

Public Lands Coordination Commission

May 15, 2012

PLCC Commissioners present: Zane Odell, Drew Gordanier, Slim McWilliams, Dennis Atwater, Travis Greenlee, Matt Clark Casey McClelland (alternate.)

PLCC Commissioners absent: Frank Greene

Montezuma County Commissioners present: Commissioner Steve Chappell

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. Dennis Atwater noted a correction in the minutes. Page two third paragraph, Change from all roads in the Monument to "90% plus" Minutes were approved.

The PLCC resolution and policy on alternates was reviewed. Amendment to resolution was approved.

SOPA Projects relating to Montezuma County were reviewed.

An explanation of the ditch bills were given... which directs the Forest Service to issues easements for ditches. The Forest service will not assert ownership of any of the water.

Several BLM ROW's were being updated and there was discussion surrounding where those updates were to take place. Maps were requested for active updates.

The next item of business was the Apache County Resolution. There was brief discussion surrounding the difference between resolutions and ordinances and MOU's. Dennis Atwater commented on MOU's. Dennis noted that MOU's go directly to cooperating agency status versus coordinating agency status. Dennis voiced concern that the local government authority was not respected during the TMP. Matt Clark asked if the debate focused on whether or not coordination obligation was being met? Dennis responded that regardless of the MOU the county is a coordinating county and the agencies are required to coordinate. The MOUs just becloud the issues. Dennis noted that Montezuma County is a coordinating county as declared by a resolution.

County Commissioner Chappell noted that the MOU had an expiration date and then the county sent a letter regarding coordination which was never signed and is in limbo. We don't view field trips and public meetings as coordination we use sitting down with Commissioners with a map prior to the decision of making a closing as coordination not getting a map after the roads are closed and being the first ones to see it. Of course commissioners expire every four years and when a new group comes along it is pretty

easy to ignore that group. Dennis noted that resolution 08-2012 Passed by the BOCC on August 30th 2010 resolves that this is a coordinating county.

Commissioner Chappell noted that the original MOU that expired spoke of coordination but it also spoke of cooperation. The language wasn't bad in that it had some good points. Dolores County...when they were doing the wilderness areas passed a resolution as well. I don't know that resolutions do anything except declare your position, but if you don't have a big stick it's not going to happen.

Dennis noted that the resolution declares your position but it also provides an opportunity to take it to an ordinance.

Commissioner Chappell noted that it might be useful to hear a little from the Dolores County resolution reading...therefor it is resolved that the County Commissioners go on record as opposing any additional expansion of wilderness in primitive areas... that the Forest Service be required to report the use and benefit of existing areas that new studies be undertaken to allow for expanding use of these existing areas to the general public rather than to privileged few backpackers the board further resolves to oppose an further closing of roads within National Forest in Dolores County... So a lot of good that did...and that was a resolution.

Dennis noted that another thing that a resolution does if it is written and it is in compliance and reflection of state laws it reflects your policy that you will enforce those laws.

Matt Clark asked what state laws those would be and how they get around the supremacy clauses within the constitution. Dennis noted that there is no supremacy clause regarding roads and that the roads belong to the state. The state gives the jurisdiction to the county and you were sent the Colorado Revised Statutes.

Dennis furthered that the states have laws that say roads are under their jurisdiction and that those jurisdictions are passed to the county. Matt noted that the point of the supremacy clause and preemption doctrine is that anything that federal law decrees takes precedent over state law. So it would still have to go through some legal process for the state to have a right to do something in controvert to the federal government in their management plan.

Dennis reiterated that he did not believe that supremacy clause went to the roads. Matt added that we need to debate that question if we are considering passing anything remotely binding. That is the main thing we bump up against if we pass anything like the Arizona resolution. If we are in the purview of an MOU then we are trying to work together...but if we are talking about law then we need to discuss this. It really is the central question if we are considering moving this towards an ordinance or something that becomes law.

Dennis noted that the congressmen that are in charge of the Public Lands Committee and Natural Resources Committee. They are not aware of any supremacy of the Federal Government on roads. They even asked one forester where in federal law did he get the authority to close any road on the forest. And the forester could not answer. Matt furthered that he was uncomfortable considering any ordinance that is direct opposition to federal law unless you can show me something that says states have that right. If the

county wants to do that and be in the position to challenge federal law that is their prerogative but I don't feel comfortable recommending it knowing the actual legal precedent that has been set over and over on federal on federal supremacy.

Denis noted that there has been a precedent set in Apache County Arizona where they have passed a resolution that goes to their state law. It was offered up at a congressional hearing and so we were looking at that because the state law in their county mirrors state law in Colorado and the resolution has been effective there to date. Since it was passed it seems to have worked well...for both the Federal government and the county because they are now working together. And roads are no being close without them sitting down together at the table. Matt responded that he agreed that the feds might not challenge it...and it might be a good way to take coordination to the next level. My point however is simply to be aware while we are discussing it and making recommendations that the preemption doctrine and supremacy clause have precedents going clear back to the beginning of this country.

