

Appendix B Applicable Law and Other Citations on Jurisdiction



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National Park Approaches Act of 1931

CHAP. 79.—An Act To amend the Act of April 9, 1924, so as to provide for national-park approaches.

January 31, 1931.
[H. R. 12404.]
[Public, No. 592.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "An Act authorizing the construction, reconstruction, and improvement of roads and trails, inclusive of necessary bridges, in the national parks and monuments under the jurisdiction of the Department of the Interior" (43 Stat. 90; U. S. C., title 16, p. 390, sec. 8), approved April 9, 1924, is hereby amended by adding the following:

"SEC. 4. Whenever the Secretary of the Interior shall determine it to be in the public interest he may designate as national-park approach roads and as supplementary parts of the highway systems of any of the national parks roads whose primary value is to carry national-park travel and which lead across lands wholly or to the extent of 90 per centum owned by the Government of the United States and which will connect the highways within a national park with a convenient point on or leading to the Federal 7 per centum highway system: *Provided*, That such approach roads so designated shall be limited to not to exceed sixty miles in length between a park gateway and such point on or leading to the nearest convenient 7 per centum system road; or, if such approach road is on the 7 per centum system, it shall be limited to not to exceed thirty miles: *Provided further*, That not to exceed forty miles of any one approach road shall be designated in any one county.

"SEC. 5. The Secretary of the Interior is hereby authorized during the fiscal years 1932 and 1933 to construct, reconstruct, and improve such national-park approach roads so designated, inclusive of necessary bridges, and to enter into agreements for the maintenance thereof by State or county authorities, or to maintain them when otherwise necessary, as well as hereafter to construct, reconstruct, and improve roads and trails within the national parks and national monuments; and for all such purposes there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the following sums: \$7,500,000 for the fiscal year ending June 30, 1932; the sum of \$7,500,000 for the fiscal year ending June 30, 1933: *Provided*, That under agreement with the Secretary of the Interior the Secretary of Agriculture may carry out any or all of the provisions of this section: *Provided further*, That not to exceed \$1,500,000 shall be allocated annually for

National parks.
Extension of road systems in.
Vol. 43, p. 90, amended.
U. S. C., p. 390.
Post, p. 1570.

New matter.

Approaches to be designated.

Purposes declared.

To connect with Federal aid highways.

Proviso.
Length restrictions.

Maximum mileage in any one county.

Improvements during fiscal years 1932 and 1933.

State, etc., maintenance.

Construction, etc.

Sums authorized.

Proviso.
Jurisdiction of Secretary of Agriculture.

Annual allocations for approach roads.

Authority to construct park roads, etc., by Secretary of the Interior not affected.

National forest roads to require approval of Secretary of Agriculture.

the construction, reconstruction, and improvement of such national park approach roads: *And provided further*, That nothing in this Act shall be construed to limit the authority of the Secretary of the Interior to hereafter construct, reconstruct, improve, and maintain roads and trails within the national parks and national monuments.

"SEC. 6. Whenever any such approach road is proposed under the terms of this Act across or within any national forest the Secretary of the Interior shall secure the approval of the Secretary of Agriculture before construction shall begin."

Approved, January 31, 1931.

Executive Order 5949. November 16, 1932

Executive Order

WITHDRAWAL OF PUBLIC LAND

MONTANA AND WYOMING

Under and pursuant to the provisions of the act of Congress approved June 25, 1910 (36 Stat. 847-848), entitled "AN ACT To authorize the President of the United States to make withdrawals of public lands in certain cases," as amended by act of Congress approved August 24, 1912 (37 Stat. 497), and on the recommendation of the Secretary of the Interior, it is hereby ordered that the lands lying within 250 feet on each side of the center line of the Cooke-Red Lodge approach road as now located on the ground, from Cooke to a point 8.58 miles south and west of Red Lodge, in sec. 25, T. 9 S., R. 14 E., S. $\frac{1}{2}$ secs. 19, 20, N. $\frac{1}{2}$ secs. 29 and 30, and NW. $\frac{1}{4}$ sec. 28, T. 9 S., R. 15 E., principal meridian, Montana, surveyed; S. $\frac{1}{2}$ sec. 28, secs. 33 and 34, T. 9 S., R. 15 E., Tps. 8 and 9 S., R. 19 E., T. 9 S., R. 18 E., principal meridian, Montana, unsurveyed; Tps. 57 and 58 N., Rs. 104, 105, 106, and 107 W., sixth principal meridian, Wyoming, unsurveyed, be, and the same are hereby, in so far as title thereto remains in the United States, withdrawn from settlement, location, sale, entry, or other disposal and reserved for approach road to Yellowstone National Park, subject to all valid existing rights.

