

Exhibit D

DOCUMENTATION OVERVIEW OF SWEETGRASS ACCESS TO NFS LANDS, 4/23/02:

The following is a chronological overview of pertinent information regarding the historical nature of access and attempts to secure this access.

Early GLO Plats show a road up the Sweetgrass in the same general locale as existing “private” access road now located off NFS lands. These plats appear to predate patenting and Northern Pacific Railroad (NPRR) land grants.

2/12/1904: lands temporarily withdrawn from settlement, entry, sale or disposal for the proposed Crazy Mountains Forest Reserve.

8/10/1906: Presidential Proclamation, Crazy Mountains NF (appears to more or less correspond with current forest boundary). Our status records show 8/19/1906 as the date in which land was reserved from Public Domain.

7/1/1908: Crazy Mountains NF becomes part of the Absaroka National Forest by Executive Order.

c. 1919-1930: Grants from US to Northern Pacific Railroad, includes most odd number sections.

After land grants to NPRR: Various deeds from NPRR deed ownership of odd number sections to private parties. Most include a clause reserving to the public existing roads.

Sometime in the early part of the twentieth century a large fire took place in Sweet Grass drainage.

2/7/27: Sweet Grass County Road Viewers recommend not granting road petition for Sweet Grass Road.

1929-1938: The first school in Sweetgrass Canyon was started in 1929 at the Ward and Parker sawmill, presumably in Section 9, T4N, R12E. From there, it moved to the Brannin Ranch (Section 2, T4N, R12E) back to the sawmill for several years running. In the summer of 1933, the first real schoolhouse was built half way between Brannins and Ward and Parkers (presumably in Section 10, T4N, R12E on NFS lands). This was called the Bachelor School because it was built by several bachelors. It was located in School District #4 and operated until 1938.

8/4/1930: Letter to Mr. Ward and Mr. Parker, inholders of Section 9, T4N, R12E in Sweetgrass drainage from G. E. Martin, Forest Supervisor: This letter explains that the FS maintains “only a trail thru the Forest up Sweet Grass Canyon.” It goes on to state that “there is no objection to private individuals improving this trail to the point where it can be used for either wagons or automobiles.... The Forest Service is distinctly interested in keeping all existing trails open for horse travel, and aggressive action will be

taken in every case where trails are blocked by fencing or in any other manner..... This policy is necessary to conserve for the public established means of gaining ingress and egress to the National Forest and for use of Forest employees in protection and administration of Forest resources.

7/31/1936: Letter to R. C. Ward from "Forest Ranger" C. V. Rubottom: This is a follow up letter to a request by Mr. Ward to work on the Sweet Grass Road. The Ranger states that the road project is not on the "approved list of roads and for this reason we are unable to use regular road funds." The letter goes on to state the "However, this project has been included in our plans for WPA work to commence some time this fall. If this work should be approved, we will build a new road from Brannin's to your place. I hope that this project will be approved as I agree with you that the road is important and should be done."

6/18/1943: Letter to Regional Forester from G. E. Martin Forest Supervisor: This letter is primarily documenting ownership and use in the Big Timber Canyon area but also references Sweetgrass Canyon. It states, "In Sweetgrass Canyon the trails were first used by prospectors, trappers and hunters, at the same time as in Big Timber Canyon, and latter ranchers brought sheep into the upper country and maintained the trail until the Forest Service took over. A heavy dude travel occurred prior to the war and cattle have been taken in over the trail since 1934." (Reference date for active prospecting of minerals in Big Timber Canyon are establish in this letter as 1890 to 1900).

This letter goes on to address Forest records of historic government trail construction expenditures as follows for "Sweetgrass Trail #122; 1930, \$17.27; 1934, \$32.14; 1935, \$1676.98; 1936, \$430.03; 1937, \$565.64; 1939, \$111.13; 1940, \$42., total \$2875.18."

7/1/45: Absaroka NF in Crazyes becomes Gallatin and L & C NF

7/3/1945: Letter to R. C. Ward from District Forest Ranger C. V. Rubottom: This is an important letter as it talks about the Forest Service contributing \$125. for work on Sweet Grass Creek Road. "any further time beyond this will have to be taken care of by your follows I guess, as my road money has been canceled for the fiscal year. If your men wish to put in the small bridges you mention, as a contribution, it will be O. K. We do not have any steel culvert.... The county expense should be paid by the ranger at Big Timber since he has taken over that area July 1. And if he wishes to pay you for the bridge planks, he can do that, to make any other arrangements...." There is also an undated invoice to the Forest Supervisor from R. V. Rubottom to pay Robert C. Ward \$126. for 42 hours for a tractor and operator "as per contract." I was informed by Mr. Ward's heirs that this is the money discussed above for work on the Sweet Grass Road.

