



File Code: 7700
Date: September 26, 2013

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SEP 27 2013

Ravalli County Commissioners



Ravalli County Commissioners
214 S 4th Street
Suite A
Hamilton, MT 59840

Dear Commissioners,

You have recently received a letter from Dan Thompson, President of the Ravalli County Off Road User Association (RCORUA). Dan copied West Fork Ranger Dave Campbell as well as the other user groups listed below. I am writing to add some information and clarify the Forest Service position regarding access to National Forest in Hughes Creek. I have attached a copy of a letter to the Commissioners from 2007 that describes the history of access as well as states the position of the Forest Service regarding this public road accessing trail 650 that is currently blocked by an illegal gate across the county road.

The RCORUA suggests a major trail construction project consisting of 6 miles of new trail construction. This is an alternative to removing the gate and accessing the current trail which is in poor condition largely due to the fact that the gate has prevented normal use and maintenance. As I know you are aware the budget for maintaining trails is very tight and projected to become even more challenging in the future. In light of that fact and that a trail already exists I do not support a new trail alternative. Commission Chair Burrows suggested that the commission would be interested in hearing from citizens and groups interested in gaining access in Hughes Creek and trail 650 which connects to trails to Lost Trail Pass and Overwhich Creek. Those groups are receiving copy of this letter as well.

As stated in the letter from Acting Forest Supervisor Barry Paulson in 2007, we wish to work with the county to restore public access and certainly the recently adopted Ravalli County Natural Resource Policy emphasizes access to public lands.

Sincerely,


JULIE K. KING
Forest Supervisor
Bitterroot National Forest

cc: Ravalli County Off Road User Association, Ravalli County Fish and Wildlife Association, Bitterroot Backcountry Horsemen, Bitterroot Backcountry Cyclists





United States
Department of
Agriculture

Forest
Service

Bitterroot National Forest

1801 N. First
Hamilton, MT 59840
406-363-7100

File Code: 7700

Date: June 6, 2007

Ravalli County Commissioners
215 So. 4th Street
Suite A
Hamilton, MT 59840

Dear Commissioners,

The Hughes Creek road, (county road 9630) has been a public county road since 1900. By this letter we are asking the county assert the public status of this road and take appropriate action to redcem the public's right to use the upper segment of this road beyond the gate illegally placed by a private individual. We are willing to work with the county in whatever capacity necessary to redcem the public's right to continue to use this public road. Our Office of General Counsel has advised me in this matter and has been in contact with County Attorney George Corn.

The segment in question begins at the locked gate in Section 2, T3S R21W, west line of Mineral Survey (MS) 5898, and runs easterly to the terminus of the road in Section 20, T2S R21W, PMM. This locked gate is located at mile post 8.5 and has been in place since roughly 1978. The gate is an illegal obstruction to public use on a public road. The public status of this road has recently become more urgent as a landowner with holdings behind the gate is attempting to market the property advertising that access is via a private road behind a locked gate.

Following is a brief chronology of the history of the subject Hughes Creek road:

March 10, 1899 - Petition was filed with the Ravalli County Commissioners for survey and construction of a road on Hughes Creek.

June 5, 1900 - Commissioners declared the road a public highway from the Alta Post Office running east to Woods Placer Mining Company Claims, a total of approximately 12 miles.

April 27, 1981 - Letter to the Forest Service from County Attorney, Robert Brown, stating the road as originally petitioned, 12 miles, remains a public road under county jurisdiction.

August 1982 - Landowners petition to abandon a portion of the road from the west boundary of MS 5898 to the terminus of the road.

October 14, 1982 - Commissioners issue order to deny petition to abandon and further order that the road remain open to the public and that all encroachments be removed.

May 29, 1984 - Ravalli County brings suit against landowners to remove gates.



September 20, 1984 – Order to Show Cause Hearing before Judge Wheelis. Judge rules that a restraining order would not be issued due to insufficient evidence of a public road.

October 19, 1988 – Letter from County Attorney, John Robinson, to Commissioners recommending that the matter of removing the gates be dismissed without prejudice in the event additional evidence might be introduced at a later date.

December 10, 1993 – Judge Langton dismisses case without prejudice.

The Hughes Creek road provides the only access to the upper reaches of the Hughes Creek drainage. The unauthorized gating of this road has effectively barred public access to thousands of acres of public land. Current Montana Code, 7-14-2615 (3), states: "The board may not abandon a county road or right-of-way used to provide existing legal access to public land or waters, including access for private recreational use as defined in 23-2-301 and as permitted in 23-2-302, unless another public road or right-of-way provides substantially the same access."

