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

COUNTY OF INYO,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
INTERIOR, *et al.*

Defendants, and

SIERRA CLUB, *et al.*

Defendant-Intervenors.

) Case No: 1:06-cv-1502 AWI-DLB

) **Parties' Stipulated List of**  
) **Undisputed Facts**

) Anthony W. Ishii  
) United States District Judge

In accordance with E.D.Ca.L.R. 260(c), the Parties set forth the following list of stipulated facts to which they all agree.

**INYO COUNTY'S COMPLAINT & THIS COURT'S ORDER OF SEPTEMBER 29, 2008**

1. On October 25, 2006, Plaintiff Inyo County filed a quiet title action against the federal government claiming the following routes: Padre Point Road, Lost Section Road, Petro Road, and Last Chance Road. Inyo County Complaint, Doc. # 1.
2. This Court dismissed the complaint's quiet title claims for Padre Point Road, Lost Section Road, Petro Road, and most of Last Chance Road as outside the twelve year statute of limitations mandated by the Federal Quiet Title Act, 28 U.S.C. § 2409a. See Amended Order on Motions By Defendants and Defendant-Intervenors to Dismiss For Lack of Subject Matter Jurisdiction at 17 (Sept. 29, 2008), Doc. # 68.
3. The claimed Last Chance Road is identified by the County in the third claim of the County's complaint, including by reference to the County Road Register (Inyo County Complaint ¶ 78) and Exhibit 3 to the Complaint, a reduced sized copy of the 1957 Magruder Mountain map prepared by the United States Geological Survey ("USGS") (Inyo County Complaint ¶ 79).
4. The Court did not dismiss Inyo County's quiet title claim for the northern segment of the claimed Last Chance Road because Plaintiff's claim for that area accrued much later than its claims for the other roads (October 31, 1994) and the complaint was not outside the statute of limitations. See Order on Parties' Stipulation at 4 (Oct. 30, 2008), Dkt. # 71.
5. The claimed Last Chance Road runs generally southeast from Willow Springs Road. See Joint Stipulation Identifying Issues Remaining For Decision, Doc. # 70 at 2:7-19; Doc. # 71 at 2:13-26. Inyo County's complaint identifies the northern segment of the claimed Last Chance Road in the third claim of the Complaint, including by the following evidence: (1) a description of Last Chance Road in the County Road Register; and (2) the 1957 United States Geographic Survey ("USGS") Magruder Mountain map, which was attached to the complaint as Exhibit 3. See Inyo County Complaint ¶¶ 78-79, Doc. # 1; Complaint Exh. 3; see also Doc. # 70 at 2:7-19; Doc. # 71 at 2:13-26.

**LAND STATUS**

6. On July 26, 1866, Congress passed “An Act Granting Right of Way to Ditch and Canal Owners Over The Public Lands and For Other Purposes,” Ch. 262, 14 Stat. 251, 253 (commonly referred to as the Mining Act of 1866). Section 8 of the Act was codified in 1873 in the Revised Statutes as section 2477 upon publication of the Revised Statutes, and subsequently recodified in 1938 as 43 U.S.C. § 932. The statute, commonly referred to as “R.S. 2477” provides in its entirety that “[t]he right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted.” R.S. 2477; 43 U.S.C. § 932 (repealed 1976).
7. On November 26, 1934, pursuant to the Taylor Grazing Act of June 28, 1934, President Roosevelt issued Executive Order 6910, which temporarily withdrew all of the vacant, unreserved and unappropriated public land in the State of California “from settlement, location, sale or entry, and reserved for classification, and pending determination of the most useful purpose to which such land may be put in consideration of the provisions of said Act of June 28, 1934, and for conservation and development of natural resources.... The withdrawal hereby effected is subject to existing rights.” Executive Order 6910 on Withdrawal of Public Lands for Conservation (Nov. 26, 1934).
8. In 1936, Congress amended the Taylor Grazing Act and authorized the Secretary of the Interior to examine and classify any lands withdrawn or reserved by Executive Order 6910 and to open the lands to entry, selection, or location for disposal in accordance with the classification under applicable public land laws. 43 U.S.C. § 315f.
9. The Secretary of the Interior, acting through the Bureau of Land Management (“BLM”), did not exercise this authority with respect to the lands underlying the claimed Last Chance Road until 1967. On December 14, 1967, the BLM classified the lands underlying the claimed Last Chance Road as open for multiple uses.
10. On October 21, 1976, Congress enacted the Federal Land Policy and Management Act (“FLPMA”). FLPMA repealed R.S. 2477 and designated the lands underlying the claimed

1 Last Chance Road as part of the California Desert Conservation Area. Federal Land Policy  
2 Management Act §§ 601, 706(a).

3 11. In designating the Last Chance Wilderness Study Area No. 112 on March 31, 1979, BLM  
4 excluded a narrow corridor around a feature on a map that appears to be a road heading  
5 southeast from Willow Springs Road towards Last Chance Canyon. See Doc. # 70 at 2:7-19;  
6 Doc. # 71 at 2:13-26.

