

OWYHEE COUNTY RESOLUTION NO. 11-01

**RESOLUTION TO ESTABLISH A GROUPING, AS WELL AS THE CRITERIA
FOR THE GROUPING, FOR THE RIGHTS-OF-WAY UPON AND ACROSS
LAND OWNED BY THE UNITED STATES OF AMERICA IN OWYHEE
COUNTY**

The following Resolution was considered and adopted by the Owyhee County, Idaho Board of Commissioners (hereafter the "Board") on this 4th day of January, 2011.

WHEREAS, by Owyhee County Ordinance 93-02 enacted on April 12, 1993, the Board recognized that since initial settlement of lands within Owyhee County, owners of private land, holders/owners of private property interests, and holders of statutory/regulatory entitlements have necessarily asserted and used rights-of-way upon and across lands owned by the United States of America lying within Owyhee County in order to obtain beneficial and economically efficient use of their private land, property interests, and statutory/regulatory entitlements;

WHEREAS, by Owyhee County Ordinance 93-02, the Board authorized the Owyhee County Recorder to receive and to record "assertions of right of way ... on the form provided by the County Recorder";

WHEREAS, by Owyhee County Resolution 94-03 resolved on February 14, 1994, the Board found that it was "in the best interests of all members of the public in Owyhee County that the public use of such rights-of-way as defined by the Idaho State Legislature and as acknowledged by Revised Statute 2477 be proclaimed by the Board ...";

WHEREAS, by Owyhee County Resolution 94-03, the Board resolved that it "reviewed United States Department of Interior Geological Survey Maps No. 1 through 161, as presented by the Office of the Assessor of Owyhee County ... and determined that such maps are sufficient to document such rights of way";

WHEREAS, by Owyhee County Resolution 94-03, the Board resolved that it proclaimed the "user rights on behalf of the public to all rights-of-way as defined by the Idaho State Legislature in Idaho Code 40-107 and as historically recognized and acknowledged by Revised Statute 2477, and as shown on United States Department of Interior Geological Survey Maps No. 1 through 161 ..." and "authorized and directed" the Chairman of said Board "to execute an assertion of right-of-way form as provided by the Owyhee County Recorder and to file said form asserting rights-of-way in conformance with ..." Owyhee County Resolution 94-03 with the Owyhee County Recorder;

WHEREAS, since 1994, six (6) events have occurred or will likely occur, which, among others, may affect the purpose of Owyhee County Ordinance 93-02 and Owyhee County Resolution 94-03, namely:

- the enactment of *Omnibus Public Land Management Act of 2009*, Sections 1501-1508, relating to Owyhee Public Land Management;
- the apparent development in the law to require that the validity of a right-of-way authorized under Revised Statute 2477 be adjudicated in U.S. District Court, as opposed to merely through the process authorized under Idaho Law [*Owyhee County, Idaho*, 179 IBLA 18, 27, 28 (fn. 9) (2010)]; and
- the initiation of a Travel Management Plan (“TMP”) process on October 18, 2010, by the Boise District of BLM to develop a TMP for the public land in Owyhee County west of the Bruneau Rivers which is intended to address all motorized routes on public land *outside* of the six designated wilderness areas and not otherwise covered by the Wilson Creek, Hemingway, and Murphy sub-regions TMPs.
- the pending final revision and Record of Decision on the Jarbidge Resource Management Plan.
- the pending continuation of the development of the Bruneau Resource Management Plan, which was started but discontinued several years ago.
- the issuance of Secretarial Order 3310 on December 22, 2010 by Dept. of the Interior Secretary Ken Salazar, which directs the Bureau of Land Management to designate appropriate areas with wilderness characteristics under its jurisdiction as “Wild Lands” and to manage them to protect their wilderness values.

WHEREAS, given the foregoing background, the Board finds (without waiving any of its authority under Idaho laws over the public roads lying within Owyhee County) that it is prudent and necessary to group (in consultation with the public) the various rights-of-way that are shown on United States Department of the Interior Geological Survey Maps No. 1 through 161 and referenced in Owyhee County Resolution 94-03 that are on lands owned by the United States of America;

1. NOW, THEREFORE, IT IS HEREBY RESOLVED, that the Board *proposes* the following groups, as well as the criteria for such groups, of the various rights-of-way (aka “roads, trails, and ways”) that are shown on United States Department of the Interior Geological Survey Maps No. 1 through 161 and referenced in Owyhee County Resolution 94-03 that are on lands owned by the United States of America:

A. Rights-of-Way to be ratified as R.S. 2477: This group includes those rights-of-way that cross land owned by the United States of America

within Owyhee County that are illustrated on General Land Office Maps or through other competent evidence that were established as public roads by public use for 5-years before 1893, by public use and public maintenance for 5-years before 1976, and/or by County declaration before 1976.

B. Rights-of-Way to access private land and Idaho State land: This group includes those rights-of-way that cross land owned by the United States of America within Owyhee County that are illustrated on General Land Office Maps or through other competent evidence that were used to access private land and State land within Owyhee County before 1976.

C. Rights-of-Way to provide “management/administrative access”: This group includes those rights-of-way that cross land owned by the United States of America within Owyhee County that provide management/administrative access across such land to exercise the rights, obligations and entitlements of a license/permit/land use authorization issued by an agency of the United States of America, like the Bureau of Land Management (“BLM”). These licenses are inclusive of grazing permits issued by the BLM. BLM maintains similar administrative authority to cross private lands owned by a grazing permit holder. See 43 C.F.R. 4130.3-2(h) (10/1/2005 Edition).