This order shall continue in full force and effect unless and until revoked by the President or by act of Congress.

HERBERT HOOVER

THE WHITE HOUSE,
November 16, 1932.

[No. 5949]

Department of the Interior and Related Agencies Appropriations Act, 1998
(Enrolled Bill)[H.R.2107.ENR]

(e) MAINTENANCE AND REHABILITATION OF BEARTOOTH
HIGHWAY-

(1) MAINTENANCE- The Secretary of Agriculture shall, consistent with the funds provided herein, be responsible for--

(A) snow removal on the Beartooth Highway from milepost 0 in Yellowstone National Park, into and through Wyoming, to

milepost 43.1 on the border between Wyoming and Montana; and

(B) pavement preservation, in conformance with a pavement preservation plan, on the Beartooth Highway from milepost 8.4 to milepost 24.5.

(2) REHABILITATION- The Secretary of Agriculture shall be responsible for conducting rehabilitation and minor widening of the portion of the Beartooth Highway in Wyoming that runs from milepost 24.5 to milepost 43.1.

(3) AUTHORIZATION OF APPROPRIATIONS- There is authorized to be appropriated to the Secretary of Agriculture--

(A) for snow removal and pavement preservation under paragraph

(1), \$2,000,000; and

(B) for rehabilitation under paragraph (2), \$10,000,000.

H.R.2400

Transportation Equity Act for the 21st Century (Enrolled Bill (Sent to President))

SEC. 1601. HIGH PRIORITY PROJECTS PROGRAM.

(a) IN GENERAL- Chapter 1 of title 23, United States Code, is amended by striking section 117 and inserting the following:

Sec. 117. High priority projects program

(a) AUTHORIZATION OF HIGH PRIORITY PROJECTS- The Secretary is authorized to carry out high priority projects with funds made available to carry out the high priority projects program under this section. Of amounts made available to carry out this section, the Secretary, subject to subsection (b), shall make available to carry out each project described in section 1602 of the Transportation Equity Act for the 21st Century the amount listed for such project in such section. Any amounts made available to carry out such program that are not allocated for projects described in such section shall be available to the Secretary, subject to subsection (b), to carry out such other high priority projects as the Secretary determines appropriate.

(b) ALLOCATION PERCENTAGES- For each project to be carried out with funds made available to carry out the high priority projects program under this section--

(1) 11 percent of such amount shall be available for obligation beginning in fiscal year 1998;

(2) 15 percent of such amount shall be available for obligation beginning in fiscal year 1999;

(3) 18 percent of such amount shall be available for obligation beginning in fiscal year 2000;

(4) 18 percent of such amount shall be available for obligation beginning in fiscal year 2001;

(5) 19 percent of such amount shall be available for obligation beginning in fiscal year 2002; and

(6) 19 percent of such amount shall be available for obligation beginning in fiscal year 2003.

(c) FEDERAL SHARE- The Federal share payable on account of any project carried out with funds made available to carry out this section shall be 80 percent of the total cost thereof.

(d) DELEGATION TO STATES- Subject to the provisions of this title, the Secretary shall delegate responsibility for carrying out a project or projects, with funds made available to carry out this section, to the State in which such project or projects are located upon request of such State.

(e) ADVANCE CONSTRUCTION- When a State which has been delegated responsibility for a project under this section--

(1) has obligated all funds allocated under this section and section 1602 of the Transportation Equity Act for the 21st Century for such project; and

(2) proceeds to construct such project without the aid of Federal funds in accordance with all procedures and all requirements applicable to such project, except insofar as such procedures and requirements limit the State

to the construction of projects with the aid of Federal funds previously allocated to it;

the Secretary, upon the approval of the application of a State, shall pay to the State the Federal share of the cost of construction of the project when additional funds are allocated for such project under this section and section 1602 of the Transportation Equity Act for the 21st Century.

`(f) PERIOD OF AVAILABILITY- Funds made available to carry out this section shall remain available until expended.

`(g) AVAILABILITY OF OBLIGATION LIMITATION- Obligation authority attributable to funds made available to carry out this section shall only be available for the purposes of this section and shall remain available until obligated pursuant to section 1102(g) of the Transportation Equity Act for the 21st Century.

