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Supervisor, District III
El Dorado County Board of Supervisors
Testimony on "Restoring Public Access to the Public Lands: Issues Impacting
Multiple-use on Our National Forests
Monday, September 19, 2011

Whose lands are these? What protection was reserved to the people by past documents? What faith should we have in making an agreement with representatives of the Government of these United States of America? Why do representatives of the Federal Government act as though they are "King" and the people are the servants?

In an effort to understand what the agencies base their responses to my County's efforts to maintain our county roads crossing federally managed public lands, and specifically the Rubicon Trail, I have spent many hours reading the laws and regulations that are cited. I believe these laws and rules are best summarized by quoting here the second sentence of Section 1-2 of the Bureau of Land Management 2009 Manual of Surveying Instructions: *"the dominant Federal policy has shifted from one favoring disposal and settling of the unreserved public lands to one favoring retention, administration, and control."* In that manual they continue this attitudinal change in a footnote on the next page which explains the use of "Federal interest lands" as opposed to "public lands" within this edition of the manual. Such attitudes should be struck from all Federal documents!

I do believe it is absolutely contrary to the Declaration of Independence and to the Constitution. Through these and other writings the people proclaimed and directed that the Federal Government would be a servant of the people and the people's rights would be upheld. The Federal Government should be helping people do that which they cannot otherwise do for themselves! It should not be violating promises made to the people.

This nation has created complex and conflicting laws and the agencies have promulgated regulations that only confound the efforts of the people to accomplish what they believe is appropriate use of the Public Lands. As one example of the complexities of the rules I refer you to Section 219.5 of the National Forest System Land and Resource Management Planning 1982 Rule. Within this Rule is direction to form an interdisciplinary team that includes a whole host of Forest employees and their respective specialties. The trouble with this is that these people do not seem to prepare an integrated perspective to be presented to the responsible line officer. They seem to work through their corresponding specialist at the Regional level or with other agencies with their independent proposals until they get their way. How can the line officers manage if the operations are horizontal rather than vertical?

County Roads on Public Lands

I shall attempt to illustrate what I believe are violations of the Federal/Local relationship by illustrating a long history of activities that involve our Wentworth Springs Road and our Rubicon Trail and which may be indicative of violations by the Federal Agencies in regards to locally maintained roads throughout our Nation.

The County of El Dorado was established as one of the original 27 counties of California on February 18, 1850. As such it was held responsible to the people for the establishment and maintenance of a “public road” system. The Eldorado (note misspelled name) National Forest was not established by Congress until July 28, 1910 but may have been a part of the “Sierra Forest Reserve” created in 1891.

All of the counties of California were entrusted with building and maintaining “public roads” for citizens that had purchased public lands from the Federal Government and or from private parties prior to the time that there was a State of California highway system. Why now, 161 years later, should the Federal Agencies be attempting to close these roads or tell the counties how to do the work they have been doing for 161 years. If the Federal Agencies want to get involved they should offer to construct projects for the counties to improve the roads; but not interfere with adequate maintenance operations.

We are having discussions with the USFS about the rights-of-way on the Wentworth Springs Road and the Rubicon Trail and these roads were shown in existence on the original survey plats by the General Land Office in the late 1800s. The Rubicon Trail, circa 1881-1885, was established as the last piece of road connecting the road from Georgetown to Wentworth Springs to the Road from Lake Tahoe to Rubicon Springs; hence it’s name.

The basis for use of the Public Land was found in the Mining Law adopted by the THIRTY-NINTH Congress in 1866, Session 1 per Chapter 262, Section 8: “That the right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.” Pursuant to that law, on August 3, 1887 the Board of Supervisors, upon the petition of E.L.Crawford (my Great Grandfather) and 19 other citizens, declared the Rubicon Trail as a “Public Road”. (El Dorado county minute book F page 287).

El Dorado County spent money on construction and maintenance from about 1887 until about 1950. The Rubicon Trail is shown on the 1937 maintained system maps. In 1937 the County placed a concrete bridge over Rocky Basin Creek near Airport Flat; in 1939 a steel bridge placed over the Rubicon River. Off Highway Vehicle usage was prompted by the Jeepers Jamboree beginning in about 1952 and the maintenance until 2009 was left mostly to volunteers. No maintenance was done by the County or the USFS during that period.

In 2001 many of us realized that we must either resume formal maintenance and policing of activities on the Rubicon Trail or chance losing the right of use. We set out to establish a plan and that plan turned into a document that proposed a management scheme well beyond simple maintenance and law enforcement. It had an annual cost of about five million dollars and was deemed unacceptable due to cost.

