

From: Magallanes, Downey
To: [Bowman, Randal](#)
Subject: Fwd: Paria River Road Resolution
Date: Saturday, May 27, 2017 7:41:41 AM
Attachments: [Kane County Paria Resolution.pdf](#)
[ATV Club Letter Paria.pdf](#)

This is for the staircase

----- Forwarded message -----

From: Dirk Clayson <[REDACTED]>
Date: Thu, May 25, 2017 at 10:40 PM
Subject: Paria River Road Resolution
To: Downey Magallanes <downey_magallanes@ios.doi.gov>, Mike Noel
<[REDACTED]>
Cc: John Tanner <john_tanner@hatch.senate.gov>, Brian Steed
<brian.steed@mail.house.gov>

Hi Downey,

I wanted to send you an electronic copy of a couple of documents that may assist with your efforts on behalf of Kane County.

Attached are two documents in PDF format.

1- The Kane County resolution to save the access to Paria Canyon with the attached map of the Paria River road.

2- The letter from the local ATV club which I have included for reference mainly because it contains photo evidences of the open road per BLM sign as well as historical evidences back to the late 1800s and early 1900s helping to document the land term over 140 years of road use prior to the 2009 closure.

With the access closed, this fantastic area and the hiking trails accessed from the river road, no have very little visitation. What was once one of our most visited areas is now almost completely lost for the visitor experience simply because the hike to any trail heads are simply out of reach for most.

Please let me know if there is anything else that I can assist with regarding these or other Kane County matters. Again, Thanks so much for your help.

Best Regards,

Dirk Clayson
Kane County Commission
[REDACTED]

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Downey Magallanes
Office of the Secretary
downey_magallanes@ios.doi.gov
202-501-0654 (desk)
202-706-9199 (cell)

KANE COUNTY RESOLUTION NO. R-2017-10

A RESOLUTION TO SAVE ACCESS TO THE PARIA CANYON

WHEREAS, commencing in 1865 Mormon settlers lead by Peter Shirts established communities in the Rockhouse area and then the Pahreah townsite by traveling the Paria River road. The Pahreah townsite grew to include 130 inhabitants, public facilities and a church. Floods later washed away crop lands over the years and resulted in the last residents leaving the area in the 1930s, however, the Pahreah cemetery remains as a respectful reminder of these early pioneers. The stories of Peter Shirts and his “pull the plow” share cropping efforts with the Native American Indians is a great reminder of the human element in the history of these lands; and

WHEREAS, by 1873 the Paria River road was established as the main public thoroughfare for travel between Salt Lake City, Utah, and Lee’s Ferry, Arizona, which is well documented by John D. Lee and numerous history books; and

WHEREAS, the Paria River road through the Paria Canyon was continuously used as a public thoroughfare for 140 years until 2009 when it was summarily closed; and

WHEREAS, the Southern Utah Wilderness Alliance (SUWA) and The Wilderness Society (TWS) sued Kane County and obtained a federal court injunction finding that Kane County could not own an R.S. 2477 right-of-way for any road, like the Paria River road, unless and until its title was adjudicated in court. A Bureau of Land Management (BLM) legal advisor stated his agreement with the finding, and SUWA and TWS then prevailed upon BLM to barricade and physically close the Paria River road in 2009; and

WHEREAS, Kane County later prevailed in the legal proceedings and reversed the adverse decision. However, BLM’s physical closure of the Paria River road remains; and

WHEREAS, Kane County would like to make a statement of their appreciation for the local BLM office. The local BLM office, at the time, was assisting with responsible use and enjoyment of the area and was not working to close the road. The directive was issued to them from higher offices within the department. Local BLM officials were excluded from the decisionmaking that affected our area; and

WHEREAS, the Paria River road closure was done without consideration of the road’s purpose, rights, local economies, customs, culture and heritage; and

