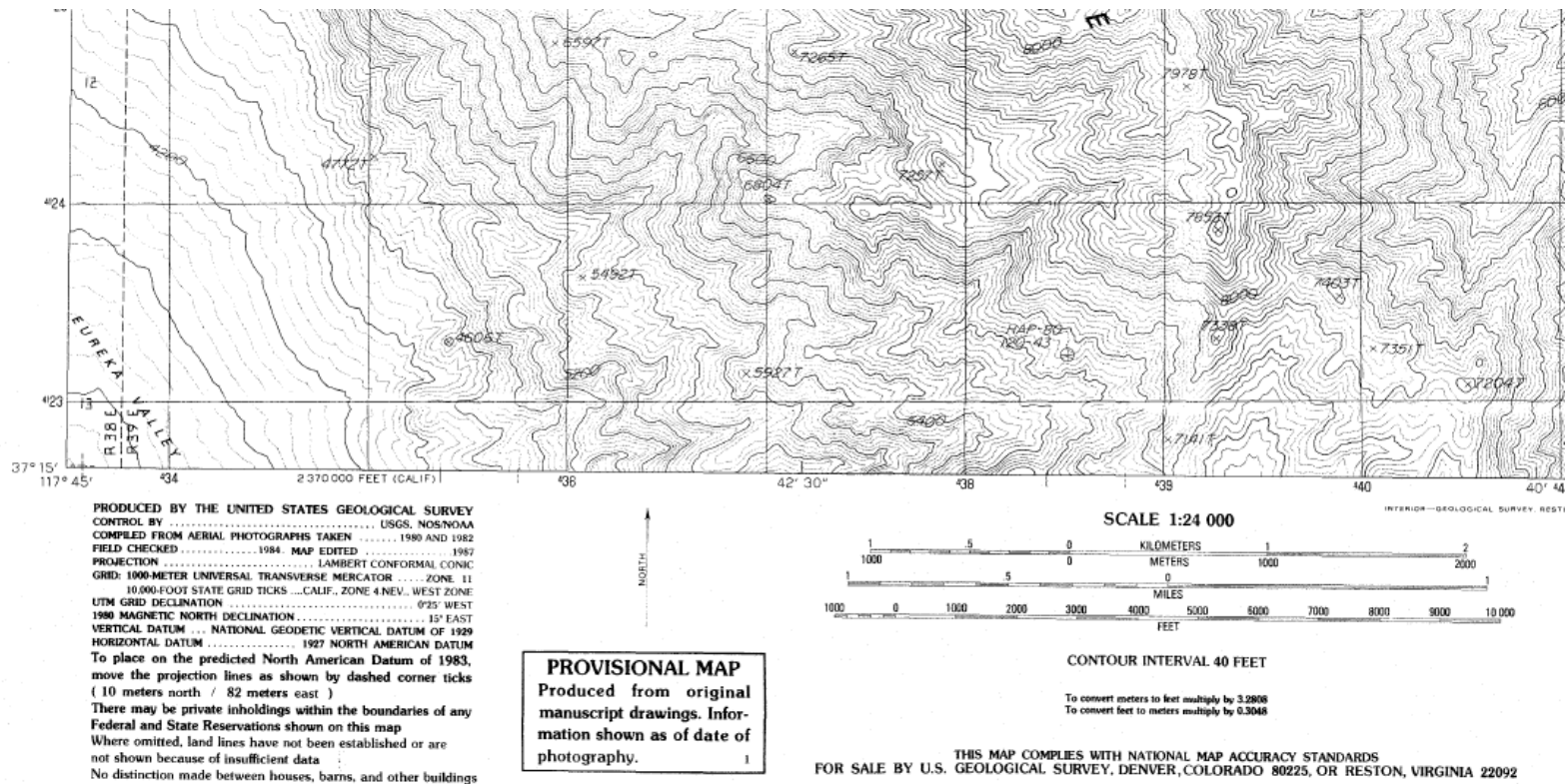


EXHIBIT 2

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

COUNTY OF INYO,

Plaintiff,

VS.

