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MONTANA FIFTH JUDICIAL DISTRICT COURT, MADISON COUNTY

PUBLIC LANDS ACCESS
ASSOCIATION, INC,

Petitioner,

v.

THE BOARD OF 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

Respondents,

and

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

Defendants and

Intervenors.

Cause No. DV-29-04-43

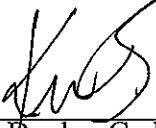
**NOTICE OF ENTRY OF FINAL
JUDGMENT**

NOTICE IS HEREBY GIVEN that a Final Judgment was entered in favor of Petitioners Public Land/Water Access Association f/n/a Public Lands Access Association, Inc. (PLWA) and against Respondents Board of County Commissioners of Madison County, Montana, C. Ted Coffman, Frank G. Nelson, and David Schulz and Respondent-Intervenor James C. Kennedy in

this Cause No. DV-29-04-43 on or about September 24, 2016. A true and correct copy of the Final Judgment and the Order clarifying it as such are attached as Exhibit A.

DATED this 24th day of October, 2016.

GOETZ, BALDWIN & GEDDES P.C.

By: 

J. Devlan Geddes/Kyle W. Nelson

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served upon the following counsel of record, by the means designated below, this 24th day of October, 2016.

- U.S. Mail
- Federal Express
- Hand-Delivery
- Via fax: (406) 586-3130
- Email

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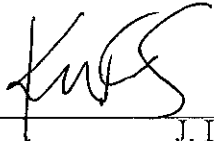
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JUN 27 2016

Karen J. Miller,
Notary Public
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,

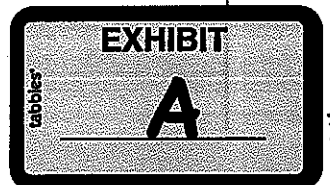
and

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 ¹	46 feet
18	B to B ¹	45 feet
19	C to C ¹	39 feet
20	D to D ¹	37.5 feet
21	E to E ¹	37.5 feet
22	F to F ¹	44 feet
23	G to G ¹	47.5 feet
24	H to H ¹	47 feet
25	I to I ¹	50 feet

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

<u>Exhibit 1-A</u>	<u>Exhibit 2-B</u>
A - A ¹	4
B - B ¹	4
C - C ¹	5
D - D ¹	5
E - E ¹	6
F - F ¹	7
G - G ¹	8
H - H ¹	9
I - I ¹	10

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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:

A - A ¹	50 feet
B - B ¹	50 feet
C - C ¹	39 feet (there are no borrow pits)
D - D ¹	37.5 feet (there are no borrow pits)
E - E ¹	37.5 feet (there are no borrow pits)
F - F ¹	44 feet (there are no borrow pits)
G - G ¹	65 feet
H - H ¹	50 feet
I - I ¹	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.

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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 - D¹ and E to E¹ 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 - D¹ 47.5 feet
8 E - E¹ 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 ¹	50 feet
18	B - B ¹	50 feet
19	C - C ¹	39 feet
20	D - D ¹	47.5 feet.
21	E - E ¹	47.5 feet.
	F - F ¹	44 feet
	G - G ¹	65 feet
	H - H ¹	50 feet
	I - I ¹	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, D¹, E, E¹. 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:

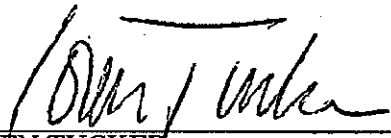
27 1. The width of the County road known as Seyler Lane at sections described and shown
28 on Exhibit 1-A are as follows:

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A - A ¹	50 feet
B - B ¹	50 feet
C - C ¹	39 feet
D - D ¹	47.5 feet
E - E ¹	47.5 feet
F - F ¹	44 feet (there are no borrow pits)
G - G ¹	65 feet
H - H ¹	50 feet
I - I ¹	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 29th day of June, 2016, to the following:

KAREN J. MILLER, Clerk of Court


Deputy Clerk

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SEP 07 2016

James die

GOETZ, BALDWIN &
GEDDES, P.C.

