

East Crazy Inspiration Divide Land Exchange #63115

United States Department of Agriculture
United States Forest Service, Region 1
Custer Gallatin National Forest

Comment from Enhancing Montana's Wildlife & Habitat, Kathryn Q. Kern

USFS, below are my comments opposing the East Crazy Inspiration Divide Land Exchange - #63115 - Alternative A - No Action.

I am very disappointed in the this whole process, but especially in the obvious lack of alternatives provided for the public to choose from.

Where is the option for "Defend and maintain our already existing historical prescriptive easements" ???

I am submitting the deed research that I uncovered on our already existing historical prescriptive easement trail system. The Forest Service, per many FOIA documents in my FOIA requests, showed that the FS diligently sought out these railroad grant deeds for any "easement in the public" language, viewing them as gold. This is property law and cannot be ignored.

In fact, in the USFS 1948 law case (attached) involving the Crazy Mountains public access, against the landowner that was blocking public access at two locations, Paul L. Van Cleve (father and grandfather to current owners Carroccia's and Dringman's), was founded on one railroad grant deed – 3N 12E Section 3, which contained the coveted public easement language: "the lands hereby conveyed being subject, however,, to an easement in the public for any public roads heretofore laid out or established, and now existing over and across any part of the premises." You already have this law case, because I received it as part of one of my FOIA requests.

In the DOJ filing, Amended Complaint No. 1098, June 25, 1949, arguing on behalf of the Forest Service and the public, "VI. That the United States has a special right, title and interest in said highway and trail and all parts thereof, including the parts thereof situated upon lands now owned by the defendants, amounting to an easement and right-of-way for said purposes by reason of the facts that said road and trail were established upon said land when it was in part public land of the United States of America and in part in the ownership of the Northern Pacific Railroad Company... which said railroad company and railway company dedicated the same public highway, which was appropriated by the United States and the general public prior to the issuance of any patents therefor, thereby reserving unto itself and the general public said public highway, road and trail, and by reason of the fact that the United States and its permittees and the public have for more than 50 years used said road and trail for said purposes and the United States has, during said period from time to time, expended upon said road and trail monies appropriated by Congress, for its construction and maintenance to the end that it might serve said purposes; and the United States in common with the public is entitled to the possession of the right-of-way for said highway and that the same necessary for the protection, use and administration of the national forest and other property of the United States."

Black's Law Dictionary defined Highway as, "A free and public road, way, or street; one which every person has the right to use. In all counties of this state, public highways are roads, streets, alleys, lanes, courts, places, trails, and bridges, laid out or erected as such by the public."

Additionally, "V. That at all times mentioned herein, there has existed and there now exists a public highway, viz., a road and trail in and along the canyon of Big Timber Creek entering said Crazy Mountains Division of said national forest across the east boundary line... of NE1/4 of the NE1/4 of section 12, Township 3 North, Range 12 East, extending westerly... and through and across Sections 1, 2, 3, 4, 5 and 6 of said township and range, and thence westerly, then northerly to a point near the center of Township 4 North, Range 11 East where it joins the Sweet Grass Trail situated in the Sweet Grass Canyon ...and the upper drainage of Sweet Grass Creek for the use by the general public at large of the recreational areas, camp grounds, parks, and facilities of said national forest, and by the United States of America on behalf of the general public at large pursuant to the laws of the United States and the regulations of the Secretary of Agriculture relating to the protection, use and administration of the national forest."

This paragraph relays that public access goes from the FS boundary in 3N 12E Section 12, west thru sections 1-6, then the trail (119) enters 4N 11E at the overlap between 3N 12E Section 6 and 4N 11E section 36 to Section 34, where it connects with the S. Fork of the Sweet Grass Trail #122, going north, to about the center of 4N 11E, where it joins the main trunk of the Sweet Grass Trail #122. When you combine that with the East Trunk Trail #115/136, we already have a beautiful loop of historical public access.

After the 1948 Big Timber case was settled, in the benefit of the USFS and the public, perfecting the historical public access, Senator Conrad Burns writes to the FS Supervisor asking their intentions towards filing a Statement of Interest on the Trail System, since Van Cleve is continuing to block access at Sweet Grass. Regional Forester Hal Salwasser replies (attached) on March 6, 1996, stating, "...it is our position that the United States has an easement interest due to historic public and administrative use and maintenance." This position continued to be maintained by various FS public employees, including FS Supervisors, Yellowstone District Rangers and even Law Enforcement Officers.

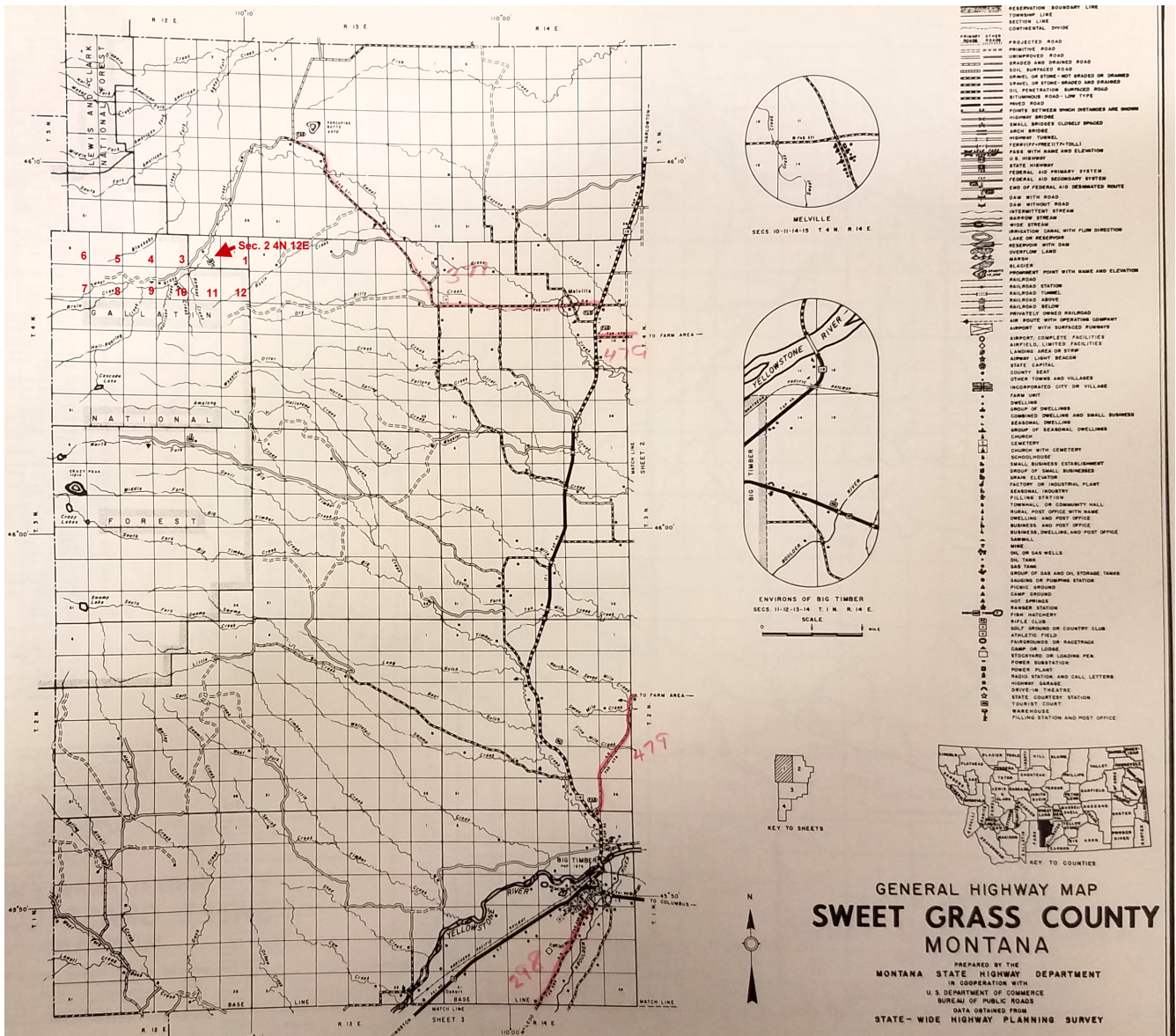
After a public hunter, Joe Rookhuizen, reached out to Senator Steve Daines about obstructed access on the East Trunk Trail #115/136, Daines wrote to FS Supervisor Mary Erickson. Erickson replied on Oct 2, 2015 (attached and part of FOIA documentation I received), repeating the same position the FS had held for decades, "It is a historic trail that dates back a century or more. The Forest Service maintains that it holds unperfected prescriptive rights on this trail system as well as up Sweet Grass Creek to the north based on a history of maintenance with public funds, and continued public and administrative use."

This position was reinforced by the Yellowstone District Ranger, Alex Sienkiewicz, with his yearly reminders to FS employees and seasonal volunteers, this one on July 7, 2016 (attached). Sienkiewicz stated to not sign in, nor ask for permission to access the national Forest Service thru routes shown on the maps, even if they cross private property, that these were historic public access routes, that signing in and permission played in to the private landowners objectives of establishing permissive access, against the public.

After that 2016 email, the landowners and their local groups sought to get Sienkiewicz removed as District Ranger, which the FS did after Sonny Perdue was sworn in as Ag Secretary in 2017. After public outcry, based on my FOIA history, Sienkiewicz was restored but hindered from working on the public's behalf and Supervisor Erickson began pursuing more vigorously land exchanges on the south and directed the Yellowstone Club to the East Crazies for this exchange. This is where the shift in FS actions takes a turn towards privatization, instead of maintaining and defending our Crazy Mountains trail system.

In addition to the railroad grant deeds with easement in the public language, there are historical documents I am attaching, that attest to the public access criteria, which even the FS Office of General Council looks for in filing a Statement of Interest.

- 1945 Sweet Grass Road - Discussion and receipt for road work on Sweet Grass Road from Brannin's to Ward's using FS funds and discussion of private funds, receipt for 42 hours of road work/construction.
- 1929-1938 The first public school in Sweet Grass Canyon was started in 1929 at the Ward and Parker Sawmill, presumably in Section 9, T4N, R12E. From there, it moved to the Brannin Ranch (Section 2, T4N, R12R) back to the sawmill for several years running. In the summer of 1933, the first real schoolhouse was built half way between Brannins and Ward and Parkers (presumably in Section 10, T4N, R12E on NFS lands). This was called the Bachelor School because it was built by several Bachelors. It was located in School District #4 and operated until 1938. Can't have a public school on a private road.
- 1948 Sweet Grass County record of county inspecting Sweet Grass Canyon Road.
- County document with maps showing what Rein claims as Rein Lane was called Upper Sweet Grass Creek Road (among other names over time).
- Sweet Grass Creek landowner Cosgriff communications with FS and Rein that the road has always been public. He provided proof to the FS and stated an easement was not necessary "since it was a public road". Cosgriff also shared that WPA funds built a bridge, that Section 8 road was built under SUP in mid 30s and the permit had a condition that the road would be open to the public.
- Below is a Sweet Grass County map from 1965, showing the road went from the Melville Road in 5N 13E into 5N 12E. The map legend shows the upper part of the road was graded and drained to 5N 12E Section 24 midway. After that it is categorized as an unimproved road. That road continues from 5N 12 E Section 24 southwesterly thru sections 25, 26, 35, entering 4N 12 E, Section 2, which has an icon similar to that on the Big Timber Canyon Road FS designations. This is where the #122 Trailhead was noted. But the road does not stop there, it continues thru Section 2 to the corner of 3, down into Section 10 (FS) to the border of Section 9, which then indicates "primitive road" after that. This map reflects FS, accounts, public school having been out there, other Sweet Grass landowner accounts, that this was routinely used by the public.



There is abundant historical documentation, including FS records obtained in my FS FOIA requests that show routine trail maintenance was being conducted not only by FS employees, but also seasonal volunteers to repair damage, or nearby landowner attempts to obstruct public access, damage/debris from the outfitters and their clients, as well as other users. I think the above evidence is sufficient to show that there was a long history of documentation towards, at the very least, historical prescriptive easements on this trail system. But I would like to include a particular case of the Sweet Grass County Deputy, a landowner and the Sweet Grass County Attorney that confirm the difference between the FS trail system with an easement in the public and the rest of a private landowners land – by their own actions.

As part of my research, I heard about an incident involving alleged criminal trespass from a public hunter, Rob Gregoire, using the East Trunk trail (#115/136) in November, 2016 – the fall after the USFS did its trail work there. According to the Deputy Sheriff's report, the hunter had likely walked off of East Trunk (the public Forest System trail) and onto private property and was cited for criminal trespass for this reason (not because he walked on the Forest Service trail). The criminal trespass case was eventually settled. After the fact, however, trying to figure out some conflicting statements, I was curious to know more about the incident so in April, 2018 I sent an open records request to the Sweet Grass County Sheriff's office to get the incident report and related documents/photos from the file. A true and accurate copy of my request and the Sweet Grass County Sheriff's response to this request are attached.

The Deputy Sheriff Ronnenberg primary narrative, written on 12/27/2016 stated he was called out to Hailstone Ranch about a trespasser. He parked in the FS parking area next to Gregoire's vehicle and watched the hillside to the north, waiting for him to return. At 1:20 pm he sees a person traveling down the hill traveling south to the FS campground. He issues Gregoire a citation, later writing his primary narrative.

Then Ronnenberg writes a Supplemental Report, citing a meeting with a Langhus family member, the Sweet Grass County Attorney, Pat Dringman and himself; where it was decided to return to the area of the trespass to verify visibility of Gregoire's descent, documenting it. Ronnenberg parked where he had before, looking towards the area he saw Gregoire emerged from the timber. When the Deputy Sheriff walked the East Trunk trail on April 10, 2017 to document the area and noticed a new sign and that the trail markers that had previously been there (in September, 2016) had been removed. He also noticed that the trail was harder to find and no longer "established." Ronnenberg goes up the trail to the ridge to look back and see if he can see the parking area, notes that one step and the view was obstructed by the timber. He then walks back on the trail, which meanders. "As I recall I saw Mr. Gregoire traveling South down the hill, and not change directions as I had on the trail. See, the landowner knowing his property, reading Ronnenberg's primary narrative, recognized that something was wrong with the description, if Gregoire had kept to the FS trail, visibility would have been different, gets in touch with Ronnenberg and the 3 have a meeting, deciding on the verification.

There is a second Supplemental Report documenting a re-enactment on April 18, 2017. Ronnenberg parked in the campground as before, while Kevin Langhus goes up the trail with a GPS and radio. Each time Kevin can see Ronnenberg, he is to radio, and Ronnenberg photographs Langhus. Ronnenberg then directs Langhus to where he saw Gregoire previously, and when Langhus gets to the area, Ronnenberg radios to Langhus to verify if he is still on the trail. Langhus replies he is not and can't even see the trail. Ronnenberg talks him down to where he saw Gregoire, continuing to photograph. By the re-enactment, they determined Gregoire had gone off trail, taking an easier, more direct route back.

After reading all the reports a number of times, I called and spoke with Ronnenberg, to verify my understanding of the events. He confirmed my understanding. I asked, why if they had proof of the trespass off the trail, why did they not prosecute? He said I would have to ask the County Attorney (one of the Sweet Grass landowners). Then it hit me why.

By doing the re-enactment to see if Gregoire had gone off trail, they did more than prove their view that he trespassed, they confirmed the FS and our position that the trail has a different

status than the surrounding private lands with historical prescriptive easements, otherwise there would have been no need to verify the trail and Gregoire's location at all. They couldn't go to court with that information, becoming part of the legal public record and possibly becoming a case precedent, so they offered him a settlement with a fine. By the landowner, Sheriff Department and County Attorney's actions, they confirm our FS trail public access status.

It has been over 7 years I've been collecting documentation on the Crazies and the evidence keeps growing – the FS, prior to 2017 was defending the status of the Crazy Mountain trail system, as historical prescriptive public access, and maintaining this trail system with FS employees, monies and volunteers, as well as documenting multiple use by the public.

Yet, none of this history is represented in this proposal. Why have you abandoned such defense, not even including it as one of the Alternatives? Instead FS Supervisor Mary Erickson throws the weight and money of the Yellowstone Club into the Crazies to further muddy the waters. You even include in writing on Page 4 of the PEA the mafia shakedown leveraging of a private landowner's agreement with the Crow Nation for their access to one of the sacred sites on Crazy Peak. This access agreement has nothing to do with the exchange or public access in general, except to advertise it for the Crow Nation, to muscle them into submitting public comments in support of the proposal, if they want their sacred site access back.

I especially object to yet another Crazy exchange, where the public will be quickly pushed off the rolling hills and productive habitat of the low country and relegated to the steep, high terrain largely consisting of rock and ice with the Mountain Goats. The landowners, however, receive the valuable and productive low land.

This proposal asks the public to give up 100% of mineral rights on land going to the landowners. In return, however, the public receives only mineral rights on 2 of the 11 sections it's receiving. In Montana, mineral rights supersede surface rights, so it is not unreasonable to assume that the owners of these claims may decide to assert these valuable rights in the future. At that time, under Montana law, those owners would have the ability to disrupt the surface by building roads, cutting down trees, diverting water, and using any and all legal means they choose to develop their mineral rights on the newly consolidated public lands.

The proposal asks the public give up all water rights on land it is giving to the landowners, while it does not receive the water rights on all the land it receives. Another win for the landowners and a loss for the public. The proposal asks the public to give up 52 acres of wetlands and receives only 7.8 acres in return, meaning the public stands to lose 44.6 acres of wetlands.

Now to address some points in the PEA.

1. The PEA violates the current Travel Plan.

- a. The PEA creates a net loss to public recreation opportunities and a reduction of existing public access points to the Crazies.

b. The PEA eliminates existing hunting and fishing opportunities, and overall alters the nature and scope of existing recreational opportunities in the Sweet Grass drainage.

c. The PEA contemplates relinquishing three (3) historically used public access trails and four (4) administrative roads to private ownership; this directly violates current Travel Plan objectives.

2. The PEA does not meet the stated goals within the same PEA.

a. Within the PEA, the Custer Gallatin National Forest (CGNF) admits to a reduction in public recreational opportunities. To justify this loss, the agency erroneously contends that it meets the projects goals because in its current state Sweet Grass Trail is “a long out and back trail with no scenic destination” where “[c]urrent use levels are low.” This not only mischaracterizes the actual trail which connects with other trails and is widely considered one of the more scenic trails in the Crazies and provides significant recreational value (especially to hunters), but the claim is also based on the false premise that Sweet Grass Creek is not currently in use.

b. Use of Sweet Grass Creek for recreational opportunities, including hunting and fishing access, is very well documented. Additionally, as the USFS acknowledged, most use of Sweet Grass Trail occurs during the fall hunting season. Eliminating access to those areas would preclude historical access opportunities for hunting and angling.

c. As proposed, a new 22-mile East Trunk Trail would be constructed with only one access point from the south. This new route would not only eliminate a separate, existing public access point but would severely alter the nature of and use of the trail for compatible recreational opportunities. For the public to enjoy previously accessed property from the northern route, the public would need to hike at least 11 miles. This distance, in conjunction with a single access point, renders previous hunting, fishing or day-hike opportunities inaccessible; it would shift historical recreation use of the area.

d. Additionally, the single access point also creates additional concerns as it relates to increased trail use in areas not previously accessed, bottleneaking and creating congestion at the trail head area, increasing remote, long-distance use, straining maintenance crews and emergency-rescue personnel while increasing expenses for trail maintenance, and creating unfeasibility of use for certain recreational users due to severely steepened trail topography and inconvenient trail distances.

3. The PEA fails to analyze the effects that severed ownership of mineral interests in the parcels being acquired by USFS could have on those lands in the future.

a. Tenets of mineral law observe a general rule of mineral estate dominance, meaning one of the foundational rights to mineral ownership is the right to enter upon the surface of the property and make any use of it that is reasonably required for enjoyment of the mineral estate. Simply put, mineral rights supersede surface rights, and that makes it very difficult to stop mineral exploration and development.

b. In this exchange, 100% of the federally owned mineral rights would be transferred to the non-federal parties, and only 18% of non-federal mineral rights would be transferred to federal ownership in return. This would lead to a significant imbalance of monetary value and property rights, with the public getting the short end of the stick on both.

c. The law in Montana is clear in relation to the dominance of the mineral estate. Thus, it is not unreasonable to assume that the unknown and unanalyzed severed owners of these claims may decide to assert these valuable rights in the future. At that time, under Montana law, those owners would have the ability to disrupt the surface by building roads, cutting down trees, diverting water, and using any and all legal means they choose to develop their mineral rights.

4. The PEA is faulty because it does not disclose the monetary value of land exchanged.

a. Federal Land Policy and Management Act (FLPMA) requires that the value of exchanged lands be equal, adjusted for any difference in value by cash equalization payments up to 25% of the value of the Federal lands to be disposed.

b. The PEA omits public disclosure of land valuation exchanged.

c. Therefore, we believe the PEA is faulty, misleading, and perhaps illegal.

5. The PEA is faulty because it does not disclose valuation of severed water rights.

a. A reasonable appraisal would contain the value of water rights exchanged.

b. The PEA does not contain any publicly disclosed value of severed water rights from Federal to non-Federal parties.

6. The PEA is faulty because it does not disclose a valuation of timberlands in the exchange.

a. Federal Land Policy and Management Act (FLPMA) requires that timberland values received by the public in an exchange are equal-to or higher-than that of the timberland values received by the non-federal party in the exchange.

b. The PEA omits public disclosure of timberland values exchanged.

c. Therefore, we believe the PEA is faulty, misleading, and perhaps illegal.

7. The PEA is faulty because it relies on public benefits which it does not provide, and therefore cannot consider as a part of the Project proposal because those benefits are not guaranteed.

a. The PEA claims non-federal parties will construct the new trail, make the trailhead, and provide parking lot improvements. No contracts between federal and non-federal parties have been disclosed to the public for review within the PEA.

b. The PEA claims non-federal parties will provide access to Crazy Peak to the Crow Nation, allow access across private lands, and consider conservation easements on lands received in the exchange. These agreements do not include the federal party involved in the exchange and therefore are misleading and cannot be considered by the public as an additive value resulting from the exchange. There are no guarantees these agreement can be trusted/guaranteed or enforced, rendering their benefits inappropriate to include in the PEA.

8. The PEA is faulty because it violates Executive Order 12962 requiring a no-net-loss of wetlands in land exchange.

a. The PEA estimates the total wetland value within the currently non-federal parcels to be 7.8 acres, with the total wetland acreage within the currently federal parcels to be 52.4 acres. This means that the Proposed Land Exchange would result in a significant loss of wetland acreage under federal control: a net loss of 44.6 acres to be specific.

b. The wetlands analysis has been done twice and in each case the public was found to be losing significant wetland acres.

9. Typically, this type of proposal has multiple options, however the PEA proposes to evaluate only “two” alternatives: (1) a “no-action alternative” and (2) Proposed Land Exchange.

a. NEPA requires an agency to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C § 4332 (2)(E).

b. The Service eliminated four other alternatives due to claims of technical or economical infeasibility. In other words, the Service evaluated only the Proposal from the Yellowstone Club and adjacent landowners plus the no-action alternative required by law.

c. The law does not support this limited range of alternatives, as it is reasonable to consider others - such as defending current access rights – as viable alternatives in the PEA. The underlying rationale of one two alternatives creates the perception of a pre-determined outcome: do what the Yellowstone Club and adjacent landowners want. This lack of alternatives, which subsequently leads to a predetermined outcome, is precisely the type of “foreordained formality” decision-making that violates NEPA as a matter of law.

10. The Project sets a dangerous precedent by reinforcing and rewarding the negative and anti-public behavior of the landowners involved.

a. The Proposed Land Exchange would set a terrible precedent and is poor public policy. Encouraging private landowners to stand their ground in obstructing legal public access until

the USFS acquiesces to their demands is dangerous to all members of the public and all public federal land, particularly in Montana.

b. State, federal, and local agencies should be promoting the enforcement of their own rights, rules, and regulations, rather than capitulating to parties who are undermining the public's rights.

11. The PEA fails to analyze that the Project will result in habitat loss and degradation of the riparian zone along Sweet Grass Creek.

a. The USFS is directed to regulate aquatic resources for the benefit of increased fishing opportunities. Here, the PEA does the exact opposite. The USFS asserts there will be minor negative impact on stream fishing opportunity. This is disingenuous as there will be no net fish habitat improved or protected, or fishing opportunity gained, by federal ownership.

b. The PEA would create a net loss in federal riparian habitat. Executive Order 12962 directs USFS agencies to the extent permitted by law and where practicable, to improve the quantity, function, sustainable productivity, and distribution of U.S. aquatic resources for increased recreational fishing opportunities. This PEA does the opposite.

12. The public forever loses rightful claim up Sweet Grass Creek Road and Trail #122

a. The current Travel Plan designated the Sweet Grass Trail No. 122 as a public, non-motorized and non-mechanized trail. It is currently managed from the west to T. 4 N., R. 12 E., Section 8, as a Trail Class 3 trail for foot and stock use. The UFS determined that the access to the area was "inadequate" and thus, included in its Travel Plan the need and desire to "Perfect trail access across private in-holdings within Sweet Grass..."

b. The PEA, however, ignores the goals set forth in the Travel Plan and does not reserve Sweet Grass Trail No. 122 for administrative or public use. This is in direct conflict with Forest Services' own objectives and would forever relinquish a public access point in the Crazy Mountains. 13. The public trades low-lying and highly productive and diverse wildlife habitat for steeper and higher elevation rock and ice. Particularly for elk hunters, this is concerning because of the reduction in quality elk hunting opportunities this will create.

I strongly admonish the FS to abandon these privatization efforts, and return to the FS Region policy documenting, defending and maintaining our Historical Prescriptive Easement public access on the Crazy Mountains and work towards perfecting it, as before. Our public trust is being grossly trampled by this proposal.

Thank you,
Kathryn QannaYahu Kern
Enhancing Montana's Wildlife & Habitat
924 11th Ave., Apt 2
Helena, MT 59601

41-50

DEED : Record Book No. 41, Sweet Grass County, Montana

Reception No. 59889

BIG TIMBER PIONEER (Form L. D. 39/1 2-2-14 1M RP)

Northern Pacific Railway Co. }

Barney M. Brannin ----- }

(A)

Contract No. 17962

Deed No. 31255E

MONTANA DIVISION

NORTHERN PACIFIC RAILWAY COMPANY

(I.L.S.)

THIS DEED, Made the twenty-first day of November in the year of our Lord one thousand nine hundred and forty-seven, by the NORTHERN PACIFIC RAILWAY COMPANY a corporation of the State of Wisconsin, grantor, to BARNEY M. BRANNIN of Melville in the County of Sweet Grass and State of Montana grantee, WITNESSETH:

WHEREAS, by a contract in writing entered into on the seventeenth day of November A. D. 1939 the grantor contracted to sell and convey the premises hereinafter described for the consideration, hereinafter expressed, which contract has been duly performed and the grantee has become entitled to a conveyance of the premises.

THEREFORE, the grantor in consideration of the sum of Six hundred forty (640.00) Dollars, unto it paid according to said contract, the receipt whereof is acknowledged, grants, bargains, sells and conveys unto the grantee, his heirs and assigns, the following described tract of land situate in the County of Sweet Grass in the State of Montana to-wit:

South half (S $\frac{1}{2}$) (\$1.10 documentary stamps attached and cancelled.) of Section No. three (3) in Township four (4) North of Range twelve (12) East of the Montana Principal Meridian, containing, according to the United States Government Survey three hundred twenty (320.00) acres, more or less; the lands hereby conveyed being subject, however, to an easement in the public for any public roads heretofore laid out or established, and now existing over and across any part of the premises.

Together with the hereditaments and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, The said lands and appurtenances, unto the grantee his heirs and assigns, forever.

The grantor will forever WARRANT AND DEFEND the title to the premises, except as against liens, charges and incumbrances originating after the date of the aforesaid contract of sale.

IN WITNESS WHEREOF, The grantor has caused these presents to be sealed with its corporate seal, and signed by its Vice President, the day and year first above written.

Signed, Sealed and Delivered in the Presence of

NORTHERN PACIFIC RAILWAY COMPANY,

J. S. Dow

By B. W. Scandrett
Vice President.

Joan L. Junghans

(SEAL)

Attest: Arnold Nachald
Secretary.

(JMH)

STATE OF MINNESOTA)
 : ss.
COUNTY OF RAMSEY)

On this 16th day of December in the year 1947, before me W. R. BIELENBERG a notary public, personally appeared B. W. SCANDRETT to me known to be the Vice President of the Northern Pacific Railway Company, the corporation which executed the foregoing instrument, and who being duly sworn, did say, that the seal affixed to said instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said B. W. SCANDRETT acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office, in the City of St. Paul, the day and year last aforesaid.

(Notarial Seal)

W. R. Bielenberg
Notary Public, Ramsey County, Minnesota.

W. R. BIELENBERG,
Notary Public, Ramsey County, Minn.
My Commission Expires Aug. 5, 1954.

Filed for record December 26, 1947 at 2:55 P. M.
Dick Armstrong, Clerk and Recorder
By Raymond Hunter, Deputy
Fees: \$1.50
Return to Barney M. Brannin

COMPARED

1939
4N12E
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← E

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36-28

38-35

1940

4N12E

5,9,17

Northern Pacific Railway Co. ** (A)
 to ** DEED No. 28741E
 Robert C. Ward and Ernest Parker ** Contract No. 17136
 ***** Montana Division *****
 NORTHERN PACIFIC RAILWAY COMPANY

THIS DEED, Made the tenth day of April in the year of our Lord one thousand nine hundred and forty, by the Northern Pacific Railway Company a corporation of the State of Wisconsin, grantor, to Robert C. Ward and Ernest Parker of Melville in the County of Sweet Grass and State of Montana grantees, WITNESSETH:

WHEREAS, by a contract in writing entered into on the fifteenth day of April, 1930 the grantor contracted to sell and convey the premises hereinafter described for the consideration hereinafter expressed, which contract has been duly performed and the grantee has become entitled to a conveyance of the premises.