DEPARTMENT OF THE INTERIOR,
DIRK KEMPTHORNE, in his
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.,

Defendant-Intervenors.

DEPOSITION OF LEONARD HUARTE

Independence, California

March 5, 2008

NICCOLE M. ROSSY
 Certified Shorthand Reporter #10698
 Post Office Box 1675
 Bishop, California 93515
 (760) 872-4718

CERTIFIED
COPY

1 California-Nevada 1987.

2 A. Oh, man. I forgot my glasses. I can't believe
3 that. I'm blinder than a bat without them.

4 MR. ZUKOSKI: What power do you need?

5 THE WITNESS: I don't care. I just use Payless
6 ones.

7 MR. ZUKOSKI: Yeah, me too.

8 THE WITNESS: Yeah, that's good.

9 MR. BERNARD: Do those work?

10 THE WITNESS: Oh, yeah. Now I can see.

11 MR. ZUKOSKI: You got the blind old man
12 syndrome.

13 THE WITNESS: Yeah, right.

14 Q. BY MR. BERNARD: Can you find Willow Creek Road
15 to begin with? Willow Springs, sorry.

16 A. Yeah.

17 MR. ZUKOSKI: Willow Springs is right there.

18 THE WITNESS: Oh, yeah. Okay. This is the
19 road coming down. This is coming from the north down to
20 it.

21 Q. BY MR. BERNARD: And the road you're indicating
22 on the map is --

23 A. I can't see. Where in the heck --

24 Q. -- is a road that's running adjacent to with
25 the map labels as Willow Creek; is that correct?

1 A. Yeah, let's see.

2 Q. And which travels past Willow Spring, correct?

3 A. Yeah. Let's see, Willow Springs -- there's
4 Cucomungo. So this has to be coming in from the north,
5 like Pigeon Springs back here, but I can't find the --

6 MR. KELLER: Are you looking for North Eureka
7 Valley Road?

8 THE WITNESS: Yeah.

9 MR. KELLER: That's off the map.

10 THE WITNESS: I guess it would be, yeah.

11 MR. ZUKOSKI: Will this help?

12 MR. KELLER: I don't know if it's on here.

13 THE WITNESS: Yeah, it would be.

14 MR. BERNARD: Let's go off for a minute.

15 (A discussion was held off the record.)

16 Q. BY MR. BERNARD: Mr. Huarte, off the record we
17 looked at some other maps to try and help you get
18 oriented on this USGS map. So are you now familiar
19 enough to confirm this is the Willow Springs Road?

20 A. Yes.

21 Q. Here on the north end of this USGS map --

22 A. Right.

23 Q. -- going generally west to east I guess?

24 A. Yeah.

25 Q. Okay. And can you show us on this map where

1 you believe Last Chance Road to be?

2 A. Well, it must be -- it doesn't show where --
3 here's Cucamonga Springs way up here. I don't know.
4 Here's about where we turn right. It's either -- it's
5 either this one or -- God, I can't -- I can take you up
6 there and show you. I don't know. It's --

7 Q. By "this one" -- boy, this is hard because we
8 don't have section numbers. You're pointing to a road
9 that heads south off of Willow --

10 A. Yeah. It comes back this way off of our road
11 here, the Willow Springs Road. It's either that one or
12 it could -- this one doesn't look far enough.

13 Q. The one you've referred to as the first one
14 that it might be is a road heading south off of Willow
15 Springs Road --

16 A. Yeah. It comes back --

17 Q. -- just south of this border between California
18 and Nevada, correct?

19 A. It would actually be heading back kind of east.

20 Q. Do you want to go ahead and mark that on the
21 map for us?

22 A. You mean just --

23 Q. Yeah.

24 A. It's either that one or --

25 Q. And let's call that A.

1 A. Like I said, we turned around at about the
2 border here, and it's just down below where we turned
3 around at that this little road takes off.

