

Motorized Road and Trail - TNF - E - 6

Key Contacts

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Subject

Code 6



Subject Code 6
RS-2477

Comment: ...We agree to disagree on these routes. However, we believe an assertion, once made in accordance with state law, become a permanent property right of the county until disproved by the federal government through court action. In other words, it is not necessary, or appropriate, for the federal government to approve an assertion for that assertion to become effective. RS-2477 is a self-enacting law, meaning that when the requirements of state law are met the property right is automatically conveyed from the federal government to the county. We intend to proceed on this basis.

In several places in the DEIS (Pgs. S-3, 1-3) the text refers to "potential access rights" the Counties "may have" on roads and trails that "may have existed" prior to the establishment of the Forest. We find this language particularly galling in view of the RS-2477 law and subsequent regulations and case law. These are actual rights-of-way that we thoroughly researched over a period of three years. They definitely exist on the ground. There is no question in our minds that they exist and have been properly asserted under the law. (Ltr No 1817, 6340, 5559, 7367, 5551, 6145, 3864, 44, 4495, 4, 5218, 6540, 5452, 5, 3635, 6187, 5836, 7331)

Response: Section 108 of the Department of the Interior Omnibus Consolidated Appropriations Act restricts RS-2477 right-of-way rules and regulations from becoming effective without an authorizing Act of Congress. Due to the pending legislation, the Department of the Interior and the Forest Service have elected to defer making any administrative determination on RS-2477 assertions except in cases where there is a demonstrated, compelling, and immediate need to make such determinations. However during this period, we plan to continue to gather relevant information about the history of the various roads that are at issue in the Region. We have also agreed with the counties to not decommission any asserted routes. However, we maintain the right, in the interim, to determine whether any route is open to motorized travel. We have also indicated in the FEIS that additional 2477 assertions can be made at any time in the future.
MM, AS

Comment: 13) The consideration given to RS-2477 claims by the TNF is very troubling. Speaking as an attorney who has worked on several RS-2477 cases, most of the claims cited in the MRTTP appear to have no legal backing. At a very minimum, all roads that are the subject of RS-2477 claims must have been built prior to the creation of the TNF. If a road was not in existence at the time the TNF was created, nothing that has been done since that time will qualify that road as a public road under RS-2477. Most of the roads in question appear to have been built quite recently. Acknowledging these spurious claims only encourages future claims. (Ltr No 7225, 7333)

Response: Section 108 of the Department of the Interior Omnibus Consolidated Appropriations Act restricts RS-2477 right-of-way rules and regulations from becoming effective without an authorizing Act of Congress. Due to the pending legislation, the Department of the Interior and the Forest Service have elected to defer making any administrative determination on RS-2477 assertions except in cases where there is a demonstrated, compelling, and immediate need to make such determinations. However during this period, we plan to continue to gather relevant information about the history of the various roads that are at issue in the Region. MM, AS

Comment: 5) The Regional Forester's remand of the 1997 Travel Plan was done in part to "assess Revised Statute 2477 assertions on implementation of Forest Plan Alternative 3-M" (Appeal Decision of the Open Road and Open Motorized Trail Travel Plan, Jan. 14, 1998). A significant problem with that

aspect of the Region's decision, and the implementation of that part of the remand in the 1998 FEIS, is that it appears to be in direct opposition to the December 18, 1997 direction from then Director of Lands in the Chief's office. That direction states in part "...I have directed Regional Foresters to defer any processing of RS-2477 assertions except in cases where there is a demonstrated, compelling and immediate need to make such determination." We have, and still do, maintain that there is no compelling and immediate need for the Forest to deal with any RS-2477 assertions by counties whose boundaries incorporate part of the Targhee National Forest.

We do credit the Forest in how it dealt with most of the RS-2477 issue. In most cases it left roads which counties asserted as RS-2477 roads open, but included them in the road density calculations. We would be very concerned if the Forest were to do, as some counties are suggesting, i.e. not use the RS-2477 assertion roads in the Forest's road density calculations. In the cases when those assertions were made for roads that are to be closed, the Forest finessed the situation by not proposing to obliterate those roads until sometime in the future when the county assertions are adjudicated.

However, there are a number of cases where the Targhee opened additional miles of roads and motorized trails in alternative 3M(+) after county assertions were made. For instance, on the Palisades Ranger District road #251 is asserted to be an RS-2477 route, yet the written record clearly shows that the road was constructed in the mid-1970's for a timber sale. The same holds true for the upper two miles of road #250 on the same District. These are just two examples of roads that will be opened under the MRTTP, but were closed in the 1997 Travel Plan, and where there is irrefutable evidence that they were constructed by the Forest Service for timber sales.