`(h) TREATMENT- Funds allocated to a State in accordance with this section shall be treated as amounts in addition to the amounts a State is apportioned under sections 104, 105, and 144 for programmatic purposes.'

(b) PURPOSE OF PROJECTS- Section 145 of such title is amended--

(1) by inserting `(a) PROTECTION OF STATE SOVEREIGNTY- ' before `The authorization'; and

(2) by adding at the end the following:

`(b) PURPOSE OF PROJECTS- The projects described in section 1602 of the Transportation Equity Act for the 21st Century, sections 1103 through 1108 of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2027 et seq.), and section 149(a) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (101 Stat. 181 et seq.) are intended to establish eligibility for Federal-aid highway funds made available for such projects by section 1101(a)(13) of the Transportation Equity Act for the 21st Century, 117 of title 23, United States Code, sections 1103 through 1108 of the Intermodal Surface Transportation Efficiency Act of 1991, and subsections (b), (c), and (d) of section 149 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, respectively, and are not intended to define the scope or limits of Federal action in a manner inconsistent with subsection (a).'

(c) CONFORMING AMENDMENT- The analysis for chapter 1 of such title is amended by striking the item relating to section 117 and inserting the following:

`117. High priority projects program.'

SEC. 1602. PROJECT AUTHORIZATIONS.

Subject to section 117 of title 23, United States Code, the amount listed for each high priority project in the following table shall be available (from amounts made available by section 1101(a)(13) of the Transportation Equity Act for the 21st Century) for fiscal years 1998 through 2003 to carry out each such project:

1646.

Montana

Conduct environmental review, planning, design, and construction of the Beartooth Highway in Wyoming and Montana



United States
Department of
Agriculture

Forest
Service

Rocky
Mountain
Region

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Date: February 5, 1999

Representative Rick Hill
1037 Longworth Bldg.
Washington, D.C. 20515

Beartooth Highway Steering Group
Forest Service, Rocky Mountain Region 2
740 Simms Street
P.O. Box 25127
Lakewood, CO 80225

Honorable Representative Hill and Beartooth Highway Steering Group:

In a February 23, 1998 memorandum to the Beartooth Highway Steering Group, you requested that group, "...develop a recommendation for resolving the long-term ownership and responsibility for the (Beartooth) highway." You requested this recommendation by the end of 1998.

We have summarized our recommendations in the attached Executive Summary.

The Beartooth Highway Steering Group membership is represented by the following agencies:

Department of Agriculture

Regional Forester, Region 1, represented by Regional Engineer
Forest Service, Region 1 - Gallatin National Forest
Forest Service, Region 1 - Custer National Forest
Regional Forester, Region 2, represented by Regional Engineer
Forest Service, Region 2 - Shoshone National Forest

Department of the Interior

National Park Service - Yellowstone National Park

Department of Transportation

Federal Highway Administration, Western Federal Lands Highway Division
Federal Highway Administration, Central Federal Lands Highway Division

Wyoming Department of Transportation

Montana Department of Transportation

The steering group supports the recommendations presented in the enclosed attachments. Our plan is to implement these recommendations as improvements continue on the Beartooth Highway over the next few years.

Please direct any technical questions regarding this project to Patrick Wlaschin, Central Federal Lands Highway Division 303-716-2006. Any other questions can be directed to any of the committee members.

Respectfully,

/s/ Lyle Lavery

LYLE LAVERTY
Regional Forester

Enclosures:
Executive Summary
Appendix

cc:

Governors, States of Montana, Wyoming
Senator Conrad R. Burns
Senator Max Baucus
Senator Craig Thomas
Senator Michael B. Enzi
Representative Barbara Cubin
Red Lodge: Chamber of Commerce, Mayor, Steve Burke
Cooke City: Chamber of Commerce
Cody: Chamber of Commerce, Mayor
County Commissioners; Park County WY, Park County MT, Carbon County MT, Stillwater
County, MT
Beartooth Highway Steering Group
FHWA, Wyoming Division
Wyoming State Senator Henry Coe
Wyoming State Representative Pat Childers
Montana State Senator Alvin Ellis, Jr
Montana State Representative Joan Andersen

Executive Overview

The economic benefits of the Beartooth Highway impacts the viability of the communities of Red Lodge & Cooke City, MT and more recently Cody, WY. These interests have continued to intensify over the last few years. The Federal Highway Administration, National Park Service, Forest Service and the States of Wyoming and Montana have growing concerns about the accelerated deterioration of the highway and the lack of resources to operate, maintain and upgrade the highway. Representative Hill and Senator Baucus have provided interim funding amounting to \$31,900,000 for maintenance, snow removal, pavement preservation, rehabilitation and reconstruction. The steering committee estimates an additional \$28,000,000 is needed to finish the road upgrade to appropriate standards.

