

First off, I would like to state that I am opposed to this rehearing for validating West Fork of Pinecreek for the following reasons:

1. Petitioner is not a resident or property owner in Shoshone County and therefore has no standing to ask for a road validation in Shoshone County. The original petition should never have been heard. See Bopp vs. City of Sandpoint.
2. The petition's written description is vague on where and what is being asked to be validated.
3. I believe the BOCC has not declared any conflicts of interest they may have or any ex parte communications they have had about this petition.
4. The written decision to deny the petition to validate was done on April 26th, 2022. It was voted on and recorded in the minutes of the meeting for that day. The Findings of Facts, Conclusions and Decisions done on June 21st, 2022, have never been on a BOCC agenda or recorded in any official county minutes, as past practice has been. The importance of this is that Idaho Code provides for specific time lines to request a rehearing and to appeal to District Court. The petitioner was well past the deadline to request a rehearing and therefore, should never have been granted a rehearing.

The evidence I have seen from the petitioners now, came from a 1909 BOCC meeting that states the County approved \$300.00 to survey West Fork of Pinecreek Road. There is no instrument # to show the recording that this was ever even done. As many of us know, BOCC minutes state many things that never get done. If there is not a recording of the survey, then there is no proof it was even done or money ever spent. As evidence of this, Shoshone County Assessor does not see it as a road, since the property owners are still being taxed on what is referred to as West Fork of Pinecreek Road. Title companies have never been able to find a record of survey and therefore do not recognize it as a county road (see Joe Avery's title search).

I was told by the past road department manager, that the county's road list came about when a past Commissioner drove around with the different road district supervisors. They looked at and recorded what roads were being plowed and how far they were plowed. This is where the road inventory and road length list came about. If you look at the road inventory, there are numerous so called roads listed that are not roads, that

are on private property and that title searches will not recognize. A quick example besides the West Fork of Pinecreek is Grey's Bridge Road up Burke. We all know this inventory list and ITD maps in no way meet the 2005 state legislature mandated requirement of an "official county road map".

The other evidence I have seen from the petitioners, is money spent on flood damage. Nowhere does it state what was done. This is not evidence it is presumption. My presumption is that the creek started coming down the privately owned road, down to the turnaround area and onto the unproven 3.18 miles of West Fork of Pinecreek.

I request the opposition is permitted time for surre buttal to any new items brought up in petitioner rebuttal.

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Ex 7-B
7-B

First off, I would like to start by saying I'm opposed to this validation. I would also like to make sure that it goes on record that I do not believe the BOCC has met their requirement in declaring all information and conversations that they had about this petition prior to this hearing. Please see exhibit A – pages 9 & 10 of the AG's open meeting law opinion booklet.

Mr. Avery's property was granted it's homesteaded in January of 1915. This means that the land would have been taken out of public domain in approximately 1910 when the homestead application would have been filed. See exhibit B, 5 pages.

For this road to be validated per R S 2477, there has to be evidence not **HEAR SAY** of continuous use for five years prior to the land being taken out of public domain. In other words, the petitioner has to prove continuous use for 5 years prior to 1910. In the case of Galli vs Idaho County, the Idaho Supreme Court stated that a survey map with notes of some cabins and fences was not adequate to show regular public use for five years. See exhibit C, 9 pages.

In a USGS document, in 1904 a study of the Pine Creek District was done. The report states –At the time the Pine Creek District had been only slightly developed. See exhibit D.

Shoshone County has never officially made or adopted a county road map, showing highways and right of ways. See exhibit E. Per Idaho Code 40-202, the BOCC shall cause a map to be prepared showing the general location of each highway and public right of way. Even the ITD road surface map the county tries to use as it's official map, clearly states that the information is “as is” without warranty of any kind. See exhibit F. In other words, it's just a reference map not a legal map.

In both Idaho Supreme Court cases, Homestead Farms vs BOCC of Teton County and in Flying A Ranch vs BOCC of Fremont County, the court clearly states that the initial placement of roads on a county's official highway map must have factual support for doing so. In other words, the county has to have evidence as to ownership and reason for placing road on the map. See exhibits G, 10 pages & H, 8 pages.

In the Road Law Handbook, it states that the county grader making a pass over a road was done merely as a favor and did not qualify as public maintenance for road creation purposes. See exhibit I, 2 pages.

In conclusion, I do not believe you can approve this petition to validate for the following reasons:

1. The burden of proof for continuous use has not been met.
2. Very little mining activity happened in the West Fork of Pine Creek. And it's questionable if the prospectors in the upper end of the west fork came in from Latoure Gulch.
3. Without an officially adopted Shoshone County Highway Map and the County not meeting it's burden of proof on how they received the roads and right of ways, how can the county validate land when they have no proof of ownership.

Also, for all of the above reasons, the BOCC should explain which one of them decided to direct public works and spend tax payer's money to remove a blockade on private land.