MONTANA FIFTH JUDICIAL DISTRICT COURT, MADISON COUNTY

**PUBLIC LANDS ACCESS
ASSOCIATION INC.,**

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,**

Respondents,

and

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

Intervenors.

Cause No. DV-29-04-43

**ORDER CLARIFYING
AND
DECLINING TO AMEND
FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

ISSUED JUNE 27, 2016

**AND
ORDER SETTING DEADLINE
TO REQUEST FURTHER RELIEF**

Madison County moved to clarify the Court's order. Kennedy and the County both moved to clarify or amend. PLAA believes the Court finally got it right.

Both moving parties are concerned about clarity of the width of the right of way across the Ruby River under the Seyler Lane bridge.

The width of that portion of the Seyler Lane county road which crosses the Ruby River from D to D¹ to E to E¹ is set out explicitly in Conclusion of Law No. 12. If the enclosed

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1 quadrangle is a rectangle, the width of the county road under the bridge and across the river is
2 47.5 feet. In the event the quadrangle is not a rectangle, the width of the county road is somewhat
3 narrower than the distances found at D - D¹ and E - E¹. The parties presented no evidence on that
4 point. Thus the Court can make no additional findings to satisfy their requests.

5 Both the parties and the public can locate the county road by using a measuring tape at the
6 designated locations, commencing at the upstream and downstream ends of the bridge abutments.
7 Bridge abutments are those installations which provide lateral and subjacent support for the road.
8 Abutments are not limited to that which has been placed only vertically below the ends of the
9 bridge. The structures sometimes called "wing walls" provide lateral and subjacent support for
10 the bridge. They are a portion of the bridge abutments.

11 Kennedy also is concerned about the width of the road at D to D¹ and E to E¹. The Court
12 derived its findings from the evidence and exhibits which the Court found most credible. The
13 Court perceives Kennedy's concern to be that the Court should have relied on different evidence.
14 The Court is not persuaded and declines to re-weigh the evidence.

15 There is no reason nor basis to adjust the Court's findings, conclusions or order.

16 It appears to the Court that the critical issue at Seyler Lane is whether the public may
17 reach the river by use of the county road. That issue has been resolved by the Supreme Court.
18 The District Court has done its best with the evidence provided by the parties to find the width of
19 that strip. If PLAA believes that it should have an opportunity to attempt to expand that width by
20 reference to public recreational use of the area, it expeditiously should file and serve its request
21 for additional fact finding on that issue.

22 NOW THEREFORE IT IS HEREBY ORDERED as follows:

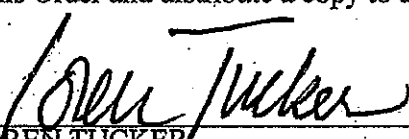
- 23 1. Madison County and Kennedy's motions for amendment are denied.
- 24 2. PLAA shall file and serve its request for additional fact finding regarding recreational
25 use which may affect the width of Seyler Lane in the vicinity of the Ruby River on or before
26 September 23, 2016, if at all.

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3. In the absence of a request for further fact finding by PLAA, the Court's Findings of Fact, Conclusions of Law and Order issued June 27, 2016 and this order shall constitute final judgment.

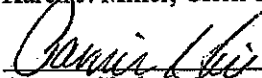
4. The Clerk of Court will please file this Order and distribute a copy to all parties.

Dated: September 6, 2016.


LOREN TUCKER
District Judge

The undersigned hereby certifies that a copy of the foregoing ORDER CLARIFYING AND DECLINING TO AMEND FINDINGS OF FACT CONCLUSIONS OF LAW, AND ORDER ISSUED June 27, 2016 AND ORDER SETTING DEADLINE TO REQUEST FURTHER RELIEF filed in Cause No. DV-29-2004-43 was sent by email or US Mail on the 7th day of September 2016, to the following:

Karen J. Miller, Clerk of Court


Deputy Clerk **Carmin Hill**

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