The Beartooth Highway in this report is referred to by segment numbers. Section II of the appendix contains a map of the highway as well as segment definitions.

Long Term Ownership and Responsibility: The Steering Group has established the following long term goals concerning ownership and responsibility. The target date for achieving these goals is the year 2008. At this point in time, the entire Beartooth Highway is expected to be reconstructed to appropriate standards and all ownership and responsibility issues will be resolved.

State Ownership: The committee's first preference is that the States of Wyoming and Montana will eventually accept shared ownership and responsibility for the Beartooth Highway.

- Segments 2, 3, 4 will be owned and maintained by the State of Wyoming.
- Segments 1, 5, 6, 7 owned and maintained by the State of Montana.

Federal Ownership: If the State governments of Wyoming and Montana do not agree to assume ultimate responsibility for the highway, then legislation should be considered to determine federal ownership and responsibility. The National Park Service has the workforce and equipment but not the funds and the Forest Service has neither the funds or workforce to properly maintain the pavement and structures. In the meantime, the Park Service would be left with the status quo, a bandaid approach to maintenance and operation sacrificing funds and staffing needed for work in the Park, (based on the Park Approach Road Act of 1931).

Current Project Status: At present the Steering Committee is coordinating various project activities along the Beartooth Highway. Agreements between the Federal and State agencies are being drafted and reviewed. The committee is also evaluating pavement preservation recommendations along the route, and exploring options for obtaining funding necessary to complete the reconstruction project.

Environmental and preliminary engineering studies are currently underway for the reconstruction of portions of the highway. The Forest Service, National Park Service and the State of Montana continue to work together to maintain various segments of the highway and to provide spring and other routine snow removal.

A detailed description of these activities is contained in the attached appendix, Section VI.

Funding Scenarios to Accomplish the Long Term Committee Goals

Current estimates to rehabilitate and reconstruct the highway to appropriate highway standards is approximately \$68 million. To date, the committee has obtained \$9.4 million from the Montana Forest Highway program, \$10 million from the DOI 1998 Appropriations Bill and \$19.9 million for High Priority projects from the DOT Transportation Equity Act for the 21st Century (TEA-21). A portion of this funding is not available for the project till the steering committee has been successful in identifying and obtaining the 20% non-federal match. This leaves a balance of **\$28 million**. These additional funding needs must be met before the highway is totally reconstructed and the issue of ownership of the Beartooth Highway is resolved.

This additional \$28 million will be used to replace the obsolete bridges on Segment 2, to complete the remaining reconstruction of Segment 4, for the future resurfacing of existing pavements and to bring Segments 2 and 3 up to appropriate standards.

Possible funding mechanisms have been identified by the Steering Committee to meet this \$28 million shortfall. These items include:

- An appropriations bill line item funding - The steering group would support either a lump sum covering the needs mentioned above or smaller amounts spread out over several years. This funding issue could be addressed in either a Department of Transportation, Interior or Agriculture Appropriations Bill.
- Public Lands Discretionary (PLD) Funding - Approximately \$84 million per year is allocated annually in the TEA-21 highway bill for highway projects on federal lands. These projects are selected from a list submitted to the Federal Highway Administrator. Congressional and local support is always helpful in raising a given project's priority.
- FY 2004 Future Highway Bill - A new highway transportation bill to continue funding our nations transportation systems will need to be passed in the year 2004. Congress may continue to show their support for the Beartooth Highway by again supporting it with "High Priority Project" funding, as occurred in TEA-21.
- Funds from the Forest Highway program for either Montana or Wyoming could be designated for use on the Beartooth Highway.
- Funds from the National Park Service Parkways and Park Road Program for the Intermountain Region could be designated for use on the Beartooth Highway.

With respect to the \$19.9 million High Priority funds reserved for Montana for this project from the TEA-21 highway legislation, the Steering Group is having difficulty in identifying a non-federal source of funding for the 20 percent required matching funds. The State of Montana is hesitant to spend State funds on a project that is outside their State boundaries. The State of Wyoming is hesitant to spend State funds on a project that crosses into their State but does not significantly serve their citizens and is not a part of their State highway system.

