COPY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

County of San Bernardino, PLAINTIFF(S). v. United States of America, Department of Interior, DEFENDANT(S).	CASE NUMBER ED CV 06 - 01179 VAP (RCx) **SUMMONS**

TO: THE ABOVE-NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED and required to file with this court and serve upon plaintiff's attorney Charles S. Scolastico, Deputy County Counsel, whose address is:

County of San Bernardino
Office of County Counsel
385 North Arrowhead Avenue, 4th Floor
San Bernardino, CA 92415-0140

an answer to the ☒ complaint ☐_____amended complaint ☐ counterclaim ☐ cross-claim which is herewith served upon you within 20 days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgement by default will be taken against you for the relief demanded in the complaint.

SHERRI R. CARTER

Clerk, U.S. District Court

Dated: OCT 26 2006

By: MARGO MEAD
Deputy Clerk

(Seal of the Court)

SEAL

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Virginia A. Phillips and the assigned discovery Magistrate Judge is Rosalyn M. Chapman.

The case number on all documents filed with the Court should read as follows:

EDCV06- 1179 VAP (RCx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

==========

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

[ ] **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

[ ] **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

[X] **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

PLEASE CONFORM

FILED

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Attorneys for Plaintiff COUNTY OF SAN BERNARDINO

2006 OCT 26 PM 1:27

CLERK, U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
RIVERSIDE
BY _____

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ED CV 06 - 01179 VAP

COUNTY OF SAN BERNARDINO, Plaintiff, vs. UNITED STATES OF AMERICA, DEPARTMENT OF INTERIOR, Defendant.	Case No. COMPLAINT TO QUIET TITLE (28 U.S.C. § 2409)

Plaintiff County of San Bernardino ("County") alleges as follows:

INTRODUCTION

1. This is an action to quiet title to certain described rights-of-way for highways, including the scope thereof, in accordance with Revised Statute 2477 (R.S. 2477). R.S. 2477 was passed as part of the Mining Act of July 26, 1866.

JURISDICTION AND VENUE

2. The County alleges that this Court has federal question jurisdiction under 28 U.S.C. sections 1346(f) and 2409a (quiet title to real property in which the United States claims an interest). The highways which are the subject of this action are located in San Bernardino County,

California, and venue is proper in this Court pursuant to 28 U.S.C. section 1391(b), and all applicable law.

THE PARTIES

3. The County is a political subdivision of the State of California and is organized and existing under the laws of said State. The County is responsible for providing local government services, including but not limited to road construction, reconstruction and maintenance, search and rescue, emergency medical services, law enforcement, and recreational opportunities, all of which depend on access along the highways which have been historically (prior to 1976) and currently part of the County's basic system of public roads.

4. The United States of America is the federal government and the owner of the Mojave National Preserve, a unit of the National Park System. The relevant highways at issue in this action are located within or adjacent to the boundaries of the Mojave National Preserve.

5. The United States Department of the Interior ("DOI") is the department of the federal government to which Congress delegated specific authority to administer the public lands under federal law, including the Mojave National Preserve.

6. The United States National Park Service ("NPS") is the agency within the DOI that has been delegated specific authority by Congress to administer the Mojave National Preserve. Prior to October 31, 1994, the U.S. Bureau of Land Management ("BLM") was the agency within the DOI that had been delegated authority by Congress to administer federal public lands, which included the land now contained in the Mojave National Preserve.

THE HISTORY OF R.S. 2477 HIGHWAYS

7. R.S. 2477, enacted as part of the Mining Act of July 26, 1866,

provides in pertinent part as follows:

> § 8. And be it further enacted, That the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.

(Mining Act of July 26, 1866, § 8, codified at 43 U.S.C. § 932, repealed by Federal Land Policy Management Act of 1976 ("FLPMA"), Pub.L. No. 94-579 § 706(a), 90 Stat. 2473.)

8. Though Congress repealed R.S. 2477 on October 21, 1976 by the FLPMA, it specified that any "valid" R.S. 2477 rights-of-way "existing on the date of approval of this Act" (October 21, 1976) would continue in effect. (FLPMA § 701 (a).)

9. R.S. 2477 was self-executing and, therefore, ratification or approval by the federal government was not required to perfect an R.S. 2477 right-of-way. (Sierra Club v. Hodel (10th Cir. 1988) 848 F.2d 1068, 1083-84.)

10. As evidenced in BLM regulations dating as far back as 1939, BLM has long declined to regulate R.S. 2477 rights-of-way or require any affirmative part by any State in establishing its claim to an R.S. 2477 right-of-way:

a. In 1939, BLM regulations provided:

> The grant [under R.S. 2477] becomes effective upon the construction or establishing of highways, in accordance with the State Laws, over public lands not reserved for public uses. No application should be filed under said R.S. 2477 as no action on the part of the Federal Government is necessary.
>
> (43 C.F.R. § 244.55 (1939.)

b. In 1963, BLM regulations provided:

> Grants of [R.S. 2477 rights-of-way] become effective upon the construction or establishment of highways, in accordance with State laws, over public lands, not reserved for public uses. No application should be filed under R.S. 2477, as no action on the part of the Government is necessary.
>
> (43 C.F.R. § 244.58 (1963.)

c. In 1974, BLM regulations provided:

> No application should be filed under R.S. 2477, as no action on the part of the Government is necessary . . .Grants of [R.S. 2477 rights-of-way] become effective upon the construction or establishment of highways, in accordance with the State laws, over public lands, not reserved for public uses.
>
> (43 C.F.R. §§ 2822.1-1 & 2822.2-1 (1974.)

11. The DOI recognizes that there is "[n]o formal process for either asserting or recognizing R.S. 2477 rights-of way currently is provided in law, regulations, or DOI policy," which creates a "a continuing cloud" on right-of-way claims. Accordingly, DOI asserts that "[c]ourts must ultimately determine [sic] the validity of such claims." (Department of Interior, Report to Congress on R.S. 2477 (June 1993), pp. 6 & 25.)

12. The holder of an R.S. 2477 right-of-way is not required to consult with BLM prior to conducting maintenance within the right-of-way or using the right-of-way in the same manner as it was used on October 21, 1976. (Southern Utah Wilderness Alliance v. BLM (2005) 425 F.3d 735, 749; See also Department of the Interior, Report to Congress on R.S.

2477 (June 1993) (Appendix II, Exhibit M at pg. 4) (stating that activities within the R.S. 2477 right-of-way that are within the jurisdiction of the right-of-way holder "include, but are not necessarily limited to, maintenance, reconstruction, upgrading and reasonable activities.")

13. Although R.S. 2477 is an offer by the federal government, acceptance of an R.S. 2477 right-of-way by a government agency is governed by state law. (Western Aggregates, Inc. v. County of Yuba (2002) 101 Cal.App.4th 278, 296.)

14. Under California law, the acceptance of an R.S. 2477 right-of-way could be established by public use without formal action by any public authority, or by other affirmative action by the public in general or a public agency indicating an intent to accept the statutory dedication, including but not limited to, use, public repair and depiction of the public road on official maps and documents, inclusion in the County Maintained Road System.

15. Prior to October 31, 1994, BLM historically did not attempt to require the County to inform BLM, submit plans, or request approval or other authorization before conducting maintenance or improvement on the highways subject to this suit. Following the creation of the Mojave National Preserve in 1994, the NPS has attempted to require the County to submit plans or request approval or other authorizations before conducting maintenance on the highways subject to the suit, and has, in fact, complained that the County was inadequately performing such maintenance to the detriment of visitor experience; except that the NPS has restricted access to materials required for maintenance and have assumed regulatory responsibility on the roads without County input or approval.

16. BLM historically did not object to the County's maintenance on

the highways subject to this suit.

17. The County has performed regular maintenance on thousands of miles on the majority of the subject highways dating back to pre-1921 including the roads in this complaint lying within the Mojave National Preserve.

18. Beginning in 1929 and continuing yearly until the mid-1970s, the County published books containing maps depicting the roads maintained by the County. The books contained a listing of each road maintained by the County, including the road name, a brief description, mileage, type of road (dirt, paved, etc.) and other identifying and descriptive information.

GENERAL ALLEGATIONS REGARDING THIS QUIET TITLE ACTION

19. This is an action under 28 U.S.C. §2409a to quiet title to fourteen (14) R.S. 2477 rights-of-way in the County. The rights-of-way are described herein and in Exhibits 2 through 15, incorporated herein.

20. The County holds its R.S. 2477 right-of-way interests in the highways in issue without necessity of any approval of the federal government. (Western Aggregates, Inc. v. County of Yuba, *supra*, 101 Cal.App.4th 278, 296.)

21. Effective October 31, 1994 Congress passed the California Desert Protection Act of 1994 (16 U.S.C. § 410aaa through 410aaa-83). The Act established the Mojave National Preserve ("Preserve") in the California desert. Among other things, the Act requires the Secretary of the Interior to administer the Preserve in accordance with laws and regulations governing the NPS. Under the auspices of this Act, and other federal laws, BLM, National Parks Service (NPS) and other federal agencies under the Department of the Interior have attempted to close highways which are part of the County's Highway System across federal

lands or interfered with the actions of the County and its authorized agents in conjunction with the regulation, operation and management of these highways. Various actions on behalf of the County with various federal officials and agencies have failed to resolve this dispute. These circumstances present a case in controversy through federal abridgment of the County rights pertaining to the rights-of-way. Moreover, this controversy is "a continuing cloud" on the County's right-of-way claims.

22. On April 4, 2006, the County submitted a notification of intention to file suit under 28 U.S.C. §2409(m) to DOI. (Attached as Exhibit 1 hereto.)

23. The description of highways in Exhibits 2 through 15 attached hereto are the result of information recorded within the County database of records. The subject highways were also driven and measured by staff from the County Department of Public Works, with current photographs taken at intervals along the length of each highway or a portion of the subject highway.

24. The age and use of all of the subject highways is verified by County Road System books published yearly during the period extending from 1929 to the early-1970s. The published books contained a listing of each road maintained by the County, including the road name, a brief description, mileage, type of road (dirt, paved, etc.) and other identifying and descriptive information. County staff reviewed published books from 1929, 1931, 1941, 1951, 1961 and 1971. Information was also obtained from the Water Supply Paper 490-B entitled "Routes to Desert Watering Places in the Mohave Desert Region, California (1921), which was prepared by David G. Thompson and contains a detailed set of geological survey maps covering the entire Mojave National Preserve area.

25. The majority, if not all, of the subject highways may have been

realigned to a greater or lesser degree over time to reach various destinations, and the County has essentially maintained a direct route from one location to another over an extended period of time on essentially the same routes and alignments prior to October 21, 1976 and continuing to present. *(Id. at 308.)*

FIRST CAUSE OF ACTION

(Quiet Title to Black Canyon Road)

26. The County realleges and incorporates by reference the allegations of paragraphs 1 through 25.

27. Black Canyon Road is located on public lands, not reserved for public uses prior to 1976. It is part of the County-maintained road system, as more particularly shown and described in the attached Exhibit 2, incorporated herein by reference.

28. A portion of Black Canyon Road was known as the "Cima-Fenner Road" in 1921, and it served as a connector to many other destination points. The road alignment varies in length and description from 1941 to 1951, but the present road alignment was established by at least 1961.

