

DEER LODGE, MONT.

April 9, 2021

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Region 2 Supervisor  
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Dear Randy and Brian,

This letter is to help continue our conversations. I would like to state the County's position and plan for opening a road through Spotted Dog. I would like at this time to request that FWP provide the County with a formal written statement on its position and any counter proposal or response to the County. I'd also like to schedule a time when we can get together in person and really pore over the maps in detail, as well as a date for our joint expedition to document the condition of the road and landmarks.

As you know, the County's preference for a road through Spotted Dog is (1) Jake Creek Road up to near the reservoir at the switchback; (2) Forest Service Road 314 to Trout Creek Road, and (3) Trout Creek Road to Avon. We've discussed the merits of a petition for court recognition of road migration (§ 7-14-2622) which was recommended by the County's attorney a few years ago. The County does believe that it has adequate evidence to show that migrated route has been "traveled and used" for the statutory time period.

I have also discussed with the Commissioners and Scott Hazelton the other legal option, which is a petition before the Commission to alter the course of the road, as per § 7-14-2601. I'd like to explore the merits of this option with FWP in the near future, particularly with regard to:

- the cost of acquiring the right-of-way over FS 314
- whether a road survey is necessary
- what the County would do with its historic right of way near the reservoir
- the procedure for public hearing
- any agreement that could be entered into between Powell County and the State of Montana and FWP in which a judicial determination is not required.

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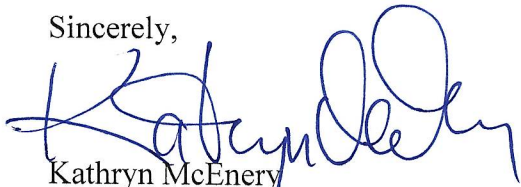
Please note that a few weeks ago (March 4), the Commissioners met with Carol Fox, Conn Coughlin, Ed Scharf, and Ric Hirsch to discuss their concerns and the interest of the PLWA in the Jake Creek Road. A document summarizing that discussion is attached. The County was asked to consider their proposal, which is to simply open the historic roadbed from the south locked gate to the reservoir, and to then continue on the historic right of way along the east edge of the reservoir to the road by the Canyon River Ranch. They attached a number of maps to their memo. I also include another detail map that Brian sent over.

Scott Hazleton has advised the Commissioners that increased erosion potential makes this not the best option in his opinion. Nevertheless, the Commissioners are interested in pursuing this option if only to accomplish the least restrictive seasonal closures on the road. I can't stress enough how important this issue is to the County.

I've also, for information purposes, attached the petition for court determination as it is drafted so far.

Please get in touch with me in the next two weeks to schedule our next meeting. Scott and I are happy to drive to Helena if that would facilitate the meeting.

Sincerely,



Kathryn McEnery  
Powell County Attorney

cc: Powell County Board of Commissioners  
Powell County Planning Department  
MT FWP – R. Arnold, B. Schenk, M. Thompson, M. Balachek  
MT DNRC – B. Robbins