WHEREAS, for nine years, this closure has negatively impacted the tourism in Kane County as the Paria River road was a well-known popular recreation area and route to trail heads; and

WHEREAS, the Paria River road provided access to several hiking trailheads such as Deer Creek and the confluence of Bull Valley Gorge, Rock Springs Creek, Starlight Canyon, and Snake Creek; and

WHEREAS, many historical pioneer markers of the Paria River road are being lost from our heritage and historical interpretation since they are no longer accessible; and

WHEREAS, Kane County R.S. 2477 litigation is pending on this road. Litigation strategies by the Department of the Interior and the Department of Justice, now coordinated with SUWA, serve to delay the court proceedings. These delays are prejudicial to Kane County through the loss of evidence and increased expense; and

WHEREAS, precedent set with the Kane County Bald Knoll R.S. 2477 litigation clearly demonstrates the county's ability to quiet title to its R.S. 2477 roads. The evidence supporting the Paria River road is overwhelmingly documented across 140 years and indisputably establishes that this road served as a public thoroughfare for more than ten years prior to 1976; and

WHEREAS, the extended closure of this road and flood activities will result in a higher maintenance burden for reopening; and

WHEREAS, the traveled surface of the road is being destroyed by non-use making on-sight evaluations by the court difficult to accurately obtain; and

WHEREAS, over 140 years of road use presented no negative impacts to the area and was clearly one of the least impactful items in the drainage, given the severe floods and other natural occurring activities; and

WHEREAS, the Grand Staircase-Escalante National Monument management plan states: "TRAN-8 In the event that Title 5 rights-of-way are issued, or in the event of legal decisions on RS 2477 assertions, maintenance activities will be governed under the terms of those actions"; and

WHEREAS, the Grand Staircase-Escalante National Monument Proclamation states: "The establishment of this monument is subject to valid existing rights." This sentence reflects the President's intention to honor rights that existed prior to the establishment of the Monument. Before it was established, the lands within GSENM were subject to various authorizations, some giving "rights" to the holders and some of which could be construed as providing valid, but lesser, interests. Valid existing rights (VERs) are those rights in existence within the boundaries of GSENM when the Monument was established on September 18, 1996."

Kane County established its R.S. 2477 rights with over 100 years of public use under the revised statute 2477 of 1866 which ended with the with the creation of the Federal Lands Policy and Management Act of 1976. Therefore, these rights were clearly established prior to the creation of the GSENM and are therefore valid and existing rights.

NOW THEREFORE, BE IT RESOLVED BY THE KANE COUNTY BOARD OF COMMISSIONERS, IN AND FOR KANE COUNTY, STATE OF UTAH, AS FOLLOWS:

Kane County respectfully requests that the road closed signs, physical barriers, and any other physical obstruction to access on the Paria River Road, Kane County Road Number K6200, be removed by the BLM while pending litigation continues.

Kane County urges the BLM / Department of the Interior to move forward with removing any legal restrictions of access of the Paria River Road, Kane County Road Number K6200, and requests that whatever procedures need to be accomplished to achieve this result are taken with haste.

ADOPTED this 8th day of May, 2017.

ATTEST:


KARLA JOHNSON
Kane County Clerk




Dirk Clayson, Chair
Board of Commissioners
Kane County

Commissioner Clayson voted Y
Commissioner Matson voted Y
Commissioner Smith voted Y

Additional RS2477 Background reference:

R.S. 2477 granted valid and respected right-of-ways to counties by its general wording: "The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted."

Although FLPMA repealed Revised Statute 2477, it did not terminate rights-of-way conveyed under R.S. 2477. Section 701 of FLPMA states that nothing "...shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use authorization existing on the date of approval of this Act." For a route to be an R.S. 2477 right-of-way, it must have existed before the passage of FLPMA (October 21, 1976).