1950: Prior to this time, Paul L. Van Cleve operated a dude ranch in Big Timber Canyon and wished to have exclusive use in that area including NFS lands. To prevent public use of the area, Mr. Van Cleve closed the historic access road up Big Timber Canyon in 1940. This is important because Mr. Van Cleve apparently also owned property both inside the Forest and adjacent to the Forest in Sweetgrass drainage. Ultimately, the

United States sued Van Cleve regarding closing the road. In about 1948, an injunction was issued by the Court that prevented Mr. Van Cleve from blocking the Big Timber Canyon Road to public travel. The suit apparently continued and was finally settled when Van Cleve granted the US an easement late 1953 for the road and for the Big Timber and Sweetgrass Creek Trails. Apparently, not all of Mr. Van Cleve's sections that these trails cross were included in this easement.

In an attempt to achieve his goals and have exclusive use in the Big Timber Canyon area, Mr. Van Cleve made several attempts to enter into a land exchange with the Forest Service. The proposals from the 40's and 50's involved the United States acquiring his private sections in Sweetgrass Creek drainage for NFS lands in Big Timber Creek drainage. Apparently the FS studied the possibility of conducting such an exchange in 1944 which was found not to be in the best public interest. A February 27, 1950 FS letter states that "The recreation and scenic values of the Big Timber Canyon are far greater than those in Sweetgrass. In addition, we have always contended at least that the road up the Big Timber Canyon is a public thoroughfare thereby providing a means of access to the lakes and recreational facilities above Mr. Van Cleve's dude ranch. On the other hand, the Sweetgrass Canyon has never been considered as open to the public and the cost to secure rights-of-way as well as the expenditures necessary to develop a road that would be considered reasonably satisfactory would be excessive. We have considered it inadvisable to make such an investment in the Sweetgrass as long as reasonable access was available up the Big Timber Canyon..."

However, in the mid-50's apparently the FS had intended to conduct an exchange with Mr. Van Cleve as proposed above. It seems the US was sued by several local sportsman's groups to prevent the LEX. The LEX with Van Cleve's never occurred. Several other LEX proposals with the Van Cleve's have been considered since this time. None proved to be in the best interest of the public.

8/12/1958: Letter to file from George Duvendack, Forest Supervisor documenting a visit with Mr. and Mrs. Van Cleve and their son "Spike". The purpose of the visit was "an attempt to have Mr. and Mrs. Van Cleve provide access to the public through their Brannin Ranch property, to public-owned lands at the head of Sweet Grass Creek." (The Brannin Ranch is the dude ranch now owned by the Carroccia's). "The Van Cleves' now have a locked chain across the road on the Brannin Ranch. The road proceeds approximately two miles beyond the Brannin property and crosses the Parker Ranch." (Section 9, T4N, R12E). "This road has been used for a number of years by the Parkers' in hauling out both government and private stumpage... It appears from the fact sheet prepared by the Forest Service – the one used at the Van Cleve hearing in connection with the Big Timber Creek road access case, that neither the county nor the government has any right-of-way across a number of parcels of private land on Sweet Grass Creek below the Brannin Ranch..... **My appeal to Van Cleves' was this: That while I had no definite facts upon which to base my conclusions at this moment, that in my judgment another fight similar to the Big Timber Creek case was in the offering if they continued to maintain the locked gate on Sweet Grass Creek; and that my visit was solely for the purpose of appealing to them to provide access to hunters and**

other users of the Sweet Grass canyon, in such a manner that the public would not be aroused. I pointed out to Van Cleve that if he did provide access for the public to public lands, pending negotiations for rights-of-way, that everyone, including themselves, would benefit.... There was some acceptance by Van Cleve of the idea of avoiding a fight. Van Cleve said he would allow saddle and pack stock through his place. There is, of course, the problem of parking for trailers and autos, etc. I think I made my purpose clear concerning my thoughts, that if a fight ensued on the access problems in Sweet Grass canyon, the public would win out.” (emphasis added). The letter to the files goes on to state that, “Van Cleve further showed me a letter from his new attorney concerning the deed and abstract of the Brannin property. I noted one item in particular in this letter from the attorney, in which he said that the original homestead called for reservations for roads, trails, telephone lines, power transmission lines and water transmissions.” (my research does not verify this statement, FC) “Paul informed me that in this letter the attorney advised him that none of these reservations had been exercised. As a consequence, the government had no claim to lands for these purposes. He was further advised by his attorney that he is entirely within his rights in locking the gate across the road, and that if necessary, he would be justified in killing anyone who forced entry.”

