Your Access Rights on Public Land: A Practical Legal Guide

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State Senate District 14
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INDEX

- Summary……. 2
- Access Law in Nevada……. 2
- Unlawful Inclosures Act……..3
- Nevada Law Copies UIA…….5
- Abatement of Nuisances……..5
- RS2477……..8
- Background of RS2477…….8
- Federal Case Law…….10
- Additional Federal Laws…….14
- Nevada State Law (NRS)……15
- Nevada Case Law……18
- Prescriptive Easements……19
- Nevada County Actions……20
- "So, why is there still a problem?"…….21
- False Defenses……23
- Enforcement……26
- Conclusion……27

Front Top: BLM Sign, Elko County, NV
Front Bottom: Illegal signs and a locked gate on a public road, Elko County, NV

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SUMMARY

Federal and State law require full access across private property when roads go through to public land. Judicial court decisions at all levels of government confirm the constitutionality of such law. The Nevada Legislature has codified federal law, and federal case law, protecting your right to access the public lands. The Nevada Legislature in 2019 made illegal the locking of gates on such access roads, declaring such illegal lockouts "public nuisances". The legislature criminalized such illegal road enclosures, with up to six months in jail and up to a $1,000 fine for a first offense. Public nuisances can be abated by either legal or private action. Through Federal Law RS2477, the Nevada Legislature has declared almost all roads in Nevada as public rights of way. This report provides a detailed analysis of this legal background.

ACCESS LAW IN NEVADA

Nevadan's and ALL Americans are blessed with an enormous "public domain". Outdoor opportunities abound on this land mass owned by you and I. Protecting your full right to access *your own public land* is, as you will read, fully codified in federal, state, and even county law.

Despite a complete body of law protecting your right of passage and use, illegal lockouts abound, and I believe the primary problem is, in general, a very limited understanding of the full scope of these laws by the people responsible to enforce them. The purpose of this report is to provide a synopsis for the legal community's use.

As an avid Nevada outdoorsman, this issue is one I have taken great interest in. And as a Nevada Legislator since 2010, I have worked on and sponsored several of the laws listed. Let's start with federal law.

THE "UNLAWFUL INCLOSURES ACT"

BACKGROUND: Barbed wire was first invented and became readily available in the 1870s. With its low cost, large areas of land could be fenced inexpensively and soon many miles of private and public land were in effect landlocked by such fencing. (In Nevada most privately owned land, then and now, is the watered bottomlands, while the upper slopes and mountains remain public land, used primarily for grazing). By running these fences entirely on private property, access to the public domain was blocked, reducing competition and allowing a monopoly of public resources by the private landowners.

This was not unique to Nevada. The US Congress, responding to public outcry, passed the Unlawful Inclosures Act (UIA) (43 USC 25) in 1885, making it illegal to use fencing on *private* property in such a way as to block access to the *public* domain.

The UIA is clear: *"…no person, by force, threats, intimidation, or by any fencing or inclosing, or other unlawful means, shall prevent or obstruct any person from entering upon…public land…or shall prevent or obstruct free passage or transit over or through the public lands."*

"Cattle barons" challenged the right of Congress to tell them what they could or could not fence on their private property. This legal challenge made it to the US Supreme Court in 1897, and in "Camfield vs United States", the court ruled that yes indeed, Congress had every right to outlaw such fencing. The decision states that "*...the Unlawful Inclosures Act is constitutional…the right to erect what he pleases on his own land will not justify him* [the private property owner] *in maintaining a public nuisance…no person maintaining such a nuisance can shelter himself behind the sanctity of private property…Congress exercised its constitutional right of protecting the public lands from nuisances* [in this case, fences] *erected on adjoining*

[private] *property…Congress has the duty of safeguarding the public interest",* and that *"Congress would be recreant* [cowardly] *in its duties as trustee for the people of the United States to permit any individual or corporation to monopolize…*" the public domain.

In "Camfield vs United States", the United States Supreme Court cited verbatim *"Sic utere tuo ut alienum non leadas",* Latin for *"Use your own property in such a way as not to injure that of another".* This Latin phraseology is a direct quote from the "Father of the common law", Sir Edward Coke (1552-1634). Coke, [pronounced Cook], his "Selected Writings of Sir Edward Coke", along with Sir William Blackstone's (1723-1780) "Commentary on the Laws of England" are seminal works on common law, both used to this day.

Of course, no law was needed for dealing with illegal fencing done on PUBLIC land as the government already had full authority there. The UIA was specifically targeting fencing done on PRIVATE land. Such fencing was made illegal if done in such a way as to block others, most commonly at that time homesteaders and smaller livestock operators, from accessing and using public lands. Such fencing was often done in clever ways on private property to intentionally monopolize usage of public domain land - lands that were intended to be open and for the use of all. It is very important to understand the UIA makes it illegal to use fencing on PRIVATE land to block access to PUBLIC land. (Indeed, this became such a huge problem that President Theodore Roosevelt in his 1907 national "State of the Union" speech directed then Secretary of the Interior Ethan Hitchcock to have all such fences removed.)