THEREFORE, The grantor in consideration of the sum of Three thousand five hundred (3,500.00) Dollars, unto it paid according to said contract, the receipt whereof is acknowledged, grants, bargains, sells and conveys unto the grantees, their heirs and assigns, the following described tract of land situate in the County of Sweet Grass in the state of Montana, to-wit:

All of Sections five (5), nine (9) and of Section No. seventeen (17) in Township four (4) North of Range twelve (12) East of the Montana Principal Meridian, containing, according to the United States Government Survey one thousand nine hundred nineteen and 52/100 (1,919.52) acres, more or less; the lands hereby conveyed being subject, however, to an easement in the public for any public roads heretofore laid out or established, and now existing over and across any part of the premises.

(\$3.50 Documentary Stamps attached and cancelled)

Together with the hereditaments and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, The said lands and appurtenances, unto the grantees, their heirs and assigns, forever.

The grantor will forever Warrant and Defend the title to the premises, except as against the liens, charges and incumbrances originating after the date of the aforesaid contract of sale, and taxes levied for the year 1930.

IN WITNESS WHEREOF, The grantor has caused these presents to be sealed with its corporate seal, and signed by its Vice President, the day and year first above written.

(Corporate Seal)
 Signed, Sealed and Delivered
 in the Presence of
 C. B. Theits
 Anna B. Tibbs

Attest: Northern Pacific Railway Company,
 By B. W. Scandrett, Vice President
 A. M. Gottschald, Secretary

JMH

STATE OF MINNESOTA)
 COUNTY OF RAMSEY) SS.

On this 26th day of April in the year 1940, before me Sig A. Bertelsen a notary public, personally appeared B. W. Scandrett to me known to be the Vice President of the Northern Pacific Railway Company, the corporation which executed the foregoing instrument, and who being duly sworn, did say, that the seal affixed to said instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said B. W. Scandrett acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office, in the City of St. Paul, the day and year last aforesaid.

(Notarial Seal) Sig A. Bertelsen, Notary Public, Ramsey County, Minnesota.
 My Commission expires March 20, 1947

Filed for Record May 10, 1940 - 5:00 P.M.
 E. R. Patterson, Clerk & Recorder
 By Paul Snyder, Deputy
 Fees: \$1.50
 Return to Robert C. Ward, Melville, Mont.
 (Clerk & Recorder Seal)

.....
 Checked with Sales Book.....
 Checked with Plat.....
 Checked with Contract...SAB.....

COMPARED

← E

SWEET GRASS COUNTY

N. P. Railway Co.)
to) Contract No. 16418 MONTANA DIVISION Deed No. 28031E
Barney M. Brannin.)

NORTHERN PACIFIC RAILWAY COMPANY

THIS DEED, Made the twentieth day of November in the year of our Lord one thousand nine hundred and thirty-three, by the NORTHERN PACIFIC RAILWAY COMPANY a corporation of the State of Wisconsin, grantor, to BARNEY M. BRANNIN of Melville in the County of Sweet Grass and State of Montana grantee, WITNESSETH:

WHEREAS by a contract in writing entered into on the twenty-eighth day of February A. D. 1928 the grantor contracted to sell and convey the premises hereinafter described for the consideration hereinafter expressed, which contract has been duly performed and the grantee has become entitled to a conveyance of the premises.

THEREFORE, the grantor in consideration of the sum of Seven hundred thirty and 28/100 (730.28) Dollars, unto it paid according to said contract, the receipt whereof is acknowledged, grants, bargains, sells and conveys unto the grantee, his heirs and assigns, the following described tract of land situate in the County of Sweet Grass in the state of Montana to-wit:

ALL of Section No. seven (7) in Township four (4) North of Range twelve (12) East of the Montana Principal Meridian, containing, according to the United States Government Survey seven hundred thirty and 28/100 (730.28) acres, more or less; the lands hereby conveyed being subject, however, to an easement in the public for any public roads heretofore laid out or established, and now existing over and across any part of the premises.

Together with the hereditaments and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, The said lands and appurtenances, unto the grantee his heirs and assigns, forever.

The grantor will forever WARRANT AND DEFEND the title to the premises, except as against liens, charges and incumbrances originating after the date of the aforesaid contract of sale.

\$1.00 in Revenue Stamps attached and duly cancelled.

IN WITNESS WHEREOF, The grantor has caused these presents to be sealed with its corporate seal, and signed by its President. the day and year first above written.

NORTHERN PACIFIC RAILWAY COMPANY,

By Charles Donnelly
President.

Attest:

Signed, Sealed and Delivered
in the Presence of

Russell H. Dick
L. R. Fellows

(CORPORATE SEAL)

A. M. Gottschald
Assistant Secretary.

STATE OF MINNESOTA)
COUNTY OF RAMSEY.) ss.

On this 11th day of December in the year 1933, before me S. A. Bertelsen a notary public, personally appeared CHARLES DONNELLY to me known to be the President of the Northern Pacific Railway Company, the corporation which executed the foregoing instrument, and who being duly sworn, did say, that the seal affixed to said instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said CHARLES DONNELLY acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office, in the City of St. Paul, the day and year last aforesaid.

S. A. Bertelsen
Notary Public, Ramsey County, Minnesota

(NOTARIAL SEAL)

S. A. Bertelsen,
Notary Public, Ramsey County, Minn.
My Commission Expires March 23, 1940.

Filed for record this 2 day of Jan. A. D. 1934 at 3:07 o'clock P. M.

W. A. Conwell, Clerk & Recorder.

CLERK & RECORDER SEAL
#41301

COMPALED

1933
4W12E
7

← E

BK 70 PG 33

Document No. 27711

CHARLES O. LUNDQUIST,
-TO-
B. KESSELHEIM, Inc.

WARRANTY DEED

This Indenture Made the 29th day of September,

A. D., one thousand nine hundred and Forty-one
BETWEEN Charles O. Lundquist, an unmarried man,

Minneapolis, Minnesota,
and B. Kesselheim, Inc.
Billings, Montana,

of the FIRST PART
of the SECOND PART;

WITNESSETH that the said party of the FIRST PART, for and in consideration of the sum of
One Dollar and other good and valuable consideration
lawful money of the United States of America to him in hand paid by said party
the receipt whereof is hereby acknowledged: do es by these presents grant, bargain, sell, convey, warrant and confirm into
the said party of the SECOND PART, and to its successors heirs and assigns forever, the hereinafter described
real estate situated in the County of Park and Sweet and State of Montana, to-wit:

All of Section Twenty-five (25), Township Four (4) North, Range Ten (10) East,
all of Sections One (1), Three (3), Nine (9), Eleven (11), Thirteen (13) and Twenty-
five (25), in Township Three (3) North, Range Eleven (11) East, all of Sections
Eleven (11), Thirteen (13), Fifteen (15), Seventeen (17), Nineteen (19), Twenty-one
(21), Twenty-three (23), Twenty-five (25), Twenty-seven (27), Twenty-nine (29),
Thirty-one (31), Thirty-three (33) and Thirty-five (35), in Township Four (4) North,
Range Eleven (11) East, M. P. M. situated in Park County, Montana; and
All of Sections Five (5), Seven (7), Nine (9) and Nineteen (19), in Township Three
(3) North, Range Twelve (12) East, and all of Sections Nineteen (19), Twenty-one (21),
Twenty-nine (29), Thirty-one (31) and Thirty-three (33), in Township Four (4) North,
Range Twelve (12) East, M. P. M., situated in Sweet Grass County, Montana,
containing in all 18,820.68 acres, more or less.

DOCUMENTARY STAMPS-----\$5.50, AFFIXED AND CANCELLED.

TOGETHER with all and singular the hereinbefore described premises together with all tenements, hereditaments, and appur-
tenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and
profits thereof, and also all the estate, right, title, interest, right of dower and right of homestead, possession, claim, and demand what-
soever, as well in law as in equity, of the said party of the FIRST PART, of, in or to the said premises, and every part and parcel
thereof, with the appurtenances thereto belonging, TO HAVE AND TO HOLD, all and singular the above mentioned and described
premises unto the said party of the SECOND PART, and to its successors heirs and assigns forever.

And the said party of the FIRST PART, and his heirs, do es hereby covenant
that he will forever WARRANT and DEFEND all right, title and interests in and to the said premises and the quiet
and peaceable possession thereof, unto the said party of the SECOND PART its successors heirs and assigns, against all
acts and deeds of the said party of the FIRST PART, and all and every person and persons whomsoever lawfully claiming or
to claim the same.

This conveyance shall be subject to all easements of the public for highways or other
purposes and to all reservations and exceptions of minerals or for other purposes now
appearing of record;
IN WITNESS WHEREOF, the said party of the FIRST PART has hereunto set his hand
and seal the day and year first hereinbefore written.

Signed, Sealed and Delivered in the Presence of
Jessie Ames
F. B. Martin
Charles O. Lundquist (Seal)
(Seal)
(Seal)
(Seal)

MINNESOTA,
STATE OF MONTANA
County of HENNEPIN.

On this 29th day of September, in the year nineteen hundred and
Forty-one, before me Jessie Ames, a Notary Public
for the State of Minnesota, personally appeared Charles O. Lundquist, an unmarried man,

known to me
to be the person whose name is subscribed to the within instrument and acknowledged to me that he
executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

(NOTARIAL SEAL)
Jessie Ames Jessie Ames
Notary Public for the State of Montana Minnesota,
Residing at Minneapolis, Minnesota,
My Commission expires May 23, 1947.

Filed for record the 20th day of October, A. D. 19 41, at 9:00 o'clock A. M.
Deputy. R. L. Bullie, County Recorder.

Public
evident

←

158-3d Deed

Sec 7 T 3 N 13 E

177

1907

NORTHERN PACIFIC RAILWAY CO.

(EE)
Contract No. 4029 Deed No. 14911E
Montana Division.

TO

ANTHONY ARNESON.

NORTHERN PACIFIC RAILWAY COMPANY.

THIS DEED, Made the fourth day of September in the year of our Lord one thousand nine hundred and seven, by the NORTHERN PACIFIC RAILWAY COMPANY, a corporation duly incorporated under the laws of the State of Wisconsin, party of the first part, and Anthony Arneson of Big Timber in the County of Sweet Grass and State of Montana party of the second part, WITNESSETH, Whereas, by a contract in writing entered into on the twenty-first day of March, A. D. 1902 the party of the first part contracted to sell and convey to Anthony Arneson and Edward Arneson, to whose rights the party of the second duly succeeded for the consideration hereinafter expressed, the premises hereinafter described; and WHEREAS, By the terms of said contract the party of the second part has become entitled to a conveyance of said premises.

NOW THEREFORE, The party of the first part, in consideration of the sum of Two thousand three hundred seventy-three and 36/100 (\$2,373.36) Dollars, unto it duly paid according to said contract, the receipt whereof is hereby acknowledged, does grant, bargain, sell and convey unto the said party of the second part, his heirs and assigns, the following described tract of land situate in the county of Sweet Grass in the State of Montana that is to say: All of section three (3), in township one (1) North, of range thirteen (13); all of section thirty-three (33), in township two (2) North, of range thirteen (13); and all of section No. seven (7) in Township three (3) North, of Range thirteen (13) all East of the Western Principal Meridian, containing, according to the United States Government Survey one thousand nine hundred twenty-four and 37/100 (1,924.37) acres, more or less; excepting and reserving unto the party of the first part, its successors and assigns, forever, all coal and iron upon or in said land, and also the use of such surface ground as may be necessary for exploring for and mining or otherwise extracting and carrying away the same; the lands hereby granted being, subject, however, to an easement in the public for any public road or roads heretofore laid out or established; and now existing over and across any part of said described land. Together with the hereditaments and appurtenances thereunto belonging or in anywise appertaining, with the reservations and exceptions before stated.

TO HAVE AND TO HOLD, The said lands and appurtenances, unto the said party of the second part, his heirs and assigns, forever, free and clear of all liens, charges and incumbrances, except taxes and assessments, if any, levied or assessed since the twenty-first day of March, A. D. 1902 upon the conditions and subject to the reservations aforesaid.

The said party of the first part, for itself and its successors, covenants and agrees to and with the said party of the second part, his heirs and assigns, that it will WARRANT AND DEFEND the title to the said premises, forever, except as against the taxes and assessments aforesaid, and tax titles founded thereon.

IN WITNESS WHEREOF, The said party of the first part has caused these presents to be sealed with its corporate seal, and signed by its President, the day and year first above written.

Signed, Sealed and Delivered
in the Presence of

Edwin D. Clark

Wallis F. Schneider

STATE OF MINNESOTA,)
) SS.
COUNTY OF RAMSEY.)

Northern Pacific Railway Company,

By Howard Elliott
President.

Attest:
R. H. Relf
Assistant Secretary.



On this 16th day of September in the year 1907, before me Edwin D. Clark a notary public, personally appeared Howard Elliott to me known to be the President of the Northern Pacific Railway Company, the corporation which executed the foregoing instrument, and who being duly sworn did say, that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said Howard Elliott acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office, in the City of St. Paul, the day and year last aforesaid.

Edwin D. Clark
Notary Public, Ramsey County, Minnesota.
My Commission expires July 5, 1914.



Filed for record this 1st day of Oct. A. D. 1907 at 5.00 o'clock P. M.

J. H. Allen
County Recorder.

By C. H. Allen
Deputy.



COMPARED.

No. 1269.

3N13E
Sec 7

Easement

3d

SWEET GRASS COUNTY

Northern Pacific Railway Co # (A)
 to # Contract No.16640 Montana Division Deed No.27291E
 A.M.Grosfield # NORTHERN PACIFIC RAILWAY COMPANY
 #####

THIS DEED, made the fifteenth day of October in the year of our Lord one thousand nine hundred and twenty-eight, by the Northern Pacific Railway Company, a corporation of the State of Wisconsin, Grantor, to A.M.Grosfield, of Big Timber, in the County of Sweet Grass and State of Montana, grantee, WITNESSETH:

The grantor, in consideration of the sum of Five Thousand (\$5,000.00) Dollars, unto it paid, the receipt whereof is acknowledged, grants, bargains, sells and conveys unto the grantee, his heirs and assigns, the following described tracts of land situate in the County of Sweet Grass and State of Montana, to-wit:

Lots Three (3), Four (4), Southwest quarter and West half of Southeast quarter of Section thirteen (13); all of Section Twenty-three (23); all of Section Twenty-five (25); all of Section Twenty-seven (27) and all of Section Thirty-five (35), in Township four (4) North, of Range Twelve (12) East of the Montana Principal Meridian, containing according to the United States Government Survey Two Thousand eight hundred seventy-nine and 04/100 (2,879.04) acres, more or less; the lands hereby conveyed being subject, however, to an easement in the public for any public roads heretofore laid out or established, and now existing over and across any part of the premises.

Together with the hereditaments and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the said lands and appurtenances, unto the grantee, his heirs and assigns forever.

The grantor will forever WARRANT and DEFEND the title to the premises.

IN WITNESS WHEREOF, the grantor has caused these presents to be sealed with its corporate seal, and signed by its Vice-President, the day and year first above written.

Signed, Sealed and Delivered
 in the Presence of
 Edwin Irle
 M.P.Nadeau

CORPORATE SEAL

NORTHERN PACIFIC RAILWAY COMPANY
 By C.W.Bunn, Vice-President
 Attest: R.H.Relf, Assistant Secretary.

STATE OF MINNESOTA)
 COUNTY OF RAMSEY) ss.

On this 8th day of November in the year 1928, before me Edwin Irle, a Notary Public personally appeared C.W.Bunn, to me known to be the Vice-President of the Northern Pacific Railway Company, the corporation which executed the foregoing instrument, and who being duly sworn, did say, that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said C.W.Bunn acknowledged said instrument to be the free act and deed of said Corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the City of St.Paul, the day and year last aforesaid.

Edwin Irle.
Edwin Irle
 Notary Public, Ramsey Co. Minn.
 My Commission expires August 14, 1935.

Notarial Seal

Filed for record this 22nd day of Nov. A.D. 1928, at 4:50 o'clock P.M.

W.A.Conwell, County Recorder

Clerk and Recorder's seal
 #31852.

COMPARED

1928
 4N12E
 3,4 D
 Sec 13
 23, 25, 27
 35

← E

41-60

Reception No. 59890

DIG. TIMBER PIONEER (Form L. D. 394 2-2-44 1M RP)

Northern Pacific Railway Company

R. C. Brannin, et al

(A)

Contract No. 17963

Deed No. 31256E

MONTANA DIVISION

NORTHERN PACIFIC RAILWAY COMPANY

(L.L.S.)

THIS DEED, Made the twenty-first day of November in the year of our Lord one thousand nine hundred and forty-seven, by the NORTHERN PACIFIC RAILWAY COMPANY a corporation of the State of Wisconsin, grantor, to R. C. BRANNIN, A. H. BRANNIN and BARNEY M. BRANNIN of Melville in the County of Sweet Grass and State of Montana grantees, WITNESSETH:

WHEREAS, by a contract in writing entered into on the seventeenth day of November A. D. 1939 the grantor contracted to sell and convey the premises hereinafter described for the consideration hereinafter expressed, which contract has been duly performed and the grantee has become entitled to a conveyance of the premises.

THEREFORE, the grantor in consideration of the sum of Three thousand two hundred sixteen and 80/100 (3,216.80) Dollars, unto it paid according to said contract, the receipt whereof is acknowledged, grants, bargains, sells and conveys unto the grantees, their heirs and assigns, the following described tract of land situate in the County of Sweet Grass in the State of Montana, to-wit:

All of Section one (1), and North half (N½)

(\$3.85 documentary stamps attached and cancelled.)

of Section No. eleven (11) in Township four (4) North of Range twelve (12) East of the Montana Principal Meridian, containing, according to the United States Government Survey nine hundred sixty-four and 80/100 (964.80) acres, more or less; the lands hereby conveyed being subject, however, to an easement in the public for any public roads heretofore laid out or established, and now existing over and across any part of the premises.

Together with the hereditaments and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, The said lands and appurtenances, unto the grantees their heirs and assigns, forever.

The grantor will forever WARRANT AND DEFEND the title to the premises, except as against liens, charges and incumbrances originating after the date of the aforesaid contract of sale.

IN WITNESS WHEREOF, The grantor has caused these presents to be sealed with its corporate seal, and signed by its Vice President, the day and year first above written.

NORTHERN PACIFIC RAILWAY COMPANY,

Signed, Sealed and Delivered in the Presence of

BY B. W. Scandrett Vice President.

(JMH)

J. S. Dow

Attest: Arnold Nachald secretary.

Joan L. Junghans

(SEAL)

STATE OF MINNESOTA) : ss. COUNTY OF RAMSEY)

On this 16th day of December in the year 1947, before me W. R. BIELENBERG a notary public, personally appeared B. W. SCANDRETT to me known to be the Vice President of the Northern Pacific Railway Company, the corporation which executed the foregoing instrument, and who being duly sworn, did say, that the seal affixed to said instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said B. W. SCANDRETT acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office, in the City of St. Paul, the day and year last aforesaid.

(Notarial Seal)

W. R. Bielenberg Notary Public, Ramsey County, Minnesota.

Filed for record December 26, 1947 at 2:57 P. M. Dick Armstrong, Clerk and Recorder By Raymond Hunter, Deputy Fees: \$1.50 Return to Barney M. Brannin

W. R. BIELENBERG Notary Public, Ramsey County, Minn. My Commission Expires Aug. 5, 1954.

COMPARED

1947
4N12E
1, p11

← E

DEED RECORD BOOK NO. 40, SWEET GRASS COUNTY

Reception No. 57296

SHULTZ-TRIBUNE PRINTING CO., GREAT FALLS, MONTANA

Northern Pacific Railway Co.)
Paul L Van Cleve Jr.)

DEED

Contract No. 18125

Montana Division

Deed No. 30342E

NORTHERN PACIFIC RAILWAY COMPANY

add. THIS DEED, Made the first day of December in the year of our Lord one thousand nine hundred and forty-five, by the Northern Pacific Railway Company a corporation of the State of Wisconsin, grantor, to Paul Van Cleve, Jr. of Big Timber, in the County of Sweet Grass and State of Montana, grantee, WITNESSETH:

WHEREAS, by a contract in writing entered into on the sixteenth day of December A.D. 1940 the grantor contracted to sell and convey the premises hereinafter described for the consideration hereinafter expressed, which contract has been duly performed and the grantee has become entitled to a conveyance of the premises.

THEREFORE, the grantor in consideration of the sum of Eight hundred seven and 70/100 (807.70) Dollars, unto it paid according to said contract, the receipt whereof is acknowledged, grants, bargains, sells and conveys unto the grantee, his heirs and assigns, the following described tract of land situate in the County of Sweet Grass in the State of Montana to-wit:

Lots sixteen (16), seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), Northeast quarter of Southwest quarter (NE $\frac{1}{4}$ SW $\frac{1}{4}$) and South half of Southwest quarter (S $\frac{1}{2}$ SW $\frac{1}{4}$) of Section No. one (1) in Township three (3) North of Range twelve (12) East of the Montana Principal Meridian, containing, according to the United States Government Survey three hundred twenty-three and 08/100 (323.08) acres, more or less;

(\$1.10 documentary stamps attached and cancelled)

the lands hereby conveyed being subject, however, to an easement in the public for any public ~~for any pub-~~ roads heretofore laid out or established, and now existing over and across any part of the premises.

Together with the hereditaments and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, The said lands and appurtenances, unto the grantee his heirs and assigns, forever.

The grantor will forever WARRANT AND DEFEND the title to the premises, except as against liens, charges, and incumbrances originating after the date of the aforesaid contract of sale.

IN WITNESS WHEREOF, The grantor has caused these presents to be sealed with its corporate seal, and signed by its Vice President, the day and year first above written.

Signed, Sealed and Delivered in the Presence of
J. A. Beardsley (N. P. SEAL)
Selma Oestreich

NORTHERN PACIFIC RAILWAY COMPANY

By B. W. Scandrett, Vice President
ATTEST: Arnold Nachald, Secretary

STATE OF MINNESOTA)
: ss.
County of Ramsey)

On this 15th day of December in the year 1945, before me Sig A. Bertelsen, a notary public, personally appeared B. W. Scandrett to me known to be the Vice President of the Northern Pacific Railway Company, the Corporation which executed the foregoing instrument, and who being duly sworn, did say, that the seal affixed to said instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said B. W. Scandrett acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal, at my office, in the City of St. Paul, the day and year last aforesaid.

(Notarial Seal)

Sig A. Bertelsen
Notary Public, Ramsey County, Minnesota
Sig A. Bertelsen
Notary Public, Ramsey County, Minn.
My commission expires March 20, 1947

Filed for record December 22nd, 1945 @ 3:45 P.M.
Dick Armstrong, Clerk and Recorder
By Dorrene Schulz, Deputy
Fees: \$1.50
Return to Paul Van Cleve Jr.

COMPARED

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Sec 1

← E

(COPY)

Reception No. 52758

N. P. Ry. Co.
Paul L. Van Cleve Jr. ..
.....

(A)
DEED No. 28701E
Contract No. 15828 MONTANA DIVISION
NORTHERN PACIFIC RAILWAY COMPANY

1939
3N12
sec 3

THIS DEED, Made the fifth day of May in the year of our Lord one thousand nine hundred and thirty-nine, by the Northern Pacific Railway Company a corporation of the State of Wisconsin, grantor, to Paul L. Van Cleve, Jr. of Big Timber in the County of Sweet Grass and State of Montana grantee, WITNESSETH:

WHEREAS, by a contract in writing entered into on the twenty-fourth day of November A.D. 1923 the grantor contracted to sell and convey the premises hereinafter described for the consideration hereinafter expressed, which contract has been duly performed and the grantee has become entitled to a conveyance of the premises.

THEREFORE, the grantor in consideration of the sum of Two thousand one hundred ninety-nine and 96/100 (2,199.96) Dollars, unto it paid according to said contract, the receipt whereof is acknowledged, grants, bargains, sells and conveys unto the grantee, his heirs and assigns, the following described tract of land situate in the County of Sweet Grass in the state of Montana to-wit:

All of Section No. three (3) in Township three (3) North of Range Twelve (12) East of the Montana Principal Meridian, containing, according to the United States Government Survey seven hundred thirty-three and 32/100 (733.32) acres, more or less;
(\$2.50 Documentary stamps attached and cancelled)

the lands hereby conveyed being subject, however, to an easement in the public for any public roads heretofore laid out or established, and now existing over and across any part of the premises.

← E

Together with the hereditaments and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the said lands and appurtenances, unto the grantee his heirs and assigns, forever.

The grantor will forever warrant and defend the title to the premises, except as against liens, charges and incumbrances originating after the date of the aforesaid contract of sale.

IN WITNESS WHEREOF, The grantor has caused these presents to be sealed with its corporate seal, and signed by its Vice President, the day and year first above

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BK 70 PG 33

Lundquist
Kesselheim
1941
Montana

CHARLES O. LUNDQUIST,
-TO-
B. KESSELHEIM, Inc.

Document No. 27711
WARRANTY DEED

This Indenture Made the 29th day of September,

A. D., one thousand nine hundred and Forty-one

BETWEEN Charles O. Lundquist, an unmarried man,

Minneapolis, Minnesota,

part Y of the FIRST PART

and B. Kesselheim, Inc.

of

Billings, Montana,

the part Y of the SECOND PART;

WITNESSETH that the said party of the FIRST PART, for and in consideration of the sum of-----

One Dollar and other good and valuable consideration-----Dollars (\$ 1.00)

lawful money of the United States of America to him in hand paid by said part Y of the SECOND PART

the receipt whereof is hereby acknowledged; do es by these presents grant, bargain, sell, convey, warrant and confirm unto

the said party of the SECOND PART, and to its successors heirs and assigns forever, the hereinafter described

real estate situated in the ~~city or town of~~ Counties of ~~County of~~ Park and Sweet ^{Grass} and State of Montana, to-wit:

All of Section Twenty-five (25), Township Four (4) North, Range Ten (10) East, all of Sections One (1), Three (3), Nine (9), Eleven (11), Thirteen (13) and Twenty-five (25), in Township Three (3) North, Range Eleven (11) East, all of Sections Eleven (11), Thirteen (13), Fifteen (15), Seventeen (17), Nineteen (19), Twenty-one (21), Twenty-three (23), Twenty-five (25), Twenty-seven (27), Twenty-nine (29), Thirty-one (31), Thirty-three (33) and Thirty-five (35), in Township Four (4) North, Range Eleven (11) East, M. P. M. situated in Park County, Montana; and

All of Sections Five (5), Seven (7), Nine (9) and Nineteen (19), in Township Three (3) North, Range Twelve (12) East, and all of Sections Nineteen (19), Twenty-one (21), Twenty-nine (29), Thirty-one (31) and Thirty-three (33), in Township Four (4) North, Range Twelve (12) East, M. P. M., situated in Sweet Grass County, Montana, containing in all 18,820.68 acres, more or less.

DOCUMENTARY STAMPS-----\$5.50 AFFIXED AND CANCELLED.

TOGETHER with all and singular the hereinbefore described premises together with all tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, right of dower and right of homestead, possession, claim, and demand whatsoever, as well in law as in equity, of the said part Y of the FIRST PART, of, in or to the said premises, and every part and parcel thereof, with the appurtenances thereto belonging, TO HAVE AND TO HOLD, all and singular the above mentioned and described premises unto the said party of the SECOND PART, and to its successors heirs and assigns forever.

And the said part Y of the FIRST PART, and his heirs, do es hereby covenant that he will forever WARRANT and DEFEND all right, title and interests in and to the said premises and the quiet and peaceable possession thereof, unto the said part Y of the SECOND PART its successors heirs and assigns, against all acts and deeds of the said part Y of the FIRST PART, and all and every person and persons whomsoever lawfully claiming or to claim the same.

This conveyance shall be subject to all easements of the public for highways or other purposes and to all reservations and exceptions of minerals or for other purposes now appearing of record;

IN WITNESS WHEREOF, the said part Y of the FIRST PART ha s hereunto set his hand and seal the day and year first hereinbefore written.

Signed, Sealed and Delivered in the Presence of

Jessie Ames
F. B. Martin

Charles O. Lundquist (Seal)
(Seal)
(Seal)
(Seal)

MINNESOTA,
STATE OF ~~MONTANA~~ } ss.
County of HENNEPIN.

On this 29th day of September, in the year nineteen hundred and Forty-one, before me Jessie Ames, a Notary Public for the State of ~~Montana~~ Minnesota personally appeared Charles O. Lundquist, an unmarried man,

known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

(NOTARIAL SEAL)

Jessie Ames Jessie Ames
Notary Public for the State of ~~Montana~~ Minnesota,
Residing at Minneapolis, Minnesota,
My Commission expires May 23, 1947.

Filed for record the 20th day of October, A. D., 19 41, at 9:00 o'clock A. M.
Deputy. R. L. Bullie, County Recorder.

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19
Part

Public
Record

←

BK TO PG 33

Lundquist - Kesselheim 1941 Montana

CHARLES O. LUNDQUIST, TO B. KESSELHEIM, Inc.

