

# ATTACHMENT 3

1 RALPH H. KELLER, County Counsel (205962)  
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5 Attorney for PLAINTIFF COUNTY OF INYO

6  
7 IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
8 FRESNO DIVISION  
9

10  
11 COUNTY OF INYO,

12 Plaintiff,

13 vs.

14 DEPARTMENT OF THE INTERIOR,  
15 et al.

16 Defendants, and

17 SIERRA CLUB, et al.

18 Defendant-Intervenors.  
19  
20

Case No.: 1:06-cv-1502 AWI-DLB

DECLARATION OF  
RALPH H. KELLER

Hearing Date: January 10, 2011  
Time: 1:30 p.m  
Room: 2

Anthony W. Ishii  
United States District Judge

21 I, Ralph H. Keller, declare as follows:

- 22 1. I am the attorney of record for Plaintiff County of Inyo in the above-captioned matter.  
23 2. This Declaration is submitted on behalf of Plaintiff and pertains to Plaintiff's Reply to  
24

25 Defendants' Opposition to Plaintiff's Motion for Summary Judgment and Plaintiff's Opposition to Federal  
26 Defendant's Cross-Motion for Summary Judgment filed concurrently herewith.

- 27 3. I have personal knowledge of the matters stated herein and, if called as a witness, could and  
28 would competently testify thereto.



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

COUNTY OF INYO, )  
)  
Plaintiff, )  
)  
vs. ) No. 1:06-CV-  
) 01502-AWI-DLB  
DEPARTMENT OF THE INTERIOR, DIRK )  
KEMPTHORNE, in his capacity as )  
Secretary of the United States )  
Department of the Interior, NATIONAL )  
PARK SERVICE, MARY A. BOMAR, in her )  
capacity as Director, National Park )  
Service, JAMES T. REYNOLDS, in his )  
capacity as Superintendent, Death )  
Valley National Park, )  
)  
Defendants, and )  
)  
SIERRA CLUB, et al., )  
)  
Defendants-Intervenors. )  
)

DEPOSITION OF AINSLEY HOLESO

Death Valley, California

Thursday, June 10, 2010

JERI BETH RICH  
Certified Shorthand Reporter, CSR No. 4670  
Post Office Box 1481, Bishop, California 93515-1481  
(760) 872-4442

1 APPEARANCES:

2

3 FOR THE PLAINTIFF:

4 INYO COUNTY OFFICE OF THE COUNTY COUNSEL  
5 BY: RALPH H. KELLER  
6 County Counsel  
7 Post Office Box M  
8 224 North Edwards Street  
9 Independence, California 93526  
10 (760) 878-0229

8

9 FOR THE DEFENDANT DEPARTMENT OF THE INTERIOR:

10 U.S. DEPARTMENT OF JUSTICE  
11 ENVIRONMENT & NATURAL RESOURCES DIVISION  
12 BY: BRUCE D. BERNARD  
13 Trial Attorney  
14 1961 Stout Street, 8th Floor  
15 Denver, Colorado 80294  
16 (303) 844-1361

14

15 FOR THE DEFENDANT SIERRA CLUB:

16 EARTHJUSTICE  
17 BY: EDWARD B. ZUKOSKI  
18 Staff Attorney  
19 1631 Glenarm Place, Suite 300  
20 Denver, Colorado 80202-4303  
21 (303) 623-9466

19

20

21 ALSO PRESENT:

21

22 JOE AUGUSTINE TILMAN  
23 National Park Service

23 BERNARD THEODORE PEDERSEN  
24 Director of Public Works, County of Inyo

24

25 LEONARD HUARTE

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I N D E X

AINSLEY HOLESO

By Mr. Keller	5, 12, 20, 24
By Mr. Bernard	8, 17, 21, 25
By Mr. Zukoski	10, 20, 24

EXHIBITS: NONE

UNANSWERED QUESTIONS: NONE

INFORMATION TO BE INSERTED: NONE

## 1 I N D E X

2 Death Valley, California; Thursday, June 10, 2010

3  
 4 (Proceedings were had on-site at various  
 5 locations in Death Valley on Thursday, June 10, 2010.  
 6 GPS coordinates were taken at these locations, said  
 7 coordinates being referenced herein. Photographs were  
 taken using a digital camera, each digital photograph  
 bearing numbers, said numbers being recited for the  
 record. The photographs were not provided and are not  
 incorporated herein.)