Because the location and use of this highway is unique to the country, the Steering Committee is investigating several proposals. First, it may be possible to obtain an exemption from the 20 percent non-federal match. Second, a separate appropriation bill might be obtained for the 20 percent match. A third proposal would be for an exemption for this project so that other available federal funds could be used for the non-federal match.

Appendix

I. History

The Beartooth Highway was constructed under the Park Approach Roads Act of January 1, 1931 (H.R. 12404). This act was passed through direct influence of members of the Montana Congressional Delegation over opposition expressed by then Director of the National Park Service, Horace Albright. The act provided that roads up to 60 miles in length, serving to provide access to National Parks, could be designated and constructed by the Secretary of Interior. It was clear that the act, while applicable to all national park units, was designed to authorize the Beartooth Highway. Because the Beartooth is actually 66.8 miles in length, the State of Montana, Forest Service, and Bureau of Public Roads built the first 8.6 miles south from Red Lodge, Montana. The remaining sections extend southerly 15.1 miles to the Montana/Wyoming state line; then loops southerly and then west/north west 34.7 miles through the State of Wyoming and back into Montana; and finally 8.4 miles westerly over Cooke Pass to Cooke City and ending at Yellowstone Park's northeast entrance. These latter sections were built using Forest Highway, Federal-Aid and Park Approach Road funds under the direction of the Bureau of Public Roads.

From 1934 through 1945 the Beartooth was maintained by the Bureau of Public Roads. Since 1945, the National Park Service has maintained the Beartooth Highway. Maintenance includes, annual spring snow plowing and follow-up snow plowing related to spring storms plus some snow plowing in the fall until the road is closed. It also includes minimal maintenance such as pothole patching, striping, and drainage work. In addition, National Park Rangers respond to highway traffic emergencies.

Over the years the annual traffic and climate took their respective toll on the Beartooth and by 1959 it became necessary to do some upgrade work. All of the entities involved were reluctant to commit their limited funding resources to accomplish the needed work. In about 1964, the section of the highway from Red Lodge south to the State Line was upgraded with realignment and resurfacing using the Montana State share of Federal Highway funding. The remaining sections of road have had some chip seal work with minimal patching and related maintenance.

In 1964, a series of meetings began between the agencies involved. Those meetings have continued to the present time. There has been no permanent resolution on long term management of the road to date. The positions of each of the agencies is outlined below.

II. Segment Definitions

The Beartooth Highway has been divided into seven segments for engineering and design purposes (see attached map). Segment 1 stretches from the beginning of the route at the Yellowstone National Park boundary (MP 0.0) to the Montana-Wyoming border (MP 8.4). This segment lies within the State of Montana.

Segments 2, 3, and 4 make up the 34.7 miles within Wyoming. Segment 2 goes from MP 8.4 to the connection with the Chief Joseph Highway (MP 17.4). Segment 3 goes from MP 17.4 to just past the Pilot/Index Peak Overlook (MP 24.5). Segment 4 goes from MP 24.5 to the Montana State line (MP 43.1). In the 1970s and 1980s, the Central Federal Lands Highway Division reconstructed segments 2 and 3 to current standards. Segment 4 was rehabilitated and resurfaced in 1968 and 1969 but was not improved to any specific standards.

Segments 5, 6 and 7 make up the remaining 23.7 miles. These segments are entirely within Montana and have already been accepted as part of its road system. Segment 5 goes from the

Montana State line (MP 45.0 which is equivalent to MP 43.1 on Segment 4) to just before the Camp Westminister Spires (MP 60.0). Segment 6 goes from MP 60.0 to the Forest boundary (MP 64.2). Segment 7 goes from MP 64.2 to the city of Red Lodge.

III. Legal Interpretation

Public Law 592: Section 4 states, "Whenever the Secretary of the Interior shall determine it to be in the public interest, he may designate as national-park approach roads and as supplementary parts of the highway systems of any of the national parks roads whose primary value is to carry national-park travel and which lead across lands wholly or to the extent of 90 per centum owned by the Government of the United States and which will connect the highways within a national park with a convenient point on or leading to the Federal 7 per centum highway system: *Provided*, That such approach roads so designated will be limited to not to exceed sixty miles in length . . ."