Document No. 27711

WARRANTY DEED

This Indenture Made the 29th day of September, A. D., one thousand nine hundred and Forty-one

BETWEEN Charles O. Lundquist, an unmarried man, Minneapolis, Minnesota, and B. Kesselheim, Inc. Billings, Montana,

WITNESSETH that the said party of the FIRST PART, for and in consideration of the sum of One Dollar and other good and valuable consideration... lawful money of the United States of America to him in hand paid by said part Y of the SECOND PART

All of Section Twenty-five (25), Township Four (4) North, Range Ten (10) East, all of Sections One (1), Three (3), Nine (9), Eleven (11), Thirteen (13) and Twenty-five (25), in Township Three (3) North, Range Eleven (11) East, all of Sections Eleven (11), Thirteen (13), Fifteen (15), Seventeen (17), Nineteen (19), Twenty-one (21), Twenty-three (23), Twenty-five (25), Twenty-seven (27), Twenty-nine (29), Thirty-one (31), Thirty-three (33) and Thirty-five (35), in Township Four (4) North, Range Eleven (11) East, M. P. M. situated in Park County, Montana; and All of Sections Five (5), Seven (7), Nine (9) and Nineteen (19), in Township Three (3) North, Range Twelve (12) East, and all of Sections Nineteen (19), Twenty-one (21), Twenty-nine (29), Thirty-one (31) and Thirty-three (33), in Township Four (4) North, Range Twelve (12) East, M. P. M., situated in Sweet Grass County, Montana, containing in all 13,820.66 acres, more or less.

DOCUMENTARY STAMPS-----\$5.50, AFFIXED AND CANCELLED.

TOGETHER with all and singular the hereinbefore described premises together with all tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, right of dower and right of homestead, possession, claim, and demand whatsoever, as well in law as in equity, of the said part Y of the FIRST PART, of, in or to the said premises, and every part and parcel thereof, with the appurtenances thereto belonging. TO HAVE AND TO HOLD, all and singular the above mentioned and described premises unto the said party of the SECOND PART, and to its successors heirs and assigns forever.

And the said part Y of the FIRST PART, and his heirs, do es hereby covenant that he will forever WARRANT and DEFEND all right, title and interests in and to the said premises and the quiet and peaceable possession thereof, unto the said part Y of the SECOND PART its successors heirs and assigns, against all acts and deeds of the said part Y of the FIRST PART, and all and every person and persons whomsoever lawfully claiming or to claim the same.

This conveyance shall be subject to all easements of the public for highways or other purposes and to all reservations and exceptions of minerals or for other purposes now appearing of record; IN WITNESS WHEREOF, the said part Y of the FIRST PART has hereunto set his hand and seal the day and year first hereinbefore written.

Signed, Sealed and Delivered in the Presence of Charles O. Lundquist (Seal) Jessie Ames (Seal) F. B. Martin (Seal)

MINNESOTA, STATE OF MONTANA, County of HENNEPIN. ss.

On this 29th day of September, in the year nineteen hundred and Forty-one, before me Jessie Ames, a Notary Public for the State of Minnesota, personally appeared Charles O. Lundquist, an unmarried man,

known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same. IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

(NOTARIAL SEAL) Jessie Ames Notary Public for the State of Minnesota, Residing at Minneapolis, Minnesota, My Commission expires May 23, 1947.

Filed for record the 20th day of October, A. D. 1941 at 9:00 o'clock A. M. Deputy. R. L. Bettle, County Recorder.

3N1E S1,3,9 11,13,2 part

Public Record

←

File Code: 5460

Date: MAR 06 1996

Bob Gordon 3/11/96

Return to: Gina

SOT file

Senator Conrad Burns
10 East Babcock, #106
Bozeman, MT 59715

Dear Senator Burns:

This letter is in response to your inquiry of February 15, regarding the filing of "Statements of Interest" in county courthouses.

Some of the National Forest System roads and most of the National Forest System trails in Montana were established in the early 1900's. Since that time, these roads and trails have been maintained, signed, managed and used for Forest Service management purposes and public recreational activities. Forest visitor maps have for years shown these roads and trails open for use, subject to Forest Service travel management regulations.

A portion of this road and trail system crosses intermingled private lands. In many cases, these roads and trails afford the only access to adjoining public lands. However, only a small portion of the roads and relatively few of the trails crossing private lands are covered by recorded easements. For those National Forest system roads and trails where the Forest Service does not have recorded easements, it is our position that the United States has an easement interest due to historic public and administrative use and maintenance.

During the past several years, various actions have been taken by landowners to deter continued use of these roads and trails, including signing or physically closing those segments across private lands. The Forest Service has adopted a policy of filing in the appropriate county courthouse a "Statement of Interest" and map showing the road or trail location in situations where continued use is threatened, or we believe continued use may be threatened. The Statement of Interest is designed to provide a notice of public record that the United States does claim an interest in those National Forest system roads and trails across the private lands.

Under current Regional policy, Forest Supervisors may file Statements of Interest if such action can be supported by adequate historical evidence. Prior to filing a Statement of Interest, Forest Supervisors must evaluate status evidence to determine historic United States investment, management, maintenance, and use of the facility. Sources of evidence may include retired Forest Service or other agency employees, local citizens who have knowledge of the facility, historians, maps, USGS plats/records, Forest Service records on capital investment expenditures and maintenance records, and county records.

*Dig. 07-10-96
cc: 5460
Trail
All DAs*

USDA Forest Service Bozeman, MT 59771	
MAR 07 1996	
NOVOT	
PIRCH	
AGRECO	
MAP	
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MANAGERS	

Senator Conrad Burn

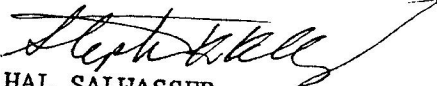
2

Forest Supervisors are encouraged to coordinate with the Regional Office Lands staff and Office of General Counsel before filing.

Since 1993, three "Statements of Interest" have been filed: two by the Gallatin Forest Supervisor and one by the Deerlodge Forest Supervisor. The two Statements in the Gallatin Forest were terminated after the Forest Supervisor received assurance that the United States interest would be maintained. In the Deerlodge case, the interest of the United States is currently being litigated.

I trust this letter provides the information you requested. Please feel free to contact us if you have further questions on this matter.

Sincerely,



for HAL SALWASSER
Regional Forester



File Code: 1510; 2730
Date: October 2, 2015

Honorable Steve Daines
Senator from Montana
Attn: Dylan Klapmeier
Field Representative | Education Liaison
218 East Front Street, #103
Missoula, MT 59802

Dear Senator Daines:

Thank you for your inquiry concerning Trail #136 in the Crazy Mountains. The Forest Service is aware of this illegally-blocked access point. Trail #136 is known as the East Trunk Trail (also historically referenced as Trail #115) and is designated as open to mountain bikes, hiking, stock, and cross country shoeing uses in the 2006 Gallatin National Forest Travel Plan and is a component of the popular "Lowline" trail system. The trail runs north from the Big Timber Canyon Picnic Area and crosses both public and private property until it reaches Sweet Grass Creek. The Sweet Grass Creek trail is also a disputed access route to National Forest System lands that remains unresolved.

The southern portion of Trail 136 provides one of the few access points to the east side of the Crazy Mountains. It is a historic trail that dates back a century or more. The Forest Service maintains that it holds unperfected prescriptive rights on this trail system as well as up Sweet Grass Creek to the north based on a history of maintenance with public funds and historic and continued public and administrative use. The process for resolving this and other comparable access disputes is expensive, lengthy and time consuming. With limited staff and budget, the Forest is unable to immediately address these complex property law issues and often times these disputes remain unresolved until brought before a court of law.

In the case of Trail 136, we are beginning the process of attempting to work amicably with the private landowner(s) to determine options for restoration of public access to this portion of the Crazy Mountains.

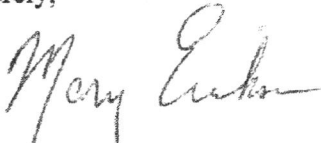
These access disputes are often quite complicated, and because they boil down to legal questions, the agency is rarely in a position to forcibly remove illegally placed barriers to access. Unfortunately, this resolution process can be quite lengthy and it is not likely to conclude prior to the end of this year's hunting season.



Access disputes across the Custer Gallatin Forest and the Northern Region have become increasingly common. There have been two new access disputes on the Yellowstone Ranger District in the last two months alone. There have been upwards of ten disputed or lost access points on the District in the last decade.

If you have additional questions or concerns please contact Alex Sienkiewicz, Yellowstone District Ranger at (406) 222-1892.

Sincerely,

A handwritten signature in cursive script that reads "Mary Erickson". The signature is written in black ink and is positioned above the printed name.

MARY C. ERICKSON
Forest Supervisor

Sienkiewicz, Alex -FS

From: Sienkiewicz, Alex -FS
Sent: Monday, August 22, 2016 4:01 PM
To: Taylor, Nancy -FS; Dennee, Robert L -FS; Oswald, Lauren M -FS; Erickson, Mary C -FS; McFarland, Elizabeth A -FS
Subject: Letter to File re: MOGA meeting and Chuck Rein

This letter to the file documents that on 17 August 2016, after the MOGA leadership meeting with Custer Gallatin NF leadership; Chuck Rein presented Alex Sienkiewicz and Mary Erickson with a copy of an EMAIL Alex had sent out to staff with CC to Forest Leadership Team. Rein complained that he was NOT trying to extinguish public access to public lands.

This email had subsequently been posted to PLWA's facebook page by an unknown 3rd party. The 6/28/2016 email follows:

All—This is my regular reminder:

NEVER ask permission to access the national Forest Service through a traditional route shown on our maps **EVEN** if that route crosses private land.

NEVER ASK PERMISSION; NEVER SIGN IN (concerns—come see me)

This includes **BUT IS NOT LIMITED TO:**

- Sweet Grass Creek (Carrocia Rein attempting to extinguish public access)
- Anywhere on the Lowline Trail (east and west Crazies) (Zimmerman, Guth, Groff, Langhuis and others trying to extinguish public access).
- Swamp Creek (Grosfield trying to extinguish public access)
- 16 Mile north crazies

Whatever past DRs or colleagues have said, I am making it clear, **DO NOT ASK permission** and **DO NOT ADVISE** publics to ask permission. These are historic public access routes... By asking permission, one Undermines public access rights and plays into their lawyers' trap of establishing a history of permissive access.

Again, questions, concerns, come see me.

Thank you—Alex

Mac Minard of MOGA also sat in on the conversation. Chuck Rein asserted that he was NOT trying to extinguish public

access, and stated as much firmly. Alex responded that when he (Rein) and the Carroccias locked gates across century-old roads like Sweetgrass Creek and put up signs drafted by lawyers stating that all access was "permissive"; that indeed he was working to extinguish public access to public lands. Both Mac Minnard and Chuck Rein asked Mary Erickson if she agreed with my (Alex's) position regarding never signing-in and never asking permission of private landowners at traditional forest access points, and Mary stated that she did support this position. All could see the parties were in disagreement, and Mr. Rein acknowledged that it would likely be unproductive to debate further. I asserted I was simply doing my job and that citizens expected me to defend public access. I noted that I was trying to "get kids to the their public lands" via traditional, century-old routes.

When the tension eased a bit, I invited Chuck to coffee or a meal to discuss possible alternative resolutions (including land exchanges or trading easements), and Chuck said he would consider it, but that "It's not just me up there" ... suggesting that the Carroccias and others are involved in the gating of the Sweetgrass Creek Road in multiple places.

I emphasize in this writing that the agency's and Rein's positions as regards this access point were "adverse" in nature in that Rein asserted any and all prospective visitors needed to ask his permission, While I (Sienkiewicz with Erickson's concurrence) asserted USFS and publics should indeed NEVER ask his permission NOR that of any other landowners (e.g., Carroccia, Cosgriff, Anderson) flanking traditional routes on the official forest map). I also asserted that USFS and publics need never sign in to access the forest via these traditional routes.

/s/ Alex Sienkiewicz



Alex Corbly Sienkiewicz
District Ranger

Forest Service

Yellowstone Ranger District, Custer Gallatin National Forest

p: 406-823-6066

c: 406-930-2454

alexsienkiewicz@fs.fed.us

5242 HWY 89 South
Livingston, MT 59047

www.fs.fed.us



Caring for the land and serving people



Alex Corbly Sienkiewicz
District Ranger

Forest Service

Yellowstone Ranger District, Custer Gallatin National Forest

p: 406-823-6066

c: 406-930-2454

alexsienkiewicz@fs.fed.us

5242 HWY 89 South
Livingston, MT 59047

SG Dispatch

From: Kathryn QannaYahu <kathryn@emwh.org>
Sent: Friday, April 20, 2018 12:44 PM
To: sgdispatch@itstriangle.com
Cc: sgsheriff@mtintouch.net
Subject: Public Information Request

Sweet Grass County Law and Justice Center
Sheriff's Office
200 West First Avenue
P.O. Box 0567
Big Timber, Montana 59011

Dispatch/Sheriff's Office,

The Montana Constitution, Article II, Part II, Section 9 states, "Right to know. No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure."

I am requesting copies of the following documents:

- November 23, 2016 dispatch about criminal trespass on Hailstone Ranch
- Statement/interview by/of Lt. Ronneberg and Bernard Robert Gregoire about criminal trespass on Hailstone Ranch
- Primary Narrative by Alan Ronneberg 12/27/2016
- hi resolution color photos from Hailstone Ranch trail cams submitted concerning criminal trespass
- Ronneberg Supplemental Reports recounting April 10 and 18, 2017 conversations and plans for re-enactment and after re-enactment, with Sweet Grass County Attorney Pat Dringman and the Langhus'.
- Case report by Lt. Ronneberg concerning Gregoire criminal trespass

For the purposes of this request the word "document" includes, but is not limited to, all agreements, memorandum, reports, maps, notes, diaries, calendars, telephone, records, internal communications, interoffice communications, e-mails, text messages, facsimiles, letters, directives, books, brochures, manuals, bulletins, worksheets, minutes and summaries of meetings, conversations and communications of any type, including telephone conversations. "Document" also includes all copies not identical to the original. Please include a search of back up servers, not just current inboxes.

Electronic PDF copies sent to this email address would be preferable or larger files uploaded to Montana File Transfer Service, I have a Montana E-pass account associated with this email address. I will print any documents I would like onto hard copies.

MCA 2-6-1006. "Public information requests -- fees. (1) A person may request public information from a public agency. A public agency shall make the means of requesting public information accessible to all persons. (2) Upon receiving a request for public information, a public agency shall respond in a timely manner to the requesting person by: (a) making the public information maintained by the public

agency available for inspection and copying by the requesting person; or (b) providing the requesting person with an estimate of the time it will take to fulfill the request if the public information cannot be readily identified and gathered and any fees that may be charged pursuant to subsection (3). (3) A public agency may charge a fee for fulfilling a public information request. Except where a fee is otherwise provided for by law, the fee may not exceed the actual costs directly incident to fulfilling the request in the most cost-efficient and timely manner possible. The fee must be documented. The fee may include the time required to gather public information. The public agency may require the requesting person to pay the estimated fee prior to identifying and gathering the requested public information. (4) A public agency is not required to alter or customize public information to provide it in a form specified to meet the needs of the requesting person. (5) If a public agency agrees to a request to customize a records request response, the costs of the customization may be included in the fees charged by the agency. (6)(a) The secretary of state is authorized to charge fees under this section. The fees must be set and deposited in accordance with 2-15-405. The fees must be collected in advance."

If there are any fees for searching or copying these records, please inform me of these costs. However, I would like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of and transparency of MT public access and/or trespass cases. This information is not being sought for commercial purposes.

If access to the records I am requesting will take longer than a 'reasonable' amount of time, please contact me with information about when I might expect copies or the ability to inspect the requested records. As I am making this request as a concerned public citizen and researcher, and this information is of a timely value, I would appreciate your communicating with me by telephone (406-579-7748) or email (kathryn@emwh.org), rather than by postal mail, if you have questions regarding this request.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Thank you for processing my request.

Thank you,
Kathryn QannaYahu

Enhancing Montana's Wildlife & Habitat
406-579-7748
1007 N. Warren St.
Helena, MT 59601

Sweet Grass County Sheriff's Office

Case P16-01082 - UNAPPROVED DRAFT

Printed on January 24, 2017

Status	Active
Report Type	Patrol
Primary Officer	Alan Ronneberg
Investigator	None
Reported At	11/23/16 11:46
Incident Date	11/23/16 11:46
Incident Code	TRESPASS : Trespass
Location	BIG TIMBER CANYON RD, BIG TIMBER, MT 59011
Beat	Sweet Grass County
Disposition	Case Report Created
Disposition Date/Time	11/23/16 15:21
Disposition Comments	

Case Comments

Offense Information

Offense Criminal Trespass To Property
Statute 45-6-203
NIBRS Code 2622 - Trespass, criminal, to property
Counts 1
Include In NIBRS Yes
Completed Yes
Bias Motivation None (no bias)
Location Fields/Woods
Entry Forced No

Arrestee

GREGOIRE, BERNARD ROBERT, JR

Male, DOB [REDACTED]

1105 WOODLAND DR
BOZEMAN, MT 59718

45-6-203 - Criminal Trespass To Property

Cited

GREGOIRE, BERNARD ROBERT, JR

Male, DOB [REDACTED]

1105 WOODLAND DR
BOZEMAN, MT 59718

45-6-203 - Criminal Trespass To Property

Offender

GREGOIRE, BERNARD ROBERT, JR

Male, DOB [REDACTED]

45-6-203 - Criminal Trespass To Property

1105 WOODLAND DR
BOZEMAN, MT 59718

Unspecified

LANGHUS, GENE

Unknown

[REDACTED]
147 MAIN BOULDER RD

BIG TIMBER, MT 59011

(406) [REDACTED] Home

(406) [REDACTED] Cell

Primary Narrative By Alan Ronneberg, 12/27/16 14:18

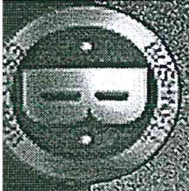
On November 23, 2016 at about 11:46am Dispatched received a call from the Hailstone ranch about someone trespassing on their property. I traveled to Big Timber Canyon and the campground at the old guard station. There I noticed a green Subaru bearing MT BKE 495, but no one was around. I positioned myself in a spot I could observe the hill side to the North and waited.

At about 1:20 pm I noticed a person coming down the hill traveling South toward the campground. I could not tell if he was following a trail or not but seemed to take a fairly direct route down the hill, which would not be on a trail.

I was able to observe the individual come down the hill and into the campground, where I made contact with him. I identified him by his Montana drivers license as Bernard Robert Gregorie from Bozeman Mt. I informed him I had received a complaint from the land owner and I was writing a citation for Criminal trespass to property. Mr. Gregorie was polite and cordial during my contact with him, he did remark that he wondered if they saw him when he went by the cabin and he was afraid the owner was going to confront him at some point.

Sometime after the First of December Gene Langhus stopped by the Sheriff's Office and provided me with trail cam photographs taken on the day he complained of the trespassing, those photo's showed the person I recognized as Mr. Gregorie. copies of the photo's are included in the case file.

The above is true and correct, this ends my report.



03-06-2014 06:05:19



MOULTRIE

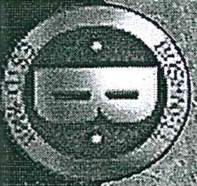


39°F 23.80inHg

MOULTRIECAM1

23 NOV 2016 01:53 pm

12:53 pm



03-06-2014 11:51:57

11-23-16

SUPPLEMENTAL REPORT

16-1080

SUSPECT: BERNARD R GREGOIRE

DOB: [REDACTED]

VICTIM: HAILSTONE RANCH, LEE AND GENE LANGHUS

MCA: 45-6-203 CRIMINAL TRESPASS TO PROPERTY

In following up on case 16-1080 a member of the Langhus family and I were asked by the County attorney to return to the Hailstone property to photograph specifically the area and the location where I saw Mr. Gregoire on the afternoon of November 14, 2016.

On April 10, 2017, I returned to the guard station campground, I parked my vehicle in approximately the same location as I did on Nov. 14. I photographed my view from the front of my vehicle and from the back of my vehicle.

As I looked North to the Hailstone ranch I was able to recognize the location I first saw Mr. Gregoire as he emerged from the timber in a small bare area and watched him walk South toward my location. I recall seeing him for approximately 10- 20 seconds before he disappeared behind some trees below from where he had emerged.

I then walked up the hill from the turn off into the campground. I noticed a new sign on the jack leg fence near the wash, requesting people to please close the gate. As I entered Lazy K Bar property there was no established trail and no trail markers. In September when I was first asked to investigate a trespass complaint I was told and noticed trail markers at the bottom of the wash.

I reached the gate to Hailstone property and went up the trail to the ridge. When I got to the ridge I turned around and noticed I could just see the campground, I took a step and the campground was obscured by trees. I looked at my clock 1402hrs and started to walk down the trail, I could not see the campground as I walked on the trail until I got to the first turn in the switch back. There I came into a small open area to the South at the head of the wash from the gate. I recognized the corner of the switch back was where I saw Mr. Gregoire but, it didn't take long to be in and out of view of the campground, one step to the west, one to the south and one to the east as I went around the corner to travel down the trail. As I recall I saw Mr. Gregoire traveling South down the hill and not change directions as I had on the trail.

As I traveled down the trail there were only two other places further to the East from the first corner that I could see the campground. The camp ground wasn't in view for very long and if I was looking up from the campground I would have only seen a flash of movement. I recall after I lost sight of Mr. Gregoire I didn't see any movement on the hillside until he appeared below the trail on Laxy K Bar property. I recall I was referencing a no trespass sign I could see from the campground and didn't see Mr. Gregoire pass under the sign.

When I got back to my truck I looked at my clock 1428 hrs, I recall after seeing Mr. Gregoire I looked at the time, 1324 hrs and made contact with him at his vehicle in the campground at 1350 hrs, 10 minutes faster that it took me to walk the trail without a pack.

The above is true and correct, this ends my report.

A handwritten signature in black ink, consisting of several overlapping, fluid strokes that form a stylized name or set of initials. The signature is positioned in the upper right quadrant of the page.

SUPPLEMENTAL REPORT

16-1080

SUSPECT: BERNARD R GREGOIRE DOB: 03/18/1967

VICTIM: HAILSTONE RANCH, LEE AND GENE LANGHUS

MCA: 45-6-203 CRIMINAL TRESPASS TO PROPERTY

On April 18, 2017, I returned to the Hailstone ranch with Kevin Langhus per request of the County Attorney's Office. I was to remain at the campground and Kevin was to walk the trail and identify the exact spot where I first saw Mr. Gregoire.

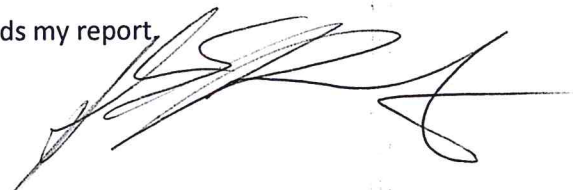
As Kevin walked the trail I noticed a flash of orange as he walked between two trees, I radioed Kevin and asked if he was on the trail. Kevin told me he was. I was able to locate the spot and photograph it. I did not see Kevin again until he radioed me and asked if I could see him, Kevin was further west than I thought but was able to see him clearly above the rocks. Kevin then proceeded up the trail to the ridge. I was unable to see him the rest of the way.

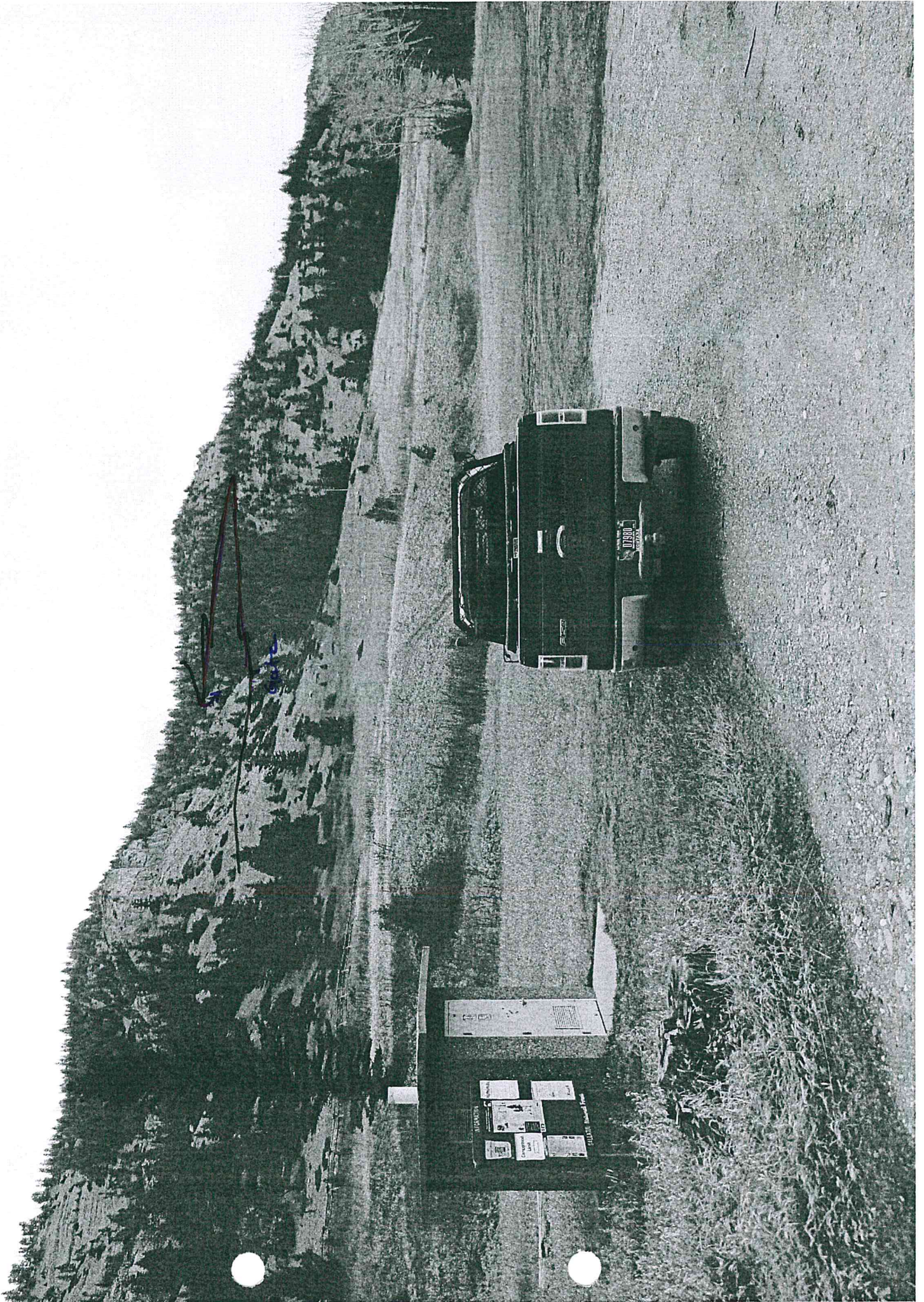
When Kevin reached the ridge line he radioed me and asked if he could see him. I took me a few seconds but was able to just make him out on the ridge line, I then photographed his position and asked Kevin to walk back down the trail and radio me every time he could see me.

When Kevin radioed, I was able to locate and photograph him and asked where he was at on the trail. Kevin told me he was at the first corner of the switch back, I could see Kevin above the rocks and asked him if he was at a head of the wash and if he could go to the east and downhill a little to the area where I first saw Mr. Gregoire. I was able to talk Kevin to the location without trouble. When Kevin reached the location, I asked if he was on the trail, if not, about how far off the trail was he. Kevin told me he was not on the trail and could not see where the trail would be from his location, but was only about 100 yards directly above the gate. I photographed Kevin at the location and asked him to continue down to the gate. I photographed Kevin again just before he went out of site, Similar to the length of time and location where I last saw Mr. Gregoire.