The UIA was the legal basis cited in 2023 by Chief U.S. District Judge Scott W. Skavdahl in a recent landmark decision, "Iron Bar Holdings v Cape. et al", dealing with the illegal fencing of "checkerboard land" in Wyoming. In a nutshell, Judge Skavdahl simply reinforced what the plain language of the UIA said: it is and remains a crime to use fencing on

PRIVATE land in such a way as to block access to PUBLIC land. His ruling was unanimously upheld by the U.S. 10th Circuit Court of Appeals in March 2025. (Hence the need for the second printing of this paper). There are a whole series of court rulings on the UIA, (See "Federal Case Law", Page 10) all of which reinforce both the constitutionality of the UIA and the illegality of fencing private property in such a way as to block access to the public domain.

NEVADA LAW COPIES UIA

The Nevada Legislature in 2019 copied almost verbatim, in Senate Bill 316, the language of the UIA, and the United States Supreme Court ruling in "Camfield" vs United States". Senate Bill 316 is now Nevada Revised Statute (NRS) 202.450.5: *"It is a public nuisance for any person: (a) by force, threat or intimidation, or by fencing or otherwise enclosing, or by any other unlawful means, to prevent or obstruct the free passage or transit over or through any:*

(1) *Highway designated* a *United States Highway*

(2) *Highway designated* as a *state highway pursuant to NRS 408.285.*

(3) *Main, general or minor county road designated pursuant to NRS 403.170.*

(4) *Public road,* as *defined in subsection 2 of NRS 405.191.*

(5) *State land or other public land; or*

(6) *Land dedicated to public use; or*

(b) To knowingly misrepresent the status of or assert any right to the exclusive use of and occupancy of such a highway, road, state land or other public land or land dedicated to public use."

ABATEMENT OF NUISANCES

The right to abate a nuisance, especially in our example a *public* nuisance, is defined by Ballentine's law dictionary as: "The *extinction or termination of a nuisance whether effected physically by or under the direction of the party injured by the nuisance; to quash, beat down, or destroy."*

Abatement of a Nuisance is an ancient Common Law principle. Sir William Blackstone in his "Commentaries on the Laws of England", published in 1770, gives a highly pertinent example of such a nuisance and the remedy: "*At present I shall only observe, that whatsoever unlawfully annoys or does damage to another is a nuisance; and such nuisance may be abated, that is, taken away or removed, by the party aggrieved thereby… if a new gate be erected across the public highway, which is a common* [public] *nuisance, any of the King's subjects passing that way may cut it down, and destroy it. And the reason why the law allows this private and summary method of doing oneself justice, is because injuries of this kind, which obstruct or annoy…require an immediate remedy; and cannot wait for the slow progress of the ordinary forms of justice."*

Blackstone further elaborates: *"If I have a way* [a "way" is a road or passage of any kind] *annexed to my estate across another's land, and he obstructs me in the use of it, wither by totally stopping it or putting logs across it or plowing over it, it is a nuisance for in the first case I cannot enjoy my right at all, and in the other I cannot enjoy it so commodiously as I ought."*

As the owner of public land, you have this exact right to abate nuisances that block access to your land as well. The right to abate a nuisance includes the concept of "self-help", the right of an individual to abate a nuisance (i.e. get rid of them).

Sir Edward Coke also notes the right of ANY INDIVIDUAL to privately REMOVE a nuisance in certain cases.

"*Reader, there are two ways to abate a nuisance-one by legal action…or the party aggrieved may enter* [the property of another] *and abate the nuisance himself."*

Nevada from its inception recognized the right of the people to exercise these ancient common law rights.

NRS chapter 1.030: "*The common law of England…shall be the rule of decision in all the courts of this State."*

This right is reaffirmed in 19th century American courts as well : "In case of violation of a right *like that of an easement by the wrongful acts of another in erecting upon his own land that which causes such injury*, the party whose right is thereby invaded is not obligated to seek his redress by a suit at law, or proceedings in equity, *but may vindicate the same by his own act, by entering upon the land of such wrong-doer, and* ***abating****, as it called, the cause of such injury."* (Emphasis mine). For even greater detail see: "The Law of Easements and Servitudes, Section six, Chapter "Remedy by abatement for injuries to easements" page 675.

Thus, under Nevada law, as well as the ancient common law rights recognized by Nevada law, for abating a nuisance, anyone coming to a locked gate illegally blocking access to the public domain, is fully within his or her RIGHT to remove the obstruction; not only can the lock be removed but, following Blackstone, the entire gate could legally be removed as well.

