

The roads less traveled



Moffat County is laying claim to little-known rights of way across pristine lands, intending to block federal wilderness designations that might stand in the way of economic growth



Kurt Kunkel of the Colorado Environmental Coalition removes debris from the middle of what is considered by the Moffat County commissioners to be an existing road. The county is claiming old roads across remote areas to block federal wilderness designations.

STORY BY THEO STEIN • PHOTOS BY SHAUN STANLEY

THE DENVER POST

BROWNS PARK — Signs on the lonely roads of this dusty corner of northwest Colorado welcome Moffat County visitors to "The Real West."

Butch Cassidy, rustlers and other outlaws once found safety in the dry hills and dramatic canyons. A plaque on the town green in Maybell, population 289, still celebrates lady bandits and the old range wars, when cattlemen stampeded 3,800 sheep over a cliff and shot the shepherd for trying to interfere.

Now, county commissioners are citing a Civil War-era mining law to claim hundreds of miles of old roads and public rights of way across a national monument, a national wildlife refuge and thousands of acres of roadless land in hopes of staving off wilderness designations they fear will throttle the region's economic future.

Many of the road claims thread through the vast, undeveloped Vermillion Basin, a stark desert of juniper, sage and broken hills — and a place county officials want the Bureau of Land Management to lease for natural gas production.

Others cross already protected lands, like Dinosaur National Monument and Browns Park National Wildlife Refuge, where for decades

locals have chafed at their inability to graze cattle, create gravel mines or build subdivisions.

In a region dependent on mining and livestock, officials are counting on the revenues from energy production to fund their schools, fix their roads and provide jobs in the coming decades. Moffat County's top 10 taxpayers, energy companies that rely on federal mineral leases, contribute 68 percent of the county budget.

But former rancher Dick Randolph, 76, who ran cattle in the wildlife refuge from 1958 to 1965, said the county's road claims are ridiculous.

"The only reason they're saying this is because of their visceral antagonism to anything that has anything to do with the word 'wilderness.' It's anathema to them," he said.

Congress repealed the law in question, Revised Statute 2477, in 1976, but grandfathered in existing claims. The 1866 law states in its entirety that, "The right of way for the construction of highways over public land, not reserved for public uses, is hereby granted."

The law's broad language has given federal land managers headaches ever since. For example, the law failed to define what constitutes

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Jeff Comstock, director of natural resources for Moffat County

Development hopes drive county's road claims

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"construction" or a public "highway."

Some of the claimed rights of way are already roads. But most, the county natural resource director says, are cow paths, Jeep trails, or historic routes that have long since vanished into the landscape.

Two years ago, the 10th Circuit Court of Appeals in Denver adopted the Bush administration's argument that there must be evidence of a construction to prove a right of way. But Moffat County has a different definition, one officials are demanding that the Interior Department accept.

"We have said from the beginning that there is no need for physical evidence to be present to prove a right of way," said Jeff Comstock, director of natural resources for Moffat County. "The need for a route by the public is all that's required. It may not even be necessary today but may be one the county looks to in the future."

Designations derail some uses

Since the 1990s conservation groups have tried to get Congress to designate 320,000 of the county's 1.8 million acres public land — most of it owned by the BLM — as wilderness. Many acres have already been found to possess the emptiness and lack of human development that qualify them as Wilderness Study Areas, places like the Diamond Breaks, Cross Mountain and parts of Dinosaur National Monument.

With a wilderness designation, grazing would continue, and ranchers could still use pickups to fix fences and watering holes in some cases. But energy development, road building and use of recreational motor vehicles would be off-limits.

County officials say they don't intend to immediately improve the 2,000 miles of old routes they believe Congress granted them. But RS 2477 gives the public the right to drive across them, officials say. That — and the possibility they may be upgraded in the future — disqualifies the lands from wilderness consideration.

