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*Attorneys for Plaintiff/Petitioner*

**MONTANA TWENTY FIRST JUDICIAL DISTRICT COURT, RAVALLI COUNTY**

<p>PUBLIC LAND/WATER ACCESS ASSOCIATION, INC.</p> <p style="text-align: center;">Plaintiff/Petitioner,</p> <p style="text-align: center;">vs.</p> <p>RAVALLI COUNTY and BOARD OF RAVALLI COUNTY COMMISSIONERS,</p> <p style="text-align: center;">Defendants/Respondents.</p>	<p>Cause No. DV-41-2021-0000433-WM Hon. Leslie Halligan</p> <p style="text-align: center;"><b>DECLARATION OF DREWRY HANES</b></p>
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I, Drewry Hanes, hereby state under penalty of perjury that:

1. I am an adult resident of Bozeman, Gallatin County, Montana.
2. I am a member and the Executive Director of Public Land/Water Access

Association, Inc. (PLWA).

3. I make this declaration on my own personal knowledge.
4. I am aware of Respondent Board of Ravalli County Commissioner's (Board)

February 6, 2017 order declaring the Hughes Creek Road to be a public highway pursuant to the statutory petition process for at least 11.8 miles in length. PLWA's attorney, Kyle W. Nelson,

attended, on behalf of PLWA, the Board's January 25, 2017 public hearing on certain landowners' petition to abandon the Hughes Creek Road, which the Board denied.

5. I am further aware that in July 2019 the Montana Supreme Court affirmed in *Bugli v. Ravalli County*, 2019 MT 154, ¶ 32, 396 Mont. 271, 444 P.3d 399 (*Bugli II*) the Board's determination that the Hughes Creek Road is a public highway for at least 11.8 miles.

6. Ravalli County did not, following the *Bugli II* decision, immediately remove the gate that blocked the Hughes Creek Road.

7. After more than a year had passed, on October 9, 2020, PLWA, through its counsel wrote Ravalli County and requested that the County performed its clear legal duty and immediately remove the gate. Ltr. Nelson-Ravalli Cty. Board (Oct. 9, 2020), attached as Ex. 1. Ravalli County did not immediately remove the gate.

8. On January 7, 2021, PLWA, through its counsel wrote to Governor Gianforte and Attorney General Knudsen asking that they use the power of the state of Montana to force Ravalli County to immediately remove the gate. Ltr. Geddes-Gianforte/Knudsen (Jan. 7, 2021), attached as Ex. 2. Six days later, on January 13, 2021, Ravalli County removed the gate.

9. I am aware that in spring 2021 the landowner on Hughes Creek Road installed another gate blocking the road. Ravalli County did not remove that gate until June 21, 2021.

10. In July 2021, after Ravalli County removed a gate at approximately 8.5 miles up the Hughes Creek Road, I am aware that PLWA member Jim Olson travelled up the Hughes Creek Road and discovered a new gate about 150 yards further up the road but still on the portion declared to be public by the Board. There were also several felled trees and other brush on the

other side of the gate obstructing the road. The gate included a menacing sign threatening to shoot any “trespasser.”

11. I am aware that in July 2021, Mr. Olson notified Ravalli County Commissioner Greg Chilcott and former deputy county attorney Royce McCarty of the gate and obstructions and asked for their removal.

12. When the gate was still up two months later, PLWA, through counsel, wrote Ravalli County on September 21, 2021 and requested that the County perform its legal duty to remove the new gate. Ltr. Nelson-McCarty (Sept. 21, 2021), attached as Ex. 3. PLWA’s letter asked that the County have the gate removed by Oct. 16, 2021, which was approximately one month away.

13. PLWA received a letter from the County (through counsel) dated October 1, 2021 responding to PLWA’s September 21, 2021 letter. Ltr. McCarty-Nelson (Oct. 1, 2021), attached as Ex. 4. The letter from the County states that the County will not provide PLWA a “timeline for completion” of its process surrounding the new gate on the Hughes Creek Road. That letter states only that the County is “investigating and addressing this situation in accordance with Montana law[.]” The County did not say it planned to remove the gate at any time.