The Forest Service wishes to work with the county to restore public access to public lands and a determination from the county regarding the status of this road segment is a crucial step in restoring this access. Please let us know how we can best assist the county in this effort.

Sincerely,

A handwritten signature in black ink, appearing to read "Barry Paulson", written in a cursive style.

BARRY PAULSON
Acting Forest Supervisor

cc: Dave Campbell, George Corn, Ravalli County Attorney, Chris Hoffman, Ravalli County Sheriff, David Ohnstad, Ravalli County Road Supervisor

MONTANA FOURTEENTH JUDICIAL DISTRICT COURT
MEAGHER COUNTY

STATE OF MONTANA,)	
)	<u>Cause No. DV 12-16</u>
Plaintiff,)	
vs.)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
HOWARD ZEHNTNER and ZEHNTNER)	AND ORDER
BROTHERS, LLC,)	
)	
Defendants.)	

A show cause hearing on the State's Application for Preliminary Injunction was held on November 14, 2012. Both parties presented argument, testimony and exhibits. In addition, the parties addressed the Defendants' Motion to Dismiss for lack of standing. The Court has now reviewed the briefs, pleadings, and attached exhibits, and, having considered the evidence submitted at the hearing, enters the following Findings of Fact, Conclusions of Law, and Order.

BACKGROUND

1. On October 12, 2012, Attorney General Steve Bullock filed a Complaint for Declaratory and Injunctive Relief on behalf of the citizens of the State of Montana seeking to have the Tenderfoot Road declared a petitioned county road. The Complaint states that the action is pursued on behalf of Montana citizens under the Attorney

General's authority as granted in section Mont. Code Ann. § 2-15-501(6). Attached to the Complaint is the declaration of Robert Dennee, Lands and Realty Officer for the Forest Service, and a number of historic documents, maps, photographs, and other exhibits. The State also filed an Application for Preliminary Injunction to have Defendants unlock the gate they placed across Tenderfoot Road in August 2012. The declaration of George Mongar is attached to the Application, along with other exhibits.

2. Defendant Zehntner Brothers, LLC, is a limited liability corporation registered to do business in the State of Montana. Howard Zehntner is the registered agent of Zehntner Brothers, LLC, and resides in Meagher County, Montana.

3. On October 19, 2012, Defendants filed their opposition to the State's Application for Preliminary Injunction, and included a Motion to Dismiss for lack of standing. Defendants claim that the Attorney General is not the proper party to bring this action, and that only the County has authority to enforce the county road statutes. Attached to Defendants' brief is an affidavit of Howard Zehntner.

4. Defendants also filed a Motion to Strike the declaration of Robert Dennee, and to limit his testimony at the show cause hearing. After considering the briefs submitted by the parties, the Court denied Defendant's motion and allowed Mr. Dennee to testify at the show cause hearing based on his knowledge, expertise, and experience and considering the informal nature of the proceedings and relaxed rules of evidence.

5. Defendants filed their Answer to the State's Complaint on November 7, 2012.

6. At the show cause hearing, the Court heard testimony from Robert Dennee,

Glen Zehntner, Howard Zehntner, and current Meagher County Attorney, Kimberly Deschene. The following exhibits were offered and admitted:

Demonstrative Exhibits:

- State's Exhibit 1 (large scale aerial photograph depicting road location and land ownership)
- State's Exhibit 2 (large scale aerial photograph depicting HES 668)
- Defendants' Exhibit A (large scale aerial photograph)
- Defendants' Exhibit B (large scale aerial photograph)

Exhibits Admitted Into Evidence Without Objection

- Defendants' Exhibit A (Letter of 6/21/12)
- Defendant's Exhibit B (Resolution Dated 8/27/12)
- Defendants' Exhibits C to E (Emails with County Attorney from 8/27/12 to 9/5/12)
- Defendants' Exhibits F to H (Emails with Forest Service from 10/15/11 to 8/28/12)

FINDINGS OF FACT

1. The road in question has been referred to variously as "County Road No. 13", "Tenderfoot Road", and "Zehntner Road" by the parties and is located in Meagher County, northwest of White Sulphur Springs, Montana. It appears that the road is most commonly referred to as "Tenderfoot Road" and the Court will refer to it as such herein.

