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## **Road ownership test case hits a bump**

'Weiss Highway' was built by the feds, not Juab County; Road test case hits a bump

*Christopher Smith The Salt Lake Tribune*

In the first test of a landmark deal between Utah and the Interior Department to settle disputed ownership of old roads across federal lands, the "Weiss Highway" spanning Juab County has been billed as irrefutably and rightfully the property of the state. But records held by Juab County and the Interior Department show the road was in fact built by federal employees at taxpayers' expense to provide access to federal grazing allotments. And Juab County officials signed away any ownership claim to a major section of the road in a 1936 easement in return for the Interior Department paying the county one dollar. The road was even named for the Department of Interior employee who oversaw its construction, Henry L. Weiss.

The origins of the 99-mile route between Jericho Junction and Callao were outlined in testimony filed Friday with the Bureau of Land Management by national conservation groups opposing Utah's request for the federal government to surrender ownership interest in the straight-as-a-preacher gravel road.

In January, Gov. Olene Walker held a news conference to file the state's application with the BLM for a "recordable disclaimer," on the Weiss Highway, saying the outcome "will have national significance."

Environmental groups fear if the federal road is turned over to local control, it will set a precedent across the West, potentially eliminating thousands of acres of public land from future wilderness protection.

The BLM is considering whether Utah has shown ample evidence the federal government has no legitimate claim to the Weiss Highway under an 1866 mining law known as R.S. 2477, which granted rights of way across federal land to counties if the route was "not reserved for public use."

As the debut poster child of the new road disclaimer process outlined in a pact signed last year by Interior Secretary Gale Norton and former Gov. Mike Leavitt, the Weiss Highway was expected to be a perfect R.S. 2477 candidate. It was portrayed as a county road whose paternity was without controversy and would be grudgingly accepted by environmental groups as a legitimate claim to local ownership.

After discovering the Weiss Highway was not blazed across the barren desert by pioneering settlers but instead built exclusively by federal crews and bulldozers in a Depression-era jobs program under the direction of the old U.S. Division of Grazing, conservationists say the state's argument of rightful county ownership is not only specious but laughable.

"The state of Utah clearly missed key evidence," said Kristen Brengel of The Wilderness Society, whose first clue to the road's federal origin came from a Juab County history book, part of the Utah Centennial series on the shelves of virtually every public library in the state. "This is a federal road built on federal land by federal employees to administer a federal program. It's as simple as that."

Not quite, says the state lawyer who prepared Utah's claim for the Weiss Highway. State officials acknowledged Friday they were not aware the Civilian Conservation Corps built the roadway from 1935 to 1941, they downplayed any importance the federal construction has to the state's claim for ownership.

"For a long time, the county and state have been maintainers of that road and not the federal government, so some participation of construction by the federal government in the past by no means cancels its nature as an R.S. 2477 road," said Assistant Attorney General Ralph Finlayson. "That element is not a major difficulty in my view."

But Ted Zukoski, an attorney for Earthjustice who submitted the highway's federal birthright to the BLM on behalf of The Wilderness Society, said the state's refrain that maintenance constitutes ownership is flawed.

"Just because someone at the car wash vacuums your car a lot doesn't mean they get to own it," said Zukoski. "It seems Utah is trying to set a very low bar for taking property rights away from the American people."

Although the state has submitted affidavits of former Juab County employees who recall maintaining the road since the late 1940s, Juab Deputy County Attorney Perry Davis responded to The Wilderness Society's request for road maintenance records on March 16 by disclosing "we have no records" of maintenance, funding or construction of the Weiss Highway.

Environmental groups however, have submitted pages of federal construction reports and dozens of photographs of the road being built from the U.S. Grazing Service and CCC files held by the National Archives and the Utah Division of History.

"If that kind of data was missed by our people then I am disappointed, but we're not threatened by it," said Randy Johnson, a deputy planner for Walker who works on R.S. 2477 issues. "We are trying to use the data to clarify the picture and I hope on each of the roads we claim we get this kind of help."

The public comment period for the state's claim on the Weiss Highway closed Saturday, and the decision whether to turn over the roadway to Juab County now rests with the Department of Interior, the same agency that supervised its construction.

"BLM is reviewing the application and will take all comments into consideration as it works its way through the process," said spokesperson Celia Boddington.

**Caption:** Jump page D2: "Weiss Highway" in Juab County, whose sections are known locally as Cherry Creek Road and Sand Pass Road, was actually built by workers in a federal Depression-era jobs program to provide access to federal grazing allotments. That finding may affect a Utah effort to have the federal government turn the road over to local control; that effort has been seen as a test case for ownership of old roads on federal lands.

Courtesy of Utah Historical Society

Jump page D2: Graphic: Weiss Highway: State lays claim to west desert road built by the CCC (timeline, map) Text by Christopher Smith, Graphic by Mark Knudsen/The Salt Lake Tribune

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