29. The County has performed maintenance of the road since at least as early as 1941. The County often adds asphalt to reinforce the shoulder to minimize undercutting to the roadway. The roadway has also been actively graded to delineate the road from the wash.

30. The purposes for use of this road include access to homesteads and mining operations, search and rescue, and traveling in and through the area.

31. Defendants have asserted their claim to the property constituting the County's R.S. 2477 right-of-way by their actions as described above in paragraph 21.

SECOND CAUSE OF ACTION

(Quiet Title to Cedar Canyon Road)

32. The County realleges and incorporates by reference the allegations of paragraphs 1 through 25.

33. Cedar Canyon Road is located on public lands, not reserved for public uses prior to 1976. It is part of the County-maintained road system, as more particularly shown and described in the attached Exhibit 3, incorporated herein by reference.

34. A large portion of Cedar Canyon Road was well established by 1921, when it known as the road from Cima to Lanfair. The present road alignment was established as early as 1931.

35. The County has performed maintenance of the road since at least as early as 1921. The County often adds native material to reinforce a berm to minimize undercutting to the roadway. The County has also graded a substantial berm and erected "sandwich board" warning markers to alert motorists to the narrow sections and substantial vertical drop-offs into the wash.

36. The purposes for use of this road include access to homesteads and mining operations, and traveling in and through the area.

37. Defendants have asserted their claim to the property constituting the County's R.S. 2477 right-of-way by their actions as described above in paragraph 21.

THIRD CAUSE OF ACTION

(Quiet Title to Cima Road)

38. The County realleges and incorporates by reference the allegations of paragraphs 1 through 25.

39. Cima Road is located on public lands, not reserved for public uses prior to 1976. It is part of the County-maintained road system, as

more particularly shown and described in the attached Exhibit 4, incorporated herein by reference.

40. Much of the alignment of Cima Road was established by 1921, when it was known as the "Silver Lake-Cima Road." Though the road alignment varied slightly from 1951 to 1961, the present road alignment has remained the same since 1971.

41. The County has performed maintenance of the road since at least 1929. The County often adds asphalt to reinforce the shoulder to minimize undercutting to the roadway.

42. The purposes for use of this road include access to homesteads and mining operations, and traveling in and through the area.

43. Defendants have asserted their claim to the property constituting the County's R.S. 2477 right-of-way by their actions as described above in paragraph 21.

FOURTH CAUSE OF ACTION

(Quiet Title to Essex Road)

44. The County realleges and incorporates by reference the allegations of paragraphs 1 through 25.

45. Essex Road is located on public lands, not reserved for public uses prior to 1976. It is part of the County-maintained road system, as more particularly shown and described in the attached Exhibit 5, incorporated herein by reference.

46. A portion of Essex Road was established by 1921, and the present road alignment existed prior to 1941.

47. The County has performed maintenance of the road prior to 1941. The County often adds asphalt to reinforce the shoulder to minimize undercutting to the roadway.

48. The purposes for use of this road include access to

homesteads and mining operations, and traveling in and through the area.

49. Defendants have asserted their claim to the property constituting the County's R.S. 2477 right-of-way by their actions as described above in paragraph 21.

FIFTH CAUSE OF ACTION

(Quiet Title to Goffs Road)

50. The County realleges and incorporates by reference the allegations of paragraphs 1 through 25.

51. Goffs Road is located on public lands, not reserved for public uses prior to 1976. It is part of the County-maintained road system, as more particularly shown and described in the attached Exhibit 6, incorporated herein by reference.

52. The existing road alignment for Goffs Road was established by 1921, when it was known as the "National Old Trails Road."

53. The County has performed maintenance of the road as early as 1911. The County maintained the road until 1923, and the State then assumed maintenance of the road from 1923 to approximately 1931. However, following completion of a Goffs Road cut off in approximately 1931, the responsibility for maintenance once again reverted to the County. The County continues to assume responsibility for maintenance of the road, and it often adds asphalt to reinforce the shoulder to minimize undercutting to the roadway.

54. As early as 1921, the road was described as the main artery of travel of the desert area of the County. It passes through several towns where supplies and accommodations could be obtained. The road also lies with a few hundred yards of the main line of the Atchison, Topeka & Santa Fe railway. It also provides access to non-federal lands including homesteads and mining claims.

55. Defendants have asserted their claim to the property constituting the County's R.S. 2477 right-of-way by their actions as described above in paragraph 21.

SIXTH CAUSE OF ACTION

(Quiet Title to Halloran Springs Road)

56. The County realleges and incorporates by reference the allegations of paragraphs 1 through 25.

57. Halloran Springs Road is located on public lands, not reserved for public uses prior to 1976. It is part of the County-maintained road system, as more particularly shown and described in the attached Exhibit 7, incorporated herein by reference.

58. By 1921, a major traveled roadway existed in the immediate vicinity of the existing County-maintained portion of roadway known as Halloran Springs Road. The existing road alignment was created in 1960 or 1961 during construction of the Interstate 15 freeway from Baker to Cima Road.

59. The County has performed maintenance of the road since between 1961 and 1971.

60. The purposes for use of this road include access to homesteads and mining claims.

61. Defendants have asserted their claim to the property constituting the County's R.S. 2477 right-of-way by their actions as described above in paragraph 21.

SEVENTH CAUSE OF ACTION

(Quiet Title to Halloran Summit Road)

62. The County realleges and incorporates by reference the allegations of paragraphs 1 through 25.

63. Halloran Summit Road is located on public lands, not reserved

for public uses prior to 1976. It is part of the County-maintained road system, as more particularly shown and described in the attached Exhibit 8, incorporated herein by reference.

64. By 1921, a major traveled roadway existed in the immediate vicinity of the existing County-maintained portion of roadway known as Halloran Summit Road. The existing road alignment was created in 1960 or 1961 during construction of the Interstate 15 freeway from Baker to Cima Road.

65. The County has performed maintenance of the road since between 1961 and 1971.

66. The purposes for use of this road include access to homesteads and mining claims.

67. Defendants have asserted their claim to the property constituting the County's R.S. 2477 right-of-way by their actions as described above in paragraph 21.

EIGHTH CAUSE OF ACTION

(Quiet Title to Ivanpah Road)

68. The County realleges and incorporates by reference the allegations of paragraphs 1 through 25.

69. Ivanpah Road is located on public lands, not reserved for public uses prior to 1976. It is part of the County-maintained road system, as more particularly shown and described in the attached Exhibit 9, incorporated herein by reference.

70. The present road alignment was established by 1921, when the road was known as "Goodsprings-Goffs Road."

71. The County has performed maintenance of the road since at least 1929, which includes grading the road.

72. The purposes for use of this road include access to mining

camps and agricultural settlements, and traveling in and through the area.

73. Defendants have asserted their claim to the property constituting the County's R.S. 2477 right-of-way by their actions as described above in paragraph 21.

NINTH CAUSE OF ACTION

(Quiet Title to Kelbaker Road)

74. The County realleges and incorporates by reference the allegations of paragraphs 1 through 25.

75. Kelbaker Road is located on public lands, not reserved for public uses prior to 1976. It is part of the County-maintained road system, as more particularly shown and described in the attached Exhibit 10, incorporated herein by reference.

76. The present road alignment was established by 1921, when the road was separated into several individual roadways. Around 1958, these roadways were later combined to form the existing road.

77. Portions of the present roadway were maintained by the County as early as 1931, and the County has maintained the present roadway since approximately 1958. The County has performed grading and earthwork through the drainage canal.

78. The purposes for use of this road include access to mining camps and homesteads, and traveling in and through the area.

79. Defendants have asserted their claim to the property constituting the County's R.S. 2477 right-of-way by their actions as described above in paragraph 21.

TENTH CAUSE OF ACTION

(Quiet Title to Kelso-Cima Road)

80. The County realleges and incorporates by reference the allegations of paragraphs 1 through 25.

81. Keslo-Cima Road is located on public lands, not reserved for public uses prior to 1976. It is part of the County-maintained road system, as more particularly shown and described in the attached Exhibit 10, incorporated herein by reference.

82. The present road alignment was established by 1921.

83. The County has performed maintenance of the road since at least 1929. The County often adds asphalt to reinforce the shoulder to minimize undercutting to the roadway.

84. The purposes for use of this road include access to mining camps and agricultural settlements, and traveling in and through the area.

85. Defendants have asserted their claim to the property constituting the County's R.S. 2477 right-of-way by their actions as described above in paragraph 21.

ELEVENTH CAUSE OF ACTION

(Quiet Title to Lanfair Road)

86. The County realleges and incorporates by reference the allegations of paragraphs 1 through 25.

87. Lanfair Road is located on public lands, not reserved for public uses prior to 1976. It is part of the County-maintained road system, as more particularly shown and described in the attached Exhibit 11, incorporated herein by reference.

88. The present road alignment was established by 1921, when the road was a portion of the roadways known as "Goodsprings-Goffs Road."

89. The County has performed maintenance of the road since at least 1929. The County often adds native material to reinforce berms to minimize undercutting to the roadway.

90. The purposes for use of this road include access to mining

camps and agricultural settlements, and traveling in and through the area.

91. Defendants have asserted their claim to the property constituting the County's R.S. 2477 right-of-way by their actions as described above in paragraph 21.

TWELFTH CAUSE OF ACTION

(Quiet Title to Morning Star Mine Road)

92. The County realleges and incorporates by reference the allegations of paragraphs 1 through 25.

93. Morning Star Mine Road is located on public lands, not reserved for public uses prior to 1976. It is part of the County-maintained road system, as more particularly shown and described in the attached Exhibit 12, incorporated herein by reference.

94. Portions of the road alignment existed as early as 1921, and the present road alignment was established by at least 1951.

95. The County has performed maintenance of the road since at least 1951, which includes grading the road.

96. The purposes for use of this road include access to mining camps and agricultural settlements, as well as traveling in and through the area.

97. Defendants have asserted their claim to the property constituting the County's R.S. 2477 right-of-way by their actions as described above in paragraph 21.

THIRTEENTH CAUSE OF ACTION

(Quiet Title to New York Mountain Road)

98. The County realleges and incorporates by reference the allegations of paragraphs 1 through 25.

99. New York Mountain Road is located on public lands, not reserved for public uses prior to 1976. It is part of the County-maintained

road system, as more particularly shown and described in the attached Exhibit 14, incorporated herein by reference.

100. The present road alignment was established by 1921.

101. The County has performed maintenance of the road since at least 1941, which includes grading the road.

102. The purposes for use of this road include access to mining camps and agricultural settlements, as well as traveling in and through the area.

103. Defendants have asserted their claim to the property constituting the County's R.S. 2477 right-of-way by their actions as described above in paragraph 21.

FOURTEENTH CAUSE OF ACTION

(Quiet Title to Nipton Road)

104. The County realleges and incorporates by reference the allegations of paragraphs 1 through 25.

105. Nipton Road is located on public lands, not reserved for public uses prior to 1976. It is part of the County-maintained road system, as more particularly shown and described in the attached Exhibit 15, incorporated herein by reference.

