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FILED

JUN 27 2016

Karen J. Miller  
District Court  
*Karen J. Miller*

MONTANA FIFTH JUDICIAL DISTRICT COURT, MADISON COUNTY

PUBLIC LANDS ACCESS  
ASSOCIATION INC.,

Cause No. DV-29-04-43

Petitioners,

vs.

THE BOARD OF THE COUNTY  
COMMISSIONERS OF MADISON  
COUNTY, STATE OF MONTANA, and  
C. TED COFFMAN, FRANK G. NELSON  
and DAVID SCHULZ, constituting  
members of said commission; and  
ROBERT R. ZENKER, in his capacity as  
the County Attorney of Madison County,  
State of Montana,

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER  
ON  
WIDTH OF SEYLER LANE  
AT RUBY RIVER

Respondents,

and

THE MONTANA STOCKGROWERS  
ASSOCIATION, HAMILTON RANCHES,  
INC., and JAMES C. KENNEDY,

Intervenors.

The Montana Supreme Court remanded the case to this Court to determine the width of the Seyler Lane public right-of-way. The Montana Supreme Court directed this Court “to consider the evidence in the record, and conduct whatever additional proceedings it deems necessary, to establish a definite width of the single, unified, public road right-of-way at Seyler Lane.” 2014 MT 10, ¶32; 373 Mont 277; 321 P.3d 38. Further, the Montana Supreme Court directed this Court to:

consider the lands used in connection with the bridge (§60-1-103(2), MCA); “the incidents necessary to enjoying and maintaining it”; (§7-14-2107(3), MCA); and the historical evidence of the “nature of the enjoyment by which it was acquired” (§70-17-106, MCA) including recreational use. *Id.* at ¶38.

1 The District Court conducted additional evidentiary hearings on August 3, 2015 and  
2 February 22, 2016. In accord with discussion among the parties and the Court and confirming  
3 Court Order, the parties have submitted no evidence regarding recreational use of the disputed  
4 area. There may be no necessity to do so unless Petitioner is dissatisfied with the width of the  
5 road established by these Findings of Fact, Conclusions of Law and Order.

## 6 FINDINGS OF FACT

### 7 Traveled Surface, Lateral and Subjacent Support

8 1. The bridge surface is 24 feet wide. The paved portion of the road approaching the  
9 bridge is approximately 20 feet wide on fill that slopes down and away from the edge of the  
10 pavement. The lowest edge of the road fill is referred to as the "toe" of road fill, which is  
11 depicted with dashed lines on Exhibit 1-A.

12 2. The topography of the bridge and its approaches are set out on Exhibits 1-A and 1-B.  
13 Both Petitioner and Madison County referred to Exhibits 1-A and 1-B and seemingly request the  
14 Court to adopt the data presented in those exhibits as appropriate measurements.

15 3. The width of the sections depicted and described by Exhibits 1-A and 1-B are as  
16 follows;

17	A to A <sup>1</sup>	46 feet
18	B to B <sup>1</sup>	45 feet
19	C to C <sup>1</sup>	39 feet
20	D to D <sup>1</sup>	37.5 feet
21	E to E <sup>1</sup>	37.5 feet
	F to F <sup>1</sup>	44 feet
	G to G <sup>1</sup>	47.5 feet
	H to H <sup>1</sup>	47 feet
	I to I <sup>1</sup>	50 feet

22 4. The widths depicted and described on Exhibits 1-A and 1-B at their specified cross  
23 sections accurately show and describe that portion of the earth's surface which is necessary for  
24 the traveled way and lateral and subjacent support, including those areas in which it has been  
25 either necessary or desirable to elevate the road surface and bridge deck above the natural  
26 contour of the surface of the earth. Exhibit 2-B depicts an "estimate" of various layers of road  
27 construction.

1 **Traveled Surface, Lateral and Subjacent Support and Borrow Pits**

2 5. Exhibit 1-A and Exhibit 1-B do not depict or describe areas utilized for borrow pits.

3 6. Borrow pits are a typical and necessary element of road use, maintenance and  
4 enjoyment. They provide a combination of fill material and drainage. They are necessary to Seyler  
5 Lane use, maintenance and enjoyment.

6 7. Exhibit 2-B provides information of the existence, general location and shape and size  
7 of the borrow pits in certain areas on each side of Seyler Lane.

