

## **Background Issues Concerning Airplane Landing Strips on Public Land**

Contained within the Salt Lake Field Office's management area is an important recreational resource in the form of small, rural, and/or remote airports, known to aviation enthusiasts as "Back Country Airstrips", of which the Vernon Landing Strip is one. A backcountry airstrip provides a simple runway, meeting the most basic requirement of accepting small general aviation aircraft operations. Like many popular roads on BLM lands in Utah, these landing strips were purpose-built to assist in mineral exploration, wildlife management, or fire fighting and are depicted on Federal, State and local maps and charts. Many of these airstrips have been in casual use and maintained by the flying public since the time of their construction. Some are already known to land managers at the BLM but are often erroneously referred to as "abandoned", "closed", or "never opened". The Vernon Landing Strip has been used by private, and government pilots, and known to local Rush Valley residents as an active airstrip, for many years. Indeed it is clearly depicted on numerous maps and charts, the most notable being the BLM's own Rush Valley Surface Management Status map, on which it is prominently labeled as a "Municipal Airport".

Four main issues pertaining to the continued use of the Vernon Landing Strip are discussed below.

**1) The "Closure" Issue--** The BLM certainly has the right to exclude the commercial use of the lands under its administration, by entities that have not obtained the proper permits. Film companies, Utility companies, River Rafters and other types of "for hire" guided public gatherings, all must obtain the correct category of permit to carry on commercial businesses. The public, on the other hand, may visit public lands by the conveyance of their choice, be it foot, horse, jeep, kayak, or airplane, and are commonly provided with facilities for their access in the form of trails, roads, put ins and take outs. OHV's are provided with designated riding areas on Federal Public Lands in many western states. If we were to add up the surface areas of *all* of the backcountry airstrips west of the Rocky Mountains, it would total only a tiny fraction of one OHV riding area.

It is questionable, whether in the case of Vernon, the flying public was properly notified of their exclusion from use of the airstrip. The Department of the Interior, recognizing the value and importance of backcountry airstrips like Vernon, has agreed not to close them with out an "open and public process that includes close consultation with local communities." The following letter from Gale Norton, Secretary of the Interior is part of the Congressional Record for July 12, 2001.

Dear Senator Crapo: The U.S. Department of the Interior is committed to working with you and other Members of Congress to develop a comprehensive process to ensure that state and local governments and citizens have an opportunity to participate in issues relating to backcountry airstrips located on lands managed by the U.S. Department of the Interior.

Our Nation's backcountry airstrips are important to many activities that take place on our public lands. Airstrips provide remote access for aerial fire fighting efforts, they

are essential safety tools for pilots operating in rural and mountainous areas, and they provide a vital link to the outside world for many rural communities.

It is important to ensure that legitimate use of backcountry airstrips are protected. It is also a priority for this Department that any proposals to alter use of federal lands must go through open and public process that includes close consultation with local communities. I commit to work with you, and other members of the congressional delegation, the State of Idaho, and local communities on any proposals to change the use of backcountry airstrips on lands managed by the U.S. Department of the Interior.

The Department of the Interior is not alone in their support of protecting access to back country airstrips. The US Department of Agriculture, administers much of the land which contains backcountry landing strips, and has similar views as evidenced by the following letter which is also part of the Congressional Record for July 12, 2001.

Dear Senator Crapo: The U.S. Department of Agriculture is committed to working with you and other Members of Congress to develop a comprehensive, long-term approach for managing backcountry airstrips on lands managed by the USDA Forest Service.

We agree that it is appropriate to maintain airstrips that provide critical air access to rural, backcountry, or wilderness areas; that contribute to pilot safety; or that support aerial fire fighting efforts. The Department also agrees that these airstrips should not be permanently closed without prior consultation with State aviation and other appropriate officials.

We appreciate your leadership on this issue and look forward to working with you in the future.

Sincerely,

Ann Veneman,  
Secretary.

Members of the US Senate and House of Representatives including Utah Senator Robert F. Bennett, Representative James Hansen, and Representative Chris Cannon have also felt it important enough to introduce bills entitled the "Backcountry Landing Strip Access Act" (S. 681 and H.R. 1363). Pilots groups from across the intermountain west, including the AOPA (380,000 members), were asked to compile lists of rural airstrips that were closed by Federal agencies, other than the FAA, over the objections of local communities and private pilots, and without a public hearing. UBCP members testified accordingly, in Washington DC.