106. The present road alignment was established by 1921, when the road was known as "Silver Lake-Nipton Road".

107. The County has performed maintenance of the road since at least 1931, which includes grading the road.

108. The purposes for use of this road include access to mining camps, as well as traveling in and through the area.

109. Defendants have asserted their claim to the property constituting the County's R.S. 2477 right-of-way by their actions as described above in paragraph 21.

PRAYER

WHEREFORE, the County prays for judgment against defendant as follows:

1. Quiet title in and to each highway described above;
2. Include within the scope of each such highway:
   (a) that which is reasonable for the type of use to which the right-of-way has been put;
   (b) the right to conduct maintenance activities within the right-of-way, including making improvements short of paving the highway where no paving exists but maintaining paving or repaving existing paved roads and making reasonable and necessary deviations from the common way without any federal authorization;
   (c) the right to widen the highway at least to the extent of a two-lane road to allow travelers to pass each other when increased travel renders that reasonable and necessary;
   (d) the right to conduct maintenance activities to accommodate reasonable and necessary accouterments such as drainage ditches, shoulders, culverts and road signs that accord with sound engineering practices, including the requirements of the American Association of State Highway and Transportation Offices ("AASHTO"), and to provide reasonable and necessary servicing of such accouterments as are put in place pursuant to sound engineering practice; and

(e) the right to regulate the highway;

3. For costs of suit incurred herein; and

4. For such other and further relief as the Court deems just and proper.

DATED: 10-25-06

DENNIS E. WAGNER
Interim County Counsel

CHARLES S. SCOLASTICO
Deputy County Counsel
Attorneys for Plaintiff
COUNTY OF SAN BERNARDINO

Board of Supervisors
County of San Bernardino

BILL POSTMUS
CHAIRMAN
SUPERVISOR, FIRST DISTRICT

April 4, 2006

Honorable Secretary
United States Department of the Interior
1849 C Street, NW
Washington, DC 200240

Re: County of San Bernardino, California: RS2477 Rights of Way-Notice of Intention to File Suit

Dear Secretary:

Pursuant to 28 U.S.C.A. Section 2409a (m) [Real Property Quiet Title Actions], the County of San Bernardino on behalf of itself and its citizens (hereinafter referred to as "County") hereby gives you notice, in your official capacity as Secretary of the U.S. Department of the Interior with jurisdiction to manage federal lands within the county, of the County's intention to file suit with regard to the ownership, control and scope of highway rights of way acquired pursuant to RS 2477 (43 U.S.C. Section 932).

The basis for the action is the continuing dispute between the Department of the Interior and the County of San Bernardino regarding the County's RS 2477 highway rights and the Department's policies and actions adverse to those rights (including but not limited to actions ensuing from and pursuant to the Federal Land Policy Management Act 43 USC 1701 *et seq.* and the California Desert Protection Act of 1994 16 USC 410aaa *et seq.*). Federal officials under your jurisdiction have closed or attempted to close highways, which are part of the County's highway system across federal lands and interfered with the actions of the County and its authorized agents in conjunction with the regulation, operation and management of these highways. Historically, approval by the federal government has never been required to exercise rights granted by RS 2477. Officials in your administration are now claiming that RS 2477 rights of way require their official recognition and maintenance activities require their permission. This action on behalf of the federal agents amounts to a federal

San Bernardino County Government Center • 385 North Arrowhead Avenue, Fifth Floor • San Bernardino, CA 92415-0110 • (909) 387-4830
District Office • 13911 Park Avenue, Suite 204 • Victorville, CA 92392 • (760) 955-5400 • (800) 472-8597
Barstow Office • 301 East Mt. View • Barstow, CA 92312 • (760) 256-4748
Twentynine Palms Office • 6136 Adobe Road • Twentynine Palms, CA 92277 • (760) 361-8577

claim of interest adverse to that of the County. Various interactions between the County and federal officials have failed to resolve the situation.

Each of the rights herein described was established prior to 1976 over unreserved federal land in a manner consistent with law as recognized and set out in Southern Utah Wilderness Alliance v. Bureau of Land Management, et al., 425 F. 3rd 735 (10th Cir. 2005).

The roads and highways subject to this notice are those set forth in Exhibit A. This claim includes for each highway sufficient width which is reasonable and necessary for the type of use to which the road has been put including but not limited to sufficient area for maintenance, drainage, ditches, culverts, shoulders, and cut slopes as existed on or before October 21, 1976.

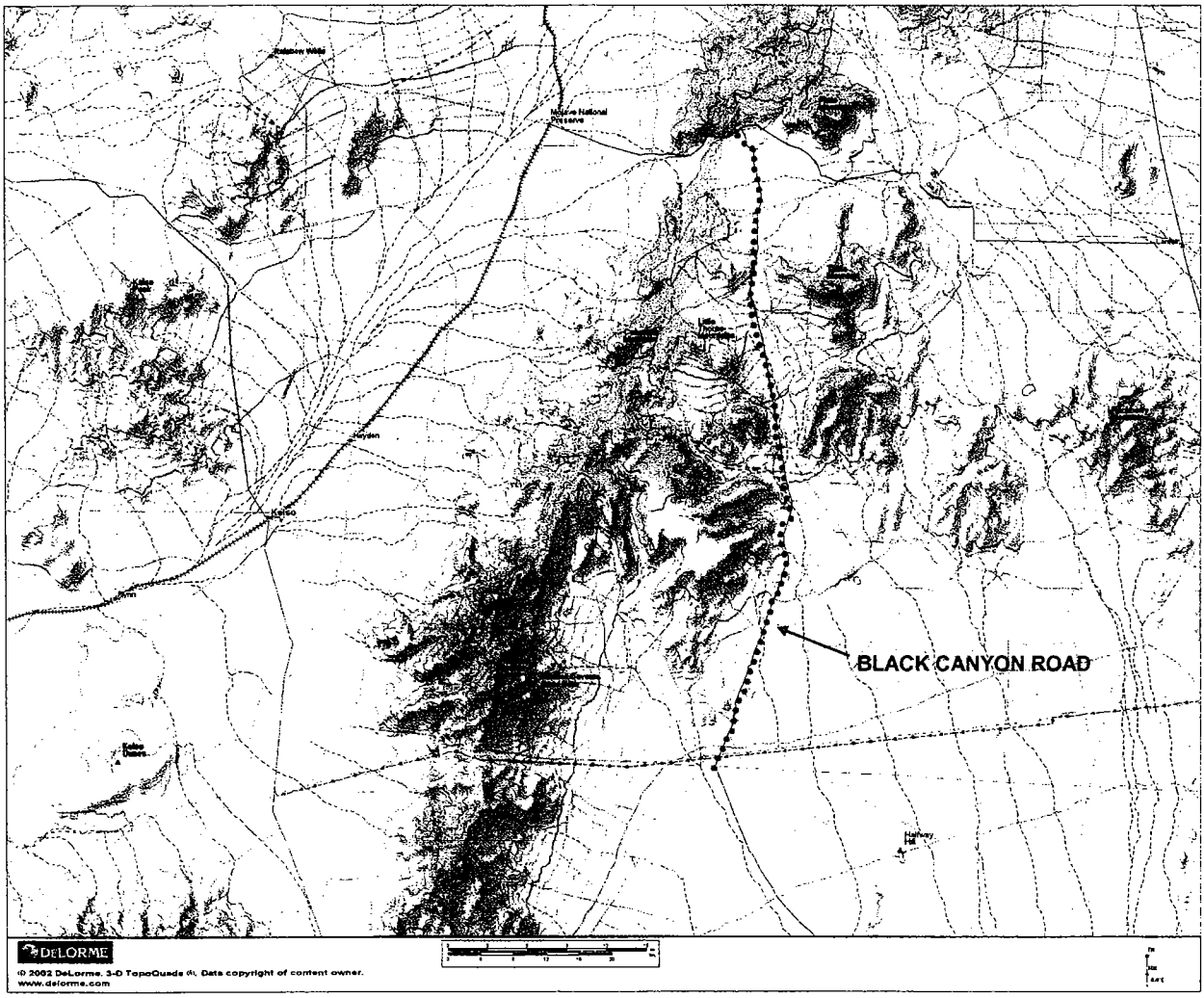
The County does not waive any rights to roads and highways not identified in this notice and may file additional notices and make subsequent claims as necessary until such time as title to all RS 2477 highways are resolved.

Sincerely,

BILL POSTMUS, Chairman
Board of Supervisors
County of San Bernardino

BP/wjp:cs

cc: Hon. Dianne Feinstein
Hon. Jerry Lewis
Hon. Howard P. "Buck" McKeon
Hon. Howard P. "Buck" McKeon, Assistant Secretary/Acting Secretary

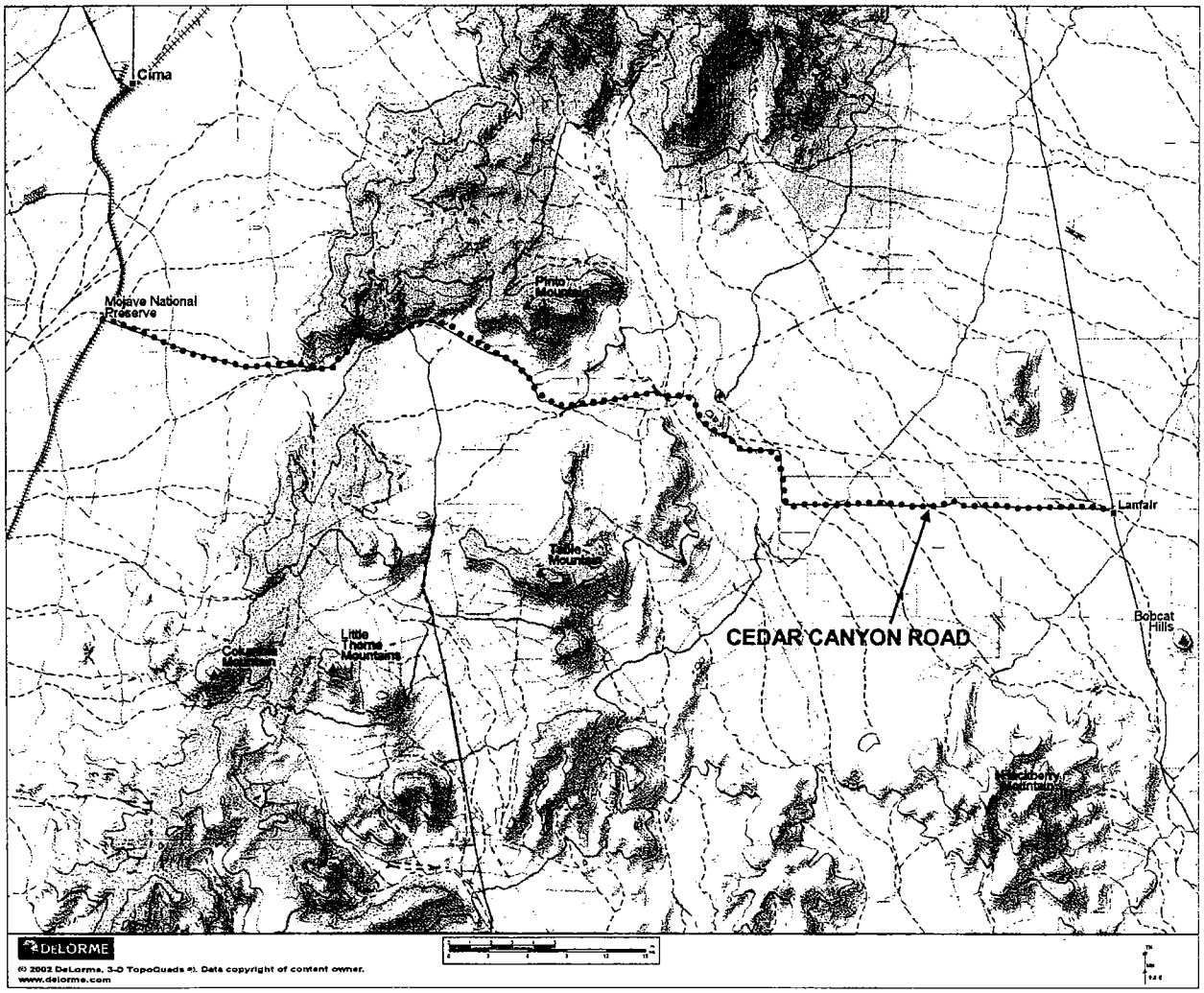


BLACK CANYON ROAD:

Description:

Black Canyon Road is a County Maintained Road System Road (CMRS) just over 20 miles long from the intersection with Essex Road on the bajada near the Providence Mountains State Park entrance, trending essentially north to the intersection with Cedar Canyon Road north of Round Valley. Black Canyon Road is first listed as maintained by the County of San Bernardino under the name "Black Canyon Road" in the 1936 Road Maintenance Book, indicating that it was adopted into the county system at some point between July of 1935 and May of 1936. The maintained alignment varies in length and description from 1936 to 1951. By 1961, however, the present alignment/mileage from Essex Road north to Cedar Canyon Road was firmly established.

The general alignment now known as Black Canyon Road has, in fact, been an important transportation link for at least 100 years.

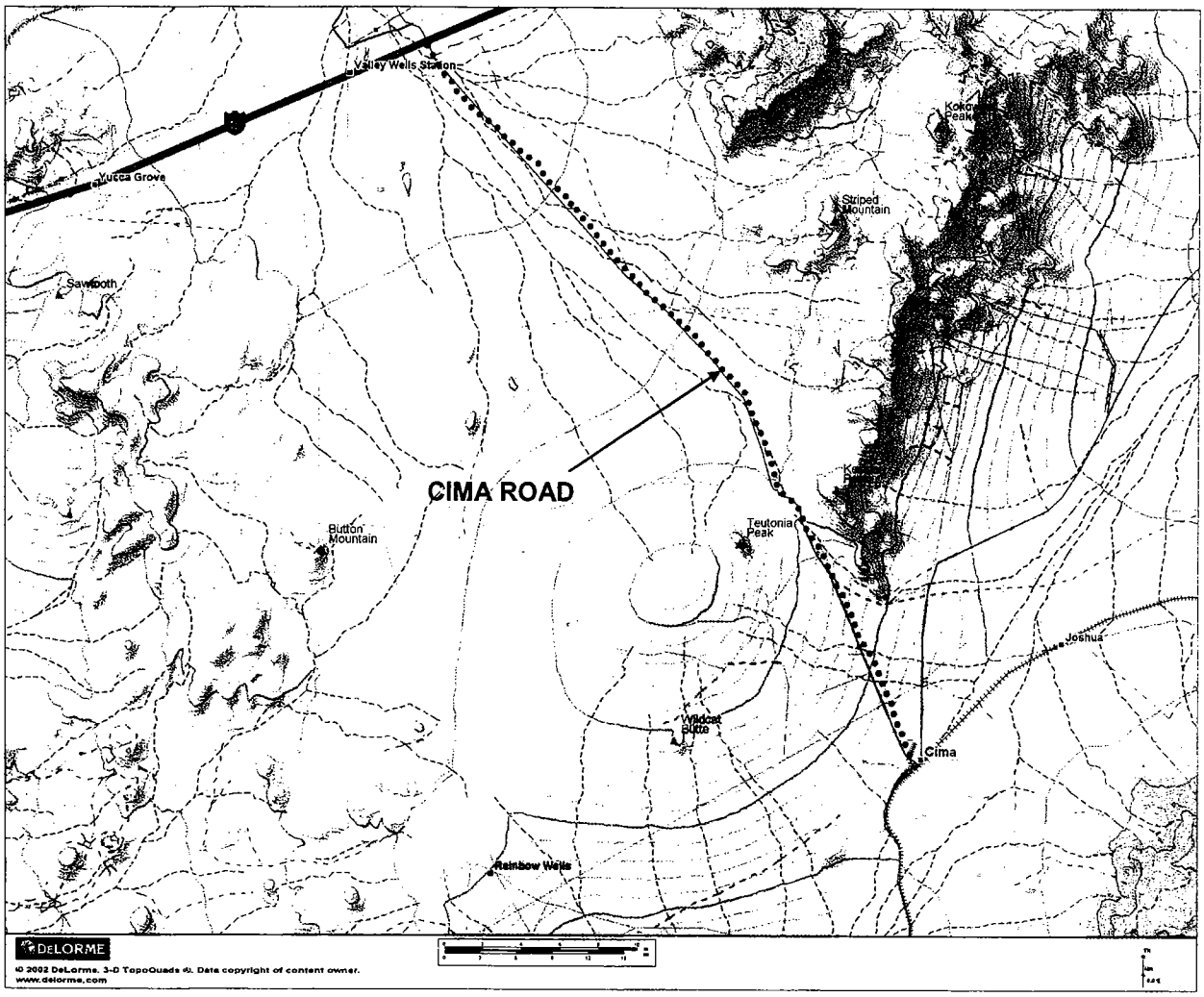


CEDAR CANYON ROAD:

Description:

Cedar Canyon Road is a County Maintained Road System Road (CMRS) just over 21 miles long from the intersection with Kelso-Cima Road east to Lanfair-Ivanpah; 2.36 miles of Cedar Canyon is paved from Kelso–Cima Road east, the rest is graded native soils. By 1946/1947, the County maintained a named Cedar Canyon Road alignment from "Goff Rd. W. to Cima Rd. via Gov't Holes." Cedar Canyon Road is, in fact, first listed as being maintained under this name in the 1948 Road Maintenance Book. Prior to 1941, the same alignment (Cima to Lanfair via Govt. Hole) was maintained by the County under the generic name of "Cima Roads."

As early as 1860, much of the alignment now known as Cedar Canyon Road served as an important interstate transportation link. This truly historic transportation route is most appropriately known as the Mojave Road, and it was carefully mapped by Thompson in 1921 as the "Old Government road to Old Fort Mohave."

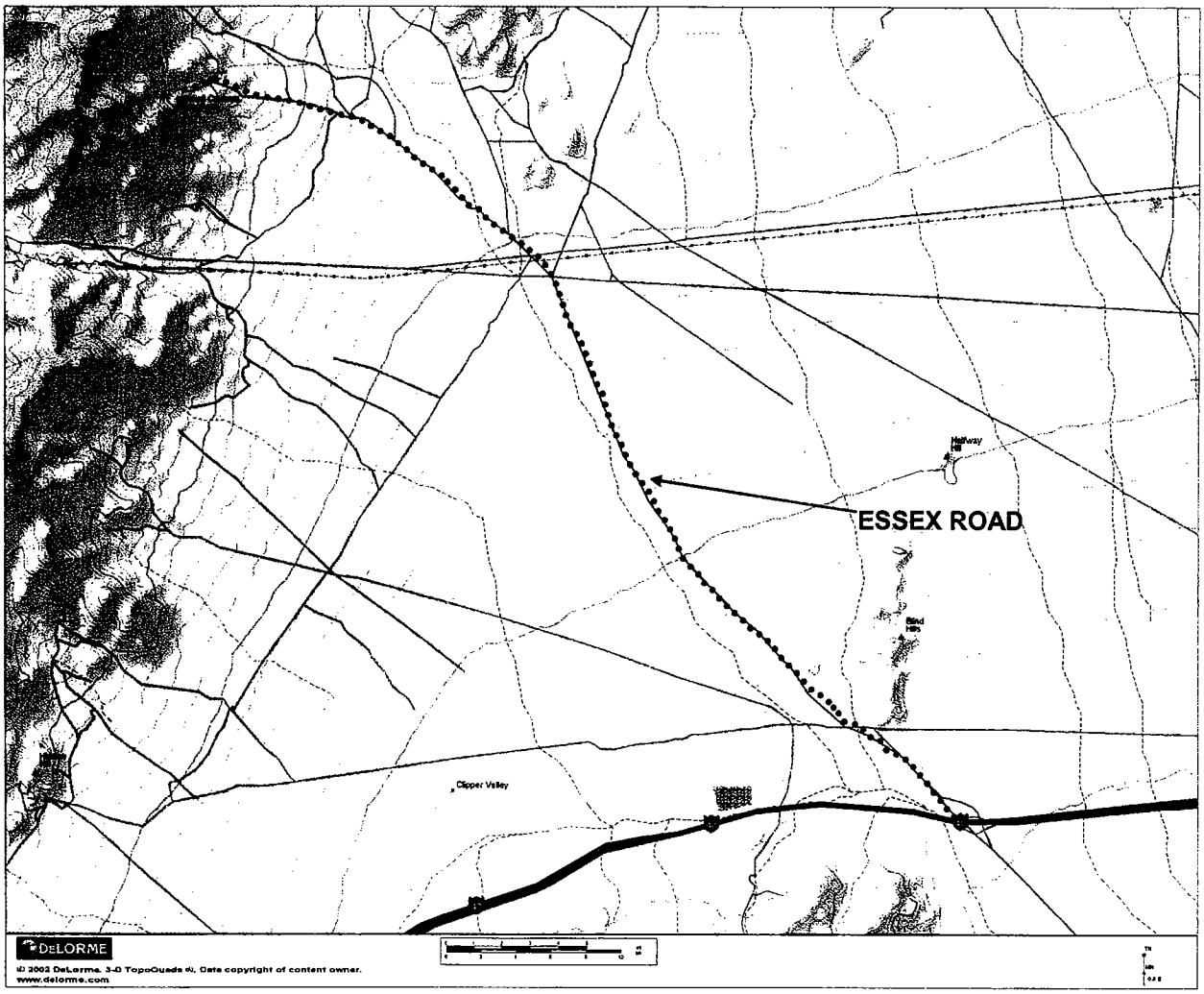


CIMA ROAD:

Description:

Cima Road is a paved County Maintained Road System Road (CMRS) just over 17¼ miles long from the intersection with Kelso-Cima Road on the flanks of the Cima Dome, trending essentially north-west to the intersection with Interstate 15 east of the town of Baker near Valley Wells.

By 1929, an alignment (including the existing alignment) known as "Cima Road" leading from State Highway #91 (now the I-15) to Kelso by way of Cima was being maintained by the County of San Bernardino.