Following the passage of SB 316 in 2019 by the Nevada Legislature, at least one District Attorney, following Blackstone's clear directive on the right to fully destroy any gate erected on a public road, felt ANY gate, locked or otherwise, would constitute a public nuisance.
As gates are a necessity for especially livestock, the 2021 Legislature passed NRS 202.450.6. It reads "An <u>UNLOCKED</u> gate which is erected and maintained across a road…described in (NRS 202.450.5) does not in and of itself constitute a public nuisance."

Thus, under both Nevada law as well as your ancient inherited common law rights for abating a nuisance, anyone coming to an illegally locked gate is fully within his or her RIGHT to remove the obstruction; gates on rights of way and public easements, to be legal, must be

UNLOCKED. Of course, the corollary of that is a LOCKED gate on an easement to the public domain is a public nuisance and can be abated by any citizen under the rules of the common law.

NRS 202.450.6 : "An UNLOCKED gate…does not, in and of itself…constitute a public nuisance…"

"RS2477"

Another key federal law is Revised Statute 2477, (originally 43 USC 932). About 87% of Nevada's land mass is under federal control. Most of this is under "multiple use" management by the Bureau of Land Management (BLM) and the United States Forest Service (USFS). While these lands are federally managed, The US Congress gave to the State of Nevada the RIGHT to control, own and manage our extensive road network, thus further protecting, through Nevada State law, full public access.

BACKGROUND of RS2477

While there are several federal laws governing access to the Public Domain, the fundamental law used by the Nevada Legislature is part of the Mining Act of 1866. From this 1866 law came what is today known as Revised Statute 2477 (RS2477), (originally 43 USC 932) a single sentence legal principle ("*The right of way for construction of highways across public land not otherwise reserved for public purposes is hereby granted"*) which grants full access rights to ALL users of the public lands. Additionally, RS2477 gave the STATES the right to formally create, define, control and protect the full use of the road networks. RS2477, as well as the UIA, are the foundations for one of the great benefits of living in Nevada - the ability to use these public lands.

That is, if access to those lands remain open. By the last decades of the 20th Century, this right of access was seriously eroding. Following the passage of the Federal Land Policy Management Act (FLPMA) in 1976, Federal Land agencies were, primarily through “travel management plans”, closing access across the state.

The “Sagebrush Rebellion”, which started in Nevada in the late 1970s, had as a major component the goal of maintaining and enhancing the right to access public lands. Road closures by Federal Agencies had become common and there was strong public support to protect and even expand access to the “Public Domain”.

RS2477 in a nutshell made all roads, and even trails, public rights of way - PERMANENT public rights of way. RS2477 was repealed in 1976, and replaced by the FLPMA. However, all rights of way in existence at the time of passage of FLPMA were “grandfathered” in. Thus, all roads that existed prior to 1977 - which is almost every single backcountry road now in existence in Nevada - remain legal public easements.

RS2477 is a “self-executing” law. The existence of a road, all by itself, without any formal or legal acknowledgement, constitutes its legal recognition. There is no legal process required before an RS2477 right of way is fully granted and made valid. And no federal agency with very minor exceptions has the authority to close an RS2477 road.

“Highways” today make us think of large paved major roads. However, “highways” as in the original RS2477 language legally means ALL types of access travel ways used by man, everything from jeep trails to our modern definition of major public road networks. Thus, under RS2477 and all the body of law supporting it, every type of “highway” is fully open and designated for PUBLIC use.

RS2477 rights of way affect the "servient estate", meaning the owner of the land the road passes over. Most of the time in Nevada, that means the federal government. However, when what was originally land owned by the federal government has passed into private hands, the same rules for any such road crossing the servient estate remain. Thus, a road crossing *private* property that provides access to *public* property remains a legal right of way if such a road existed at the time of such legal transfer. Thus, RS2477 enhances and allows STATE Governments to use not only the UIA, but RS2477, to protect access rights from closure by both private and public land managers. RS2477, like the UIA, also makes it illegal to use fencing or similar obstacles on private land to block public access.

FEDERAL CASE LAW

There is a very substantial body of Federal case law. These further reinforce and bolster the legal limitations for federal land management agencies as well as private landowners in their respective attempts to close public access.