**2) The Liability Issue**-- Currently the BLM requires being a named insured only on a Title Five Right-of-Way holder's liability insurance policy. This is easily accomplished, for a commercial entity that already has liability coverage under other applicable laws,

but is neither reasonable nor required of the public at large. According to the Utah State Office of the BLM, "*Casual use*" and maintenance of these airstrips is currently permitted to general aviation pilots. Like jeepers, motorcyclists, rafters, hikers, horseman, and others, flyers are not required to provide insurance to the Federal Government for the "casual" use of public lands.

In addition to the "casual" access mentioned above, some other points to consider are:

a) Utah has passed legislation that has been held in Federal Circuit Court to protect the BLM from liability arising from the public use of public lands. The following paragraph from the "Utah Recreational Use Statute" summarizes the pertinent parts of the statute but the entire text is attached.

Title 57 Chapter 14-1. Legislative Purpose "The purpose of this Act is to encourage *public* and private owners of land to make land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for those purposes." And further; s 57-14-2 Definitions (1) "Land" means any land within the territorial limits of the State of Utah and includes roads, water, water courses, private ways and buildings, structures, and machinery or equipment when attached to the realty. (2) "Owner" includes the possessor of any interest in the land, whether *public* or private land, a tenant, a lessee, and an occupant or person in control of the premises. (3) "Recreational purpose" includes, *but is not limited to*, any of the following or any combination thereof: hunting, fishing, swimming, skiing, snowshoeing, camping, picnicking, hiking, studying nature, waterskiing, engaging in water sports, using boats, using off-highway vehicles or recreational vehicles, and viewing or enjoying historical, archaeological, scenic, or scientific sites. (Etc.)

At least four Federal Circuit Courts have consistently held that the United States is entitled to the protection of state's Recreational Use Statutes.

b) Federal Aviation Regulation Title 14 CFR Part 91.3 (a) states; "The pilot in command of an aircraft is directly responsible for, and is the final authority as to, the operation of the aircraft". Pilots are irrefutably responsible for their decision to land. Their aircraft are insured and are already held to the highest standard. Not only is an aircraft completely dismantled every year for inspection, many parts are replaced on a 'time in service' basis not on a wear basis. Every pilot must have a physical every two years at the longest. No other activity conducted on public lands requires the same level of Federal regulation to pursue, as does aviation. The National Transportation and Safety Board data has clearly shown that recreational activities, with higher rates of injuries than flying are permitted without restriction on Federal Public Lands.

**3) The Commercial Use and Enforcement Issue**-- *UBCP is opposed to the unauthorized commercial use of backcountry airstrips.* UBCP does support reasonable permitted commercial access, because we believe that a wide variety of users provide for a healthier airport in the long run. These backcountry airstrips are available to commercial concessionaires as a Title Five Right-of-Way, through Form 299 "Application for Transportation and Utility Systems and Facilities on Federal Lands". There are many of these commercial right-of-ways, upon Department of Interior and Agriculture lands in the western U.S. and Alaska. Some examples of these airstrip right-of-ways in Utah are; Fry Canyon, Monticello FO; Sand Wash on the Green River, Vernal

FO; and Mineral Bottom, Moab FO. UBCP feels that to restrict the Many, for fear of the hypothetical, unauthorized, use of the Few, is not a workable policy. Riding mountain bikes on public land would have to be eliminated for fear of outlaw bike tours being performed, as was discovered in Moab recently. We might add that it was the other users that reported this to the BLM. And what of the public road system-- shut down because some cars were unregistered or some drivers unlicensed? UBCP does not believe that the volume of traffic on these rural airports would ever be so great as to obscure any illegitimate commercial activity for long.

**4) The Mixed Traffic Conflict Question**-- The simultaneous use of backcountry airports for fire fighting aircraft and general aviation arrivals and departures is an accepted and common activity throughout the intermountain west on both BLM and Forest Service administered lands. These airports range from grass strips with no traffic patterns and only the most general backcountry Unicom frequency, to larger, but still uncontrolled, airports like McCall, Idaho where, during the fire months a mix of large and fast tanker aircraft come and go with air taxis, family flyins and student practice. One of the commentators in this letter and UBCP member, Karl Spielman, regularly leases his hanger and permission to use the airport at his property (Skyranch UT53), to the BLM's Interagency Fire Center in Moab for a Helitack base. Rotary and fixed wing components of the fire operation use the strip during the season, as does the public. UBCP believes that the safety factor at Vernon might even be improved over previous years with the publishing of airport information through our database, such as runway length, elevation, CTAF, and advisories of seasonal hazards.

Thank you for taking the time to review this information. Should the BLM have any questions or require amplification on any information provided herein, please contact the Utah Back Country Pilots. We have no hidden agendas, just a sincere and healthy desire to preserve a type of, simple, uncomplicated, and historic aviation experience.