8

9	SITE	GPS Coordinates	Photograph
10	1	13555709.54' N 1437117.58' E	100_4318 S
11	2	13555554.11' N	100_4322 NW
12		1437139.83' E	100_4323 N
13			100_4324 S
14	3	13555187.55' N	100_4325 SE
15		1437265.96' E	100_4326 N
16			100_4327 NW
17	4	13555109.08' N	100_4329 SE
18		1437513.61' E	100_4330 NW
19	5	13554311.95' N	100_4331 SE
20		1438472.34' E	100_4332 S
21			100_4333 N
22			100_4339
23	6	13553505 .16' N	100_4334 N
24		1438736.41' E	100_4335 S
25			100_4336 E
26	7	13553828.06' N	100_4337 W
27		1439270.52' E	100_4338 SE
28	8	13554589.85' N	100_4340 N
29		1438287.05' E	100_4341 NW
30	9	13555151.49' N	100_4342 S
31		1437402.73' E	100_4343

1                               Death Valley, California

2                               Thursday, June 10, 2010

3

4                               (Discussions were had with other witnesses  
5 regarding the location, which were reported but are not  
6 transcribed herein, after which the following  
7 proceedings were had at point one:)

8                               MR. KELLER: Why don't we start?

9                               Okay. We'll now begin the deposition of --  
10 I'm sorry --

11                              MR. BERNARD: We'll need to swear Mr. --

12                              MR. KELLER: The last name?

13                              MR. BERNARD: Ainsley. Ainsley Holeso.

14                              MR. KELLER: Could you spell that?

15                              THE WITNESS: A-i-n-s-l-e-y, H-o-l-e-s-o.

16

17   AINSLEY HOLESO,  
18 called as a witness by the Plaintiff, being first  
19 duly sworn, was examined and testified as follows:

20

21   EXAMINATION

22 BY MR. KELLER:

23                              Q. And, Mr. Ainsley, do you work for the Park  
24 Service?

25                              A. Yep. I'm the roads foreman there. Been there

1 the asphalt, do what they call a cold replacement  
2 recycling, and go ahead and pave over it.

3 We look at drainage issues, armament  
4 (phonetic) issues, low water crossings, things like  
5 that.

6 Q. (BY MR. BERNARD) Okay. And standing here at  
7 the intersection of the Last Chance Wash and the Willow  
8 Spring Wash, you do not see any indications that there  
9 was mechanical construction or maintenance of the  
10 claimed road heading up Last Chance Wash?

11 A. Not any clear evidence, let's put it that way,  
12 no clear evidence of any mechanical work being out  
13 here.

14 MR. BERNARD: I think that's all I have.

15

16 EXAMINATION

17 BY MR. ZUKOSKI:

18 Q. Mr. Holeso, do you see any evidence of a place  
19 where vehicles repeatedly turned off of the Willow  
20 Springs Road into the Last Chance Wash where there's  
21 evidence of repeated vehicle use, like a two-track?

22 A. I would say yes, but from our walk here today,  
23 at this time seems like it's not only in one location,  
24 there's -- I would say probably maybe a couple of them.

25 Q. So you see places where vehicles pulled off

1 the road?

2 A. Yes. There's ruts right down there, which --  
3 it's further down than the 150 feet that we talked  
4 about. And then of course there's some evidence just  
5 right where that rock is there, the 150-foot point.  
6 But that's about the only -- from what I seen. I don't  
7 physically see any evidence of people pulling off this  
8 section here.

9 Q. Okay. Do you see -- it looks like evidence of  
10 repeated vehicle pull-offs?

11 A. I wouldn't say repeated but there's evidence  
12 of a vehicle pulling off, let's put it that way.

13 Q. Okay.

14 A. The reason why I say that is there's a couple  
15 areas where we can actually see a wheel rut actually  
16 cutting the bank or the wind row.

17 Q. But you think it's one vehicle maybe pulled  
18 off?

19 A. Yeah.

20 Q. Do you have any idea if that's something that  
21 happened fairly recently, in the last ten or 20 years?

22 A. I couldn't be -- I couldn't answer that  
23 question.

24 MR. ZUKOSKI: Okay.

25 ///

1 EXAMINATION

2 BY MR. KELLER:

3 Q. Mr. Holeso, looking across the Willow Creek  
4 Wash, do you see the sign, a marker sign, put there by  
5 the Park Service?

6 A. Yes.

7 Q. In the middle of the Last Chance Road?

8 A. Yes.

9 Q. Do you see, looking up there -- have you had a  
10 chance to wander around in that general area and  
11 examine that area?