Tenderfoot Road runs in a northwesterly direction along the west side of the South

Fork of Tenderfoot Creek, it then crosses the South Fork and continues north until reaching the main branch of Tenderfoot Creek. Plaintiff contends that the road provides the only vehicular access to and across private lands owned by Howard Zehntner and Zehntner Brothers, LLC (Defendants), and private lands owned by The Bair Ranch Foundation. The road also provides access to and across public lands owned by the State of Montana and by the United States government. Defendants dispute this but have failed to present any substantial evidence to the contrary.

2. This contest arises because Defendants have undisputedly blocked public access on Tenderfoot Road where it enters their private land in section 30, Township 14 North, Range 5 East. The State maintains that Tenderfoot Road is a petitioned county road and that Defendants have no right to control public access. Defendants argue that the road they have gated is not the county road.

3. At the show cause hearing, the State presented two large aerial photographs depicting the current location of Tenderfoot Road, and the location of Defendants' gate. The parties do not dispute the current location of the road or the gates as depicted in the demonstrative exhibits. Likewise, the parties do not dispute that a county road was properly petitioned and declared in 1900. Rather, they dispute the location and length of the county road as it travels through sections 30, 31, and 32 of Township 14 North, Range 5 East.

4. The land ownership in sections 30, 31, and 32 of Township 14 North, Range 5 East is depicted in Appendix A, attached to the Declaration of R. Dennee, Compl. Ex. 1. The majority of section 31 is owned by The Bair Ranch Foundation, and

is west of Tenderfoot Road. The state owns land that includes portions of the Tenderfoot Road, and land on the east side of Tenderfoot Road in section 30, 31, and 32, which is leased to Defendants for grazing. Defendants own land in section 32 which is accessed through the state trust land. They also own land in section 30, along the South Fork of Tenderfoot Creek. Tenderfoot Road passes through Defendants' property in section 30, crosses into federal land, and comes to a bridge that crosses the main branch of Tenderfoot Creek at a point above the mouth of the South Fork of Tenderfoot Creek.

5. Certified County records submitted by the State show that two petitions to establish a county road in the Tenderfoot area were filed in 1899, and that the Meagher County Commissioners accepted the petition and declared the road a county road in 1900. (Compl. Exs. 2, 3.)

6. The petitions describe a road that goes all the way to the main branch of Tenderfoot Creek, to a point above the mouth of the South Fork of Tenderfoot Creek. State's Exhibit 2 to the Complaint is a typed petition to establish a county road, dated December 15, 1899. It provides in pertinent part, "[c]ommencing at the South East corner of Section 1, Township 12 North of Range 4 East, and running thence 2 miles North to the North East Corner of Section 36, Township 13 North, Range 4 East, thence in a Northeasterly direction past the Shannon Post Office to the District School House, thence following the main travelled road across Bridge Gulch, through the Park and over the pass to *Tenderfoot Creek*." [Emphasis Added]. State's Exhibit 3 to the Complaint is a handwritten petition with a similar description of the road location reading, "down the south fork of Tenderfoot to a point on Tenderfoot *above the mouth of the South Fork*."

[Emphasis Added]. Though the date was not included in the certified copy, Mr. Dennee testified, based on personal knowledge of the petition, that the written petition is also dated 1899.

7. The 1900 report accepting the petitioned county road describes it as a road “from Eagle Creek to *Tenderfoot Creek* by the way of Shannons.” (Compl. Ex. 2)[Emphasis Added].

8. The State’s main witness, Robert Dennee, has thirty years’ experience working with land acquisition, roads and trails, and is familiar with the Tenderfoot Road, the county records that describe the road, and the historic maps of the area. He is also familiar with the landmarks described in the petitions and was able to identify many of them on the historic maps that were reviewed at the show cause hearing.

9. One historic map discussed at the hearing was State’s Exhibit 4 to the Complaint, which is a Government Land Office (GLO) map of the Tenderfoot area. This GLO map was surveyed in 1913 and approved in 1916. It is a hand-drawn map depicting section lines and geographic features including creeks and roads. Mr. Dennee identified the South Fork of Tenderfoot Creek on the GLO map, as well as the mouth of the South Fork where it enters the main fork of Tenderfoot Creek, as described in the petitions. Mr. Dennee also identified a road that is depicted on the west side of the South Fork of Tenderfoot Creek. Dennee testified the road depicted on State’s Exhibit 4 is consistent with the location of the existing Tenderfoot Road, except that the GLO map shows the road ending in section 30 at a point next to the South Fork of Tenderfoot Creek.