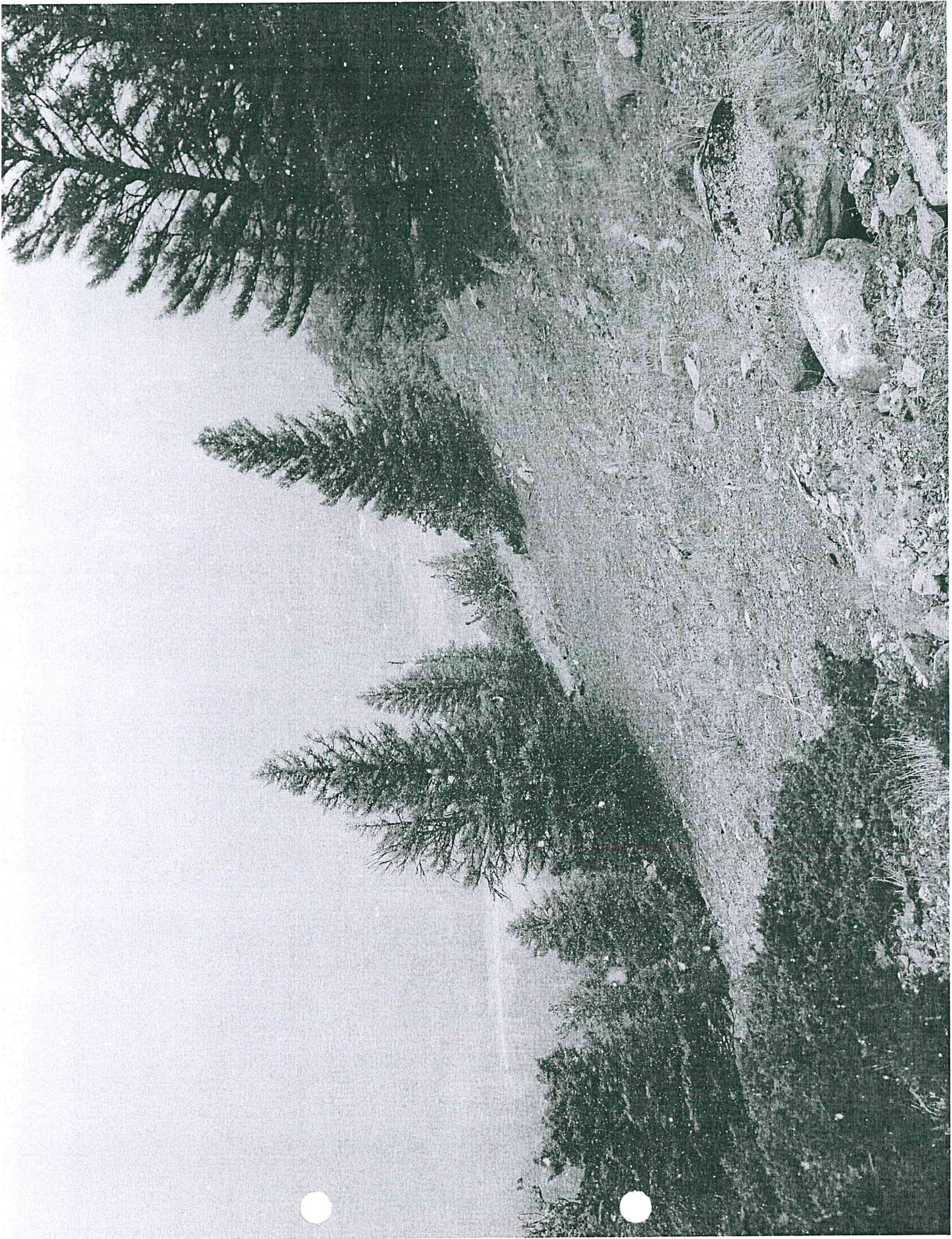
Once Kevin crossed the gate he asked me if he should follow his GPS for the location of the trail on the map. When I saw Kevin on the hillside on the east side of the wash below the gate I asked him if he was on the trail. Kevin told me that his GPS showed him close to the trail on the map. When Kevin reached the road, I told him that I never did see Mr. Gregoire on that hill side and when I first came up with Gene and Lee the markers the Forest Service put up were at the bottom of the wash. Kevin told me there was trail tape hanging in the trees that was new from the last time he was here in the winter.

The above is true and correct, this ends my report.

A handwritten signature in black ink, appearing to be the name of the reporter, written over the end of the text.











DEPARTMENT OF JUSTICE
UNITED STATES ATTORNEY
FOR MONTANA

Billings, Montana
October 29, 1948

Mr. C. G. Kegel, Deputy
U. S. District Court
Federal Building
Great Falls, Montana

Re: U. S. v. Paul L. Van Cleve, et al.

Dear Keg:

Enclosed please find original complaint and two copies thereof. Please file the original complaint and issue summons, and advise us of the date of filing and the number assigned.

You will also find enclosed an original and two copies of a notice of application for preliminary injunction which should be delivered to the Marshal, asking the Marshal to serve the original summons and the original notice upon each of the defendants by delivering to them, and each of them, a copy of the summons, complaint and order. The post office address of the defendants is Melville, Montana, but I believe that they are still residing upon the Van Cleve ranch situated in the Big Timber Canyon some thirty miles north of Big Timber, Montana.

Service upon the defendant corporation may be made by service upon Helen P. Van Cleve, who is the major stockholder of said corporation and the wife of the defendant Paul L. Van Cleve, Jr., or service may be made upon the defendant corporation by serving Paul L. Van Cleve, Jr., who is the active business manager of the defendant corporation.

This is an action to obtain a declaratory judgment to establish the existence of a public road and trail through and upon the lands owned by the defendants.



Mr. C. G. Kegel, Deputy
October 29, 1948
Page 2

It is probable that The Great Falls Tribune would be interested in the filing of this complaint for the reason that the defendant is the president of the Dude Ranchers Association, and for the further reason that all Rod and Gun Clubs in Montana are particularly interested in the filing of this action because of the inability of vacationers and sportsmen to use the road and highway as a means of access to public recreational areas constructed by the Forest Service and as a means of access to fishing and hunting areas in the Crazy Mountains north of Big Timber. We are also advised that there are other land owners in Montana who are contemplating the same action as this defendant if he is successful in appropriating the road and trail.

This office is indebted to the cooperative efforts of Senator James E. Murray and John W. Bonner in furnishing us with the information and assistance necessary in order to properly present this matter to the court.

Sincerely yours,



FRANKLIN A. LAMB
Assistant U. S. Attorney

FAL:nm
Enclosures 6

IN THE DISTRICT COURT OF THE UNITED STATES
IN AND FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FILED

OCT 30 1948

H. H. WALKER, Clerk
BY C. Hegel Deputy Clerk

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAUL L. VAN CLEVE, JR.; and
THE VAN CLEVE COMPANY, INC.,
a Corporation.,

Defendants.

C O M P L A I N T

No. 1098

COMES NOW the United States of America, by and through John B. Tansil, as United States Attorney, and Franklin A. Lamb, as Assistant United States Attorney, in and for the District of Montana, and for its cause of action, complains and alleges:

I

This is an action brought by the United States of America pursuant to the provisions of Rule 57, Federal Rules of Civil Procedure and Title 28, Section 2201, U.S.C.A., for and on behalf of the general public of the United States and officers and employees of the United States of America because there is an actual controversy now existing in respect of which the plaintiff needs a declaration of rights by this Court.

II

That The Van Cleve Company, Inc., is a corporation duly organized and authorized to do business under the laws of the State of Montana, with its principal place of business at Melville, Montana.

III

That for more than fifty (50) years there has been and now is a public road or highway and trail known as the Big Timber Canyon or Big Timber Creek road and trail extending across the eastern boundary of the Gallatin National Forest on the east line of the

Northeast Quarter of the Northeast Quarter ($NE\frac{1}{4}NE\frac{1}{4}$) of Section Twelve (12), Township Three North (3N) Range Twelve East (12E) and continuing in a westerly direction across the North line of the Northeast Quarter of the Northeast Quarter ($NE\frac{1}{4}NE\frac{1}{4}$) of said Section Twelve (12) and extending through and across Sections One (1), Two (2), Three (3), Four (4), Five (5) and Six (6) all in Township Three North (3N), Range Twelve East (12E) in Sweet Grass County, Montana, and crossing the Park and Sweet Grass County line and then extending in a north and westerly general direction to a point near the center of Township Four North (4N), Range Eleven East (11E) in Park County, Montana, where it joins the Sweet Grass Creek Trail.

IV

That the defendants own lands in Sections One (1), Two (2), Three (3) and Five (5), in Township Three North (3N), Range Twelve East (12E) in Sweet Grass County, Montana, over which said public road or highway and trail was, at all times herein mentioned and now is, situated, all within the District of Montana and within the jurisdiction of this Court.

V

That since the year 1940, the defendants have attempted to interfere and have interfered with the usage of said road or highway and trail by the officers and employees of the Forest Service of the Department of Agriculture, a Department of the United States of America, in the performance of their official duties as such officers and employees in the administration and protection of the Gallatin National Forest.

VI

That since the year 1940, the defendants have attempted to interfere, restrain, bar and prohibit and have interfered, restrained, barred and prohibited members of the general public from the free and unimpeded usage of said public road or highway and trail as a means of access to recreational areas and camp ground parks and facilities provided by the Forest Service of the United

States and the general usage and enjoyment of that portion of the Gallatin National Forest.

VII

That the defendants have maintained and do now maintain locked gates across said public road or highway and trail and have maintained and do now maintain signs of various kinds and nature claiming and identifying said public road or highway and trail as a private road and prohibiting any trespassing on the lands to the west of said signs and gates; That the defendants have refused and do now refuse to permit members of the general public to pass through said locked gates along said public road or highway and trail and have threatened and continue to threaten to restrain and interfere with the free and unimpeded usage thereof by officers and employees of the Forest Service of the United States.

VIII

That by reason of the conduct and actions of the defendants, an actual controversy exists between the defendants and members of the general public of the United States and officers and employees of the Forest Service, a Department of the United States of America, concerning the free and unimpeded right of usage of said road, highway and trail and concerning the status and character of said public road, highway and trail.

WHEREFORE, plaintiff prays:

1. That an injunction be issued out of this Court directed to the defendants and their employees, attorneys, agents and those acting in concert with them or any of them, restraining and enjoining each of them during the pendency of this action from maintaining gates, locks or chains interfering or tending to interfere or impede the free usage of the road, highway or trail or the gates situated thereon by members of the general public or officers or employees of the Forest Service of the United States of

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America, and from maintaining signs of any character importing to convey the meaning or impression that said road is a private road or that travel thereon or usage thereof is in any manner prohibited or restricted.

2. That judgment be entered herein declaring said road or highway and trail to be a public road, highway and trail and as such is a right-of-way upon, over and across the lands owned or controlled by the defendants, and that the defendants, upon the final determination of this action, be permanently restrained and enjoined from doing any act or thing tending to interfere in any manner with the free and unimpeded usage of said road, highway or trail by members of the general public or officers and employees of the Government of the United States of America.

3. That plaintiff have judgment for its costs of suit and for such other and further relief as may be just and proper.

JOHN B. TANSIL
Attorney of the United States, in
and for the District of Montana.

Franklin A. Lamb
Assistant Attorney of the United
States, in and for the District
of Montana.

District Court of the United States

FOR THE

DISTRICT OF Montana.

Billings DIVISION

CIVIL ACTION FILE No. 1098

FILED

NOV 3 1948

H. H. WALKER, Clerk

BY C. Kegeles Deputy Clerk

SUMMONS

United States of America,

Plaintiff

v.

Paul L. Van Cleve, Jr.; and
The Van Cleve Company, Inc.,
a corporation,

Defendant s.

To the above named Defendants:

You are hereby summoned and required to serve upon Mr. John B. Tansil, United States District Attorney, or Franklin A. Lamb, Assistant United States District Attorney,

plaintiff's attorneys, whose address is Federal Building, Billings, Montana,

an answer to the complaint which is herewith served upon you, within TWENTY days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

H. H. Walker

Clerk of Court.

By

C. Kegeles

Deputy Clerk.

Date: October 30, 1948.

[Seal of Court]

Reproduced at the National Archives & Seattle

No.

District Court of the United States

DISTRICT OF

v.

SUMMONS IN CIVIL ACTION

Returnable not later than _____ days
after service.

Attorney for Plaintiff.

13504-6th 25. P. 46

U. S. v. Paul L. Van Cleve Jr. et al
Billings Div. No. 1098

Form No. 282

RETURN ON SERVICE OF WRIT

United States of America

DISTRICT OF Montana

} ss:

I hereby certify and return that I served the annexed Summons and Notice

on the therein-named Paul L. Van Cleve Jr.

with copy of complaint attached thereto
by handing to and leaving a true and correct copy thereof with him

personally

at about 38 miles NW of Big Timber said District on the 1st day of

November, 1948.

United States Marshal's

Fees..... \$4.00

U. S. GOVERNMENT PRINTING OFFICE 16-17777 \$19.94

Total..... \$23.94

Geo. A. Wright

U.S. Marshal.

By [Signature]
Deputy.

Reproduced at the National Archives & Seattle

IN THE DISTRICT COURT OF THE UNITED STATES
IN AND FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

- - - - -

UNITED STATES OF AMERICA,

Plaintiff, :

v. :

PAUL L. VAN CLEVE, JR.; and
THE VAN CLEVE COMPANY, INC.,
a Corporation,

Defendants.

N O T I C E

No. 1298

- - - - -

TO PAUL L. VAN CLEVE, JR., AND THE VAN CLEVE COMPANY, INC., A
CORPORATION, MELVILLE, MONTANA:

Please take notice that the undersigned will apply to the above-entitled court in the courtroom, United States Courts and Post Office Building, City of Helena, Montana, on the 18th day of November, 1948, at 10:00 o'clock A. M. of said day, or as soon thereafter as counsel may be heard, for a temporary injunction restraining you, and each of you, your employees, attorneys, agents and those acting in concert with you, or any of you, during the pendency of this action, from maintaining gates, locks or chains interfering or tending to interfere or impede with the free usage of the Big Timber Canyon road and trail, also known as the Big Timber Creek road and trail, by members of the general public or officers or employees of the United States of America, and from maintaining signs of any character importing to convey the meaning or impression that said road or trail is a private road or trail, or that travel thereon or usage thereof is in any manner prohibited or restricted.

JOHN B. TANSIL
Attorney of the United States, in
and for the District of Montana

Franklin A. Lamb
Assistant Attorney of the United
States, in and for the District
of Montana

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IN THE DISTRICT COURT OF THE UNITED STATES
IN AND FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA,)
Plaintiff,)
-Vs-)
PAUL L. VAN CLEVE, JR., and)
THE VAN CLEVE COMPANY, INC.,)
a Corporation,)
Defendants.)

MOTION
No. 1098

Filed Nov. 18, 1948
H. A. Walk, Clerk

The defendants, and each of them, move the court as follows:

1. To dismiss the action because the complaint fails to state a claim against defendants upon which relief can be granted.

2. To dismiss the action for the reason that plaintiff has entirely failed to join an indispensable party to said action, to-wit: The Board of County Commissioners of Sweetgrass County, Montana, said Sweetgrass County being the county wherein the alleged public highway described in the complaint of plaintiff herein is located.

David B. Fitzgerald
Attorney for Defendants
127 North Main Street
Livingston, Montana

Service of foregoing motion admitted & receipt of true copy admitted this 18th day of November, 1948 without waiving any rights or time under Rules of Civil Procedure.

Franklin A. Lamb
Asst. U. S. Atty

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IN THE DISTRICT COURT OF THE UNITED STATES
IN AND FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FILED,
entered, and noted
Civil Docket:
NOV 20 1948

UNITED STATES OF AMERICA,
Plaintiff, :

H. H. WALKER, Clerk
BY Elizabeth C. Meek
Deputy Clerk

v. :

ORDER FOR
PRELIMINARY INJUNCTION

PAUL L. VAN CLEVE, JR.; and
THE VAN CLEVE COMPANY, INC.,
a Corporation, :

No. 1098

Defendants.

This cause came on to be heard upon plaintiff's applica-
tion to this court, notice of said application having heretofore
been served on each of the defendants herein, and the court having
considered the complaint on file herein, together with all of the
other pleadings, records and files in conjunction herewith, and
having heard oral evidence in open court, the court makes the
following

FINDINGS OF FACT

1. That this court has jurisdiction of this matter in accordance with the provisions of Rule 57, Federal Rules of Civil Procedure, and Title 28, Section 2201, U.S.C.A.
2. That an actual controversy now exists between the plaintiff and defendants.
3. That there has been for many years and now is a road, highway and trail known as the Big Timber Canyon and Big Timber Creek road and trail, extending across the eastern boundary of the Gallatin National Forest and extending generally in a westerly direction through the Big Timber Creek Canyon, and extending through and across certain lands owned and controlled by the defendants herein, as described in the complaint on file.

4. That since the year 1940 the defendants have maintained and is at the present time maintaining locked gates across said Big Timber Creek Canyon road and trail, the maintenance of which has interfered, restrained, barred and prohibited members of the general public from the free and unimpeded usage of said road and trail, and have interfered, barred and prohibited the free and unimpeded usage of said road and trail by officers and employees of the Forest Service of the United States of America, and in addition thereto the defendants have maintained and now are maintaining signs of various kinds and nature importing and conveying the meaning or impression that said road and trail is a private road and trail, and that travel thereon or the usage thereof is prohibited and restricted.

5. That the maintenance of said locked gates and signs has interfered with the free and unimpeded usage of said road and trail by members of the general public and officers and employees of the United States.

On the basis of the foregoing, the court makes the following

CONCLUSIONS OF LAW

1. That this court has jurisdiction of a controversy now existing between the plaintiff and defendants, pursuant to the provisions of Rule 57, Federal Rules of Civil Procedure, and Title 28, Section 2201, U.S.C.A.

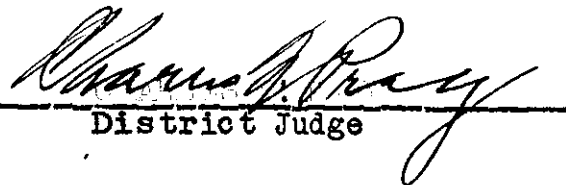
2. That the maintenance of locked gates, chains and signs by the defendants has interfered, impeded and barred members of the general public and officers and employees of the United States from the free and unimpeded usage of the Big Timber Canyon road and trail, and that the continued maintenance thereof during the pendency of this action will result in restraining and interfering with the free and unimpeded usage of said road and trail.

ORDER

WHEREFORE, IT IS ORDERED that the defendants, and each of them, their agents, servants, employees, attorneys and all persons acting in concert with them, or any of them, be, and they hereby are, restrained and enjoined pending the determination of this action from maintaining any locked gates or signs of any character which tend to interfere or impede the free usage of the Big Timber Canyon road or trail through, over and upon property owned by the defendants, or either of them, or any signs that import to convey the meaning or impression that said road or trail is a private road and trail and that travel thereon or usage thereof is in any manner prohibited or restricted.

IT IS FURTHER ORDERED that the Clerk of this court issue a preliminary injunction under the seal of this court.

DONE in Open Court this 20th day of November, 1948.


District Judge

United States Department of Justice

UNITED STATES ATTORNEY
FOR MONTANA

Billings, Montana
November 24, 1948

Mr. C. G. Kegel, Deputy
U. S. District Court
Federal Building
Great Falls, Montana

Re: U. S. v. Paul Van Cleve, Jr.
Billings Civil Number 1098

Dear Keg:

Enclosed please find original stipulation and original proposed order granting the defendants additional time within which to file their brief in support of their motion.

If this meets with the Court's approval will you please notify counsel for both parties of the date of the execution of the order.

Sincerely yours,



FRANKLIN A. LAMB
Assistant U. S. Attorney

FAL:nm
Enclosures 2

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IN THE DISTRICT COURT OF THE UNITED STATES
IN AND FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
-Vs-
PAUL L. VAN CLEVE, JR., and
THE VAN CLEVE COMPANY, INC.,
a Corporation,
Defendants.

STIPULATION
No. 1098 ✓

FILED
NOV 27 1948

H. H. WALKER, Clerk
BY *Chegel* Deputy Clerk

IT IS HEREBY STIPULATED AND AGREED, by and between
the parties to the above entitled action, acting through
their respective counsel herein, that the defendants and
each of them, may have to and including the 20th day of
December, 1948, to prepare, serve and file their memoran-
dum in support of their motion to dismiss the complaint
in said action heretofore made herein.

DATED this 24 day of November, 1948.

John B. Farsill

Franklin A. Lamb

Attorneys for Plaintiff

David B. Fitzgerald

Attorney for Defendant
127 North Main Street
Livingston, Montana

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IN THE DISTRICT COURT OF THE UNITED STATES
IN AND FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

-Vs-

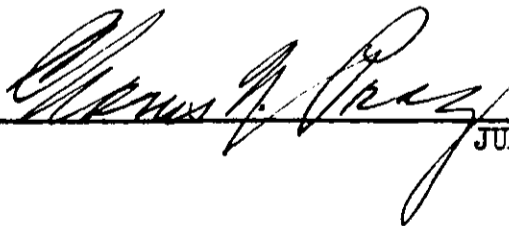
PAUL L. VAN CLEVE, JR., and
THE VAN CLEVE COMPANY, INC.,
a Corporation,

Defendants.

O R D E R

No. 1098 ✓

Pursuant to stipulation of the parties herein on file,
it is hereby ordered that the defendants and each of them,
in the above entitled action may have to and including the
20th day of December, 1948, to prepare, serve and file
their memorandum in support of their motion to dismiss the
complaint in said above entitled action, heretofore made
herein.


JUDGE

FILED *entire*
7 noted in Cecil Hockett
NOV 27 1948
H. H. WALKER, Clerk
by *Elizabeth C. McKee*
Deputy Clerk

8

IN THE DISTRICT COURT OF THE UNITED STATES
IN AND FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAUL L. VAN CLEVE, JR.; and
THE VAN CLEVE COMPANY, INC.,
a Corporation,

Defendants.

PRELIMINARY INJUNCTION

No. 1098

This cause came on regularly for hearing before the Court, Honorable Charles N. Pray Judge presiding, on the 18th day of November, 1948, plaintiff being represented by Franklin A. Lamb, Assistant United States Attorney, in and for the District of Montana, and the defendant being present in person and represented by by his counsel David B. Fitzgerald, and oral and documentary evidence having been presented on behalf of the plaintiff, and at the conclusion of the evidence the motion for issuance of a preliminary injunction was orally argued to the court by counsel for the respective parties, and the court after considering all the evidence and the argument of counsel and being fully advised in the premises made its findings of fact and conclusions of law and directed the Clerk of this court to issue a preliminary injunction based upon the Court's findings of fact and conclusions of law, which by reference are incorporated herein and hereof made a part, the Court being of the opinion that it was proper and necessary that a preliminary injunction issue restraining the defendants from the acts complained of in plaintiff's complaint in order that the status quo of the subject matter of the action remain unchanged until the final determination of the action on its merits is had by the Court.

DEC 1 1948
BY E. C. McK...

WHEREFORE, IT IS ORDERED, and this does ORDER that you, the defendants, Paul L. Van Cleve, Jr. and The Van Cleve Company, Inc., a corporation, and each of you, your agents, servants, employees, attorneys and all persons acting in concert with you or any of you be, and you hereby are, restrained and enjoined, pending the determination of this action, from maintaining any locked gates or signs of any character which tend to interfere or impede the free usage of Big Timber Canyon road or trail through, over and upon the property owned by you, the said defendants, or either of you, or any signs that import to convey the meaning or impression that said road or trail is a private road and trail, and that travel thereon or usage thereof is in any manner prohibited or restricted.

Given under my hand and the seal of this court this 20th day of November, 1948.

H. Swack
Clerk of the above-entitled Court.

Form No. 282

RETURN ON SERVICE OF WRIT

United States of America

DISTRICT OF Montana

ss:

I hereby certify and return that I served the annexed Preliminary Injunction

on the therein-named The Van Cleve Co., Inc., a Corp

by handing to and leaving a true and correct copy thereof with Paul L. Van Cleve Jr., President of The Van Cleve Co. Inc., a Corp. personally

at Billings in said District on the 27th day of November, 19 48

Geo. A. Wright

U.S. Marshal.

By

J. P. Johnson

Deputy.

Form No. 282

RETURN ON SERVICE OF WRIT

United States of America }
DISTRICT OF Montana } ss:

I hereby certify and return that I served the annexed Preliminary Injunction
on the therein-named Paul L. Van Cleve Jr.

by handing to and leaving a true and correct copy thereof with him
personally
at Billings in said District on the 27th day of
November, 1948

United States Marshal's
U. S. GOVERNMENT PRINTING OFFICE 16-17777
Expenses \$ 4.06
Total \$ 4.06

Geo. A. Wright
U.S. Marshal.
By J.P. Johnson
Deputy.

GIBSON, FITZGERALD & BODINE

FRED L. GIBSON
DAVID B. FITZGERALD
RICHARD A. BODINE

LAW OFFICES
127 NORTH MAIN STREET
LIVINGSTON, MONTANA

TELEPHONE 18

December 18, 1948.

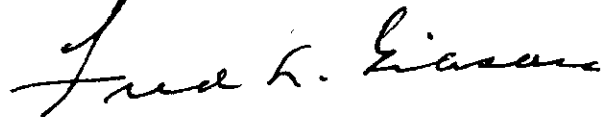
Mr. H. H. Walker, Clerk
United States District Court
Helena, Montana.

Dear Sir:

We are enclosing herewith defendants' brief in support of Motion to Dismiss in the action entitled United States of America, Plaintiff, v. Paul L. Van Cleve, Jr., et. al., Defendants, for filing and delivery to Judge Pray.

A copy of the brief has been served upon the attorneys for plaintiff by mail.

Very truly yours,



Fred L. Gibson

9

IN THE DISTRICT COURT OF THE UNITED STATES
IN AND FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 -Vs-)
)
 PAUL L. VAN CLEVE, JR., and)
 THE VAN CLEVE COMPANY, INC.,)
 a Corporation,)
)
 Defendants.)

DEFENDANTS' BRIEF
ON MOTION
TO DISMISS

No. 1098 ✓

Filed Dec - 20 - 1948
H. H. Walker Clerk

This action is brought to obtain a declaratory judgment declaring and determining a certain road and trail in Sweet Grass County, Montana, "to be a public road, highway and trail and as such is a right of way upon, over and across the lands owned or controlled by the defendant".

The action is brought by the United States of America, and the jurisdiction of this court is only because the United States is a party to the controversy. Art. 2 Sec. 3 U. S. Constitution.

The controversy is whether the road is a public road or a private way across the lands of defendants.

The action is brought pursuant to the permission of Section 2201 of Title 28 U. S. C. entitled "Judiciary and Judicial Procedure", being the revision of Section 400 Title 28 formerly titled "Judicial Code and Judiciary". Rule 57 Federal Rules of Procedure governs the procedural aspects of

actions for declaratory judgments.

The declaratory judgment act does not enlarge the jurisdiction of the court. *Commercial Casualty Co. v Fowles*, 154 Fed. 2nd 884, 165 A L R 1068. Nor does the fact that the United States is plaintiff in any manner enlarge the powers of the court.

While the jurisdiction of the courts of the United States extends "to controversies to which the United States shall be a party", U. S. Const. Art. 3 Sec. 2, when the United States voluntarily becomes a litigant in its own court, it must maintain its contention in the controversy under the same rules of substantive law and evidence binding upon other litigants in like situation, excepting that laches and the statutes of limitation shall not bar its action if otherwise of legal right and merit. *United States v Beebe*, 127 U. S. 338, 32 L. Ed. 121. But even as to the defense of laches and limitations the United States is subject thereto if it is a litigant in a case where it is a nominal plaintiff, and has allowed its name to be used therein for the sole benefit of private persons. *United States v Beebe*, supra.

Here the United States appears as would any private litigant. It has no power or authority over the road in controversy.

The establishment, maintenance, control and supervision of public highways is within the state power and authority.

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Montana has by statute enacted a "General Highway Law", (Chapter 140, R. C. M. 1935) and in great detail has provided for the creation, maintenance, control and use of the public roads of the state. The State of Montana has imposed the duty of working and maintaining "such highways as are necessary for public convenience" upon the boards of county commissioners of the respective counties. Sec. 1622 R. C. M. 1935, as amended by Chapter 102, Session Laws 1947. The power of establishing certain roads called "state roads", and of maintenance thereof, and of co-operation in the construction of highways under the federal aid road act is conferred by the state upon the "State Highway Commission", Secs. 1790, 1791 R. C. M. 1935, but the road here involved is not in truth, nor is it alleged to be in the complaint, either a state highway or a federal aid highway, within the authority of the State Highway Commission. If a public highway, as plaintiff seeks to have it declared to be, it is within the control and supervision of the board of county commissioners of the county wherein it is located, Sweet Grass County, and it follows that said board is an indispensable party to an action that has for its purpose the determination of its status and character as such public highway. For if it is declared by judgment to be such public highway, the duty is upon said board to work and maintain it, (Sec. 1622 R. C. M. 1935, supra,) and to levy and cause to be collected taxes upon the taxable property of the county for such maintenance. Sec. 1617 R. C. M. 1935, as amended by Chapter 145 Session Laws 1947.

For the purpose of the motion to dismiss it is, of course, true that the allegations of fact are to be taken as true. But it is also true that the entire complaint must be examined to determine the issues presented and that a matter alleged as a fact is not to be taken apart from the context and aside from, and independent of the purpose, scope and object of the action.

4 Here we have the broad, general allegation that "for more than fifty years there has been and now is a public road or highway and trail * * * extending across the eastern boundary of the Gallatin National Forest * * * and extending through and across sections One (1), Two (2), Three (3), Four (4), Five (5) and Six (6) all in Township Three North, (3 N) Range Twelve East (12 E) in Sweet Grass County, Montana, and crossing the Park and Sweet Grass County line and then extending in a North and Westerly general direction to a point near the center of Township Four North (4 N), Range Eleven East (11E) in Park County, Montana, where it joins the Sweet Grass Creek Trail". Taken alone this might be construed as a statement of fact that the so called "road or highway and trail" was and is a "public road or highway or trail", but it is followed in the complaint by the allegation that "The defendants own lands in Sections One (1), Two (2), Three (3) and Five (5) in Sweet Grass County, Montana, over which said public road or highway and trail was * * * and now is situated". And following the allegation that the so-called "public road or highway and trail" is in part situated on lands of the defendants there are allegations showing the claim and contention of defendants that the "road" is not

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a public road but a private road; and the prayer of the complaint, and the purpose of the action as disclosed by the pleading in its entirety is "That judgment be entered herein declaring said road or highway or trail to be a public road, highway and trail and as such is a right of way upon, over and across the lands owned or controlled by the defendants".

Thus it is shown that the "actual controversy" that must exist to give the court jurisdiction to enter a declaratory judgment, is whether the road and trail is a public highway or a private way across defendants lands.

Such being the controversy as defined in the complaint we consider the motion to dismiss.

The motion is made pursuant to Rule 12 Federal Rules of Civil Procedure, as amended, and upon the 6th and 7th grounds of defense which the rule provides may be made by motion.

The first ground of the motion is the 6th ground of defense specified in the rule, that the complaint "fails to state a claim against defendants upon which relief can be granted".