A limited list includes:

1. Camfield vs. United States (1897)
2. Iron Bar Holdings v Cape, et al. (2025)
3. Golconda Cattle Co. vs United States (1912)
4. Sierra Club v Hodel (1988)
5. Mackay vs Uinta Development Corp. (1914)
6. Utah vs. Andrus (1979)
7. Stoddard vs United States (1914)
8. United States ex rel. Bergen vs. Lawrence (1985)

#1 Camfield v United States
(United States Supreme Court, 1897)

"*...the Unlawful Inclosures Act is constitutional…the right to erect what he pleases on his own land will not justify him* [the private property owner] *in maintaining a public nuisance…no person maintaining such a nuisance can shelter himself behind the sanctity of private property …Congress exercised its constitutional right of protecting the public lands from nuisances* [in this case, fences] *erected on adjoining* [private] *property*…"

#2 Iron bar Holdings LLC VS Cape, Smith, Yeomans and Slowensky
(U.S. 10th Circuit Court of Appeals, 2025)

"Whatever the UIA's merits today, it - and the case law interpreting it - remain good federal law…the abatement of a nuisance…did not take any property right possessed by the private owner…all Iron Bar has lost is the right to exclude others from the public domain-a right it never had. The government owes a landowner no compensation for requiring him to abate a nuisance on his property, <u>because he never had a right to engage in the nuisance in the first place.</u> The UIA concerned the type of incursions on private property necessary to reach public land. The core principle of the UIA…is that a landowner cannot maintain a barrier which encloses public lands and prevents access for lawful purposes."

"Put simply, we found <u>any</u> inclosure that effectively prevents access to public lands for <u>lawful</u> use is an <u>unlawful</u> inclosure that is a proscribed violation of federal law."

#3 Golconda Cattle Co. v United States,
(US 9th Circuit Court of Appeals, 1912)

Golconda Cattle Co., a Nevada corporation, had fenced their 11,000 private acres but in the process eliminated access to 26,000 public acres. The court, although all the fencing was on private property, citing the UIA, ordered much of the fencing removed and full access to the

public domain restored. The court not only ordered openings for public access, but access large enough for herds of cattle and bands of sheep to also have full access to the public domain.

#4 Sierra Club v Hodel,
(US 10th Circuit Court of Appeals, 1988)

Established that the Federal government does NOT have the right to deny local government efforts to make improvements on RS2477 rights of way. STATE, not federal, law was designated as the controlling body of law for RS2477 designations.

#5 Mackay v. Uinta Development
(U.S.8th Circuit Court of Appeals, 1914)

Mackay had driven a band of sheep over private land to access public land and was arrested for trespass by the landowner. Mackay claimed he had a right to trail his sheep to the public domain. The court ruled "*In such a situation the law fixes the relative rights and responsibilities of the parties. It does not leave them to the determination of either party…all persons…have an equal right of use of the public domain, which cannot be denied by interlocking lands held in private ownership*." The Court cited UIA and Camfield decision and ruled it illegal to use fencing on private property to deny access to public property.

#6 Utah v. Andrus,
(U.S. District Court for Utah, 1979)

This case limits a federal agency's [in this case, BLM] ability to deny access based on potential wilderness claims when such access crosses public land; however, BLM can, at times, prescribe location of access roads as necessary. This was not an RS2477 case as Utah did not claim a right of way or attempt to make a right of way prior to passage of FLPMA on October 21, 1976.

#7 Stoddard vs. United States,
(US 8th Circuit Court of Appeals, 1914)

Stoddard built a fence entirely on private property that blocked livestock usage on the adjacent public land. Stoddard's fence did allow "persons" access. Stoddard argued the UIA applied only to "persons" not livestock. The court did not agree, noting the UIA "*was intended to prevent the obstruction of free passage or transit for any and all lawful purposes over public lands…including "free herding and grazing of cattle".*

#8 United States ex rel. Bergen v Lawrence
(US District Court, District of Wyoming, 1985)

Lawrence fenced over 20,000 acres. All the fences were on private property. However, the fences also, by enclosure, blocked from public access 9,600 acres. The court wrote "*Neither is the fact the fence is broken by 28 gates, 19 of which are unlocked, enough to take the defendant's fence outside of the scope of the UIA. Some of the locked gates have "no trespassing" signs on them; and certainly, none of the gates invite the public to come in. The court is not entirely convinced that all these gates provide adequate access for humans*…" and "*Even when such a person has a grazing or other such lease on the public land his fence encloses, the fence would still be illegal if such fence blocked the public*" from other multiple uses of that same public land. Defendant claimed forcing him to remove his fences on his private property was an unconstitutional "taking". The court saw otherwise, noting "*all that* [the defendant] *has lost is the right to exclude others…from the public domain - a right he never had in the first place*". BLM was also chastised: "*BLM inaction was based …on a mistaken belief that BLM lacked the power to prevent the defendant from building the fence* [on private property]."
Lawrence was ordered to completely remove the fence or else modify the fence to meet UIA standards.

ADDITIONAL FEDERAL LAWS

Several additional Federal laws guarantee and protect public access.

The Taylor Grazing Act of 1934 (USC 73-482) is another Federal law that outlaws blocking access. "*Nothing contained in this subchapter shall restrict…ingress or egress over the public lands in grazing districts for all…lawful purposes".* Additionally, in "Iron Bar Holdings V. Cape, et al." the federal court noted *"…the provisions of the UIA and the Taylor Grazing Act should be read together to give effect to each…while preserving their sense and purpose".*

Federal law 43 CFR 4140.1: "*Grazing permittees or lessees performing the following prohibited acts…interfering with lawful uses or users including obstructing free transit through or over public lands by force, threat, intimidation, signs, barriers or locked gates*" may be subject to various penalties up to and including loss of grazing privileges on allotments.

