

Public Lands Coordination Commission

Meeting Minutes March 22, 2011

Commissioners present: Drew Gordanier, Frank Green, Zane Odell, Dennis Atwater, Rob Yates, Matt Clark

Commissioners present: Gerald Koppenhafer

Approximately 3 citizens & Steve Beverlin Tom Rice from the Forest Service were also present.

7:05 PM Meeting was called to order.

The Pledge of Allegiance was recited & ground rules established.

First Item of business was approval of agenda & minutes. Agenda & Minutes were approved adding discussion of the GAP to the agenda new business.

Old business was discussed.

An update on BOCC actions was given. The BOCC were presented the letter from the PLCC recommending that the resolution creating the PLCC be changed to reflect the new recommendations for membership. The BOCC took the recommendation under advisement and tabled the decision until the next BOCC meeting.

The SOPA Letter was discussed and it was reported that the letter was sent on to the FS without the rangeland projects and the Goodman Point Pipeline projects.

RS 2477 was discussed.

Rob Yates reported on the meeting with the Forest Service attended by Dual Likes, Rick Newby, Rob Yates, Dennis Atwater, Commissioner Steve Chappell and James Dietrich. Concerning 2477 the maps were reviewed to see what the decommissioning looked like compared to the older maps. We also discussed other areas that need some help for example camping sites or "spurs" that exceed the football field measure from the road. As far as 2477 we received some maps from the Forest Service and we need to review them. We can now identify some areas that fall under that jurisdiction for example the Hog-Back Road which is scheduled for decommissioning/ or closure but now it has been opened back up for 30 days of comment. One like that I can personally see would need to remain open because it cuts off so much land. There might be some other roads like that.

Dennis Atwater added that the subcommittee can prioritize them and can take the ones the public has brought in that are issues of concern and put them up as a priority so we can get those out of the way and get rid of the tension over those. Then we can prioritize the roads get the no-brainers up first and work on down the list.

Rob Yates added that regarding private property north of wolf den and Steve has indicated that he is working on things with the landowners. I think anything going to

private land is a priority. Some of the others will just take a lot of leg work. There were some other breakthroughs like with the camping that it sounds like we can make some progress on. We spent a couple of hours up there and it was basically an over view of seeing what we actually have and what is going away.

Duane added that we have everything except that overlay of the topo map.

Duane asked if anything was moving ahead on RS 2477...the ones we turned in? And all of the documents we gave on the homesteads and deeded land?

Drew asked...isn't that what you were doing on Monday?

Rob added that no...we didn't take that with us over there...we were just getting those maps basically and looking to see what they had compared to what we had already. That stuff that you brought in the last time we didn't look at that.

Frank Green added that is what we need to do next is take a look at those since we have those maps now.

Rick Newby asked about the Wagon Road and Stock Drive...those were submitted months ago.

Drew Gordanier added... We plan to go look at things this spring.

Zane Odell added we as a PLCC will take a field trip to review it this spring.

Rick further that a field trip won't tell you when it was built...if it was on a map before the Forest then it s there.

Drew Gordanier added it will tell us how much is existing that is actually usable.

Duane added that I can tell you that sitting right here and it will save you 100miles of walking. Adding that it is decommissioned ...you have to walk it.

Rick added that the road that was closed during decommissioning last summer were there prior to the Forest Service.

Dennis Atwater furthered that all of the documentation on the road is on the web and there is no question as to whether it is an RS 2477 road or not. The point is that it is an RS 2477 that has been decommissioned without proper authority. So the County is going to have to decide what happens next. The road really needs to be put back into order as it is a public ROW and it has not gone through the legal process for closure.

Duane added this road is historical and I don't know how you feel about closing historical stuff but they are historical.

Dennis added that this is a traditional cultural property hat is eligible for entry into the National Registry.

Duane added that these roads are called a wagon road and a stock drive but back in the 50's these were the two accesses on that mountain. They were the only road to get up

there. So people may say that was just a stock drive but no it wasn't it was a road. So was the Wagon Road...it was the way to get on up to upper pole springs...you used the Wagon Road to get up there.

Drew added that his concern was that the road went through private lands.

Duane responded that it didn't.

Gerald Koppenhafer added that he felt it did.

