

**MINUTES OF THE BOARD OF
CARBON COUNTY COMMISSIONERS
SPECIAL MEETING
Monday, April 9, 2007
Jeffrey Center, Rawlins, Wyoming**

A special meeting of the Board of Carbon County Commissioners was held Monday, April 09, 2007 at the Jeffrey Memorial Center, Rawlins, Wyoming to meet with Moffat County Colorado Officials to discuss the public roads. Attending the meeting were Commissioners Terry Weickum and Jerry Paxton; County Clerk, Gwynn Rothenberger, County Attorney Cindy DeLancey, Road & Bridge Superintendent Bill Nation; Road & Bridge Right-of-Way Specialist Bart Evans; and Karen Larsen, GIS Specialist. Chairman Zeiger was absent.

Present from Moffat County were Commissioners Tom Gray and Tom Mathers; Road & Bridge Superintendent Bill Mack; and Natural Resources Director Jeff Comstock.

Commissioner Weickum called the meeting to order at 10:10 a.m.

Mr. Nation presented an article from the November 5, 2006 Casper Star Tribune titled "*County asks for road rights*". The article discusses Moffat County asking federal officials to endorse its claims to maintain five roads across Bureau of Land Management (BLM) land. Mr. Nation stated this is the purpose of the meeting today as some of Carbon County's roads meet with Moffat County's roads.

Mr. Comstock advised that about one year ago, the Department of Interior in Utah settled a lawsuit over how roads are addressed. Essentially the Department of Interior said they had the right to deal with roads. A discussion of RS2477 arose from this situation and an opinion was issued from 10th Circuit Court regarding the rights of counties to use these roads and how Department of Interior should address this issue.

Moffat County officials laid claim to certain roads approximately three years ago. The problem arose that BLM was held up by a court decision saying if a county lays accretion to these claims, BLM shall not process it. Since, then, the moratorium was lifted and the 10th Circuit Court decision has allowed BLM to process these claims. Moffat County picked a variety of five roads in their county in their claim, including roads in wilderness study areas, on BLM land, a livestock/jeep trail, and submitted these to BLM, along with testimony of the uses, maps and aerial photos as evidence of the road uses, and asked them to acknowledge that these are RS2477 roads. BLM said these are legitimate RS2477 roads.

Mr. Gray added that in the Utah case, the Secretary of Interior issued a memorandum on how to make a determination on the RS2477 right-of-way (ROW). According to Mr. Gray, BLM can only make a non-binding RS2477 decision, therefore counties can not make improvements to these roads at that point. Mr. Gray stated their purpose is to provide public access to public land.

There was then discussion regarding the BLM's permitting process to improve roads and how each Board handles these issues and timelines.

Mr. Nation stated his approach with RS2477 and the Federal Land Policy Management Act (FLPMA) that states that there is 66' or 80' of ROW, is to develop roads to meet demands. He takes the road work to the right-of-way limit, either 66' or 80' from the center of the existing road. In the past, he had to apply for ROW change and construction permits. He took a more aggressive approach, stating that if the improvements are within these ROW limits, he makes the improvements.

Mr. Gray asked if the ROW feet is Wyoming specific. Mr. Nation replied that it may be just Wyoming specific but advised him to research the issue as it may be a federal standard. He stated that typically, if a project is within the ROW line on a county road, he does not notify the BLM. There was further discussion on ROW issues, maintenance of county roads, and relationships with BLM. Mr. Nation stated that he invited BLM to attend this meeting, but that he received no reply and nobody attended today's meeting.

Mr. Nation stated the interesting part of the article he presented earlier, is that the roads in question are not county roads, but open public roads. Commissioner Weickum applauded the effort that Moffat County has put forth as he feels there are non-county roads in Carbon County that are essential for public use. Mr. Comstock stated Moffat County's claim assures that the public still has access to these roads but that the county would not maintain them.

Mr. Gray stated that the court decision he discussed earlier states that public roads (non-county roads) should be permitted before upgrades. Mr. Comstock stated at least two of their claimed roads have already been shut down by the BLM. His argument is that those were public access before BLM existed or the wilderness study areas existed. These roads remain closed at this time, but Moffat County hopes the public will be able to go back on these roads in the near future.

Mr. Comstock stated they filed their claim October 25, 2006 and that the Department of Interior shall expediently process the request. He advised the local office processed immediately, but it has been held up since with the Department of Interior. Apparently Moffat County was told that Department of Interior is waiting for interpretation on Colorado state law regarding road use. He feels that their law is simple and says that if someone can prove a road is used, it is therefore a road. They are frustrated with the hold up but feel that Department of Interior has made this more of a political issue than a legal issue.

Commissioner Weickum asked if Carbon County were to pursue the same type of claim, if this would help Moffat County's cause. Mr. Comstock replied that San Juan County Colorado turned in a larger list of roads but he feels that any additional applications probably would not be processed any faster nor would it help theirs get processed.

Mr. Gray stated he is concerned that these non-binding determinations from the BLM may be overturned. He stated that if the issue does go to court, the non-binding determinations may be good evidence that these are RS2477 roads.

Mr. Nation asked if the five roads are multi-jurisdictional. Mr. Comstock replied that the County Road does go over private land, but all other roads are not private, but federally owned land and state lands.

Discussion ensued regarding counties taking over private roads and the processes involved and funding. Commissioner Weickum asked if the addition of a county road in Colorado adds to the county's valuation. Mr. Gray discussed the Highway User Tax Fund (HUTF) that is distributed per mile of county road. Mr. Gray stated they also get severance tax distributions, or energy impact funds, and the counties can apply for state funds.

There was then discussion of how speed limits are determined and enforced on county roads and discussion of the well permitting processes and the effects on county roads.

Mr. Gray asked Mr. Comstock and Mr. Evans to coordinate and exchange information on RS2477 and road maintenance issues.

Mr. Comstock asked about wild horses and if the Commissioners are involved with the Rawlins BLM office on their management of these horses. There was discussion on how this issue could be addressed.

ADJOURNMENT

There being no further business, Commissioner Weickum adjourned the meeting at 12:11 a.m.

-s- Gwynn G. Rothenberger, Carbon County Clerk

Approved this 18th day of April, 2007.

BOARD OF COUNTY COMMISSIONERS
CARBON COUNTY, WYOMING

-s- Terry Weickum, Commissioner