

Ryder Gauteraux  
Chuck Jones  
25 Cedar St  
Wallace ID 83873

Ryder Phone# (541) 410-4317

**RECEIVED**

OCT 25 2021

**SHOSHONE COUNTY  
COMMISSIONERS**

**THE COUNTY COMMISSIONERS OF SHOSHONE COUNTY  
IN THE STATE OF IDAHO  
IN & FOR THE COUNTY OF SHOSHONE**

RYDER GATEREAUX,	)	Case No.
	)	
CHUCK JONES,	)	<b>PETITION TO VALIDATE</b>
	)	<b>WEYER GULCH ROAD</b>
PETITIONERS.	)	
	)	Hearing date:
	)	Time:
	)	Dept:
	)	
	)	
_____	)	
	)	

Petitioners RYDER GATEREAX and CHUCK JONES (hereinafter "PETITIONERS") hereby petition the Shoshone County Commissioners to validate Weyer Gulch Road located southeast of Wallace, county of Shoshone (previously known as Anderson Gulch Road and Weir Gulch, among other spellings; hereinafter WEYER GULCH), a public road that provides access to both private land and state and federal public lands, in accordance with Idaho Code Title 40, Chapter 2, 40-203A. The petitioner hereby agrees to pay a reasonable fee as determined by the commissioners to validate the road known as WEYER GULCH.

I. BACKGROUND

Petitioners purchased multiple properties located southeast of Wallace in 2019, that the Weyer Gulch Road serves as ingress and egress to, and no time has WEYER GULCH Road ever been abandoned by the Wallace City Council or Shoshone County commissioners though the City of Wallace did place barriers blocking ingress and egress in 2020 without providing an alternate route. Petitioners contends WEYER GULCH is not part of a platted subdivision within the meaning of 40-203A

## II. IDAHO LAW GIVES THE COUNTY COMMISSIONERS AUTHORITY TO VALIDATE A PUBLIC RIGHT-OF-WAY

- A. The County Commissioners have the authority to validate a public right-of-way when there is doubt as to the establishment of the right-of-way. Idaho Code Title 40, Chapter 2, section 40-203A entitled “Validation of County or Highway District System Highway or Public Right-of-Way” provides “(a)ny resident or property holder within a county or highway district system...may petition the board of county or highway district commissioners, whichever shall have jurisdiction of the highway system, to initiate public proceedings to validate a highway or public right-of-way... if any of the following conditions exist: (a) If, through omission or defect, doubt exists as to the legal establishment or evidence of establishment of a highway or public right-of-way”. Validation proceeding as described in I.C. § 40-203A is the appropriate method to “validate an existing highway or public right-of-way about which there is some kind of doubt,” although “[i]t does not allow for the creation of new public rights.” (Galvin v. Canyon County Highway District No.4 (2000) 134 Idaho 576, 579).

If proceedings for validation of a highway or public right-of-way are initiated, the commissioners shall follow the procedure set forth in section 40-203, Idaho Code, and shall:

- (a) If the commissioners determine it is necessary, cause the highway or public right-of-way to be surveyed;
  - (b) Cause a report to be prepared, including consideration of any survey and any other information required by the commissioners;
  - (c) Establish a hearing date on the proceedings for validation;
  - (d) Cause notice of the proceedings to be provided in the same manner as for abandonment and vacation proceedings; and
  - (e) At the hearing, the commissioners shall consider all information relating to the proceedings and shall accept testimony from persons having an interest in the proposed validation.
- (3) Upon completion of the proceedings, the commissioners shall determine whether validation of the highway or public right-of-way is in the public interest and shall enter an order validating the highway or public right-of-way as public or declaring it not to be public.

(4) From any such decision, any resident or property holder within a county or highway district system, including the state of Idaho or any of its subdivisions, or any agency of the federal government, may appeal to the district court of the county in which the highway or public right-of-way is located pursuant to section 40-208, Idaho Code.

(5) When a board of commissioners validates a highway or public right-of-way, it shall cause the order validating the highway or public right-of-way, and if surveyed, cause the survey to be recorded in the county records and shall amend the official highway system map of the respective county or highway district.

