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**VIA EMAIL FOLLOWED BY U.S. MAIL**

Ravalli County Board of County Commissioners  
215 S. 4th Street, Suite A  
Hamilton, MT 59840  
[gwiles@rc.mt.gov](mailto:gwiles@rc.mt.gov)

*Re: Request for Removal of Illegal Encroachment/Gate on Hughes Creek Road*

Dear Commissioners:

My firm represents the Ravalli County Fish & Wildlife Association and Public Land/Water Access Association. As you know, there is a gate near the 8-mile marker of Hughes Creek Road. That gate is obstructing public access to a county road (and the public lands and waters that the road reaches) beyond the gate and constitutes an unlawful encroachment of a public highway. I write here to respectfully request that the Ravalli County Board of County Commissioners (Board) comply with the mandatory provisions of §§ 7-14-2133 and 7-14-2134, MCA and “immediately” remove the unlawful gate.

Sections 7-14-2133 and 7-14-2134, MCA address obstructions and encroachments on county roads and public highways. Those statutes state, in pertinent part:

**7-14-2133. Removal of obstructions on county roads**

- (1) When a county road becomes obstructed, the board of county commissioners, or the county surveyor if the surveyor is in charge, **shall remove** the obstruction upon being notified of the obstruction.

**7-14-2134. Removal of highway encroachment**

- (1) . . . if any highway is encroached upon by fence, building, or otherwise, the road supervisor or county

surveyor of the district must give notice, orally or in writing, requiring the encroachment to be removed from the highway.

- (2) If the encroachment obstructs and prevents the use of the highway for vehicles, the road supervisor or county surveyor **shall immediately remove** the encroachment.
- (3) The board of county commissioners may at any time order the road supervisor or county surveyor to immediately remove any encroachment.

§§ 7-14-2133(1), -2134(1)–(3), MCA (emphasis added).

There is no dispute that Hughes Creek Road was duly established as a county road/public highway by petition and is approximately 12 miles in length. This Board made that very determination in January 2017 when it denied a petition to abandon the road beyond the unlawful gate.

Enclosed as **Exhibit 1** are the minutes of the Board's January 25, 2017 public hearing on that abandonment petition. The Board unequivocally determined that:

- Hughes Creek Road was legally established as a public highway right of way by petition (Finding of Fact 6);
- Hughes Creek Road is "at least 11.8 to no more than 12 miles" in length (Finding of Fact 1);
- Hughes Creek Road beyond the gate (located at 8.5 miles from West Fork Road) "leaves private lands and enters public lands at various points" (Finding of Fact 3);
- Hughes Creek Road beyond the gate provides "public access to public lands or public waters" (Finding of Fact 4); and
- If Hughes Creek Road were abandoned beyond the gate, substantially similar legal access to public lands or waters "would not be provided" (Finding of Fact 7).

See Ex. 1.

I am aware that several nearby landowners disagree with the Board's 2017 determination and believe that the county portion of the road ends at approximately the 9-mile marker (about a half mile past the gate). Respectfully, the landowners are mistaken. In 2019, the Montana Supreme Court held that the "historical record substantially supports the Board's conclusion that Hughes Creek Road is 11.8 miles

long.” *Bugli v. Ravalli County*, 2019 MT 154, ¶ 32, 396 Mont. 271, 444 P.3d 399 (*Bugli II*).

More importantly, *Bugli II* recognized that the gate across Hughes Creek Road “illegally block[s] access to an existing county road.” *Bugli II*, ¶ 33. To that end, the language of §§ 7-14-2133 and 7-14-2134, MCA is clear and unequivocal: the obstruction and encroachment “shall” be “immediately” removed.

Of course, none of this is news to the Board. In 2017, the Board ordered that the gate be removed by **June 1, 2017**. See Ex. 1. I appreciate that the opposing landowners’ two lawsuits reasonably delayed that deadline. Those lawsuits, however, were fully resolved by the Montana Supreme Court in July 2019—well over a year ago. As it stands then, Hughes Creek Road is a legally established county road/public highway by petition that is approximately 12 miles in length, and it is currently obstructed by an unlawful encroachment.