Presentation by:
Samuel Smith, President
Utah/Arizona ATV Club
6250 Antelope Trail
Kanab, Utah 84741
435 644-8236

I am speaking on behalf of the Utah/Arizona ATV Club of Kanab, Utah. Our club is mostly comprised of a variation of people who enjoy recreating on our public lands using our OHV's. We represent more than 100 households, and members and supporters from a number of western states. We are not supported by large corporate donations, or have paid staff or paid officers. Our efforts are supported by just volunteers and our love of visiting our public lands.

Many of us are retired and some are physically limited due to age and injuries. Here in Kanab, Utah our club endeavors to support our community through donations to schools, the needy and veterans, and by hosting visitors, including sponsoring OHV events that benefit this area. One of which is our annual 'Warriors Ride' where we take veterans, some disabled, to the beautiful red rock country we enjoy riding our OHV's here in Kane County, Utah. Like it or not, Kane County has become an OHV destination. That is evidenced by the large numbers of OHV visitors staying at our motels, visiting our local stores. On one day in March one of our ladies had occasion to count the number of OHV's coming to Kanab, from the St George area she counted 54 motorized OHV's on trailers.

The majority of our members are folks consisting of both home-grown locals and others who are new comers to this area. In past 25 years, the club used to enjoy many OHV Trails that are now closed such as riding up the Paria River; from the old Paria townsite north of US Highway 89. This particular Paria River corridor route had been a road into southern Utah since the 1800's. This route follows the Paria river bed from the area south of Cannonville, Utah, and exits at the old Paria town site. It was a signed open route at one time. This road is full of pioneer writings historical petroglyphs, and Pictoglyph sites. It was the favorite ride of the locals and many OHV visitors.

Please be aware, the Paria River, to the south of US Highway 89 is designated wilderness and is respected as such. That area is protected by two other designated congressionally approved wilderness areas and allows those seeking a wilderness experience to hike all the way to the Colorado River.

Then in 2009, environmental groups petitioned the Grand Staircase Escalante National Monument (GSENM) BLM field office to close access to the northern section of this RS2477 titled Paria River designated road. This route, being not only a historic byway used by OHV enthusiasts, but by people interested in visiting the pioneer rock art name site locations made by pioneers who often were their own forebearers. The local people had enjoyed this for years causing no damage to the route. You see, when the annual floods run the Paria, all tracks are washed away.

In 2009, the GSENM BLM Field Office arbitrarily and unilaterally closed this route without input from anyone except those environmental groups or handpicked committees. Kane County

at that time protested and took this issue to the courts where it remains. The GSENM BLM office posted it as a wilderness study area. Disregarding, that this route had been considered a RS2477 road by Kane county for years. There were huge protests here in Kane County which brought out large groups of people from both sides of the issue.

Our ATV Club, and the Southern Utah Off Highway Vehicle Alliance, based here in Kanab, Utah would urge you to consider reviewing decisions made by our local BLM land managers. It seems that attempts to communicate or give local input to the GSENM BLM Field office are ignored, simply dismissed by double talk. No one seems to be held accountable to the affected local people regarding the unilateral decision making methods the BLM employs in such issues. This includes many of the BLM field offices in Southern Utah and namely the BLM Office who manages the Grand Staircase National Monument.

The below comments come from a former Kane county, Utah County Commissioner Mark Habbeshaw who was involved in this litigation at that time.

“The specific document closing the Paria road to motorized travel was the Grand Staircase/Escalante National Monument (GSENM) management’s administrative decision to close the road based on petitions to close the road submitted to the BLM GSENM by Southern Utah Wilderness Alliance (SUWA) and The Wilderness Society (TWS). The petitions were submitted during the time Kane County was under a federal injunction issued by Judge Tena Campbell not to take any action on roads without quiet title adjudication in federal court. Thus, the county was powerless to stop the closure. The closure took effect shortly after the protest ride up the Paria in 2009. Judge Campbell was subsequently overturned by the 10th Circuit and the Paria is in the current quiet title lawsuit of over 700 roads in Kane County”.