4 Q. And is it possibly that road or what's the
5 other road?

6 A. This one, but I don't know, this don't look --
7 this one looks more like it right in here because that's
8 the way it -- basically you kind of have to make a sharp
9 turn and come back off of it like that. This one looks
10 like it more than this one.

11 Q. So you think -- let's mark the other one as B
12 then. But you believe it to be the road you've marked
13 as A?

14 A. Yeah, I think so. This one up here, the
15 further one because here's the border, yeah, Nevada.

16 MR. BERNARD: Okay. Let's go ahead and mark
17 this as Deposition Exhibit 2. I think we can just do
18 these sequentially.

19 (A discussion was held off the record.)

20 (Exhibit 2 was marked for identification.)

21 Q. BY MR. BERNARD: So what we've now marked as
22 Deposition Exhibit 2 is this USGS map Last Chance
23 Mountain, and you've marked on there two roads A and B.
24 You believe the Last Chance Road to be the one you've
25 marked as A; is that correct?

EXHIBIT 3



EXHIBIT 4



EXHIBIT 5



EXHIBIT 6



EXHIBIT 7

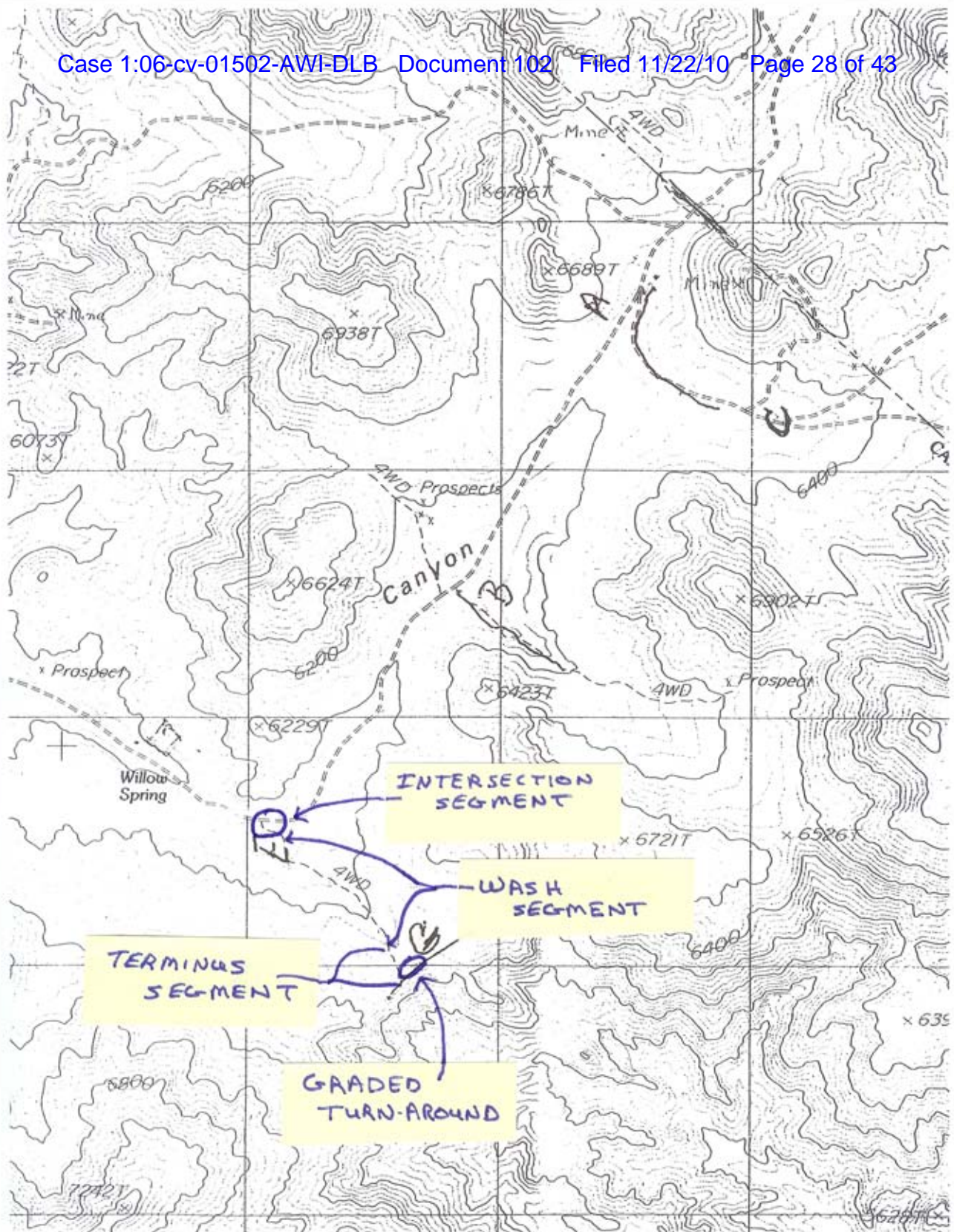


EXHIBIT 8

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 LEONARD HUARTE

163 May Street
Bishop, California
Wednesday, June 9, 2010; 2:32 p.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 MR. ZUKOSKI: Do you remember -- do you
2 remember that tree being there 40 years ago at all?

3 THE WITNESS: Not really.

4 It's pretty good size now, though, that one
5 tree there. But I sure don't really remember it.

6 Q. (BY MR. BERNARD) I'm just -- I'm still just
7 curious about this, you going out and grading the road
8 without -- nobody had told you to grade the road and
9 you had no indication from anybody -- you didn't know
10 if it was a County road.

11 Is that normal practice, go out and just grade
12 roads you might find?

13 A. Well, to me, I guess the -- my first boss knew
14 it was a County road because they evidently graded it,
15 you know? I -- then when I showed up -- well, the new
16 boss took over and I guess he -- he knew about it, I
17 guess, so we just kept grading that little road. I --
18 I -- I don't know, tell you the truth.