Casey McClelland noted that he sent the Apache County Resolution to an attorney in Denver that represents all of the counties in Utah except one. She specializes in mining mineral and public land law. So really I think we ought to see what somebody who does this for a living has to say about it.

Drew Gordainer asked if Dolores County was working on this as well? Commissioner Chappell responded that they were but that they did not favor the resolution and would rather see a MOU where coordination would continue and would give the Forest Service and BLM the opportunity to come through the county process of closing roads which would involve a public hearing and then a decision by both the Forest Service and BOCC so it would be a lot of pressure on the BOCC because if a road was closed they would have to agree with the Forest Service. So the representative of the people... the BOCC...would have to be in agreement with the Forest Service and sign a document saying that the road could be closed. Or they would disagree and say that is a road that the public needs for health safety and welfare. They would like to form a document and see if the FS/ BLM would be a partner in that...an MOU that we will work together on road closures and determine them by our process.

Zane Odell noted...that makes more sense than driving a wedge between us. Commissioner Chappell replied that that is what they felt....we don't want a document that just creates lawsuits...we want a document that coordinates and has a process.

Matt noted that with RS 2477 you already have a demonstrated legal mechanism instead of going up against the feds saying we can just do whatever we want with the roads.

Commissioner Chappell furthered that RS 2477 is a good way declare a public highway or public road but we are talking about roads that access public land and not necessarily that type of road and this would involve a process that would include the county rather than exclude.

Dennis added that what the resolution in Apache County did was it went right to state law. That state law here is very clear. When you look at state laws under powers of a county it requires coordination. Counties have the authority to adopt ordinances and resolutions regarding health safety and welfare issues as otherwise prescribed by law.

Mat asked if the coordination process were to be resolved would it help us with this issue? Casey McClelland added that he felt that it would because it brings everyone together into the decision and the thing that bothers me is that the TMP final rules says that these decision must be made locally, with local government, local tribes and local public. In fact it says that 113 times in the final rule. If we are all together here and we are coordinating like we should be...and every user group is represented...then we are going to be happy with the outcome. It just doesn't go that way though comments are made, over and over. Out of 45 people who comment 40 will be pro motorized and 5 anti and then it will go the way of the anti. I we are coordinating and have input on what is actually closed...and agree on it. If we simply follow the FS rules the whole process could be changed. An we will accomplish something that the whole community will be happy with .

Zane asked if the Resolution will get us there?

Dennis replied it is one step...and Matt noted that getting the coordination protocol finalized would help as well.

Steve asked if we could get some clarification from the Federal agencies on the coordination protocol and noted that Dolores and Montezuma County would continue to work on a document that would help to find a way to get in on the front end of planning.

Steve Chappell added that it does not make sense to us that when congress mandates coordination then why can't we get a signed document back say that is what they are going to do? Who is your boss and if they tell you to do it why isn't it done.

Derek Padilla added that the hang up may be over the definition of coordination. The Agencies may have a different interpretation. That was a problem down on the Gila National Forest. The federal government definition of coordination was... we will get together with you beforehand to work through the process and to identify what we are going to identify as the decision after input from everybody. It wasn't the reverse where the counties are say...yes that's ok to do that...or no its not ok to do that. It was not that level of coordination. An the counties of course didn't like that and so they are still going through all of that.

Steve Chappell added that we are being insulted by the ABCD coordination by the forest Service. We have all figure out the ABCD thing. You have A proposal B proposal and C proposal and a facilitator that gets up and says here are the choices but we already know the choice is already made so why go through the process. Everybody has caught onto that...so let's get to the able to really talk about things instead of looking a scenarios and having to pick one.

Derek Padilla disagreed and felt that it they are giving the public a basic idea of the alternative we can choose from. We don't have to give to provide on specific alternative but in my view it's better for the public to say that this is what we are thinking is the best proposed action so that they can provide meaningful comment. I have already been reviewing the comments and the proposal will not look like any of the specific alternatives because will be based on the comments received. So we are doing exactly what you are asking us to do. Connie Clementson added that they spent a large amount of time talking to individuals and people about what happened and where the routes are. The Line officers thoughtfully reviewed every single comment that came in. We sat down

for hours and hours talking to individuals about their favorite roads and why they are important to them. We do have a difference...the federal government vs. locals on the definition of coordination. My view is that the counties want to have a role in making the decision and the federal government maintains that they have the right...under the constitution... to make the decision on behalf of the public. I think we may always have to agree to disagree on the definition of coordination. We believe that our commitment to this county...and I hope it has been very clear...we want to work with you. You may not get the decision you want out of the federal government but have we made every effort to involve you in the decision making process and thoughtfully consider everything that the BOCC represents from their constituents.

Travis Greenlee asked about the federal definition of coordination and if the federal government can choose whatever they want to no matter what the county says. Connie replied...that is how the county seems to see it. The Counties though truly believe that they have a decision making role in federal actions. And I believe the Forest Service and BLM maintain that that final decision lies with the line officer.