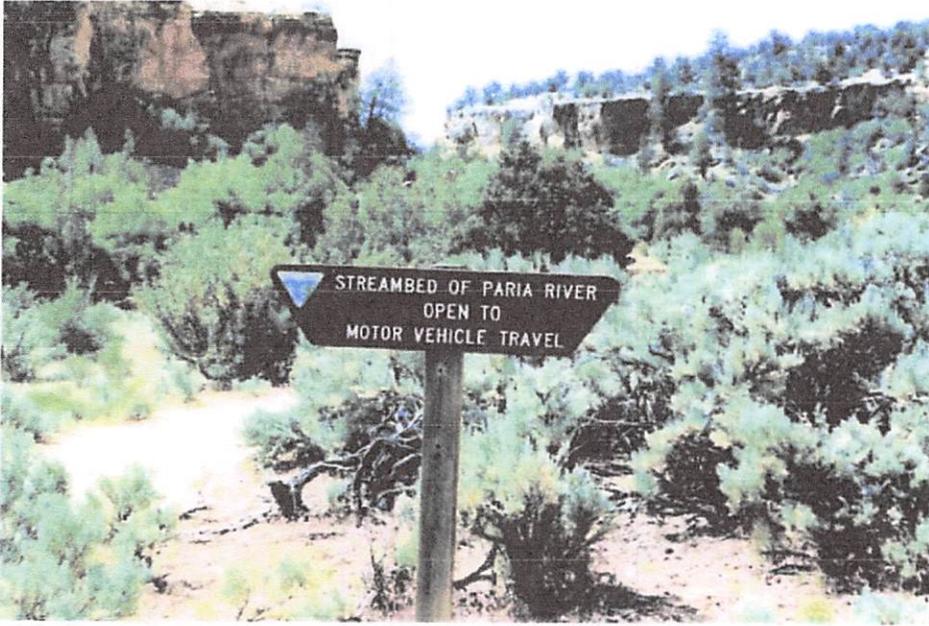
“One and one half years prior to the closure the county commission submitted a request for a non-binding determination supporting the public’s RS2477 rights along the road (including all of our documentation supporting the road as a public highway) as per Department of Interior policy under Secretary Norton. Unfortunately, the BLM refused to consider the county’s submission. The county was successful in securing QT to six roads (the first in the nation) and will likely prevail in many more titles in the current QT litigation”.

“It is my understanding that the current commission is relying on quiet title to resolve road ownership rather than creating an issue by opening the road on the ground. It may be some time before the quiet title litigation resolves the issue”.

What we hope for is the opportunity to resolve the status of our RS2477 roads based on reasonable resolution and short of quiet title but there are no specific efforts that I am aware of at this time of the willingness of anyone with the authority to even discuss this.

Thank you for your consideration.