Some parties wanted some type of control on the public road and were upset that the County did not adopt the plan. These people complained to the California Central Valley Regional Water Control Board. That Board held hearings and issued a Cleanup and Abatement Order (#R5-2009-0030 April23-2009). The work that should be under way now was prompted by that order. Based on the USFS objection to that Order and their statement that they “did not own, operate or maintain the Rubicon Trail” our county believed from the above that it was our road in our system and we agreed to perform the work required under the CAO.

However, at meetings on August 31, 2010 with the USFS at the Forest Supervisors office, we were informed that we could not readily proceed without either proving our RS 2477 rights or obtaining an

easement. Further that unless we could prove the 1910 location of the Trail, we would lose our claim. We succumbed to the wishes of the USFS and applied for the easement.

And then we were told that all maintenance, the bridges, and the easement would all need to be wrapped together in one big EIS/NEPA document. This led to discussions regarding the history of the Trail and a Programmatic Agreement was proposed that began in April 2011. And that document is overwhelmingly convoluted and full of recitations that may not be able to be met.

This has prompted research that indicates that there have been agreements with the USFS that we should maintain this road and others and that the USFS should convey easements to us so we could pursue our maintenance as cooperators having jurisdiction per our County Maintained Mileage System which is registered with the State of California. These agreements are dated July 13, 1971 and October 6, 1992. Some of these agreements go back to 1952 but without sufficient specificity. The 1992 document is most explicit and contains a very descriptive annotation of USFS road # 14N34 and County road # 63 from Airport Flat to the County line at Rubicon Springs. SO, the County has agreed upon easements for the subject!

And if that is not enough, please refer to the PETITION FOR REVIEW dated 5-21-09 filed with the Water Board by the Attorneys for the USFS. In their zeal to escape the Water Board CAO they make many citations about our responsibility for the Rubicon Trail and their lack of ownership thereof but most important, on page 2 IV A and IV B they state as follows: *B. The Petitioner does not own, operate, or maintain the Rubicon Trail, which is the subject of the Order, and thus has no right, power, or duty to conduct the actions required by the Order.* Further, on page 17, second full paragraph, fifth line which is part of section XII D they state: *This easement was separated from the federal estate prior to the creation of the Eldorado National Forest, and the Petitioner has no right or power to deny the use of the easement to the County.*

As with this road and many other El Dorado County roads and many local roads across our Nation, the public came to rely on being able to access their lands and the public lands by using the roads that were established under this law. All "Public Roads" are not as clearly established as was the Rubicon Trail; however, such establishment is extremely evident on the ground and therefore creates a public right-of-way. If not so established under the Act of Congress, it would be a prescriptive right of the people of these United States over lands belonging to them and being managed by the various Federal Agencies. It is time for the Federal Agencies to quit trying to close public roads maintained by local agencies.

The County of El Dorado has done, is doing, and will do what is right by the Rubicon Trail, its environmental setting and its users. We have been placed in a very tenuous position by a conglomeration of agencies that want "their" rules followed as though they were independent governments. It seems that these agencies lack coordinated governance that can approve the actions ordered by the State Regional Water Quality Control Board and which the County has agreed to. These agencies have placed NEPA processes, historical unknowns, and easement requirements ahead of problem solutions; those problems being the sedimentation and erosion control.

Unless these agencies can find a way through the abyss, the County's efforts to stop erosion control and sedimentation will be stymied for at least two years and probably more. For much of the work we have grants that may not be renewed for the period of time potentially needed for Federal processing.

In closing, why has the County been placed in this tenuous position? Why can't we just proceed to satisfy the CAO and do our sediment and erosion control on a road that we maintained before there was

an Eldorado National Forest? We believe that “maintenance” is clearly exempt from environmental analysis; especially when done to satisfy an order of the Regional Water Quality Control Board.

And, as though the Rubicon issue is not enough, there comes to light two other matters. First, the USFS has informed the County that they will be purchasing a property referenced as Francis Cow Camp. That privately held property is crossed prescriptively by the Wentworth Springs road, currently a County Maintained Road. We have asked that before the USFS takes title that they have the current owner deed the County an easement recognizing our historic prescriptive use. They are expressing reluctance on this issue.

And secondly, we have been offered an easement one hundred feet in width on each side of the centerline of the existing Wentworth Springs Road from Georgetown to its intersection with Ice House Road. However, attachments to the FHWA proposed easement are two exhibits provided by the USFS that make accepting the easement and following through with the added conditions prohibitive.

