

How the Judge's Rulings Unfairly Affected the Trial Proceedings

The Judge's Actions:

- Disallowed talk of RS2477 or the history of the road during the trial.

-Why is this a problem? If the road were not an historic right of way, there would have been no protest to begin with. Citizens of Blanding are not so unreasonable so as to think they can ride OHVs wherever and whenever they would like. They were protesting the illegal closure and seizure of a road that has played a critical role in the history of the county since its beginning.

- Claimed that, for the intents and purposes of the case, the road was closed to motorized traffic, period.

-Why is this a problem? It is an incomplete statement. The [closure order](#) of the canyon specifically states that the road is closed to motorized vehicles, except for authorized and permitted use. Ferd Johnson gave permission as the Water Master of San Juan County to use that road, thus giving authorization for the protest to take place there. For the Judge to insist on excluding that important clause demonstrates prejudice towards the defendants and hurts their case.

- Claimed that, for the intents and purposes of the case, the ride that took place was, indeed, illegal. Whether or not it was *criminal* was up to the jury.

-Why is this a problem? This notion casts unwarranted and unjust guilt over the defense, not to mention anything of the accuracy of the stipulation. As mentioned before, the controversy over the road in Recapture Canyon is about the unwarranted closing of a right-of-way. The claim is flawed in its premise and hurts the defense.

-Disallowed a recorded [phone conversation](#) with the State Director of BLM Utah wherein the Director gives Commissioner Lyman permission to carry out the protest on the county road. The phone conversation took place on May 1, 2014.

-Why is this a problem? To have received express permission from the head of BLM Utah to use the road would justify the use of that road and is certainly contrary to the notion of a conspiracy. Disallowing it cripples the defense and denies them due justice.

- Disallowed key evidences from being placed in the hands of the jury because they were “technical” and, “would only confuse the jury.” The evidences in question were the right-of-way documents for the county pipeline road upon which the protest was carried out.

-Why is this a problem? This motion undercuts the defense's argument completely, and prevents to truth from being presented to the Jury. Follow the link to the [documents](#) and examine them to see how technical and confusing they truly are.

The Prosecution

The Prosecution's Actions:

-The Prosecution insisted on presenting very short pieces of audio/video evidence taken out of context

-Channel 2 News: [Prosecution's Clip](#) [Full Clip](#)

-Fox 13 News: [Prosecution's Clip](#) [Full Clip](#)

-Commission Meeting 1: [Prosecution's Clip #1](#) [Full Clip](#)

[Prosecution's Clip #2](#)

[Prosecution's Clip #3](#)

-Commission Meeting 2: [Prosecution's Clip #1](#) [Full Clip](#)

-Upon questioning concerning the reason for charging five men with crimes in conjunction with the peaceful protest, the Utah U.S. Attorney's office responded that they simply had to do *something* after the many petitions of environmental activist groups, naming specifically a petition with 3,000 signatures submitted by Alliance for a Better Utah calling for prosecution. The role of a U.S. Attorney's office should be to administer justice, not to bend to the will of environmental activists and promote the agenda of special interest groups. Additionally, these environmental groups--namely SUWA, and the Wilderness Society--prodded the Prosecution and BLM to fabricate a case by sending regular e-mails with media reports and stories from other external sources.

-One of the defendants, Trent Holliday, was implicated in the conspiracy for "liking" one of Phil Lyman's County Commissioner Facebook posts. Another defendant was implicated for a picture taken at the pre-protest rally wherein he can be seen in the background. Charging people for conspiracy for such actions is absolutely alarming. A case should have never been brought against these two. Both have small families. Both were not able to afford attorneys and were appointed federal defenders. Both were found not guilty. Neither should have been charged in the first place. Valuable time and money was wasted on all sides for the wrongful prosecution of these two men.