We find it even more disturbing that the Forest saw fit to recognize and create new open (to motorized vehicles) roads and/or trails along corridors where there are no roads or trails noted on any existing map. It is difficult to even know how to comment on whether those roads should be closed or not, since they do not show on maps and there are no numbers on them, merely lines on the MRTTP maps. Most problematic in our view, is that the Forest created new rights-of-way in some cases, where no roadway or trail exists. As we see it, the Forest has given de fact credence and acknowledgment of these spurious RS-2477 claims. In addition the Forest has taken a position that conflicts with direction from the Chief's office. Most seriously the Forest is actually establishing a precedent that other counties will surely follow if this remains unchanged. (Ltr No 6803, 5366, 6339, 7321, 5877, 5769, 7332)

Response: At this time our direction is to respect county requests and not decommission the asserted roads. We are not making any other determinations on these roads or trails. Section 108 of the Department of the Interior Omnibus Consolidated Appropriations Act restricts RS-2477 right-of-way rules and regulations from becoming

effective without an authorizing Act of Congress. Due to the pending legislation, the Department of the Interior and the Forest Service have elected to defer making any administrative determination on RS-2477 assertions except in cases where there is a demonstrated, compelling, and immediate need to make such determinations. However during this period, we plan to continue to gather relevant information about the history of the various roads that are at issue in the Region. Any 2477 assertions shown as "open" in the alternative maps were included in road and trail densities. As to roads 250 and 251 specifically, road 250 was asserted. Road 251 was not asserted by the county. However, some previously decommissioned roads which cross road 251 were asserted. MM, AS, LAB

Comment: 5. Pg. IV-25, 3rd para. This entire paragraph is completely out of synch with the RS-2477 law. You cannot add or delete RS-2477 assertions at will. Assertions, once made by the county, are valid until challenged in court and declared by the court to be unfounded. Our discussions with Gerry Jeppson, Madison County Commissioner, is that their assertions do not include a road or trail. We believe you need to check with Gerry on this point, and suggest you not vary the RS-2477 routes by alternative. (Ltr No 6340, 3636)

Response: At this time our direction is to respect county requests and not decommission the assertions roads. Section 108 of the Department of the Interior Omnibus Consolidated Appropriates Act restricts RS-2477 right-of-way rules and regulations from becoming effective without an authorizing Act of Congress. Due to the pending legislation, the Department of the Interior and the Forest Service have elected to defer making any administrative determination on RS-2477 assertions except in cases where there is a demonstrated, compelling, and immediate need to make such determinations. However during this period, we plan to continue to gather relevant information about the history of the various roads that are at issue in the Region. The RS2477 maps is the same for all alternatives. This has been clarified in the FEIS. MM, AS

Comment: Another concern I have is, the Revised Statute (RS) 2477, roads and trails under the 1866 Act. This issue involves potential access rights the Counties have on roads and trails that existed prior to the establishment of the Forest. Some that are in question are:

RS-2477's in the Island Park, Ashton, Teton Basin & Palisades Ranger Dist.

Trail-004 Area)	Continental Divide Trail (Two Top
Road-121 Road)	Dugway Fork-Split Creek (Off Chick Creek
Road-664 Area)	Boundary (Packsaddle
Road-665 Area)	Crooked Creek (Packsaddle
Road-220 Area)	Timber (Off Rd. 218 Kelly Canyon
Road-221 Canyon Area)	Upper Timber Drive (Off Rd. 218 Kelly
Road-046	Willow Creek/Tin Cup (Centennial Mountain

Area)

Road-327

East Dry Creek (Centennial Mountain Area)

There are about 10 road and trail assertions in the Dubois area and about 20 road and trail assertions in the Salmon area that concern me too. (Ltr No 6380)

Response: Section 108 of the Department of the Interior Omnibus Consolidated Appropriations Act restricts RS-2477 right-of-way rules and regulations from becoming effective without an authorizing Act of Congress. Due to the pending legislation, the Department of the Interior and the Forest Service have elected to defer making any administrative determination on RS-2477 assertions except in cases where there is a demonstrated, compelling, and immediate need to make such determinations. However during this period, we plan to continue to gather relevant information about the history of the various roads that are at issue in the Region. We have also agreed with the counties to not decommission any asserted routes. However, we maintain the right, in the interim, to determine whether any route is open to motorized travel. We have also indicated in the FEIS that additional 2477 assertions can be made at any time in the future.
MM, AS