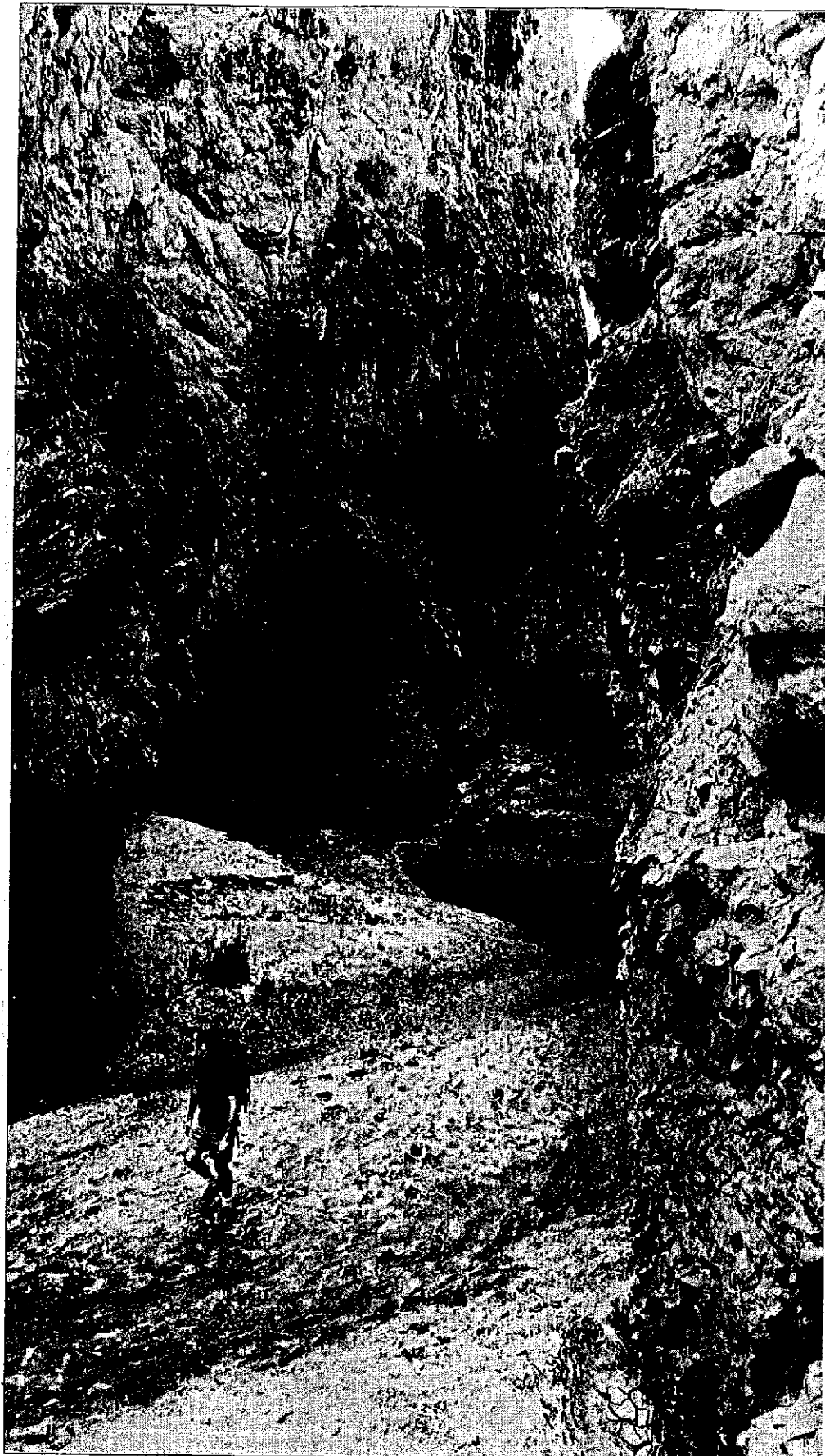
But drilling here would come at a price. New roads and drill pads would be bulldozed through the desert stands of juniper and piñon pine; pipelines would break up unspoiled vistas and likely displace herds of game that draw hunters from across the country.

During the Clinton administration, environmentalists appeared to have the upper hand. Under Interior Secretary Bruce Babbitt, the BLM focused on protecting the wild qualities of the landscape until conservation groups could develop enough support in Congress to protect them forever.

In 1997, the BLM conducted a preliminary study of Vermillion Basin that found 77,000 acres were roadless and had wilderness character. "Just because someone asserts there's a route out there doesn't mean it meets the definition of a maintained road" that would disqualify the area as wilderness, said John Husband, director of the BLM's Little Snake field office, which did the study.

But momentum shifted quickly once the Bush administration took office. In July 2001, Moffat County officials asked Interior Secretary Gale Norton, a former Colorado attorney general, to block a formal study that would confirm Vermillion's wilderness character. Norton did.

The Sept. 11, 2001, attacks and the war on Iraq prompted President Bush to push for full utilization of domestic energy sources like those believed to lie under Vermillion.



This path through Vermillion Canyon in Browns Park National Wildlife Refuge is among the 2,000 miles of old routes County officials are claiming that Congress granted them in 1976 when it issued Revised Statute 2477.

Last spring, the administration announced a series of steps that environmentalists say represent a coordinated effort between the administration and Western Republicans to speed development of BLM lands and stop future wilderness claims.

"Vermillion Basin and lands of north-west Moffat County are among the most magnificent and important unprotected BLM landscapes in the West," Babbitt said recently. "It's a shame to see the administration adopt policies that will cause it to be degraded and devalued."