8 8. The scale provided on Exhibit 1-A and 2-B allows each cross section to be located at a  
9 precise distance from the bridge. Exhibits 1-A and 2-B coincide generally, but are not precisely  
10 congruent.

11 9. The cross sections on Exhibit 1-A are located sufficiently near cross sections on  
12 Exhibit 2-B as set out below to inform the Court of the existence and dimension of borrow pits at  
13 the cross sections depicted on Exhibit 1-A:

14 Exhibit 1-A

Exhibit 2-B

15 A - A <sup>1</sup>	4
16 B - B <sup>1</sup>	4
17 C - C <sup>1</sup>	5
18 D - D <sup>1</sup>	5
19 E - E <sup>1</sup>	6
F - F <sup>1</sup>	7
G - G <sup>1</sup>	8
H - H <sup>1</sup>	9
I - I <sup>1</sup>	10

20 10. The coinciding information derived from Exhibits 1-A, 1-B, and 2-B in combination  
21 show and describe the width of the Seyler Lane right of way near the Ruby River.

22 11. The total width of the Seyler Lane road which is necessary for traveled surface,  
23 lateral and subjacent support and borrow pits is set out as follows:

24 A - A <sup>1</sup>	50 feet
25 B - B <sup>1</sup>	50 feet
26 C - C <sup>1</sup>	39 feet (there are no borrow pits)
27 D - D <sup>1</sup>	37.5 feet (there are no borrow pits)
28 E - E <sup>1</sup>	37.5 feet (there are no borrow pits)
F - F <sup>1</sup>	44 feet (there are no borrow pits)
G - G <sup>1</sup>	65 feet
H - H <sup>1</sup>	50 feet
I - I <sup>1</sup>	50 feet

1           **Lateral and Subjacent Support, Borrow Pit and Maintenance/Inspection**

2           12. Use, maintenance and enjoyment of the bridge and road also require space for  
3 maintenance, inspection, repair, and potential future replacement.

4           13. The credible evidence is that virtually no space wider than the bridge deck will be  
5 necessary for replacement purposes. However, historical use and maintenance includes a greater  
6 width under and near the ends of the bridge.

7           14. Madison County historically has used areas wider than the paved surface for  
8 maintenance, including mowing; removing snow; weed control and line of sight clearance. On  
9 some occasions those areas may have been wider than the combined distance of the paved  
10 surface; lateral and subjacent support; and borrow pits. However, such occasional use has been  
11 irregular and serendipitous rather than necessary.

12           15. Madison County's removal of brush either has been or can be completed reasonably  
13 within the widths used for the traveled way, lateral and subjacent support and borrow pits.

14           16. Fences have been erected in areas which have been convenient (or least  
15 inconvenient). The fences do not inform the Court about the area necessary for traveled way,  
16 lateral and subjacent support, borrow pit drainage and maintenance.

17           17. The critical location which heretofore has not been defined by measurement involves  
18 the area which the public requires for use, maintenance and enjoyment of the road and bridge  
19 from each bridge abutment to the high water mark on each side of the river respectively.

20           18. Madison County and the State of Montana via their agents, have traveled upon a strip  
21 of ground between the abutments and the high water marks of the river extending an average of  
22 approximately 5 feet upstream and downstream from the ends of the bridge abutments. These  
23 distances inform the Court of that which is reasonably necessary for use, maintenance and  
24 enjoyment.

25           19. The fact that such area has been used upstream and downstream from the end of each  
26 abutment persuades that such distance is reasonably necessary to the public interest in and right  
27 to inspect and maintain the bridge.

28

1 20. Exhibit 105 is an approximation of an approximation. It also is acknowledged to be  
2 inaccurate. It is not particularly useful.

3 21. At the bridge abutment sections D - D<sup>1</sup> and E to E<sup>1</sup> on Exhibit 1-A there are no  
4 borrow pits. The total width which is necessary for use, maintenance and enjoyment of Seyler  
5 Lane including five feet upstream and downstream from the end of each of the bridge abutments  
6 at the sections noted below is as follows:

7	D - D <sup>1</sup>	47.5 feet
8	E - E <sup>1</sup>	47.5 feet

9 22. There is no evidence to support a finding that surveyors who marked off adjacent or  
10 nearby parcels of land were concerned about the dimensions of the Seyler Lane right of way.  
11 Likewise, there is no evidence that they were aware of dimensions involved in historic use or  
12 took such dimensions into account in preparing their surveys.

