

Study No. 3

Jurisdiction of West Rosebud Road

Mystic Lake Hydroelectric Project FERC No. 2301

Mystic Lake, Montana

PPL Montana

45 Basin Creek Road
Butte, Montana 59701

October 3, 2005

Jurisdiction of West Rosebud Road
Study Report

September 19, 2005

Prepared for PPL Montana

by

American Lands Co.

Purpose of Study:

The goal of this study was to determine legal jurisdiction regarding access for West Rosebud Road on non-National Forest lands. As the study was implemented, the goal grew to include determining legal jurisdiction for the road on National Forest lands.

Methods:

The methods included research of Stillwater County records by a title company, by Stillwater County staff, and by American Lands Company and research of National Forest records by Forest Service staff.

Results and Discussion:Non-National Forest Lands Jurisdiction

It was determined that West Rosebud Road is a county road on non-National Forest lands. It was made a county road by a number of county road declarations of the Stillwater County Commission in the early 1900s. The most significant of those is when The Montana Power Company deeded title to a series of road easements to Stillwater County on May 15, 1925, and by which title was accepted by the Stillwater County Commission on May 5, 1926.

National Forest Lands Jurisdiction

Previous to this study, it was a common understanding that the road was a county road on National Forest lands. However, the results show that it is not a county road, but is instead under Forest Service jurisdiction. It is true that The Montana Power Company also deeded the road on National Forest lands to Stillwater County in the May 15, 1925 deed. However, the Forest Service had no record by which the Forest Service ever deeded a road right-of-way to The Montana Power Company to begin with. The May 5, 1926 Stillwater County Commission notes indicate that though the commission accepted title to the road on private lands, the commission also reserved acceptance of title to the portion across National Forest lands until the right to acquire title to the road across National Forest lands is obtained. Research of the records found no evidence that that ever occurred.

Conclusion:

The study has been completed. The determination was made that the West Rosebud Road is a county road on non-National Forest lands and is under Forest Service jurisdiction on National Forest lands. The Forest Service, PPL Montana and Stillwater County plan to have discussions as to whether the road on National Forest lands would be declared a county road. If not, the Forest Service would grant some type of special use permit or easement to PPL Montana that would cover use and maintenance of the road. Those discussions and processes would be outside of the FERC relicensing process. Therefore, the results of this study will not be carried forward through the relicensing process.