Duane responded that down on the Mancos side there was a small section that went through private.

Gerald added that it also went right through Wesley Wallace's property.

Duane and Rick both responded that it did not go on his property.

Rick added that his point is that they have put a lot of hours into this and they don't want to keep going if there is no progress on it.

Zane added that he had heard concerns both way on that and he wanted to go see for himself where it goes by private ground. This has gone up to the BOCC but we want to look before we decide anything.

Gerald added that both routes were presented at the coordination meeting at the annex. He furthered that the only way those things become an RS 2477 is if Montezuma County takes it to court to establish that that is what it is.

Duane added that's correct. And where we have the documentation that establishes that it was there in the late 1800s the process is pretty simple and pretty inexpensive.

Gerald added it is not going to be simple. I can tell you that right now.

Rick asked...are you saying you are not going to pursue this?

Gerald responded no we are not saying that at all...but we are going to have everything in line before we do this.

Duane asked how do we go about doing this? What do the commissioners want us to do? What do we have to hand you?

Gerald responded that we are going to go look at this before we do anything. We are not going to jump off a cliff just because you guys woke up on something that happened three or four years ago.

Duane added these are historical roads up there.

Gerald added a lot of that goes right through my permit I know exactly where it goes. It hasn't been used in a long time.

Rob Yates asked... I'm a little confused did they close the Morrison trail is that what we are talking about?

Duane added no they didn't close Morrison...we are talking about the rim road.

Rob asked if they decommissioned the whole thing?

Duane responded no just portions of it.

Dennis Atwater interjected that there is a difference between an permit and private property. A permit doesn't change it being public land.

Rob Yates added that the one place above the Aspen Loop trail did get used at one time. If that's part of the historical deal then yes I can see that. Some of that other down there I don't know where they have decommissioned because I have never been down on the lower portion of it. All of those other little roads going out by Wesley's the Aspen Loop intersects a bunch of them and I know that some of those would be decommissioned but those are not part of the historic one.

Duane added up there in the Mancos area there are a lot of other RS 2477s that could be approved in that area. The other thing is when you start working on the wild-lands project I brought Loretta a whole box of BLM maps that predate 1976 for Montezuma Dolores San Miguel and San Juan.

Frank Green asked...Gerald to answer Rick's question I guess this is on hold until we get a site survey is that correct?

Gerald responded yes.

Rob asked... on these two?

Gerald responded that the BOCC will look every one of them before we go forward.

Zane added that the PLCC discussed this as well and it was decided that they will go look at them before taking them forward.

Duane asked if the whole road has to be claimed RS2477?

Rob Yates added we don't know...because portions of it were not closed because it is on the main road. And some of it wasn't being used anyway. I don't know if you can piecemeal it or not.

Dennis Atwater responded it does by law.

Rob added that some of it hasn't been decommissioned but you can still declare it an RS 2477 and go through the process.

Dennis added that you can go through the process and you can get rid of a portion of the ROW or all of it. But to do it legally it has to go through the legal process. That's why the counties generally go in and they assert all of the RS 2477s. Its not typical to go in and

say do this one or that one. It's a ROW that belongs to the people. And as such you have to go through the legal process to take away the public right of way.

Duane Likes added that when it comes to the County Commissioners that Gerald should abstain from voting on it as it is very clear that he has a conflict of interest with it.

Rob Yates added that the purpose of this group is to vet all concerns and go look at things so that when we pass things up to the BOCC to advise them we can say we feel that his has some credibility.

Duane asked does not an 1880s map have credibility does not a report to the Forest Service have credibility?

Rob Yates added that yes it does but we need to also look at the sites on the ground now.

Duane added that there are a whole range of issues related to why we need these roads. Reservoir maintenance, wood hauling, but it just opens up more country to haul wood out of. For checking cows etc.

Frank added that everything we have looked at indicates that if you go forward with an assertion you better have your research really done and everything lined up. That include getting the BOCC to want to do this and I think getting them up there to look things over will go a long way towards that end. Its not that the Commissioners are not going to try but they want to have their ducks in a row. If they are going to put money out for legal action they want to know they can do some good.

Zane added that it would be a waste of taxpayer money to up there half cocked.

Duane asked how many people do I have to have sign a petition that these two roads are important to them.