For example one condition is: “8. Prepare, in cooperation with the Regional Forester, a landscape and erosion control plan with the objective of protecting, restoring, or enhancing the roadside landscape, protecting the soil, and protecting or reestablishing vegetative cover. Such plan shall, when appropriate, provide vegetating cuts, fills and other areas damaged as a result of highway construction; maintenance or operation; and for terraces, drainage, waste disposal areas, soil replacement, and other related requirements necessary to achieve the objective.” While appropriate for new construction, such condition is not appropriate on an existing road. So the purpose of allowing a 200 foot wide easement appears to be getting the County to do the USFS work!

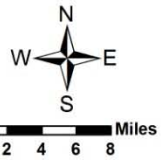
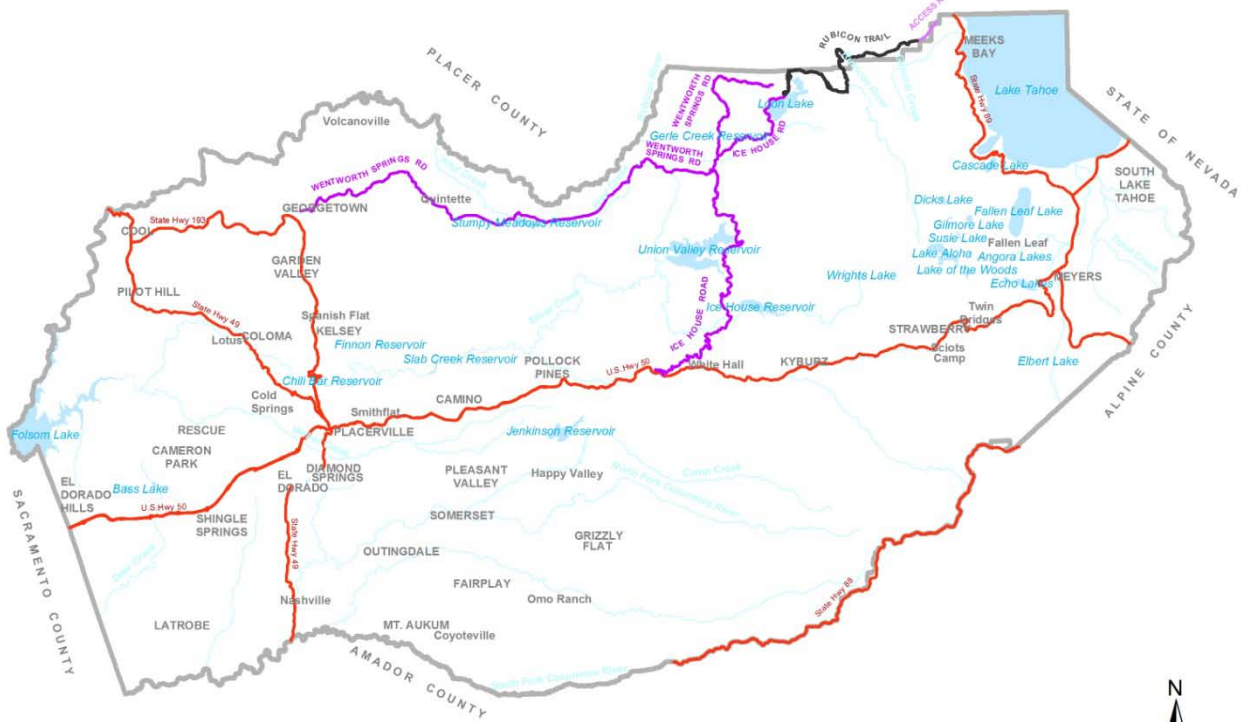
If Congress truly wants to help the counties of this Nation serve the public with an appropriate maintained road system, it could pass a law that provides an easement for all county roads crossing Federal Public Lands that have been historically in the county system without all of the regulatory hoops now required by the Federal Agencies. Or Congress could reaffirm the law of 1866 and tell the agencies to leave alone the counties road systems throughout this Nation.

Your assistance in this matter will be appreciated and I thank you for allowing me to present this matter for your consideration.

See Attachment 1 – Status Report

RUBICON TRAIL

County of El Dorado State of California



Notes:
 Map prepared for El Dorado County Supervisorial District III, September 14, 2011
 Map prepared by Jim Urquhart, September 14, 2011
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