Travis Greenlee responded...if you don't like what we say it doesn't matter...there is no coordination at all there because your saying that you will involve us...you will listen to us...but in the need if you don't like what we have to say you can do whatever you want to anyway. Connie replied we look at it more than if we like it or don't like it...we are taking a lot of other things into consideration like resource impacts and all of the things we are charged to maintain on behalf of the public. Management of the federal land is on behalf of all the public and so we do try to make an informed and considerate decision. But if it just what you want versus what we want I don't believe that is the case. I think we take all of the information into consideration and try to make the best decision that we can for both the public and the resource.

Drew Gordanier added that the problem we are having and our interpretation of coordination is that when you guys decide you need to do resource management and you are thinking that is closing roads. That is where we should be involved before the public knows about it or anybody. That is where we think that you guys should come to us and tell us we are thinking of closing some of these roads what is your views on something like that before anybody has an ABC or D to choose from. That is what we are trying to get. Just like the SOPA deal...we should really know what is going on before the SOPA. When you are developing new ideas or whatever...then that is where we feel that you guys should come and say look...we are going to think about doing AB or C over here...what are your ideas. So through the Commissioners this group will look at things and we can provide better input. So before we go through the scoping stage the Commissioners should have the authority to look and see what is planned.

Travis added that he felt like even though the federal agencies will listen they are saying we will make the decision meaning you guys...where it should be we as the Federal agencies and the County Government together.

Commissioner Chappell added that we could wait until after the elections and then really push congress to better define coordination. Because the words are there but we feel we are not really involved. It would be good to get a really specific idea of what they meant. They put in there time after time.

Casey asked how the Federal Government is interpreting the travel rule because it seems very clear that you have to coordinate and it has to be local. How many comments did you receive? Derek replied 4-600. Casey wanted to know how many were local and Derek responded that most of them were. Casey noted that when the EA came out there were 10 basic point that were focused on but the issues could have only come from a few comments. I am guessing most of the comments were for A...no change even though the Travel rule allows that.

Derek responded that it doesn't because the no-change authorizes cross country travel which is not allowed. Casey responded that it is allowed the final travel rule states that a district ranger does not have to make any changes. Derek responded yes the designated system can be left as it is...but motorized cross country travel is not an option for us to maintain. Dennis asked when this information comes from the Federal Registry but it does not state that...where do you get that information?

Derek responded that it is within the Travel Management Rule. Dennis added that it is not because I have read it front to back.

Casey suggested that it would be worthwhile to have the final travel rule here to go over it.

Derek agreed that he could do that during the next meeting.

Connie asked Casey how he defines coordination. I heard from some if you involve us upfront what is coordination and then I heard if we can help make the decision that is coordination.

Casey responded along those lines...coordination isn't just we get together talk about it and then a decision is made that nobody locally is happy with. I do not believe that if you asked the majority of the community folks nobody is going to say close it all.

Zane added that coordination is defined as it is written in FLPMA.

Dennis added that the American Stewards of Liberty have it defined pretty good. Public comment and coordination are two distinctly different things. Zane added it states in FLPMA with equal standing and to reach consistency.

Dennis added that coordination and public comment are two distinctly different things. Public comment is a period for the public...coordination is where government entities meet together and they work problems out in a business atmosphere where we all sit at the same table each with equal standing. Dennis furthered that coordination starts when the action is first proposed. We meet together on it. We identify critical issues, and we work it out together. We don't have to wait around to find out what the decision is because we know...we have been a part of the process. We may not agree with every finding. Some we are going to have to take and some you are going to have to take. It is a process we have to work through and that is what we have been asking for. Coordination is already clearly defined there is no ambiguity, and there is nothing left for congress to do except direct the agencies to coordinate with counties as mandated by law.

Derek responded that he would look into the issue regarding coordination and find out why the agency has not proceeded with that and see if there was a difference between definitions of coordination.

Dennis added that every day the citizens of this county lose ground by not being a part of the process they are legally entitled to.

Casey added that he felt Mark Stiles wants to leave a legacy of roadless areas and wild & scenic. When you have a district supervisor that wants to leave that behind you are not making the decisions there.

Connie added that the two things that she heard tonight that everyone wants is that you want to be involved before it is on the SOPA, and that you want to sit down and make the decision with us. (The BOCC that is)

Steve Chappell noted that if the BOCC shares in the decision making then they share in the criticism too which could help deflect some of the criticism directed at the federal agencies.

Duane Likes noted that there were a number of RS 2477 roads closed but if we had gone through the coordination process we would have pinpointed those roads right up front.

Drew Gordanier felt that the Apache County resolution should be tabled until we get more information. Drew made a motion to table the Resolution and it passed.

Matt Clark asked if we need to establish anything more formal about trying to resolve the coordination question?

Connie thought that the Forest Service did respond at one point. But that we need to revisit the letter as it was so long ago. It was agreed that we would all look for the letter.

Casey McClelland requested that the Forest Service final rule be reviewed during the next meeting. Casey volunteered to highlight the paragraphs that we need some discussion on.

The meeting adjourned at 9:00