14. I am aware that in late October 2021, Mr. Olson travelled up the Hughes Creek Road and found that the gate and felled timber and brush were still in place, and that the gate then had several new menacing signs.

15. PLWA filed its complaint in this case on October 21, 2021 because the County—despite repeated requests from PLWA—had not immediately removed the gate. At that point,

the gate had been in place for four months, blocking the road throughout the entire summer and fall.

16. After the lawsuit was filed, the County asked for two extensions of time, on November 18, 2021 and December 10, 2021, to respond to the PLWA's complaint.

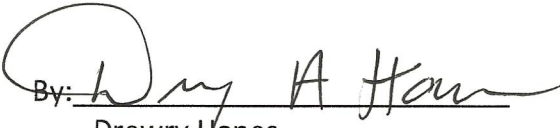
17. I am aware that in the days before Christmas Day, one week before the County's answer was due, that the gate and obstructions blocking the Hughes Creek Road were finally removed. I understand that the landowner actually removed the metal gate and had installed a wire gate in its place. The County only removed the wire gate and then cleared the brush and felled timber,

18. With that timeline, it took Ravalli County over six months to perform its legal duty to "immediately" remove the new gate and obstructions blocking the Hughes Creek Road. Before that, it took Ravalli County months to remove the gate from spring 2021 to late June 2021. Before that, it took Ravalli County over a year and a half since the Montana Supreme Court affirmed that the Hughes Creek Road is a public road to remove the original gate that had blocked the road. And before that, Hughes Creek Road had been illegally blocked for nearly forty years.

19. Now, within days of the County's removal of the gate in late December 2021, the Hughes Creek has been blocked again, this time by a large excavator, and the County has not removed that encroachment.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 12<sup>th</sup> day of January, 2022.

By:   
Drewry Hanes

James H. Goetz  
Robert K. Baldwin  
J. Devlan Geddes  
Trent M. Gardner  
Kyle W. Nelson  
Jeffrey J. Tierney  
Katherine B. DeLong  
Braden S. Murphy

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October 9, 2020

**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), 7-14-2134(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 there 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 expressly rejected the landowners' contentions and 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 determined that the unlawful gate “is an encroachment” of the highway right-of-way and 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 (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

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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).



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))  
Royce McCarty, Ravalli County Attorney’s Office ([rmccarty@rc.mt.gov](mailto:rmccarty@rc.mt.gov))  
Ryan Domsalla, U.S. Forest Service ([rdomsalla@fs.fed.us](mailto:rdomsalla@fs.fed.us))



SPECIAL AND REGULAR MEETINGS  
OF THE  
RAVALLI COUNTY BOARD OF COUNTY COMMISSIONERS

REGULAR MEETING 9:30 AM (starting with Agenda Item 6)

Wednesday, January 25, 2017

Commissioners' Meeting Room  
County Administration Building,  
215 S. 4<sup>th</sup> St, Hamilton, MT 59840.

*P*  
*JB*  
*RZ*

6. Public Hearing - Petition to Abandon a Portion of Hughes Creek Road

Present:

Terry Nelson, Planner  
Glenda Wiles, BCCAA  
Howard Recht, Civil Counsel  
Dan Browder, Civil Counsel  
Dusty McKern, RCRBD  
Sheriff Steve Holton  
U.S. Travis McElderry

Also present:

Jesse Kodadek, Attorney  
Ryan Domsalla, USFS  
Kristen Swindle, USFS  
Angus Baker  
Marcella Baker  
Jim Olson  
Jay Bugli  
Mike Stephens  
Joe Kirschn  
Wade Cox  
Charlene Cox