13 23. Rip rap placed in the river is below the high water mark.

#### 14 CONCLUSIONS OF LAW

15 1. Rip rap placed in the river below the high water mark is placed in an area open to  
16 public use. It informs nothing about the width of the Seyler Lane Road.

17 2. Various certificates of survey created for purposes of making and adjusting property  
18 lines among neighbors are not useful. Surveys created to adjust boundary lines between  
19 neighbors are presumably focused on those issues rather than the location or dimensions of  
20 county roads.

21 3. A surveyor who prepares a boundary survey for a private party does not control the  
22 location or dimensions of a county road obtained by prescription. Such location and dimension  
23 are established by historic use.

24 4. The width of a public prescriptive right of way includes an area necessary for  
25 travel/use, maintenance and enjoyment.

26 5. The width of a prescriptively acquired county road includes the traveled way, area for  
27 lateral and subjacent support, and that which has been utilized and is reasonably required for  
28 maintenance which includes borrow pits and an area adequate for inspection.

1           6. Fences may provide some evidence of the manner in which an area is generally used.  
2 However, a fence outside the area the public has historically used for travel, lateral and subjacent  
3 support, maintenance and enjoyment does not enlarge the public right of way. Conversely a fence  
4 recently erected and/or installed by permission of the County does not diminish of the public  
5 right of way.

6           7. The fact that the public may not have used an inspection width at every abutment end  
7 in recent times does not control that which is reasonably necessary for maintenance and  
8 inspection.

9           8. That which is reasonable depends upon the context. A reasonable amount when both  
10 parties to a negotiated transaction are seeking the same goal may be different from that which is  
11 reasonable when one party is attempting to acquire rights from the other party without  
12 compensation and based upon hostile use of the others party's assets. That which is reasonable  
13 requires justice and fair-mindedness and moderation. Terms such as minimal, adequate,  
14 sufficient, liberal or generous are not useful to the analysis.

15           9. The width of Seyler Lane at various points near the Ruby River shown and described  
16 on Exhibit 1-A and 1-B are as follows:

17	A - A <sup>1</sup>	50 feet
18	B - B <sup>1</sup>	50 feet
19	C - C <sup>1</sup>	39 feet
20	D - D <sup>1</sup>	47.5 feet.
21	E - E <sup>1</sup>	47.5 feet.
	F - F <sup>1</sup>	44 feet
	G - G <sup>1</sup>	65 feet
	H - H <sup>1</sup>	50 feet
	I - I <sup>1</sup>	50 feet

22           12. The width of Seyler Lane across the river from bridge abutment to bridge abutment is  
23 determined by the sidelines of a quadrangle, the corners of which are D, D<sup>1</sup>, E, E<sup>1</sup>. If the  
24 quadrangle is a rectangle, the width is 47.5 feet. If the quadrangle is not rectangle, the width will  
25 vary accordingly.

26           NOW THEREFORE IT IS HEREBY ORDERED as follows:

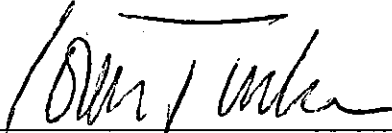
27           1. The width of the County road known as Seyler Lane at sections described and shown  
28 on Exhibit 1-A are as follows:

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A - A <sup>1</sup>	50 feet
B - B <sup>1</sup>	50 feet
C - C <sup>1</sup>	39 feet
D - D <sup>1</sup>	47.5 feet
E - E <sup>1</sup>	47.5 feet
F - F <sup>1</sup>	44 feet (there are no borrow pits)
G - G <sup>1</sup>	65 feet
H - H <sup>1</sup>	50 feet
I - I <sup>1</sup>	50 feet

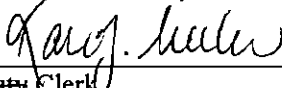
2. The Clerk of Court will please file this Order and distribute a copy to all parties.

Dated: June 27, 2016.

  
\_\_\_\_\_  
LOREN TUCKER  
District Judge

The undersigned hereby certifies that a copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER ON WIDTH OF SEYLER LANE AT RUBY RIVER filed in Cause No. DV-29-2004-43 was mailed and/or emailed on the 29<sup>th</sup> day of June, 2016, to the following:

KAREN J. MILLER, Clerk of Court

  
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Deputy Clerk

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