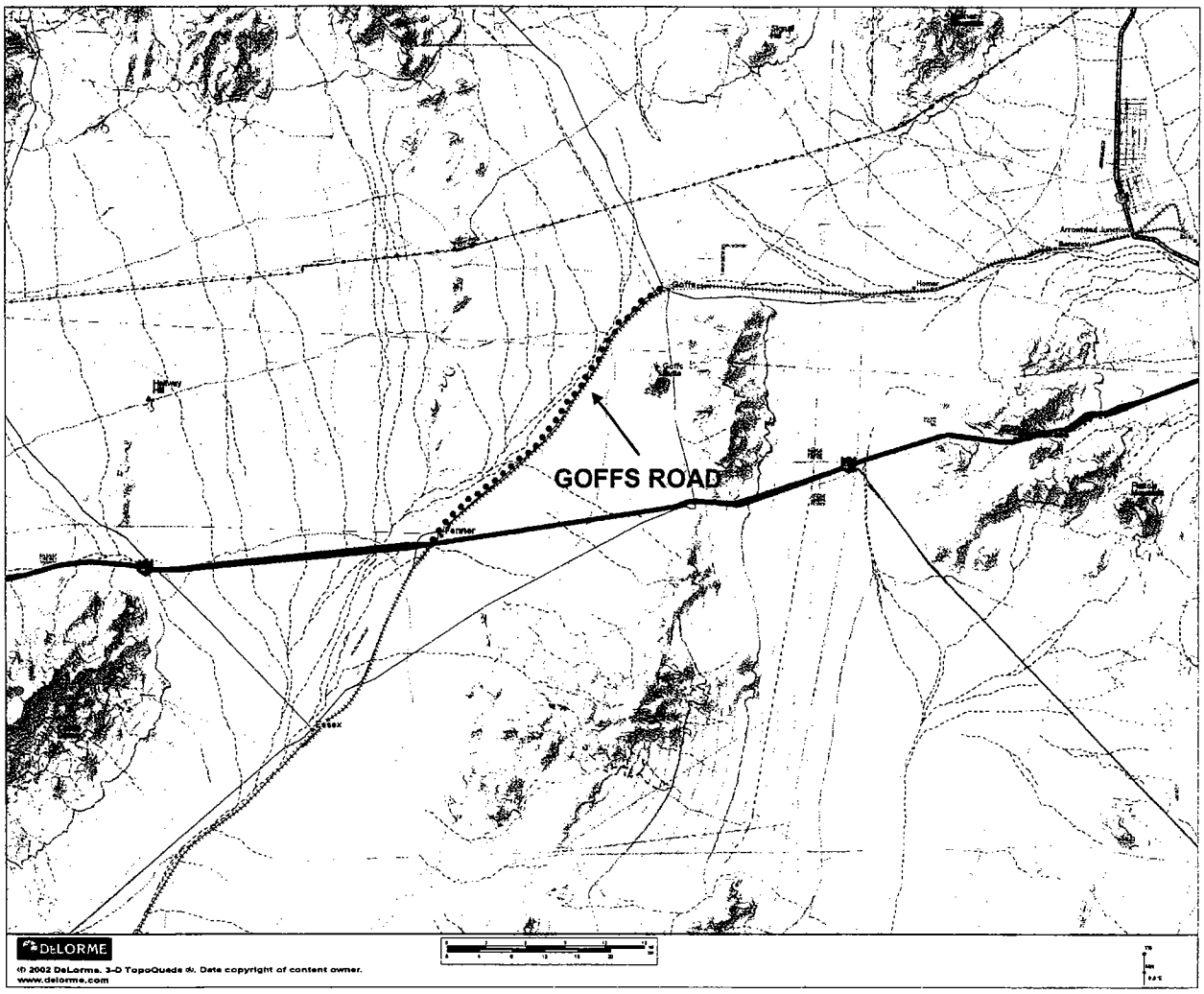


ESSEX ROAD:

Description:

Essex Road is a County Maintained Road System Road (CMRS) paved road just over 14 miles long from the intersection with Interstate 40 north and west to the Providence Mountains State Park. The road follows the native terrain with only minor cut and fill, mainly long straight segments with several relatively steep curves. The County of San Bernardino began maintaining the entire length of roadway known today as Essex Road by 1933 (the first appearance of this named alignment in a County Road Maintenance Book). This road led from Essex North to Caves."

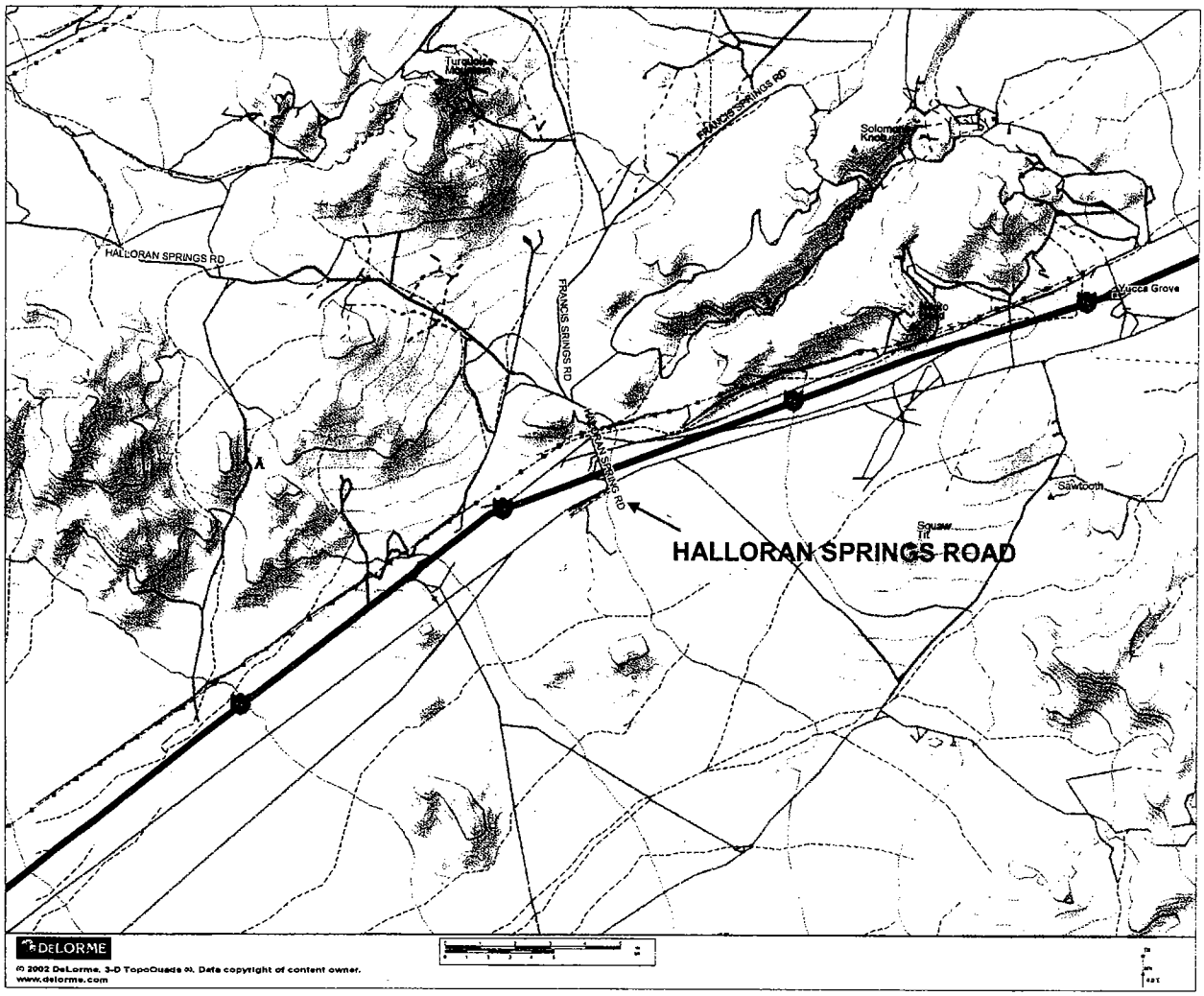
In addition, a small portion of what is now maintained by the County of San Bernardino as Essex Road has existed for over 100 years.



GOFFS ROAD:

Description:

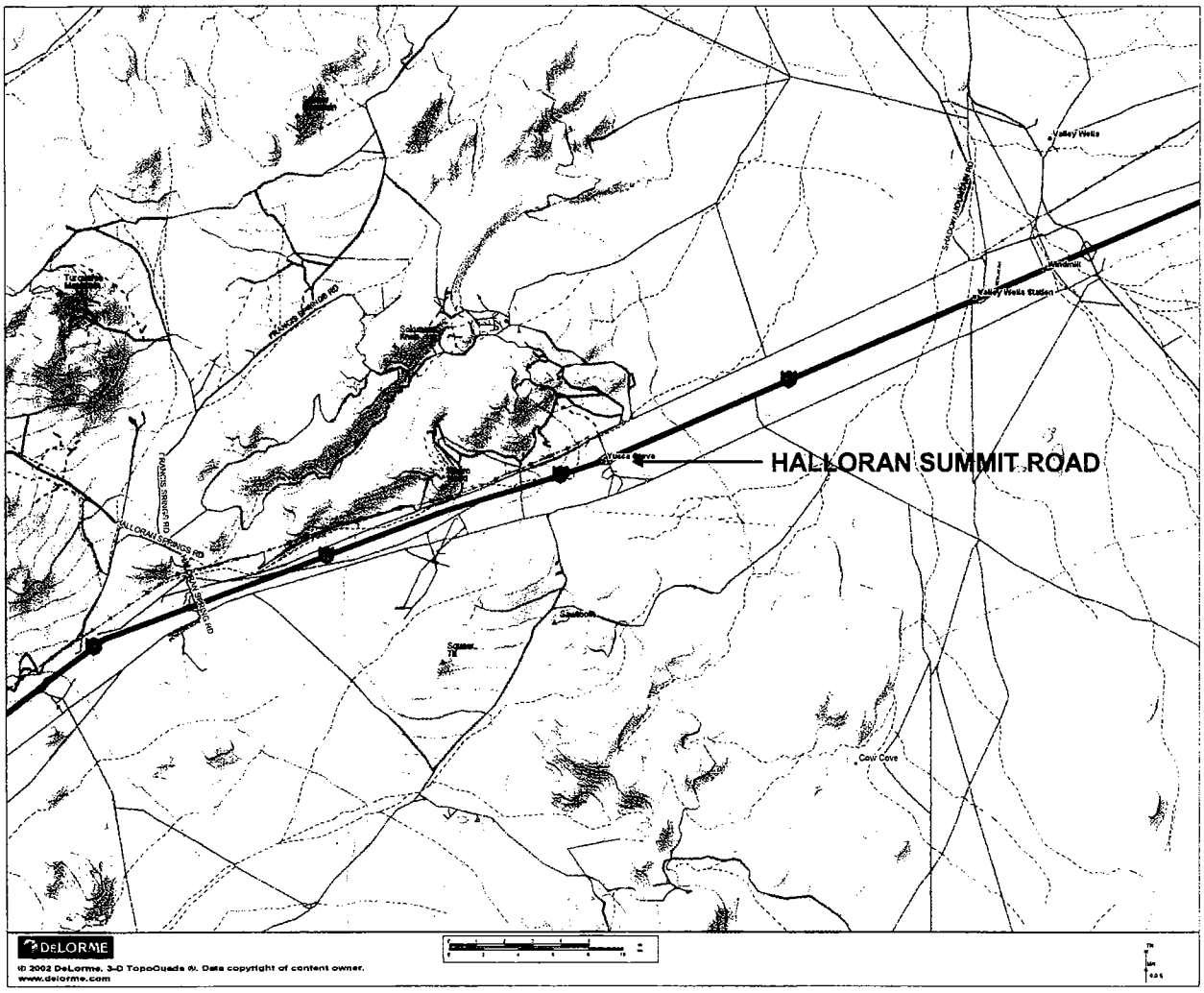
Goffs Road is a County Maintained Road System Road (CMRS) paved road just under 29.5 miles long from the intersection with National Trails Highway north and east to the junction with State Highway 95. A significant portion of the alignment between Interstate 40 north and east to Goffs, parallels the rail tracks and provides the boundary road for the Mojave Preserve; a distance of approximately ten miles. There are two major roadway alignments, "Historic" and "Present," known as and/or identified as Goffs Road. Today, the southern section (South of Cedar Canyon Road) of the "Historic" Goffs Road is known as Lanfair Road, and the northern section (North of Cedar Canyon Road) is known as Ivanpah Road. The "Present" Goffs Road alignment extends from National Trails Highway (Old Route 66) on the south to Arrowhead Junction on the north.