7 12. The lands underlying the claimed Last Chance Road were withdrawn and reserved as  
8 National Park Service land and designated as wilderness on October 31, 1994, pursuant to the  
9 California Desert Protection Act, 16 U.S.C. § 410aaa et seq.; Doc. # 70 at 2:7-19; Doc. # 71  
10 at 2:13-26.

11 13. In 1995, the National Park Service placed signs on the claimed Last Chance Road prohibiting  
12 motorized travel on the route. See Doc. # 70 at 2:7-19; Doc. # 71 at 2:13-26.

13 14. The United States asserts unencumbered ownership of the lands on which the claimed Last  
14 Chance Road is alleged to exist. See Doc. # 70 at 2:7-19; Doc. # 71 at 2:13-26.

15 **INYO COUNTY'S 1948 RESOLUTIONS**

16 15. Inyo County asserts that the Last Chance Road was established as a County road by the  
17 County Board of Supervisors' adoption of Resolution 48-8 and Resolution 48-9 on March 1,  
18 1948. Pedersen Declaration at 2, ¶¶ 3-4 (Oct. 28, 2009), Doc. # 75-3; Chegwidan  
19 Deposition at 28:1-12 (March 5, 2008).

20 16. The resolutions do not refer to any roads by name or road number and do not identify the  
21 Last Chance Road or Road No. 2046. Pedersen Deposition at 45:8-7 (June 9-10, 2010).

22 17. Instead, the resolutions refer to attached maps of the county system of primary and secondary  
23 roads, amendments and revisions to the County road register, an official map of the primary  
24 road system of the County, and a set of official route descriptions of the roads in the  
25 County's primary road system. The County has not been able to locate any of these  
26 attachments, although the County asserts that the County Road Register addressed in ¶¶ 25-  
27 35 may have been prepared contemporaneously with the 1948 resolutions.  
28

- 1 18. Specifically, Resolution 48-8 states that the County “has adopted maps of the county primary  
2 road system which also show the secondary roads of the county road system,” that “in  
3 connection with the said maps, a number of revisions and amendments were made to the  
4 County Road Register,” and that “the road register amendments and revisions shall constitute  
5 the County Road Register and shall be the official road register in lieu of the former road  
6 register.” Pedersen Declaration at 4-5. The County has not been able to locate copies of the  
7 attached maps of the County’s primary and secondary road system or the road register  
8 amendments and revisions referenced by Resolution 48-8, although the County asserts that  
9 the County Road Register addressed in ¶¶ 25-35 below may constitute the referenced road  
10 register amendments and revisions. Chegwiddden Deposition at 16:5-21 28:1-29:2; Pedersen  
11 Deposition at 37:6-40:22, 41:7-22.
- 12 19. Resolution 48-9 states that a map attached as Exhibit “A” to the resolution is adopted “as the  
13 official map of the primary road system” of the County, and that the set of route descriptions  
14 attached as Exhibit “B” to the resolution is adopted “as the official route descriptions for the  
15 roads” included in the County’s primary county road system. Pedersen Declaration at 4-5.
- 16 20. The County has not been able to locate a map marked as Exhibit “A” to Resolution 48-9 or  
17 the route descriptions marked as Exhibit “B” to Resolution 48-9. Chegwiddden Deposition at  
18 16, 25, 28, 31, 66; Pedersen Deposition at 37, 41-42. There is no way of determining the  
19 roads that were included in Exhibits “A” and “B” to Resolution 48-9. Chegwiddden  
20 Deposition at 25:14-24.
- 21 21. The County’s representatives were unable to explain the distinction between the County’s  
22 primary road system and its secondary road system. Chegwiddden Deposition at 25:7-13;  
23 Pedersen Deposition at 23:22-24:22.
- 24 22. The County acknowledges that the adoption of a resolution purporting to adopt a road into  
25 the County’s maintained mileage system does not necessarily indicate that the road is in  
26 existence. Chegwiddden Deposition at 26:9-27:2.
- 27 23. The County may adopt roads by resolution that are neither constructed nor maintained.  
28 Pedersen Deposition at 27:7-28:8.

**COUNTY ROAD REGISTER**

24. Inyo County has provided this Court with excerpts from an undated document entitled “County Road Register.” Inyo County Pedersen Declaration at 6, Doc. # 75.3 (attached as Exh. J). This Road Register sets forth a one-paragraph description of the location of each Inyo County road at the time at which the Register was created. Id.
25. At the bottom of the entry for Last Chance Road 2046 is the typed statement: “As Revised and Amended by Resolution of the Board of Supervisors of Inyo County, Dated March 1, 1948, Page 110-111, Supervisors Proceedings Volume N. Minutes of the Board of Supervisors on file of County Clerk of Inyo County California.” Exh. J; Pedersen Deposition at 39:5-40:5.
26. The County acknowledges that it does not know the date on which the Road Register was prepared or the dates on which it may have been revised and updated. Pedersen Deposition at 41:7-22.
27. Bernard Pederson, Inyo County Director of Public Works and Road Commissioner, acknowledged that the listing of roads in the Road Register does not necessarily indicate that the roads physically existed. Pedersen Deposition at 106:12-107:25.
28. The listing of roads in the County Road Register does not necessarily indicate that the County claims the roads as County roads because the establishment of County roads requires action by the Board of Supervisors. Chegwidden Deposition at 23:25-24:9.
29. Ron Chegwidden, the former Inyo County Director of Public Works and Road Commissioner, did not know if the roads listed in the Road Register conform to those that may have been included in the Exhibits A and B to Resolution 48-9. Chegwidden Deposition at 31:1-5.
30. The County Road Register describes a route identified as “Last Chance Road,” No. “2046,” “[b]eginning at a point of junction with County Road 2047, described as: 39-E, T. 21, Sec. 21, 1/4S 1, Point 2-southeast, thence describing a long southwesterly and a long southeasterly curve to R. 39-E, T. 21, Sec. 36, 1/4S 4, Point 8, south boundary of District 2, at a junction with continuing County Road 5046, being point of termination. Exh. J.