10/1/1958: Letter to Gallatin Forest Supervisor from Assistant Regional Forester E. F. Barry regarding language in 1953 easement from Van Cleve to US for portions of Sweet Grass Creek Trail. The language of the conveyance references that the trails are designed “horse and foot trails” which is not to be construed as limiting or restricting use to that mode of travel.

1/5/1967: Letter to Gallatin Forest Supervisor for Thomas Ellis, District Ranger: Documents conversations with Mr. Van Cleve about possible land exchange in the Crazies. The letter goes on to say, “Mr. Van Cleve stated that during the condemnation proceedings for access into Big Timber Canyon, the government justified the condemnation of the right-of-way by stating that Big Timber Canyon was the only feasible access into the Crazies, and that access through Sweetgrass Canyon was not feasible. He feels that this legal stand by the government will block any future legal attempts to gain access into Sweetgrass Canyon.... Paul feels that the most feasible route into the Crazies is up the Shields River. I feel he wants to keep the east side of the Crazies in Sweetgrass Canyon area closed to public access.” Note, to my knowledge and research, the US never attempted to condemn access into Big Timber Canyon, FC.

1/16/1967: Letter to District Ranger from Forest Supervisor regarding thoughts on possible LEX with Van Cleve. Among other things this letter states, “I do not believe that access to the Crazy Mountains should be limited to only the Shields River. We should probably have access through the Shields, Big Timber Creek and also Sweet Grass.”

7/22/1968: Van Cleve deeds the old Brannin place to his daughter and son-in-law Bill and Shelly Carroccia.

3/11/1970: Letter to files from District Ranger documenting a meeting with property owners along Sweetgrass Creek including Spike Van Cleve, Bill Carroccia, Mr. and Mrs. Ralph Cosgriff and Mrs. John Hoyem. The purpose of this meeting was to get the landowners to sign a letter of understanding agreeing to allow the FS to conduct a road survey through their property "from the end of the County Road to Eagle Park." Note that because all landowners involved owned property above the Forest boundary it appears that it was the thought at this time the County Road ended at the old Brannin place (Carroccias'). The letter goes on to state that all parties were opposed and refused to sign. Both Van Cleve and Carroccia were however agreeable to an interchangeable lock with the FS on the road gate to allow FS vehicular traffic and a facility to encourage passage of public pack stock and backpackers.

Date unknown, c. 4/70: Letter from Frank Salomonson, District Ranger to files or Forest Supervisor (first page is missing): Here the Ranger has apparently already met with the Van Cleves on 3/11/70 and states, "I feel that after searching our files on the Van Cleve case and talking with the family it would be well-advised to delay pushing for a survey in F.Y. 1971 and right-of-way in F.Y. 1972 in Sweetgrass Creek and observe the priorities agreed to October 24, 1967 and Multiple Use Survey Report of February 1969.... In the interim period while we continue negotiations for rights-of-way we can attain our needs via a letter of agreement."

The reports referenced in the above paragraph must have recommended that the Crazies be closed to motorized use which appears to have been at least part of the rationale for accepting another easement from the Van Cleves for "foot and horse travel only" as defined in the 11/22/73 easement on the same roads and trail that we acquired an easement on in 1953.

4/17/1970: Letter to District Ranger from Spike Van Cleve discussing more LEX possibilities (high country for lower elevations).

5/21/1970: A signed "Letter of Understanding" between William J. and Michel Van Cleve Carroccia and the FS which grants the FS permission to have FS locks on the two road gates in Section 2, T4N, R12E (Sweetgrass Creek Road). It goes on to allow the FS to build a facility on their private property to allow the passage of pack stock and backpackers and to construct an unloading facility located in the proximity of the pack stock gate. The District still uses this Letter of Understanding as our basis for trailhead designation on Carroccia's property on our visitor maps.