(6) The commissioners shall proceed to determine and provide just compensation for the removal of any structure that, prior to creation of the highway or public right-of-way, encroached upon a highway or public right-of-way that is the subject of a validation proceeding, or if such is not practical, the commissioners may acquire property to alter the highway or public right-of-way being validated.

- B. As the records demonstrate herein, WEYER GULCH has been a long standing right-of-way utilized by many. It has been maintained and built upon in part with public funds and provides access to public utilities. It is under the control of the county, and not within the platted subdivision of the city of Wallace, and therefore falls within the jurisdiction of the County Commission and the procedure set forth in section 40-203A is applicable. Furthermore, the actions taken by the city of Wallace in blocking WEYER GULCH has raised doubt as to not only the location and validity of the public-right-of-way, but the controlling jurisdiction of the public right-of-way. Section 403A therefore describes the appropriate method of validating WEYER GULCH.

### III. LOCATION OF WEYER GULCH

WEYER GULCH is accessed today directly off the Eastbound on-ramp of exit 62 at a location called the at-grade crossing that is a 15-20 ft wide gravel road driving into the South Fork of the CDA River and out the other side. On the south side of the river it heads up the hill approximately 100 feet to an intersection that converges with the original WEYER GULCH coming from the East. The original road was approximately 25 feet wide and was accessed by crossing a two-lane bridge off the state highway at the far East end of what is now the gravel parking area adjacent to the exit 62 eastbound on-ramp. At this intersection there is also another road approximately 20 feet wide running to the West towards town that crossed the CDA river with a bridge that was 6 to 10 ft wide (Exhibit 19).

From that intersection going south up WEYER GULCH the road is approx. 25 ft wide at points and as narrow as 12 ft in areas. This road has a dirt surface and has not been regularly maintained in recent years though is able to be travelled with a 4-wheel drive truck. There is overgrowth in areas where optional logging roads provide travel. The road heads its way up the hill to the southern border of Section 35 across multiple parcels of private land in approximately the same location and route as shown on the County's GIS (Exhibit 14). and current State/Federal maps, then crosses into Section 2 onto state and Federal lands and works its way to the East and ends somewhere in the Stevens lake area.

IV. DEED HISTORY OF WEYER GULCH DEMONSTRATING IT AS A PUBLIC RIGHT-OF-WAY AND JURISDICTION WITH THE COUNTY COMMISSIONER

A. WEYER GULCH HAS THROUGHOUT DEED HISTORY BEEN REAFFIRMED A PUBLIC RIGHT-OF-WAY.

All of Section 35 was deeded from the United States of America to Northern Pacific Railroad (hereinafter "NPRR"), and as maps show, the road in question was a well maintained road with a two-lane Bridge crossing the South Fork of the Coeur D'Alene River (hereinafter "CDA") accessed from the public road later known as State Highway Route 10, having been constructed and providing access to multiple dwellings, the public water system, and mining operations known collaboratively by the name Silver Buckle prior to 1901 (Exhibit 9)..

Records first reference the public right-of-way when NPRR sold property located in Section 35 and "retained 'Right of Access' and the 'Right of Necessary Use' across the public right away of this portion of land unto itself and its successors." This land was deeded to the City of Wallace and recorded July 14th, 1898, in book 11 of Deeds page 468. (Exhibit 1)

NPRR also deeded property within Section 35 to Shoshone County/Sisters of Charity of Providence Hospital and Public Utilities Consolidation Corporation, in which NPRR retained rights unto themselves and their successors. NPRR states in multiple deeds "**the lands hereby conveyed also being subject to an easement in the public for any public roads heretofore laid out or established, and now existing over and across any part of the premises.**" This specifically references three roads that were constructed with public funds and used by the public, one of which is WEYER GULCH as shown on multiple maps beginning in two locations that cross the CDA river and converging into one road heading up the Gulch (Exhibit 9 and 15)..

The second road referenced, an unnamed road, we will call Lower Tower Road for simplicity, is a road to the right turning off WEYER GULCH road approx. ½ mile up from the CDA river that then runs northwesterly to the location of the Water Tower then around the tower and down the hill to Silver St in Wallace (Exhibit 5).