- 1 31. This legal description for the claimed Last Chance Road is incomplete and inaccurate.  
2 Pedersen Deposition at 52-58. Among other deficiencies, the legal description places the  
3 road within Township 21, omitting any indication of either south or north. Exh. J. Reference  
4 to USGS maps reveals that there is no Township 21 North, Range 39 East, in this area.  
5 Township 21 South, Range 39 East, is approximately 84 miles south of the location of the  
6 claimed road as depicted on Exhibit 3 to the complaint in Township 7 South. Pedersen  
7 Deposition at 52:17-54:2, 55:19-57:5.
- 8 32. The County Road Register describes the 2046 Last Chance route as 4.0 miles long. Exh. J.
- 9 33. The County acknowledges that it has no information that a road ever existed over the entire  
10 4.0 mile Last Chance Road No. 2046 listed on the Road Register and claimed to have been  
11 adopted into the County's maintained mileage road system pursuant to the 1948 resolutions.  
12 Pederson Deposition at 107:12-20; see also Chegwiddden Deposition at 53:1-8.
- 13 34. The County Road Register does not constitute a current inventory of roads claimed to be part  
14 of the County's maintained mileage system. See, e.g., Chegwiddden Deposition at 23:12-  
15 24:12, 51:19-52:14, 56:19-57:1; Pedersen Deposition at 31:19-32:12.

16 **CALTRANS MAPS OF COUNTY ROAD SYSTEM**

- 17 35. The County asserts that inventories of County maintained roads are depicted on California  
18 Department of Transportation ("CalTrans") supplied maps of the County Road System.
- 19 36. In 1955, CalTrans published maps of the County Road System, Inyo County, California.  
20 Sheet 2 of 24 of these maps shows a road labeled "Last Chance Rd." and numbered "2046"  
21 extending for approximately one-half mile from Willow Springs Road (No. 2047) and  
22 heading generally southeast. Exh. C to Pedersen Declaration, Doc. # 75 (attached as Exh. A)  
23 ("1955 CalTrans map"). A double dashed line labeled "County Right of Way Only – No  
24 Road" continues southeast from the labeled "Last Chance Rd." Id.
- 25 37. Because the 1955 CalTrans map provides no topographic information and little other detail, it  
26 is impossible to tell whether the route on the 1955 CalTrans map corresponds to the routes  
27 depicted on the 1913 Lida and 1957 Magruder USGS maps, or to the route shown on the  
28

1 1987 Last Chance Canyon USGS map, discussed below. Compare 1913 Lida, 1957  
2 Magruder, and 1987 USGS maps (attached as Exhs. E-G) with Exh. A.

- 3 38. The County acknowledges that there is no way of knowing whether the 1955 CalTrans Map  
4 corresponds to maps that may have been attached to Resolution 48-8 and Resolution 48-9.  
5 Chegwiddden Deposition at 25:14-24, 28:13-29:2.

6 **INYO COUNTY'S 1956 RESOLUTION ABANDONING MAINTENANCE FOR SOME OR**  
7 **ALL OF THE LAST CHANCE ROUTE.**

- 8 39. By Resolution passed and adopted on May 7, 1956, and maintained mileage report dated  
9 May 3, 1956, Inyo County excluded various roads from the County's maintained mileage  
10 system. Chegwiddden Deposition Exh. 8 (attached as Exh. B). The maintained mileage report  
11 states that 26 miles of the excluded mileage is accounted for by the exclusion of the Last  
12 Chance Road and the Arrow Road. The County Road Register has two entries for Last  
13 Chance Road: Road 2046, described as 4.0 miles long, and Road 5046, described as 18.0  
14 miles long. Inyo County Pedersen Declaration at 6, Doc. # 75-3, Road Register Entry 5046  
15 (attached as Exh. C). The County Road Register has one entry for Arrow Road: 5047,  
16 described as 4.0 miles long. See Road Register Entry 5047 (attached as Exh. D). The  
17 entirety of Last Chance and Arrow Roads, as described in the County Road Register, total 26  
18 miles. Chegwiddden Deposition at 54:14-57:1; Pedersen Deposition at 50:5-51:11.
- 19 40. The 1956 Resolution references attached maps marked as Exhibit A, and attached route  
20 descriptions including lengths marked as Exhibit B. The County has not been able to locate  
21 either Exhibit A or B to the 1956 Resolution. Pedersen Deposition at 46-48.
- 22 41. The maintained mileage report references an attached sample resolution showing corrected  
23 mileage of maintained roads, and attached Exhibit "A" set of corrected County road maps  
24 with mileage, and an attached Exhibit "B" IBM corrected tabulation of County roads. The  
25 County has not been able to locate the sample resolutions, or documents labeled as Exhibits  
26 "A" or "B" to the report. Pedersen Deposition at 46:13-49:17.
- 27 42. However, County officials agreed that by passing and adopting the 1956 Resolution, the  
28 County abandoned nearly all of the Last Chance Road. Pedersen Deposition at 101:11-14.



