

# Public Lands Coordination Commission

May 1, 2012

PLCC Commissioners present: Frank Green, Zane Odell, Drew Gordanier, Slim McWilliams, Casey McClelland as an alternate.

PLCC Commissioners absent: Matt Clark, Travis Greenlee

Montezuma County Commissioners present: None

Citizens Present: none

Federal Agency Representatives:

**Forest Service**; Derek Padilla, **BLM**; Marietta Eaton, Tom Rice.

7:00 PM Meeting was called to order.

The Pledge of Allegiance was recited.

First item of business was approval of agenda & minutes. Minutes were approved.

The PLCC Resolution and draft policy on seating alternates was discussed. Discussion included naming a first and second alternate. Frank Green was to contact Rob Yates regarding his continuance as an alternate. Dennis Atwater forwarded that the PLCC should have more members so that all interests are represented. A motion was made to accept the Resolution as written... Including the designation of a first and second alternate. Motion passed.

## **Section 8. Seating Alternates**

- (1) 1<sup>st</sup> and second alternates shall be appointed.*
- (2) In the event said Commission meets quorum of (5) but still has vacant seats, any alternates present shall be seated if the alternate chooses to be seated.*
- (3) Seated alternates shall be carry full voting privileges.*

Additional discussion focused on adding addition members to the PLCC bringing the membership up to 9 members and setting a quorum of 5. Dennis Atwater made a motion under Section 2 of the PLCC Resolution that the PLCC recommend to the BOCC that the PLCC Commission should consist of 9 members with 5 being a quorum, keeping two alternates. Motion failed.

The PLCC Field trip was then discussed. Dennis Atwater reported that he felt that the manner by which roads were being closed is ok...but the difficulty is always that the jurisdiction of those roads are not BLM but County jurisdiction under the law, and cannot be legally closed without following State and County Law. Therefore any closures are illegal. Dennis also noted that there are 32 locations that are on the map to be closed.

The field trip visited 4 locations and two of the locations were not on the map. Dennis added that the reasons for closing the roads were not appropriate anyway.

Marietta noted that none of the roads we visited are yet being closed.

Dennis noted that the Southwest Public Lands Coalition has done a historic review of all of the roads in CANM and that map would be coming soon for review. 90% of the roads on the map are pre-1976 roads.

Marietta noted that there are some disagreements over how the RS 2477 assertions are handled. She also noted that the BLM has a process in place and that she could not at here level do anything. However should the 2477 assertion be made it would not be difficult to reopen any of the roads that are being closed. So if we come to agreement on the 2477 roads the roads can easily be re-commissioned.

Casey McClelland asked why even try to close roads before the 2477 is resolved. Marietta responded that it is her job to implement the Resource Management Plan. It is my job not my choice to second guess the decisions that were made, as a government employee I have to follow the process.

Slim McWilliams noted that once a road is closed it is always harder to get it re-opened than to leave it closed. Slim also noted that for coordination to work we have to discuss these things first.

Marietta responded that her predecessor followed that process and that the all of the advisory notes were reviewed, BOCC notes were reviewed and that the issue was discussed. Marietta noted that she could not go back, all I can do is go forward. It would have been much easier if I had been the one who personally had made these decisions. Even if I had rock solid proof that a road was RS 2477 I would still have to go through someone higher up to leave the road open.

Dennis noted that the problem we have is direction coming from the current administration to close roads on public lands. Congressman Amidae asked the Forest Service...were in Federal Law do you have the authority to close a road and he could not answer.

Marietta noted that the way the plan I written it indicated which roads were to remain open...making the assumption that any other roads out there would be closed. The plan tells me which roads are to remain open.

Marietta noted that the road closures should be completed by this fall but she added that she is putting off some of these roads to allow more discussion. She felt that she had some discretion over where roads could be closed and that there should be access, parking and trail heads on the main road through the Monument.

Casey McClelland noted if a road is on a map predating FLPMA that it should no be hung up in court.

Marietta responded that it shouldn't be but it is. She furthered that the solicitors in her agency would not let her make those determinations herself and that the government

has put the burden of proof onto the entity making the assertion. Inconsistencies in the determination process have caused the difficulties.

The Apache County Resolution was then discussed.

Dennis Atwater noted that the Apache County Resolution came about as a result of the Wallow Fire. He also noted that a similar resolution will be passed by 50 to 100 counties in the west. In Apache County the resolution has forced coordination. When they went back to the Forest Service about three months ago and told the Forest Service that they needed thinning done the Forest Service said yes...lets work on it. Now the County is doing thinning work.

Dennis noted that the language in the resolution supports State Law. All it is... is a re-statement of State Law... period. It is the duty of the County Commissioners to keep these roads open for the health safety and welfare of the citizens.