Given the plain and unambiguous language of §§ 7-14-2133 and 7-14-2134, MCA, and the lack of any legitimate reason for further delay, the Ravalli County Fish & Wildlife Association and Public Land/Water Access Association respectfully request that the Board (or the road supervisor or county surveyor, as appropriate) “immediately” remove the unlawful gate obstructing and encroaching upon Hughes Creek Road.

I invite the Board, or the Ravalli County Attorney’s Office, to call me to discuss a potential date this fall for which the Board will require the gate’s removal. The Ravalli County Fish & Wildlife Association and Public Land/Water Access Association strongly prefer to work cooperatively with the Board to reach an amicable solution, but any further extended delay is not acceptable.<sup>1</sup>

That said, I understand there may have been some threats of violence if there is an attempt to remove the gate. I also understand that the Ravalli County Sheriff’s Office requires a “court order” before it will lend peace-keeping assistance to those who perform the work to remove the gate. I truly hope both of those understandings are inaccurate and that the Board, the appropriate county employees, and the Sheriff’s Office work together to “immediately” remove the unlawful gate.

Nonetheless, if the Ravalli County Fish & Wildlife Association and Public Land/Water Access Association are forced to initiate a legal action to compel the Board to enforce the mandatory, non-discretionary language of §§ 7-14-2133 and 7-14-2134, MCA, they are prepared to file a mandamus action to do so. See § 27-26-102, MCA

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<sup>1</sup> I appreciate that the term “immediately” is not defined by § 7-14-2134, MCA. According to Black’s Law Dictionary, however, the term “immediate” means “[o]ccurring without delay.” *Black’s Law Dictionary* 619 (Bryan A. Garner ed., 8th ed. 2005).

(a writ of mandamus may be issued “to compel the performance of an act that the law specifically enjoins”); see also *Common Cause of Mont. v. Argenbright*, 276 Mont. 382, 390, 917 P.2d 425, 429–430 (1996) (a writ of mandamus is available “when the party requesting it is entitled to the performance of a clear legal duty”).

Moreover, if forced to initiate legal action, the Ravalli County Fish & Wildlife Association and Public Land/Water Access Association will seek an award of their costs and attorney fees as damages pursuant to § 27-26-402, MCA and under the private attorney general doctrine. See *Kadillak v. Mont. Dep’t of State Lands*, 198 Mont. 70, 74, 643 P.2d 1178, 1181 (1982) (reasonable attorney fees are damages with the meaning of § 27-26-402, MCA); *Montanans for Responsible Use of Sch. Trust v. State ex rel. Bd. of Land Com’rs*, 1999 MT 263, ¶ 64, 296 Mont. 402, 989 P.2d 800 (noting that attorney fees may be recovered under the private attorney general doctrine where “the government, for some reason, fails to properly enforce interests which are significant to its citizens”). Moreover, pursuant to the plain language of § 7-14-2133, MCA, the Board is “responsible or liable for . . . willful, intentional neglect **or failure to act**” with respect to its legal duty to remove obstructions on county roads. § 7-14-2133(3), MCA (emphasis added).

Again, I truly hope court action is not necessary. The Board is aware of the unlawful obstruction and encroachment on Hughes Creek Road (*i.e.* the unlawful gate) and of its statutory mandate to immediately remove it. The Ravalli County Fish & Wildlife Association and Public Land/Water Access Association respectfully request that the Board comply with that legal duty and remove the unlawful gate across Hughes Creek Road.

Please call (or write) and let me know whether the Board intends to comply with §§ 7-14-2133 and 7-14-2134, MCA and, if so, to discuss the date when it intends to do so.

Sincerely,

Kyle W. Nelson

KWN:km

cc: Chris Hoffman, Commissioner ([choffman@rc.mt.gov](mailto:choffman@rc.mt.gov))  
Greg Chilcott, Commissioner ([gchilcott@rc.mt.gov](mailto:gchilcott@rc.mt.gov))  
Jeff Burrows, Commissioner ([jburrows@rc.mt.gov](mailto:jburrows@rc.mt.gov))  
Stephen Holton, Ravalli County Sheriff ([sholton@rc.mt.gov](mailto:sholton@rc.mt.gov))  
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