Such laws have clear and intentionally interlinking purposes. The UIA makes it illegal on private property to fence off public access. The Taylor Grazing Act makes it illegal for lessees of grazing allotments to do the same. Federal regulations further reinforce both; when a lessee of an allotment blocks access to that allotment or other public lands, it is grounds for revocation of such grazing privileges. And rightfully so. Grazing on the public domain is a privilege - not a right. It is one of the many "multiple uses" allowed on federal lands.

Grazing allotments are often very valuable. And, obviously, grazing on the public domain is one of the multiple uses allowed. However, to lock off access jeopardizes that privilege. And it seems especially galling to use PUBLIC land for PRIVATE profit and then intentionally and illegally deny access to the actual OWNERS of the land - the public itself – from other "multiple uses". Not only is this totally illegal, but considering the growing call to remove grazing from the public domain, remarkably short sighted. (And for those of us fighting to maintain public

lands grazing, it is a public relations disaster as well). Somewhat paradoxically, a common complaint surrounding blocking public access has been one rancher attempting to deny access to another rancher who is trying to get to his legal federal grazing allotment, by blocking/locking trails or roads crossing through the rancher's private property.

NEVADA STATE LAW

The Nevada Legislature has defined and codified the official policy of Nevada State Government regarding access to Nevada's great public domain - a policy that guarantees every Nevada citizen's RIGHT to full access.

This declaration reads: "**THE PUBLIC INTEREST OF THE STATE OF NEVADA IS SERVED BY KEEPING ACCESSORY ROADS AND PUBLIC ROADS OPEN AND AVAILABLE FOR USE BY THE RESIDENTS OF THIS STATE**…" (NRS 405.204).

The Legal community must sometimes research extensively to discover the intent behind a law. But when it comes to the right to use our public lands there are no gray areas. Nevada law is clear and completely unambiguous.

The State government's unmistakable intent and purpose, of protecting the legal use of backcountry roads and trails, is vital in that Nevada's 110,000 square mile land mass is 87% controlled by the federal government. As noted, most of this land is under "multiple use" management by the Bureau of Land Management (BLM) and the United States Forest Service (USFS).

While these lands are federally managed, the U.S. Congress, by law, gave to the Nevada State Government the RIGHT to control, own and manage our extensive road network, thus ensuring, through Nevada State law, full public access.

Following several federal court decisions, as well as the "grandfathering" of RS2477 rights by FLPMA in 1976, the Nevada Legislature, starting in the 1979 legislative session, took full advantage of this grant of authority from the U. S. Congress.

To both codify and expand access law, and using the legal authority originally delegated by RS2477, the Nevada Legislature passed a series of statutes. These include:

Nevada Revised Statute **(NRS)** 405.204: "The public interest of the State of Nevada is served by keeping accessory roads and public roads open and available for use by the residents of this state…".

NRS 202.450.5 "It is a public nuisance for any person:

(A) by force, threat, or intimidation, or by fencing or enclosure, or by any other unlawful means, to prevent or obstruct the free passage or transit over or through any

1. Highway designated as a US Highway
2. Highway designated as a state highway
3. Main, general or county road
4. Public road as defined in NRS 405.191
5. State land or other public land
6. Land dedicated to public use

(B) to knowingly misrepresent the status or assert any right to the exclusive use and occupancy of such a highway, road, state land or other land dedicated to public use…"

NRS 405.191: defines "public road" including RS2477 roads and declares ALL roads not legally defined as "private" are "public" roads.

NRS 405.201: defines "accessory roads" (roads on public land going exclusively to private land and no further) as RS2477 roads.

NRS 405.202: "All accessory roads are for the use of the general public."

NRS 403.170: gives full powers to county commissions to designate, open, and map all roads in a county and declare them rights of way fully available for public use.

NRS 403.190.2: requires mapping of all county roads including all RS2477 roads, which after filing are fully protected legal rights of way for public use.

NRS 403.095: allows county commissions to make rules for gates on easements/rights of way, but the county must *"Require that all such gates must be unlocked"*.

NRS 403.410: "All public roads, streets and alleys…and all such roads and streets…the county commissioners cause to be opened, are declared to be Public highways."

Under these Nevada laws, no road is "private" i.e., not for "public" use, unless very specifically designated as "private" by the respective county commission. The Nevada Legislature has delegated near total control of roads within a county's boundaries to the respective county commissions. However, while these county commissions have great leeway to EXPAND access, their ability to close or restrict access is carefully limited. For example, the process to declare a road "private" (and thus NOT open for the public's use and enjoyment), is an intentionally cumbersome process.