Section 5 states, "the Secretary of the Interior is hereby authorized during the fiscal years of 1932 and 1933 to construct, reconstruct, and improve such national-park approach roads . . . and to enter into agreements for the maintenance thereof by State or county authorities, or to maintain them when otherwise necessary,"

Section 6 states, "Whenever any such approach road is proposed . . . across or within any national forest the Secretary of Interior shall secure the approval of the Secretary of Agriculture before construction shall begin."

The codification of this public law provided for these additional provisions:

"Appropriations for the National Park Service are authorized for -- . . . maintenance of roads in the national forests leading out of Yellowstone National Park, Wyoming, Idaho, and Montana;"

Executive Order dated November 18, 1932, ordered "that the lands lying within 250 feet on each side of the center line of the Cooke-Red Lodge approach road as now located on the ground . . . withdrawn from settlement, location, sale, entry, or other disposal and reserved for approach road to Yellowstone National Park, subject to valid existing rights."

[Omitted section of the Executive Order contained the detailed right-of-way descriptions]

Definition of "park road" as stated in 23 USC 101, means "a public road, including a bridge built primarily for pedestrian use, but with the capacity for use by emergency vehicles, that is located within, or provides access to an area in the national park system with title and maintenance responsibilities vested in the United States."

1998 Department of Interior Appropriations Bill: This is the portion of the bill that pertained to the Crown Butte Mine settlement. Section 502 (e)(1) states, "The Secretary of Agriculture shall, consistent with the funds provided herein, be responsible for (A) snow removal on the Beartooth Highway from milepost 0 . . . to milepost 43.1", and "(B) pavement preservation, in conformance with a pavement preservation plan . . . from milepost 8.4 to milepost 24.5."

Section 502 (e)(2) states, "The Secretary of Agriculture shall be responsible for conducting rehabilitation and minor widening of the portion of the Beartooth Highway in Wyoming that runs from milepost 24.5 to milepost 43.1."

IV. Current Agency's Perspective

The **National Park Service (NPS)** has been responsible for snow plowing, maintenance and response to traffic emergencies on the Beartooth since the mid-1940's. Yellowstone Park Superintendents have long held that it is inappropriate to spend it's limited funding on snow plowing, maintenance and emergency response of the Beartooth considering that there is already inadequate funding to meet demands of its responsibilities within the Park boundaries. The position of the NPS, since the beginning of meetings in 1959, has been that it would be willing to take responsibility for the Beartooth if Congress were to designate it a National Parkway with funding for operation, maintenance and appropriate ranger presence without having to spend its already limited funding for protection and management of Yellowstone Park.

In 1998, the NPS continued, under the FS funding for snow removal and minimal maintenance, to accomplish these tasks upon the Forest Service request. With the limited crews and equipment available to the NPS, it has difficulty getting the extensive road system in Yellowstone National Park open by the targeted dates. The NPS would prefer that the Forest Service contract with other entities for snow removal on the Beartooth. However, the NPS is willing to do this work for the near term, as long as funding is available that is not taken from other Yellowstone Park or NPS programs, until another appropriate entity accepts the long term maintenance of the Beartooth. Once the funding for maintenance and snow removal from the Crown Butte settlement is spent, the responsibility for these tasks will return to the NPS thereby adversely affecting its already limited funding for in-Park needs.

The Forest Service: The Beartooth Highway involves the Gallatin, Custer and Shoshone National Forests. The Beartooth is almost entirely on National Forest lands with the exception of some private holdings in the Cooke City and Silver Gate areas. The Beartooth has long been recognized as having unparalleled scenic qualities and was designated as a National Forest Scenic Byway in 1989.

The Forest Service has invested some limited funding into the Beartooth but the needs of the national forests require a much lower standard of road than required for a National Park Entrance. Forest Service funding direction does not allow for spending appropriated funds on construction and maintenance on a highly developed highway such as the Beartooth. Recent legislation (the DOI appropriations bill of 1998) provides funding through the Forest Service for snow removal, minimal maintenance, and for a portion of the long term reconstruction needs. All of these activities are being performed by others since the Forest Service has neither the equipment or organization to plow snow or maintain major asphalt roadways. In the short term, the Forest Service has been handed the leadership role of the Beartooth Highway using the \$12 million from the Crown Butte mine settlement. This role is considered temporary until the funding is gone. Unless the States agree to make it part of the Montana/Wyoming public road systems, the long term responsibility remains with the National Park Service.