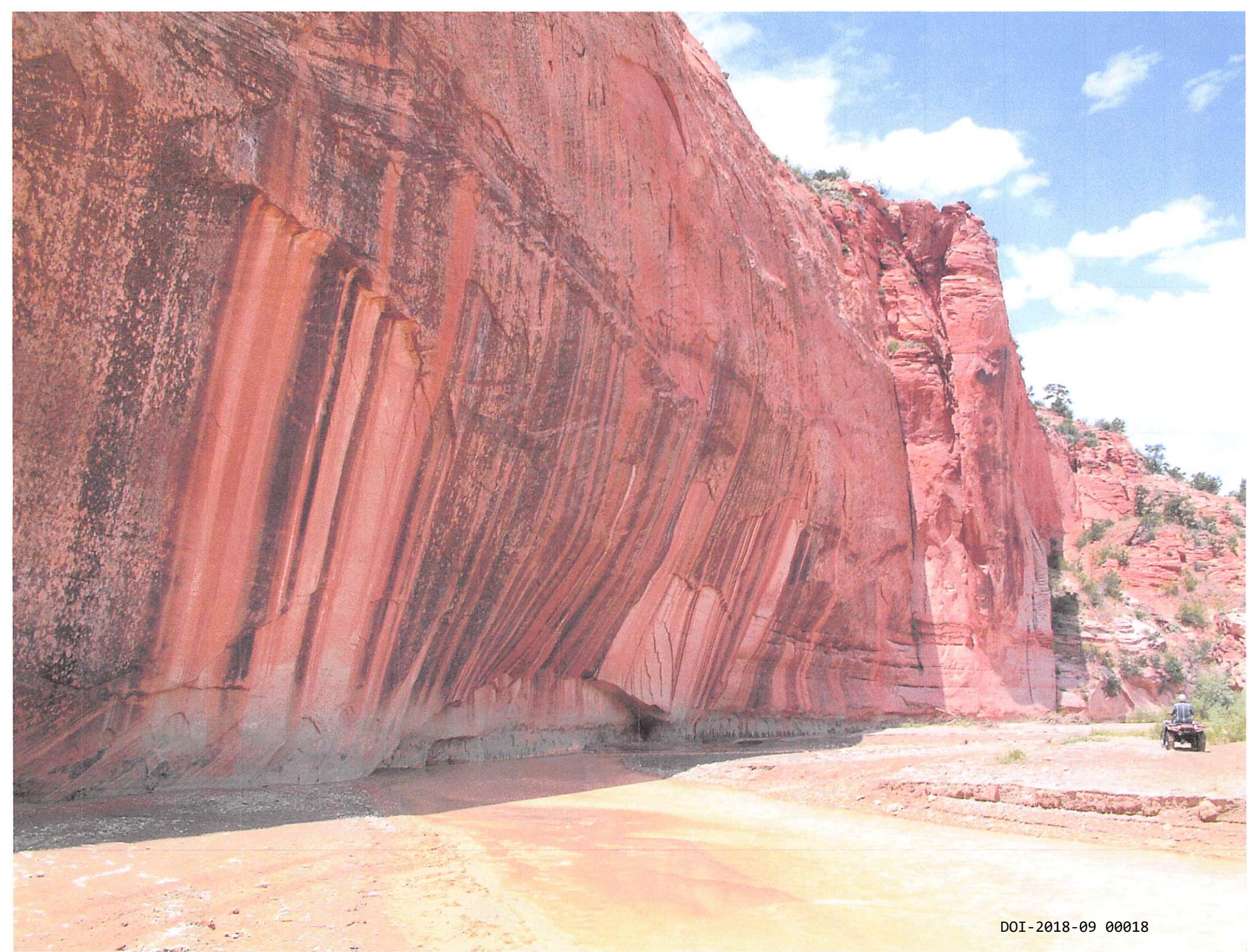
1999 Photo of BLM Sign at the Paria River