12 A. Within the general area, yes.

13 Q. Do you see signs of a road there, whether  
14 mechanically constructed or not?

15 A. There's evidence, there is evidence of a road.  
16 But I don't see any sign of any mechanical work to  
17 establish or maintain the road. I mean you can see by  
18 the wear -- I mean there's evidence where there's wear.  
19 Where people utilize a road will create a road, that  
20 you can see evidence of wear.

21 Q. And, in your opinion, does it take repeated  
22 trips to create that kind of wear to establish a road  
23 in that way?

24 A. Yeah.

25 Q. By vehicles?

1 A. Yes.

2 Q. Do you know how long this road has been  
3 closed, how long that sign has been in place that  
4 prevents passage?

5 A. I was just informed it was -- I guess the sign  
6 was placed there in '95. Exactly when I have no idea.

7 Q. So then -- it is unusual in the desert -- I  
8 mean this means that road hasn't, assuming nobody has  
9 driven on that road for 15 years, is it unusual to be  
10 able to see signs of roads that remain after being  
11 closed for 15 years?

12 MR. ZUKOSKI: Objection; assumes facts not in  
13 evidence.

14 Q. (BY MR. KELLER) Well, is it unusual to,  
15 generally, for desert roads, to see signs of the road  
16 remaining after a road's been closed for 15 years?

17 A. Oh, yes.

18 MR. BERNARD: Objection; ambiguous, lacks  
19 foundation.

20 You can go ahead and answer now.

21 Q. (BY MR. KELLER) You spend a lot of time in  
22 the desert working on desert roads in Death Valley?

23 A. Yes, I do.

24 Q. Are there many roads in the Park that have  
25 been closed in -- for 15 years since the Park

1 EXAMINATION

2 BY MR. KELLER:

3 Q. Okay. Mr. Holeso -- did I say it right that  
4 time?

5 Yep. Yep.

6 Q. Sorry.

7 MR. BERNARD: We should do Mr. Huarte first.

8 (Discussions were had with other witnesses  
9 regarding the location, which were reported but are not  
10 transcribed herein, after which the following  
11 proceedings continued at point two:)

12 MR. KELLER: Okay. We'll call Mr. Holeso,  
13 continue your deposition.

14 Q. (BY MR. KELLER) Looking to the northwest, the  
15 area we've been talking about as we stand here, do you  
16 have any opinion as to whether that may have been a  
17 route at one time?

18 A. I would say, if it would, it would be more of  
19 a Jeep trail, not any kind of established road.

20 Q. Do you see any -- any current signs of vehicle  
21 passage or -- in the recent past?

22 A. No.

23 MR. KELLER: I don't have any other questions.

24 ///

25 ///

1 A. No.

2 MR. BERNARD: That's all I have.

3 Thank you.

4 MR. ZUKOSKI: Nothing from me.

5 (Discussions were had with other witnesses  
6 regarding the location, which were reported but are not  
7 transcribed herein, after which the following  
8 proceedings were had at point four:)

9 MR. KELLER: I don't have anybody else that  
10 I --

11 MR. BERNARD: I just have maybe one for  
12 Mr. Holeso.

13

14 EXAMINATION

15 BY MR. BERNARD:

16 Q. Mr. Holeso, standing at this point four under  
17 this pinion tree with some cut limbs, do you observe  
18 any signs of mechanical construction or maintenance in  
19 the -- in the wash itself or the claimed road surface?

20 A. No.

21 MR. BERNARD: All right. That's all I have.

22 MR. KELLER: I have nothing.

23 MR. ZUKOSKI: Nothing for me.

24 ///

25 ///

1 EXAMINATION

2 BY MR. KELLER:

3 Q. I'd just ask, looking up the hill, does that  
4 appear to be vehicle tracks going up the hill?

5 A. What appears to be a two-track.

6 MR. KELLER: Thank you.

7 No more questions.

8

9 EXAMINATION

10 BY MR. ZUKOSKI:

11 Q. Mr. Holeso, do you have any idea when that  
12 two-track, if it is one, would have been created?

13 A. No. I can't -- there's no way I could answer  
14 that.

15 (Discussions were had with other witnesses  
16 regarding the location, which were reported but are not  
17 transcribed herein, after which the following  
18 proceedings were had at point six:)

19

20 EXAMINATION

21 BY MR. KELLER:

22 Q. Mr. Holesco --

23 MR. BERNARD: Holeso.

24 MR. KELLER: I apologize, both in advance.

25 THE WITNESS: You'll get it right. By the

1 time we're done you'll get it right.

2 Q. (BY MR. KELLER) Okay. We're standing at point  
3 six. We walked up out of the wash from point five.  
4 Did that appear to you to be a two-track road coming up  
5 from there?