Comment: Bonneville/Teton Co. 2477 assertions maps (Palisades/Teton Pass area) do not agree with 3M+ in terms of what's open for motorized. Maps need to be corrected. There are also a few problems with Appendix C. Having these not agree makes review/comment impossible. (Ltr No 3619)

Response: RS-2477 were not intended to match 3M+ maps. At this time our direction is to respect county requests and not decommission the assertion roads. Section 108 of the Department of Interior Omnibus Consolidated Appropriations Act restricts RS-2477 right-of-way rules and regulations from becoming effective without an authorizing Act of Congress. Due to the pending legislation, the Department of the Interior and the Forest Service have elected to defer making any administrative determination on RS-2477 assertions except in cases where there is a demonstrated, compelling, and immediate need to make such determinations. However during this period, we plan to continue to gather relevant information about the history of the various roads that are at issue in the Region. We have updated the 2477 map in the FEIS to clarify the status of the assertions. MM, AS

Comment: In an attempt to address RS-2477 Roads and Trail, the Madison County Commission has put together the following list of roads and trails we believe qualify as rights of ways across federal lands.

...The following are a list of names of Roads and Trails that we have Identified:

- 1. Kelly Canyon Road**
- 2. Kelly Lime Kiln Road**
- 3. Morning Glory Mine Road**
- 4. Wolverine Pass Trail**
- 5. Sawmill Road #1**
- 6. Trail**

7. **Mud Creek Trail**
8. **Woods Canyon Trail**
9. **Hell's Hole Trail**
10. **Coal Mine Trail**
11. **Coal Mine Road**
12. **Big Burns Trail**
13. **Little Burns Trail**
14. **Lime Kiln Road**
15. **Windy Ridge Road**
16. **Jensen Creek Road**
17. **Jensen Creek Trail**
18. **Red Butte Road**
19. **Hilton Creek Road**
20. **Carlton Cut off Trail**
21. **Sheep Driveway**
22. **Sheep Creek Road**
23. **South Canyon Creek Road**
24. **Canyon Creek Trail**
25. **Hilton Creek Trail**
26. **Moody Swamp Road**
27. **Cow Camp Road**
28. **Browning Creek Road**
29. **Pole Canyon Road**
30. **Mud Springs Road**
31. **Saw Mill Road #2**
32. **Clark Creek Road**
33. **Garner Creek Road**
34. **South Moody Road**
35. **Fish Creek Road**
36. **Graham Hollow Road**
37. **Old Kirkham Hollow Road**
38. **Calamity Creek Trail**
39. **Lost Springs Road**
40. **Graham Springs Road**

Roads and Trails that are in Teton County, but accessed from Madison County

1. **Wright Creek Road**
 2. **South Pony Creek Road**
 3. **Cold Springs Road**
 4. **Pony Creek North Old Road**
 5. **Davis Springs Road**
 6. **Crooked Creek Road**
 7. **Milk Creek Trail**
- (Ltr No 5559)**

Response: As per the letter Forest Supervisor Reese sent you on January 25, 1999, the roads and trails that you asserted would not be decommissioned. Some of the roads were physically closed years ago and we would not change their status. We have updated the map legend for 2477 routes to clarify route status relative to the assertions.

Section 108 of the Department of the Interior Omnibus Consolidated Appropriations Act restricts RS-2477 right-of-way rules and regulations from becoming effective without an authorizing Act of Congress. Due to the pending legislation, the Department of the Interior and the Forest Service have elected to defer making any administrative determination on RS-2477 assertions except in cases where there is a

demonstrated, compelling, and immediate need to make such determinations. However during this period, we plan to continue to gather relevant information about the history of the various roads that are at issue in the Region. We have also agreed with the counties to not decommission any asserted routes. However, we maintain the right, in the interim, to determine whether any route is open to motorized travel. We have also indicated in the FEIS that additional 2477 assertions can be made at any time in the future. MM, AS

Comment: Other road claims need further analysis and should not be kept open by the TNF without this analysis. (Ltr No 5877)