1 The County asserts that an approximately one-half mile portion of Last Chance Road  
2 continues to be part of the County's maintained mileage system. Id.

3 **INYO COUNTY ROAD INVENTORY**

- 4 43. Inyo County's 1975 Road Inventory (also called a tabulation) contains an entry for Last  
5 Chance Road, numbered as 2046. 1975 Inventory at 12 (attached as Exh. H); Pederson  
6 Deposition at 32:4-19. The Road Inventory identifies a section of the County Road System  
7 map on which the route appears, and the length of the route (0.59 miles), but provides no  
8 other location information. Exh. H.
- 9 44. Inyo County officials stated that they believed the route the parties followed on June 10,  
10 2010 during the on-site portion of the depositions was the route as claimed in the County's  
11 suit. Pedersen Deposition at 68:6-24. That route was measured to be 2,728 feet (0.52 miles)  
12 in length, 12% shorter than the route identified in Inyo County's Road Inventory. Holeso  
13 Deposition at 29:9-12 (June 10, 2010).

14 **UNITES STATES GEOLOGICAL SURVEY MAPS**

15 **THE U.S.G.S. 1913 LIDA MAP**

- 16 45. There are three relevant USGS topographic maps displaying the general vicinity of the route  
17 at issue in this litigation: the 1913 USGS topographic map for Lida, Nev.-Calif. ("1913 Lida  
18 map"), the 1957 USGS topographic map for Magruder Mountain, Nev.-Calif. ("1957  
19 Magruder Mountain map") (a reduced sized copy of which is attached as Exhibit 3 to the  
20 County's complaint), and the 1987 USGS topographic map for Last Chance Mountain  
21 ("1987 Last Chance Mountain map"). See Exhs. E-G.
- 22 46. The 1913 USGS Lida Map has a scale of 1:250,000. Exh. E. The map indicates that it was  
23 developed from surveying conducted in 1897-1898, 1905, and 1911. Second Pflugh  
24 Declaration at 4, ¶ 9 (Aug. 20, 2010).
- 25 47. The 1913 Lida map depicts a dashed line, indicating a feature classified as a "trail or path,"  
26 heading southeast from the Willow Springs Road toward the northern rim of Last Chance  
27 Canyon. Second Pflugh Declaration at 4, ¶ 9. The trail or path feature depicted on the 1913  
28 Lida map continues south into Last Chance Canyon for a short distance before climbing up

1 the western wall and then traversing to Last Chance Spring in the next canyon to the west.

2 Id.

3 **TESTIMONY CONCERNING THE RELIABILITY OF THE 1913 LIDA MAP**

4 48. Mr. George Milovich, Inyo County Agriculture Commissioner, whose family owned a  
5 mining claim adjacent to Last Chance Spring and who frequently visited the area of Last  
6 Chance Springs in the 1960s, testified that there was no trail going from Willow Springs  
7 Road to Last Chance Spring. See Milovich Deposition at 6:12-14, 15:18-23, 19:13-16,  
8 40:16-25.

9 49. Mr. Leonard Huarte, Inyo County equipment operator, testified that he did not see how a  
10 vehicle could get down into Last Chance Canyon from the northern rim of the canyon.  
11 Leonard Huarte Deposition at 44 (June 9-10, 2010) (“Second Huarte Deposition”). While  
12 standing on the northern rim of the canyon during his on-site deposition on June 10, 2010,  
13 Mr. Huarte reiterated that he did not see any possible way that a travel route, even a foot trail,  
14 could proceed into Last Chance Canyon from the northern rim of the canyon. Id. at 77:7-17.

15 50. Mr. Joe Tilman, an engineering technician for the National Park Service, Death Valley  
16 National Park maintenance division, visited the site of the claimed Last Chance route on June  
17 3, 2010, and again on June 10, 2010 and testified that he did not observe any signs of a road  
18 or an abandoned road heading from the northern rim of Last Chance Canyon into the canyon.  
19 Tilman Deposition at 5:23-6:2, 30:20-31:4 (June 9-10, 2010).

20 **THE USGS 1957 MAGRUDER MOUNTAIN MAP**

21 51. The 1957 USGS Magruder Mountain map has a scale of 1:62,500. Exh. F. The map  
22 indicates that it was developed from aerial photography taken in 1952, and field work  
23 conducted in 1957. Second Pflugh Declaration at 4-5, ¶ 10.

24 52. The 1957 Magruder Mountain map depicts a double dashed line, indicating a feature  
25 classified as an “unimproved dirt” road heading southeast from the Willow Springs Road  
26 from roughly the same location as the “trail or path” feature on the 1913 Lida map. Second  
27 Pflugh Declaration at 5, ¶ 10.