19 But it was supposedly on the, you know, it's
20 on the County map so it's a County road so I don't
21 think it was that important to grade it all the time,
22 you know, as short as it is. It just went up to
23 nothing really, you know.

24 And I don't know if that road ever connected
25 down here to come up. I don't see how it could have,

1 EXAMINATION

2 BY MR. KELLER:

3 Q. Okay. Leonard, I've got a couple, just to
4 follow up.

5 How -- I mean how did you, when you were a kid
6 and you're out there just starting, how did you learn
7 what roads to plow? Or grade, I should say.

8 A. Well, the guys on the crew -- I mean I'd just
9 go out with them and they'd show me, you know, and
10 they -- "We grade this road" and "We grade that road,"
11 and clear over to Death Valley almost, you know.

12 Q. So people just took you out and drove you
13 around --

14 A. Yeah.

15 Q. -- the roads?

16 A. Yeah, basically. They just showed me where to
17 go, you know, the County roads and stuff.

18 Q. Uh-huh.

19 A. And then -- I mean there's not that many out
20 there, actually, you know --

21 Q. Right.

22 A. -- you got your basic ones, you know, and so
23 it's not that hard really, you know.

24 Q. Okay. But you did not have to look at a map
25 and figure out where the County road was --

1 A. Oh, no.

2 Q. -- and then go?

3 A. I never really did that, you know. I just
4 took their word for it, you know.

5 Q. Uh-huh.

6 A. That's how I learned.

7 Q. So -- change the subject -- December.

8 Describe exactly what -- when did you remember grading
9 A to C -- E to G there, Last Chance Road, and how did
10 that come about?

11 A. When we started walking up that road, that --
12 everything just started looking familiar. I -- and I
13 just forgot all about that little road, because --
14 because I swore A and C was the, you know, the Last
15 Chance Road.

16 Q. Uh-huh.

17 A. And a lot of the guys I worked with did too.

18 Q. So I mean let's zero in a little bit. We were
19 driving out there in December, okay? I mean did -- did
20 you recall seeing the road while you were driving
21 along, seeing that little spur taking off while you
22 were still in the car?