HALLORAN SPRINGS ROAD:

Description:

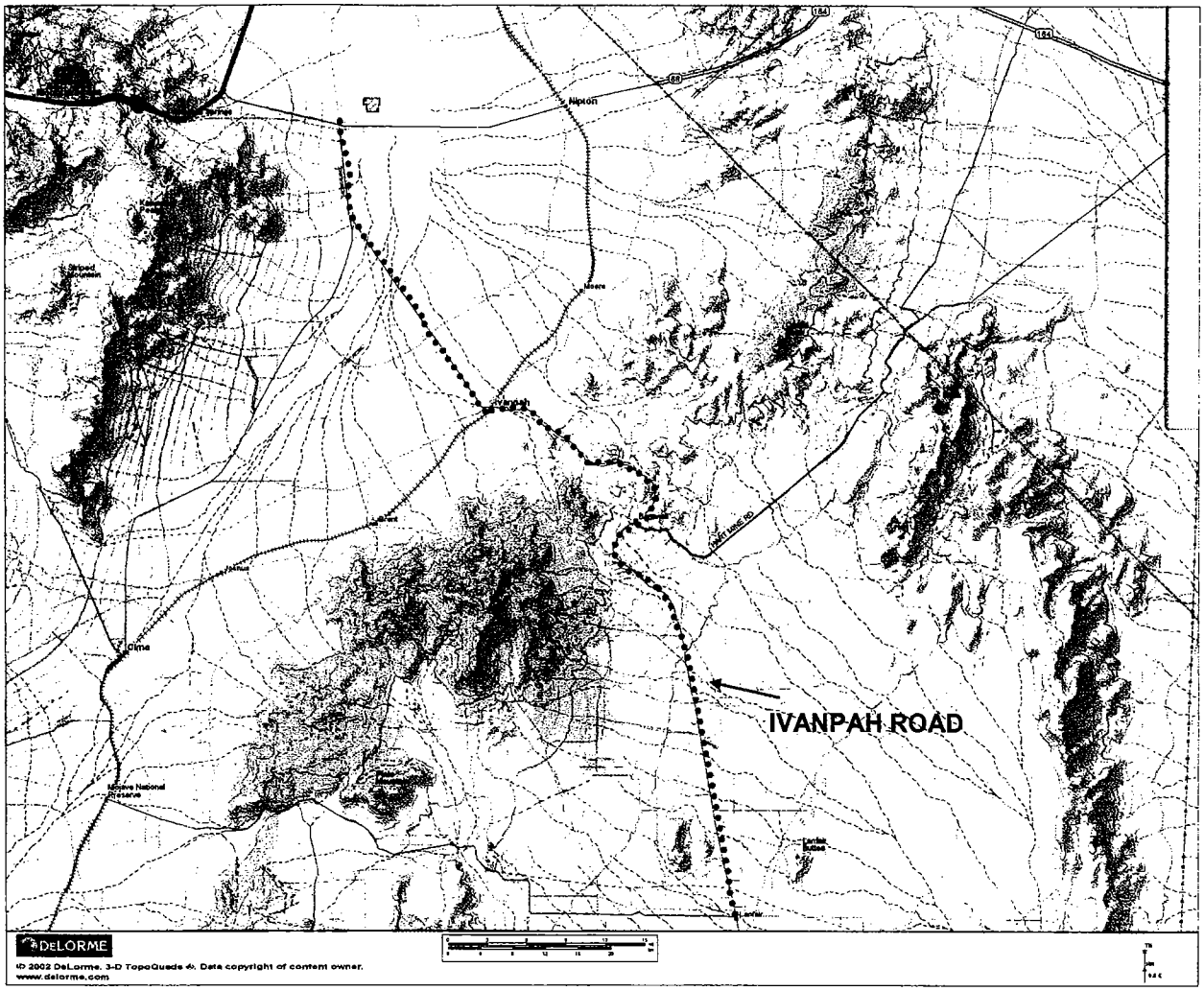
Halloran Springs Road is a short section as County Maintained Road System Road (CMRS) paved road just under 0.25 miles long from the intersection with Interstate 15 north and south.



HALLORAN SUMMIT ROAD:

Description:

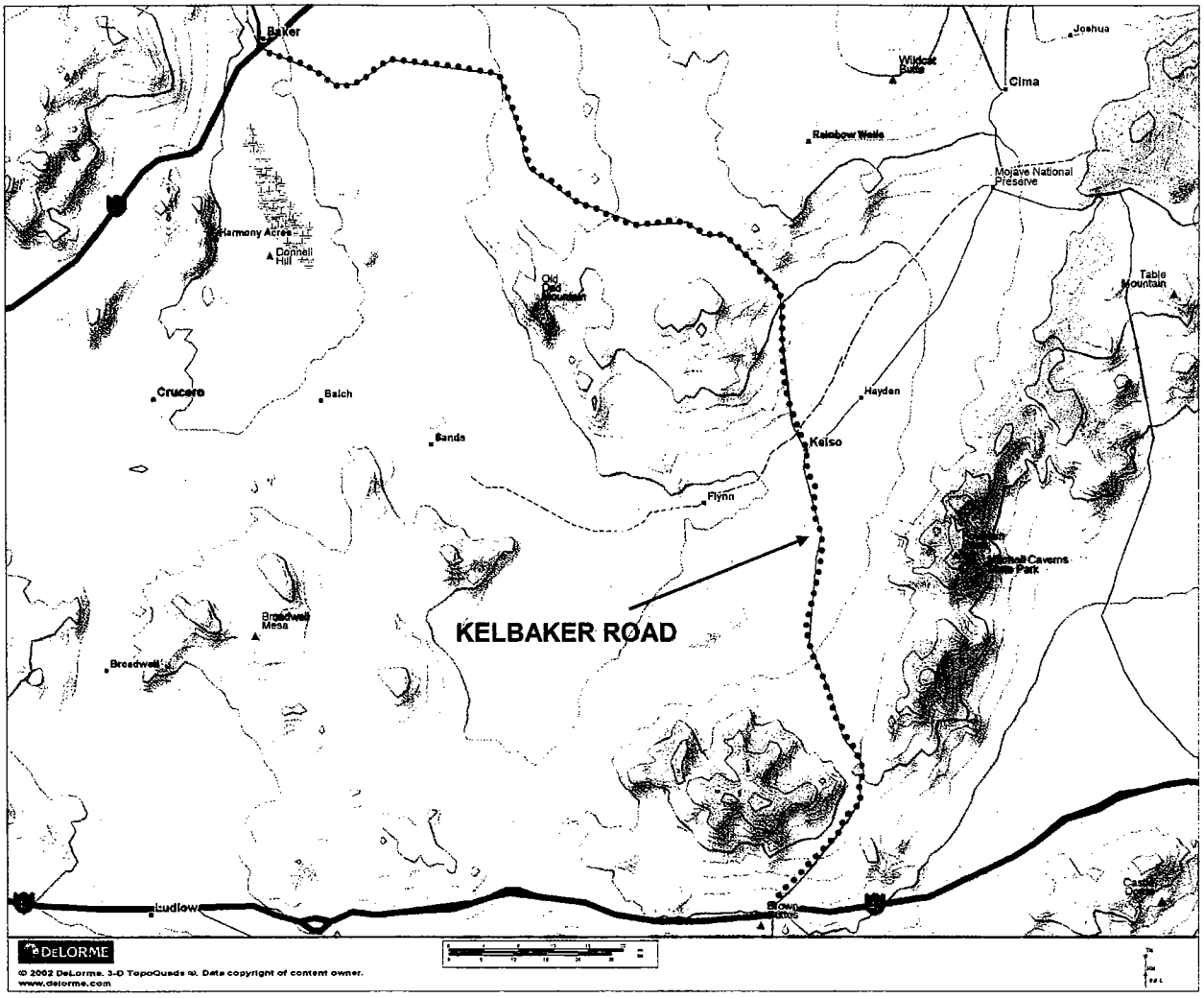
Halloran Summit Road is a short section as County Maintained Road System Road (CMRS) paved road just under 0.25 miles long from the intersection with Interstate 15 north and south. The Halloran Summit Road alignment, like Halloran Springs Road, was created in 1960/1961, during construction of the I-15 Freeway from Baker to Cima Road.



IVANPAH ROAD:

Description:

Ivanpah Road is a County Maintained Road System Road (CMRS) just under 30 miles long; an extension of the alignment of Lanfair Road from the "T" intersection with Cedar Canyon Road, the site of the now vanished settlement of Lanfair, north to the intersection with Nipton Road. Approximately 12 miles of Ivanpah Road is graded dirt, the remaining 17.71 miles of Ivanpah Road is paved from south of the rail tracks to the intersection with Nipton Road. Ivanpah Road has been maintained by the County of San Bernardino for over 75 years. Historically, today's Ivanpah Road was part of a much longer alignment maintained by the County of San Bernardino under the name "Goffs Road." Today, this "Historic" section of Goffs Road is known as Ivanpah Road (north end) and Lanfair Road (south end), and it extends from Goffs Road north to Nipton Road. The oldest known name for this alignment is the "Goodsprings – Goffs road" (Thompson-1921).