53. This unimproved dirt road feature transitions to a single dashed line, classified as a “trail,” just north of the rim of the canyon, that descends into the Canyon and then continues as a “jeep trail” going roughly south, following the floor of Last Chance Canyon into Death Valley. Second Pflugh Declaration at 5, ¶ 10; Exh. F.

**DISCREPANCIES BETWEEN THE 1913 LIDA MAP AND  
THE 1957 MAGRUDER MAP**

54. While the 1913 USGS Lida map shows a route going roughly south from the Willow Springs Road to Last Chance Spring, the 1957 Magruder Mountain map shows a southeastern route from the Willow Springs Road into Last Chance Canyon. Exh. F. Last Chance Canyon is approximately a mile to the east of Last Chance Spring. Last Chance Spring lies in the next canyon to the west. Compare Exh. E with Exh. F.

**THE USGS 1987 LAST CHANCE MOUNTAIN MAP**

55. The 1987 USGS Last Chance Mountain map has a scale of 1:24,000. Exh. G. The map indicates that it was developed from aerial photography taken in 1980 and 1982, and field work conducted in 1984. Second Pflugh Declaration at 6, ¶ 12.

56. The 1987 Last Chance Mountain map depicts a single dashed line labeled “4WD,” indicating a four-wheel drive “trail” heading southeast from the Willow Springs Road from roughly the same location as the features shown on the 1913 Lida map and the 1957 Magruder Mountain map. Second Pflugh Declaration at 6, ¶ 12.

57. The trail feature shown on the 1987 Last Chance Mountain map ends at the northern rim of Last Chance Canyon. Second Pflugh Declaration at 6, ¶ 12.

**DISCREPANCIES BETWEEN THE 1913 LIDA AND 1957 MAGRUDER  
MOUNTAIN MAPS, AND THE 1987 LAST CHANCE MOUNTAIN MAP**

58. The 1987 Last Chance Mountain map depicts a significant portion of the Last Chance Road in a different location than the 1957 Magruder Mountain map. Second Pflugh Declaration at 6, ¶ 13. On both the 1957 Magruder Mountain map and the 1987 Last Chance Mountain map, the depicted route initially follows a wash south from Willow Springs Road. On the 1957 Magruder Mountain map, the route is shown as continuing in a wash in a southeasterly

direction to the rim of Last Chance Canyon. However, on the 1987 Last Chance Mountain map, approximately two-thirds of the way up that wash (south) toward the rim of Last Chance Canyon, the route climbs out of the wash and proceeds directly south to the rim of the canyon. The 1957 Magruder Mountain map and the 1987 Last Chance Mountain map show the route reaching the rim of Last Chance Canyon at locations approximately 900 feet apart from one another. Second Pflugh Declaration at 7-8, ¶¶ 14-15.

59. The northern end of Last Chance Canyon is divided by a ridge running in a northwest/southeast direction. Second Pflugh Declaration at 7-8, ¶¶ 14-15. On the 1957 Magruder Mountain map, the Last Chance route proceeds along the eastern side of the ridge and continues down into the canyon on this eastern side. Id. On the 1987 Last Chance Mountain map, the Last Chance route terminates on the western side of the ridge overlooking the Canyon. Id. As noted above, the routes are shown as reaching the rim of the canyon at locations about 900 feet apart. Id.; see also Exhs. G, F.

60. The large scale of the 1913 Lida map makes it impossible to determine whether the trail or path depicted on that map followed the eastern route, as shown on the 1957 Magruder Mountain map or the western route, as shown on the 1987 Last Chance Mountain map, or a different route altogether. Second Pflugh Declaration at 7-8, ¶¶ 14-15.

61. The claimed Last Chance Road as shown on the 1955 CalTrans map more closely follows the alignment of the route depicted on the 1957 Magruder Mountain map than that shown on the 1987 Last Chance Mountain map. Second Pflugh Declaration at 9, ¶ 17.

62. County officials testified that the County claims a right-of-way over the route the County asserts currently exists on the ground and which the County believes is indicated on the 1987 Last Chance Mountain map. Pedersen Deposition at 68.

#### **COMPARISON OF THE 1957 MAGRUDER MOUNTAIN MAP AND THE ALLEGED ROUTE ON THE GROUND**

63. As noted above, Inyo County representatives Milovich and Huarte, and National Park Service employee Tilman, testified that they never saw a trail or travel route of any kind descending from the northern rim of Last Chance Canyon into the canyon. Milovich

Deposition at 31:17-32; Second Huarte Deposition at 44; Tilman Deposition at 13-14.

Messrs. Huarte and Tilman further testified that they did not see any possible way a travel route, even a foot trail, could proceed into Last Chance Canyon from the northern rim.

Second Huarte Deposition at 44; Tilman Deposition at 16.