NRS 405.195 deliberately creates a series of obstacles to formally dedicating a road as private rather than public - and even after such a legal change, five citizens can demand, and the county MUST create, another alternate route to facilitate public access that may have been impaired by the change. This same complicated and intentionally difficult process is followed to declare a road "abandoned".

The Legislative intent remains completely transparent - the policy of the State of Nevada is to protect full public access.

NEVADA CASE LAW

In addition to RS2477 and numerous Nevada Revised Statutes, there is a substantial body of Nevada case law (also known as "common law" and "precedent law"). A partial list includes:

A. Anderson vs. Richards (1980)

B. Thomm vs. Zachry (2018)

C. United States vs. Carpenter (2016)

D. Stix vs. La Rue, 78 Nev. (1962)

***Anderson v. Richards, 96 Nev. 318 (1980):**

This case established that a "private" vs "public" road is based on legal right and not if such right is exercised or by quantity of public use. Unlawfully closing of a public access, even if over extended periods of time, cannot remove the public right to traverse such a road. Historic maps were primary evidence presented to show the road was public in nature and age. Established RS2477, the historic 1866 federal right of way law, as defining legal basis. No "work" is required to maintain an RS2477 right of way. This case deals extensively with the meaning and application of RS2477. The road in question, which had been blocked on private property, was ordered to be reopened as an RS2477 right of way road.

***Thomas v. Zachry, 311 F. Supp.3d 1198 (2018):**

Determined that under NRS 405.191.2 that the State of Nevada has established that all roads with certain limited exceptions are considered public rights of way and granted acceptance of such as rights of way under state law as required by federal statute (RS2477).

Again, historic maps were used to determine if the road in question was originally established on the public domain prior to transfer of ownership to private land. This case combined state law with federal law extensively and dealt with a private landowner who had

claimed the right to block the road in question where it crossed her private property. Road was ordered reopened as an RS2477 road.

***United States v. Carpenter (Elko County), 2016:**

This involved the Jarbidge road dispute, in which Elko County claimed both ownership of the road as well as the road being an RS 2477 right of way. Elko was unsuccessful primarily because they were unable to show on a reliable map the existence of the road prior to 1909, when the area became part of a Forest Reserve. However, since the case was concluded, the USFS and Elko County came to an agreement and the road will remain an RS2477 access road.

***Stix v. La Rue, 78 Nev. (1962):**

This case established the prescriptive easement rights on access roads used by the public. If the road was originally established on public ground and was used by the public for at least five years it becomes a legal permanent easement. Road in question was ordered to remain open as a prescriptive easement for public usage. (More on "Prescriptive easements" below).

PRESCRIPTIVE EASEMENTS

As noted in Stix vs La Rue, and in addition to the RS2477 protections, under the NRS and case law if any road crossing private property has been open for five years for public use, it becomes a "prescriptive easement", also known as a "dedicated easement". "Public use" has been defined as something as basic as a single rancher using the road to access his property consistently. These are also permanent rights of way. This is a historic common law right and now further enhanced in Nevada case law and codified under NRS 405.193 & NRS 405.195. "Prescriptive" means a right created by usage over time. Five years of continuous use is the fundamental requirement for this form of dedicated legal access in Nevada.

NEVADA COUNTY ACTIONS

Nevada counties are required by Nevada law to map and document their RS2477 roads. Several have been especially aggressive in asserting this legal principle as found in RS2477 and have added additional clarification on State policy in the process.

Case in point: On October 6th, 1994, the Eureka County Commission passed a resolution defining their RS2477 rights. The resolution reads in part: *"RS2477 provides…a permanent easement or title across the public lands…whereas it is to the benefit of the citizens of and users of RS2477 roads…the broadest possible definition of "RS2477 roads" be endorsed and supported, and…similar public travel corridors across private lands which were established and used by the public when such lands were public domain prior to issuance of private patent, are RS2477 public roads."*

The Elko County Commission, the most aggressive in protecting Nevada citizens' right of access, passed a similar resolution on October 18, 2000. It reads in part: *"Whereas, the United States is the owner of the servient estate traversed by rights of way…pursuant to the grant offered in RS2477 and…Whereas other property owners may have succeeded the United States as owner of the servient estate traversed by rights of way…the rights of those property owners in the servient estate is limited by the obligation to honor the rights of way accepted by the public pursuant to the grant offered under RS2477…all rights of way accepted under RS2477 will be retained in perpetuity for the use and benefit of the public. The county sheriff is hereby authorized to take any action necessary to prevent unreasonable interference…by the owner of the servient estate."*

SO, WHY IS THERE STILL A PROBLEM?
"THE LAW OF DISPROPORTIONATE INTEREST"

Despite county, state and federal laws and court decisions, all protecting the public interest, why are access roads leading to public land in Nevada still illegally blocked?
I call it "The [psychological] law of disproportionate interest".