The third road referenced, another unnamed road, we will call Upper Tower Road for simplicity, which is a road to the right turning off WEYER GULCH approx. 1 mile up from the CDA river that then runs northwesterly to the location where the communications tower is located today then down the hill connecting to Lower Tower Road and down the hill to Silver Street in Wallace

On February 9th, 1923, NPRR, the owner still retaining the majority of section 35 (approximately 600 + Acres), deeded about 3.5 acres to Mary Eva Weyer (this piece is now owned by the State of Idaho). At that time, it was known as the Weyer Tract, it was sold to Ms. Weyer as described in the deed recorded on February 9th, 1923, in book 57 of Deeds page 177, (Exhibit 2) and retained rights unto itself (NPRR) and its successors, “the land is subject to use of the public right of way.” A blueprint of the Weyer Tract from the Wallace Mining Museum shows in detail the location of this public Right of Way (Exhibit 15) ; this survey was done right around 1923, showing two public roads going through the property, one is the large 2 lane Bridge as shown on the 1901 map (Exhibit 8 and 9) , and the Second is a narrower bridge approx. 500 feet to the West, this is also described as a public right away, accessing multiple houses in the WEYER GULCH area. This smaller bridge is described as a public right of way with no restrictions and no details in the original deed recorded in 1923 only showing the existence of the right of way. Later in 1950 documents described this location as a footbridge with a width of 6 ft; this is in documents filed when the city of Wallace did necessary repairs to the bridge. At that time the Sisters of Charity hospital used property in WEYER GULCH regularly for events and picnics.

On February 17th, 1926, NPRR, deeded about 1.4 acres to Morton Webster (this piece is now owned by the State of Idaho). At that time, it was known as the Webster Tract; it was sold to MR. Webster as described in the deed recorded on February 26, 1926, in book 59 of Deeds page 394 (Exhibit 6), and retained rights unto itself (NPRR) and its successors, “the land is subject to use of the public right of way.” A blueprint of the Webster Tract is attached to the Weyer Tract In 1938 the Griner family lived on a small piece of land 50’ by 50’ that they purchased from NPRR. When they purchased this property it was also subject to the public right of way. The Griner Family still owns this parcel today.

John L. Fitzgerald purchased approx. 6.5 acres of land from NPRR just south of the Weyer Tract, on Feb 1, 1928 recorded in book 61 page 118 (Exhibit 3). In multiple deeds for this piece of land spanning from 1928 through 2020, mention is made that the land is subject to easements for the Public Right of Way. Some deeds also mention the use to go over present existing roads and trails plus an easement across the Footbridge over the mainstream accessing WEYER GULCH which gives access to that portion of the property.

In 1992 Norid LLC purchased from NPRR (Exhibit 7), (through its subsidiaries, Meridian Minerals Company, Plum Creek Timber, and Crown Pacific limited partnership working with CP Liquidating Trust), the remaining 500 plus acres of land in section 35 along with mineral rights, Timber Rights, and all Easements running with the land. This land both uses this public Right of way for access to the property and is subject to the easement for the public Right of Way known as WEYER GULCH that accesses the State and Federal land to the south in Section #2 and continuous sections of public land.

**B. NPRR HAS RETAINED RIGHTS FOR IT AND ITS SUCCESSORS TO UTILIZE WEYER GULCH AND ACKNOWLEDGES IT AS A PUBLIC RIGHT-OF-WAY.**

NPRR throughout all sales of land has retained rights unto itself and its successors to access all of its property and has acknowledged public use of WEYER GULCH road as a public right-of-way, that continues into Section #2 labeled as highway #16 in part, this is still maintained as a public right-of-way today. (Exhibit 14)

After the sales from NPRR the lands changed hands multiple times with changes to buildings and property boundaries, but there is no known change to the location or the use of WEYER GULCH Rd other than the location crossing the CDA river

Today petitioners Chuck Jones and Ryder Gauteraux own all privately owned parcels that the WEYER GULCH road crosses in section 35 before it reaches State and Federal lands to the south. (It is unknown today if the public right-of-way crosses Phillip Griner's property or not, because that parcel is 50 Ft by 50 Ft and has a legal description that has not been verified as to its actual location.)

