



Utah Diné Bikéyah

- a non-profit supporting Native Tribes working together to **Protect Bears Ears** -

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March 8th, 2019

Title: HB 179 Road Closure Amendments Bill Memo

To: Utah Senate

From: Gavin Noyes, Executive Director, Utah Diné Bikéyah

Utah Diné Bikéyah asks that HB 179 be voted down in the Senate unless an amendment is considered to exempt federal land management officials from Rep. Lyman's "Road Closure" Bill. It appears this Bill may be designed to challenge federal management authority, especially in regards to RS2477 claims. Without this exemption, this Bill should not move forward and its constitutionality should be questioned.

HB 179, Rep. Phil Lyman's Road Closure Amendment Bill, passed the House Law Enforcement Committee on February 25th with 6 votes in favor to 2 opposed. However, a misleading presentation was provided by Rep. Phil Lyman in which he suggested that individuals and groups were closing roads, rather than the federal agencies that carried out the closures. HB 179 went on to pass the full House on March 1st with votes of 47 in favor to 16 opposed.

On February 25th, Rep. Phil Lyman provided only two examples in which he argued the need for this Bill. He stated that citizens are closing roads "on their own volition," but provided no proof, nor showed any examples indicating that this problem actually exists. See Appendix 1. What he failed to explain is that the BLM has the authority to close federal roads and that, in this instance, they delegated their job to a volunteer group with whom they have an agreement. Rep. Lyman's Bill may create an overreach of state authority onto federal jurisdiction and according to Rep. Lyman should allow county or state officials to charge federal officials with misdemeanors if due process mistakes are made.

Rep. Phil Lyman states this Bill, "has no bearing on anything other than closing roads without going through the due process." Even this statement suggests that federal officials may be the ones impacted. Closing roads is illegal, so legislators should study why this Bill is needed and who is currently responsible for prosecuting these criminals who close roads? You may find this legislation to be redundant, and it may cause jurisdictional primacy or constitutional issues.

Appendix 1- Rep Lyman Provides Misleading Examples During House Committee Testimony

The photos used by Rep. Phil Lyman were taken from a site called, The Petroglyph which often publishes skewed facts.

<https://thepetroglyph.com/friends-of-cedar-mesa-caught-closing-county-road-illegally-177b6b0d3a1f>

Representative Lyman provided a misleading slide show presentation during the House Law Enforcement committee which made the road closure issue appear to be a legitimate problem, even though it is not.

During the committee hearing Representative Sandra Hollins asked a question about who is doing these road closing activities, and Rep Lyman responded, “there was a local group that went out and obstructed a road on their own volition. We called the BLM and said, ‘hey’ this road was obstructed. Was it with your authority? They said, it is not with our authority. So, they contacted the interest group who went out and removed the obstruction.” He went on to say, “It does a lot more damage to the reputation of the BLM when they have unauthorized rogue closures like this. So the answer to your question is yeah, it is people acting on their own volition.”

In fact, in each of Representatives Lyman’s slide show examples, it is the federal agency official who ends up getting fined or jailed, not any citizens. In his first scenario, the National Park Service blocked a state highway during the government shutdown. Obviously, NPS officials were trying to help tourists here, not hurt them. In the second group of photos (which Rep Lyman showed 3-4 pictures of the same project), the BLM did not file the proper paperwork to close 1 legally designated route at a cultural site (even though they were building a new road, and closing two other illegal roads to improve access to the same site. Rep. Lyman was trying to blame the volunteer group (Friends of Cedar Mesa) for the closure and also blame the BLM by suggesting the agency allows volunteer groups to do this at will. This is simply not true. This was actually a BLM project in which the agency didn’t realize they were closing a legal road, and the agency immediately corrected their mistake and fixed it. In both cases and there was no issue (no need to have the Sherriff issue a misdemeanor or have the county sue the federal government.) At a minimum, the Senate Committee should not pass this Bill out of committee until they hear from the federal agencies that this is a problem.



Friends of Cedar Mesa caught closing county road illegally



During the House Committee hearing Rep Romero's asked about the need for tribal consultation. Rep. Lyman's response was, "It doesn't affect the Tribes." "The answer is no, it has no bearing on anything other than closing roads without going through the due process." The Navajo Nation raised this Bill as a concern due to its potential to harm the agencies' ability to protect cultural resources on public lands and the State of Utah has not properly consulted Tribes.

Audio from Rep Lyman- Direct Quotes- February 25th

Rep. Phil Lyman

“seemed conspicuously missing is some sort of penalty for illegally closing roads. Only recourse a county would have would be to sue if someone were to illegally close a road.”

“A lot of counties pass ordinances that say we are going to make it a misdemeanor to close a road. But without a state equivalent law it makes that enforcement unlikely.”

Slide: “Federal government has the authority to close a park, but not a state road.”

“Other times when people go out with heavy equipment, backhoes. This is right in the middle of a road in San Juan County...that was illegally closed. When the county brought it up..., they were ordered to go back and fix it.” “They put up a sign. It was an illegal closure.”

“Talking with the BLM, they say they have people that voluntarily go out and close roads. They’ll drag rocks or branches onto the road. A lot of this is done by volunteer organizations that say we don’t like this road, we are going to close it. If they have gone through the due process... If it is a road people are using, there should be some recourse. As you can see this isn’t a minor effort, this isn’t someone kicking a rock into a road. It is an obstruction.”

“My proposal, the proposal of this Bill would make this a class C misdemeanor.”

Rep. Angela Romero- “Have you consulted with Tribes?”

“It doesn’t affect the Tribes.” “The answer is no, it has no bearing on anything other than closing roads without going through the due process.”

Hollins- “Who is closing these roads?”

“[In San Juan County,] (T)here was a local group that went out and obstructed a road on their own volition. We called the BLM and said, hey this road was obstructed. Was it with your authority? They said, it is not with our authority. So, they contacted the interest group who went out and removed the obstruction. But it is very rare that uh, that you kind of resolve something so quickly. ... It does a lot more damage to the reputation of the BLM when they have unauthorized rogue closures like this. So the answer to your question is yeah, it is people acting on their own volition.”

“In the first example, it is the National Park Service.”