Kyle Nelson  
Lewis Mikolaichik  
Suzanne Raski  
Kent Miller  
Fred Weisbecker  
Dave Olson  
Karen Phillips  
Bill Slomp  
Brent Race  
Katie Phillips  
Jacob Pintok

Julie King  
Doug Anderson  
Sheila Schroff  
John Ormiston  
Del Reynolds  
Mike Jeffords  
Lynn Kleen  
Seth Pogue  
Kathy Jeffords  
Dave Campbell

Public Comment:

Seth Pogue  
Jay Bugli, Applicant  
Jesse Kodadek, Worden Thane Law  
Mike Jeffords  
Dave Campbell  
Jim Olson  
Ryan Domsalla, USFS  
Lola Grenfell  
Tony Hudson  
Kyle Nelson, PLWA Attorney  
Mike Stephens



Dave Olson  
Lola Grenfell  
Jesse Kodadek  
Jim Olson  
Seth Pogue  
Lewis Mikolaichik

Close public comment 11:11 AM

BCC concurrence

Finding of Fact 1:

There is evidence which shows that the road is not more than 12 miles in length, commencing from the Alta Post Office (at least 11.8 to no more than 12 miles). All BCC concur.

Finding of Fact 2:

There is evidence that the original public process and petition for said road was legally followed. All BCC concur.

Public comment:

Lewis Mikolaichik  
Dave Campbell  
Ryan Domsalla, USFA

Finding of Fact 3:

The existing road beyond the gate (8.5 miles from start (West Fork Road), via GPS) leaves private lands and enters public lands at various points. All BCC concur.

Public comment:

Ryan Domsalla, USFS  
Jesse Kodadek

Finding of Fact 4:

There is evidence that this road, located above the gate as the gate sits today, does provide public access to public lands or public waters. All BCC concur.

Finding of Fact 5:

This road does have a 60 foot wide easement. All BCC concur.

Finding of Fact 6:

Within the June 5, 1900 road application, Hughes Creek Road was established as a public highway right of way by legally submitted petition. All BCC concur.

Finding of Fact 7:

If abandonment of Hughes Creek Road for 11.8 to 12 miles from West Fork Road were to occur, substantial access would not be provided, per MCA 7-14-2615 (3). Commissioners Chilcott, Burrows, Schallenberger and Hoffman concur, Commissioner Hawk does not concur.

Public comment:

Ryan Domsalla, USFA  
Jesse Kodadek

Lewis Mikolaichik  
Dave Campbell

**Commissioner Burrows moved to deny the petition to abandon a portion of Hughes Creek Road. Seconded by Commissioner Hoffman. Public comment on motion: none. Discussion: Commissioners Schallenberger, Hawk, Burrows, Hoffman and Chilcott. Commissioner Burrows, Hoffman and Chilcott voted "aye"; Commissioner Hawk and Schallenberger voted "nay", motion passed (3-2).**

**7. Possible Discussion and Decision on the Gate on Hughes Creek Road**

Public comment:

Jim Olsen  
Ryan Domsalla, USFS  
Jesse Kodadek  
Ryan Domsalla, USFS  
Jay Bugli

**Commissioner Hoffman moved to postpone any decision on this item until the property owners have had a chance to discuss. Motion died for lack of a second.**

Finding of Fact 1:

The gate is an encroachment in highway right of way. All BCC Concur.

Public Comment:

Kyle Nelson  
Wade Cox

**Commissioner Hawk moved to adopt Resolution No. 3495 and approve the order of the gate removal, encroachment located on Hughes Creek Road, and removal of said gate be completed by June 01, 2017. Seconded by Commissioner Hoffman. Public comment on motion: Jim Olson and Kyle Nelson. Discussion: none. All voted "aye" (5-0).**

**8. Public comment on items not otherwise on the agenda**

None.