Throughout the late eighteen hundreds until today, all properties were accessed through the public Right of way known as WEYER GULCH road. From approx. 1895 up until approx. 1974 the access was across the bridge as shown on the original 1901 map (Exhibit 9). The actual date that the at-grade Crossing was built is unknown, but according to most accounts it was

constructed between 1974 and 1975 due to the bridge having been compromised and removed due to the flooding that occurred in 1974. On the construction plans for I90 Idaho Department of Transportation (Exhibit 17) shows a locked gate to be provided at that location of the original bridge though when the bridge was removed, the at-grade Crossing was built, and Weyer Gulch Road sign was installed at the location that it exists today as referenced on the County GIS (Exhibit 14). Though the location crossing the CDA river changed, the use of WEYER GULCH was continuous by the public as a public Right of Way from the 1890s up until barriers were placed in front of this access point in the spring of 2020. This blockage was done without any notice to any property owners or public agencies that have rights to use the road and is temporarily obstructing the use of the road, (this is the ONLY access to WEYER GULCH).

### C. IDAHO MILITARY AND SHOSHONE WATER DISTRICT UTILIZE WEYER GULCH RIGHT OF WAY.

In the early summer of 2020, it was brought to petitioners' attention that the Idaho Military Department had placed the cell tower on property owned by East Shoshone Water District and in doing so cleared and maintained both Upper Tower Road and a portion of WEYER GULCH that is located on petitioners' property. This was needed to reach the location to install the point-to-point secure connection for the county. The County assisted in the installation of this system and clearing/maintenance of the road though doing so they used Watson Gulch, 1 mile east at the maintenance turnout on I90 and crossed land using logging roads that neither they nor the public have the right to use. This was done without any permission from the landowners. The County/State did have the right to use the WEYER GULCH though most of the road had suffered from severe neglect, so it is obvious the reason for coming in from Watson Gulch and maintained only a portion of the WEYER GULCH necessary, thus leaving the lower portion of Weyer in neglect. Now today with the blockage of WEYER GULCH there is no access to maintain the secure system. The petitioner was contacted by the Idaho State Military Department of Communications to negotiate both reasonable and legal access for maintenance to the tower through the property that we now own, and that can only be done through use of WEYER GULCH ROAD. Petitioners all agree that the use of this road should give all necessary rights for access the secure tower.

It was also brought to petitioners attention that East Shoshone Water District to which has

always used WEYER GULCH (for 100+ years) to access the city's water tower for service and maintenance that has now been barricaded and has no reasonable access to the water tower

In 2021 petitioners applied for a permit to construct a bridge that would provide the safest most reasonable crossing of the South Fork CDA river using WEYER GULCH (Exhibit 16) that provides access to multiple properties, and also access to Idaho Military Department's tower providing services to the County, along with access to the East Shoshone Water Districts Water Tower without driving through the South fork CDA river. This Permit was to build a bridge for vehicular traffic in the location of the old footbridge. ITD claimed this was not in the same location as the WEYER GULCH ROAD that was maintained for vehicles and the Permit was denied. both Parties stipulated to dismissal upon appeal because ITD did not have Jurisdiction to grant a new ROW agreement for use across land that was purchased with FWHA funding. ITD did also file a Second motion that questioned if Petitioner had an easement that ran with private property, or if it was a public right of way. This motion never moved forward because both parties agreed to dismiss due to the First Motion (ITD did not have jurisdiction and referred the matter to the FWHA for initial permitting), though if the Second motion was heard, petitioner would have had to agree if this that WEYER GULCH was a public right of way therefore petitioner may not have the right to build a public bridge.