6 A. There's signs of it, yeah.

7 Q. Signs of vehicle passage --

8 A. Yeah.

9 Q. -- coming up here?

10 And did you see any signs of mechanical  
11 construction?

12 A. No.

13 MR. KELLER: I don't have any other questions.

14

15 EXAMINATION

16 BY MR. BERNARD:

17 Q. So, Mr. Holeso, when you agreed with  
18 Mr. Keller that you saw signs of a -- what he called a  
19 two-track road, I think?

20 A. Uh-huh.

21 Q. What you're saying is a two-track travel  
22 route; is that right?

23 A. That's correct.

24 Q. And could that have been created just by the  
25 passage of vehicles as opposed to any sort of

1 construction?

2 A. From -- from what I've seen, it looks like it  
3 could -- it, you know, it was possibly created by  
4 passage of vehicles versus any type of machine work.

5 Q. And you did not see any signs of --

6 A. No.

7 Q. -- machine work or mechanical work --

8 A. No.

9 Q. -- between points five and six?

10 A. No, I haven't.

11 MR. BERNARD: Thank you.

12 MR. ZUKOSKI: I have nothing.

13 MR. BERNARD: I guess I do have just one last.

14 Q. (BY MR. BERNARD) Mr. Holeso, in your  
15 experience with roadwork and heavy equipment, if a road  
16 is graded on -- in an upland area like this outside of  
17 a wash, would you expect the evidence of that grading  
18 to persist for quite some time?

19 A. It depends on what you mean by "quite some  
20 time," because, you know, I guess we're talking about,  
21 what, 30, 40-year span. And based on the conditions  
22 that you're -- that we have up here, and we've been  
23 involved both in the winter and during the summers so,  
24 you know, with the winds and everything, it could be an  
25 erosion factor involved in it as well.

1 Q. All right. Thank you.

2 A. Whether it be weather erosion or from the  
3 rains, heavy rains.

4 Q. It could possibly have been erased in 30  
5 years?

6 A. (There was no audible response.)

7 MR. BERNARD: All right.

8 Thank you.

9 MR. KELLER: I have nothing.

10 MR. ZUKOSKI: Nothing.

11 (Discussions were had with other witnesses  
12 regarding the location, which were reported but are not  
13 transcribed herein, after which the following  
14 proceedings were had at point seven:)

15 MR. BERNARD: All right. So back on with  
16 Mr. Holeso.

17

18 EXAMINATION

19 BY MR. BERNARD:

20 Q. Mr. Holeso, did you measure the distance  
21 between point six and point seven?

22 A. Yes.

23 Q. And what did you measure that distance to be?

24 A. Five-hundred and fifty feet.

25 Q. Okay. And when you look south from this

1 point, do you see any indication of anything that could  
2 have been a road or a travel way of some sort?

3 A. No.

4 MR. BERNARD: All right. Thank you.

5 MR. KELLER: No questions.

6

7 EXAMINATION

8 BY MR. ZUKOSKI:

9 Q. Mr. Holeso, what did you use to measure the  
10 distance?

11 A. A measuring wheel.

12 MR. ZUKOSKI: Okay. No further questions.

13 MR. KELLER: Let me take another shot.

14

15 EXAMINATION

16 BY MR. KELLER:

17 Q. I mean do you see what might be a rough foot  
18 path that heads down from this location?

19 A. I would say it may be possible but it looks  
20 more, to me, like some kind of a deer trail or animal,  
21 some kind of animal trail.

22 MR. KELLER: Thank you.

23 MR. BERNARD: I think that's it.

24 ///

25 ///

1 point --

2 A. Yes.

3 Q. -- nine from point six?

4 A. Yes.

5 Q. And what is your measuring wheel indicating --

6 A. Two thousand one hundred and forty-six feet.

7 Q. Okay. Did you also -- we didn't get a reading  
8 off your measuring wheel at point four, which is the  
9 pinion tree with the cut limbs. Did you measure the  
10 distance from this point nine back up to point four?

11 A. Yes, I did.

12 Q. And what distance did you measure?

13 A. One hundred and nineteen feet.

14 Q. Okay. And what instrument did you use to take  
15 that measurement?

16 A. Just the tape measure, a cloth tape measure,  
17 150 foot.

18 Q. Okay. Did you also measure the height of this  
19 rock drop-off?

20 A. Yes, I have.

21 Q. What did you measure that height to be?

22 A. Roughly about 22 inches.

23 Q. Thank you.

24 And did you measure the width across the rock  
25 at this location?