**9. Adjournment**

**Commissioner Hawk moved to adjourn the meeting. Seconded by Commissioner Burrows. All voted "aye" (5-0).**

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Glenda Wiles, Administrative Assistant

James H. Goetz  
Robert K. Baldwin  
J. Devlan Geddes  
Trent M. Gardner  
Kyle W. Nelson  
Jeffrey J. Tierney  
Katherine B. DeLong  
Braden S. Murphy

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[knelson@goetzlawfirm.com](mailto:knelson@goetzlawfirm.com)

January 7, 2021

**VIA EMAIL/FASCIMILE AS INDICATED  
FOLLOWED BY U.S. MAIL**

Governor Greg Gianforte (Fax: 406-444-5529)  
Office of the Governor  
P.O. Box 200801  
Helena, MT 59620-0801

Attorney General Austin Knudsen (Email: [contactdoj@mt.gov](mailto:contactdoj@mt.gov))  
Office of the Attorney General  
Justice Building, Third Floor  
215 N. Sanders  
P.O. Box 201401  
Helena, MT 59620-1401

*Re: Request for Removal of Illegal Encroachment/Gate on Hughes Creek Road  
Ravalli County, Montana*

Dear Governor Gianforte and Attorney General Knudsen:

My firm represents the Ravalli County Fish & Wildlife Association and Public Land/Water Access Association (“PLWA”). I am writing to inform you that Ravalli County has abandoned its statutory duty to remove a gate obstructing public access along the Hughes Creek Road—a county road—as well as the public lands and waters that are accessed solely by that road. The gate is unlawfully encroaching on a Montana public highway. Because the County refuses to comply with Montana law mandating this gate be “immediately” removed, §§ 7-14-2133 and 7-14-2134, MCA, we respectfully request the State step in, remove the unlawful gate, and ensure safe public access on Hughes Creek Road and the public lands and waters beyond it.

**I. Background of Hughes Creek Road Dispute.**

Hughes Creek Road (“Road”) is a county road built in 1900. It begins at its junction with West Fork Road near the confluence of Hughes Creek and the West Fork of the Bitterroot River. *Bugli v. Ravalli Cty.*, 2019 MT 154, ¶ 3, 396 Mont. 271, 444 P.3d 399 (“*Bugli IP*”).



In the late 1970's, a locked gate was placed across the Road. *Bugli II*, ¶ 7. In 1982, prior landowners abutting the Road took additional steps to block public access over the Road and the public lands and waters accessed by it: they petitioned the Ravalli County Board of County Commissioners ("Board") to abandon the Road beyond the gate as a county road. *See id.* Significantly, a county may not abandon a county road used for access to public land or waters, unless another public road provides substantially the same access. *Bugli II*, ¶ 27 (citing § 7-14-2615(3), MCA). In obvious recognition of this law and finding that the Road provided access to a USFS trailhead and federally managed public lands, the Board denied the abandonment petition and ordered removal of the gate. *See Bugli II*, ¶ 7.

In 1984, the Board filed suit to remove this gate (as well as another gate) across the Road. That case, however, was later dismissed without the gates being removed.

Now, despite decades having passed, and the Montana Supreme Court's rejection of multiple legal challenges by certain landowners along the Road, the obstructing gate still exists today. *Id.*; *see also Bugli v. Ravalli Cty.*, 2018 MT 177, ¶¶ 4, 12, 392 Mont. 131, 422 P.3d 131 ("*Bugli I*").

In July 2016, in another attempt to avoid removing the gate, landowners Zackary and Tracy Bugli, along with members of the Cox family, petitioned the Board to abandon the county road segment of the Road beyond the gate. *Bugli II*, ¶ 10; *see also Bugli I*, ¶¶ 1, 5. Once again, in January 2017, following a public hearing and consideration of an extensive historical record, the Board denied the abandonment petition. In their denial, the Board expressly recognized that the Road is an approximately 12-mile long county road that provides public "access to public lands or waters" that would be entirely cut off if abandoned. The Board further found that the locked gate unlawfully encroached on the Road and **ordered the gate's removal by June 1, 2017**. *Bugli II*, ¶ 11.