-After the testimony of Ferd Johnson, Water Master of San Juan County, stating that he gave Commissioner Lyman [permission](#) to use the Water Conservancy District pipeline road for the protest, the Prosecution made a brazen attempt to discredit Ferd and mislead the jury by stating that no conversations between Commissioner Lyman and Ferd ever took place. This claim is irresponsible, hearsay, an attack on Ferd Johnson's character, and a demonstration of a lack of integrity on the part of the Prosecution. The prosecution did not make this allegation in cross examination or even in their closing arguments, when the defense or Mr. Johnson himself would have been allowed to respond. They waited until their final rebuttal to introduce this slander.

Why is any of this a problem? While much discussion could be had concerning the defense's obligation to respond to the Prosecution's methods and to withstand their rebutting arguments and tactics, there remains an underlying issue. If small clips taken out of context and blatant attacks on a defense witness's character were the only means of misleading a jury to arrive at a guilty verdict, what is to be said of the justice and truth of the whole matter? Where was the honest person who realized that the case was ill-founded and a waste and opposed proceeding? Where was the person who realized that people's honest reputations were being tarnished over falsehoods and suggested a better way? What of the money spent--precious taxpayer funds--to investigate the charges, fund the prosecuting attorneys, pay the judge and court staff, and accommodate the jury? What of the two men who were strung along in a legal battle lasting nearly nine months for "liking" a Facebook post and appearing in the background of a picture? That such a case could make it to court is cause for great concern and warrants criticism of the federal justice system. That a U.S. Justice helped the case progress with unjust stipulations that undercut the defense is un-American.

Ferd E. Johnson
PO Box 457
Blanding, UT 84511
Water Master for San Juan County Water Conservancy District.

RE: Trespass charges against San Juan County Commissioner Phil Lyman and 4 others in connection with the "Recapture" protest on May 10, 2014.

10/09/2014

To whom it may concern:

I am the water master for the San Juan County Water Conservancy District. I regularly travel the pipeline maintenance road South of Recapture Dam. I have also been involved in the years of meetings with the BLM over the fate of that road. When it was placed inside the temporary emergency closure area in 2007, it was clear that archaeology was of concern especially in the southern end of the Canyon near Perkins Road. The pipeline maintenance road is about 7 miles north of that spot and was not a concern at the time even though the BLM had extended the closure area onto the pipeline road for the sake of convenience to those needing a place to turn their vehicles around.

As a member of the local trail group and as a life-long citizen of Blanding, I was concerned about the BLM's misdealing with the County over public land management. When I heard about Commissioner Phil Lyman's plan to protest I told him that I had authorization to use the Recapture Road to the end of the pipeline. Commissioner Lyman asked if the Water Conservancy District had a problem with the event participants using the access road. I told him they were welcome to use it. He also asked if I would make sure that the upper gate was not locked on the morning of May 10, 2014. I told him I sure would.

This conversation took place a week or more before the May 10, meeting and protest.

Best regards,


Ferd E. Johnson

RECAPTURE CANYON AREA TRAVEL RESTRICTIONS

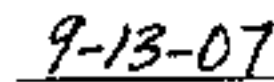
Under the Code of Federal Regulations 43 (C.F.R.) § 8341.2, BLM has the authority to close an area to motorized **recreational use**, including Off-Highway Vehicle (OHV) use, when it concludes that the use is causing, or is threatening to cause, **considerable adverse effects** to resources, including cultural resources.

Based on the damage to the cultural resources in the Recapture Canyon area resulting from OHV use, **which BLM personnel have observed** and documented, and the likelihood of continuing damage from OHV use, it is appropriate to use this authority to close portions of the Recapture Canyon area to OHV use. Therefore, it is my decision to close portions of the Recapture Canyon area, as depicted on the adjacent map, to motorized **recreational use**, including OHV use. This closure is effective September 13, 2007.

This closure order is **not intended to be a permanent order** and it **does not change the designation in the 1991 San Juan Resource Management Plan (RMP) that the lands including the Recapture Canyon area are "open" to cross-country motorized use.** However, pursuant to 43 C.F.R. § 8341.2, the area shall be closed to OHV use until the considerable adverse effects leading to the closure have been eliminated and measures have been implemented to prevent recurrence.