10. The next set of documents discussed at the hearing was State’s Exhibit 5 to

the Complaint, which is Homestead Entry Survey No. 668. HES 668 was surveyed in 1916 and approved in 1917. The map depicts a homestead area of approximately 160 acres. Mr. Dennee identified HES 668 on a large aerial map provided by the State as a demonstrative exhibit at the hearing. HES 668 lies in section 30 near the South Fork of Tenderfoot Creek, just south of the main stem of Tenderfoot Creek itself. The homestead is known as the "Mongar Homestead" and is currently owned by Defendants.

11. The documents in State's Exhibit 5 clearly identify a road across HES 668. Mr. Dennee identified two hash marks on the homestead map near corners 3 and 4 which correspond to the written description in the field notes, and indicate that a road entered the homestead near corner 4 and exited the homestead near corner 3. Mr. Dennee testified that the hash marks indicated on the 1916 map correspond to the location of the Tenderfoot Road as it exists today. The same is indicated from the map overlay attached to his Declaration as Appendix A, as well as the demonstrative exhibit prepared by the State for the show cause hearing.

12. The next set of documents discussed at the hearing was State's Exhibit 7 to the Complaint, which is Homestead Entry Survey No. 160. HES 160 was surveyed in 1913 and approved in 1914. This homestead consisted of 157.40 acres and is indicated on the large aerial photograph provided as a demonstrative exhibit by the State. It is currently owned by the State of Montana as depicted on Appendix A attached to Compl. Ex. 1.

13. Exhibit 7 includes a map that clearly identifies a road through the homestead along the west side of the South Fork of Tenderfoot Creek. The road

corresponds to the written description (field notes) accompanying the survey that refers to a road entering and crossing HES 160. The field notes for Homestead Entry No. 160 repeatedly refer to the road as a "county road."

14. The next map discussed at the hearing is State's Exhibit 8 to the Complaint, which is a map of Meagher County prepared by Meagher County Surveyor, J.V. Potter, in 1936. Mr. Dcnnce pointed out several features on this map that correspond to the language of the road petitions, including the Shannon Ranch, Eagle Creek, and the School House. The map depicts a road that corresponds to these landmarks and follows the South Fork of Tenderfoot Creek.

15. Defendants presented no evidence showing that the Meagher County Commissioners have taken formal action to abandon the petitioned county road.

16. Howard Zehntner testified that his family purchased the Mongar Homestead in 1959. The Zehntners also lease the state trust land in section 31 from the State of Montana for grazing. Howard testified that there has been a gate in section 31, on State land, for more than 50 years. He testified that he and his brothers granted permission for people to drive through the gate, but that they locked the gate during hunting season starting in 1960.

17. The gate described by Howard Zehntner was on state trust land. The gate is depicted in Ex. 14 attached to the Complaint, and consists of a single bar between two posts with a sign marked "Road Closed." Near the gate was another sign reading: "You Must Stop and Register or You May Be Prosecuted." (Compl. Ex. 15.)

18. Defendants were notified by the Montana Department of Natural Resources

and Conservation (DNRC) in 2010 that the road through state trust land was open to motorized vehicle use under the Rules for Recreational Use of State Lands. (Compl. Ex. 16.) Thus, in 2012 and at the request of the Meagher County Commissioners and the State of Montana, Howard Zehntner opened the gate. The gate was locked on occasion afterward and, in September, 2012, the Meagher County Sheriff, Jon Lopp, was called out to remove the lock. (Compl. Ex. 17.)

19. In August 2012, Defendants erected a new gate across the Tenderfoot Road. The new gate is located within the Mongar homestead, section 30, Township 14 North, Range 5 East, Meagher County, Montana, and is secured with a padlock and/or combination lock. (Compl. Ex. 18.) Thereafter, Defendants posted an announcement in the Meagher County News that "Access to Tenderfoot Creek or Falls" is "Walk-in Only." (Compl. Ex. 19.)

20. Defendants offered an enlarged aerial photograph at the hearing depicting the Tenderfoot Road and the locations of the two gates. The gate locations match those depicted on the State's demonstrative exhibits. Howard Zehntner testified that the road that is gated is not the county road. He drew another line on the aerial photograph to depict where he believed the county road was once located, running in a westerly direction in HES 160 on State land.