It is settled that private individuals to maintain a suit to enjoin obstruction to a road alleged to be a public highway, must show that they have sustained special damage different not only in degree but in kind from that suffered by the public at large. 29 C. J. 627; 40 C. J. S. 226; State ex. rel. Babcock et al v Heusman, et al, 110 Mont. 51, 99 Pac. 2nd 452. The united States in this action is merely

a private litigant. Its complaint is to be tested by the same rule that is applied to any other private litigant. Tested by the rule announced in the cited text and Montana authority the plaintiff's complaint fails to state a claim against defendants upon which relief can be granted, and the action should be dismissed because thereof. Unless it shows that it has suffered the special damage, differing in kind from that suffered by the general public, it fails to bring itself within the rule that permits a private litigant to enter into a matter that the law has entrusted to the public authorities - the board of county commissioners. And here it is to be noted that in fact the complaint is not framed upon the ground of special damage to the United States but in behalf of the general public. And while the United States has assumed guardianship of large parts of the world, it has thus far left the mountain roads and trails to the states or the individuals interested.

The second ground of the motion for dismissal of the action is the seventh in the list of defenses that may be presented by motion under Rule 12 as amended. It is the failure to join an indispensable party. This is peculiarly and especially a defense in this action where the object is to obtain a judgment declaring and establishing as a status that the road in controversy is a public highway. Admittedly the controversy before the court is exactly this: the plaintiff says the road is a public highway; the defendants say that it is a private way across their lands. This is the "actual controversy" that gives the court jurisdiction under

the declaratory judgment act, and it is the controversy that the complaint submits to the court for its declaratory judgment thereon. It follows that the board of county commissioners of the county in which the road is located is an indispensable party to the action. This board is the body which the State of Montana has clothed with the authority and power over the public highways of the class this one is alleged to be in the county where this road is located. We cite Montana statutes of which this court takes judicial notice as follows:

R. C. M. 4465.3

Board of County Commissioners has jurisdiction and power - - to lay out, maintain, control and manage public highways within the county.

R. C. M. 1622 - and Ch. 102 L. 1947

Boards of county commissioners of the several counties of the state have general supervision over the highways within their respective counties, and must work and maintain them.

The county may not be saddled with the burden and expense of maintenance, construction of bridges and repair of a road unless it is in fact and law a public road which it is its duty to maintain. And as the statute reposes the direct obligation of supervision, and the duty of working and maintaining "such highways as are necessary for public convenience" it follows that the board of county commissioners entrusted with the protection of the county interests must be a party to a suit having for its object the establishment by judgment of the status of a road as a public highway to be worked and maintained by the county.

Under the uniform declaratory judgments law adopted by many states it was held in Colorado that an action for declaratory judgment by the Mutual Insurance Company to obtain a construction of laws and charter membership policies, brought against the state commissioner of insurance was not maintainable because all policy holders had an interest in the controversy between the company and insurance commissioner and were indispensable parties. *Continental Mutual Ins. Co. v Cochrane*, _____ Colo _____ 4 Pac. 2nd 308.

An indispensable party is one who has an interest in the controversy of such a nature that a final decree cannot be made without affecting that interest, or leaving the controversy in such a condition that its final termination may be wholly inconsistent with equity. *Shell Dev. Co. v Universal Oil Prd. Co.* 157 Fed. 421. Suit will be dismissed where indispensable party not joined. *Mine Safety Appliance Co. v. Knox*, 326 U. S. 371, 90 L. Ed. 140; *Keegan v. Humble Oil & Refin. Co.* 155 Fed. 971; *Ducher V. Butler* 104 Fed. 236;

It is oft repeated in the many cases that have been brought under the Federal Declaratory Judgments Act as well as in the cases under the Uniform Declaratory Judgments Act in the states that have adopted it, that the action is not proper and should be dismissed where it appears that the decision would not terminate the uncertainty or controversy giving rise to the action. *Samuel Goldwyn, Inc. v United Artists Corp.* 113 Fed 703; *Angell v Schram*, 109 Fed 2nd 380. And it is also declared by the Supreme Court of the

United States that the declaratory judgment procedure may be resorted to only in the sound discretion of the court and where an adequate and effective judgment may be rendered. Alabama State Federation of Labor v McAdory, 325 U. S. 450, 89 L. Ed. 1725.

Here we have a case where the controversy and uncertainty as to whether the road is a public highway is sought to be settled in an action between two private litigants, neither having any power, authority or control over the road, if it is a public highway. The judgment would not be effective as to the authority or lack thereof of the board of county commissioners over the road, nor as to any member of the public who might seek to compel the board to perform an alleged duty of maintenance of it and constructing and repairing bridges and culverts to make it safe or possible to travel.

IN BRIEF SUMMARY

The case outlined in the complaint fails to entitle the plaintiff to sue for the alleged obstruction of the alleged highway, under the decisions and rules announced in cases hereinabove cited, no special damage to plaintiff permitting it to intrude into the field of action reserved to the authority having control of public highways in Montana being alleged.

The courts say of the declaratory judgments act that an appeal under the procedure therein is addressed to

the sound discretion of the court.

If the road in controversy is a public highway it is under the control of the board of county commissioners of Sweet Grass County, and that board is an indispensable party to the action. If the action here results in a judgment declaring that it is not a public highway does that deprive the board of asserting in other actions that it is a public highway? If it is declared to be a public highway does the judgment saddle Sweet Grass County with the burden of care, maintenance and improvements of the road, if the board denies that it is a public highway? May the road be a public highway as to the United States and the defendants in the action and only a private way as to the rest of the world?

These queries make clear that the suit should be dismissed because of failure to join an indispensable party, and because in the exercise of a sound discretion the suit in its present condition should not be maintained because it will not settle the controversy nor eliminate the uncertainty as to the status of the road.

The action should be dismissed.

Respectfully submitted

Richard A. Bodine

David B. Fitzgerald

Attorneys for defendants
Livingston, Montana.

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IN THE DISTRICT COURT OF THE UNITED STATES
IN AND FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FILED

DEC 23 1948

UNITED STATES OF AMERICA, :
Plaintiff, :

H. M. [Signature] Clerk
BY Ch. Kezel Deputy Clerk

v. :

STIPULATION

PAUL L. VAN CLEVE, JR., and :
THE VAN CLEVE COMPANY, INC., :
a Corporation, :
Defendants. :

No. 1098.

IT IS HEREBY STIPULATED AND AGREED by and between
the attorneys for the respective parties that the plaintiff,
United States of America, may have thirty additional days
within which to prepare and file its answer brief.

JOHN B. TANSIL
United States Attorney in and
for the District of Montana.

Franklin A. Lamb
Assistant United States Attorney
Attorneys for Plaintiff.

GIBSON, FITZGERALD & BODINE

By David B. Fitzgerald
Attorneys for Defendant.

ORDER

Upon the reading and filing of the above stipulation,
the plaintiff, United States of America, is hereby granted thirty
additional days within which to prepare and file its answer brief.

DONE this 23rd day of December, 1948.

Charles J. Pray
United States District Judge.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

v.

PAUL L. VAN CLEVE, JR., and
THE VAN CLEVE COMPANY, INC.,
a Corporation,

Defendants.

*Filed Jan 28 - 1949
A H Walker clerk
By C K Keigel deputy*

PLAINTIFF'S BRIEF ON
DEFENDANTS' MOTION TO
DISMISS

Civil No. 1098 ✓

The action before the court is pending upon plaintiff's complaint asking for a declaratory judgment that the road or highway and trail is a public road, highway and trail and asking that the defendants be restrained and enjoined from interfering with the free and unimpeded usage of the road, highway and trail by members of the general public and by the officers and employees of the Government of the United States of America. The road, highway and trail are situated entirely within the boundaries of a national forest. The defendants spend four and one-half pages in their brief attempting to analyze the question before the court before discussing their motion upon which their brief is based. Many of the statements contained in their brief are the conclusions of the writer without citation of authority, and for the purpose of this brief we have turned to page 5 of the defendants' brief where the defendants discuss the first ground of their motion.

However, in our brief we will discuss the questions before the court under three topics, i.e., jurisdiction, the complaint states a claim against the defendants upon which relief can be granted, and Sweet Grass County is not an indispensable party.

JURISDICTION

Paragraph I of the complaint on file before the court specifies the provisions under which this action is brought and discloses that the action is brought by the United States both on behalf of the general public and also on behalf of the Government's officials and employees. Because the controversy arises under the laws of the United States, this court clearly has jurisdiction of this cause and the citation of authorities would be pure surplusage.

The defendants in their brief have questioned the authority of the United States to control the road in question, and we wish to again direct the court's attention to the fact that the road in question is situated entirely within the boundaries of a national forest. Section 501, Title 16, U.S.C.A. provides for the budget necessary for the Secretary of Agriculture in the construction and maintenance of roads and trails within the national forests in the States from which such proceeds are derived. It further provides that the Secretary of Agriculture may secure the cooperation or aid of the proper State authorities in the furtherance of any system of highways of which such roads may be made a part.

Section 503, Title 16, U.S.C.A. provides for additional funds which may be expended by the Secretary of Agriculture upon request of the officers of the State within which the national forest is situated for the construction and maintenance of roads and trails.

Section 525, Title 16, U.S.C.A. discloses that the Secretary of Interior may take the necessary steps to secure a right-of-way for roads and highways across any national forest when in his judgment the public interests will not be injuriously affected thereby.

These sections clearly disclose that the Government has retained its control and supervision of the lands within the boundaries of a national forest, and while there may be reciprocal

agreements with the States it is not mandatory that such agreements be entered into, and Section 501 cited above clearly discloses that the Secretary of Agriculture has complete control of the roads and trails within the national forests unless the cooperation or aid of the State is secured by agreement. There is no allegation of any State interest in the road and trail in question in the case at bar.

Clearly, then, the United States having retained control of the construction and maintenance of the road and trail, it may go before its own courts to maintain the right of its employees to free and unimpeded usage of the road and trail in question.

COMPLAINT STATES A CLAIM AGAINST
DEFENDANTS UPON WHICH RELIEF
CAN BE GRANTED

Section 8651, Revised Codes of Montana for 1935, provides that a private person may maintain an action for a public nuisance if it is specially injurious to himself but not otherwise. The citations are numerous that the obstruction of a highway is a nuisance and that a private individual may sue in his own name to enjoin this public nuisance if it is specially injurious to him. (See Iverson v. Dilno, 44 Mont. 270). We also wish to cite to the court Faucett et al. v. Dewey Lumber Co., et al., 82 Mont. 250, wherein the Supreme Court of Montana upheld the right of a private person to sue for the obstruction of a way preventing the private person from free passage.

Section 8652, Revised Codes of Montana for 1935, provides that a public nuisance may be abated by any public body or officer authorized thereto by law.

The following Code sections of Montana provide the rights of a private person in objecting to the continuance of a public nuisance as the same affects the complainant.

The complaint in question alleges that the defendants have interfered with the usage of the road, highway and trail by the officers and employees of the United States Government in the performance of their official duties in the national forest.

Certainly the United States has the right to go into its own court to protect and enforce the rights of its employees in areas over which it exercises control.

In Williams v. Bluebird Laundry (Cal.) 259 Pac. 484, the court held that if the nuisance invades a distinct private right, a cause of action for injunction is not destroyed by the fact that similar rights of an indefinite number of other people are also infringed in the same manner.

We freely submit the complaint now on file as stating a claim against the defendants upon which this court may grant the plaintiff its desired relief.

SWEET GRASS COUNTY IS NOT AN
INDISPENSABLE PARTY

"All persons having an interest in the subject of the action, and in obtaining the relief demanded, may be joined as plaintiffs, except when otherwise provided in this chapter." Section 9077, Revised Codes of Montana 1935.

"The court may determine any controversy between parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy cannot be had without the presence of other parties, the court must then order them to be brought in...." Section 9090, Revised Codes of Montana 1935.

"Of the parties to the action, those who are united in interest must be joined as plaintiffs or defendants; and when the question is one of a common or general interest, of many persons, or when the parties are numerous, it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all." Section 9083, Revised Codes of Montana 1935.

In general the Codes provide that all persons having an interest in the subject of the action and in obtaining the relief demanded may be joined as plaintiffs. (Section 9077 R.C.M. 1935) This clearly does not mean that all persons who might join must do so. Several plaintiffs may properly join in one action where their rights are identical in nature and kind and only differ in extent and quality. Persons, however, who have separate

interests and suffer separate damage may not join. See Bancroft's Code Pleading, Volume 1, page 257-8.

It is a general rule that all persons who have an interest in the subject and ~~object~~ of the action are necessary parties plaintiff or defendant..... This general rule is not without exceptions however, one of which is that interested persons are "proper" rather than "necessary" parties when the court may determine the controversy before it without prejudice to, or by saving their rights; that is, where the cause may proceed without them, although their presence would allow a decree or judgment more clearly or effectively to settle the controversy between all interested..... Of course, persons are not necessary parties where nothing is asked of them and they are in no way essential to a determination of the respective rights of the plaintiff and defendant. See Bancroft's Code Practice, Volume 2, pages 1079-80.

Necessary parties must be joined, and proper parties may be joined, for the foregoing Code provisions are not construed as making all persons referred to necessary parties to the rendition of a valid judgment or as making their joinder in all cases obligatory. See Bancroft's Code Practice, Volume 2, page 1106.

A defect of parties plaintiff or defendant results when there is a failure to join necessary as distinguished from proper parties.....

The non-joinder of a party may ordinarily be objected to only by one prejudiced thereby. But such prejudice exists as to a defendant who may be subjected to undue inconvenience or to damage of loss or to future liquidation or to more extensive liability by reason of the defect;..... defendant may not object when he may urge against the plaintiff any defense available against the absent party and satisfaction of the judgment rendered will protect him from future annoyance or loss. Bancroft's Code Practice, Volume 2, pages 1117-18. See also Hoffman v. Gallatin County Commissioners, 18 Mont. 224, 245.

When the action may be disposed of without affecting the rights of others, there is no ground or reason for bringing in any other parties, nor is such procedure required by the codes. See Bancroft's Code Practice, Volume 2, pages 1127-8.

Necessary parties are those having an interest in the subject and object of the action and all persons against whom relief must be obtained to accomplish the object of the suit;

An indispensable party is one who has such an interest in the subject matter of the controversy that a final decree between the parties before the court cannot be made without injuriously affecting his interests or leaving the controversy in such a situation that its final determination may be inconsistent with equity and good conscience. "Indispensable" parties are of course "necessary" parties.

A proper party is one without whom the case may proceed but whose presence will allow a decree of judgment more clearly settling the controversy.

A familiar illustration of the distinction between necessary and proper parties is found in the action to foreclose a mortgage; the mortgagor, his heirs, devisees, grantees or assignees are necessary parties; while the mortgagees or lien holders are proper parties. The action may proceed to judgment without the latter, but it will not be binding on their interests. See Bancroft's Code Pleading, Volume 1, pages 228-30.

In the foregoing paragraphs we have discussed the general rules and definitions of the parties to this action. It seems to counsel for the Government that if the road and trail are declared to be public highways, the obligation of Sweet Grass County is neither enlarged nor diminished. The county's obligation and duties are defined by statute and the decision of this court can have no bearing insofar as the county is concerned, and the issues can be determined without the joining of additional parties. We

believe clearly that Sweet Grass County may be a "proper" party but is neither necessary nor indispensable as this court may determine the controversy before it without prejudice to or in any manner affecting the rights or obligations of Sweet Grass County. If the road is declared to be a private way Sweet Grass County is not affected, and if it is declared to be a public highway the county's obligations have already been specified and determined by the statutes of Montana, and no decision of this court can enlarge or decrease the county's obligations as determined by those statutes.

It is not necessary that the United States join other persons injured by the wrongful acts complained of as their rights are different and distinct from those of the United States. See *Duester v. Alvin*, 145 Pac. 660; also 25 Mont. 379, and Bancroft's Code Pleading, Volume 3, pages 2540-2547.

We have examined numerous authorities and read many cases pertaining to the right of abutting property owners to sue to enjoin the obstruction of a street which prevents the owner's access to his property. We were unable to find any cases wherein any court said that it was necessary to join the city or the county in the action and in each case the property owner was allowed to sue to enjoin the obstructions of the street. See 29 C.J. 629

The United States is in much the same position as the property owners as the obstructions which we complain of prevent the Government's access to areas under its control, i.e., the national forests. See also *Gentner v. Kern*, 103 Pac. 2d 721.

Without retiring from the position which we have taken we felt it advisable to discuss the effect of non-joinder of an indispensable party for the court's assistance. A defect of parties disclosed by the complaint does not ordinarily amount to failure to state a cause of action..... and even when an objection is properly raised it is not the general practice to dismiss the action but to order the absent parties brought in if their presence is necessary for a determination of the entire controversy.

On appeal the failure of the plaintiff to join necessary parties is not to be considered reversible error. See Bancroft's Code Practice, Volume 2, pages 1122-3.

In summary, therefore, it clearly appears that this court has jurisdiction of the cause as disclosed in the complaint because of the federal statutes giving the United States the control of the maintenance and construction of highways within its national forests. The Government also has the right to protect its servants and employees in the performance of their official duties in the supervision of its national forests.

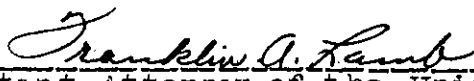
The complaint clearly states a claim upon which relief can be granted against the defendants, as it is clear that the Government cannot gain ingress or egress to its national forests without the use of the road and trail in question. (State ex rel. Dansie v. Nolan, 58 Mont. 167, 171.)

While Sweet Grass County might be a desirable or proper party, the general rules as well as the specific citations disclose that the county is not indispensable as its rights would not be affected by a judgment herein.

However, if the court deems that Sweet Grass County is a necessary party it should not dismiss the action but should order that the necessary party be joined, and grant sufficient time within which to permit such joinder.

Respectfully submitted,

JOHN B. TANSIL
Attorney of the United States, in
and for the District of Montana.


Assistant Attorney of the United
States, in and for the District
of Montana

GIBSON, FITZGERALD & BODINE

LAW OFFICES

127 NORTH MAIN STREET
LIVINGSTON, MONTANA

TELEPHONE 18

FRED L. GIBSON
DAVID B. FITZGERALD
RICHARD A. BODINE

February 7, 1949

Mr. H. H. Walker, Clerk
United States District Court
Helena, Montana

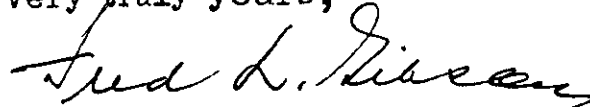
Re: United States of America,
Plaintiff, v. Paul L. Van
Cleve, Jr., et. al., Defendants.

Dear Sir:

We are enclosing herewith defendants' reply brief on
Motion to Dismiss in the above-entitled case, which you may
forward to Judge Pray.

A copy of the brief has been served on the Attorneys for
plaintiff by mail.

Very truly yours,


Fred L. Gibson

FLG:n

12

IN THE DISTRICT COURT OF THE UNITED STATES
IN AND FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FILED

FEB 9 - 1949

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
-Vs-)
)
PAUL L. VAN CLEVE, JR., and)
THE VAN CLEVE COMPANY, INC.,)
a corporation,)
)
Defendants.)

H. H. WALKER, Clerk
BY Suzanne L. Roman
Deputy Clerk

REPLY BRIEF OF
DEFENDANTS ON MOTION
TO DISMISS

No. 1098 ✓

In plaintiff's brief, the issues on the motion to dismiss are discussed under the three heads, "jurisdiction", "the complaint states a claim against defendants upon which relief can be granted", and "Sweet Grass County is not an indispensable party".

The first matter, jurisdiction, is not involved in defendants' motion to dismiss. Admittedly this Court has jurisdiction of the pending cause. We said in our original brief upon the motion to dismiss, "The jurisdiction of this Court is only because the United States is a party to the controversy". Article 3, Section 2, United States Constitution. The plaintiff asserts that "because the controversy arises under the laws of the United States, this Court has jurisdiction of this cause and the citation of authorities would be pure surplusage". So, it is agreed that this Court has jurisdiction of the cause.

Whether, because the United States is a party to the controversy, as we see it, or because the case arises under the laws of the United States, as plaintiff contends, is not material insofar as jurisdiction of the court is concerned. But because

the argument of plaintiff discloses what appears to us to be a misconception of the case in its broad and general aspect, and because the source of jurisdiction is of importance, in this, that if there is a law of the United States that gives to the United States jurisdiction and control of the road across defendants' lands, then the case is governed by such federal law, and not by the laws of Montana, upon which substantive law the defendants' motion to dismiss is predicated.

The motion itself is, of course, a matter of procedure governed by the federal rules of civil procedure applicable in federal courts without regard to the source of jurisdiction of the cause. So, we will briefly canvass the question of the ground of this court's

JURISDICTION.

Although plaintiff avers that it would be "pure surplusage" to cite authorities to support its contention that jurisdiction here is because the case "arises under the laws of the United States", it might have enlightened the Court, and it certainly would have informed the defendants, had the plaintiff cited any law of the United States that gives the Federal Court jurisdiction of an action for a declaratory judgment fixing the status of a road across private lands as a public highway. If, instead of the United States, Richard Roe, a resident citizen of Montana, had brought this action against defendants, also citizens of Montana, to secure a judgment declaring the road which crosses the lands of defendants, (their private property), to be a public road, what law of the United States or what provision of its Constitution could be cited to give this Court jurisdiction of such cause?

Counsel say the road across defendants' lands is within the boundaries of the Gallatin National Forest. True, but such fact does not place it within federal jurisdiction. The creation of a forest reserve, whether by presidential proclamation or by Act of Congress, does not change the law that governs action and relationship of persons, and property rights in the territory thus set aside as a reserve. The purpose of the creation of the reserve is to preserve the timber that is upon the public domain of the United States from destruction, and the incidental conservation of the water supply by preventing the denuding of the forest lands owned by the United States. It would seem to go without saying that the creation of a forest reserve does not withdraw the territory within its boundaries from the sovereignty of the state in which it is situate. But, probably because Congress realized the tendency of bureaucrats vested with some administrative power, to seek to expand and enlarge it to include legislative and judicial authority as well, it was enacted by Congress that:

4

"The jurisdiction, both civil and criminal, over persons within national forests shall not be affected or changed by reason of their existence, except so far as the punishment of offenses against the United States therein is concerned; the intent and meaning of this provision being that the State wherein any such national forest is situated shall not, by reason of the establishment thereof, lose its jurisdiction, nor the inhabitants thereof their rights and privileges as citizens, or be absolved from their duties as citizens of the State."

Sec. 480, Title 16, United States Code Annotated.

The statute itself clearly shows that the Congress, by the creation of forest reserves, seeks not to make unconstitutional assault upon state sovereignty. But if more is needed,

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a recent decision of the Supreme Court of the United States supplies it. In the case of Wilson v. Cook, 327 U.S. 474, 90 L.Ed. 793, that court held that

"the state has legislative jurisdiction over the federal forest reserve lands located within it, whether they were originally a part of the public domain of the United States, or were acquired by the United States by purchase."

A forest reserve is not a body politic; it has no legislative power. By its creation, the government reserves from disposal certain forest areas. Even so, it permits entry upon and location of mineral claims therein. As to the lands therein that are owned by private persons, the creation and existence of the reserve affects them not all. And the fact that a road or a section of it is within or traverses a forest reserve gives no jurisdiction over it to the federal government.

An Act of Congress that would purport to take from the state its territorial jurisdiction over private lands or roads crossing the same in a forest reserve, would be in violation of the United States Constitution that prescribes when, how, and for what purpose the United States may obtain exclusive sovereignty and legislative authority over areas within a state. Clause 17 of Section 6 of Article 1, United States Constitution. But we are not called upon to consider this for no law has been cited from which it may be said that this case arises.

It is true that plaintiff refers to Sections 501, 503 and 525 of Title 16, United States Code Annotated, and in brief asserts that these sections "disclose that the government has retained its control and supervision of the lands within the boundaries of a national forest". A reading of these Sections does not disclose any retention of control over private lands that happen to lie within the exterior boundaries of a forest

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reserve. The federal government had no control over such lands to retain. Such lands, and indeed the government lands within the forest reserves, if within a state, are under state sovereignty. The two sections first cited merely provide a source of revenue to be used by the government in building roads and trails. Of course the government may build such roads, trails, structures or what not on its own lands as it may desire. It may do so as the proprietor of the lands. And the government, under its power of eminent domain, may take private property for a road, which road, of course, must be for a public use within the purview of federal power. There is here no issue upon the question of what power the Secretary of the Interior has in condemning rights of way for roads. This action is not a condemnation suit. Whatever authority the Secretary of the Interior has to obtain a right of way for roads, it surely does not come from the section of the Code cited by the plaintiff. That Section, 525, Title 16, United States Code Annotated, plaintiff says provides "that the Secretary of the Interior may take the necessary steps to secure a right of way for roads and highways across any national forest when, in his judgment, the public interests will not be injuriously affected thereby". Counsel misconstrue the language of the section if they urge to the court, as they do, that this gives the Secretary of the Interior a right to take steps to get a right of way for the government over private lands for a government road. The statute reads as follows:

"In the form provided by existing law the Secretary of the Interior may file and approve surveys and plats of any right of way for a wagon road, railroad, or other highway over and across any national forest when in his judgment the public interests will not be injuriously affected thereby."

Sec. 525, Title 16, United States Code Annotated.

Clearly this means that the Secretary of the Interior may permit the construction of a railroad or highway over and across a forest reserve, if, in his judgment, public interests will not be injuriously affected thereby. The Secretary merely permits the construction and approves surveys and plats of any right of way for the railroad or highway. The right of way over private lands in the reserve is for the builder of the road to obtain.

The Secretary of the Interior does not, under this Section, "take the necessary steps to secure a right of way" as plaintiff says, but it merely grants power to such official to permit the corporation or entity that seeks to build a railroad or road across a forest reserve to do so. The Interior Department, having control of the public domain of the United States, is, by this Section, permitted to grant a right of way across government lands, not authorized by such Section to "secure" a right of way. Certainly the United States statutes cited by plaintiff do not grant to federal courts jurisdiction of a case involving the alleged obstruction of an alleged highway over private lands, wherein the dispute is whether the road involved is a public road or not, and the parties to the controversy are private citizens, resident of the state wherein the highway lies. The federal government could not retain "control and supervision" of private lands within such boundaries under our federal constitutional system, either in a political or proprietary sense, and it could retain only such control over its own lands as is within its capacity as the proprietor of the lands.

After carefully canvassing the question of the legislative power of the states over the areas within the

national forests therein, the Supreme Court of the United States, in the case of Wilson v. Cook, above cited, said, "It follows that the state has retained its legislative jurisdiction, which it acquired by statehood, over public lands within the state, which have been included within the forest reserve". As to the private lands in forest reserve boundaries, we have never before heard of anyone who has intimated that the creation of a forest reserve takes from the state its sovereignty over the area.

If, as we believe is manifest, the jurisdiction of this court in this case is because the United States is a party to the controversy, and not because as plaintiff asserts, it is one that arises under the laws of the United States, we then have for consideration by the court on the defendants' motion to dismiss, the two grounds of our motion specified, outlined and briefly presented in our original brief herein and which here we need not repeat, but to which, for a brief further consideration, we advert as follows; first:

FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

This ground of motion, as stated in our original brief, is the 6th ground of defense, which, under rule 12 Federal Rules of Civil Procedure, may be made by motion.

In answer to our original brief upon this defense, plaintiff for the moment seems to shed the robe of august official power assumed in its discussion of the source of the court's jurisdiction, and appears in the subdued habiliments of a private litigant humbly seeking to enforce the rights of its employees.

But even as it pleads that under the provisions of 8651, Revised Codes of Montana, 1935, a private person may maintain such an action as the one it has here instituted, there appears an upsurge of sublime official power which it could but momentarily repress; when it asserts that it may "enforce the rights of its employees in areas over which it exercises control". Plaintiff's brief, page 4.

Despite the plaintiff's persistent thought that it has the power and authority of "control" over everything within the exterior boundaries of such forest reserves as it sees fit to create within a state, we believe that the holding of the Supreme Court in *Wilson v. Cook*, supra, is in accordance with the constitutional principles properly applied. And as the States, in establishing and maintaining public highways, are acting in their governmental capacity, State v. District Court, 105 Mont. 44, 69 P. 2d 112, 29 C.J. 671, it follows that the laws of the State of Montana must determine whether the road on defendants' land is a public highway or not. And that is the issue in the case. It is the reason the action was brought. The plaintiff says the road is a public highway. The defendants aver it is not. The plaintiff says that "an actual controversy exists between the defendants and members of the general public of the United States and officers and employees of the Forest Service, a Department of the United States of America, concerning the free and unimpeded right of usage of said road, highway and trail and concerning the status and character of said public road, highway and trail". And it asks for a judgment declaring the road to be a public road. Such is the story of the complaint.

And as was pointed out in defendants' original brief, even though the road was a public road, a private person has no cause of action for its obstruction unless he can plead and prove special damage to him differing in kind and degree from that

occasioned the generality of users of the road.

Because the creation, maintenance and protection of the road is a governmental function, a private person has no voice in its protection unless in the exceptional instances of special and particular damage to him. The complaint fails to state facts so necessary. State ex. rel. Babcock v. Linsman, 110 Mont. 51, 99 Pac. 2d 492. This case was erroneously cited in our original brief as being reported in 99 Pac. 2d 452 instead of 492.

The last cited case follows the rule adopted in Montana in the case of State ex. rel. Dansie v. Nolan, 58 Mont. 167, 191 Pac. 150, and a reading of that case discloses that the complaint herein fails to allege facts that would show plaintiff's position to be different in its nature than that of the general public.

FAILURE TO JOIN AN INDISPENSABLE PARTY.

The 7th defense, that rule 12 of the federal rules provides may be presented by motion, is failure to join an indispensable party. If the road or trail is a public road, it follows that the Board of County Commissioners is entrusted with its protection, repair and maintenance. See cases cited in our original brief.