Litigation<sup>1</sup> by the landowners delayed the gate's removal by this deadline. But ultimately, in July 2019, at Ravalli County's request and its taxpayers' expense, the Montana Supreme Court expressly rejected the landowners' contentions, removing any uncertainty over Ravalli County's mandate to the landowners to remove the gate. *Bugli II*, ¶¶ 32-33.

As such, per the binding precedent of *Bugli II*, it has now been undisputed for well over a year that:

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<sup>1</sup> The landowners initiated the first lawsuit on April 10, 2017, when they filed a complaint for declaratory and injunctive relief, seeking relief, in part, from having to remove the gate and allow public access over Hughes Creek Road. *Bugli I*, ¶ 6. While the appeal of the first lawsuit was pending in the Montana Supreme Court, the landowners filed the second lawsuit on July 31, 2017, seeking review of the Board's denial of their abandonment petition. *Bugli II*, ¶¶ 15-18.

- Hughes Creek Road is a legally established county road/public highway that is being illegally blocked by the locked gate; and
- The locked gate is blocking the public's right to access public lands and waters beyond the gate.

## II. Montana Law Requires Immediate Removal of the Gate Obstructing Public Access.

Montana law clearly and unequivocally mandates the gate— which is an obstruction and encroachment— “shall” be “immediately” removed. §§ 7-14-2133 and -2134, MCA. Sections 7-14-2133 and -2134, MCA, which govern obstructions and encroachments on county roads and public highways, 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), 7-14-2134(1)-(3), MCA (emphasis added).

The legislature's use of the word “shall” is mandatory, meaning removal of the encroachment is required. *See Gaustad v. City of Columbus*, 265 Mont. 379, 381-82, 877 P.2d 470, 471 (1994) (“[s]hall” is understood to be compelling or mandatory). To abide by Montana law, the government has no choice but to immediately remove the gate.

PLWA tried to work cooperatively with the Board and the Ravalli County Attorney's Office to

reach an amicable solution to this problem, to no avail. Seeking a resolution short of litigation, PLWA sent the Board a letter on October 9, 2020, urging them to act on its mandate and require the gate's removal. PLWA further informed the Board that if it is forced to initiate legal action to compel the Board to enforce the law, that PLWA is prepared to file a mandamus action to do so and will seek its attorneys' fees under the mandamus statute as well as the private attorney general doctrine. *See* §§ 27-26-102 and -402, MCA; *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"); *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 (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"). Finally, PLWA pointed out the Board's legal responsibility for failing to take action to remove obstructions on county roads. § 7-14-2133, MCA.

With full knowledge of the Board's statutory duties, and in complete dereliction thereof, the Board is refusing to take any steps whatsoever to remove the gate. In November 2020, the Ravalli County Attorney's Office, unwilling to put a response in writing, informed this firm in a phone call:

- The Board is not going to respond to this firm's October 9, 2020 letter;
- The Board is not going to take any steps to remove the illegal gate across the Road despite successfully defending its prior mandate twice at the Montana Supreme Court; and
- Instead, Ravalli County is now planning to defend against a mandamus lawsuit on the basis that removing the gate is a threat to public health and safety, as a result of the landowners' threats of violence toward anyone who attempts to remove the gate.

Furthermore, the Ravalli County Sheriff's Office has indicated it will require a court order before it will lend peace-keeping assistance to those who perform work to remove the gate.

In short, Ravalli County acknowledges it has a clear legal duty to remove the gate that is blocking public access to public land and waters. Nonetheless, the County refuses to act.<sup>2</sup> Instead, the County is surrendering to the vigilantism of a few menacing landowners along the Road who flout Montana law and threaten harm to anyone trying to remove the gate or access the Road. That lawlessness must not be condoned.