21. Bob Dennee testified that the Tenderfoot Road is the only public access road to Tenderfoot Creek, and that Defendants' locked gate prohibits the public from motorized access to Tenderfoot Creek.

22. Bob Dennee also testified that Tenderfoot Road is the public access road

for the larger Tenderfoot project, which is known as the “Tenderfoot Acquisition.” The Tenderfoot Acquisition is a joint project of the USDA Forest Service, the Rocky Mountain Elk Foundation, the Tenderfoot Trust, and The Bair Ranch Foundation. The main purpose of the project is to purchase the intermingled private lands offered by TBRF in the Tenderfoot Creek area, and to consolidate those lands into public ownership, to conserve important wildlife and fish habitat, protect the watershed and ensure future recreational access. A map and description of the project area is attached to the Complaint as Exhibit 12. The entire proposed acquisition area encompasses 8,220 acres. To date, 3,400 acres have been acquired. The remaining 4,820 acres will be acquired over the next few years with private and public funds. The Bair lands, once acquired, combined with the current adjacent federal landholdings, will create a large contiguous block of public land.

23. Plaintiff contends that the Tenderfoot Acquisition will provide high quality habitat for fish and wildlife, and extraordinary recreational opportunities for hiking, fishing, camping, hunting, and other forms of outdoor recreation. Plaintiff also contends that the Tenderfoot Acquisition is supported by many state and local sportsmen’s groups, as well as the Meagher County Commissioners. In April 2012, the Commissioners passed a resolution supporting the land purchase in the Tenderfoot area and wrote letters supporting the same. (Compl. Ex. 13.)

24. In August 2012, the Attorney General’s Office prepared a resolution for the Meagher County Commissioners to sign authorizing the Attorney General’s Office to file suit on behalf of the county. The Commissioners did not sign the resolution. The

Attorney General therefore pursued this action independent of the County on behalf of the public. Meagher County Attorney Kimberly Deschene testified that the County will abide by whatever ruling the court renders.

Based on these FINDINGS OF FACT, the Court enters the following

CONCLUSIONS OF LAW

A. DEFENDANTS' MOTION TO STRIKE and MOTION IN LIMINE

1. A preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits.

University of Texas v. Camenisch, 451 U.S. 390, 395 (1981). Such is consistent with Montana law which provides that an injunction order may be granted on the basis of affidavits or oral testimony. Mont. Code Ann. § 27-19-303.

2. This Court concluded at the hearing and herein concludes that the affidavits of Robert Dennee and Howard Zehntner are properly considered. Likewise, the Court concluded and herein concludes that Mr. Dennee was and is entitled to testify about matters within his personal and professional knowledge and experience.

B. DEFENDANTS' MOTION TO DISMISS FOR LACK OF STANDING

3. Montana Code Annotated § 2-15-501(6), authorizes the Attorney General, "when required by the public service," to "prosecute or defend appropriate cases in which the state or any officer of the state in the officer's official capacity is a party or in which the state has an interest[.]" Here, the Attorney General has filed a declaratory judgment action on behalf of the citizens of Montana seeking to have Tenderfoot Road declared a county road. Contrary to Defendants' assertion, the Attorney General is not pursuing the

action under the county road statutes in Title 7, Chapter 14, Part 21.

4. This Court concludes that the Attorney General has standing to bring this action on behalf of the public under his broad constitutional and common law authority, as well as his statutory authority under Mont. Code Ann. § 2-15-501(6). *See State ex rel. Ford v. Young*, 54 Mont. 401, 403, 170 P. 947, 948 (1918); *State ex. rel Olsen v. Public Service Commission*, 129 Mont. 106, 113, 283 P.2d 594, 598 (1955) (“this court has repeatedly held that the attorney general has common-law powers and duties.”).

5. Contrary to the Defendants’ assertion, the county road statutes in Title 7, Chapter 14, Part 21 do not expressly nor implicitly restrict the Attorney General’s authority to bring suit to enforce the public’s interest in a county road. Even if the Attorney General had brought suit under the referenced statutes, like *Ford*, *Supra*, it appears that the purpose of granting county road enforcement authority to the county attorneys statewide is to supplement, not supersede the Attorney General’s common law, constitutional, and statutory powers and duties. Moreover, it is axiomatic that a gated county road “affects the public interests,” and that bringing an action to enjoin Defendants from preventing public access “has for its purpose the protection of public rights.” *Olsen*, 129 Mont. at 115, 283 P.2d at 599. Thus, the fact that the Meagher County Commissioners did not sign the resolution or otherwise authorize the Attorney General to bring this suit on behalf of the County is irrelevant, because the suit was brought on behalf of the public at large to protect public access rights.