D. Rights-of-Way to provide “livestock trailing access”: This group includes those rights-of-way that cross land owned by the United States of America within Owyhee County that provide livestock trailing access across such land to exercise the rights, obligations and entitlements of a license/permit/land use authorization issued by an agency of the United States of America, like the Bureau of Land Management (“BLM”). These licenses are inclusive of grazing permits and crossing permits issued by the BLM. BLM maintains similar administrative authority to cross private lands owned by a grazing permit holder. See 43 C.F.R. 4130.3-2(h) (10/1/2005 Edition).

E. Rights-of-Way not within any other group: This group includes those rights-of-way that cross land owned by the United States of America within Owyhee County that are not otherwise determined at this time to be within any other group noted above. This determination, when made by the Board, is not intended to change or otherwise impair whatever status the right-of-way may have had, now or in the future, unless otherwise adjudicated under applicable law.

No groups (and related criteria) intend to cover the various rights-of-way that are shown on United States Department of the Interior Geological Survey Maps No. 1 through 161 and referenced in Owyhee County Resolution 94-03 that are on lands owned by private landowners or by the State of Idaho.

2. IT IS HEREBY FURTHER RESOLVED by the Board that the public shall have sixty days (60-days) from the publication of the Summary of this Resolution in the *Owyhee Avalanche* to submit written comments to the Board as to the *proposed* groups, including the criteria for such groups, stated herein. The Board will send separate written notice to the BLM, soliciting the BLM's comment within the 60-day comment period.

3. IT IS HEREBY FURTHER RESOLVED that after receipt of any written comments to the Board as to the *proposed* groups stated herein, the Board will set an open, public meeting in accordance with applicable law to receive any further verbal comments from the public as to the *proposed* groups, including the criteria for such groups, stated herein. The Board will send separate written notice to the BLM, inviting the BLM to the scheduled public meeting.

4. IT IS HEREBY FURTHER RESOLVED that after the open, public meeting, the Board will determine and otherwise establish by further Resolution the groups, including the criteria for such groups. The Board will immediately thereafter tender such groups, including the criteria for such groups, to the BLM to apply in the BLM's TMP process.

5. IT IS HEREBY FURTHER RESOLVED that after the groups, including the criteria for such groups, is determined by the Board, the Board will direct a designee of the Board (hereinafter to be named/identified by separate and further Resolution) to apply the groups, including the criteria for such groups, to the various rights-of-way that are shown on United States Department of the Interior Geological Survey Maps No. 1 through 161 and referenced in Owyhee County Resolution 94-03. *Proposed* Maps will be prepared that color coordinates the various rights-of-way by groupings upon the land owned by the United States of America. The *Proposed* Maps will not color coordinate the various rights-of-way by groupings upon the lands owned by private landowners or by the State of Idaho.

6. IT IS HEREBY FURTHER RESOLVED that after the designee of the Board prepares the *Proposed* Maps, as stated herein, the Board shall provide notice, as required by applicable law, as to the availability for the review of the *Proposed* Maps, and shall give the public sixty days (60-days) from the notice for the public to submit written comments to the Board as to the *Proposed* Maps. Written comments may include any omissions of any rights-of-way on the *Proposed* Maps, and if any omissions, the written comment shall include the suggested group in which that right-of-way will be within. The Board will send separate written notice to the BLM, soliciting the BLM's comment within the 60-day comment period.

7. IT IS HEREBY FURTHER RESOLVED that after receipt of any written comments to the Board as to the *Proposed* Maps, as stated herein, the Board will determine and otherwise establish by separate and further Resolution the Maps, as *Final* Maps. The Board will immediately thereafter tender such *Final* Maps to the BLM to apply in the BLM's TMP process.

8. IT IS HEREBY FURTHER RESOLVED that after the *Final Maps* are determined, the Board shall provide notice, as required by applicable law, as to the availability for the review of the *Final Maps*, and shall give the public sixty days (60-days) from the notice for the public to submit a written protest to any specific right-of-way and/or to the grouping of any specific right-of-way on the *Final Map*. Any protest must be timely filed with the County Clerk of Owyhee County. Any protest must be submitted on a form specified by the County Clerk of Owyhee County and the designee of the Board, and will require the submission of a filing fee when a timely written protest is filed with the County Clerk of Owyhee County. The Board will establish the reasonable protest filing fee at a later date in accordance with governing law.

9. IT IS HEREBY FURTHER RESOLVED that should any timely protests be filed, the Board shall direct and authorize the designee of the Board to assess the protest and provide a recommendation to the Board as to whether the protest warrants any change in the *Final Maps*. If a change is recommended, the Board will set an open, public meeting, with direct notice by certified mail to the protester, to determine whether the Board will accept or reject the recommendation. If accepted by the Board, the designee of the Board shall change the *Final Maps*, as specifically related to the protest. The Board will immediately thereafter tender such *revised-Final Maps* to the BLM to apply in the BLM's TMP process. If rejected by the Board, the aggrieved protester may seek whatever remedies may be available under applicable law, though Board hereby states that this Resolution does not intend to establish any further remedies that may be available under applicable law.

10. IT IS HEREBY FURTHER RESOLVED that after the *Final Maps* are determined and/or after any *revised-Final Maps* are determined, the Board may seek to validate, in whole or in part, in the U.S. District Court, District of Idaho, those rights-of-way that fall within the group identified as "Rights-of-Way to be ratified as R.S. 2477" based upon the applicable law at that time.

11. IT IS FURTHER RESOLVED that this Resolution is effective on the date of signatures of the Board.

APPROVED AND ADOPTED this 4th day of January, 2011.


JERRY/HOAGLAND, CHAIRMAN


RICHARD FREUND, MEMBER


GEORGE HYER, MEMBER

OWYHEE COUNTY CLERK: CHARLOTTE SHERBURN

Attest: Charlotte Sherburn

Date: January 4, 2011