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<sup>2</sup> Indeed, the Ravalli County attorney is charged with prosecuting an action for violating the law as provided in Title 7, chapter 14, parts 21. § 7-14-2138, MCA.



### III. The State Must Take Action to Protect Public Access to Public Land and Waters and Restore Law and Order in Ravalli County.

Ravalli County's refusal to enforce the public's right to access public lands and waters is a matter of great public importance that must not be ignored. It is undisputed that:

1. **Hughes Creek Road is a public road open to everyone.** The Road is not just reserved for the few rogue landowners who currently control this county road and surrounding public land by threatening violence to anyone—including law enforcement—who dares to take down their gate.
2. **The Road accesses public water and public land, which belong to the public.** In fact, the "Road provides legal access to thousands of acres of USFS land" and "is the *only* county road within the Hughes Creek drainage." *Bugli II*, ¶ 36 (emphasis original).

The Montana Supreme Court recently recognized:

...the Board...could not legally abandon the county portion of Hughes Creek Road because it provided the only legal means for public access to the public lands and waters beyond the Landowners' locked gate. **Montana law prevents private land owners from blocking public access to public lands and waters** through Montana's statutory process for abandoning county roads.... **Montana's public lands belong to the public** and cannot be enjoyed or properly managed where counties have abandoned legal access points in favor of private ownership."

*Bugli II*, ¶ 36 (citing § 7-14-2615(3), MCA) (emphasis added).

3. **Hughes Creek Road is gated and illegally blocked by neighboring landowners.** This is evident from Montana Supreme Court's holdings in *Bugli I* and *Bugli II*, *supra*.
4. **Ravalli County is refusing to perform its legislatively mandated job of removing the gate or taking action to rectify the encroachment over this county Road.** The County is abdicating its legislative mandate and custodial duty to control and manage the Road. *See* §§ 7-14-2133 and -2134, MCA; *Bugli I*, ¶ 15 (citing §§ 7-5-2101 and 7-14-2101(1)(a)(i), MCA). By refusing to remove the gate and maintain public access over the Road, the County is violating the "high degree of trust" the legislature placed in the Commissioners' hands to protect county roads. *See* § 60-1-102(1)-(2), MCA.

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Clearly, Ravalli County is failing the public and violating Montana law. A government's refusal to uphold the rule of law, for fear of retribution by a few outlaw neighbors, is a dangerous proposition to American democracy and our peaceful way of life in Big Sky Country.

**Thankfully, the State of Montana, through your honorable offices, has the authority to step in, remove the gate, and restore law and order in Ravalli County.**

By virtue of its status as a county road, the State owns and is ultimately responsible for Hughes Creek Road, pursuant to Montana law:

The state through its legislature primarily has the power to control and regulate the public highways and their use. The power is an exercise of the police power of the state to protect the highways and promote the safety, peace, health, morals and general welfare of the public.

*City of Billings v. Herold*, 130 Mont. 138, 141-142, 296 P.2d 263, 264 (1956) (citing 40 C.J.S., Highways, § 232, pp. 240, 241). As such, the State has primary authority over public roads, such as Hughes Creek Road, whereas local governments serve as trustees and only have the jurisdiction delegated to them by the legislature. *See State ex rel. Rocky Mountain Bell Telephone Co. v. Mayor, etc., of City of Red Lodge*, 30 Mont. 338, 76 P. 758 (1904) (cities only have the authority granted to them by state legislature, and state does not surrender control over streets to cities); *Dakota Utilities Co. v. City of Billings*, 2003 MT 332, ¶ 28, 318 Mont. 407, 80 P.3d 1247; *Herold*, 130 Mont. at 141-142, 296 P.2d at 264-65 (Through its police powers, the state has the power to regulate and control public highways to promote the public's safety, peace, health, morals and general welfare); *Bidlingmeyer v. City of Deer Lodge*, 128 Mont. 292, 297, 274 P.2d 821, 823 (1954) (Although a municipality's source of police power is delegated from the state, the state may "take away or revoke a part or all of the authority which it has delegated to the cities."); *see also* § 7-14-2109, MCA (state can require counties to transfer county roads to state for highway purposes).