5/21/1970: Letter to Forest Supervisor from District Ranger. Documents that Sweetgrass Canyon ROW is Forest's number one priority recommends delaying survey and ROW acquisition. States that Ranger conducted research on Sweetgrass Road and concludes the seven miles below Carroccias is not a county road. Points out that two Van Cleve sections that FS trails cross where not including in the 1953 easement. Ranger believes the Letter of Understanding is a "fair compromise and will satisfy our present needs for access during the interim period while we negotiate for right-of-way." Ranger goes on to state, "If this right-of-way has to go through the courts, the facilities stated in the letter of

agreement will give us the inroads to encourage public use and the time to gather and document information in Sweetgrass Creek.

11/22/1973: The Van Cleves' granted another easement to the US that included portions of the Sweetgrass Trail. This easement states, "The trails are to be used for horse and foot travel only." It is unclear why the US would accept such an easement but it appears that this was the result of negotiations with the Van Cleves. One thing for sure is that the original 1953 easement did not include reference for the Big Timber Creek trail, 119 through section 35, T4N, R11E nor reference to Sweetgrass Trail, 122 in section 7, T4N, R12E both apparently held by Van Cleve in 1954. Don't know if this was a mistake or not. By 1973, section 7 was owned by Carroccia and was not included in the new easement. Section 35 was included in the "foot and horse easement."

8/17/88: FS response to Congressional generated by Shelly Carroccia about general public access to NFS lands up Sweetgrass. As I remember, this was the result of our trail crew posting a sign on Carroccia property in Section 2, T4N, R12E indicating the direction of the East Trunk Trail, #115. This trail also crosses Carroccia property as well as others and ends in BT Canyon where we have an easement from the Van Cleves for this trail. The Congressional response hints around about possibility of prescriptive easements for SG Trail and discusses the agreement with the Carroccias from 1970 for the trailhead on their property. Apparently, motorized access above the Carroccia dude ranch on Sweetgrass trail was a big deal to Ms. Carroccia at this time and was addressed in this response. Prior to this time, the trailhead for Sweetgrass trail on Carroccia's showed on our maps but the foot and horse travel restriction did not until the trail got to the Van Cleve property further up the drainage. Ms. Carroccia was upset, because to her, this meant that vehicular access was allowed. At that time we offered to extend the travel restrictions to the trailhead on the next revision of the map which we did. We also told Marlenee that we have additional access needs in Sweetgrass.

Early 1990's: D-1 and Forest worked with the PLAAI to see if a public ROW exists from County road located at common corner of Sections 17, 18, 19, 20, T5N, R13E through Section 7 T4N, R12E. PLAAI informed the FS that they could not confirm either County road status or deeded ROW to US.

10/14/1992: Letter from Van Cleve (includes Shelly Carroccia) attorney wanting FS to enforce "foot and horse travel only" easement. Note, to my knowledge that the original 1953 easement which addresses the "foot and horse trails" was never terminated.

2/25/94: E-mails between Forest Supervisor, District Ranger and Forest Lands staff: Chuck Rein, primary landowner below the Forest boundary on Sweetgrass tries to exert a form of control on the road. Supervisor suggests we don't alter how we have used the road. Ranger spoke with Rein and said he didn't want to stir the pot on Sweetgrass Road. Both parties agreed.

5/22/1995: Letter from Shelly Carroccia to District Range Con: Among other things this letter states, "The public has been under the impression from Forest Service maps that

our front gate is a trail head and public parking lot. That is not, nor has it ever been, correct. Historically we have allowed the public to cross us as they have stopped at the ranch to ask permission. The private road has been signed "Private land; please stay on traveled way". With the increase in number of hikers and riders, come some who are not quite so conscientious about asking; therefore we are signing the property "access with permission only". To my knowledge this is the first reference of the public having to ask permission. To my knowledge the FS did not ask permission to cross Carroccia property on FS trails before this time (personally, I never did). This letter, along with the fact that the Carroccias and 'closed the drainage' in prior summers because they thought fire danger was too high for people to be on the Forest, prompted a meeting with the Carroccias to work this out (enter Page and Pat Dringman, Page is the Carroccia's daughter, Pat is her husband, both were in law school).

