

SUBJECT Egin-Hamer -
Conversation with Jeff Feraday -
Attorney

BY B. Bain DATE 9-29-87
SHEET NO. _____ OF _____
PROJECT NO. _____

Jeff Feraday is a local attorney & one of the founders of ICC
I asked several questions of Jeff relative to possible
legal action

The first & most obvious is what are the possible grounds
for a lawsuit - there are 2

1. That the BLM violated some aspect of the NEPA process
in developing the EA & EIS
2. Would the courts consider the action taken by the BLM
to be "arbitrary and capricious"

On #1, BLM has stated that they have carefully followed
NEPA guidelines - we would have to find a glitch

#2 Would the area suffer unacceptable impacts if the
road is built & a closure enforced? EIS says no (see
attached) - is that the case?

Also see new conditions BLM will impose on Counties
We would have no case if we only contended that the
closure will not be enforced or the ROW revoked for
violation according to Jeff

If we have no grounds on 1+2 above, our only course of
action would be to monitor the closure - is it enforced,
is it real ... and if a violation occurs (we can document
it) go to court to force the BLM to revoke the ROW if
they do not do so on their own

Jeff is willing to donate some time to discussion with us
relative to the grounds for a lawsuit & would consider
representing us. He would re-evaluate his pro bono
commitment if we pursue a lawsuit.



SUBJECT Egin - Haver
Conversation w/ Ed Stockly

BY Blair DATE 9-28
SHEET NO. _____ OF _____
PROJECT NO. _____

Ed represents the Idaho Natural Resources Legal Foundation

Ed is reviewing the actual wording in the final BEM decision relative to the terms and conditions that would be placed on the counties for granting of the ROW

He feels that some significant changes have occurred from the final EIS in this area and that these changes could eliminate the grounds for a lawsuit

He is also talking to Del Vail to get a feel for how soon the counties would be granted the ROW & hence how soon any legal action would be required.

He doesn't have an answer yet & will get back to me ASAP

g. Summary of Impacts

This alternative would reduce miles traveled per trip by area farmers and ranchers by 8.5 to 21.5 miles, resulting in savings of between \$77,600 and \$102,200. There would be a reduction of earnings in the meat animal industry of \$2,600 annually. Secondary earnings losses would amount to \$4,000. It would cost \$48,500 to install the needed cattleguards and pipeline. It would cost \$700 per year for cattleguard maintenance. The reduction in elk hunter days would reduce earnings by \$164,700. The total loss (including multiplier effect) would be \$362,300. It would cost between \$84,000 and \$504,000 to build a gravel surface road, with annual maintenance costing \$13,400. The involved counties would have to increase their road and bridge department budgets by \$79,900 the first year, \$93,300 for years two through 10, and \$13,000 per year thereafter. The net present worth of this alternative is minus \$4.7 million.

6. SAND MOUNTAIN WSA

The Alternative C route would not affect the wilderness values of the Sand Mountain WSA.

7. NATIVE AMERICAN CONCERNS (CULTURAL RESOURCES)

Impacts to Native American values would be as described for Alternative A.

D. ALTERNATIVE D - SEASONAL CLOSURE

This alternative is to grant a right-of-way for the road on the route applied for with the stipulation that it be closed every year from December 1 through March 31.

1. WILDLIFE

A seasonal closure (from December 1 to March 31) of the Alternative A route could provide for adequate protection of the wildlife in the area. Overall impacts of the project could be a possible delay in the elk moving in the area. It may also move the elk out of the area earlier in the spring than if left undisturbed. These minor changes in elk movements would not have a significant effect on the availability of forage and habitat in the area. The elk population is expected to remain at present levels.

Enlarging the ACEC would extend protective constraints for elk over a larger area but would not increase elk numbers because numbers are limited by cooperative agreements, not habitat.

This route would remove 64 acres of winter big game range forage from the area. The cost of replacing this acreage would remain the same as for Alternative A.

Closing this route from December 1 to March 31 is expected to be difficult. The applicants have stated that they will not accept a four-month winter closure on this road if they invest the money to build

it. It is expected that there would be little or no cooperation from Fremont County in putting an ordinance on record that would allow Idaho peace officers (i.e., IDFG, Idaho State Police, etc.) to enforce an annual closure from December 1 through March 31. This has been demonstrated by their unwillingness to place the Juniper ORV closure on the county records to help protect this wintering big game population. This Federal closure has been in effect since 1975. All enforcement actions have been carried out by the BLM.

However, if the Counties would accept the winter closure, pass a County ordinance, and enforce it, the road would not have an effect on the elk herd. To enforce the closure, the Counties would have to construct physical barriers such as swing gates or removable concrete ribbon barriers. They also would have to increase law enforcement efforts in the area from December 1 to March 31 at an added expense of between \$2,000-\$3,000. Failure to carry through with the enforcement of the road closure would cause BLM to revoke the right-of-way grant.

