

## OPINION

### OUR VIEW

## Open Road Talks

The Southern Utah Wilderness has won a preliminary victory for itself and Utah voters. Third District Judge Dennis Frederick ruled this week that the state can't simply shut the public out of negotiations with the federal government without at least some showing that its reason is legally sufficient.

SUWA had requested certain documents related to Revised Statute 2477 roads in Millard and Beaver counties. Repealed in 1976, R.S.2477 was a federal law that granted local governments rights to construct highways across federal lands. When the law was repealed in 1976, the roads were grandfathered, but no records were kept regarding which roads were constructed under the law.

Answering that question in Utah has been a bitter battle between the opponents and proponents of federal wilderness designation. To avoid the contention, representatives from Utah and the U.S. Department of the Interior are currently negotiating the issue behind closed doors.

In response to SUWA's request for information related to the negotiations under the state's open-records law, an assistant attorney general provided a litany of exemptions from the law, centering on exceptions for documents created in anticipation of litigation. The most interesting unofficial reason for denial, however, is a

statement in the letter that "in any event. . . SUWA undertakes its own investigations regarding R.S.2477 roads and therefore has its own access to R.S.2477 road data." One would expect an assistant attorney general to realize that the open-records law does not excuse the state from providing documents simply because another source is available or a requester is a particularly vigilant watchdog on the issue.

Judge Frederick characterized the state's denial letter as "rather cursory," underscoring the reality that the open records law favors public disclosure. He required that the state give a more detailed response to the courts, enough information to allow the judge "to make a reasonable judgment as to the propriety of the claimed exemptions." Presumably, the state should have given SUWA this much information as well so it could determine its appeal rights.

The state may ultimately win its case, either on the merits or by simply delaying disclosure until the negotiations are through and the public is left to face the consequences of government by fiat. SUWA, however, has gained something for Utahns, recognition that when the government operates in secret, particularly on an issue of vital importance to the state, it should at least articulate a legally sound reason for doing so.