7/30/1995: Letter from Shelly Carroccia documenting meeting of July 15, 1995 with Ranger and Carroccia family. The Ranger asked that they not post the sign requiring the public to ask permission while they try to work out a resolution. Carroccias don't want to do this and say everyone and the FS has always asked permission. Ranger brings up that the public may have a prescriptive easement for road and trail across the private and that for the Carroccia's to access their property above FS lands the USFS could require a reciprocal easement. Carroccias disagreed that there could be prescriptive easement and the mere mention of reciprocity just plain pissed them off. A meeting with lands was schedule for August.

July 30, 1995: Carroccias write US Senator Max Baucus regarding access dispute: Same old stuff here. FS doesn't recognize private property rights, we threatened them with reciprocity, etc. Does say the FS tried to purchase an easement through the private properties in Sweetgrass but the "area property owners were not, and are not, interested in conveying an easement across their lands." They are unwilling to accept reciprocity and will go to court to fight. Requests assistance from Baucus.

8/14/1995: FS replies to Congressional: FS doesn't want to create a dispute, nor change the mutual understanding that has worked reasonably well for both parties for years. Public and private access has been mutually and informally accommodated since at least the early 1900's. A sign stating 'use by permission' would create a significant change from how access has been accommodated in the past. FS has not told forest users that they must seek permission nor does the 1970 agreement state this. Reciprocity is applicable if the access route were to be formally signed as a private facility.

8/16/1995: Letter to Carroccias from Ranger: This is a follow-up to their 7/30/95 letter to the Ranger documenting the 7/15 meeting. Ranger disagrees with what Shelly wrote about his stance on prescriptive easements. Ranger doesn't know what case would exist and it is not his intention to push this point. Doesn't want to dispute access but wants to continue to provide mutual accommodation for all affected parties. A change in signing would be a significant change in accommodations. Schedule meeting for August 17, doesn't work for Page but suggest we have that meeting ASAP.

8/30/95: Lands Staff notes from meeting with Carroccias. Carroccias and FS disagree on intent of 1970 agreement. Doesn't say a whole lot more.

8/30/95: Lands sub-staff notes from meeting with Carroccias.

2/28/96: Internal memo from Ranger: He's going to let things lie unless Carroccias post a sign requesting people as permission to enter.

8/6/96: Internal memo from Ranger: Apparently Shelly Carroccia suggested wording for a sign that we weren't willing to accept. Ranger thought her wording may force us to clarify or seek formalized access rights. He acknowledges that trailhead is by their agreement. He suggests wording for a sign that he thinks will avoid the access issue. Note that he thinks the biggest messages they would like to convey are that their private land is scattered throughout the length of the trail and they don't want folks to camp or graze on their land and that the gates along the way need to be closed due to stock use.

8/6/96: Internal memo from Lands Staff: Here is reference the 8/30/95 meeting between the FS and Carroccias. Susan Brooke, Burns' Staffer, mediated the meeting. Page Dringman was suppose to take notes from the meeting and draft an agreement for cooperative FS/Landowner management and use of Sweetgrass trail and road system. "capturing the points of agreement" from the meeting. No agreement was drafted, she dropped the ball. The sign that the ranger recommends would be helpful but was only one of several key points that needed to be captured in the agreement at this meeting. Unfortunately, we have no records of the "points of agreement" and the Carroccias continue to stall.

8/12/96: Ranger ok's Carroccias posting Trailhead with sign "Trail head closed due to Fire Danger". "They keep pushing."

8/12/96: Internal Memo: Ranger wants to finalize an agreement with Carroccias this coming winter. We didn't want to push them last year when Page said she'd draft an agreement because of our workload.

8/14/96: Letter to District Resource Assistant from Shelly Carroccia. This letter is worth reading as it takes the Ranger's suggested trailhead sign verbage and changes it however, no reference is made of the public needing to seek permission from the landowners for access. It does say "if you a unfamiliar or unsure about using this area, please contact the landowner at the ranch house for further information". She also states that Page is working on a comprehensive agreement as she agreed with Bob Dennee and Gordon Schofield last December.

9/4/96: Internal Memo from Acting DR: JD Lumber plans to apply for a road use permit to reconstruct and haul from Carroccia's Section 7 in Sweetgrass. JD's Forester was told, by the Acting Ranger Gordon Schofield, that the Carroccias would need to apply for a road SUP, since it wasn't an FS road across forest and, we would probably condition it on the reciprocal needs of the public.

3/8/97: Letter from Shelly Carroccia to DR: This points out to the new ranger that people have to get permission, etc.

8/97: Sweetgrass Road identified by the Forest as a possible RS 2477 case.