Because Ravalli County and its County Attorney are refusing to preserve public access by taking the necessary steps to remove the gate and prosecute those thwarting the law, the State is responsible to rectify this dire situation. Safe and efficient travel over public roads is of "important interest to all" Montanans and preserves the "public peace, health, and safety[.]" § 60-1-101, MCA. Blocking the public's ability to safely travel over public roads is an "urgent" problem. *See* § 60-1-101(2), MCA. The State has a statutory duty to "assist and cooperate with" the County in this matter and has "broad authority" to take the necessary steps to remove the gate and reopen the Road to the public. *See* § 60-1-102(3)-(4), MCA; *see also*: §§ 60-2-110, -111, -126, -201, -204, -210, -211, MCA and § 7-14-4108, MCA (statutes providing for cooperation between state, counties and cities). This is consistent with the legislature's intent, with respect to the county road statutes, "to provide sufficiently broad authority to enable the highway officials at all levels of government to function adequately and efficiently in all areas of their respective responsibilities, subject to the limitations of the constitution and the legislative mandate

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imposed.” § 60-1-102(4), MCA.

If counties were allowed to completely ignore the mandates of the statutes, they would be of no legal consequence. This could not have been the intent of the legislature.

*Madison County v. Elford*, 203 Mont. 293, 302, 661 P.2d 1266, 1270 (1983) (County’s eminent domain proceedings did not substantially comply with mandates of Chapter 7, Section 14, MCA).

Mr. Governor and Mr. Attorney General: PLWA urges the State to take immediate action to rectify this injustice. Any failure to act by the State will not only violate the public’s right of access to the public lands and waters accessed by Hughes Creek Road, but it will also constitute a complete abdication of your charge to maintain law and order in Montana.

Neither the State nor Ravalli County should condone these illegal actions. To do so would defy norms essential to maintaining a civil society and would be a tacit endorsement of lawlessness and mayhem. Yesterday’s actions at the U.S. Capitol demonstrate how quickly the mob can seize control when our political leaders fail to enforce the rule of law. Regardless, the public coffers should not have to fund potentially expensive litigation to compel compliance with the law, especially after the taxpayers already paid to establish Ravalli County’s right/obligation to remove the illegal gate. The State must exercise its authority, to the full extent of the law to ensure that those who threaten public safety and are held to account.

Sincerely,



J. Devlan Geddes

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))  
Royce McCarty, Ravalli County Attorney’s Office ([rmccarty@rc.mt.gov](mailto:rmccarty@rc.mt.gov))  
Ryan Domsalla, U.S. Forest Service ([rdomsalla@fs.fed.us](mailto:rdomsalla@fs.fed.us))

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September 21, 2021

**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 Encroachments & Obstructions on Hughes Creek Road*

Dear Commissioners:

My firm represents the Public Land/Water Access Association. PLWA respectfully requests that the Ravalli County Board of County Commissioners comply with the mandatory provisions of MCA, §§ 7-14-2133 and 7-14-2134 and “immediately” remove the new unlawful gate and other obstructions blocking public access to the Hughes Creek Road. Ravalli County has known since July 2021 of the new gate as well as the felled trees obstructing the original roadbed beyond the new illegal gate (pictures enclosed). With all due respect, the two months that has elapsed has been more than enough time to develop a plan, comply with the law and have these obstructions removed.

If the gate and trees are not removed by **October 16, 2021**, PLWA will assume that Ravalli County has no intention of performing its clear legal duties under §§ 7-14-2133 and 7-14-2134, MCA to remove the encroachment and obstructions.

