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Forest  
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Date: August 25, 2011

Hugh B. McKeen  
Commission Chairman  
Catron County Commissioner's Office  
P.O. Box 507  
Reserve, NM 87830

Dear Mr. McKeen:

This letter is in response to your letter of August 17, 2011 regarding Catron County maintenance activities on National Forest System Road (NFSR) 32, referred to by you as Historic Highway 12, from Bill Kelly Ranch upstream to Reserve. In your letter, you assert that Catron County has full jurisdiction over NFSR 32 and will continue to maintain the road.

There is no record that Catron County has ever established its claim to RS 2477 right-of way for NFSR 32, or any other National Forest System Road in Catron County, in court. Therefore, it is the position of the Forest Service that you do not presently have jurisdiction over NFSR 32 and that the County is not authorized to conduct maintenance or reconstruction activities on this road.

As detailed in our letter of January 29, 2009 to Catron County, there is a specific process that the county must follow to establish its rights pursuant to RS 2477. This process was also explained to Commissioner Wehrheim in a meeting on April 28, 2009 at the Forest Supervisor's office.

Congress has not delegated to the Forest Service the adjudicative authority to conclusively establish a valid RS 2477 right; a court of competent jurisdiction must determine the existence of RS 2477 rights of way across federal lands. The burden of proving the existence of an RS 2477 right-of-way in court lies with the claimant.

Even if this road had been properly conveyed to Catron County, the county is still required to abide by the necessary applicable federal regulations such as NEPA, Endangered Species Act, National Historic Preservation Act, Archeology Resources Protection Act, Native Graves Protection and Repatriation Act and the Clean Water Act. Further, the appropriate permits for maintenance of roads within floodplains or affecting streams, wetlands or endangered species must be obtained prior to initiating on the ground work.

Judge Parker's order of dismissal in Van Clothier v. U.S.D.A. et al. (Civ. No. 07-714 JP/ACT) concluded litigation for the federal government. The order also dismissed Catron County's motion to amend the complaint to include consideration of the County's claim to an RS 2477 right-of-way for NFSR 32. The court stated that it was dismissing the case without prejudice "to allow the parties to pursue their claims in the appropriate state court." To my knowledge, Catron



County has not perfected its claims in court and has not established a right of way pursuant to RS 2477; please correct me if I am wrong.

Finally, you caused damage to National Forest System lands when you maintained the road without Forest Service authorization. Contrary to your claim that all material was pushed away from the live stream bed, there was at least one serious cut and fill of about 100 feet on the south end of the road and several incidental fill areas associated with river crossings. Trees, both riparian and non-riparian, were cut or pushed from the road and several additional trees were "skinned" up by heavy equipment. I appreciate the efforts made to minimize damage by crossing the river at right angles and only scraping the road bed when necessary. However, this does not change the fact that all maintenance work on NFSR 32 was unauthorized and without jurisdiction.

The unauthorized maintenance of NFSR 32 that Catron County recently completed is under investigation. Based on the results of that investigation, I will take appropriate actions to hold Catron County accountable for damages or violations of law. Catron County may not conduct any further maintenance or reconstruction activities on NFSR 32 without jurisdiction and/or the appropriate authorization(s). If you have any questions, please do not hesitate to contact Louie Cañez at 575-338-8221.

Sincerely,



Kelly M. Russell  
Forest Supervisor

cc: Pat Morrison  
John Pierson  
Bob Cordts  
Louie Canez  
Tim Bertrand  
Corbin Newman  
COE  
USFWS  
OGC