Late summer 2000: District Resource Assistant attempts to enter Sweetgrass through the Carroccias on the trail/road. Assistant was stopped at the gate by Pat Dringman and passage refused until the US personnel signed in. After discussing the situation with Page and Pat Dringman for a couple hours, and because the Forest had been closed and was in extreme fire danger, the FS employee consented to sign in. After discussing this situation with Forest Lands Staff and OGC, OGC advised the District not to sign in.

6/2001: D-1 seasonal employees refuse to sign in at Carroccia Ranch (OGC had advised us not to sign in). These employees were threatened with arrest for criminal trespass. One employee was "banned forever" by Page Carroccia from going up Sweetgrass. They were just doing what they were told by their supervisor.

6/28/2001: Page Carroccia to Acting DR: This letter complaining about FS and threatens that future attempts by FS to cross Carroccia property on SG trail without permission will be considered trespass. This letter was cc'ed to other neighboring landowners and Sheriff.

7/2/01, documented in 7/5/01 memo to files: Phone call from Carroccia neighbor Ralph Cosgriff to D-1 lands staff in which Mr. Cosgriff says the Carroccias have "gone to far". Mr. Cosgriff stated he had proof that the County and Forest Service had maintained portions of the road/trail across private land in the Sweetgrass drainage which he provided as referenced in earlier correspondence. Around this time, OGC advises the District not to ask permission and not to cross Carroccias property.

7/2/01: SO Lands attempts to set up a meeting with Susan Brookes and Page Dringman.

7/17/2001: Forest Supervisor response to Dringman's 6/28 letter. Let's meet 7/24/01 to resolve matter. Meeting never took place, canceled by Dringman.

12/21/2001: District Resource Assistant gives Shelly Carroccia a draft trailhead sign the Forest has been working on for the Crazy Mountains and asks for comments from her family. The purpose of the sign is to better inform the public of private lands in the Crazies. Page Dringman calls immediately after seeing the draft and threatens to sue the FS if the sign is published citing inaccuracies regarding Sweetgrass Trail and Trailhead. The resource assistant explained that sign depicted the exact same thing as the current and past Forest Visitor maps. Dringman was very hostile.

1/11/2002: Personal conversation between Ralph and Betty Cosgriff and District Ranger. Cosgriff's own property up Sweetgrass and feel very strongly that the road/trail are public access. They said there was a public school up in section 10 and that the WPA built a

bridge in section 10, also that Paul Van Cleve built the road in section 10 under SUP in the mid-30's and the permit had a condition that the road would be open to the public. The Cosgriffs said they would sign affidavits attesting to what they know about public access in Sweetgrass.

END 1/16/2002

BIG TIMBER RANGER DISTRICT BRIEFING PAPER, JANUARY 17, 2002

SUBJECT: SWEETGRASS CREEK ACCESS

ISSUE SUMMARY: The Big Timber Canyon Road represents the only deeded access to National Forest System (NFS) lands from Duck Creek on Livingston Ranger District to Cottonwood Creek on Musselshell Ranger District; a distance of fifty miles of National Forest boundary.

Located approximately eight Forest boundary miles north of the Big Timber Canyon Road is Sweetgrass Creek, where the Gallatin Forest Plan identifies the need for additional public access to NFS lands. Although informal, the public has enjoyed roaded access to a trailhead in the Sweetgrass Creek drainage. This road passes through several landowners' properties from a county road west of Melville, Montana to a trailhead located on private property in the south half of Section 2, T4N, R12E located on the Carroccia Ranch in the Sweetgrass. The Sweetgrass Trail, #122 begins at this trailhead and provides access to the NFS lands further into the drainage. At Sweetgrass Trail trailhead, the public has been able to park on the Carroccia Ranch by prior agreement and has been accommodated foot and horse access through private lands to NFS lands.

Since approximately 1995, the Carroccias have insisted the public and Forest Service (FS) employees must first obtain permission and sign in prior to being allowed to use the FS trail and continue into the drainage to access the National Forest. This is unacceptable to the FS. Signing in was not required in the past, and as long as the public and FS were being accommodated, the FS or others did not question the potential of public rights to use this access.

In the summer of 2001, the Carroccias threatened FS employees with the filing of criminal charges if they attempted to use this access without first acquiring permission. After a briefing in July 2001, the Office of General Counsel (OGC) advised the Big Timber District not to use the Sweetgrass Trail through the Carroccia property and not to ask permission to do so until such a time that this situation could be remedied.