Sincerely,



Kyle W. Nelson

KWN:kp  
Enclosures



cc: Dan Huls, Commissioner (Email: [dhuls@rc.mt.gov](mailto:dhuls@rc.mt.gov))  
Greg Chilcott, Commissioner (Email: [gchilcott@rc.mt.gov](mailto:gchilcott@rc.mt.gov))  
Jeff Burrows, Commissioner (Email: [jburrows@rc.mt.gov](mailto:jburrows@rc.mt.gov))  
Stephen Holton, Ravalli County Sheriff (Email: [sholton@rc.mt.gov](mailto:sholton@rc.mt.gov))  
Royce McCarty, Ravalli County Attorney's Office (Email: [rmccarty@rc.mt.gov](mailto:rmccarty@rc.mt.gov))  
Bill Fulbright, Ravalli County Attorney (Email: [bfulbright@rc.mt.gov](mailto:bfulbright@rc.mt.gov))  
Ryan Domsalla, U.S. Forest Service (Email: [rdomsalla@fs.fed.us](mailto:rdomsalla@fs.fed.us))  
Greg Gianforte, Montana Governor (Fax: 406-444-5529)  
Austin Knudsen, Montana Attorney General (Email: [contactdoj@mt.gov](mailto:contactdoj@mt.gov))



SPRINT WITH BEST BELLY X D 250 X 20 BCOA HEAT NO SP



**WARNING**  
**NO TRESPASSING**

You quite possibly could  
get shot or hurt and  
then try to sue resulting  
in a long drawn out  
court battle.

**You Will Lose.**

Because this sign  
will be:

**"EXHIBIT A"**



# Ravalli County Attorney

205 Bedford Street, Suite C ♦ Hamilton, MT 59840 ♦ (406) 375-6750 ♦ Fax (406) 375-6731

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County Attorney:

**Bill Fulbright**

Chief Deputy Attorney:

**Angela Wetzsteon**

Deputy Attorneys:

**Royce McCarty**

**Clay Leland**

**David Lakin**

**Lauren Maes**

**Hao Wang**

October 1, 2021

Mr. Kyle Nelson, Esq.  
Goetz, Baldwin & Geddes, P.C.  
P.O. Box 6580  
Bozeman, MT 59771

Re: *Hughes Creek Road*

Dear Mr. Nelson:

I am writing in response to your letter dated September 21, 2021, addressed to the Ravalli County Commissioners concerning encroachments and obstructions on the Hughes Creek Road.

As I explained in my telephone conference with you on September 17, 2021, the County has removed a gate from Hughes Creek Road twice in 2021. Following the County's latest removal of a gate in June 2021, a new gate was erected at a new location further up the road. Additionally, it appears that a new road was constructed directly behind the gate that appears to start in the public easement, but at some point may leave the public easement and cross private property. The construction of the new road has raised several new issues being examined and researched by the County.

I will reiterate what I told you in our telephone conversation: The County is doing its due diligence in light of the new situation we are encountering at this new location. The County will not be providing you, or anyone else, the details of the process or a timeline for completion. On each prior occasion of removal, the release of any information immediately led to a social media circus, with much misinformation attributed to the County, which significantly increased tensions and personal risks to all of the individuals involved.

Your repeated phone calls demanding different answers to the same questions, and you "setting" an arbitrary deadline for the County's completion of its due diligence in this new situation, are unproductive. The County is taking all reasonable steps in investigating and addressing this situation in accordance with the law, to insure that the rights of the public as well as the rights of the landowners are respected, all while minimizing any dangers to public safety.

Sincerely,



**Royce A. McCarty, Jr.**  
Deputy Ravalli County Attorney

EXHIBIT

4

tabbies

cc: Dan Huls, Commissioner (Email: dhuls@rc.mt.gov)  
Greg Chilcott, Commissioner (Email: gchilcott@rc.mt.gov)  
Jeff Burrows, Commissioner (Email: jburrows@rc.mt.gov)  
Stephen Holton, Ravalli County Sheriff (Email: sholton@rc.mt.gov)  
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