Drew added I don't think you need to do that...people know that already. The Commissioners know that as well.

Frank Green added that in the BOCC meeting where these roads were discussed at least one or more of the commissioners have stated that if we have the proof and we think we have a chance we will pursue it. I really believe they will but...they want to know they have their ducks in a row. I think they want to have not just the maps but they want to have everything they can have.

Duane added if you look at game retrieval if you go up one of those roads and shoot an elk 100 yards off the road it wouldn't be bad to drag it 100 yards and put it on a 4 wheeler to haul it out.

Zane added we are not against it but we are going to go look. That was decided here six weeks ago.

Dennis added that what will determine if that is and RS 2477 road is the documentation, and the historical use. That's all. Looking at it is fine and looking at it may resolve some issues like where does it go. But it goes where it goes and we will be able to

substantiate with our materials where that road went. Maybe through the convenience of the traveling public its how the law would say it... it has maybe been altered over the years...depending on when it was altered...both could still be RS 2477 if there was a significant change. Looking at it might help resolve those issues but basically I know what will determine the validity of that ROW is the historical data & historical use period.

Rob Yates added...I know what your saying...its black and white on a piece of paper...send it up.

Duane responded that's not what I'm saying. I am asking what do we need to get together beyond what we have?... because it definitely qualifies.

Duane Likes furthered where do we go on future roads? The other RS 2477 roads out there... I am not going to spend my time working on them unless I see some moving ahead on them.

Drew added at this point lets get them identified.

Duane responded...I'm through unless I know that an RS 2477 that I identify that somebody is going to take it serious.

Drew responded I think we have.

Rick Newby added that we were told that they would do everything in their power if we brought it to them and it was RS2477.

Dennis Atwater added that he had an additional concern on RS 2477 regarding the Red Arrow Gold Corporation. He stated that he had been handed the letter outside right before the meeting.

Dennis read the letter. The letter discussed the need for access to the mine and explained that the road was an RS 2477 Road.

Tom Rice explained that the author of the letter had a process to go through to assert that claim.

Dennis Atwater added that this road had come up during the Monday meeting and that he understood that the forest Service had indicted willingness to transfer the road to the County.

Steve Beverlin added that the Forest Service was prepared to do a jurisdictional transfer of the Red Arrow Mine Road to the County and we can begin that process tomorrow if the County so desires.

Steve added that he did not believe that the BOCC have had opportunity to discuss that amongst themselves yet to determine if that was a reasonable of feasible approach.

Tom Rice added that the access he wants up there is for a commercial operation for his mining regardless if it is on private property. If he is going to be hauling off of his private property onto what is right now Forest Service road he has commercial use of that just like loggers or cattle trucks...he has to pay a commercial fee on that...so we are not a

barring access or limiting access to a private land. Red Arrow just needs to have a permit to use that road if they are hauling any material off of the mine for commercial use. It is a commercial activity vs. a private activity.

Zane Odell asked if he had been in contact with the BOCC.

Gerald Kopenhafer responded that he had...he had a permit before to plow that road in the winter to access that mine. They charge him a fee and he doesn't want to pay the fee. That's that what it boils down to...that and the bond fee so that he doesn't destroy the road in the wintertime. It is no different than what they do with the pumping plant or like charging Dune Findley to haul his logs down the Groundhog Road. Part of the reason the County wants to take that road back is to get away from these commercial issues because Steve and them have to charge to do commercial stuff up there. But the ones getting charged are the ones hauling logs... Cement trucks and those hauling cattle don't.

Steve Beverlin clarified...Cattle trucks are charged through their permit, and cement trucks are charged by charging subdivision surface rock replacement fees. Just to keep the road in good shape that's what it is for.

Gerald added that all of the private landowners at Groundhog are using the same road.

Rob Yates asked if Dolores County owned their part of the road?

Steve responded no.

Rob asked why they plow it?

Gerald added that everything up to Groundhog is private.

Rob asked if the County was going to take all of that back ?

Gerald responded yes we plan to take it back and that will relive the commercial issues on that road.

Frank added that if you are hauling on a FS road to the Norwood Road you still need a permit.

Steve responded yes. Like Dewayne has a permit and Corey Veach has a permit.

Zane asked if we need to consider the Red Arrow Road ?