The State of Montana has been actively involved in the Beartooth from spearheading legislation to build the highway to assuming responsibility to construct and maintain from milepost 45.0 (state line) to milepost 68.7 at Red Lodge. Montana has facilitated the acquisition of the necessary rights of way for the 8.4 mile section of the Beartooth from the state line near Cooke Pass through Cooke City and Silver Gate to Yellowstone Park's northeast entrance, but have not accepted the responsibility for maintenance. Currently, the State of Montana has indicated that, if the Beartooth were reconstructed to current federal highway standards, they would recommend to the Highway Commission that the State accept maintenance responsibility. Through the Transportation Equity Act for the 21st Century (TEA-21), Montana received an appropriation of \$19.9 million for reconstruction of the Beartooth Highway in Montana and Wyoming. Montana has indicated that they cannot provide State matching funds required by this legislation for

projects outside the State's boundaries. At this time, Montana does not want to apply for additional Forest Highway funding to the Beartooth. Since the segment of the Beartooth that requires reconstruction lies within Wyoming, Montana does not want to apply for Public Lands Discretionary funding for the project.

The State of Wyoming: When the Beartooth Highway was constructed in 1934, it did not connect to any Wyoming highway system road. In 1996, construction of the Sunlight Basin/Chief Joseph Highway was completed which connects to the Beartooth at mile post 17.4. A connection now exists between the city of Cody and Yellowstone's northeast entrance by way of the westerly portion of the Beartooth. With respect to funding the Beartooth Highway, the State has indicated that they are unable to use State funds as a federal match for projects off the State Highway system. The minutes of the Wyoming Transportation commission meeting of October 14, 1998 state, "When the entire section within Wyoming is reconstructed to current standards, Wyoming will consider assuming ownership of US 212 in northwestern Wyoming. Because of the time frame required to accomplish the reconstruction, Wyoming will not make a definite commitment that encumbers future transportation commissions and could possibly encumber a different governor." Wyoming also feels that if they are responsible for the maintenance, operation and traffic on the road that they should fully control and/or own the corridor the roadway occupies. At this time, the State of Wyoming does not want to apply Forest Highway funding to the existing Beartooth Highway. Wyoming has indicated that they will consider submitting the project as a candidate for the Public Lands Discretionary program.

The Federal Highway Administration (FHWA) has traditionally taken the lead role in administering funding for the construction and rehabilitation of the Beartooth Highway. In addition the FHWA performed routine maintenance of the Beartooth from 1934 through 1945. They remain the leader/coordinator for management of funding for planning, design and construction of federally funded highways including the Beartooth. The FHWA does not have authority nor funding to do highway maintenance under their current legislative mandates. They, therefore, must obtain an agreement with another entity for maintenance of a highway as a condition of proceeding with construction. FHWA has and continues to play a key role as facilitator of efforts to bring to closure future direction for construction and permanent maintenance agreement for the Beartooth.

V. Road Inventory and Needs Study

A report titled the **Beartooth Inventory and Needs Study** was prepared by the Western Lands Division of the Federal Highway Administration in 1994. Work estimates and needs come from that report.

VI. Current Project Status

The Steering Group is presently working toward four specific short term goals.

- Implement pavement preservation and rehabilitation of Segments 2, 3 & 4
- Execute project agreements between agencies
- Identify strategy for funding the completion of the reconstruction of the highway
- Fulfill time line for project development and reconstruction of the highway to appropriate standards.
- Use existing funds to repair as much of the road as possible.

The Steering Group plans to use the existing funding for the Beartooth Highway as follows:

- \$2 million from the 1998 DOI Appropriation Bill
 - \$1 million - Snow removal
 - \$1 million - Maintenance and pavement preservation
- \$10 million from the 1998 DOI Appropriation Bill
 - \$1 million - Pavement preservation
 - \$5 million - Engineering and environmental clearance
 - \$4 million - Reconstruction of a portion of Segment 4
- \$19.9 million from the TEA-21 High Priority funds
 - \$19.9 million - Reconstruction of a portion of Segment 4
 - Requires additional 20% matching funds. Also to be used for reconstruction.
 - Is subject to obligation limitation which reduces this portion of the funding by approximately 10 percent.
 - This funding is to be used in the year 2003. At that time, the State of Montana may not have the available contract authority.

