



# U.S. Forest Service

## Briefing Paper

### National Forest System-Northern Region

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**Topic: Crazy Mountains access – East Trunk Trail No. 136 (also known as (aka) Trail No. 115)**

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**Issue:** East Trunk Trail No. 136 (aka Trail No. 115) travels through the northeast area of the Crazy Mountains on the Custer Gallatin National Forest (CGNF). The trail winds in and out of NF and private lands due to the checkboard landownership pattern created by railroad grants. The historic trail was constructed by the Forest Service (FS) and connects two historic FS guard stations; it is shown on FS maps dating back to at least 1925.

The United States has not filed a Statement of Interest and the landowners have not filed a Quiet Title Action to clear any potential claimed interests of the United States.

#### **Summary:**

- The Crazy Mountain Forest Reserve was established in 1906 and in 1908 became part of the Absaroka National Forest, and later, part of the CGNF.
- The Crazy Mountain Range (Crazies), located in south-central Montana north of Livingston and west of Big Timber, Montana, consists of a checkerboard ownership of private and public lands, with limited points of public access.
- The Northern Pacific Railroad was deeded the odd number sections in the Crazy Mountains. Northern Pacific Railroad conveyed their properties to private holders with the instruments 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 said described land.”
- The FS has many historic roads and trails (often constructed by the FS) that cross private land and are used to access FS lands, for which the FS does not have deeded easements. FS and public use of such roads and trails to access FS lands relies, in most cases, on prescriptive rights. Requesting private landowner permission to utilize prescriptive rights may be viewed as a FS acknowledgment that such prescriptive rights do not exist—rather, that use is permissive—which could lead, under Montana law, to the loss of prescriptive rights. The public is the beneficiary of such access rights, and the FS has a duty to serve the public interest.
- In 2016, an internal email from the Yellowstone District Ranger informed his staff that landowner permission was not required before utilizing prescriptive access rights to certain trails in the Crazies. This message was intended to ensure that FS employees were aware that the Agency may have prescriptive rights-of-way to the trails in question. The email was shared outside the agency and published on a local group’s Facebook page—it caused controversy and concern among some landowners and local and state elected officials.
- A private landowner on the east side of the Crazies has asserted that the United States does not have prescriptive rights on the East Trunk Trail (known historically as Trail #115 or

April 8, 2021

currently as Trail #136). In letters to the landowner, the FS has made clear its view that the FS retains a prescriptive easement on the trail, which is shown on FS maps and served as a connecting trail between two historic FS guard stations.

- The FS, Department of Justice attorneys, the landowners (Hailstone Ranch) and their attorney have been meeting and discussing the disputed East Trunk Trail, in an attempt to seek a mutually agreeable resolution without litigation. Several options were discussed at an initial meeting on April 28, 2017 including potential land exchange, purchase, reciprocal right-of-way easements, and a possible re-route of the East Trunk Trail. We believe this process holds promise and we intend further meetings.
- Last fall, a private citizen was cited in Sweet Grass County, Montana for criminal trespass while traversing the disputed East Trunk Trail. The Forest Service was not a party in the case.
- The private citizen's attorney served Subpoenas Duces Tecum on Forest Supervisor Mary Erickson, District Ranger Alex Sienkiewicz, and a Forest Service Law Enforcement Officer, each seeking FS records related to the case. In accordance with the USDA Touhy regulations, 7 C.F.R. 1.215, these subpoenas were to be treated as Freedom of Information Act requests. However, the private citizen's attorney subsequently informed the FS that the criminal complaint had been settled, and the subpoenas were deemed moot.
- In addition, the FS is continuing the dialogue concerning access, in general, to the Crazies. The FS is participating in a discussion group facilitated by a neutral party—which includes landowners, Crazy Mountain Stockgrowers, local pro-access interests, Rocky Mountain Elk Foundation, and the State of Montana's new access coordinator—to explore ways to address longstanding access issues in a manner that constructively addresses all interests. This group, or members of the group, have met three times. Pro-access interest groups had previously discussed mobilizing their members to re-establish perceived historic routes through private lands, but have since agreed not to pursue that effort, in part due to these meetings.

**Planned Next Steps:**

- The FS will continue to attempt to resolve the access issues related to Trail #136 (aka #115) to the satisfaction all involved.
- The FS will continue working with landowners and others to discuss potential long term access configurations for the Crazy Mountains. A meeting is scheduled for July 18, 2017 at the Grand Hotel in Big Timber, Montana.
- The CGNF and the Northern Regional Office have received multiple inquiries from private landowners, state elected officials, and organizations concerned about the Agency's approach to contested access facilities. The FS has great respect for private property and is committed to being a good neighbor to landowners, while maintaining access to NFS lands for itself and the public.