While counties are not the owners of the public roads established within their boundaries, they act as a trustee for the public and as the agency through which the state acquires the property. The state owns the highway. Not necessarily the fee but the easement for the public highway. State v. District Court, 105 Mont. 44, 69 P. 2d 112, and cases therein cited.

It seems not necessary in this reply to cite cases further than in our original brief to the point that where,

because of the absence of a party having such an interest in the determination of the issue that the judgment cannot fully and finally settle the same, the case should be dismissed because of failure to join such indispensable party.

DECLARATORY JUDGMENT ACTION.

It should at all times be borne in mind that this is merely an action seeking a declaratory judgment to determine whether the road or trail mentioned in the Complaint is a public highway or not.

It is well understood by the courts that jurisdiction of such actions is taken as a matter of discretion. That such a judgment "should be granted only as a matter of judicial discretion, exercised in the public interest". Eccles v. Peoples Bank, U.S. , 92 L.Ed. 592 - Advance Sheet.

The cautious attitude of the federal courts in cases brought for declaratory judgments, is to be noted in many cases, among those in the Supreme Court may be cited: Great Lakes D. & D. Co. v. Huffman, 319 U.S. 293, 87 L.Ed. 1407; Brillhart v. Excess Ins. Co., 316 U.S. 491, 86 L.Ed. 1620.

Certainly here is a case where the court may well proceed with caution. The action is to declare the "highway and trail" to be a public road, highway and trail. The Complaint does not say how wide the road, how wide the trail, what part is road, what part is trail. And as stated in our original brief, if the declaration shall be that the trail is not a public road, does that set the issue at rest so that Sweet Grass County may not in later action claim that it is a public road under its control? Or, if declared to be a public road, does that declaration bind Sweet Grass County to repair and maintain it as a public road under its supervision?

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If the declaratory judgment does not bind Sweet Grass County, the action should be dismissed because of the failure to join it as a party, as Rule 12 provides, and for the additional reason that judicial discretion may well be exercised to avoid such an idle determination amounting to no more than an advisory opinion upon the disputed question whether the road is a public road, or whether it is a trail or what not.

Respectfully submitted,

Fred L. Gibson

David B. Fitzgerald

Attorneys for Defendants.
Livingston, Montana

13

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MONTANA
3 BILLINGS DIVISION
4 - - - - -

5 UNITED STATES OF AMERICA,

6 Plaintiff, :

7 v. :

8 PAUL L. VAN CLEVE, JR.; and :
9 THE VAN CLEVE COMPANY, INC., :
a corporation,

10 Defendants.
11 - - - - -

MOTION TO CITE FOR CONTEMPT
AND FOR ENLARGEMENT OF
TEMPORARY INJUNCTION

Civil No. 1098 ✓

Filed May 25-1949.

H. H. Walker

Chas

12 COMES NOW John B. Tansil, United States Attorney,
13 and Franklin A. Lamb, Assistant United States Attorney, in
14 and for the District of Montana, the attorneys for United
15 States of America, and respectfully show to the Court as
16 follows:

17 I

18 That on November 19, 1948, a preliminary injunction
19 was issued out of this court directed to the defendants above
20 named enjoining them and each of them during the pendency of
21 this action from maintaining any locked gates or signs of any
22 character which tend to interfere or impede the free usage of
23 the Big Timber Canyon road or trail through, over and upon
24 the property owned by said defendants, or either of them, or
25 any signs that import to convey the meaning or impression that
26 said road or trail is a private road and trail and that travel
27 thereon or usage thereof is in any manner prohibited or
28 restricted; that thereafter said preliminary injunction was
29 duly and regularly served upon each of said defendants.

30 II

31 That continuously since the issuance and service
32 upon said defendants of said preliminary injunction, said

1 defendants have continued to maintain locks, chains, signs
2 and gates which continued to interfere and impede the free
3 usage of the Big Timber Canyon road and trail through, over
4 and upon the property owned by said defendants, and that said
5 locks, chains, signs and gates convey the meaning and impres-
6 sion that said road and trail is a private road and trail and
7 that travel thereon and usage thereof is prohibited and
8 restricted.

9 III

10 That on May 20, 1949, officers, servants and em-
11 ployees of the Forest Service of the United States of America
12 were engaged in maintenance work upon the Big Timber Canyon
13 road in Section 3, Township 3 North, Range 12 East in Sweet
14 Grass County, Montana, in preparation of said road for the
15 use of the general public of the United States and the
16 officers, servants and employees of the United States Forest
17 Service during the coming summer months, which said mainte-
18 nance work was necessary for the safe travel of the general
19 public and the officers, servants and employees of the United
20 States Forest Service in the performance of their duties so
21 that the general public might attain access to the recrea-
22 tional area constructed by the United States of America, and
23 the officers, servants and employees of the United States
24 Forest Service might attain access to the Big Timber Canyon
25 trail necessary for fire protection in the National Forest,
26 and upon said date while so engaged, the defendant Paul L.
27 Van Cleve, Jr., violently obstructed and prevented the per-
28 formance of said duties by the said officers, servants and
29 employees of the United States Forest Service and caused the
30 discontinuance of the necessary work as aforesaid and pro-
31 hibited and restricted the free usage and travel of said
32 employees, servants and officers of the Forest Service of the

1 United States upon said Big Timber Canyon road and trail.

2 IV

3 That on May 20, 1949 and on May 22, 1949, the de-
4 fendant Paul L. Van Cleve, Jr., violently threatened officers,
5 servants and employees of the Forest Service of the United
6 States and prevented the construction of a cattle guard upon
7 lands owned and controlled by United States of America and
8 immediately adjoining certain lands owned by the defendants,
9 said lands being situated in Section 4, Township 3 North,
10 Range 12 East in Sweet Grass County, Montana, and by reason
11 thereof prevented, restricted and prohibited said officers,
12 servants and employees of the United States of America from
13 the performance of their duties in the improvement and mainte-
14 nance of property owned by United States of America.

15 V

16 That by said conduct as aforesaid the defendant
17 Paul L. Van Cleve, Jr. has abused the dignity of this Court
18 and obstructed the administration of justice in the manner
19 set forth above and has violated the letter, spirit and in-
20 tent of the order of this Court dated November 19, 1948, and
21 has threatened and continues to threaten to prevent the
22 officers, servants and employees of the United States of
23 America in the free and unimpeded usage of the Big Timber
24 Canyon road or the maintenance thereof, and continues to
25 maintain chains, locks, signs and gates restricting, inter-
26 fering, impeding and prohibiting the free usage of the Big
27 Timber Canyon road and trail, and by such course of conduct
28 aforesaid continues to violate the order of this Court dated
29 November 19, 1948, and continues in contempt of the dignity
30 of this Court.

31 WHEREFORE, the plaintiff prays that the defendant
32 Paul L. Van Cleve, Jr. be adjudged in contempt of this Court

STATE OF MONTANA, } ss.
County of Sweet Grass }

I, DICK ARMSTRONG, Clerk and Recorder of Sweet Grass County, Montana,
do hereby certify that the attached is a true and correct copy of a-----
Deed No. 28701E-----

Filed for record April 1 19 42, at 2:50 o'clock P.M. and
recorded in Book 37 of Deeds Page 160 in the
records of Sweet Grass County, Montana.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of
said office.
Done at Big Timber, Sweet Grass County, Montana, this 25th day
of May 19 49

Dick Armstrong Clerk and Recorder
Deputy

(COPY)

Reception No. 52758

N. P. Ry. Co.
 Paul L. Van Cleve Jr.

(A)
 DEED No. 28701E
 Contract No. 15828 MONTANA DIVISION
 NORTHERN PACIFIC RAILWAY COMPANY

THIS DEED, Made the fifth day of May in the year of our Lord one thousand nine hundred and thirty-nine, by the Northern Pacific Railway Company a corporation of the State of Wisconsin, grantor, to Paul L. Van Cleve, Jr. of Big Timber in the County of Sweet Grass and State of Montana grantee, WITNESSETH:

WHEREAS, by a contract in writing entered into on the twenty-fourth day of November A.D. 1923 the grantor contracted to sell and convey the premises hereinafter described for the consideration hereinafter expressed, which contract has been duly performed and the grantee has become entitled to a conveyance of the premises.

THEREFORE, the grantor in consideration of the sum of Two thousand one hundred ninety-nine and 96/100 (2,199.96) Dollars, unto it paid according to said contract, the receipt whereof is acknowledged, grants, bargains, sells and conveys unto the grantee, his heirs and assigns, the following described tract of land situate in the County of Sweet Grass in the state of Montana to-wit:

All of Section No. three (3) in Township three (3) North of Range twelve (12) East of the Montana Principal Meridian, containing, according to the United States Government Survey seven hundred thirty-three and 32/100 (733.32) acres, more or less;
 (\$2.50 Documentary stamps attached and cancelled)

the lands hereby conveyed being subject, however, to an easement in the public for any public roads heretofore laid out or established, and now existing over and across any part of the premises.

Together with the hereditaments and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the said lands and appurtenances, unto the grantee his heirs and assigns, forever.

The grantor will forever Warrant and Defend the title to the premises, except as against liens, charges and incumbrances originating after the date of the aforesaid contract of sale.

IN WITNESS WHEREOF, The grantor has caused these presents to be sealed with its corporate seal, and signed by its Vice President, the day and year first above

4 /-3 /-1-1-1 /

- 2 -

written.

(Corporate Seal)

Signed, Sealed and Delivered in the
Presence of C. B. Theits - Anna B. TibbsNorthern Pacific Railway Company
By B. W. Scandrett Vice President. JMH
Attest: G. W. Gottschald Assistant SecretarySTATE OF MINNESOTA)
COUNTY OF RAMSEY) SS.

On this 11th day of December, in the year 1939, before me. S. A. Bertelsen a Notary Public, personally appeared B. W. Scandrett to me known to be the Vice President of the Northern Pacific Railway Company, the corporation which executed the foregoing instrument, and who being duly sworn, did say, that the seal affixed to said instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said B. W. Scandrett acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office, in the City of St. Paul, the day and year last aforesaid.

(Notarial Seal)

S. A. Bertelsen
Notary Public, Ramsey County, Minnesota
S. A. Bertelsen
Notary Public, Ramsey County, Minn.
My commission expires March 23, 1940.

Filed for Record April 1, 1942 @ 2:50 P.M.
E. R. Patterson, Clerk & Recorder
By Paul Snyder, Deputy
Fees: \$1.50
Return to Paul Van Cleve Jr. Melville, Montana
(Clerk & Recorder Seal)

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF MONTANA

3 BILLINGS DIVISION

FILED

4 JUN 6 - 1949

5 UNITED STATES OF AMERICA,

H. H. WALKER, Clerk

6 Plaintiff, :

BY *Ch. Hegel*

ORDER

7 v. :

Civil No. 1098

8 PAUL L. VAN CLEVE, JR.; and :
9 THE VAN CLEVE COMPANY, INC., :
a corporation,

10 Defendants.

11
12 Upon the reading and filing of the Motion of the
13 attorneys for the plaintiff herein, and upon being fully
14 advised in the premises, and for good cause shown,

15 IT IS HEREBY ORDERED that the defendant Paul L.
16 Van Cleve, Jr. show cause if any he has at the court room,
17 United States Courts and Post Office Building, City of
18 Great Falls, Montana, on the 6th day of June, 1949, at 2:00
19 o'clock P. M. of said day, or as soon thereafter as counsel
20 may be heard, why he should not be adjudged in contempt of
21 this Court and the order of this Court dated November 19,
22 1948, and be punished accordingly, and why the preliminary
23 injunction of this Court dated November 19, 1948, should not
24 be enlarged to restrain him from maintaining any gates, locks,
25 chains, signs or engaging in any conduct during the pendency
26 of this action which might interfere or tend to interfere or
27 impede with the free usage or maintenance of the Big Timber
28 Canyon road and trail by the general public or the officers,
29 employees or servants of the United States of America.

30 IT IS FURTHER ORDERED that a copy of this Order
31 together with a copy of the Motion of the plaintiff be
32 served upon the defendant at least three days before the

1 time herein set for showing cause.

2 *Dated May 25, 1949*

3 *James P. Ray*
4 United States District Judge

5
6 Entered and noted in Civil Docket
7 May 25, 1949.

8 *H. Hwaek* Clerk.

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

FILED

JUN 6 - 1949

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAUL L. VAN CLEVE, JR.; and
THE VAN CLEVE COMPANY, INC.,
a corporation,

Defendants.

H. H. WALKER, Clerk

BY Chygel Deputy Clerk

N O T I C E

Civil No. 1098

TO PAUL L. VAN CLEVE, JR., AND THE VAN CLEVE COMPANY, INC., A
CORPORATION, MELVILLE, MONTANA:

Please take notice that the undersigned will bring
on its Motion for an order adjudging Paul L. Van Cleve, Jr.
as being in contempt of the above-entitled Court, and its
Motion for an order enlarging the terms of the preliminary
injunction heretofore issued out of said Court on the 19th
day of November, 1948, in the court room, United States
Courts and Post Office Building, City of Great Falls,
Montana, on the 6th day of June, 1949, at 2:00 o'clock P. M.
of said day, or as soon thereafter as counsel may be heard.

JOHN B. TANSIL
United States Attorney

Franklin A. Lamb,
Assistant United States Attorney

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE
DISTRICT OF MONTANA, BILLINGS DIVISION

UNITED STATES OF AMERICA,)
Plaintiff,)
vs) Civil Action No. 1098
PAUL L. VAN CLEVE, JR., and)
THE VAN CLEVE COMPANY, INC.,)
a Corporation,)
Defendants.)

The defendant in the above cause was cited to appear and show cause why he should not be held in contempt for the alleged disobedience of the restraining order theretofore issued by the court.

The proof shows that the gate across the highway in question at the lower boundary of the Van Cleve property has never been locked since the restraining order was issued, and that all signs indicating a private road which had formerly been posted at the gate had been removed by defendant following the issuance of the restraining order. Although the above facts were clearly established at the hearing, counsel for the plaintiff has indicated that a species of deception was practiced by the defendant to deceive travelers on approaching the gate where they would be confronted by a "Positively No Trespassing" sign, and could see a chain over the gate with a padlock attached, and who, meeting such conditions, would be likely to turn back, gaining the impression from the appearance of the sign, chain and lock that passing the gate was prohibited. There appeared on the no trespassing sign written words to the effect that the traveler would be expected to keep to the road and not trespass on either side thereof.

The defendant was questioned as to whether one driving up to the gate could read the writing on the no trespassing sign, and he was not explicit in his answer but said that one on opening the gate could not help but see the written part and

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be able to read it. No question is raised as to the right of the defendant to post no trespass signs on his property, in fact he stated that all of his property was so posted.

From the foregoing recitation of facts the proof appears to be insufficient to enable the court to state in positive terms that it has been clearly and convincingly established that the defendant has violated the restraining order. It is possible that the defendant may have created a condition there that might have been misleading to a stranger driving that way, but the evidence shows that men in the forestry service and others, so far as the proof goes, passed through the gate and over the road without interference by the defendant or any of his employees, and none of them ever found the gate locked after the restraining order was issued.

While it appears that considerable ill feeling exists on the part of the members of the forestry service and the defendant it does not seem to be necessary to go into the quarrel over the attempt at road repairing on the part of the forestry crew or the abusive conduct on the part of the defendant for which he later apologized; he did not object to work done on the forest reserve, but only on his own land, and there might be some question raised as to whether it was proper during the pendency of the restraining order and the action to undertake extensive alterations in the condition of the road. It is evident that the forestry crew with their road machinery gained entrance over the road in question through the premises of defendant without obstruction. The court does not believe that this unfortunate incident should be accepted as proof of a violation of the restraining order which required the defendant to keep the road open for ingress and egress of members of the public generally during the pendency of the action, or until the further order of the court.

From a consideration of all the facts which the court regards as material to the issues raised in this hearing, the court does not believe the proof justifies holding the defendant

in contempt of the restraining order, and such is the order herein, without assessment of costs, each side paying its own costs.

Judge

16
FILED

JUN 22 1949

STATE OF MONTANA,)
County of Sweet Grass,) ss.

C. Keigel
Notary Public

DICK ARMSTRONG, being first duly sworn on oath deposes and says:

That he is the duly elected, qualified and acting Clerk and Recorder of Sweet Grass County, Montana, and Ex-Officio Clerk of the Board of County Commissioners of Sweet Grass County, Montana; that on the 20th day of June, 1949, he mailed true copies of the annexed Certificate and Resolution as follows: Mailed one such copy to Franklin D. Lamb, Assistant United States District Attorney inclosed in an envelope addressed to him at Billings, Montana; and mailed one such copy to Fred L. Gibson, attorney for the defendants in the action referred to in such resolution, addressed to him at Livingston, Montana; which envelopes and contents were deposited by affiant in United States Post Office at Big Timber, Montana, on said date with the proper and required postage thereon postpaid.

Dick Armstrong

Subscribed and sworn to before me this 20th day of June, A. D. 1949.

E. O. Orseland

Notary Public for the State of Montana
Residing at Big Timber, Montana
My commission expires 2/05/1950

FILED

JUN 22 1949

RESOLUTION.

By Ch. Regel Deputy Clerk

WHEREAS, in the case of "The United States of America, Plaintiff, versus The Van Cleve Company, a corporation, and Paul L. Van Cleve, Jr., Defendants", now pending in the United States District Court for the District of Montana, an order was duly made or given by and in said Court on the 7th day of June, 1949, requiring that the County of Sweet Grass of the State of Montana, be joined as a party in said action,

And after considering said matter, and being duly advised in the premises,

IT IS HEREBY RESOLVED: That the County of Sweet Grass, of the State of Montana, declines to join in the aforesaid action as a party plaintiff.

- - - - -

STATE OF MONTANA,)
County of Sweet Grass.) ss.

We hereby certify that the foregoing is a true and correct copy of a resolution adopted by unanimous vote of the Board of County Commissioners of Sweet Grass County, Montana, at a special meeting regularly called, noticed and held on June 20th, 1949.

Dated: June 20th, 1949.

[Handwritten Signature]

Chairman of the Board of County Commissioners of Sweet Grass County, Montana.

ATTEST:

[Handwritten Signature]
Clerk of said Board.

United States Department of Justice

UNITED STATES ATTORNEY
FOR MONTANA

Billings, Montana
June 24, 1949

Mr. C. G. Kegel, Deputy
U. S. District Court
Federal Building
Great Falls, Montana

Re: U. S. v. Paul L. Van Cleve, Jr.,
et al.

Dear Keg:

Enclosed please find original amended complaint as directed to be filed by the Court when the hearing was held in Great Falls on June 7th.

Please advise us of the date of filing.

Also, enclosed please find a copy of the amended complaint, and we ask that you issue summons and deliver the summons and one copy thereof together with one copy of the complaint to the Marshal for service upon the Chairman of the Board of County Commissioners of Sweet Grass County, Montana, who have offices in the courthouse in the City of Big Timber, Montana. Copies of the complaint are being mailed to the attorneys for the other defendants and no new summons need be served upon them.

Very truly yours,

Franklin A. Lamb

FRANKLIN A. LAMB
Assistant U. S. Attorney

FAL:nm
Enclosures 2

19

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MONTANA
3 BILLINGS DIVISION
4 - - - - -

5 UNITED STATES OF AMERICA,

6 Plaintiff, :

AMENDED COMPLAINT

7 v. :

No. 1098

8 PAUL L. VAN CLEVE, JR.;
9 THE VAN CLEVE COMPANY, INC.,
10 a corporation; and
11 SWEET GRASS COUNTY, MONTANA,
12 a quasi-municipal corporation,

13 Defendants.
14 - - - - -

*Filed June 25-1949
H. H. Walker Clerk
By C. Y. Keigel Deputy*

15 COMES NOW United States of America, by and through
16 John B. Tansil, United States Attorney, and Franklin A. Lamb,
17 Assistant United States Attorney, in and for the District of
18 Montana, and for its first cause of action complains and
19 alleges:

20 I

21 That this is an action brought by the United
22 States of America pursuant to the provisions of Rule 57,
23 Federal Rules of Civil Procedure, and Title 28, Section 2201,
24 U.S.C.A., because there is an actual controversy now exist-
25 ing in respect of which the plaintiff needs a declaration of
26 rights by this Court.

27 II

28 That the Van Cleve Company, Inc., is a corporation
29 duly organized and authorized to do business under the laws
30 of the State of Montana, with its principal place of
31 business at Melville, Montana.

32 III

That the defendant Sweet Grass County, Montana, is
a quasi-municipal corporation duly created and organized

1 under and by virtue of the laws of the State of Montana, and
2 by prior order of this Court was declared to be a necessary
3 party to the full and final disposition of the issues in this
4 cause; that the said defendant was requested by the plaintiff,
5 United States of America, to join as a party plaintiff in this
6 cause, and at a special meeting regularly called, noticed and
7 held on June 20, 1949, by a resolution then duly and regularly
8 adopted, the said defendant Sweet Grass County, Montana, re-
9 fused to join as a party plaintiff herein, and therefore said
10 county is named herein as a party defendant.

IV

11
12 That the plaintiff was at all times herein men-
13 tioned, and now is, the owner of large areas of public lands
14 situated in Township 2 North, Ranges 11 and 12 East; Townships
15 3 and 4 North, Ranges 10, 11 and 12 East; Townships 5 and 6
16 North, Ranges 9, 10, 11 and 12 East; and Township 7 North,
17 Ranges 9 and 10 East, Montana Principal Meridian, in Park,
18 Sweet Grass, Meagher and Wheatland Counties, Montana, con-
19 stituting the Crazy Mountains Division of what was formerly
20 the Absaroka, now the Gallatin National Forest, established
21 under authority of and pursuant to Acts of Congress.

V

22
23 That at all times mentioned herein there has
24 existed and there now exists a public highway, viz., a road
25 and trail in and along the canyon of Big Timber Creek enter-
26 ing said Crazy Mountains Division of said national forest
27 across the east boundary line thereof on the east line of the
28 NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 12, Township 3 North, Range 12 East,
29 and extending westerly through said NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section
30 12, and through and across Sections 1, 2, 3, 4, 5 and 6 of
31 said township and range, and thence westerly, then northerly
32 to a point near the center of Township 4 North, Range 11 East

1 where it joins the Sweet Grass Trail situated in the Sweet
2 Grass Canyon in said Crazy Mountains Division of said national
3 forest, which said highway and trail, except for the acts of
4 the defendants hereinafter complained of, has provided and
5 now provides the only means of access to that part of the
6 said Crazy Mountains Division of said national forest within
7 and adjacent to the canyon and drainage basin of Big Timber
8 Creek and the upper drainage of Sweet Grass Creek necessary
9 in the protection, use and administration thereof by the
10 agents and employees of the United States of America, pur-
11 suant to the laws of the United States and the regulations
12 of the Secretary of Agriculture relating to the protection,
13 use and administration of the national forests.

14 VI

15 That the United States has a special right, title
16 and interest in said highway and trail and all parts thereof,
17 including the parts thereof situated upon lands now owned by
18 the defendants, amounting to an easement and right-of-way for
19 said purposes by reason of the facts that said road and trail
20 were established upon said land when it was in part public
21 land of the United States of America and in part in the owner-
22 ship of the Northern Pacific Railroad Company, and its suc-
23 cessor in interest, the Northern Pacific Railway Company,
24 which said railroad company and railway company dedicated the
25 same as a public highway, which was appropriated by the
26 United States and the general public prior to the issuance of
27 any patents therefor, thereby reserving unto itself and the
28 general public said public highway, road and trail, and by
29 reason of the fact that the United States and its permittees
30 and the public have for more than 50 years used said road and
31 trail for said purposes and the United States has, during
32 said period from time to time, expended upon said road and

1 trail monies appropriated by the Congress, for its construc-
 2 tion and maintenance to the end that it might serve said pur-
 3 poses; and the United States in common with the public is
 4 entitled to the possession of the right-of-way for said high-
 5 way and that the same is necessary for the protection, use
 6 and administration of the national forest and other property
 7 of the United States.

8 VII

9 That since the year 1940 and up to and including
 10 the present time, the defendants have maintained gates across
 11 the said road and trail and have, at will, kept said gates
 12 locked, and attempted to exercise dominion and control over
 13 the same, and have maintained and do now maintain signs
 14 thereon and adjacent thereto claiming and identifying said
 15 road and trail as a private road and trail and prohibiting
 16 the use thereof, and have threatened and continue to threaten
 17 to restrain and interfere with its free usage, thereby re-
 18 stricting and preventing the free and unimpeded use and main-
 19 tenance of said road and trail by the servants, agents and
 20 employees of the United States engaged in the protection, use
 21 and administration of the said Crazy Mountains Division of
 22 the said national forest as required by law and the regula-
 23 tions of the Secretary of Agriculture, and by reason of said
 24 conduct on the part of said defendants, the defendants have
 25 restricted and prevented the free and unimpeded use and
 26 maintenance of said road and trail as the sole means of
 27 access to the property of the United States, to said plain-
 28 tiff's injury and damage.

29 VIII

30 That by reason of the conduct and acts of the de-
 31 fendants, an actual controversy exists between the defendants
 32 and the United States of America concerning the free and

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unimpeded right of usage and maintenance of said public highway, road and trail and concerning the status and character thereof.

COMES NOW the United States of America and for its second cause of action complains and alleges:

I

That this is an action brought by the United States of America pursuant to the provisions of Rule 57, Federal Rules of Civil Procedure, and Title 28, Section 2201, U.S.C.A., because there is an actual controversy now existing in respect of which the plaintiff needs a declaration of rights by this Court.

II

That The Van Cleve Company, Inc., is a corporation duly organized and authorized to do business under the laws of the State of Montana, with its principal place of business at Melville, Montana.

III

That the defendant Sweet Grass County, Montana, is a quasi-municipal corporation duly created and organized under and by virtue of the laws of the State of Montana, and by prior order of this Court was declared to be a necessary party to the full and final disposition of the issues in this cause; that the said defendant was requested by the plaintiff, United States of America, to join as a party plaintiff in this cause, and at a special meeting regularly called, noticed and held on June 20, 1949, by a resolution then duly and regularly adopted, the said defendant Sweet Grass County, Montana, refused to join as a party plaintiff herein, and therefore said county is named herein as a party defendant.

IV

1
2 That the plaintiff was at all times herein men-
3 tioned, and now is, the owner of large areas of public lands
4 situated in Township 2 North, Ranges 11 and 12 East, Town-
5 ships 3 and 4 North, Ranges 10, 11 and 12 East; Townships 5
6 and 6 North, Ranges 9, 10, 11 and 12 East; and Township 7
7 North, Ranges 9 and 10 East, Montana Principal Meridian, in
8 Park, Sweet Grass, Meagher and Wheatland Counties, Montana,
9 constituting the Crazy Mountains Division of what was former-
10 ly the Absaroka, now the Gallatin National Forest, established
11 under authority of and pursuant to Acts of Congress; that the
12 United States of America, on behalf of the general public of
13 the United States, has constructed, created and developed
14 recreational areas and camp grounds, parks and facilities on
15 and in the immediate vicinity of the above-described public
16 lands for the general usage and enjoyment of that portion of
17 the Gallatin National Forest by the public at large.

V

18
19 That at all times mentioned herein, there has
20 existed and there now exists a public highway, viz., a road
21 and trail in and along the canyon of Big Timber Creek enter-
22 ing said Crazy Mountains Division of said national forest
23 across the east boundary line thereof on the east line of the
24 NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 12, Township 3 North, Range 12
25 East, and extending westerly through said NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of
26 Section 12, and through and across Sections 1, 2, 3, 4, 5 and
27 6 of said township and range, and thence westerly, then
28 northerly to a point near the center of Township 4 North,
29 Range 11 East where it joins the Sweet Grass Trail situated
30 in the Sweet Grass Canyon in said Crazy Mountains Division of
31 said national forest, which said highway, road and trail,
32 except for the acts of the defendants hereinafter complained

1 of, has provided and now provides the only means of access to
 2 that part of the said Crazy Mountains Division of said
 3 national forest within and adjacent to the canyon and drainage
 4 basin of Big Timber Creek and the upper drainage of Sweet
 5 Grass Creek for the use by the general public at large of the
 6 recreational areas, camp grounds, parks and facilities of
 7 said national forest, and the general usage and enjoyment
 8 thereof as provided by the United States of America on behalf
 9 of the general public at large pursuant to the laws of the
 10 United States and the regulations of the Secretary of Agri-
 11 culture relating to the protection, use and administration of
 12 the national forests.

13 VI

14 That the United States, for and on behalf of the
 15 public at large, has a special right, title and interest in
 16 said highway and trail and all parts thereof, including the
 17 parts thereof situated upon lands now owned by the defendants,
 18 amounting to an easement and right-of-way for said purposes
 19 by reason of the facts that said road and trail were estab-
 20 lished upon said land when it was in part public land of the
 21 United States of America and in part in the ownership of the
 22 Northern Pacific Railroad Company, and its successor in
 23 interest, the Northern Pacific Railway Company, which said
 24 railroad company and railway company dedicated the same as a
 25 public highway, which was appropriated by the United States
 26 and the general public prior to the issuance of any patents
 27 therefor, thereby reserving unto itself and the general pub-
 28 lic said public highway, road and trail, and by reason of the
 29 fact that the United States and its permittees and the public
 30 have for more than 50 years used said road and trail for
 31 said purposes and the United States has, during said period
 32 from time to time, on behalf of itself and the general public,

1 expended upon said road and trail monies appropriated by the
2 Congress, for its construction and maintenance to the end that
3 it might serve said purposes; and the United States in common
4 with the public is entitled to the possession of the right-of-
5 way for said highway, road and trail and that the same is
6 necessary for the protection, use and administration of the
7 national forest and other property of the United States, and
8 as a necessary way of access to the recreational areas, camp
9 grounds, parks and facilities and all areas adjacent thereto
10 in said national forest, by the general public at large.