23 A. Oh, yeah. I've always -- yeah. Well, I knew
24 that little road was there.

25 Q. Uh-huh.

1 A. But, why, I just -- I just couldn't remember
2 that we ever graded that road -- I don't know why --
3 till actually -- oh, I told my boss that when we were
4 going out --

5 Q. Uh-huh.

6 A. -- Jeff, I said -- and that's when it dawned
7 on me. I said, That little road right there, I think
8 we used to grade that. But I wasn't sure until we
9 started actually walk -- we went way up here to where
10 we were taking you --

11 Q. Uh-huh.

12 A. -- I thought that was Last Chance.

13 Q. So at the point that you made that comment to
14 your boss, did you know that was Last Chance Road at
15 that point?

16 A. No. I still didn't. No, I just -- I thought
17 it was way up here.

18 Q. Uh-huh.

19 And so -- so who -- okay. So then what
20 happened that -- that we went up to where we thought
21 Last Chance is, where is that on the map, the road that
22 you all thought was Last Chance?

23 A. Oh, A and C, yeah, where we went up there for
24 the, what, the GPS and all that.

25 Q. Uh-huh, yeah.

1 A. Then we were informed that wasn't Last Chance
2 Road.

3 Q. Okay. Do you -- I mean do you now, looking at
4 the maps -- or do you have any opinion whether -- which
5 one is Last Chance Road or are you just going by what
6 everybody says at this point?

7 A. Well, basically, yeah, I'm just going by,
8 yeah, like I said, when I was -- just starting out
9 grading them roads -- whoever, "Go grade that road,"
10 you know.

11 Q. Are you sure --

12 A. Or I'd just follow them, you know, grading it.

13 Q. Are you sure the road that we actually walked
14 in December is that E to G road?

15 A. If it's the Last Chance Road? Or --

16 Q. Yeah. The road we walked, are you confident
17 that the road --

18 A. Oh, yeah. That's the one, yeah, that is the
19 one, yeah. As soon as I started walking up there and
20 got up there to the top where we turned around at, it
21 all came back to me.

22 Q. Okay.

23 A. That's where we graded it.

24 MR. KELLER: That's all I have.

25 MR. BERNARD: Just one or two more.

1 EXAMINATION

2 BY MR. KELLER:

3 Q. Okay. Mr. Huarte, looking -- looking up Last
4 Chance Road, I mean do you have specific memories of
5 grading any of what we see from here, the first, say,
6 20 yards from the wash on up the hill from the Willow
7 Creek Wash on up the hill?

8 A. Yes, I do. When we walked clear to the end,
9 it -- it looked all familiar.

10 Q. I meant -- I'm talking about how about what we
11 see now, can you specifically remember --

12 A. Oh, sure.

13 Q. -- grading that section?

14 A. Yes. Yes.

15 Q. How far in would you say you can see from here
16 up the road?

17 A. Well, to where the big pinion tree is up in
18 there.

19 Q. Would you hazard a guess how many yards that
20 is?

21 A. Oh, I don't know, 200 yards or so. I don't
22 know.

23 Q. Okay.

24 A. I'm not too good on distance.

25 Q. All right.

1 it all out again, take it down to the big wash and out.

2 So --

3 MR. ZUKOSKI: Nothing further.

4 MR. KELLER: I don't have anything.

5 MR. BERNARD: I think I have one more.

6

7 EXAMINATION

8 BY MR. BERNARD:

9 Q. Mr. Huarte, so you've described that this wash
10 would periodically flood and scour itself out and you
11 had to do a good deal of work to establish a drivable
12 route in here; is that right?

13 A. Yes.

14 Q. Why did you not construct a road outside the
15 wash to avoid that issue?

16 A. Well, where would we go? There's -- it was
17 just following the wash right up all the way. I mean
18 we couldn't get up, you know, maybe too hard for -- as
19 small as a road it was, we just stayed right here in
20 the wash, you know. It was just a lot easier following
21 the wash because we could always get dirt back in it.
22 But we knew it would get washed out again. A lot of
23 our roads are like that, a lot of washes, you know,
24 they go through.