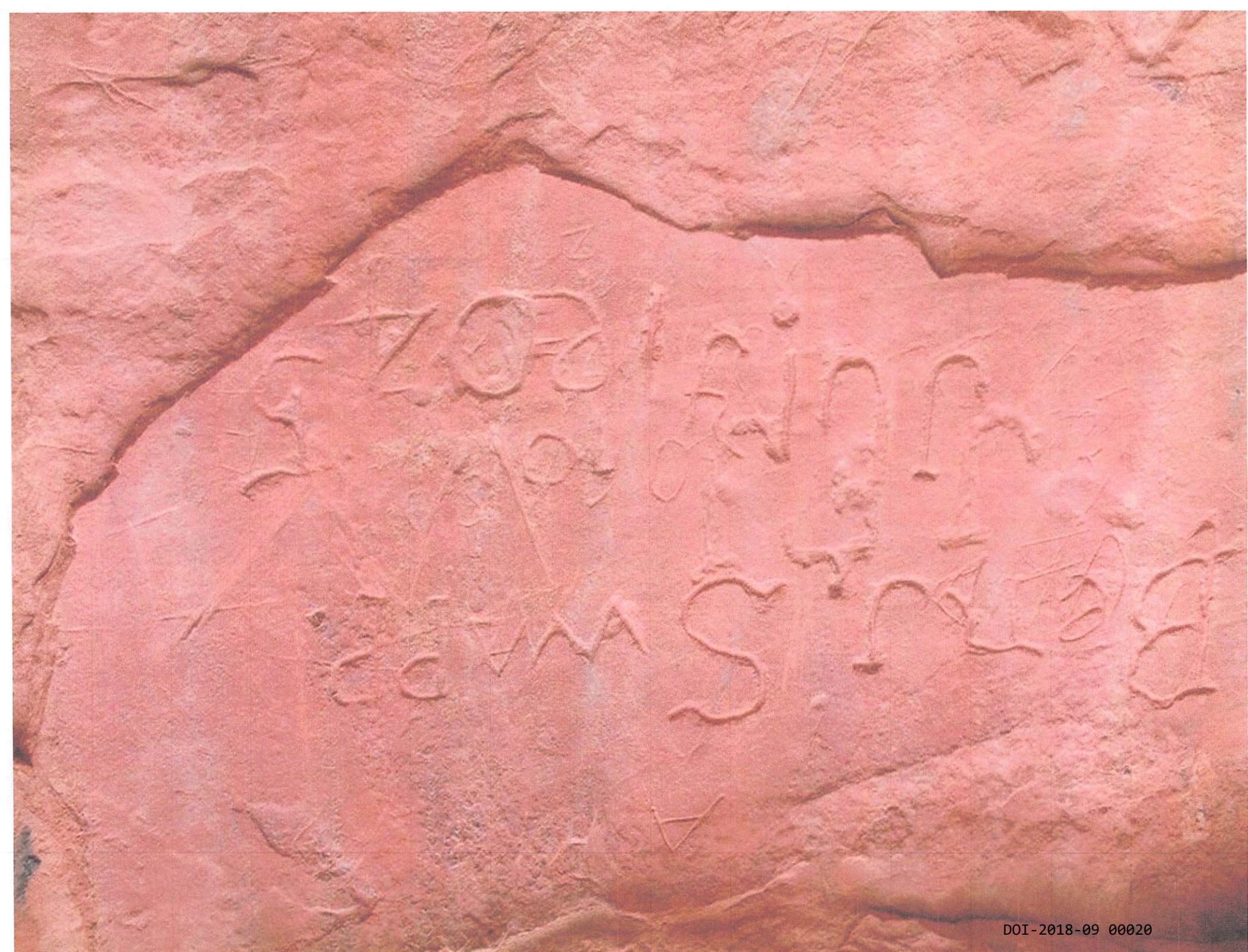
The GSENM Field Office denies this sign was there.

