

County moves closer to invoking R.S. 2477 claims

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by John Q. Murray

The R.S. 2477 bandwagon lurched forward again Wednesday, as Mineral County commissioners asked for what could be the final piece of information needed to claim rights-of-way under a Civil War-era law.

The county commissioners, working closely with natural resources advisor Noel Williams, asked Craig Osterman to obtain legal advice regarding liability and maintenance.

Craig is the executive director of the Treasure State Alliance, a group championing continued access to public lands for motorized recreation users such as snowmobilers and ATV users.

Work with all due haste, suggested Mike Byrnes of the Mineral County Resource Advisory Group (MCRAAG), pointing out that the latest forest plans are nearing completion. The Lolo National Forest plan includes specific direction regarding road decommissioning.

Craig had pointed out during the meeting that it is much less expensive for the county to claim its R.S. 2477 rights before a road has been destroyed rather than after. In fact, he said, if the county claims its R.S. 2477 rights before the Forest Service decommissions a road, the county could take the Forest Service to court and force the Forest Service to restore the road.

Mike asked for the legal advice within two weeks rather than within two months.

The movement first started over two and a half years ago, at an Aug. 11, 2004 meeting, when MCRAAG first proposed using the law to preserve access to the county's roads.

Under Revised Statute 2477, passed in 1866, the county can claim use of a right-of-way if the road predated the land's reservation by the federal agency.

The law had been used extensively on BLM lands in Utah and Nevada, where the lands had first been reserved in 1976.

In the 2004 meeting with local rangers Rob Harper and Garry Edson, proponents heard that the law would have to be applied differently on Forest Service land. Though the name and administrative boundaries of the national forest have changed over the years, from Hellgate, Missoula, Coeur D'Alene, and Bitterroot to the Lolo, the lands were reserved for the national forest between 1904 and 1906.

That means that R.S. 2477 would apply only to roads constructed prior to 1904, Harper said. He said he anticipated that it would apply to only a handful of roads.

But the MCRAAG members found General Land Office maps drawn by U.S. government surveyors dating from the late 19th century that showed over 100 such roads in Mineral County. They obtained certified copies of the maps which, they told commissioners, would be their evidence in court if the R.S. 2477 claims were ever challenged.

Mike presented a consolidated map created from the individual General Land Office maps that showed an extensive network of roads all through Mineral County that predated the existence of the U.S. Forest Service. There are likely 139 "ways" that could be claimed under the law, he said.

By endorsing the county's Resource Use Plan, the commissioners have already approved the idea of R.S. 2477 in general. The meeting Wednesday provided the full list of specific roads and ways that could be claimed.

Commissioner Judy Stang questioned whether it might be better to identify the ways most important to the group, and seek to negotiate with the Forest Service.

"I'm trying to stay out of litigation, because that costs the county tons and tons of money. Nobody in Mineral County wants to see a road closed, but these roads have to be very useful," she said.

The MCRAG members repeatedly recommended invoking the R.S. 2477 rights on all eligible roads and ways.

If the Forest Service disagrees with the designation, they have the burden of proof--they must show that the roads are not eligible, Mike said.

Other Montana counties are also moving ahead with R.S. 2477 claims, Craig said.

Commissioner Stang then queried the group about the county's liability or obligations to maintain the roads.

Craig said he was not a legal expert, but believed that such use would fall under Montana recreational road law. Users assume responsibility for recreational use along a non-maintained right of way.

It's just like the signs that say, "County maintenance ends here," explained MCRAG member Alan Amborn. The road is posted, and users assume responsibility for their own activities beyond that point.

And like other recreational trails, Craig suggested, local user groups could develop plans specifying which roads would be maintained in each year of the plan.

Noel Williams pointed out that right of ways are defined differently in each state, so the legal advice would have to be specific to Montana road law. He promised to forward a set of specific questions to Craig, who in turn promised to provide responses as quickly as possible.

Rep. Gordon Hendrick called during the meeting to go on record as supporting all of the R.S. 2477 right of ways in Mineral County.

On Wednesday, the county commissioners also decided to join an effort to submit a Montana roadless petition to the Department of Agriculture.

Gov. Brian Schweitzer originally visited Mineral County Aug. 1, 2005, to encourage the county to solicit public input on roadless areas and submit its recommendations to the governor's office. The recommendations would be compiled and forwarded to the Bush administration.

But instead of proceeding with that plan, Montana instead filed an amicus brief in a lawsuit seeking to change the process of roadless area review, and Schweitzer abandoned the petition process.

After votes in Mineral County and Flathead County showed wide support for multiple use of the national forest lands, Craig said he would seek to work with the individual counties and prepare a Montana petition.

He said he thought if he could gain the cooperation of 10 of Montana's 34 forest counties, the project would succeed.

"It's a proactive approach--a way for us to stand up and say we want to help manage these lands," Craig said.