Response: At this time our direction is to respect county requests and not obliterate the assertions roads. Section 108 of the Department of Interior Omnibus Consolidation Appropriations Act restricts RS-2477 right-of-way rules and regulations from becoming effective without an authorizing Act of Congress. Due to the pending legislation, the Department of the Interior and the Forest Service have elected to defer making any administrative determination on RS-2477 assertions except in cases where there is a demonstrated, compelling, and immediate need to make such determinations. However during this period, we plan to continue to gather relevant information about the history of the various roads that are at issue in the Region. MM

Comment: RS-2477 road and trail assertions by the counties could have a major impact on management of the forest, on forest resources, wilderness designation, the general quality of recreation experiences, etc. This important issue is not adequately addressed in the DEIS/TP. And it is interesting to me that the county assertions under RS-2477 were not even mentioned, as best I can determine, in the draft or final revised forest plan and EIS. The miles of roads and trails of RS-2477 assertions not open to motorized use out of the 910 miles of road and trail assertions are given only for Alternative 3M+ (page IV-25). How many of these 910 miles are road assertions and how many miles are trail assertions? The same data should have been given for the other alternatives and should have been included in Tables S-1 and II-1 since RS-2477 assertions were one of the key issues in the appeals of the original travel plan. How will these RS-2477 assertions be adjudicated? Is there a time table and procedure for addressing and adjudicating these assertions? If assertions are determined to be invalid, how would this affect the proposed motorized use of these roads or trails, their decommissioning, or the closure to motorized use of invalid assertions? Until the assertions are adjudicated, the Forest Service should be under no obligation to allow motorized use on the basis of assertions alone. (Ltr No 7230)

Response: You are correct that RS-2477 is an important issue that was not addressed in the Forest Plan FEIS. That is why the subject is being addressed in this EIS. The 1,020 miles of assertions apply to all alternatives and this has been clarified in the FEIS. Of the 1,020 miles, 583 miles are roads, and 437 miles are trails. This clarification has also been made in the FEIS. There is no difference in RS-2477 assertions between alternatives, and thus, no indicator is needed for the consequences table.

Section 108 of the Department of the Interior Omnibus Consolidated Appropriations Act restricts RS-2477 right-of-way rules and regulations from becoming effective without an authorizing Act of Congress. Due to the pending legislation, the Department of the Interior and the Forest Service have elected to defer making any administrative determination on RS-2477 assertions except in cases where there is a demonstrated, compelling, and immediate need to make such determinations. However during this period, we plan to continue to gather relevant information about the history of the various roads that are at issue in the Region. We have also agreed with the counties to not decommission any asserted routes. However, we maintain the right, in the interim, to determine whether any route is open to motorized travel. We have also indicated in the FEIS that additional 2477 assertions can be made at any time in the future.

There is no time table for adjudication. If assertions are invalid, travel would continue as described in the Travel Plan and this EIS. MM, AS

Comment: THESE COMMENTS ARE FROM THE PUBLIC MEETING IN DRIGGS

3. You have not addressed the "historic trails" you plan to close even though these trails existed before there was National Forest in this area. Historic roads are supposed to remain open to motorized vehicles. (Ltr No 3877)

Response: At this time our direction is to respect county requests and not obliterate the assertions roads. Section 108 of the Department of Interior Omnibus Consolidated Appropriations Act restricts RS-2477 right-of-way rules and regulations from becoming effective without an authorizing Act of Congress. Due to the pending legislation, the Department of the Interior and the Forest Service have elected to defer making any administrative determination on RS-2477 assertions except in cases where there is a demonstrated, compelling, and immediate need to make such determinations. However during this period, we plan to continue to gather relevant information about the history of the various roads that are at issue in the Region. MM

Comment: The 2477 road and trail assertions is not in agreement with the 3M+ alternatives. Specifically, the Palisades area is shown as open. I interpret this as open to motorized use but at the meeting the explanation was that they were only open to public. The 2477 map needs to be explained more clearly what open and not open means. (Ltr No 6338, 4194)

Response: We have added clarification to the RS-2477 Map (#1) to explain the route status better by updating the legend definitions. This clarification update has also been noted in the text (Chapter IV) of the FEIS. AS

Comment: They believe that these roads and trails are exempt from a motorized or nonmotorized discussion.

In the County's final 2477 map, Pole Canyon North will also have 2477 assertion made on it.