The routes depicted in the closed section of the adjacent map are now officially "closed" to motorized recreational use, **except for permitted and/or administrative use.** **The areas and routes outside of the closure area remain "open" to all types of recreational use, including motorized, in accordance with the RMP.**


Acting Field Manager


Date

For more information, please contact:

Bureau of Land Management
Monticello Field Office
365 North Main Street
P.O. Box 7
Monticello, UT 84535
(435) 587-1500

U-42412
2800
(U-069)

Moab District
P.O. Box 970
Moab, Utah 84532

MAY 22 1981

DECISION

Right-of-Way Granted

Pursuant to the authority vested in the undersigned, a right-of-way, the details of which are shown on Appendix A, (copy attached) is hereby granted.

Serial Number: U-42412

Name of Holder: San Juan County Water Conservancy District
P.O. Box 245
Blanding, Utah 84511

Map showing the location and dimensions of grant

Map designations: Sketch drawn on topog of area

Date filed: February 15, 1979

FINAL MAP AS ACTUALLY CONSTRUCTED IS TO BE SUBMITTED WITHIN 60 DAYS AFTER COMPLETION OF CONSTRUCTION. (Map requirements specified in 43 CFR 2802.3-6)

Permitted use: Diversion Dam and Reservoir Basin

Authority: Title V of the Federal Land Policy and Management Act of 1976 and Right-of-Way Regulations in 43 CFR 2800.

Effective date: Date of this grant.

Termination date: 30 years from date of grant.

Rental: None

Val Kenneth V. Phee

District Manager

Enclosure
Appendix A

ORedshaw/jb

Edward R. Schuch

5/20

5/20

7. All trees, brush and debris will be removed from the area to be inundated. This removal will be a selective grubbing action, and will not consist of blading or similar actions which would remove all vegetation.
- C. Post-Construction Stipulations
 1. The downstream side of the dam site not covered by rip-rap will be covered with six inches of topsoil, taken from within the right-of-way, and reseeded with the seed prescription identified in Stipulation #2 below. (Rip rap on the upstream side of the dam is to extend to the edge of the pavement.)
 2. Disturbed areas will be seeded using the following seed prescription:

2 lbs/acre	Fairway crested wheatgrass	<u>Agropyron cristatum</u>
2 lbs/acre	Indian ricegrass	<u>Oryzopsis hymenoides</u>
2 lbs/acre	Antelope bitterbrush	<u>Purshia tridentata</u>
1 lb/acre	Fourwing saltbush	<u>Atriplex canescens</u>
1 lb/acre	Noman alfalafa	<u>Medicago sativa</u>

All seed used will meet all the requirements of the Federal Seed Act (7 U.S.C., Sec. 1551 - 1610, inclusive); Federal Specifications JJJ-S-181 and the Seed Laws and Noxious Weed Law of the State of Utah. Seed will be drilled to a depth of one-half inch, using a drill with two boxes for various seed sizes. Seeding will be done during the restoration phase and immediately following construction.

On areas too steep for drilling, broadcast seeding at a rate double that for drilling, will be permitted. Seed cover will be assured by harrowing, dragging a chain, or a similar method.
 3. When all development and rehabilitation have been completed, a joint compliance check of the right-of-way will be made by the holder and the authorized officer or his designated representative to determine compliance with the terms and conditions of this grant. The holder will perform at his own expense any required modifications or additional reclamation work needed to comply with the terms of this grant.
 4. The holder accepts all liability for recreational uses which may be made of the site, and will be responsible to keep the area clean and free of trash and debris created as the result of such use.

Acceptance of Right-of-Way and page four of four in Appendix A, "Terms and Conditions of Right-of-Way Grant."

[See All of Appendix A](#)

[Back](#)