As a result, the Forest Service and public have lost an access they have enjoyed since before the patenting of private land in the area. Lack of access makes the administration of allotments and special use permits, as well as trail maintenance, extremely difficult, if not impossible, in the lower Sweetgrass.

BACKGROUND: The NFS lands in the Sweetgrass drainage on the east side of the Crazy Mountains are accessible by system trail from the west. Using FS trails to reach the lower elevations of NFS lands in the Sweetgrass would require a tough two-day hike for a stout backpacker. Trails accessing the drainage have restricted easements through the checkerboard private ownership restricting use to "foot and horse travel only." The lower segment of the Sweetgrass Trail does not have recorded easements through the private lands in Sections 2, 3, 7, and 9, T4N, R12E.

From the County Road, #371 located at or near the common corner of Sections 17, 18, 19, and 20, T5N, R13E, the Sweetgrass Road crosses approximately 5 miles of private lands before reaching the Sweetgrass Creek Trail trailhead in the S½, Section 2, T4N, R12E. The road passes through at least four separate ownerships in this distance. Chuck Rein owns the majority of the property the road passes through. Perry Anderson also owns a piece, as does Ralph Cosgriff. The Carroccia Ranch owns the final ½ mile or so before reaching the Forest boundary. A historic road (which the FS considers the system trail) actually continues about 3 miles into FS Section 8, T4N, R12E, passing through an additional three private ownerships in Sections 3 and 9, T4N, R12E. Apparently, no deeded access exists for the road crossing the private lands.

Public travel on the road and trail across private lands has really not been contested by any landowners, with the exception of the Carroccias. Access has been allowed, the landowners most likely fearing the potential litigation or condemnation that may follow the closure of this access. Apparently to avoid the potential fight over public access into the drainage, in 1970, the Carroccias signed a Letter of Understanding with the FS allowing the agency to have a FS lock on a gate that crossed the road on their property, to build a facility on their property that would allow the passage of pack and saddle stock and backpackers around the locked gate, and to construct an unloading facility for the public. The FS has interpreted this as a trailhead agreement and has noted a FS trailhead on visitor maps in this locale since at least 1984.

Currently, the FS describes the Sweetgrass Trail, #122 as beginning at this trailhead and locked gate. The FS trail follows

the old roadbed east, further into the drainage and appears to cross private property in Section 3, T4N, R12E before reaching NFS lands in Section 10, T4N, R12E. The trail continues on the old roadbed through private ownerships in Section 9, and the roadbed ends on NFS land in Section 8 at Eagle Park. From there, the trail continues and again crosses land owned by the Carroccias in Section 7. Above Section 7, the trail is either on NFS lands or on a deeded right-of-way. No deeded right-of-way to the US is known to exist on the private land for the trail above the trailhead through Section 7. Although the trail is used by private landowners as an access road to their property, no authorizations exist from the FS for a private road across NFS lands in sections 8 and 10. It should be noted that the FS restricts use to "foot and horse travel only" for the entire length on the Sweetgrass Trail. Attached is a map showing various ownerships, trail, and road locations.

For the most part, all controversy and confrontations regarding public access into the Sweetgrass have involved the Carroccia family and the previous landowner of their property, the Van Cleves (the matriarch of the Carroccia family is Shelly Van Cleve Carroccia who acquired the property from her father Spike Van Cleve in the 1960s). That's not to say the Reins would be in favor of a deeded access through their property; however, it appears that the Reins have always accommodated the public through their land on the road; and to our knowledge, have never attempted to stop or regulate public access on the road. Ralph and Betty Cosgriff feel strongly that the Sweetgrass Road is a public access (Cosgriff's also own property above the Carroccia Ranch). Other people who own property where no easements exist for the road or trail crossing, have never contacted the District (at least in the past 15 years or so) one way or another about the public crossing their land.

Public access into the Sweetgrass predates Forest Reservation, private land patenting, and land grants to the Northern Pacific Railroad (NPRR). It appears the NPRR reserved existing roads for the public prior to transferring ownership to their property in the area that encompasses most odd-numbered sections. Records exist that the FS and Sweet Grass County spent money improving the Sweetgrass Road in the 1930s. According to Ralph and Betty Cosgriff, a public school once existed in Section 10, T4N, R12E above the Carroccia Ranch headquarters.