Attachments:

Utah Recreational Statute

Amendment number 878 from 2001 U.S. Senate Appropriations bill  
(Understanding between Congress and Departments of Interior and Agriculture)

Copy of Effected Area (BLM Rush Valley Map)

## ***Utah Recreational Use Statute***

UTAH CODE ANNOTATED

TITLE 57: REAL ESTATE

CHAPTER 14: LIMITATION OF LANDOWNER LIABILITY -- PUBLIC RECREATION

### **§57-14-1. Legislative purpose.**

The purpose of this act is to encourage public and private owners of land to make land and water areas available to the public for recreational purposes by limiting the owners' liability toward persons entering the land and water areas for those purposes.

HISTORY: Amended by Chapter 62, 1997 General Session

### **§57-14-2. Definitions.**

As used in this chapter:

(1) "Land" means any land within the territorial limits of the state of Utah and includes roads, water, water courses, private ways and buildings, structures, and machinery or equipment when attached to the realty.

(2) "Owner" includes the possessor of any interest in the land, whether public or private land, a tenant, a lessor, a lessee, and an occupant or person in control of the premises.

(3) "Recreational purpose" includes, but is not limited to, any of the following or any combination thereof: hunting, fishing, swimming, skiing, snowshoeing, camping, picnicking, hiking, studying nature, waterskiing, engaging in water sports, using boats, mountain biking, using off-highway vehicles or recreational vehicles, and viewing or enjoying historical, archaeological, scenic, or scientific sites.

(4) "Charge" means the admission price or fee asked in return for permission to enter or go upon the land.

(5) "Person" includes any person, regardless of age, maturity, or experience, who enters upon or uses land for recreational purposes.

HISTORY: Amended by Chapter 62, 1997 General Session

### **§57-14-3. Owner owes no duty of care or duty to give warning -- Exceptions.**

Except as provided in Subsections 57-14-6(1) and (2), an owner of land owes no duty of care to keep the premises safe for entry or use by any person entering or using the premises for any recreational purpose or to give any warning of a dangerous condition, use, structure, or activity on those premises to that person.

HISTORY: Amended by Chapter 62, 1997 General Session

### **§57-14-4. Owner's permitting another to use land without charge -- Effect.**

Except as provided in Subsection 57-14-6(1), an owner of land who either directly or indirectly invites or permits without charge or for a nominal fee of not more than \$1 per year any person to use the land for any recreational purpose does not thereby:

- (1) make any representation or extend any assurance that the premises are safe for any purpose;
- (2) confer upon the person the legal status of an invitee or licensee to whom a duty of care is owed;
- (3) assume responsibility for or incur liability for any injury to persons or property caused by an act or omission of the person or any other person who enters upon the land; or
- (4) owe any duty to curtail the owner's use of his land during its use for recreational purposes.

HISTORY: Amended by Chapter 62, 1997 General Session

**§57-14-5. Land leased to state or political subdivision for recreational purposes.**

Unless otherwise agreed in writing, Sections 57-14-3 and 57-14-4 are applicable to the duties and liability of an owner of land leased to the state or any subdivision of the state for recreational purposes.

HISTORY: Amended by Chapter 62, 1997 General Session

**§57-14-6. Liability not limited where willful or malicious conduct involved or admission fee charged.**

- (1) Nothing in this act shall limit any liability which otherwise exists for:
  - (a) willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity;
  - (b) deliberate, willful, or malicious injury to persons or property; or
  - (c) an injury suffered where the owner of land charges a person to enter or go on the land or use the land for any recreational purpose, except if the land is leased to the state or a subdivision of the state, any consideration received by the owner for the lease is not a charge within the meaning of this section.
- (2) Any person who hunts upon a cooperative wildlife management unit, as authorized by Title 23, Chapter 23, Cooperative Wildlife Management Units, is not considered to have paid a fee within the meaning of this section.
- (3) Owners of a dam or reservoir who allow recreational use of the dam or reservoir and its surrounding area and do not themselves charge a fee for that use, are considered not to have charged for that use within the meaning of Subsection (1)(c), even if the user pays a fee to the Division of Parks and Recreation for the use of the services and facilities at that dam or reservoir.

HISTORY: Amended by Chapter 258, 1997 General Session  
Amended by Chapter 32, 1997 General Session  
Amended by Chapter 62, 1997 General Session

**§57-14-7. Person using land of another not relieved from duty to exercise care.**

This chapter may not be construed to relieve any person, using the land of another for recreational purposes, from any obligation which the person may have in the absence of this act to exercise care in use of the land and in activities thereon, or from the legal consequences of failure to employ care.

HISTORY: Amended by Chapter 62, 1997 General Session