Gerald Responded if we take over the road the issue goes away. Of all the roads out there you could probably prove RS2477 the easiest of any of them. But if it is turned over to the county it is a moot point.

Rob Yates asked...even if it is an RS 2477 road and the Forest Service maintains it the still will charge the permit?

Steve Beverlin responded that the road may meet the criteria to be a RS 2477 road but unless it is legally designated as such it isn't one.

Rob added that even if we prove it as an RS 2477 you are still going to charge them a permit if it is in your jurisdiction?

Steve responded if it is a validated as 2477 it is in County jurisdiction.

Gerald added that if you go to court on some of these things...just like San Miguel County did on their ROW above Town up to those mines...They got a 4 foot ROW...Why?... because what was there before is where the mule went and they needed 4 feet for two mules to pass each other. That's what they got... the road is right there but they only got 4 foot out of that road.

Duane Likes added that State Law says that any ROW is a 60 foot ROW.

Tom Rice added that it was the "scope of use" that they were considering.

Gerald responded yes that is what they considered for when the Forest was created and that is what you are going to get. Scope of use for when this forest was designated in 1905.

Gerald added that you don't need to consider the Red Arrow Mine road because we are likely to just take it and make it a red road.

Dennis added that we will include the Road on the RS 2477 inventory only because it is.

Dennis further that philosophically the way I see this thing is that for the committee to do their work effectively and within the full scope of the law you need to inventory all of your RS 2477 period. Because it is a right of the people that ROW... so no committee has any jurisdiction to say we are only going to do these and not these for any reason. You cannot negotiate away the people's rights. If you look under County powers under the Board of County Commissioners it says the BOCC is not clothed to negotiate away the public's rights. If you go to the penalty part of it its 100 dollars a day for doing that. So if there is law out there and you are not following it is a 100 dollar a day penalty for each Commissioner. Since we are assigned under the Commissioners under their authority we are going to follow the law and we are going to designate every single RS2477 so we don't get anybody's butt in a sling.

Rob added that would be under county inventory for future.

Duane added that beyond the Red Arrow there are more RS 2477's

Dennis added to do our job right we need to do what is required by under the law and what the people's rights are under the Constitution. And that is what we are going to do.

Dennis went on...What Gerald is saying they can end the issue without owner. But that will be up to them but we will still list all of them on the RS 2477 inventory. And what happens beyond that is up to the following the legal procedures. If ...and this isn't going to happen... but if the county said well we are going to get rid of that road...it would have to go through the legal process which the county has one... on decommissioning a road or taking Public ROW out of use. Which would involve a public hearing and there the public has their voice back and that is the way it goes then it is done legally and it is an

over and done issue. But until you go through that process...no RS 2477 or any other county road can be decommissioned without going through the legal process period.

Slim McWilliams asked...is a road an RS 2477 road when the Courts have designated it as such? So if you have two inventories then...an inventory of road that perhaps should be RS 2477 but have not been designated by the courts and those that have.

Zane responded... correct, and our job here is to prioritize them. Also what is to go with first or the hardest and to identify all of them. As they come to us.

Dennis Responded we are not waiting for them to come to us we are working from the maps. If one comes to us that is an issue we need to address it.

Rob added ...vs. going through a process of prioritization.

Next on the Agenda was US waters it was reported that the BOCC had been presented a memo stating that more information was needed and that the local water managers should be consulted for input. It was reported that DWCD manager Mike Preston was asked about the issue and he had asked the Colorado Water Congress but had no response yet.

Gerald added that his thing had been going on for several years and that last year they tried to make everything waters of the US from what is running down the borrow ditch to every mud puddle...always before waters of the US had been considered to be navigable waters. This is just a move by the EPA top go around Congress and control more bodies of water in this whole process. I have talked to Tipton about this and he is supposed to be looking into this to get this back under control and the Sate still has a right to control these waters because basically if that goes through the Sate water rights are at risk. The thing of it is if it becomes waters of the US any water you use if you pump it or irrigate and you put fertilizer in your system you are going to be under so many EPA regulations. I don't know...they (EPA) made a regulation on Dairy Farmers that control spills of milk. According to regulations you have to have a berm system similar to what you have around oil tanks. In order to control milk spills because there is a fat in milk that is like a petroleum product.