C. PLAINTIFF’S APPLICATION FOR PRELIMINARY INJUNCTION

6. An injunction should issue where the Plaintiff can establish a *prima facie*

case, or show that it is at least doubtful whether or not he or she will suffer irreparable injury before his or her rights can be fully litigated. *State v. BNSF*, 2011 MT 108, ¶ 17, 360 Mont. 361, 254 P.3d 561 (citation omitted); Mont. Code Ann. § 27-19-201. The applicant only needs to meet one of these factors to be entitled to a preliminary injunction. *Id.*, ¶ 27.

7. The documents submitted by the State show that a county road was petitioned and accepted from Eagle Creek to the main Tenderfoot Creek, at a point above the mouth of the South Fork. The landmarks described in the petitions can be tracked on the maps submitted by the State, and warrant a conclusion that the road as petitioned is in substantially the same location as the road as it exists today.

8. While Defendants suggest that the road location has moved, or that the county road stops short of Tenderfoot Creek, as noted by the Plaintiff, discrepancies in the description or location of a road in old county documents are not sufficient to defeat the road's public status. *Ashby v. Maechling*, 2010 MT 80, 356 Mont. 68, 229 P.3d 1210. Moreover and without reaching a final determination of the ultimate issue but for the purpose of the preliminary injunction only, there is no historic evidence that the road has moved or stops short of Tenderfoot Creek. The lines drawn on the demonstrative exhibits by Howard Zehntner which purport to show that the road was in some other location are inconsistent with the official maps discussed by Mr. Dennee. It is undisputed, however, that Defendants have gated and locked what is now Tenderfoot Road in sections 31 (the original gate) and 32 (the new gate), both gates being on the road historically utilized by the public to recreate in the Tenderfoot drainage.

9. The Montana Supreme Court has held that when the record of a road's creation is "extremely old," the correct standard to apply is whether the "record taken as a whole" is sufficient to show the creation of a county road. *Reid v. Park County*, 192 Mont. 231, 234, 627 P.2d 1210, 1212 (1981).

10. In the case sub judice and based upon the foregoing findings of fact, and particularly in view of the test that is used for older roads like the Tenderfoot Road, the court concludes that the State has met the prima facie standard for an injunction to issue and/or demonstrated that it is at least doubtful whether the general public will suffer irreparable injury before their rights can be fully litigated. The undisputed evidence shows that a county road was petitioned and accepted from Eagle Creek to the main branch of Tenderfoot Creek, above the mouth of the South Fork. Furthermore, the road as historically mapped is in substantially the same location as it is today.

11. Once established, a county road continues to be a county road unless it is formally abandoned or vacated either by operation of law, by judgment of a court of competent jurisdiction, or by order of the board of county commissioners. Mont. Code Ann. § 7-14-2615(1). The Supreme Court has clarified that the "intent must be of character so decisive and conclusive as to indicate a clear intent to abandon" and "must be some affirmative official act, and not mere implication." *McCauley v. Thompson-Nistler*, 2000 MT 215, ¶¶ 28-29, 301 Mont. 81, 10 P.3d 794.

12. There is no evidence in the record, nor do Defendants claim, that the commissioners have abandoned the county road or that there has been any formal action taken to disavow its county road status.

13. As a matter of law, Tenderfoot Road cannot be abandoned by the commissioners because it provides existing legal access to public land and, according to Bob Dennee, there is no other public road or right-of-way that provides substantially the same access. Mont. Code Ann. § 7-14-2615(3).

14. The Court concludes that the record as a whole establishes a prima facie case that the Tenderfoot Road is a petitioned county road from Eagle Creek to the main branch of Tenderfoot Creek, including the portions of the road that have been gated and locked by Defendants.

15. While Defendants counter that the status quo on Tenderfoot Road has been a locked gate, the letter from Montana DNRC Land Manager Garry Williams to Howard Zehntner, dated August 18, 2010, suggests that the gate was erected without permission from the State and that any interference with motorized use was improper. (Compl. Ex. 16.)