2. THREATENED, ENDANGERED, AND CANDIDATE SPECIES

Bald Eagle (Endangered)

Same as Alternative B *no action*

Ferruginous Hawk (Candidate)

Same as Alternative A *build road no impact*

Idaho Dunes Tiger Beetle (Candidate)

Same as Alternative A *build road minimal impact*

Desert Evening Primrose (Candidate)

Same as Alternative A. *build road no impact*

3. LIVESTOCK MANAGEMENT

The road construction and maintenance would physically reduce the total amount of vegetation on 64 acres of public land. This would mean a loss of six AUMs: four AUMs in the Nine Mile Knoll Allotment, and two AUMs in the Saurey Allotment (see Map 5). There would be a loss of livestock from vehicle collisions, particularly in the Saurey Allotment because the road would be within one-quarter mile of the only water source in the south pasture.

Enlarging the ACEC would enlarge the area of winter motor vehicle closure. Sheep trailing using motor vehicles from December 1 until March 31 would not be allowed. This may require alternative trailing routes or trucking, or trailing from April 1 - November 30.

This alternative route would also require four cattleguards be installed.

4. RECREATION

The impacts are the same as Alternative A, except that winter sports activities would be reduced by the access closure during winter.

5. ECONOMICS

a. Driving Distances

This alternative would have the same impact on distances traveled and per trip cost savings as Alternative A (10.6 to 24.5 miles, \$2.86 to \$12.69). However, since this alternative involves winter closure, the number of trips made would be reduced from the Alternative A levels to between 13,200 and 17,550 vehicles. Using the same assumptions as in Alternative A, the cost savings would be between \$67,000 and \$89,000 per year. This would represent 0.5% of the 1983 crop earnings in the three-county region.

b. Livestock Grazing

This alternative would have no impact on earnings from livestock grazing. There would be a need to install four cattleguards at a cost of \$26,000. Annual cattleguard maintenance would cost \$400.

c. Hunter Days

This alternative would have no impact on hunter days.

d. Construction, Maintenance, and Monitoring

It would cost between \$88,000 and \$528,000 to build the road with this alternative. Annual maintenance would cost approximately \$800 per mile, for a total annual cost of \$7,040. The maintenance cost per mile is less in this alternative due to the winter closure of the road. There would be no monitoring costs with this alternative.

e. County Budgets

Based on a 10-year bond at 10% interest to pay for the construction of the road, the counties involved (Fremont and Jefferson) would have to increase their budgets by \$83,000 in the first year and \$90,000 per year for the next nine years based on a \$60,000 per mile cost to build the road. Thereafter, the budgets would need to be increased by \$7,000 per year to cover maintenance. Fremont County would be responsible for 48% of the cost and Jefferson County, 52%. For Fremont County, this would be an additional \$3.62 per capita the first year, \$3.93 per capita in years two through 10, and \$0.31 per capita thereafter. These represent 4.5%, 4.9%, and 0.4%, respectively, of the Fremont County per capita road and bridge budget. For Jefferson County, this would be an additional \$2.65

per capita the first year, \$2.87 per capita in years two through 10, and \$0.22 per capita thereafter, representing 4.4%, 4.8%, and 0.4%, respectively, of the Jefferson County road and bridge budget.

f. Net Present Worth Analysis

In the net present worth analysis of this alternative, the following assumptions were made:

1. Life of Project - 30 years
2. Road Construction Cost - \$88,000 to \$528,000
3. Annual Road Maintenance Cost - \$7,040 (beginning year 2)
4. Annual Benefit to Users - \$89,000
5. Annual Hunter Days Lost - \$0
6. Annual Livestock Earning Losses - \$0
7. Cost of Installing Cattle Guards - \$26,000
8. Annual Cattle Guard Maintenance - \$400
9. Discount (interest) Rate - 8.625%

This analysis indicates that the net present worth of this alternative is a positive \$394,800 at a cost of \$60,000 per mile to build the road and a positive \$834,800 at a cost of \$10,000 per mile to build the road.

g. Summary of Impacts

This alternative would reduce miles traveled per trip by area farmers and ranchers by 10.6 to 24.5 miles, resulting in savings of between \$67,000 and \$89,000. It would cost \$26,000 to install the needed cattleguards and \$400 per year to maintain them. It would cost between \$88,000 and \$528,000 to build a gravel surface road with annual maintenance costing \$7,040. The involved counties would have to increase their road and bridge department budgets by \$83,000 the first year, \$90,000 for years two through 10, and \$7,000 per year thereafter. The net present worth of this alternative is plus \$0.4 million based on a cost of \$60,000 per mile to build the road.

6. SAND MOUNTAIN WSA

The impacts would be the same as for Alternative A except that there would be no change from the present condition during the period from December 1 to March 31.

7. NATIVE AMERICAN CONCERNS (CULTURAL RESOURCES)

Since elk numbers would remain unchanged under this alternative, there would be no impact to Native American values.

E. ALTERNATIVE E - THE ACEC BOUNDARY ROUTE

This alternative is to grant a right-of-way for a road that would follow the southern boundary of the existing Nine Mile Knoll ACEC (Map 2).