In the early to mid 1990s the Carroccia Ranch began closing the Sweetgrass Trail to public access when they thought the fire danger was too high. The Forest was not closed at these times.

This happened most every summer for a few years. The FS requested they not do this and attempted to come to some resolution with the Carroccias to assure unencumbered public access. In approximately 1995, the Carroccia Ranch began making the public and FS employees sign in prior to allowing access to NFS lands. This resulted in a meeting facilitated by a Burns Congressional Staffer. Apparently, some common ground was found to avoid an access controversy, and Page Carroccia Dringman, an attorney, was to prepare a draft agreement for public access through the Carroccia Ranch. Ms. Dringman never completed and submitted the draft to the FS. The OGC advised the FS not to sign in at this access. Until canceled, the FS opinion was that the 1970 agreement mentioned above was still binding.

In 2001, Page Dringman prevented access and threatened FS employees at the Sweetgrass Trail trailhead. At that time, the District was advised by OGC not to use the trailhead and trail crossing the Carroccia Ranch.

Since that time, the FS has attempted to meet with Page Dringman to try to resolve this access issue, but to no avail. In December 2001 Shelly Carroccia was asked to review a draft sign to be used at all Crazy Mountain trailheads on the Gallatin National Forest. The sign was created to better inform the public about private ownership and rights in the Crazies. Mrs. Carroccia shared this draft with her daughter Page, who immediately called the District and threaten to sue the FS if we published this sign. Ms. Dringman claimed the map on the sign misrepresented access through Carroccia Ranch lands. This map is identical to existing Gallatin NF Visitor Maps regarding Sweetgrass Trail.

Ms. Dringman is very hostile towards the FS but is still willing to meet with the FS to discuss access.

FS POSITION:

The Gallatin National Forest Plan, 1987 identifies the need for additional public access to the National Forest System (NFS) lands in the Sweetgrass Creek portion of the Crazy Mountains. Currently, no recorded easements have been documented for the road that crosses private land to a locked gate in S½ Section 2, T4N, R12E (the Carroccia Ranch) that provides the current historic access route from the county road. Public rights for this road may exist; however, the FS currently recognizes that this access is by accommodation.

Although the old road actually continues above the locked gate on the Carroccia Ranch and crosses NFS lands in Section 10 ending in

Forest Section 8, the FS manages this route as the Sweetgrass Trail, #122 from this gate to the headwaters of the drainage. This road accesses several private inholdings above NFS lands; however, no authorization exists for this road on NFS lands. The Sweetgrass Trail is restricted to foot and horse travel only.

This restriction on the lower portion of the Sweetgrass Trail is the result of negotiations with the Carroccias. The FS interpretation of a 1970 agreement with the Carroccias authorizes the District to construct trailhead facilities and a by-pass gate at the locked road gate for hikers and horse users to use the Sweetgrass Trail. This trailhead has appeared on Forest Visitor maps since at least 1984. The FS recognizes that no recorded easements exist for Sweetgrass Trail across private lands above the locked road gate until above the private inholding, Section 7, T4N, R12E, which is also owned by the Carroccia Ranch. The FS recognizes that access across several private inholdings is by accommodation and has allowed vehicular access to continue on the Sweetgrass Trail to those inholders above the locked gate in the past. This access by accommodation by both private landowners and the FS worked reasonably well until around 1995 when the Carroccias began regulating public use above the locked gate on their property.

The FS would rather not question the legality of public access across private lands to NFS. The FS does not want to create a dispute nor change the mutual access accommodations that have worked reasonably well in the past. The FS would prefer to negotiate with the private landowners to avoid a lengthy court battle or condemnation proceedings. The FS has asked the private landowners not to force the issue by making the public or FS employees "sign in."

If forced, the FS will require authorization for roaded access and motorized use of the Sweetgrass Trail for inholders above the locked gate. The reciprocal needs of the public will be taken into consideration prior to granting such access.

Since there is some question as to public rights to use this trail, the Office of General Counsel (OGC) has advised FS employees not to obtain permission nor use the access until such time that this situation can be remedied

CONTACTS:

Bill Avey, Big Timber District Ranger, Frank Cifala, Big Timber District Resource Assistant. 406-932-5144

Sweet Grass Access - Big Timber Ranger District

- National Forest Lands
- Carroccia
- Cosgriff
- Van Clave
- Billy Creek Ranch
(Anderson 1979)
- Other Private Lands

4/17/02 [w/ copyright/initials]