16. To sanction an illegal gate as the “status quo” would be improper given the fact that the State has made a prima facie showing that Tenderfoot Road is a county road which cannot be blocked by a private landowner, even if implicit “permission” were given by the State.

17. In any case, the new locked gate is located on Defendant’s private land and was erected in August of 2012, after Defendants were made aware of the State’s position that the road is a county road. A three month old gate erected while the road’s status was in dispute cannot in fairness, in this Court’s view, be considered the status quo.

18. The Court concludes that the evidence is sufficient to warrant an order

granting the State's application for preliminary injunction, requiring that Defendants unlock both gates, refrain from building and/or locking any other gate(s), and take down any signs that purport to restrict access to the Tenderfoot Road, until a final ruling on the merits can be had.

Based upon the forgoing, the Court hereby enters its:

ORDER

1. Defendants' Motion to Strike and Motion in Limine are DENIED.
2. Defendants' Motion to Dismiss for lack of standing is DENIED.
3. The State's Application for Preliminary Injunction is GRANTED.

Defendants are hereby ordered to unlock both gates, refrain from building and/or locking any other gate(s), and take down any signs restricting public access, until a final ruling of this Court is issued.

4. Any violation of this order will cause Defendants to be in contempt of court.

DATED this ____ day of _____, 20_____.

Hon. Randal I. Spaulding, District Judge

cc: J. Stuart Segrest, Counsel for Plaintiff
Hertha Lund, Counsel for Defendants
Susan Swimley, Counsel for Defendants

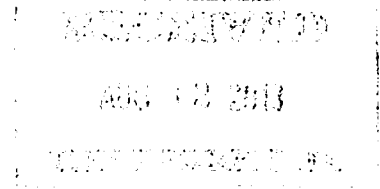


Ravalli County Off Road User Association

P.O. Box 72, Hamilton, Montana 59840

August 8, 2013

Commissioners
215 S 4th Street
Suite A
Hamilton, MT 59840



Dear Commissioners,

We understand that the Ravalli County Commissioners have been approached by the Forest Service to once again attempt to establish the upper Hughes Creek Road as a County road. As you know, local landowners have gated this portion of the Hughes Creek Road for some time. The purpose of this letter is to recommend an alternative course of action that the Board of Directors of RCORUA believe better serves the public interest.

We offer the following observations in support of our proposal:

- Multiple previous attempts to establish the subject portion of the Hughes Creek Road by Ravalli County have failed;
- Establishment of the subject portion of Hughes Creek Road as a County road would not provide legal access to Hughes Creek for anglers and hunters because the road is separated from the creek by private land;
- Forest Service Trail 650 is not currently available to man, beast or machine due to multiple washouts and a deteriorated steep section of trail; major reconstruction would be required to make this trail useable by the public; approximately 4 miles of this trail lies within the riparian zone of Hughes Creek.


In view of the history of past attempts to gain public access to the gated portion of the Hughes Creek Road, the limited value of the existing Trail 650 for recreational purposes and the need for a complete reconstruction of Trail 650 we believe the public interest would be far better served by a relocation of trail 650 to a ridgeline north of Hughes Creek. This relocation would lie entirely on public land and offer a much improved and sustainable opportunity for recreation to the citizens of Ravalli County.

From Hughes Point to Quartzite Mtn. approximately 6 miles of new trail could be constructed along a ridgeline. Approximately 5 miles of the existing Tr 650 from Hughes Point to the trailhead could be decommissioned. From Quartzite Mtn. to the Lookout Mountain Rd 5696 approximately 6 miles of an old pack trail could be reconditioned to complete the relocation of the trail. This old Forest Service pack trail was utilized years ago to provide access to fire lookouts on Quartzite and Lookout Mountains. A 3.2 mile section of this non-system trail has been utilized by ATV enthusiasts for at least two decades and would not require reconditioning. A map showing the approximate location of RCORUA's recommended

relocation of Tr 650 is attached. We suggest that the relocated/reconditioned Tr 650 be designated for ATV travel without seasonal restrictions.

We hope that the County Commissioners as well as other interested recreational groups in Ravalli County will endorse RCORUA's suggestion as a more attractive alternative to pursuing legal remedies with regard to the gated portion of the Hughes Creek Road.

Respectfully Submitted,

A handwritten signature in black ink that reads "Dan Thompson". The signature is written in a cursive, flowing style.