Few traces of some paths

In early April, Norton overturned a BLM policy to automatically exclude energy exploration on wilderness-quality lands to protect areas for future designations.

She also announced two agreements with Utah and Alaska to settle road claims made under RS 2477. Utah Gov. Mike Leavitt said his deal with Interior included only "indisputable" roads built before 1978, when Congress overturned the mining law.

The Utah pact also excluded claims in Grand Staircase-Escalante National Monument and other preserved areas.

But conservation groups fear that the deal, negotiated as part of a court settlement, will open the door for local governments and private groups to claim marginal paths as public highways.

"In January, Moffat County commissioners released a map showing their RS 2477 routes, which they developed by consulting old land grant maps, aerial photographs and interviewing local residents.

Some of the county's claimed rights of way include portions of constructed roads suitable for a family car. But most are dirt two-tracks, cow paths — even century-old routes where no trace of anyone's passing remains.

County records show several of the claims rest solely on the testimony of a single resident who said the routes were once used by Indians.

Comstock acknowledges the far-reaching claims are an attempt to head off repeated attempts to designate Moffat County's first wilderness areas. But the county also wants to preserve unlimited access for the "huge number" of motorcyclists and other off-road enthusiasts who flock to the BLM lands every weekend, he said.

"These are our rights," Comstock said. "We want environmental groups and the federal government to consider these rights before they consider land management changes."

"RS 2477 isn't in the Bill of Rights," countered Kurt Kunkel of the Colorado Environmental Coalition.

Since May, Kunkel and a field crew have inventoried 700 miles of routes on Moffat County's map with digital cameras and Global Positioning System equipment.

"The lands of western Moffat County are drop-dead gorgeous," he said. "They are incredibly special places with scenic vistas, great wildlife habitat and important archaeological sites. If the county encouraged public travel on all the routes they're claiming, it would have a devastating effect on the land."

Although Moffat County has been the most aggressive in asserting its right of way claims, Rio Blanco and Montrose counties are also working on theirs.

Former Moffat County commissioner Neil McCandless says county officials may have the support of many residents, but they have failed to consider the impact of their claims on private-property owners. "The county's claims end at private property, but I think a lot of these motorized guys are just going to keep on going."

That's happened in Boulder, where an off-road group has begun four-wheeling down a landowner's driveway they say is an old county road. Another landowner near Durango claimed the law as justification for bulldozing a two-lane road across his neighbor's property.

On a recent trip to look at Moffat County's road claims, Kunkel showed routes drawn on the county map that were difficult or impossible to locate on the ground, many others that showed no evidence of construction, would be impossible to travel and seemed to have no legitimate destination.

Colorado wants public process

In rugged Irish Canyon, Kunkel and Vera Smith of the Colorado Mountain Club walked up a 200-yard two-track that ended at a cattle watering station. On the map, the route continued up the draw, where a thicket of juniper and brush would make it difficult for a person to walk.

A few miles away in the proposed Vermillion Basin wilderness, Kunkel and Smith negotiated a steep footpath to a Native American "medicine wheel." Archaeologists think the stone circle was built in Vermillion Canyon by the Fremont Culture centuries ago to chart solar, lunar and astronomical events.

The county map claimed the rutted path down to the archaeological site was an old road that connected with other roads in a figure-eight near the wheel. No such route was apparent among the scrubby juniper on the stony bench.

The map showed yet another route snaking up the narrow canyon that yawned just to the west of the medicine wheel. If an old road once existed in the canyon bottom, it was impossible to see.

Half a mile to the north, another phantom road curled across sheer rock face before plummeting back to the sage meadow.

Comstock said that while the map was a "fairly good representation" of the county's claims, it was never meant to be "completely accurate." Moffat County officials are starting a ground-truthing process similar to Kunkel's.

Nevertheless, the county's definition of a "road" has the support of Gov. Bill Owens.

In a May 15 letter to Norton, state natural resources director Greg Walcher said that under Colorado law, valid county road claims exist through national parks, wildlife refuges and wilderness study areas. Since the claims predated environmental laws, no permits should be required if a county wants to upgrade a trail to a road, Walcher added.

The simple passage of vehicles prior to 1978 establishes a right of way, Walcher said. Furthermore, Colorado should not have to identify the edges of the right of way, which should include "all land reasonably necessary" to accommodate the traditional use.

Walcher asked Norton to "engage Congress in a separate process" on an agreement that was more consistent with Colorado law.

The letter prompted hundreds of angry letters from environmental groups across the country.

The governor's staff responded to those critics in a letter that assured them: "In Colorado, no solution to this contentious issue could work unless it was developed by a very public process with all sides fairly represented."