64. Mr. Tilman testified that the southern third of the unimproved dirt road between Willow Springs Road and the northern rim of Last Chance Canyon as shown on the 1957 Magruder Mountain map was just a wash and not a travel route of any kind. Tilman Deposition at 16. Mr. Tilman testified that he did not observe any signs of travel in the wash and does not believe there was ever a road at that location. Id. at 16, 31, 32. Mr. Tilman testified that the wash was only wide enough to accommodate a foot trail or a mule trail. Id. at 17.
65. In his testimony on the site of the claimed Last Chance Road, Mr. Huarte could find no evidence of a road, nor did he remember grading a road, in the area depicted on the 1957 Magruder Mountain map that diverges from the 1987 Last Chance Mountain map. See Second Huarte Deposition at 69:5-70:1. On walking the area, he recalled grading a route that generally follows the path depicted on the 1987 map from Willow Springs Road to the rim of Last Chance Canyon, although he was uncertain whether he had graded the portion of the route he observed as climbing out of the wash to the rim of the canyon. Id. at 68:22-69:16; 70:13-72:3; 69:5-70:1; 72:11-21.

**DISCREPANCIES BETWEEN THE 1987 LAST CHANCE MOUNTAIN MAP AND THE  
ALLEGED ROUTE ON THE GROUND**

66. The 1987 Last Chance Mountain map shows the Last Chance route turnoff from Willow Springs Road crossing and then paralleling the Willow Springs Wash, then turning southeast before intersecting and travelling up the Last Chance Wash. Exh. G. During his June 10, 2010 on-site deposition, however, Mr. Huarte testified that, while he was not certain, he recollected that the turn-off from Willow Springs Road to the Last Chance route did not parallel the Willow Springs wash. Second Huarte Deposition at 58:3-12. Mr. Huarte testified that the road instead turned off of Willow Springs Road at approximately a 90-degree angle (although, with graded "wings" allowing for a less acute turn off of or back

1 onto Willow Springs Road) and then continued directly up the Last Chance wash toward the  
2 south. Second Huarte Deposition at 51:16-52:13, 57:9-24, 58:18-59:2. Mr. Pederson also  
3 testified that, while not certain, it appeared to him that Last Chance Road went off the  
4 Willow Springs Road, crossed the Willow Springs Wash at a 90-degree angle, and then  
5 directly entered the Last Chance Wash. Pederson Deposition at 116:6-9

6 **LACK OF DOCUMENTATION OF CONSTRUCTION OR MAINTENANCE**

7 67. The County does not have any records, documentation or other information indicating that  
8 the claimed Last Chance Road was mechanically constructed. Chegwiddden Deposition at 33.

9 68. The County does not have any records, documentation or other information indicating who  
10 constructed or otherwise established the claimed Last Chance Road. Chegwiddden Deposition  
11 at 33.

12 69. The County does not have any records, documentation or other information indicating when  
13 the claimed Last Chance Road was mechanically maintained, other than the recent  
14 recollections of Mr. Leonard Huarte noted below. Chegwiddden Deposition at 33, 35-36.

15 **ALLEGED COUNTY CONSTRUCTION AND MAINTENANCE**

16 70. The route of the alleged road that County representatives asserted the County is claiming in  
17 their 2010 deposition testimony largely within the Last Chance Wash. Pedersen Deposition  
18 at 68, 109-110. The alleged route commences off of the Willow Spring Road and proceeds  
19 generally south to the northern rim of Last Chance Canyon.

20 71. Mr. Leonard Huarte maintains the Willow Springs Road and graded the road shortly before  
21 his March 5, 2008 deposition. See Second Huarte Deposition at 20:5.

22 72. During his first deposition, on March 5, 2008, Mr. Huarte identified the "Last Chance Road"  
23 from topographic maps several miles to the east of its location on the 1987 USGS Map. See  
24 Leonard Huarte Deposition at 16:25-18:15 (March 5, 2008) ("First Huarte Deposition"); see  
25 also First Huarte Deposition marked 1987 Magruder Mountain map, Dkt. # 75-4 (A on map  
26 attached as Exh. I).

27 73. At the March 5, 2008 deposition, when asked about a route depicted on the 1987 USGS map  
28 that departs Willow Spring Road near Willow Spring at the point (marked "E" on Exh. I)

1 where the Willow Spring Road makes a turn to the northeast as one is proceeding east, Mr.  
2 Huarte testified that he did not know if it was a County road and that “[a]s far as I remember  
3 I cannot remember grading it.” First Huarte Deposition at 33, 46; see also Exh. I. Mr.  
4 Huarte testified that he did not remember anyone else grading that route. First Huarte  
5 Deposition at 33.

6 74. Mr. Huarte testified that the first time he saw the area, marked “E” on Exh. I, in the early  
7 1970s it “kind of” looked like it had been graded, but that he didn’t know “if the old timers  
8 had graded it” or not. First Huarte Deposition at 34. Huarte testified that he had driven on  
9 that route approximately ten times in the early 1970s in order to go hunting. Id. at 35:18-24,  
10 36:25-37:9.

11 75. During his second deposition, on June 9, 2010, Mr. Huarte testified that, in December of  
12 2009, he visited Last Chance Road with his supervisor and other personnel from Inyo  
13 County. Second Huarte Deposition at 46-47. There was snow on the ground. He testified  
14 that he was in a vehicle with his supervisor. Id. Huarte testified that, on passing Last Chance  
15 Road, he did not recognize it as Last Chance Road but remembered grading it and mentioned  
16 that fact to his supervisor. Id. at 47. Mr. Huarte testified that he believed that Last Chance  
17 Road was further to the east and travelled to the road they believed to be Last Chance Road.  
18 Id. Mr. Huarte further testified that, when he was taken to the actual location of the route the  
19 County now claims as Last Chance road, he walked it and recalled having graded the road.  
20 Id. at 17.

