

Jeffco asserts road jurisdiction

Helena Independent Record

http://www.helenair.com/articles/2006/02/03/neighbors/c01020306_01.txt

By Marga Lincoln - IR Staff Writer - 02/03/06

BOULDER — Claiming authority from the 1866 Mining Law, the Jefferson County Commission asserted Tuesday at a meeting with state and federal agency representatives that it has jurisdiction over most roads and rights of way in the county, including those on state and federal lands.

“We’re not going to get a grader out there, but we are serious and want to see some resolution,” said Commission Chair Tom Lythgoe.

The discussion was polite, but resolution may prove elusive and time-consuming.

All of the major parties agreed they prefer to settle the issue person-to-person, rather than in court.

Tuesday’s commission meeting with agency representatives resulted from a Dec. 13 letter drafted by Commissioner Chuck Notbohm that stated all roads in the county, other than those privately owned or state or federal highways, are under the protection, care and control of the commissioners.

The letter, signed by all the commissioners, was mailed to all federal and state land agencies with jurisdiction in the county.

Legal rights

The county was granted rights of way under Revised Statute 2477 of the 1866 Mining Law, said Commissioner Ken Weber. This granting occurred before there was a state of Montana, and prior to the establishment of the Forest Service and Bureau of Land Management.

“Once they grant the right of way, they can’t take it back,” he said in an interview.

The county also claims it has some rights of way by way of prescriptive easements. This means that “if I develop a right of way for five years, then I have a right of-way,” explained Weber.

The county never took any formal action to abandon many of these rights of way, nor did it ever relinquish its jurisdiction. Even if a right of way isn’t used for years, it is not abandoned or relinquished, said Weber.

“A road is a county road that has never been abandoned,” concurred Jefferson County Attorney Mathew Johnson, in a follow-up interview. “The county would have jurisdiction over those roads.”

However, so far, the county has made blanket statements about asserting its jurisdiction, but has no list of specific roads.

There is no carte blanche approach for turning roads back to the county, said Helena National Forest Supervisor Kevin Riordan, following the meeting.

“We have a process. A public road agency, such as the county, can claim RS2477,” he said, “and they can present evidence.”

"The burden of proof is probably high," he said, "and it does rest with the county."

County's concern

At the heart of the issue is the county's historic and continued dependence on mining and other resource industries.

"When any designation is put on a road, it might as well be called wilderness because it closes down areas permanently," said Notbohm. "We have a big share of this county shut down."

The commissioners fear that right-of-way closures will forever doom future resource development in the county.

If Golden Sunlight or Montana Tunnels mines close, the only way to replace their financial contribution to the county is with another mine, said Notbohm. The two mines are among the county's top three taxpayers.

The commissioners have "never been asked to sit at the table for final decisions on whether we agree with these designations or not," he said.

However, former Jefferson County Commissioner Sam Samson disagreed.

Samson faulted Notbohm and other commissioners for not getting involved in earlier meetings with agencies.

"Either you weren't present," he said, "or you were half asleep."

The county has been invited to participate in discussions for all federal agency travel plans in the county, he said.

The county also worked with state and federal agencies on road openings, including: McCarty Creek, Red Rock Road, and Sheep Camp Road.

"The charge by the Commission that a big share of our roads have been and are being closed without commission and public input is totally false..." he said in a letter he read to the commission. He accused the commission of making false claims and charges against the agencies.

Venting frustration

However, another former County Commissioner, Jim McCauley, differed.

"What we're dealing with is frustration," he said. "You people from agencies deal with it from your point of view, we deal with it from ours."

In the 1970s and 1980s, there were a lot of closures on private and public land, he said. On the Boulder Valley side, for instance, there is no longer year-round access to the Bull Mountains.

"I support these commissioners 100 percent," he said. "I think their letter was a bit bold, but right. We need to know where we're at."

Frustration was certainly crackling in the air. Of the 30 meeting attendees, some came from neighboring counties to urge the commissioners to confront the federal government in court.

However, the commissioners and representatives from the Forest Service, Bureau of Land Management, the state Department of Natural Resources and Conservation and the state Fish, Wildlife and Parks sought to avoid legal battles.

"I didn't come here to be argumentative or combative," said Riordan of the Helena National Forest. "We have had a great working relationship with Jefferson County in the past." Rights of way can be granted under RS2477, he said, "but this is not a forum for specifics."

"It was our perception that we thought you were at the table ... we offer our openness to get you involved," he said.

Lythgoe agreed that the county also thought it had a good working relationship with the agencies.

"But when it comes to roads there hasn't been a whole lot of communication," he said.

"The reports we get back from the public — there's a real concern that roads are being closed down and they are being shut off from public land," Lythgoe said.

"I think we can do this without a big fight," said. Weber.

Lythgoe suggested setting up working meetings with each of the agencies in the near future, but none are set at this time.