



COUNTY OF CASSIA

OFFICE OF THE BOARD OF COUNTY COMMISSIONERS

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An open Letter to the Citizens of Cassia County

RE: Road responsibilities and validation procedures.

There is an order to all things in the world. Sad experience proves time after time, that when we step out of order, there is chaos, confusion and contention. Claims have been wrongfully made that the Commission and/or its members have "*lost interest*"; are "*misinformed*"; or simply "*ignore the law*". Nothing is further from the truth. This Board of Commissioners is very interested, very informed, and is driven by integrity and the law to do what is right – to follow the order of things.

Recently several letters have been distributed through various media attacking the Commissioners, other County personnel and attempting to set forth the legal basis for action concerning roads, and perceived roads within various parts of Cassia County.

Personal attacks usually arise when the underlying issues and relevant facts are sparse, non-existent or misunderstood. Therefore, in this letter to the Citizens of Cassia County, we set forth the legal parameters that govern Commission action in the arena of jurisdiction over roads and the road validation matters. It is our desire that relevant facts be used, in conjunction with the laws set forth by the legislature, in conducting public debate on these matters.

The Board is aware of intense opinion and feelings regarding road and access issues. Instead of pandering to those special interests or circumstances, the Board has turned to statute and the rule of law to provide order and fairness. The Board has diligently worked to understand the relevant law as set forth in Code, and not as anecdotally delivered or wondered about in some quarters. The Board is comfortable that it understands how road validation statutes apply to their actions, and are prepared to follow that order of things as they have determined is fair and appropriate to all citizens; not just a few. By this procedure, the Board provides for fairness to all interested parties; rather than have any decision appear to be a back room deal. This is what this Board strives for, and it is what we are doing. Were we to do otherwise, it would be like building a mud hut in an earthquake zone – a matter of "**when**", not "**if**" it would collapse.

So, we write to share some basic parameters that govern this Board's duties and responsibilities concerning road validation matters in general. In discussing duties and responsibilities it is critical that the law be understood as written by the Idaho legislature. Idaho Code, Section 40-604 discusses the duties and powers of commissioners. Among other items, it sets forth that the *"Commissioners shall (1) Exercise general supervision over all highways in the county highway system, including their location, design, construction, reconstruction, repair and maintenance, and develop general policies regarding highway matters. (2) Cause to be surveyed, viewed, laid out, recorded, opened and worked, any highways or public rights-of-way as are necessary for public convenience under the provisions of sections 40-202 and 40-203A, Idaho Code."* And in paragraph [(13)](14) of this Section sets forth that *"[b]y July 1, 2000, and every five (5) years thereafter, the commissioners shall have published in map form and made readily available the location of all public rights-of-way under their jurisdiction."*

However, when a highway district is organized under Idaho law, it supplants the Board of County Commissioners for its identified jurisdiction. Idaho Code Section 40-1310 discusses the powers and duties of highway district commissioners in such case. In relevant part it states: *"The commissioners of a highway district have exclusive general supervision and jurisdiction over all highways and public rights-of-way within their highway system, with full power to construct, maintain, repair, acquire, purchase and improve all highways within their highway system, whether directly or by their own agents and employees or by contract. Except as otherwise provided in this chapter in respect to the highways within their highway system, a highway district shall have all of the powers and duties that would by law be vested in the commissioners of the county and in the district directors of highways if the highway district had not been organized."*

This exclusive general supervision and jurisdiction means, in the simplest terms, that the County Commissioners have no right or authority to supervise or exercise jurisdiction over the road matters within an organized highway district boundary. And so for road matters within the Albion Highway District, the Board of County Commissioners recognizes the Highway District Commission as being the ultimate supervising authority, answerable in their duties and responsibilities only to the electorate for that jurisdiction, or to the Courts in instances of judicial review.

It is also the Highway District's obligation and duty to provide mapping of public rights-of-way under its jurisdiction. Idaho Code Section 40-1310 goes on to state, in relevant part: *"By July 1, 2000, and every five (5) years thereafter, the highway district board of commissioners shall have published in map form and made readily available the location of all public rights-of-way under its jurisdiction."* [Underline added.]

We would add that the duty is to publish in map form the location of all public rights-of-way under the district's jurisdiction. This does not necessarily translate into *"... cataloguing and mapping roads in common use by the public..."* as has been posited by some. It is critical and necessary in understanding and acting on such legislation to actually deal with what the statutes say, as opposed to merely what one thinks or hopes that they say.

Next, with regard to the road validation process, it is specifically governed by Idaho Code Section 40-203A. That section of Idaho Code sets forth the validation procedure for public rights-of-way. It offers an option to petition by residents, property holders within the relevant highway system, the state of Idaho, or federal agencies OR it allows the governing board of the highway system to initiate proceedings if certain conditions exist.

With respect to proposed proceedings concerning 1125 East near Elba, Idaho, the Board of County Commissioners has determined after review that any proceedings will have to be initiated by petition of another, and will not be brought forward by the Board. The Board is aware that there are residents and/or property holders within the County Road and Bridge area of jurisdiction that line up on each side of the issue as to whether the road should be validated or not. The Board has been advised that evidence will be produced on this issue. Therefore, in order to be fair and to propound the interests of due process to all involved, the Board will not initiate proceedings on its own and become an advocate for one position or the other. Instead, the Board will remain neutral on the matter. Then, if a petition for validation is filed, the Board will hear all interested parties and make a determination based upon the relevant facts and evidence presented.

To do otherwise would be imprudent, unlawful and unfair.

BOARD OF COMMISSIONERS
FOR CASSIA COUNTY, IDAHO

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