The Steering Group is presently directing the following activities:

- Reconstruction of Segment 1 - \$9.4 million funded through the Forest Highway Program for Montana
- Environmental engineering studies for Segment 4
- Interim pavement preservation repairs on Segments 2, 3, 4
- Bridge scour repairs on Segment 2
- Snow plowing as needed for all Segments

VII. Reference to Web Page

<http://www.cflhd.gov/projects/wy/beartooth/index.htm>

VIII. Desired Future Responsibility

Fiscal Year 2003 - Segment 1 - Reconstructed to appropriate standards acceptable to Montana - MT DOT presents route to Highway Commission for ownership and maintenance responsibility.
 Segment 2 - Reconstructed to appropriate standards acceptable to Wyoming - WY DOT presents route to Highway Commission for ownership and maintenance responsibility.

Fiscal Year 2008 - Segment 3 & 4 - Reconstructed to appropriate standards that are acceptable to Wyoming - WY DOT presents route to Highway Commission for ownership and maintenance responsibility.

IX. Beartooth Highway Steering Committee

Attempts to improve the Beartooth Highway has been occurring for the past decade. During this time, the committee membership has changed several times. The following list represents the current active members:

Ms. Becky Aus represented by Jim Fischer, Forest Engineer
 Supervisor, Shoshone National Forest
 Cody, Wyoming

Mr. Frederick Behrens
 Division Administrator
 Federal Highway Administration

Cheyenne, WY

Ms. Janice Brown
Division Administrator
Federal Highway Administration
Helena, MT

Mr. Gary Carver
Wyoming Department of Transportation
Cheyenne, WY

Ms. Nancy Curriden
Supervisor, Custer National Forest
Billings, Montana

Mr. Tim Hudson
Chief of Maintenance
Yellowstone National Park

Ms. Carol Jacoby
Division Engineer
Western Federal Lands Highway Division
Vancouver, WA

Mr. Marv Jensen
Assistant Superintendent
Yellowstone National Park

Ms. Patricia Saindon
Administrator Planning and Program Division
Montana Department of Transportation
Helena, MT

Ms. Glenda Wilson
Regional Engineer
Forest Service, Rocky Mountain Region 2
Lakewood, CO

Mr. Patrick Wlaschin
Program and Administration Engineer
Central Federal Lands Highway Division
Lakewood, CO

Mr. Larry Smith
Division Engineer
Central Federal Lands Highway Division
Lakewood, CO

Mr. Vicotor Strube
District Engineer
Wyoming Department of Transportation
Basin, WY

Mr. Tom Pettigrew
Regional Engineer
Forest Service, Northern Region 1
Missoula, MT

Mr. Gene Roccabruna
Director, Wyoming Highway Department
Cheyenne, WY

OCT 14 1998

WYOMING
TRANSPORTATION COMMISSION OF WYOMING

Contrary to earlier published notices, the Commission began its meeting on Wednesday afternoon to attend to some agenda items because of a last minute influx of several delegations scheduled for Thursday morning.

The Transportation Commission of Wyoming met in the Commission room of the Transportation Headquarters building in Cheyenne on Wednesday, October 14, 1998. The meeting was convened at 1:45 p.m. with the following members constituting a quorum:

24. In his report to the Commissioners, Director Roccabruna said that the Department is a member of the Beartooth Steering Group and is in the fore of the discussions concerning improvements and ownership of the Beartooth Highway. He said that WYDOT has been repeatedly asked to assume ownership of that highway, but there may have been some misunderstandings about the official Department posture regarding ownership of that road.

Director Roccabruna presented a map of the area and explained that the part of the Beartooth highway in Wyoming is composed of three segments. Segments two and three which are 9.0 and 7.1 miles in length respectively, were reconstructed to current standards during the late 1970s and early 1980s. Segment four is 18.6 miles in length, is substandard and requires total reconstruction. Additional money has been made available from the federal government as a result of legislation authorizing the purchase of the Crown Butte Mine and TEA-21 legislation. Director Roccabruna said the misunderstanding may be the result of earlier verbage in Commission minutes, specifically in the minutes of July 16, 1998, and August 20, 1998.

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In order that there be no confusion about the Department's posture in the matter, it was recommended by Director Roccabruna, moved by Commissioner Brown, seconded by Commissioner Mills and carried that the following will constitute the Commission's position relative to assumption of 34.7 miles of US 212, the Beartooth Highway in northwestern Wyoming. "When the entire section within Wyoming is reconstructed to current standards, Wyoming will consider assuming ownership of US 212 in northwestern Wyoming. Because of the time frame required to accomplish the reconstruction, Wyoming will not make a definite commitment that encumbers future transportation commissions and could possibly encumber a different Governor."