25 Q. Okay. So you were just -- didn't want to take

1 A. No.

2 MR. BERNARD: All right. Thank you.

3 That's all I have.

4 MR. ZUKOSKI: Nothing from me.

5 MR. KELLER: Nothing.

6 (Discussions were had with other witnesses
7 regarding the location, which were reported but are not
8 transcribed herein, after which the following
9 proceedings were had at point six:)

10

11 EXAMINATION

12 BY MR. KELLER:

13 Q. Mr. Huarte, reopen your deposition.

14 Do you recall from point five to point --
15 which was right where we came out of the wash -- to
16 point six, which is here on the edge of the head of the
17 canyon, do you recall grading to this point?

18 A. Yes.

19 Q. Do you recall if you followed the path that we
20 walked in your grading?

21 A. I'm not sure on that. It kind of looks that
22 way but I'm not really sure.

23 Q. Okay. But do you recall how far up the road
24 and how close to the edge of the canyon here did you
25 grade?

1 A. We came to right up in here. We had a -- kind
2 of like a big turn-around circle up here. It was a lot
3 flatter than it is here now. That's where we turned
4 around.

5 Q. Can you see any sign of that circle now, of
6 that turn-around?

7 A. Not really. Just -- I can just see the
8 general area in here where we -- where we had it.

9 Q. How can you tell what the general area is?

10 A. Well, just by -- when we got right here to the
11 edge we just -- we just had to turn around for people,
12 you know, when they came up.

13 Q. What kind of radius did you need to turn that
14 equipment around?

15 A. Oh, you didn't need much. You could jack it
16 around pretty easy. We didn't have articulating then
17 but you could get it, you know, just right down in that
18 little area, turn it around. It turns pretty good.

19 Q. So would you say you came up as far as where
20 we're standing right now?

21 A. Yeah, just right in here, this area.

22 Q. Which is point six.

23 And I mean do you have a clear memory -- I
24 mean you've had a chance to look around and orient
25 yourself and see the hills going up on each side in the

1 canyon. Do you have a clear memory of grading up to --
2 up to this canyon?

3 A. Yes, I do.

4 Q. And what time period was it that you did that?

5 A. It was in the early seventies.

6 MR. KELLER: Thank you.

7 No further questions.

8

9 EXAMINATION

10 BY MR. BERNARD:

11 Q. Mr. Huarte, when we were standing at point
12 five, I believe I asked you if you can recall having
13 graded where we saw the beginning of kind of a faint
14 two-track heading up the hill?

15 A. Uh-huh.

16 Q. I believe you responded you couldn't recall
17 doing that for certain; is that --

18 A. I don't know if that's the way we came or up
19 one of the other -- the other wash. That -- that
20 probably was the way but I don't really recall that
21 right, you know, coming up that little section.

22 Q. Okay. But --

23 A. But I can look down here, I mean -- I know we
24 got here but I don't know if that was exactly it, you
25 know.

1 Q. And you think you graded all the way to this
2 point six?

3 A. Oh, yeah. We turned around right here.

4 Q. Did you see between point five and point six
5 any physical indication of past grading?

6 A. No, not really. That's -- couldn't tell.

7 MR. BERNARD: I believe that's all I have.

8

9 EXAMINATION

10 BY MR. ZUKOSKI:

11 Q. Mr. Huarte, did you observe any wind rows that
12 would have been created by a blade anywhere along this
13 route?

14 A. No, not really.

15 Q. And do you recall ever blading an area to the
16 east of here?

17 A. No. Not really, no. We didn't -- we didn't
18 go that way. We just came right up here. That's where
19 we turned around.

20 Q. And by "right up here," you mean you think the
21 path that we walked --

22 A. Yeah, we walked up. I had to -- I don't
23 really remember coming up that little part but, like I
24 said, that must have been it.

25 MR. ZUKOSKI: Nothing further.

EXHIBIT 9