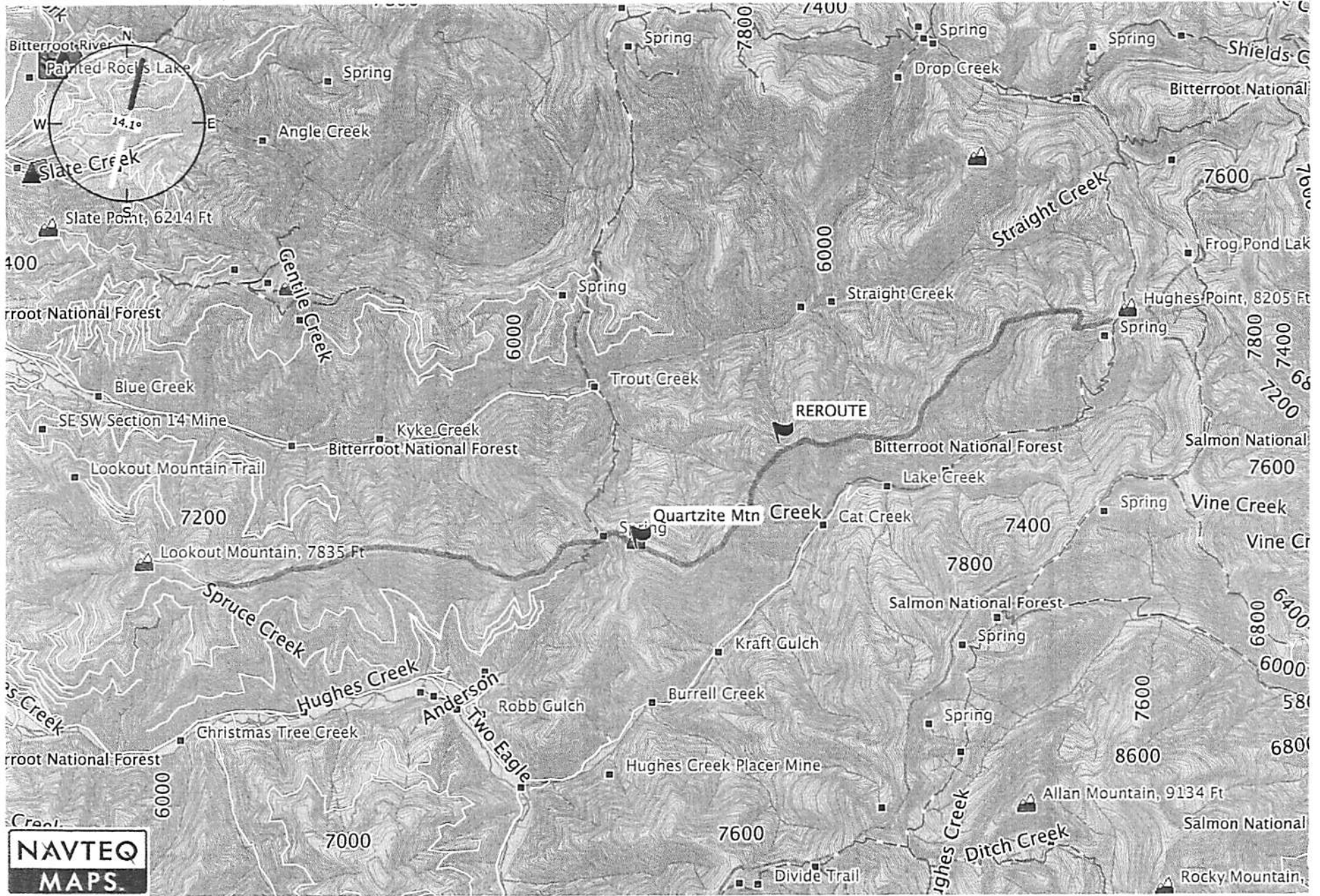
Dan Thompson, President
Ravalli County Off Road User Association
642-9824

cc: Dave Campbell, District Ranger
Bitterroot National Forest

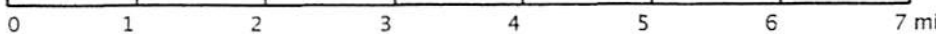
Ravalli County Fish & Wildlife Association

Bitterroot Back Country Horsemen

Bitterroot Back Country Cyclists



Topo U.S. 24K North Central
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 1995-2009.



N45 34.812 W113 59.432

PROPOSED TR 650 REROUTE