For example, an individual, driving on a public access road, comes to a locked gate across this road. What will he do? Is it likely such an individual is going to go and research the law and county maps, file a formal complaint with law enforcement, and ensure the illegal road blockage is removed?

Compare: private and corporate landowners in Nevada, at least prior to 2019, when illegally locking such a gate, faced no threat of penalty. By running a very minimal risk by illegally locking off such access, they in effect could treat the public domain behind such a closure as their own de facto property. Though they did not own one acre of it or pay one penny of property tax, the public land in effect became a private fiefdom that no one but their own selected favorites could utilize. Unlike the average person as described above, the land-blocker has a HUGE interest in "taking a chance". (Even more disgusting are landowners who would charge a fee or even rent out to hunting guides, etc. the "right" to use the road crossing their property to re-access the public land - an access they do NOT own and were ILLEGALLY blocking!).

And prior to 2019, the road blockers faced in a worst-case scenario the very remote possibility of a civil court challenge. Even if they lost, the only penalty would be to unlock the gate. And with passage of time and the realization of no penalty they often developed a serious "so sue me" attitude.

Thus, a landowner whose property adjoins the public domain has a huge self-interest giving him or her (nowadays this frequently involves corporations and even mining companies) a grossly disproportionate interest in the outcome, when compared to an average recreational public lands' user.

Indeed, more than one brave soul using an RS2477, or other fully legal right of way, has been threatened with criminal trespass (and even physical violence) by the owner of the servient estate. Thus, the landowner, while at minimum violating FEDERAL law and facing, at worst, civil penalties if even challenged in court, would use STATE criminal law, (which could mean jail time and thousands of dollars in fines), to threaten, intimidate, harass and falsely accuse someone of trespass! (A "trespasser" who by law is fully entitled to use the right of way!)

To help rectify this gross imbalance, the Nevada Legislature in 2019 unanimously passed SB316, now NRS 202.450.5, making such illegal closures a public nuisance with penalties of up to six months in jail and a thousand dollar fine for the first offense. NRS 202.450 makes even *misrepresenting* the legal status of such an access road a crime. And, as a public nuisance, ANY member of the public is fully within their common law legal right (see NRS 1.030) to remove such obstacles placed in the way of the PUBLIC to access the PUBLIC's land. In effect it would be no different in application than if someone threw up some sort of roadblock on a public street. Any individual, with full legal protection, could get out of their vehicle and remove such a public nuisance impeding public traffic. And if the individual who placed the illegal obstacle in the street could be caught, he or she should face criminal charges.

While both the BLM and USFS have backed off considerably in their former efforts to close miles of Nevada backcountry roads and trails, the problem has sadly shifted to private property owners (including some very wealthy individuals and some huge corporations) blocking

legal access. While the Nevada Legislature has for decades passed laws ensuring access rights, they failed, prior to 2019, to provide criminal penalties, with teeth, for violation. SB316 rectified that.

FALSE "DEFENSES"

Having worked on this issue for many years now, there are some common but false claims made to justify locking or otherwise blocking legal access.

"This road has not been used in years. It is no longer public (from non-use)."

Such claims have no legal merit and all such roads remain fully legal public access routes. It is a PUBLIC right and that right is NOT based on the volume of actual traffic.

"**This road originally went up the wash but the flood washed a section away. Therefore it is gone and you cannot cross without going on my property."**

When the road has shifted due to natural processes, ie, rockslides, willow growth, floods altering drainages etc, the need to re-route such access does not alter the public's right of way. "Acts of God" will not alter your legal right to access public land. And remember the "right of way" means more than a "road". You have a right to reasonably access your own [public] land.

"This access road is an illegal "taking" of my property"

As noted in both the Camfield vs United States and the Bergen vs Lawrence decisions listed earlier, "*all the (*defendant) *has lost [*i.e, taken away] *is the right to exclude others…from the public domain - a right he never had in the first place."* And "*The right to erect what he pleases on his own land will not justify him in maintaining a public nuisance…no person maintaining such a nuisance can shelter himself behind the sanctity of private property…the Unlawful Inclosures Act is constitutional…"*

"You have to get permission before you cross my land"

No one is required to get "permission" from a landowner when crossing on an access road. You must of course leave gates as you found them. However, if a gate has been illegally locked - even if that lock has been in place for years - such illegal acts cannot divest the public of its right to traverse access roads. As such illegal barriers under Nevada law constitute a public nuisance, a citizen has a common law right to fully abate such a nuisance. That would include removing the lock and under common law right, even removing the entire gate. After 2019 and the passage of SB316, the question of eliminating gates entirely, due to constant illegal closures, was considered. It was recognized that gates are fundamental for livestock management, one of the basic multiple uses. To further clarify this the 2021 Nevada legislature passed SB 94 (now NRS 202.450.6). Gates are allowed, but to LOCK such a gate is a crime. Thus, an UNLOCKED gate on an access road is legal under Nevada law.