#### V. USE OF PUBLIC FUNDS ON WEYER GULCH RD.

Based upon information and belief, PETITIONER sets forth the following use of public funds on WEYER GULCH:

- 1) The lower section of WEYER GULCH was used and maintained with public funds to access the water tower and the pipeline that provided water for the town of Wallace;
- 2) The road also provided access to the water and power systems that was used for the Sisters of Providence Hospital, and remnants of these systems are still located up WEYER GULCH, including the foundation to the Pelton Wheel that provided power to the hospital;



- 3) WEYER GULCH was considered by the state of Idaho a city street in documents when constructing the I-90 and references the location of this city street, and states that the city of Wallace did maintain the road (Exhibit 18);;
- 4) The two-lane bridge was built with public funds due to its similarity in design and construction as other public bridges in the area that were built around the same time (Exhibit 20);
- 5) All utilities were installed within the Public Right Of Way and are still there today in part though they are not currently providing any services today;
- 6) The city of Wallace did repairs and maintenance to the 6 ft wide bridge that was referred to as the footbridge accessing WEYER GULCH;
- 7) The at grade crossing is built on land now owned by the State of Idaho and is constructed using concrete fill for stabilization as shown on the plans for construction of I90;
- 8) The WEYER GULCH signpost installed on the South side of the at grade crossing is a State/Federal sign that labels the location of a Public Road and therefore would have been provided and installed using public funds;
- 9) Most recently The State of Idaho maintained a portion of WEYER GULCH to install the State Point to Point System, this installation by the State with the assistance by the County was done using public funds.

## VI. SUPPORTING DOCUMENTS & MAPS

1. Deed NPRR to the City of Wallace and recorded July 14th, 1898 in book 11 of Deeds page 468.
2. Deed NPRR to Mary Eva Weyer recorded on February 9th, 1923, in book 57 of Deeds page 177, "the land is subject to use of the public right of way."
3. Deed NPRR to John L. Fitzgerald recorded Feb 1, 1928 in book 61 page 118
4. Deed NPRR to Pacific Consolidation Corporation (later known as Citizens Utility and East Shoshone Water District) recorded the 15<sup>th</sup> may, 1928 in book 61 page 331
5. Citizens Utility map of Wallace waterlines and roads laid out and Established

6. Deed to Morton Webster recorded on February 26, 1926, in book 59 of Deeds page 394,
7. 1992 Deed Norid LLC from NPRR, (through its subsidiaries, Meridian Minerals Company, Plum Creek Timber, and Crown Pacific limited partnership working with CP Liquidating Trust), deeding the remaining 500 acres of land in section 35
8. 1901 Department of interior map, showing location of Anderson Gulch (Weyer Gulch) with multiple dwelling and mining operations on a double dotted line showing the location of the maintained road and 2 lane bridge crossing the CDA river
9. Close up of 1901 map
10. 1939 Department of Interior Geological Survey showing location of Anderson Gulch (WEYER GULCH) with multiple dwelling and mining operations on a double dotted line showing the location of the maintained road and 2 lane bridge crossing the CDA river
11. Close up of 1939 Map
12. 1966 CDA Wallace district Ranger map showing location o Weir Gulch Road (WEYER GULCH) at that time.
13. Close up of 1966 map
14. Currant County GIS map showing current location of WEYER GULCH that is 95% accurate as it lays on the ground.
15. 1923 Survey of the Weyer Tract showing the Public Right Of Way
16. Plans submitted to ITD showing possible bridge crossing without interference with Interstate travel
17. ITD construction plans I 90-1 (47) 61 revised 11,1,1972 showing both locations of Right of Way in the same place as on the 1923 Survey.
18. Additional documents received from State of Idaho showing location and details referencing the Public Right Of Way
19. Close up of ITD plans I 90-1 (47) 61 Showing actual location and labels of what exist today

20. Image of 2 Lane Public bridge crossing the CDA River at WEYER GULCH provide by ITD

VII. CONCLUSION


In conclusion, pursuant to Idaho Code Title 40, Chapter 2, 40-203A, Petitioners respectfully petition the Shoshone County Commissioners to validate WEYER GULCH, a public road that provides access to both private land, and state and federal public lands, situated in Shoshone County.

The applicants ask both the public right of ways detailed on the 1901 map (Exhibit 9) and the 1923 Weyer survey (Exhibit 15) be included in the validation with an ending point to be determined by the Commissioners after review. Petitioners also request that the roads described as Upper and Lower Tower Roads be validated (Exhibit 5).

RESPECTFULLY SUBMITTED,

  
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RYDER GAYERE A UX, PETITIONER

10/28/21

  
\_\_\_\_\_  
CHUCK JONES, PETITIONER

10/24/21