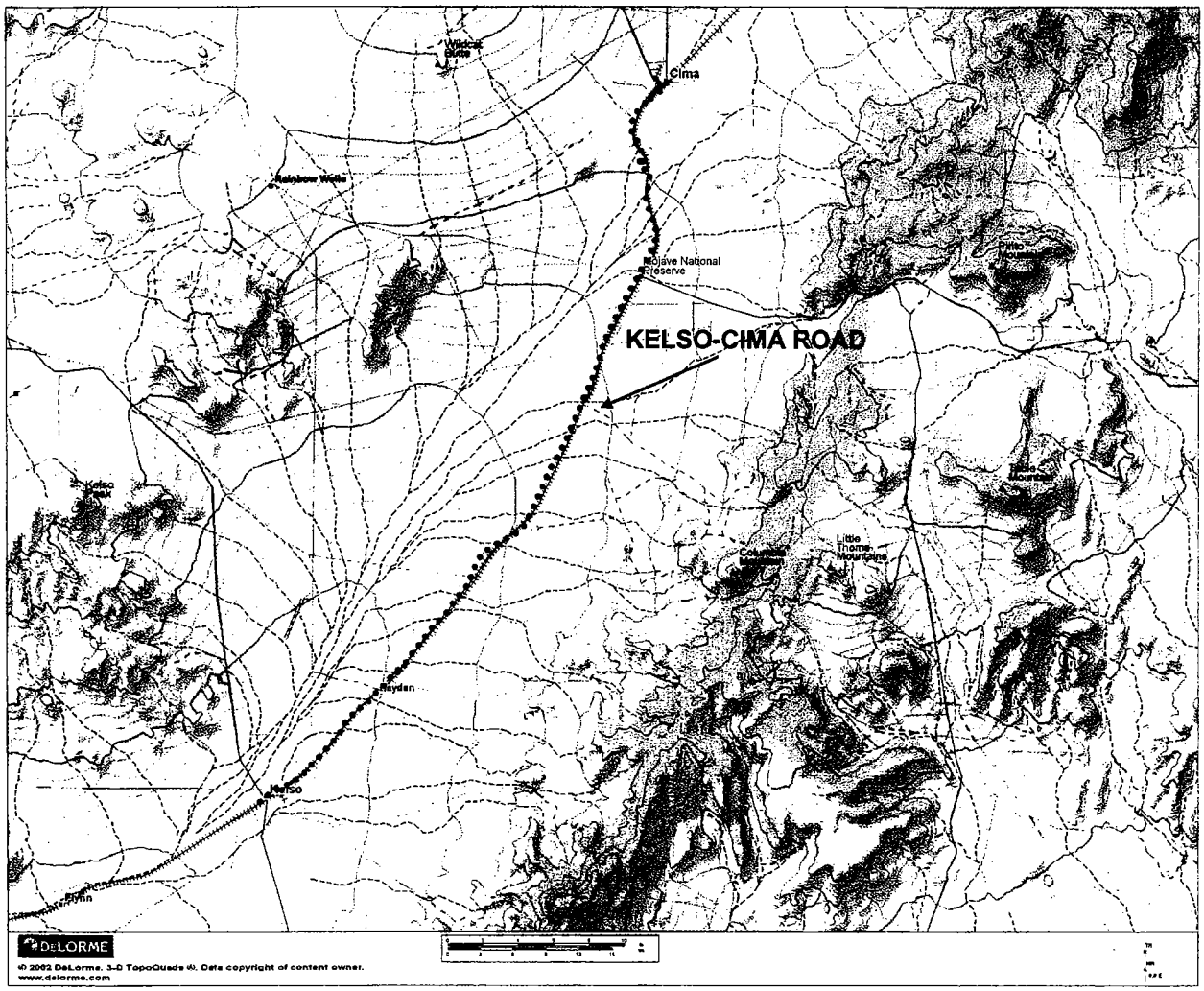


KELBAKER ROAD:

Description:

Kelbaker Road is a County Maintained Road System Road (CMRS) over 50 miles in length that originates on National Trails Highway and trends north to traverse the heart of the Mohave Preserve. For this description Kelbaker Road enters the Mojave Preserve north from Interstate 40 trends east and north to the Kelso Depot, crosses the rail tracks, then north over the saddle of the mountains whose highest point is Kelso Peak then north and west past cinder cones and lava flows down to the Mojave wash/Soda Lake intersecting with Interstate 15 and the junction with the road to Death Valley, SH 127 at Baker.

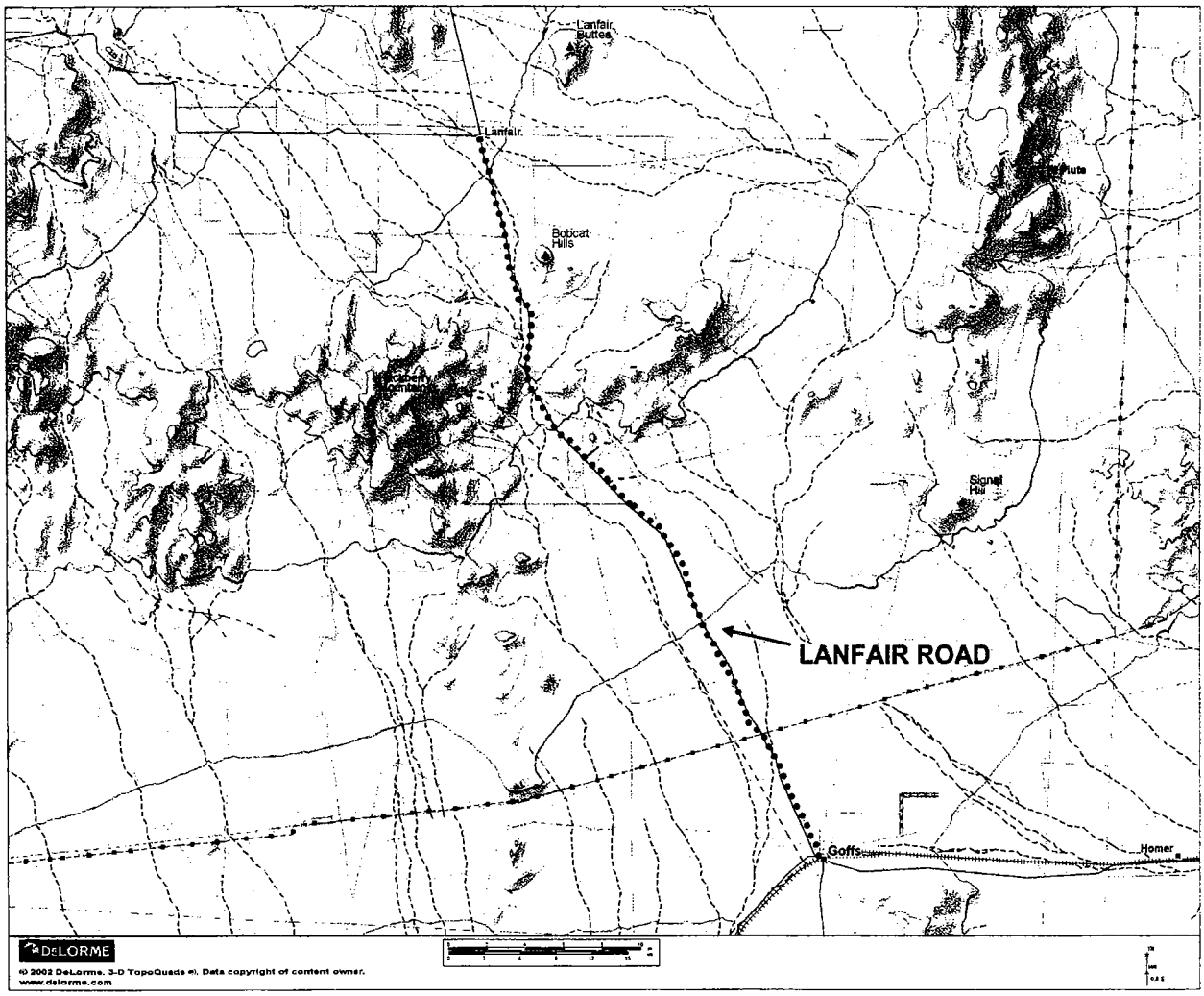
Today's Kelbaker Road is actually an amalgam of several earlier roads and road systems, several of which were maintained by both the County of San Bernardino and/or private enterprises over different periods of time. Roads of interest include Kelso Road, Cliff-Barnes Road, Vulcan Mine Road, "Old Government road to Old Fort Mohave" (Mojave Road), the road to Silver Lake, and an unnamed road leading from Bagdad on the A.T. & S.F. railroad northwards to Kelso. These disparate road alignments were combined by the County of San Bernardino into the present Kelbaker Road alignment in 1958, including a section of newly constructed roadway.



KELSO-CIMA ROAD:

Description:

Kelso-Cima Road is a County Maintained Road System Road (CMRS) paved road just under 19 miles long from the intersection with Kelbaker Road north and east to the junction with Cima Road and Morning Star Mine Road near the watershed between the Kelso Valley and the Ivanpah Valley. A significant portion of the alignment between Kelbaker Road north and east to Cima, parallels the rail tracks. Kelso Cima Road has been continuously maintained by the County of San Bernardino since prior to 1929. It was built circa 1905 as a construction road adjacent to the U.P.R.R tracks.

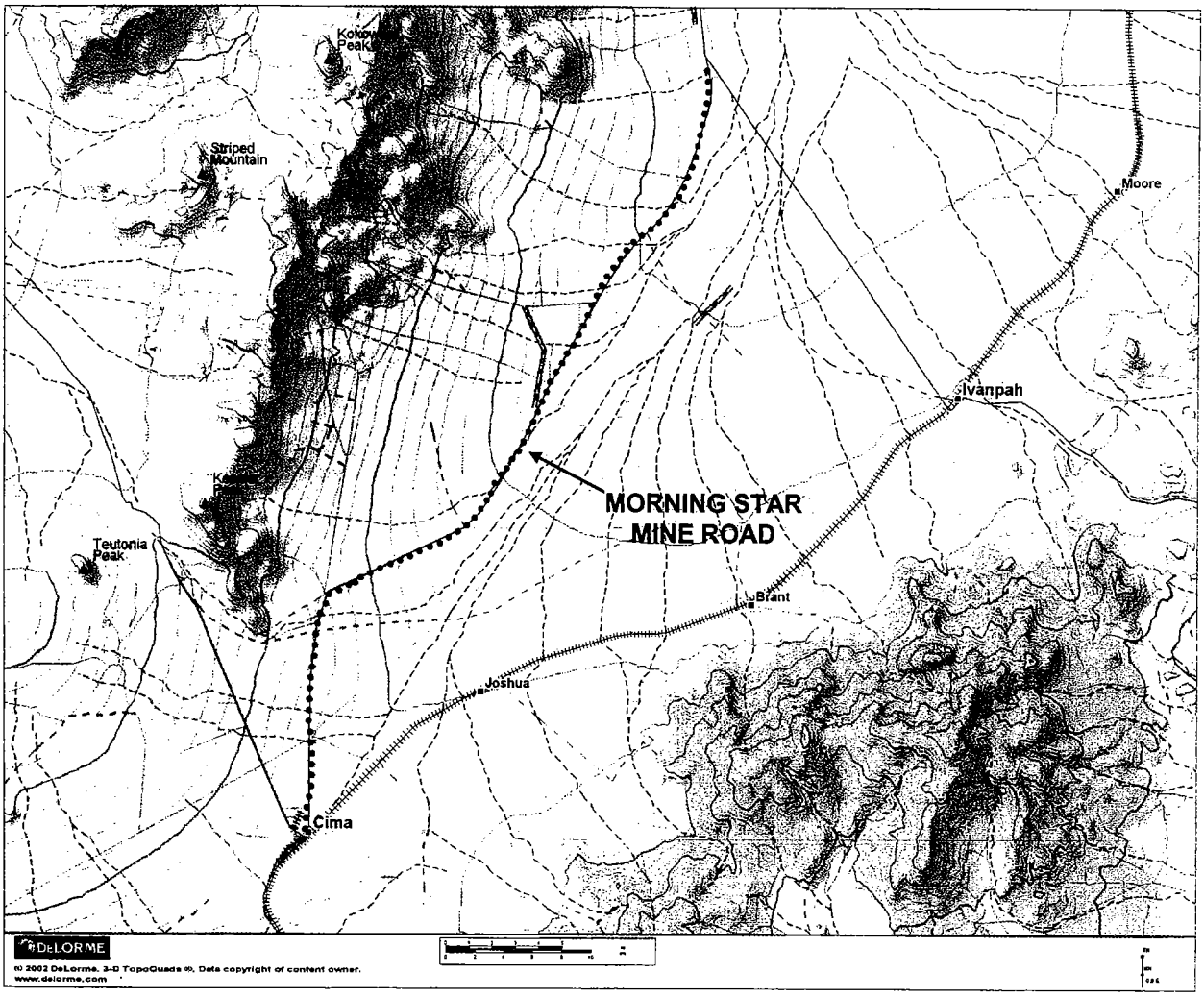


LANFAIR ROAD:

Description:

Lanfair Road is a County Maintained Road System Road (CMRS) just over 16 miles long from the "T" intersection with Goffs Road northwest to the intersection with Cedar Canyon-Ivanpah Roads; 10.33 miles of Lanfair Road is paved from Goffs Road north, the rest is graded dirt.

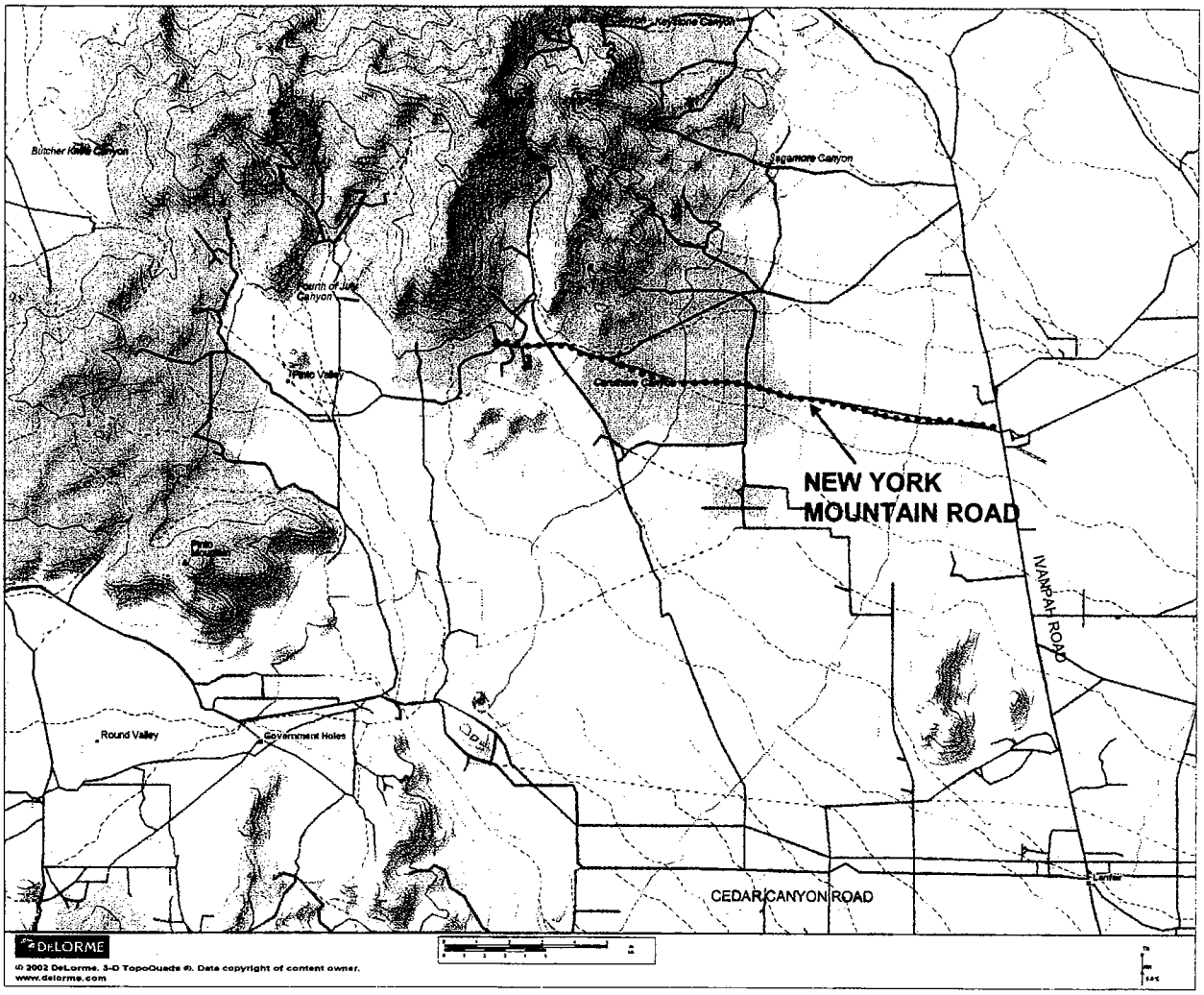
Lanfair Road has been maintained by the County of San Bernardino for over 75 years. Historically, today's Lanfair Road was part of a much longer alignment maintained by the County under the name Goffs Road. Today, this "Historic" section of Goffs Road is known as Ivanpah Road (north end) and Lanfair Road (south end), and it extends from Goffs Road north to Nipton Road.



MORNING STAR MINE ROAD:

Description:

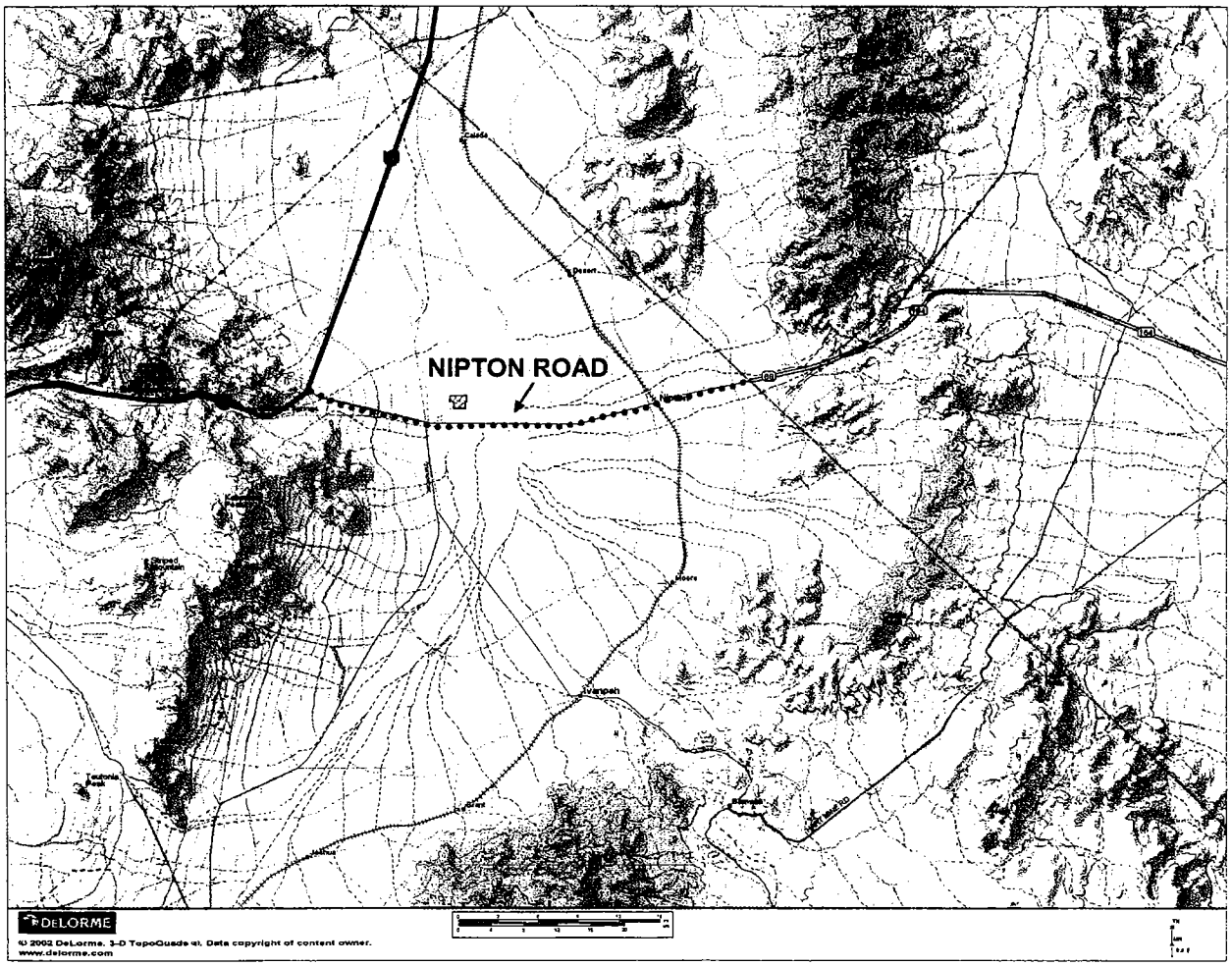
Morning Star Mine Road is a paved County Maintained Road System Road (CMRS) just over 15 miles long from the intersection with Kelso-Cima/Cima Road north and east to Ivanpah Road which it intersects as a "T". Portions of what is now known as Morning Star Mine Road have served as a traveled way for over 100 years. The alignment is depicted, at least in part, on the 1896 *Perris' Miners Map.*



NEW YORK MOUNTAIN ROAD:

Description:

New York Mountain Road is an unpaved County Maintained Road System Road (CMRS) just over six miles long from the intersection with Ivanpah Road which it intersects as a "T" west to where it provides access to a series of non-maintained trails and roads. New York Mountain Road is first listed in the 1935 Road Maintenance Book. There is no listing for New York Mountain Road in the 1934 Road Maintenance Book.



NIPTON ROAD:

Description:

Nipton Road is a paved County Maintained Road System Road (CMRS) just over 13 miles long from the intersection with Interstate 15 east to the Nevada State Line Ivanpah Road intersects as a "T" approximately five miles east of I-15.Nipton Road may be considered a boundary Road for the Mojave Preserve, separating the Preserve from the Ivanpah Dry Lake. The County of San Bernardino has maintained portions of that section of roadway leading from State Highway #31 (now the I-15) eastwards through Nipton to the state line (the present Nipton Road alignment) beginning as early as 1931.