"I have legal liability if someone crosses my land."

Unless a landowner intentionally by gross negligence deliberately attempts to sabotage an access road, NRS 41.510 gives immunity for liability. "…an owner in any premises…for participating in any recreational activity…does not incur liability…recreational activity includes…crossing over to public land or land dedicated for public use."

"There is another access road you can use"

If more than one access road to the public domain exists, it does not NOT give the servient estate a right to block off a similar road that also serves the same area. There is nothing in federal or state law that allows a private property owner to force someone getting to the public domain onto only one inlet if other reasonable inlets also exist.

In Nevada there are often highly UNREASONABLE points of access; roads crossing

mountain ranges that drop back into the same canyon, etc. In several court cases, more than one entrance for the public to their public land has been *required* when private property owners have used private fencing on large tracts of private property to limit access to public land.

"No maintenance had ever been done. "Work" must be done before it's legal"

No act of improvement is required to create or maintain the legality of a right of way. No work, no maintenance, or even travel is required once the legal status of a public right of way has been established.

"You don't respect private property"

Private property law always has restrictions primarily about its use in relation to other's property. The most common restrictions imposed by government are zoning, environmental issues, and especially pertinent for this paper, public easements and rights of way.

As Sir Edward Coke wrote more than 400 years ago, "Use your own property in such a way as not to injure that of another." As numerous court cases have defined, this includes publicly owned land as well. Consider the public domain as your property - as in fact it is!

It is important to understand all the laws above that we have discussed deal with already existing rights of way. Indeed, under RS2477, these must have existed prior to the passage of FLPMA. But there is some confusion on this point. For example, can the State of Nevada simply bulldoze a *new* road across private property to provide a previously missing access road to public land?

No. In Leo Sheep Co. vs United States (1979), the US Supreme court heard a case in which the Government simply blazed a brand-new road across private property and justified it by claiming the State had the common law right of "easement by necessity". Easement by necessity

is a right ordinary citizens have when their private property is landlocked. The court ruled the government could NOT claim an easement by necessity as the GOVERNMENT has a power no citizen has, the power of Eminent Domain. In Leo the question was not about a pre-existing right of way, but whether a government could create a common law right of easement WITHOUT going through the process of eminent domain. Leo has no bearing at all on the legal discussion above. RS2477 and the UIA were not even on the Leo docket and the "Iron Bar" decision notes Leo did not change the legal rules as found in the UIA.

ENFORCEMENT

Jurisdictional questions arise as the laws governing access are both federal and state in nature. Obviously STATE law, the NRS, would be enforced by the local county Law Enforcement officers as well as all sworn State Officers including Game Wardens and State Troopers. There are also various "memorandums of understanding" allowing Federal law enforcement officers to enforce certain State law, and visa-versa as well. BLM and USFS both have extensive law enforcement personnel in Nevada to enforce federal law, and in certain cases, state law. Apparently, there has been some confusion about their right to enforce federal access law such as the UIA or grazing rule violations on private property; however, as the Bergen vs Lawrence decision made clear Federal law enforcement has both the power *and responsibility* to protect legal access even when blocked on private property. Indeed, the decision rebuked BLM for failing to stop the illegal fencing in the first place.

While "ignorance of the law is no excuse," much of what we are discussing is not common knowledge. As enforcement of SB316 has gone forward since its passage in 2019, simple letters from respective district attorneys to violators warning of their illegal acts has resulted, in every case I am aware of, in removal of the locks and opening of the access roads.

Once private citizens are again aware they are legally protected in using their common law and statutory right to abate a public nuisance, the need for such letters should decline. As the knowledge of the laws, rights, and penalties in question become more common, I suspect the illegal actions will dissipate.

CONCLUSION

The clear intent of Nevada's County governments, the government of the State of Nevada, the United States Congress and the entire court system is remarkably consistent. The citizens of the United States, i.e. "the public" have an absolute right, with very limited restrictions, to full use and access of the "Public Domain". Lest we forget, US citizens are the owners of the property in question! And, while respecting private property, no private property owner can legally deny access to the public of its own property, by *"fencing, intimidation, threats or otherwise".*

Thus, it is the full responsibility of all three branches of government - especially at this point, Nevada's Judicial branch - to enforce these actions. The Legislative branch has provided the Law. Now all of the law enforcement personnel, the district attorneys, the Justices of the Peace and right on up to the Nevada Supreme Court, need to carry out their respective responsibilities. All of us in Government have a sworn duty to uphold the law and every person, from the humblest citizen right up to the Governor himself is entitled to equal protection - and equal access - under the law. Thus, those blocking access, intentionally acting in ways detrimental to the public interest and in open defiance of the unmistakable intent of the Law, need to be brought to justice.