21 76. During that second deposition, Mr. Huarte stated that his testimony on March 5, 2008 was  
22 incorrect and that he had in fact graded the route at the actual location of the claimed Last  
23 Chance Road several times from around 1973 to 1977. Second Huarte Deposition at 24:9-16.  
24 Mr. Huarte stated that he had totally forgotten about these occasions when he was testifying  
25 in March 2008. Id.

26 77. During his June 9-10, 2010 deposition, Mr. Huarte could not remember if he had been told to  
27 grade the Last Chance Road. Second Huarte Deposition at 24:9-16; 25:11-14. Mr. Huarte  
28 testified that “I don’t know why we really graded that road; it went up to hardly nothing.” Id.

1 at 26:13-14. He later stated that his boss “probably didn’t say grade that road.” Id. at 35:18-  
2 21.

3 78. During his June 9-10, 2010 deposition, Mr. Huarte stated that he forgot all about Last Chance  
4 Road. Second Huarte Deposition at 25:15-20. In the same deposition, Mr. Huarte stated that  
5 he had, at least once and maybe more, spent two to three weeks doing nothing but  
6 maintaining Last Chance Road. Id. at 80:2-12.

7 79. Mr. Huarte was asked on June 9, 2010 about the detailed description he gave on March 8,  
8 2008 of the route at the actual location of the claimed Last Chance Road, including the  
9 description of berms, and whether he was now testifying that he was the one who created  
10 those berms. Second Huarte Deposition at 26:20-27:11. Mr. Huarte stated on June 9, 2010  
11 that “[w]ell, I could have been the one, all right.” Id. at 27:10-16.

12 80. During his June 9-10, 2010 deposition, Mr. Huarte stated that maintenance of Last Chance  
13 Road ended in the 1970s and he doesn’t know why. Second Huarte Deposition at 27:10-16.

14 81. There is currently a large tree adjacent to the Last Chance route located approximately 200  
15 yards south of Willow Springs Road. During his deposition on June 9, 2010, Mr. Huarte  
16 discussed at length how he drove a “Cat 12” grader around the tree on the uphill (northeast)  
17 side of the tree. Second Huarte Deposition at 32:9-33:25. Mr. Huarte then stated that he  
18 really didn’t remember the tree. Id. at 34:1-5. During the on-site portion of his deposition on  
19 June 10, 2010, Mr. Huarte again conceded that he could not remember the tree. Id. at 61:21-  
20 24.

21 82. At the June 9-10, 2010 deposition, Mr. Huarte stated that he never saw anyone else grade the  
22 Last Chance route. Second Huarte Deposition at 35:22-36:4.

23 83. Mr. Huarte testified on June 9, 2010 that observers were likely to see berms or wind rows on  
24 the route, or evidence of where they had been. Second Huarte Deposition at 41:22-42:6.

25 84. During the on-site portion of his deposition on June 10, 2010, Mr. Huarte testified that he did  
26 not observe signs of berms or wind rows at any location along the route. Second Huarte  
27 Deposition at 73:11-14; 83:5-7.  
28



- 1 85. During that on-site deposition, Mr. Huarte was not sure of the location at which the claimed  
2 Last Chance Road began off of Willow Springs Road. Second Huarte Deposition at 51, 57,  
3 61-62. Mr. Huarte believed that the claimed Last Chance Road could have commenced at  
4 the location where Last Chance Wash intersects Willow Springs Wash, or that the road may  
5 have commenced at a point west of that location. Id.
- 6 86. On June 9, 2010, Mr. Huarte testified that the route he walked in December of 2009 is the  
7 route he recalled grading in the 1970s. Second Huarte Deposition at 27-28. When on-site on  
8 June 10, 2010, Mr. Huarte recalled having graded a route to the edge of the canyon. Id. at  
9 70:23-72:5. However, he testified that was not sure if the entire route he walked during that  
10 on-site portion of his deposition on June 10 was the one he recalled grading in the 1970s,  
11 stating, "I'm not sure on that. It kind of looked that way but I'm really not sure." Id. at 70.
- 12 87. During the June 10 on-site deposition, Mr. Huarte agreed that if cars had been driving on the  
13 Last Chance route, one would expect to observe marks left by vehicles scraping large rocks  
14 in the route. Second Huarte Deposition at 79:12-18. Mr. Huarte testified that he saw no such  
15 marks. Id. at 79:19-21. Mr. Huarte also testified that he would not expect to observe marks  
16 left by cars or the grader due to the passage of time and weathering. Id. at 79:3-21.
- 17 88. Mr. Bernard Pedersen, Director of the Inyo County Public Works Department and Inyo  
18 County Road Commissioner, testified that when he traveled to the site of the claimed Last  
19 Chance Road in September 2009, he could see definite signs of grading on the northern  
20 portion of the claimed road near the point where it began off of Willow Springs Road.  
21 Pedersen Deposition at 78-79.
- 22 89. However, during the on-site portion of his deposition on June 10, 2010, Mr. Pedersen  
23 testified that the low banks of Willow Springs Wash and the berms along the Last Chance  
24 Wash that he attributed to blading could be natural features created by the flow of water  
25 down the washes. Pedersen Deposition at 117-123.
- 26 90. Like Mr. Huarte, Mr. Pedersen was uncertain of the location where the claimed Last Chance  
27 Road departed the Willow Springs Road. Pedersen Deposition at 123-25, 135-37.  
28