During an interview this month, Walcher said the Utah settlement was "outrageous."

"This is important public policy that cannot be negotiated behind closed doors," he said. "We told Interior we don't operate that way in Colorado."

More than 80 members of Congress, including U.S. Reps. Diana DeGette, D-Denver, and U.S. Rep. Mark Udall, D-Boulder, also have objected to the Utah deal, claiming Norton defied a law passed in 1997 that prohibited Interior from settling claims.

Two weeks ago, House Republicans beat back an attempt by Udall to amend the Interior appropriations bill to prevent Norton from spending taxpayer money to certify that Utah or other states had valid rights of way.

Instead, U.S. Rep. Charles Taylor, R-N.C., won passage of an amendment that prohibits the BLM from processing right of way claims that crossed national parks, national monuments, wilderness study areas or designated wilderness during the next year.

If the House version of the bill passes the Senate, Moffat County won't be able to assert claims through many of the disputed lands in its county until 2005.

Udall is vowing to push for legislation that would create a national process for settling RS 2477 claims instead of Norton's state-by-state approach.

Husband, director of the BLM's Little Snake field office, said the county has not come to him to assert specific claims yet. "It's certainly a brewing issue," he said. "But we don't have anybody threatening to go out and maintain these old routes with bulldozers."

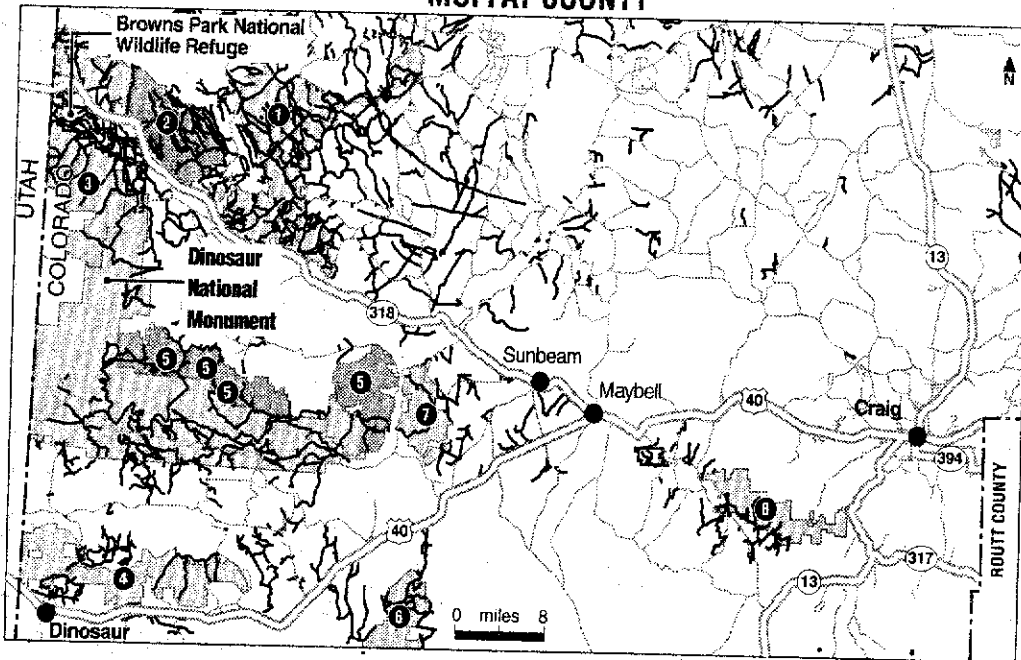
But Browns Park refuge manager Jerry Rodriguez said National Park Service officials are unsettled by the county's claims.

"Our folks in the Denver office have said we need some direction pretty quick," he said. "It makes us kind of nervous, actually."

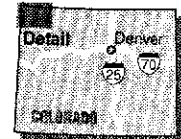
County seeks 2,000 miles of rights of way on federal land

Moffat County commissioners are using an 1866 law to claim 2,057 miles of public rights of way across 1.8 million acres of federal land, including Dinosaur National Monument, Browns Park National Wildlife Refuge and several wilderness study areas.

MOFFAT COUNTY



- 1 Vermillion Basin WSA*
 - 2 Cold Springs Mountain CWP**
 - 3 Diamond Breaks WSA
 - 4 Skull Creek WSA
 - 5 Dinosaur National Monument additions
 - 6 Pinon Ridge CWP
 - 7 Cross Mountain WSA
 - 8 Yampa River Recreation Area
- State Highway
- Moffat County road
- Public rights of way claimed by Moffat County
- *Wilderness study area
**Citizen wilderness proposal



Sources: Moffat County Department of Natural Resources; compiled by Brandon Jett, Colorado Environmental Coalition