Dennis added that they way I read this thing is that what the EPA is doing is trying to enter a new fancy word...Guidance...so instead of regulation they say guidance so that they can bring in a whole new element of regulation...and by pass federal state and local government except to put it under EPA guidance.

Gerald added that they asked for 13 thousand new enforcement personnel this year. The EPA is writing these regulations without having the authority to do it ... what they are doing right now. That is why they are using the word guidance because they have to have congressional approval for regulations. They are doing this trying to do it this way without having the authority designated by congress for them to do it.

Dennis added that is specifically why they are trying to use the word "guidance". Because the rules they are operating under now that has to be initiated by congress is called regulation. It is probably best to send a letter specifically addressing the "guidance issue".

Gerald added that is what he talked with Tipton about and added that they cut the EPA budget so it may hold them off for a while. If you guys would kike us to send another letter we can do it. This is a very big issue. Way bigger than most people realize.

Drew Gordanier suggested that the PLCC hold on for a while before acting to see if Mike Preston could bring any more information to the table.

Rob Yates agreed reminding the group that at the last meeting the PLCC had decided that they didn't have enough knowledge base to send a letter on yet.

Drew Gordanier made a formal motion to table the letter writing for the US waters until we acquire more information.

The new Forest Planning Rule was then discussed.

Everyone reported that they were still in the reading process.

Tom Rice reported that on April 6 there would be a public meeting in Delta regarding the new planning rule.

Discussion was had regarding attending the meeting. It was decided to continue research and then decide if someone wanted to attend the Meeting with one of the BOCC.

The Wild-Lands Secretarial Order was then discussed.

Dennis Atwater read a letter he drafted to the BOCC on the subject.

Frank Green Made a motion to approve the draft letter to the BOCC regarding the Wild-Lands Secretarial order. Motion passed.

The LUC & Comprehensive Plan was discussed.

It was reported that in the last PLCC meeting there had been a decision to draft a letter to the BOCC requesting that the BOCC ask the Planning Commission to consider the potential for including language in the LUC regarding road closures.

Dennis Atwater Reported that the P & Z were aware of the question and that there had been some limited discussion regarding need for developing policy on public lands. Dennis added that he and Drew were going to have to abstain being they are on the P & Z.

Drew added that the Director sees the need and that other P & Z members see the need.

Zane asked if we should send a letter to the BOCC from the PLCC asking for involvement?

Dennis added that this is a discussion that needs to happen what change should be made?

Drew added that there is a process in place to make that change and it will take some time.

Rob Yates asked if it would be better to go meet with the P & Z rather than sending letters back and forth?

Dennis thought that it would be a good time to meet with the P & Z as things have slowed down. We could schedule it in conjunction with the P& Z meeting and have it on the agenda following the P7 Z meeting and coast right into it.

It was suggested that perhaps the PLCC should wait until after the BOCC meeting with the FS on the 4th to see if anything comes out of that meeting.

The GAP review was then discussed.

Drew Gordanier reported that after hearing all of the information last week that he felt like the San Juan Citizens Alliance was an environmental group that was just trying to deter the oil and gas industry through this proposed GAP plan. I would like to recommend that the BOCC write a letter to the COGCC stating that they would not be in favor of a GAP plan.

Zane added that there is a letter already written that could be sent.

Slim McWilliams wondered if we as a coordinating county would automatically be consulted before a GAP plan was considered? Dennis Atwater responded that he thought we are automatically covered.

Frank Green added...I think so far we have only asserted our coordination process with the Forest Service and that we should broaden our scope sending the letter out to the DOW and other agencies stating that we are a coordinating county.

Dennis added...If I'm not wrong that letter was sent on up to all of the other agencies.

It was reported that the Coordination Letter was only sent to the Forest Service.

Discussion was had on drafting another letter to send to the COGCC and other agencies.

It was suggested to make a recommendation to the BOCC to inquire if Dolores County is in agreement and then take it from there.

Rob Yates was appointed to redraft the letter.

Frank Green suggested that we send a coordination letter to the remaining agencies.

There was discussion surrounding redrafting the old coordination letter using it as a template and then sending it on.

It was decided that the letter should go on the next agenda.

Meeting adjourned 8:30