1 91. Mr. Ainsley Holeso, Roads Foreman for Death Valley National Park, who has worked as an  
2 equipment operator, maintained roads and supervised road maintenance for the National Park  
3 Service for 20 years, testified that he observed no signs of mechanical construction or  
4 maintenance at any location along the claimed route of Last Chance Road. Holeso  
5 Deposition at 5-6, 7, 9-10, 17, 18, 19, 21-22.

6 **ALLEGED PUBLIC USE OF THE ROUTE**

7 92. Inyo County has identified no persons other than Mr. Huarte who claim to have knowledge  
8 as to any public use of the route prior to 1977.

9 93. Mr. Huarte testified that he had used Last Chance Road for hunting access approximately ten  
10 times in the early 1970s. See First Huarte Deposition at 35:18-24, 36:25-37:9 (March 5,  
11 2008). When asked how many times he had gone hunting there in his second deposition on  
12 June 10, 2010 Mr. Huarte stated that he didn't know and would "just be guessing." Second  
13 Huarte Deposition at 37:2-4. Mr. Huarte further testified on March 5, 2008 that he had seen  
14 "some other hunters once in a while" and parked vehicles on the southern terminus of the  
15 claimed route. Id. at 38:5-10.

16 94. Both Mr. Holeso and Mr. Pederson testified that there were signs of vehicle use, evidenced  
17 by a discernable two-track travel route near Willow Springs Road and near the rim of the  
18 canyon that generally followed the 1987 USGS Map's Last Chance Road route. Holeso  
19 Deposition at 10:18-11:23, 12:13-13:1; Pederson Deposition at 104:10-105:4, 130:13-19,  
20 131:14-18. Neither Mr. Holeso, nor Mr. Pedersen, had knowledge as to whether the use that  
21 resulted in the two-track path occurred before 1976. See Holeso Deposition at 11:20-23;  
22 Pederson Deposition at 104:10-105:4.

23 **SCOPE OF ALLEGED USE**

24 95. Mr. Huarte testified that the route was between six and eight feet wide. Second Huarte  
25 Deposition at 40:22-41:10. Mr. Pederson testified that he estimated the route to be between  
26 ten and twelve feet. Pederson Deposition at 89:4-13. Neither Mr. Huarte, nor Mr. Pederson  
27 measured the width of the route. Mr. Pedersen testified that the County claimed a right-of-  
28 way of up to 60 feet in width. Id. at 82.

1 96. Mr. Pedersen testified that the County claimed a right-of-way for public use, including use by  
2 motor vehicles. Pedersen Deposition at 82. He testified that the scope of improvements that  
3 the County asserted the right to make, including whether to pave the route and what type and  
4 class of road the County would establish and maintain, was a determination that the Board of  
5 County Supervisors would make at some point in the future. Id. at 83. Mr. Pederson further  
6 testified that the Board of Supervisors authorizes the filing of right-of-way claims on behalf  
7 of the County. Id. at 106.

8 97. Mr. Huarte testified that because Last Chance Road was so short and “just went up to  
9 nothing, really,” “I don’t think it was that important to grade it all the time.” Second Huarte  
10 Deposition at 34:19-23.

11 98. Mr. Huarte testified that he observed vehicles on the route used by “some hunters once in a  
12 while but not that many.” First Huarte Deposition at 38:5-6. Mr. Huarte further testified in  
13 his second deposition that “there was vehicles up there but I can’t really say how many, you  
14 know.” Second Huarte Deposition at 38:6-9. Mr. Huarte did not recall seeing other kinds of  
15 vehicles, such as dirt bikes or ATVs, nor did he personally observe members of the public  
16 using the route for any purpose besides hunting. Id. at 42:14-20. Mr. Pedersen was also  
17 unaware of ATV or dirt bike use on the route prior to 1976. Pederson Deposition at 89:17-  
18 19.

Respectfully submitted on August 20, 2010,

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**EXHIBIT LIST**

- Exhibit A Sheet 2, 1955 CalTrans Map of County Road System, Inyo County, California
- Exhibit B 1956 Inyo County Resolution.
- Exhibit C Inyo County Road Register Entry 5046.
- Exhibit D Inyo County Road Register Entry 5047.
- Exhibit E 1913 USGS Lida Map.
- Exhibit F 1957 USGS Magruder Map.
- Exhibit G 1987 USGS Last Chance Mountain Map.
- Exhibit H 1975 Inyo County Road Inventory.
- Exhibit I Huarte March 5, 2008 Deposition Marked 1987 USGS Last Chance Mountain Map
- Exhibit J Inyo County Road Register Entry 2046.