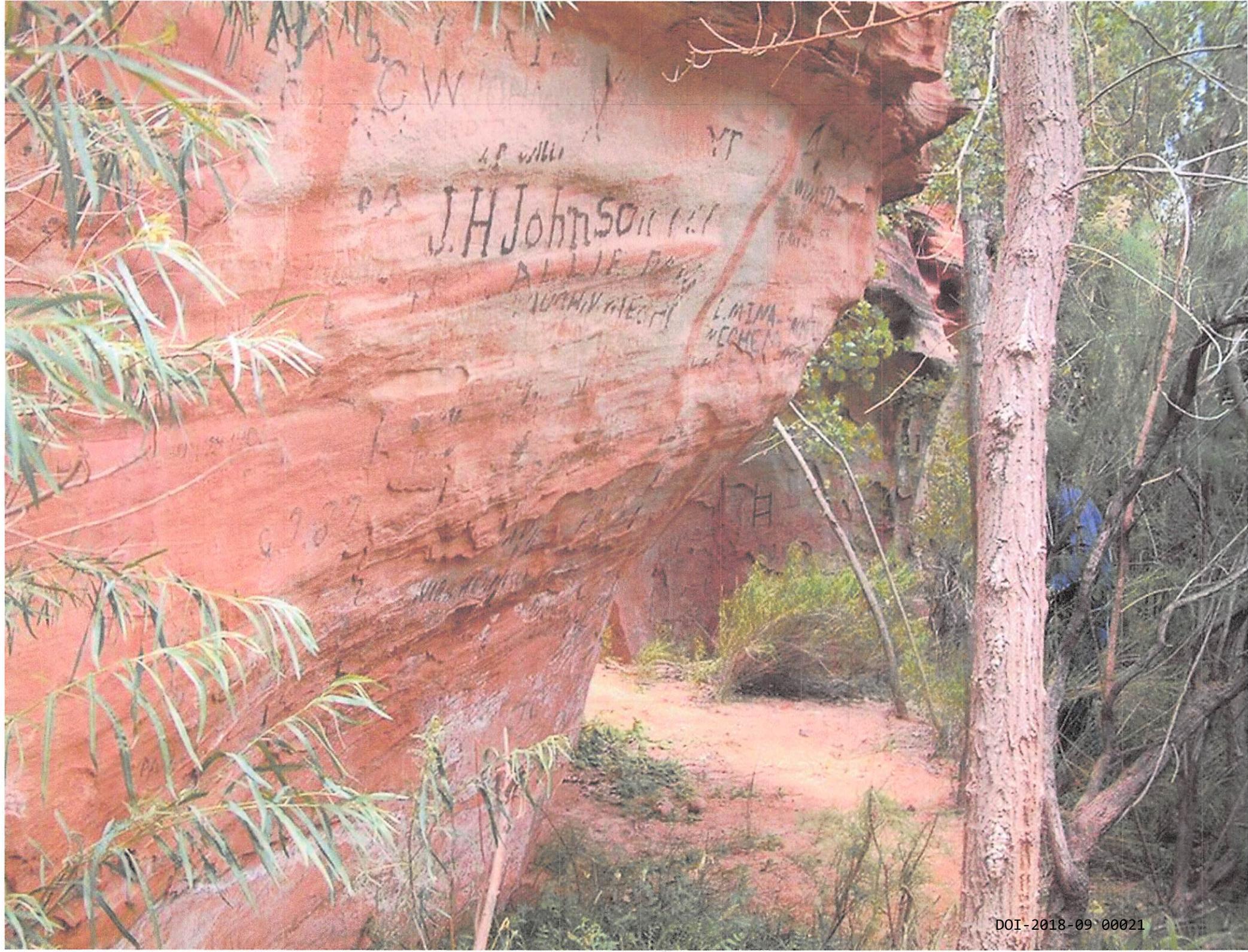


Who was this Lional Hancock back in 1888? Well, I did a little bit of research and think this is Franklin Lional Hancock, born 1871 Payson, Utah. He is on the 1880 census living in Payson, Utah with his parents Elijah and Eliza, along with his siblings. In 1890, he married Elizabeth Rebecca Tryon in Eden, Arizona. They had 12 children together and on the 1900 census, he is shown with an occupation of farmer. Franklin Lional Hancock died 1909 at Graham, Arizona and is buried at the Eden Cemetery, Arizona. I can't figure out who the other person, Yapaz is, but perhaps it is a nickname for his brother Erastus. That is my best guess anyway. I did find a wonderful story that mentions Lional and his wife in it, describing how they joined several other people **from** Eden, Arizona on a wagon trip to the Temple in Salt Lake City. If you would like to read more about their life full of joys and hardships, please click **no**, the link [The Story of My Life by Annie May Oliver Fuller 1947](#). I also located a picture of Franklin Lional Hancock and wish I could give credit to whoever shared this but I could not find any information on where or who it came from. If I can locate that information I will immediately correct this.



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