Their primary concern is that some of Teton County's 2477 assertion show as "red" on the map, implying that the Forest Service has made a decision/taken an action on 2477 roads when we are not supposed to be taking action against 2477. (Ltr No 5)

Response: At this time our direction is to respect county requests and not obliterate the assertions roads. Section 108 of the Department of Interior Omnibus Consolidated Appropriations Act restricts RS-2477 right-of-way rules and regulations from becoming effective without an authorizing Act of Congress. Due to the pending legislation, the Department of the Interior and the Forest Service have elected to defer making any administrative determination on RS-2477 assertions except in cases where there is a demonstrated, compelling, and immediate need to make such determinations. However during this period, we plan to continue to gather relevant information about the history of the various roads that are at issue in the Region. When the roads and trails are in red on the RS-2477 Road and Trail assertion by area Counties map this does indicate they will not be open in Alternative 3M+. When they are not open for motorized travel it does not mean the road or trail will be decommissioned. We have said we will not destroy the roads or trails that have been asserted by the Counties. We have clarified the map legend for Map #1 to better explain the color code. MM, AS

Comment: The Draft Environmental Impact Statement Document on Open Road and Open Motorized Trail Analysis was very confusing. It showed roads and trails that have RS-2477 designation being closed and decommissioned. ...We look forward to going over detailed maps so that this confusion of which roads are Forest Service roads and which are RS-2477 can be resolved. (Ltr No 5559)

Response: We have clarified Map #1 (RS-2477), routes with a new legend. We have committed to the counties that we do not intend to decommission any routes which have been asserted. All routes remain Forest Service roads or trails until proper adjudication occurs. AS

Comment: With respect to individual rights-of-way, we note Map 1, RS-2477 Road and Trail Assertions, has a few errors for Clark County. The first is in the area of Pete Creek Rd. 80010. Map 1 shows red dots in this area, indicating a trail that does not exist on the ground. In fact, by agreement with Mac Murdock, District Ranger, the assertion follows the eastern route on your map and continues to the divide. We ask that you make that correction. The old assertion up the bottom of Pete Creek should remain on paper, however, in case the new route ever comes into dispute. (Ltr No 1817)

Response: The Pete Creek Road #80010 will extend up to the Continental Divide for 4-wheelers. The red dots on the map along Pete Creek only indicate that the trail in that location would not be open to motorized use in Alternative 3M+. The Counties Assertions are kept on file so they can always be reviewed and discussed in the future. MM

Comment: The second error is in the area of the Middle Fork of

Indian Creek, Rd. 80204. All of these roads (204, 022, 185) end short of the divide on the map. In fact our assertions on all three roads go to the divide on existing two-track roads and should be shown as such on Map 1. In addition, Divide Road from the Middle Fork of Indian Creek to Pleasant Valley is an asserted route but is missing from your map. We ask that these corrections be made. (Ltr No 1817)

Response: The second error you mention was in Middle Creek. Three roads were mentioned that were short and should have reached the Continental Divide. These roads were 204, 022, and 185. We checked the original assertions and map and the 3 roads did not reach the Divide. The main Middle Creek Road #204 was missed by Jim Lyons descriptions but it is on the 1925 map but does not reach the Divide. In addition you requested the Divide Road from Middle Fork of Indian Creek to Pleasant Valley was an asserted route. Again this was not in the original request from Jim Lyons, but it is on the 1925 map. This trail will be shown as open asserted. However the trail begins at a junction of West Fork of Indian Creek and Modoc Creek and then goes east to Pleasant Valley. The two-track roads from the end to the divide of 204, 022 and 185 are planned for decommissioning. MM, LAB

Comment: The same condition exists for the West Fork of Indian Creek, Road 80205. Our assertion is all the way to the divide and exists as a two-track road on the ground. This assertion should also show as a solid green line on Map 1. (Ltr No 1817)

Response: In the West fork of Indian Creek the assertion is all the way to the Divide but the two track road has gone up a different fork than where the assertion is on the map. Due to the water quality and fisheries, the two track road to the Divide will not be motorized. The original assertion is up the draw and passes the oil well drilling site. The road from the oil well site down the draw to the existing road was reclaimed many years ago. There would not be motorized access to the Continental Divide in the West Fork of Indian Creek. MM

Comment: Beyond individual road assertions we have a philosophical problem with your proposal to vary assertions by alternative. We strongly believe this is inappropriate and violates the RS-2477 law. An assertion, once made, becomes permanent and cannot be allowed in one alternative and disallowed in another. (Ltr No 1817)

Response: RS-2477 assertions do not vary between alternatives, and we have clarified this on Map #1 and in the text in Chapter IV of the FEIS. AS