What the Apache County Resolution means is that to close any roads on public lands the agency must come before the Board of County Commissioners, coordinate and get preapproval before any road is closed. The resolution does not go to RS2477 or any controversial issue it simply goes to the law in the State of Arizona which is almost exactly the same State Law we have here.

Dennis read CRS and noted that under health, safety and welfare the BOCC cannot be judicially controlled except for an excess of jurisdiction or abuse of discretion. It is the duty of the BOCC to establish and maintain roads open to the public for travel.

Dennis also noted that it is a misdemeanor to close access to public lands.

Marietta noted that from a resource manager's perspective she looks at the number of redundant roads and roads needed for access to private property that need to be kept etc. But it appears that it is more of an every road that has ever been a road out there kind of an approach that is where our dialog can be very successful in the future if we can narrow down our dialog to where we can agree and where we have disagreement.

Derek Padilla added that the agencies are not really looking for a balance because it is impossible to split things up 50/50/ Rather, the agencies are trying to provide and array of opportunities

Casey McClelland responded that the TMP calls for balancing the use. The areas were balanced before the TMP's were put into place. And the TMP is no longer balanced.

Dennis noted that Steve Chappell brought the Apache County resolution forward into the BOCC meeting. My point is that being we are the PLCC that we should be involved in that discussion. W don't make the law, we don't make the resolution. I just bring this in here because it is going before the Boards of Supervisors and Commissioners in many, many other counties in the west and this should be one of them. It is being looked at in Dolores County and to me when you go back to the volumes of court cases and everything else whether it relates to health safety and welfare or public access to the lands for recreation it is all a part of what this protects because as Derek is saying we cannot debate what welfare is but there is a body that is responsible for it by law and that is the County Commissioners. It is their duty to establish and maintain roads. The

BLM and forest Service are scared to death of this thing. Because then they have to come here. As Marietta said she is afraid that there will be some redundant roads that they will not be allowed to close. I don't have a problem with closing reasonably redundant roads. All we are doing with this resolution.... which is why it was brought into the Congressional hearing...is because it is a way a way to work this from the bottom up...which the Congressman wholeheartedly supports.

Frank Green asked if the motion would be to use the Apache County resolution verbatim ? Dennis responded yes.

Dennis added that under Colorado Law every road in the County is County jurisdiction. And it says all RS2477 roads are State Highways. We have been beating our heads against the wall with these federal agencies over closing these roads. They do not have the legal authority to close these roads...which was absolutely clear if you look at the Congressional hearings in Elko Nevada. Even they admit it. On the public record in Dolores County three weeks ago...it is not in the travel management plan. They have no authority to close these roads. We have been in here for how long...trying to work with them. They have an obligation to come in here before this board before they close any road and we go out there three weeks ago and they have two roads they haven't even talked to us about. Last year they talked to us about 16 roads in one meeting and 8 in the next. Yet we look at the map and we see 32 areas. They have an obligation to come in here and work with us on this under the law.

Slim noted that we can't work with these people anyway because they just told us tonight that they don't make those decisions anyway. But when a County passes a resolution like they have in Apache County the same thing is going to happen here that happened there. When the County Commissioners say we want to go out here and cut a fire break we are going to have some respect. Its fun to sit here and visit with them but hat is all we are doing we are wasting our time.

Frank Green added that after reading through this there is nothing that looks like it can hurt us...it looks like a good deal. Frank asked how the BOCC perceived the resolution and Dennis added that they wanted to know what the reaction was down there. Frank added that they may be getting a lot of stuff done because the Federal Agencies don't want to fight the resolution. Dennis added that they can't. Because what it will come back to is that the BOCC resolutions and codification of this is not reviewable under the law unless they have exceeded their jurisdiction or their discretion...because health, safety and welfare is the primary charge of the County Commissioners.

Casey suggested that he would call and ask an attorney that he knows in Denver about it and see what she says.

Dennis also furthered that the resolution is necessary because it gives the County the Authority that it is supposed to have. And the reason that they are wanting us to do this is because when you look at coordination, they are required under the first five elements of coordination to be apprised of and abide by in effect the county land use plan. So what they are wanting counties to do is to pass this resolution and then codify it into the land use code. Zane asked who are they? Dennis responded Congress. The Congressman that we talked to. The public lands and Natural Resources Committee Congressional Subcommittee. Rod Bishop from Utah is the Chairman and Tipton sits on the committee. Amidae the Congressman for the Elko area district is the one that was

the most up to speed. Besides Rod Bishop. He asked really good questions and the Forester could not answer him. Where under Federal Law do you get the authority to close roads.

Meeting adjourned at 9:15 pm.