VII

11
12 That since the year 1940 and up to and including
13 the present time, the defendants have maintained gates across
14 the said highway, road and trail and have, at will, kept said
15 gates locked and have refused and do now refuse to permit
16 members of the general public at large to pass through said
17 gates along said highway, road and trail, and have maintained
18 and do now maintain signs thereon and adjacent thereto claim-
19 ing and identifying said road and trail as a private road and
20 trail and prohibiting the use thereof, and have exercised
21 dominion over the same, thereby restricting and preventing
22 the free and unimpeded use and maintenance of said road and
23 trail by the general public at large as a means of access to
24 the recreational areas, camp grounds, parks, facilities and
25 areas immediately adjacent thereto as provided by the United
26 States of America on behalf of the public at large and itself,
27 then engaged in the protection, use and administration of the
28 said Crazy Mountains Division of the said national forest as
29 required by law and the regulations of the Secretary of
30 Agriculture, and by reason of said conduct on the part of
31 said defendants, the defendants have restricted and prevented
32 the free and unimpeded use of said public highway, road and

1 trail as the sole means of access to the above-described
2 property, to the injury and damage of the public at large and
3 the United States of America, and have deprived the United
4 States of America of certain revenue paid by members of the
5 public in the usage of said national forest.

6 VIII

7 That by reason of the conduct and acts of the de-
8 fendants, an actual controversy exists between the defendants
9 and the United States of America on behalf of the general
10 public at large, as well as itself, concerning the free and
11 unimpeded right of usage and maintenance of said public road
12 and trail and concerning the status and character thereof.

13
14 WHEREFORE, plaintiff prays:

15 1. That an injunction be issued out of this court
16 directed to the defendants and their employees, attorneys,
17 agents and those acting in concert with them or any of them,
18 restraining and enjoining each of them, during the pendency
19 of this action, from exercising or attempting to exercise any
20 dominion or control over said highway, road and trail, and
21 from maintaining any form of gates, locks or chains inter-
22 fering or tending to interfere or impede the free usage of the
23 public road, highway or trail, or the gates situated thereon,
24 by members of the general public or servants, officers, em-
25 ployees or agents of the United States of America, and from
26 maintaining signs of any character importing to convey the
27 meaning or impression that said public road, highway and
28 trail is a private road, highway and trail or that travel
29 thereon or usage thereof is in any manner prohibited or re-
30 stricted, and that the temporary injunction heretofore issued
31 by the above-entitled Court in this cause be continued in
32 full force and effect during the pendency of this action.

1 2. That judgment be entered herein declaring said
2 road, highway and trail to be a public road, highway and
3 trail, and as such a right-of-way upon, over and across the
4 lands owned or controlled by the defendants, and that the de-
5 fendants upon the final determination of this action be per-
6 manently restrained and enjoined from doing any act or thing
7 tending to interfere in any manner with the free and unim-
8 peded usage of said road, highway and trail by members of the
9 general public at large, and officers, servants and employees
10 of the United States of America, or from maintaining any
11 gates thereon or signs upon said public highway, road and
12 trail or anywhere in the vicinity thereof importing to con-
13 vey the meaning or impression that said highway, road and
14 trail is a private highway, road and trail or that travel
15 thereon or usage thereof is in any manner prevented or re-
16 stricted, and from exercising or attempting to exercise any
17 dominion or control over said public highway, road and trail.

18 3. That plaintiff have judgment for its costs of
19 suit and for such other and further relief and orders as may
20 be just and proper.

21 JOHN B. TANSIL
22 United States Attorney

23 *Franklin A. Lamb*
24 Assistant United States Attorney

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FILED
JUN 30 1949

UNITED STATES OF AMERICA,

Plaintiff, :

v. :

PAUL L. VAN CLEVE, JR., and
THE VAN CLEVE COMPANY, INC.,
a corporation,

Defendants.

W. H. WALSH, Clerk
C. Keigel Deputy Clerk
GOVERNMENT
MEMORANDUM IN SUPPORT
OF MOTION FOR CONTEMPT

Civil No. 1098 ✓

This matter came on for hearing before the Court at Great Falls, Montana, on June 6, 1949, upon the plaintiff's motion to find the defendant Paul L. Van Cleve, Jr. and The Van Cleve Company, Inc., a corporation, guilty of contempt of this court by reason of certain conduct in violation of the preliminary injunction issued herein on the 18th day of November, 1948, and upon the Government's motion to enlarge the terms of the preliminary injunction by reason of certain conduct of the defendants which directly interfered with the efforts of Government officials in the conduct of their official duties.

In November 1948, the Government witnesses testified to the physical conditions found which restricted and interfered with the use of the Big Timber Canyon road and trail by members of the public, and incidentally interfering with its use by officials of the Government. The Court thereupon, at the conclusion of the hearing, issued its preliminary injunction, the restraining part of which is as follows:

"You hereby are restrained and enjoined pending the determination of this action from maintaining any locked gates

1 or signs of any character which tend to
2 interfere or impede the free usage of
3 Big Timber Canyon road or trail through,
4 over and upon the property owned by you,
5 the said defendants, or either of you,
6 or any signs that import to convey the
7 meaning or impression that said road or
8 trail is a private road and trail and
9 that travel thereon or usage thereof is
10 in any manner prohibited or restricted."

11 For the purpose of this Memorandum, we will discuss
12 the Government's motions separately, although this may re-
13 sult in some repetition of facts proven.

14 MOTION FOR CONTEMPT

15 Prior to the issuance of the injunction on November
16 18, 1948, a chain was maintained by the defendants held to-
17 gether by a lock which, according to the testimony of Govern-
18 ment witnesses, was looped over the pole of the portal gate
19 in such a manner that the same could be readily lifted from
20 the gate but which, the witnesses testified, definitely con-
21 veyed the impression that the same was locked. In addition
22 thereto, the defendants maintained three or four signs
23 nailed on the posts of the portal gate and upon the wooden
24 sign over the portal, which signs contained printed words of
25 "No Trespassing" and penciled writing of the defendants ad-
26 vising them to stay on the road to Half Moon Park and stating
27 that it was a private road.

28 The condition found at that time is clearly shown
29 in Government Exhibits Nos. 1, 2 and 3 introduced on
30 November 18, 1948 (T. 58). The defendant states (T. 99) that
31 the gate was locked on November 18, 1948, at the time the
32 injunction was issued but no evidence to that effect was
introduced by the Government at that time.

After the service of the Writ of Injunction upon
the defendants, the defendant states (T. 91, 93-95) that he

1 unlocked the gate replacing the lock in the chain and looping
2 it over the gate as shown in Exhibits Nos. 1, 2 and 3 of
3 November 1948 and Government Exhibit No. 1 of June 6, 1949,
4 and removed from the gate the signs containing the penciled
5 words "Private Road" and replaced the same with a printed
6 sign "Positively No Trespassing", on which the defendant
7 wrote "Positively No Trespassing on Either Side of the Road
8 From Here to Half Moon Park" (T. 93). In addition thereto,
9 the defendant placed a no trespassing sign a few yards inside
10 the portal gate and a sign on posts adjoining the gate at the
11 Van Cleve buildings "No Trespassing" (T. 37). This condition
12 existed until June 2, 1949, when the defendant removed the
13 portal sign after the acts of conduct concerning which the
14 Government complains (T. 92-93).

15 It will be recalled that the Court, at the conclu-
16 sion of the injunction hearing November 18, 1948, stated that
17 it was clear that the existence of the chain and lock as it
18 was looped over the gate, definitely conveyed the impression
19 to any member of the public approaching the gate, when con-
20 sidered in connection with the "No Trespassing" signs, that
21 travel on the road through the gate was prohibited.

22 The evidence of the Government clearly discloses
23 that the condition of the chain and lock has remained exactly
24 the same as it was prior to the issuance of the injunction
25 at all times up to the present hearing, and particularly in
26 November 1948, January 7, 1949, and April 21, 1949 (T. 38,
27 58-59).

28 As far as the signs are concerned, the only change
29 was a removal of three signs that existed in November 1948
30 which contained the printed words "No Trespassing" and the
31 replacement of a sign containing the printed words "Positively
32 No Trespassing". On the signs found in November 1948 and in

1 January, April and May, 1949, the defendant had written in
2 pencil words of caution to the public which, at all times,
3 were substantially the same except the omission of the words
4 "Private Road". It is clear from examination of Government's
5 Exhibits Nos. 1, 2 and 3 of November 1948, and Government's
6 Exhibits Nos. 2 and 5 of June 1949, that any person approach-
7 ing the portal gate in an automobile could not read the pen-
8 ciled notations of the defendant, and in fact would be con-
9 fronted with exactly the same situation and appearance of the
10 gate in June 1949 that he would have found in November 1948.
11 An examination of Government's Exhibit No. 5 of June 1949
12 clearly shows the difficulty and the improbability of any
13 member of the traveling public determining the penciled writ-
14 ing and it is very improbable that they would, in fact,
15 alight from the car and attempt to travel upon the road
16 through the portal gate.

17 It is very apparent that the defendant has
18 attempted to "split hairs" in the wording of the preliminary
19 injunction and by a carefully conceived plan of operation has
20 attempted to technically avoid the restrictive terms of the
21 injunction and yet for all practical purposes accomplish the
22 same purpose and create exactly the same impression to the
23 traveling public which the Court was attempting to aid by the
24 issuance of the preliminary injunction.

25 This, in the mind of counsel for the Government, is
26 more contemptuous of the order of this Court than an outright
27 intentional violation of the injunction, and we feel sincerely
28 that the defendant should not be permitted to continue this
29 course of conduct and that he should be punished for his
30 actions in the past.

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ENLARGEMENT OF TERMS OF INJUNCTION

It will be recalled that Government witnesses in November 1948 testified that there had not been an extensive obstruction by the defendant preventing the Government officials in the performance of their duties. However, on May 20, 1949, a Government road maintenance crew entered the Gallatin National Forest through the portal gate for the purpose of necessary repair of the road in order to make travel thereon possible by members of the public, Government officials and fire control crews. After working a portion of the road from the portal gate through the gate at the Van Cleve buildings and into Section 3, the operator of the road grader was stopped by the defendant Paul L. Van Cleve, Jr. in a very abusive and obscene manner. This conduct on the part of the defendant is clearly set forth on pages 12-16 of the transcript. In addition thereto, the defendant threatened to obtain his gun and keep the road maintenance crew off the road (T. 16, 53-54). At the time of his conversation with the grader operator, who was the foreman of the road crew, the defendant picked up a large rock and threatened the operator of the crew with the same. Thereafter and on May 22, 1949, the defendant again appeared on the road carrying an un-sheathed high-powered rifle which it was very apparent was in furtherance of the threats conveyed to the road crew two days previous (T. 38-39, 61).

After abusively and obscenely obstructing and threatening the operator of the road grader, the defendant then drove to the upper gate located on Government-owned land (T. 32-35) and ordered the Government crew to leave their work and remove the Government truck from the area as he was going to lock the gate even if such action would be deemed in contempt of this court, and that if the road crew did not leave

1 they would have to walk out from the area (T. 18-22). In
2 fact, as shown on Government's Exhibit No. 3, the upper gate
3 is thirty feet from property owned by the defendant and the
4 truck at the time the defendant ordered its removal was
5 located entirely upon Government property and the maintenance
6 crew was engaged in work entirely on Government property (T.
7 22, 33-35).

8 Thereafter, the defendant abusively and contemp-
9 tuously telephoned the supervisor of the Gallatin National
10 Forest and advised that the road crew had been run out of the
11 area and that if they went back someone might be hurt (T. 53-
12 54).

13 All of the Government witnesses testified concern-
14 ing the necessity for the maintenance work which was being
15 performed when prevented by the defendant, as the road was in
16 such condition that passenger vehicles could not safely tra-
17 vel over the road and that the same was deemed necessary in
18 the fire control and prevention work in that area of the
19 Gallatin National Forest (T. 51-53, 41-42, 59, 65).

20 The maintenance crew at the upper gate were in the
21 act of cutting timber for the purpose of constructing a
22 cattle guard to be situated entirely upon Government land
23 (T. 18, 63). It was shown that the defendant had been ruining
24 Half Moon Park by permitting his livestock to trespass thereon
25 and that the Government officials deemed it necessary for the
26 protection of said camp grounds that a cattle guard be con-
27 structed to prevent the livestock of the defendant from
28 destroying the enjoyable usage of this area by the public
29 (T. 64).

30 Although it was not directly material to the
31 motions then before the Court, evidence was introduced con-
32 cerning the maintenance of the road, both inside and outside

1 the boundaries of the Gallatin National Forest. It was
2 shown briefly that repair work had been conducted by the
3 Government on the public road within the boundaries of the
4 Gallatin National Forest from at least 1925 to 1940 when the
5 defendant locked the gates preventing further maintenance
6 work (T. 66-67). In addition thereto, witnesses testified
7 that they had examined the records of Sweet Grass County,
8 Montana, showing that county funds had been expended from
9 about 1913 to 1923 upon the Big Timber Canyon road (T. 68).
10 The county maintains the road to the boundary and the Govern-
11 ment maintains the road inside the National Forest (T. 46-47,
12 75-76), as is customary in most national forests where the
13 Government normally maintains the roads within the forest
14 boundaries and the state or county maintains the roads to the
15 boundary.

16 In addition thereto, the Government offered as
17 supporting evidence Exhibit No. 4 which was a deed from the
18 Northern Pacific Railway Company to the defendants clearly
19 disclosing an easement to the public for the public roads
20 existing at that time over and across all of Section 3, Town-
21 ship 3 North, Range 12 East. This is the section on which the
22 road grader was working at the time the defendant ordered its
23 removal and was the location of the most dangerous part of
24 the road definitely needing repair work in order to enable
25 any normal form of traffic to Half Moon Park (T. 79, 41, 59-
26 61).

27 SUMMARY

28 On the Government's motion for contempt the tran-
29 script clearly shows that for all intents and purposes the
30 signs, gates, locks and chains were primarily the same at all
31 times after the injunction was issued, and that the defendant
32 cunningly and adroitly attempted to avoid the intent and

1 purposes of the order of this Court and by such conduct is
2 definitely in contempt of the order of this Court dated
3 November 18, 1948, and should be punished accordingly.

4 Because of the defendant's conduct on May 20 and
5 22, 1949, when the defendant obscenely and abusively prevented
6 the operator of the road grader from continuing the work as
7 ordered by the Government and by his threats of physical
8 violence to the operator of the road grader, as well as to
9 the crew at the upper gate then attempting to construct a
10 necessary cattle guard, the function of the United States
11 Government in its duties in the Gallatin National Forest have
12 been restricted, prohibited and obstructed by the defendant
13 thereby preventing the maintenance work deemed necessary and
14 tending to increase the difficulty of fire control and fire
15 prevention steps in the Gallatin National Forest. The
16 defendant's threats of physical violence were demonstrated
17 by his seizing a large rock and holding the same in a
18 threatening manner, and his later appearance at the scene of
19 the work with an unsheathed rifle which he had previously
20 threatened to use. In addition thereto, he threatened to
21 lock the gate even if it was in contempt of this Court.

22 This conduct on the part of the defendant makes it
23 necessary to enlarge the terms of the injunction in order to
24 enable the Government officials to carry out the work deemed
25 necessary and essential in this particular area.

26 WHEREFORE, the Government renews its motions to
27 find the defendant guilty of contempt of this Court and re-
28 questing that the terms of the preliminary injunction here-
29 tofore issued be enlarged requiring the defendant to remove
30 the chains and locks from the gates and all signs therefrom
31 and to refrain from any interference with the maintenance of
32 the road from the boundary of the Gallatin National Forest to

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Half Moon Park, and the construction of the cattle guards,
culverts and other things deemed necessary in the performance
of Government functions.

Respectfully submitted,

JOHN B. TANSIL
United States Attorney

Franklin A. Lumb
Assistant United States Attorney

#1098

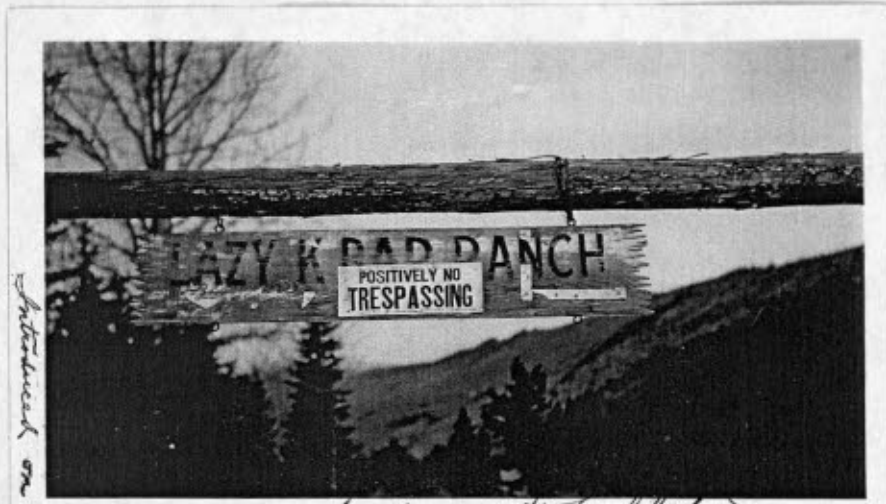
#1098

U. S.

vs

Paul L. Van Cleve et al

Exhibits introduced
at hearing on motion for Contempt



Photographed on

June 6 - 1947

Government Exhibit No 2

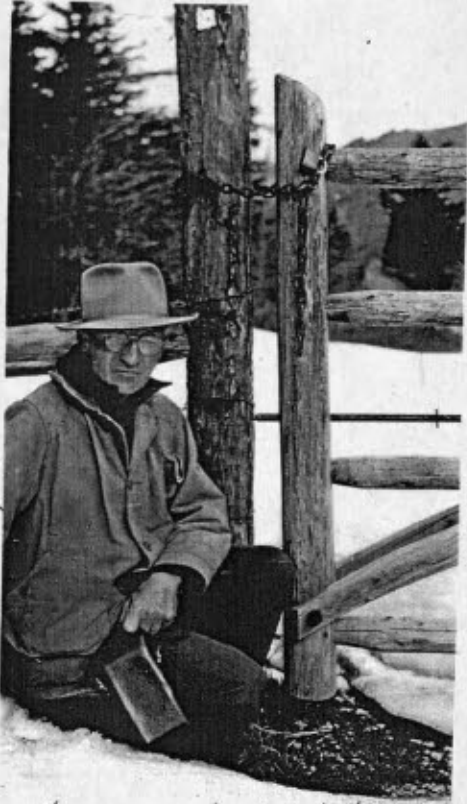


Government Exhibit No 5

1098
 118 on Paul & Van Cleve
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4-21-49
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Introduced June 6-1949

Governmental Exhibit No. 1



Case # 1098
U.S. vs.
Paul L. Van Cleve et al
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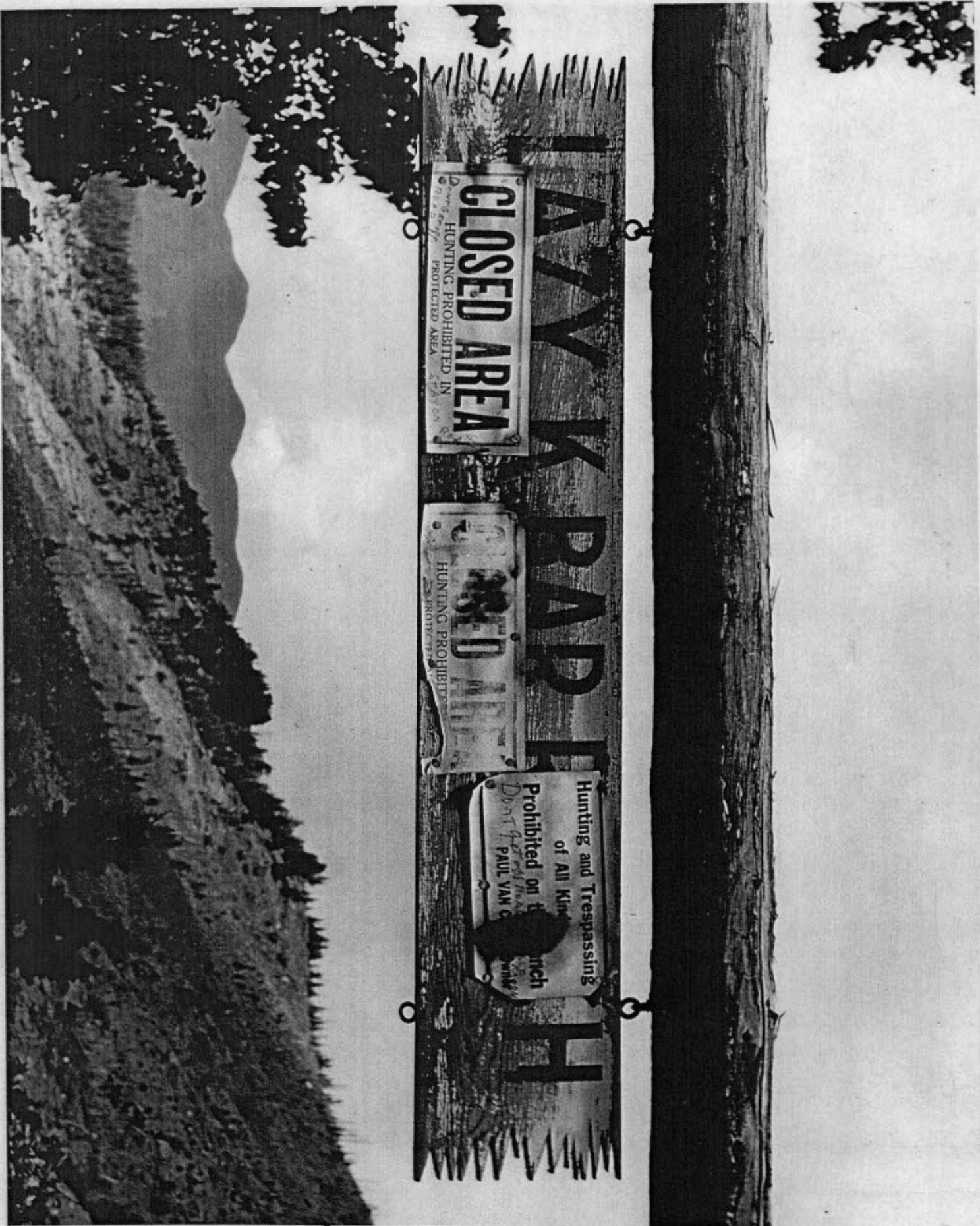
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Case # 1098 U.S. on Paul L. Van Cleave, et. al.

Part #1

PHOTOGRAPH BY
E. R. AUGUSTIN, JR.
LIVINGSTON, MONTANA



PHOTOGRAPH BY
E. R. AUGUSTIN, JR.
LIVINGSTON, MONTANA

#1098

M.S. vs Paul L. Van Cleave Jr., et al

Lynton #2



PHOTOGRAPH BY
E. R. AUGUSTIN, JR.
LIVINGSTON, MONTANA

Case # 1098

U.S. vs Paul L Van Cleave, Jr et al

John H. L.

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GIBSON, FITZGERALD & BODINE
LAW OFFICES
127 NORTH MAIN STREET
LIVINGSTON, MONTANA

FRED L. GIBSON
DAVID B. FITZGERALD
RICHARD A. BODINE

TELEPHONE 18

July 5, 1949

Clerk of the United States District Court
Great Falls, Montana

Dear Sir:

Enclosed herewith find answer of Paul L. Van Cleve, Jr., and The Van Cleve Company, Inc., to the amended complaint of plaintiff in the case of United States of America, plaintiff, vs. Paul L. Van Cleve, Jr., et al., No. 1098, which please file in the cause.

I am not sure whether the file in this cause is kept at the Great Falls office of the clerk or at Helena, but I assume that the file is in Great Falls.

We are serving copies of the answer upon the United States District Attorney today and he will, no doubt, accept service by letter.

Very truly yours,

GIBSON, FITZGERALD & BODINE

By:

Fred L. Gibson

FLG:js
Enc.

Answer of Paul L. Van Cleve, Jr.,
et al.

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IN THE DISTRICT COURT OF THE UNITED STATES

IN AND FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

FILED

JUL 7 - 1949

H. H. WALKER, Clerk
BY *C. H. Keigel* Deputy Clerk

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
-vs-)
)
PAUL L. VAN CLEVE, JR., and)
THE VAN CLEVE COMPANY, INC.,)
a corporation; and SWEET)
GRASS COUNTY, MONTANA, a)
quasi-municipal corporation,)
)
Defendants.)

ANSWER OF
Paul L. Van Cleve, Jr.,
and
The Van Cleve Company, Inc.,
To Amended Complaint
No. 1098 ✓

Come now Paul L. Van Cleve, Jr., and The Van Cleve Company, Inc., a corporation, two of the defendants in the above entitled action named, and answer plaintiff's amended complaint as follows:

FIRST DEFENSE TO PLAINTIFF'S FIRST CAUSE OF ACTION:

For their first defense to the first cause of action set forth in said amended complaint said answering defendants admit, deny and allege as follows:

I

Admit that this is an action brought by the plaintiff pursuant to the provisions of Rule 57, Federal Rules of Civil Procedure, and Title 28, Section 2201, U. S. C. A.

II

Admit the Van Cleve Company, Inc., one of the answering defendants, is a corporation duly organized and authorized to do business under the laws of the State of Montana, with its principal place of business at Melville, in said state.

III

Aver that Sweet Grass County is a political

1

2 division of the state of Montana. Deny that the order of
3 the court referred to in paragraph III of said first cause
4 of action of the amended complaint directed that said county
5 be made a party defendant herein, but aver that said order
6 directed that The Board of County Commissioners of said
7 Sweet Grass County be made defendant herein. Admit that
8 plaintiff requested said county of Sweet Grass to join it as
9 party plaintiff in this action, and that said county, acting
10 by and through its Board of County Commissioners, refused
11 to join in the said action as a party plaintiff.

12

IV

13 Admit the allegations of paragraph IV of the first
14 cause of action in said amended complaint contained.

15

V

16 Deny the allegations of paragraph V of said first
17 cause of action in said amended complaint contained, and
18 specifically deny that the road referred to in said paragraph
19 is, or ever was, a public highway.

20

VI

21 Deny the allegations, and each and every part there-
22 of, of paragraph VI of said first cause of action in said
23 amended complaint contained, and specifically deny that
24 plaintiff has any easement or right of way for said road
25 over or across any of the lands of these answering defendants,
26 or either of them, "in common with the public", or at all,
27 and deny that there is any easement or right of way over any
28 lands of these answering defendants for said road.

29

VII

30 Admit that, not only since the year 1940, but at
31 all times since they have owned the lands over which said
32 road crosses, the answering defendants have maintained gates

1
2 across said road upon their said lands, and aver that gates
3 have been and now are, kept and maintained across said road
4 where the same crosses the lands of said defendants, and that
5 such gates have been so maintained by defendants, and their
6 predecessors in interest and title to said lands, at all
7 times since said road has crossed said lands. Admit that
8 prior to the issuance of the temporary injunction herein on
9 November 20, 1948, defendants at certain times, locked one or
10 more of said gates, but deny that at any time, or at all,
11 they have interfered with the use of said road by the plain-
12 tiff, or its officers, agents, servants or employees, but
13 aver that at such times as any of said gates were locked the
14 said officers, agents, servants and employees of plaintiff
15 were furnished with keys that opened said locks, or with the
16 combination that opened the same, and that at all times said
17 plaintiff and its said officers, agents, servants and employ-
18 ees have had and do now have the use of said road where the
19 same crosses the lands of defendants all by permission of
20 defendants. Defendants aver that plaintiff itself maintains
21 and has for long maintained a gate across said road where it
22 enters upon lands of plaintiff in Section 12, Township 3
23 North, Range 12 East of Montana Principal Meridian. Deny
24 that defendants maintain signs on said road or adjacent
25 thereto identifying said road as a private road, but aver that
26 said road is in fact a private road and not a public road,
27 and this defendants assert and maintain.

28 VIII

29
30 Admit that an actual controversy exists between
31 plaintiff and defendants concerning said road; and aver
32

1
2 that the plaintiff asserts in this action that said road
3 constitutes and is a public highway, and that defendants
4 deny said assertion.

5 IX

6 Deny generally each and every allegation in the
7 plaintiff's first cause of action set forth in its amended
8 complaint not herein specifically admitted or denied.

9 SECOND DEFENSE TO PLAINTIFF'S FIRST CAUSE OF ACTION:

10 For their second defense to the first cause of
11 action set forth in said amended complaint said answering de-
12 fendants aver that the said first cause of action fails to
13 state a claim against said answering defendants, or either of
14 them, upon which relief may be granted.

15 THIRD DEFENSE TO PLAINTIFF'S FIRST CAUSE OF ACTION:

16 For their third defense to the first cause of action
17 set forth in said amended complaint said answering defendants
18 aver that the plaintiff has failed to join an indispensable
19 party to said action, to-wit: The board of county commis-
20 sioners of Sweet Grass County, Montana, which said county is
21 the county wherein the alleged public highway described in
22 said first cause of action is located, and this notwithstand-
23 ing the order of the court herein that plaintiff in its
24 amended complaint make said board a party defendant herein.

25 FIRST DEFENSE TO PLAINTIFF'S SECOND CAUSE OF ACTION:

26 For their first defense to the second cause of
27 action set forth in said amended complaint said answering de-
28 fendants admit, deny and allege as follows:

29 I

30 Admit that this is an action brought by the plain-
31 tiff pursuant to the provisions of Rule 57, Federal Rules of
32 Civil Procedure, and Title 28, Section 2201, U. S. C. A.

