



MAGAZINE

## BRC SUPPORTS NEW BLM ROAD POLICY

by BRC Public Lands Staff

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### But OHV Advocates See "More Of The Same" From BLM

In a letter sent April 17, 2006, six Democratic senators asked the Department of Interior (DOI) to rescind recent guidance on procedures used to recognize valid existing rights of way granted pursuant to R.S. 2477. The agency issued the new guidance last month after a 2005 ruling by the 10th US Circuit Court of Appeals. (See R.S. 2477: THE LEGAL BATTLE CONTINUES in the October 2005 edition of the *BlueRibbon Magazine* online at: <http://www.sharetrails.org/magazine.cfm?story=705>).

Anti-access and wilderness activist groups have claimed the new guidance expands the ways counties could assert rights of way. The letter, signed by Sens. Diane Feinstein and Barbara Boxer of California; Ken Salazar of Colorado; Ron Wyden of Oregon; Richard Durbin of Illinois; and Jeff Bingaman of New Mexico (who is the ranking Democrat on the Senate Energy and Natural Resources Committee), parroted the criticism of the anti-access lobby, claiming the new guidance would "...risk significant harm to our national parks, wildlife refuges, national monuments, wilderness areas, wilderness study areas, proposed wilderness and other special public lands by paving the way for unprecedented road development and damaging off-road vehicle use..." and concluded by asking acting Interior Secretary Lynn Scarlett to "reconsider this ill-advised policy," they wrote.

Despite what you might read in the mainstream media, Secretary Norton's "new" road policy will not have the practical or legal implications ascribed to it by the anti-access crowd. In reality, the "environmental lobby" is hoping to exploit this relatively benign announcement for political gain.

It is neither surprising nor inappropriate that the DOI revised its internal policy to incorporate the analysis presented in the September 8, 2005, Decision by the US 10th Circuit Court of Appeals in *Southern Utah Wilderness Alliance v. BLM*. (<http://www.kscourts.org/CA10/cases/2005/09/04-4071a.htm> -- don't miss footnote #36!) Contrary to the cries of the anti-access crowd, nothing in any Department of Interior policy will infringe upon the rights of any proper party to seek review of the legal status or management of public rights-of way. The courts continue to have the final word on these issues.

BRC public lands staff greeted the new guidance with a yawn and called the letter from the six Democratic Senators "predictable." Ric Foster, BRC's Public Lands Assistant said he doubts the new guidance will cause BLM to step away from what is known as the "Ignore and Close" strategy. "Unfortunately, we think BLM will continue to ignore county road rights, falsely claiming they can't address the 2477 roads until they are adjudicated by a court, but then closing the roads via the land use planning process."

Brian Hawthorne, BRC's Public Lands Director agreed. "The BLM is having its cake and eating it too. On one hand they claim a county 2477 right of way cannot be acknowledged unless by the courts, on the other hand they assume BLM has ownership and closes the road. It's outrageous." BRC public lands staff said they continue to monitor BLM route designation in western states for possible violations of the Appeals Court ruling.

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