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II

Admit the Van Cleve Company, Inc., one of the answering defendants, is a corporation duly organized and authorized to do business under the laws of the State of Montana, with its principal place of business at Melville, in said state.

III

Aver that Sweet Grass County is a political division of the state of Montana. Deny that the order of the court referred to in paragraph III of said second cause of action of the amended complaint directed that said county be made a party defendant herein, but aver that said order directed that The Board of County Commissioners of said Sweet Grass County be made defendant herein. Admit that plaintiff requested said county of Sweet Grass to join it as party plaintiff in this action, and that said county, acting by and through its Board of County Commissioners, refused to join in the said action as a party plaintiff.

IV

Admit the allegations of paragraph IV of the second cause of action in said amended complaint contained.

V

Deny the allegations of paragraph V of said second cause of action in said amended complaint contained, and specifically deny that the road referred to in said paragraph is, or ever was, a public highway.

VI

Deny the allegations, and each and every part thereof, of paragraph VI of said second cause of action in said amended complaint contained, and specifically deny that plaintiff has any easement or right of way for said road

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over or across any of the lands of these answering defendants, or either of them, "in common with the public", or at all, and deny that there is any easement or right of way over any lands of these answering defendants for said road.

VII

Admit that, not only since the year 1940, but at all times since they have owned the lands over which said road crosses, the answering defendants have maintained gates across said road upon their said lands, and aver that gates have been and now are, kept and maintained across said road where the same crosses the lands of said defendants, and that such gates have been so maintained by defendants, and their predecessors in interest and title to said lands, at all times since said road has crossed said lands, defendants aver that they, and each of them, and their predecessors in title to said lands now owned by them, have ever and do now assert that said road referred to in plaintiff's complaint is a private road or way across defendants' lands, and that no right to the indiscriminate use of or travel upon the same now exists or ever has existed in the plaintiff, or in the general public, or in anyone else, or at all; defendants aver that such travel as has been had over said road has been by the permission of defendants and their predecessors in title, and admit that they have restricted and at times prevented the free and unimpeded use and maintenance of said road by the general public at large; admit that prior to the issuance of the temporary injunction herein on November 20, 1948, defendant at certain times locked the gates maintained by them upon said road, but deny that at any time, or at all, have they interfered with the use of said road by plaintiff, its officers, agents, servants or employees and aver

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 2 that at such times as any of said gates were locked, the
 3 said officers, servants and employees of plaintiff were fur-
 4 nished with keys that opened said locks, or with the com-
 5 bination that opened the same, and that at all times said
 6 plaintiff and its said officers, agents, servants and em-
 7 ployees have had the use of said road where the same crosses
 8 the lands of defendants all by permission of defendants.
 9 Defendants aver that plaintiff itself maintains and has for
 10 long maintained a gate across said road where it enters upon
 11 lands of plaintiff in Section 12, Township 3 North, Range
 12 12 East of Montana Principal Meridian. Deny that defendants
 13 maintain signs on said road or adjacent thereto identifying
 14 said road as a private road, but aver that said road is in
 15 fact a private road and not a public road, and this de-
 16 fendants assert and maintain.

17 VIII

18 Admit that an actual controversy exists between
 19 plaintiff and defendants concerning said road; and admit
 20 that the plaintiff asserts in this action that said road
 21 constitutes and is a public highway, and that defendants
 22 deny said assertion.

23 IX

24 Deny generally each and every allegation in the
 25 plaintiff's second cause of action set forth in its amended
 26 complaint not herein specifically admitted or denied.

27 SECOND DEFENSE TO PLAINTIFF'S SECOND CAUSE OF ACTION:

28 For their second defense to the second cause of
 29 action set forth in said amended complaint said answering de-
 30 fendants aver that the said second cause of action fails to
 31 state a claim against said answering defendants, or either of
 32 them, upon which relief may be granted.

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THIRD DEFENSE TO PLAINTIFF'S SECOND CAUSE OF ACTION:

For their third defense to the second cause of action set forth in said amended complaint said answering defendants aver that the plaintiff has failed to join an indispensable party to said action, to-wit: The board of county commissioners of Sweet Grass County, Montana, which said county is the county wherein the alleged public highway described in said second cause of action is located, and this notwithstanding the order of the court herein that plaintiff in its amended complaint make said board a party defendant herein.

WHEREFORE, defendants demand:

1. That plaintiff take nothing by this action.
2. That defendants recover their costs and disbursements herein expended.
3. That defendants have such other and further relief as to the court shall seem proper in the premises.

Fred L. Gibson

David B. Fitzgerald
Attorneys for defendants
127 North Main Street
Livingston, Montana

SUMMONS IN A CIVIL ACTION

District Court of the United States

FOR THE

DISTRICT OF Montana

Billings DIVISION

CIVIL ACTION FILE No. 1098 ✓

FILED

JUL 8 - 1949

H. H. WALKER, Clerk

BY C. J. Kegel Deputy Clerk

SUMMONS

United States of America,
Plaintiff

v.

Paul L. Van Cleve, Jr.;
The Van Cleve Company, Inc., a corporation;
and
Sweet Grass County, Montana, a
quasi-municipal corporation.

Defendants.

To the above named Defendant : Sweet Grass County, Montana, a quasi-municipal corporation.

You are hereby summoned and required to serve upon John B. Tansil, United States District Attorney, and Franklin A. Lamb, Assistant United States Attorney,

plaintiff's attorneys, whose address is Federal Building, Billings, Montana,

an answer to the complaint which is herewith served upon you, within twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

H. H. Walker

Clerk of Court.

By

C. J. Kegel

Deputy Clerk.

Date: June 25, 1949.

[Seal of Court]

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U. S. v. Paul L. Van Cleve Jr. et al

Form No. 282

RETURN ON SERVICE OF WRIT

United States of America,

ss:

DISTRICT OF Montana

I hereby certify and return that I served the annexed Summons

on the therein-named Sweet Grass County, Montana, a quasi-

municipal corporation

with copy of complaint attached thereto

by handing to and leaving a true and correct copy thereof with J. F. Clark, Chairman of the Board

of County Commissioners for Sweet Grass County, Montana personally

at Big Timber in said District on the 6th day of

July, 1949

United States Marshal's

Fees.....	\$	2.00
Expenses <i>Mileage</i>	\$	<u>9.84</u>
total	\$	11.84

D. A. Batchoff

U.S. Marshal

By

J. P. Johnson
Deputy.

Property of the U.S. District Court
District of Columbia
Records Administration
Room 5000
400 ...
Pacific Alaska Region (Seattle)
Public Order
Returned to the U.S. District Court
due to unavailability of the original

GIBSON, FITZGERALD & BODINE

FRED L. GIBSON
DAVID B. FITZGERALD
RICHARD A. BODINE

LAW OFFICES
127 NORTH MAIN STREET
LIVINGSTON, MONTANA

TELEPHONE 18

July 12, 1949

Clerk of the United States District Court
Great Falls, Montana

Dear Sir:

Enclosed find brief of Paul L. Van Cleve, Jr., and the Van Cleve Company, Inc., in the case of the United States of America, plaintiff vs. Paul L. Van Cleve, et al., defendants, No. 1098, the brief being in opposition to the plaintiff's motions adjudging Mr. Van Cleve guilty of contempt, and for enlargement of the terms of the temporary injunction.

We are serving the same today upon Mr. Franklin A. Lamb, Assistant United States District Attorney at Billings, and he will acknowledge the service.

Very truly yours,

GIBSON, FITZGERALD & BODINE

By: _____

Fred L. Gibson

FLG:js

Enc.

Original brief.

IN THE DISTRICT COURT OF THE UNITED STATES
IN AND FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

-vs-

PAUL L. VAN CLEVE, JR., and
THE VAN CLEVE COMPANY, INC.,
a corporation; and SWEET
GRASS COUNTY, MONTANA, a
quasi-municipal corporation,
Defendants.

1098 ✓

MEMORANDA OF PAUL L. VAN CLEVE, JR.,
AND THE VAN CLEVE COMPANY, INC.,
CONTRA PLAINTIFF'S MOTION
FOR CONTEMPT AND TO ENLARGE INJUNC-
TION ORDER.

*Filed July 14-1949
H. H. Walker Clerk
By C. K. Keigel Deputy*

The matters now before the court are the two motions of plaintiff, first, the motion to adjudge Mr. Van Cleve guilty of contempt for the alleged violation of the temporary injunction of November 20, 1948, and second, the motion to enlarge the terms of said temporary injunction to restrain defendants from preventing plaintiff doing grading and maintenance work on the road upon defendants' lands, and, third, the motion of defendant Van Cleve to dismiss the contempt proceeding because no evidence was received of any violation by defendant of the temporary injunction order.

UPON THE CONTEMPT CHARGE.

The temporary injunction order which plaintiff avers Mr. Van Cleve has violated, provides that it is made "in order that the status quo of the subject matter of the action remain unchanged until the final determination of the action on its merits is had by the Court." By it the defendants "are restrained and enjoined, pending the determina-

tion of this action, from maintaining any locked gates or signs of any character which tend to interfere or impede the free usage of Big Timber Canyon road or trail through, over and upon the property owned by you, the said defendants, or either of you, or any signs that import to convey the meaning or impression that said road or trail is a private road or trail, and that travel thereon or usage thereof is in any manner prohibited or restricted."

The plaintiff alleges that "continuously since the issuance and service x x x of said preliminary injunction, said defendants have continued to maintain locks, chains, signs and gates which continue to interfere and impede the free usage of the Big Timber Canyon road and trail through, over and upon the property owned by said defendants, and that said locks, chains, signs and gates convey the meaning and impression that said road and trail is a private road and trail and that travel thereon and usage thereof is prohibited and restricted." Pltffs. "Motion to Cite for Contempt and for Enlargement of Temporary Injunction", par. 2 pp 1 & 2.

The injunction order is to preserve the "status quo of the subject matter of the action." That plainly is that the road shall be left and used as it was before the hearing. The evidence before the court when the temporary injunction was ordered disclosed without dispute that at all times since the earliest user of the road gates across the road were maintained where it crosses the lands now owned by defendants. And that persons going up to the timber over this road were required to open and close the gates in their use of the road. See testimony of Druckmiller and other witnesses taken at Big Timber, Montana, July 16, 1947, under the

order permitting plaintiff to take depositions to perpetuate testimony for use in its contemplated action to obtain a judgment declaring the road to be a public highway. So, to preserve the status quo we preserve the gates. But ^{no} evidence was adduced to show that in those older days the gates were locked and so, the courts injunction order was that defendants should not maintain any "locked gates" to interfere with the use of the road as it was wont to be used.

And consistently with this situation the injunction order as to the maintenance of gates clearly is that defendants shall not maintain "locked gates".

On this the evidence is undisputed that the gates have not been locked since the issuance of the injunction. Mr. Van Cleve testified that he went up to the dude ranch upon his return home from the hearing at Helena when the temporary injunction was granted and unlocked the gate and tore down the two signs that indicated the road was a private road. The forest reserve officials also admitted in their testimony on the contempt hearing that at all times they went up or down the road since the issuance of the injunction the gates were not locked. They passed through at all times without interference. It is undisputed and in fact admitted that the forest officials and employees of plaintiff have not been interfered with or impeded in the use of the road. Then, who, since the injunction order of November 20, 1948, has been prevented from using the road? Not a single, solitary individual of the great mass of men over which plaintiff has herein assumed guardianship, under the name of the "general public" has come forward to say that he has been prevented from using the road.

As a result of the temporary injunction the gates on defendants lands have since issuance remained at all times unlocked, and the signs that the road was a private road were removed. The forest service officials and employees have not been interfered with in their use of the road. They admit this and testified that they have never found the gates locked.

No one has come forward to say that he has been impeded in his use of the road. No one says he has turned back from contemplated use of the road because of a gate, a chain, a sign, or what not.

It is plain that nothing that had been done or omitted to be done by defendants, from November 20, 1948, the day the temporary injunction was issued, until May 20, 1949, the day Mr. Van Cleve discovered that the plaintiff's officials, employees and servants had four days earlier made clandestine entry upon his lands and were scarifying the soil and grading the road thereon, had caused the plaintiff to conceive that there had been any violation of the injunction order. At such times as plaintiff's officials had gone to the forest reserve they entered and left plaintiff's lands therein situate through unlocked gates, and the two signs that prior to the injunction order stated the road to be a private road had been removed. Only the board over the gate at the entrance to defendants lands with the name "Lazy K Bar Ranch", with a printed "no trespassing" card thereon appeared. And on the printed card "No trespassing" appeared the writing that warned users of the road not to trespass on the Van Cleve lands through which the road passed. Nothing has disturbed the equanimity of the plaintiff or its employees, or any

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member of the general public, insofar as the road here involved was concerned, until on May 20, 1949, Mr. Van Cleve found the plaintiff's servants scarifying and grading the road on his lands. He conceived this not to be a preservation of "the status quo of the subject matter" of the case. He stopped further work on the road on his land. Then and not till then was the contempt charge brought charging that he had violated the order at all times from the date of its issuance.

So it is patent that the inspiration of the contempt charge brought against Mr. Van Cleve was his action in preventing the forest service employees from further scarification and grading of the road where it crosses the Van Cleve lands.

But the prevention of the road grading work on defendants' lands was, admittedly, not a violation of the injunction order. It was, in the language of the order itself, "that the status quo of the subject of the subject matter of the action remain unchanged until the final determination of the action on its merits."

Counsel for plaintiff admit that this is not a violation of the order and so stated in his statement of the case to the court upon taking up the plaintiff's motion.

And counsel, besides expressly stating that whatever Mr. Van Cleve did when he stopped the grading work was not in violation of the injunction, also further admits the fact by seeking to enlarge the scope of the order to permit the plaintiff to perform what he terms "maintenance work" on the road.

The evidence as to this trouble between Van Cleve and the forest service employees then upon his land with road

machinery doing road work was to support the plaintiff's motion to enlarge the terms of the injunction to restrain defendants from interfering with such road work, referred to in plaintiff's motion papers as maintenance work on the road.

Of this we may advert briefly in that part of this memoranda devoted to the motion to enlarge the scope of the injunction order. Before proceeding to that subject however, we do feel impelled to say while on the subject of the alleged violation of the injunction order by Mr. Van Cleve, that while he has meticulously observed the order, plaintiff's servants have flouted it. But because plaintiff was not enjoined from trespassing on defendants lands, nor from grading the road, constructing bridges as a part of the road, or what not, the violation of the proprieties by its agents and servants in clandestinely going on defendants premises with road machinery to scarify and grade the road may not be punished as a contempt. Plaintiff's conduct though is termed by the courts "a gross abuse of the process of the court." It is said "where the purpose of the writ (injunction) is to preserve the existing status of property in litigation until a final adjudication may be had, it is a gross abuse of the process of the court for plaintiff to disregard his own injunction after having by means thereof tied the hands of his adversary, and while plaintiff is not liable to punishment as for contempt, the court has ample power otherwise to prevent or redress such abuse, and may do so by ordering plaintiff to restore the property to defendant and to abstain from any further interference with the possession thereof pending suit." 43 C.J.S. p 1014, Pac. 263.

And here it appears that beside the purpose of the

injunction clearly expressed in the injunction order itself, to preserve the status quo, Mr. Van Cleve and the forest supervisor had, at least tentatively, agreed that no work would be done on the road pending the action. See testimony of Mr. Urquhart, Forest Supervisor. And it is significant that for years, not since 1940 according to Urquhart, the forest service had done no work upon this road.

As to the right of defendants to warn against trespass upon their lands we find that the statute of Montana provides that "any person who shall hunt upon any inclosed land or premises where there is posted in a conspicuous place a sign or warning reading, "No hunting allowed on these premises", or a sign or warning reading, "No trespassing allowed on these premises", shall be guilty of a misdemeanor". Sec. 11482 R.C.M. 1935.

Mr. Van Cleve took down the two signs that said road was a private road. He still had the right to post his lands "In a conspicuous place" where prospective hunters, and others should receive warning not to trespass thereon. He has not violated the injunction order and is not guilty of contempt.

UPON THE MOTION TO ENLARGE INJUNCTION

The plaintiff and its agents, servants and employees have not been impeded in their use of the road. They have used it without let or hindrance. True they have of necessity been compelled to open and close gates in entering and leaving defendants' lands. But they have been compelled to open and close the plaintiff's gate at the forest reserve entrance before reaching defendants' property. That portion of the public/has been compelled to submit to the same inconvenience.

Now the plaintiff asks that defendants be restrained

"from maintaining any gates, locks, chains, signs or engaging in any conduct x x x which might interfere or tend to interfere or impede with (sic) the free usage or maintenance of the x x x road and trail by the general public or the officers, employees or servants of the United States of America."

It is true that a gate across a road interferes to some extent with the free use of the road. But here we have a road where such gates have been maintained at all times since the first use of the road. The case for a public highway thus far made by the plaintiff is contained in the depositions before the court taken to perpetuate the testimony of the witnesses deposing. The case is an attempt to establish the status of the road as a public road created by prescription. While we contend the case thus far made fails in the attempt, if successful in the end, the prescriptive right could be no greater than the past use gave. It is only the land actually used for the road, for the prescriptive period that may be taken from the owner of the servient property, and only to the extent of such use.

28 C.J.S. p 751, par. 74. Ferguson v. Standley, 89 Mont. 489, 300 Pac. 245; Lowry v. Carrier, 55 Mont. 392, 177 Pac. 756.

The extent of an easement obtained by prescription is governed by the extent of the use for the prescriptive period. Ferguson v. Standley, supra; Lowry v. Carrier, supra.

So, it appears that if the gates must be opened and closed in order to use the road, such necessity is a condition of the alleged easement by alleged prescriptive use.

As to the mere presence of locks or chains upon the gate, there is no evidence before the court that such has interfered with or will hinder the use of the road.

The plaintiff's employees have not been turned back by reason thereof. They fear them not. But the plaintiff is very much concerned about the fishermen. The testimony of A. J. Cramer, the Regional Law Enforcement Officer of plaintiff, discloses that the plaintiff's men were working hard on a Sunday, May 22, 1949, to get the road graded so that fishermen going up the road would not get their cars torn up. "It concerned me quite a little right at that time that a bunch of fishermen didn't get in there and get their cars torn up", said the Regional Law Enforcement Officer.

Of course, if the road is a public road the duty rests upon the board of county commissioners of the county wherein it lies to protect and repair it. It was not the duty of the United States to do so. It did not owe this to the fishermen.

Notwithstanding the fact that the record is devoid of any evidence that any person, either forest reserve employee or anyone else, has been hindered or impeded in using the road through defendants' lands,^{or} that any threat to prevent such use has been made, the plaintiff wants the terms of the injunction enlarged to bring about the elimination of the gates, the use of the chain loop fastened by a lock, the use of any chain, and what not else. Although no prevention of use, or threat thereof is shown, plaintiff intimates, but does not clearly state the absurdity, that mayhap some timid hunter or fisherman may approach the gate and, seeing that the loop by which the gate is fastened consists of a chain held together by a lock, shall deduce that he may enter through the gate only by permission, and not having obtained permission will turn back from his pursuit of game, or abandon

his hopeful intention of taking fish.

May the court prescribe that defendants may not maintain gates as at all times they have been maintained? Not on the record now before the court. If not, may the court forbid the defendants the use as a gate fastener of a chain loop tied by a lock? A lock suggests imprisonment and may possibly scare the timid hunter away. May the court forbid the use of the chain loop absent lock joiner? A chain suggests bondage. Must the new injunction provide that the loop for fastening the gate be a rope? Worse and worse, because there is plainly the suggestion of a hangman's knot. A wire loop might not be so fearful to the hunter and fisherman, but it still suggests possibilities of entanglement. There seems no alternative but to provide that, if defendants are allowed to maintain the gates at all, they shall be fastened with a loop of blue ribbon, probably blue, red is too sanguinary a hue.

The request that the court shall minutely specify the kind of gate fastener that shall be used is so absurd as to demand an answer bearing some relation to the request.

It is admitted that the maintenance of gates across a road "conveys the meaning and impression" that such a road is not a public road. That fact is an important fact that must be considered by the court when the trial of this cause shall be had.

For it is held generally, and specifically by Montana that "the fact that the passage of a road has been for years barred by gates or other obstructions to be opened and closed by the parties passing over the land, has always been considered as strong evidence in support of a mere license to

the public to pass over the designated way." Maynard v. Bara, 96 Mont. 302, 30 Pac. 2d 93.

The evidence before the court upon the motion for temporary injunction in Nov. 1948, consisted principally of the depositions of witnesses taken at Big Timber, Montana, on July 16, 1947, "In the Matter of the Application of the United States of America to Perpetuate the testimony of J. E. Druckemiller" and other witnesses, and the said depositions disclose that gates were at all times maintained across the road on the lands now owned by defendants, which gates people were required to open and close in going up the canyon.

The matter is important here at this time upon the motion to enlarge the terms of the temporary injunction to prevent defendants "from maintaining any gates, locks, chains, signs or engaging in any conduct during the pendency of this action which might interfere or tend to interfere or impede (sic) with the free usage or maintenance of The Big Timber Canyon road."

The injunction order made by the court in November last adequately protected plaintiff and its employees in their use of the road. It likewise protected the public in the use of the road. The order has been obeyed and is obeyed. The court certainly will not make an order that will prevent the defendants from making their defense in this action that the road on their land is their road. They have asserted that defense in their answer herein on file. Must they close their mouths to any utterance outside the court room that the road is theirs? Yet this might be conduct tending to frighten fishermen. When Galileo was enjoined from

asserting his astronomical discovery, it is said that he left the tribunal muttering to himself, "it does move." Unless and until a trial on the merits shall declare the road to be a public highway we shall hear the defendants say "it is not a public road."

IN CLOSING

In closing it seems proper to advert to the general position taken by plaintiff in this case. The purpose of the suit is to declare the road to be a public road. If it is a public highway, the state of Montana owns it and has entrusted its care and supervision to the Board of County Commissioners of the county wherein it lies. The ones who use the road are not required to maintain it. And here the plaintiff is merely one who uses the road. It has no official relation to it. True, the road leads to its property. But so does the road to the post office and the one to the office of the Collector of Internal Revenue, a much traveled one, too, in these days, by the way. Ordinarily a mere user of a public road has no right to enjoin its obstruction, if it be obstructed. It is only when he suffers some damage by reason of the obstruction above and beyond that suffered by the general public that he is permitted to maintain such a suit.

State ex rel. Babcock v. Lensman, 110 Mont. 51, 99 Pac. 2d. 492.

If plaintiff has any standing in this suit it is because of this exception to the rule. Where the private user of a public road is injured above the injury to the public generally by its alleged obstruction, and seeks relief, he acts for himself, not for the general public.

There is not any evidence before the court that it

is necessary to enlarge the injunction order to protect either plaintiff or public in its use of the road as it has been used.

Respectfully submitted,

Fred L. Gibson

David B. Fitzgerald
Attorneys for defendants.
127 North Main Street
Livingston, Montana.

United States Department of Justice

UNITED STATES ATTORNEY
FOR MONTANA

Billings, Montana,
July 15, 1949.

Mr. C. G. Kegel,
Deputy Clerk,
U. S. District Court,
Federal Building,
Great Falls, Montana.

RE: United States of America,
Plaintiff, v. Paul L. Van
Cleve, Jr., and The Van Cleve
Company, Inc., a corporation;
and Sweet Grass County, Montana,
a quasi-municipal corporation,
Defendants.
Billings Division Civil No. 1098.

Dear Mr. Kegel:

Enclosed please find our original Reply Memorandum
in the above matter for filing.

Please furnish us with the date of filing and
submit the same to the Court for his consideration.

Very sincerely yours,

Franklin A. Lamb

FRANKLIN A. LAMB,
Assistant U. S. Attorney.

FAL:l
1 Encl.

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IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FILED

JUL 16 1949

H. H. WALKER, Clerk
BY C. H. Keigel Deputy Clerk

UNITED STATES OF AMERICA,

Plaintiff, : REPLY MEMORANDUM OF
 : THE UNITED STATES OF
 : AMERICA

v.

PAUL L. VAN CLEVE, JR.; and
THE VAN CLEVE COMPANY, INC.,
a Corporation,

: Civil Cause No. 1098. ✓

Defendants.

The defendants have quoted one sentence of the preliminary injunction and given the same great weight in their Memorandum. In support of the Government's position herein, we ask the Court to refer to the Order for Preliminary Injunction, particularly, to the Findings of Fact and Conclusions of Law contained therein, which clearly discloses the Court's belief at the conclusion of the hearing in November, 1948, that the general conduct of the defendants in their maintenance of gates, locks, and signs was interfering and impeding the usage of the public road through the property of the defendants.

On Page 3 of Defendants' Memorandum, in the last paragraph thereof, the defendants state "It is undisputed and, in fact, admitted that the forest officials and employees of plaintiff have not been interfered with or impeded in the use of the road." This statement requires considerable limitation as one of the Government officials testified in Helena, in November, 1948, that the gate at the defendants' buildings had been locked and that this condition had caused them to unload their horses from the trucks and proceed from that point up the

canyon on horseback rather than being able to drive to Half Moon Park and there unload their horses. The conduct of the defendants on May 20 and 22, 1949, certainly interfered and impeded the Government officials in the use of the road and in the performance of their duties. This same expression is set forth in the first paragraph on Page 4. The defendants admitted at the time of the issuance of the preliminary injunction that the gate was locked and the Government now merely states that they have not found the gate locked since the issuance of the injunction. (T. 30, L. 19, June 6, 1949).

On Page 7 of Defendants' Memorandum, they state that the defendant Van Cleve, and the Forest Supervisor, had, at least, tentatively agreed that no work would be done on the road pending the action. On Pages 55 and 56, of the Transcript of June 6, 1949, Mr. Urquhart denied that he had told the defendant that there would be no work done on the road until the case was settled so the statement of Defendants' Brief above referred to is contrary to the testimony given.

In the last Paragraph, on Page 7 of Defendants' Memorandum, the defendants state that the plaintiff and its employees have been compelled to open and close the plaintiff's gate at the forest reserve entrance before reaching defendants' property. This is not a fact, as there is no gate at the forest boundary and the testimony given at the various hearings discloses that there never has been and that at the forest boundary adjacent to the Ranger Station many years ago a cattle guard was constructed. Therefore, the defendants, at this point, have again misstated the true facts.

On Page 8 of Defendants' Brief, the defendants state that this cause is an attempt to establish the status of the road as a public road created by prescription. This is a voluntary assumption made by the defendants and evidence of various

types will be offered to the court at the time of the trial, some of which will prove the existence of a right-of-way by easement and not necessarily by prescription. Again, the defendants have made voluntary assumptions that are not necessarily correct.

In the last paragraph, appearing on Page 8 of Defendants' Memorandum, we find another voluntary assumption wherein the defendants state that the presence of locks or chains appearing upon the gate is not evidence before the court that such has interfered with, or will hinder, the use of the road. The Court orally stated at the conclusion of the hearing, in Helena, in November, 1948, that the existence of a chain held together by a lock and looped over the gate, as shown in the exhibits, when considered in conjunction with the signs "No Trespassing" conveyed the definite impression to the public that travel on the road was restricted and prohibited, and we respectfully submit that there is definite evidence before the court of this fact.

On Page 9 of the Brief, the defendants state that the Government's employees have not been turned back by reason of the presence of the signs, locks and chains. We again refer the court to the testimony of Ranger Roemer at the November, 1948, hearing, when he was required to unload his horses at the Van Cleve buildings because of the locked gates found at that point. In the same paragraph, a partial sentence is quoted when referring to the fishermen exhibited in this area on May 22, 1949, which apparently attempts to convey the impression that Mr. Cramer was concerned because the fishermen "didn't get their cars torn up". We ask the Court to refer to Page 60 of the Transcript of June 6, 1949, and for the purpose of erasing this attempt on the part of the defendants to mislead the Court, we quote the sentence in full:

"On that morning, that was Sunday morning and it happened to be the opening day of fishing, which concerned me quite a little right at that time, that a bunch of fishermen didn't get in there and get their cars torn up is the reason we worked all the forenoon to get the road in shape."

In the second paragraph, Page 9, of Defendants' Memorandum, they again assert that if the road is a public road the duty of maintenance rests upon the Board of County Commissioners. We have previously discussed this matter in our Memorandum in opposition to defendants' motion to require the joining of the Board of County Commissioners. Therein, we set forth the various Federal statutes concerning the Government's maintenance of roads within the national forest boundaries, and at various points in the testimony given at the several hearings, the Government officials have also testified that the Government maintains the roads within the forest boundaries. The writer personally knows that this is a fact, as the Forest Service maintains the road leading to the writer's cabin and the County merely maintains the road to the forest boundary.

In the last paragraph, on Page 9, of Defendants' Memorandum, counsel for the defendants claims that it is an absurdity that a hunter or fisherman might approach the gate and, because of the conditions there present, would turn back. We again refer to the Court's remarks at the conclusion of the hearing in Helena, in November, 1948, when the court, as well as counsel for the United States, did not come to the same conclusion and did not feel, as defendants' counsel, that this was an absurdity.

In the first paragraph of Page 10 of Defendants' Memorandum, counsel has attempted to paint a fantasy, which reaches the point of absurdity requiring no reply on behalf of the Government.

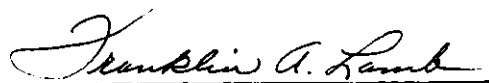
In the last paragraph, on Page 10 of Defendants' Memorandum, a general rule of law is quoted. In this connection, we wish to refresh the Court's recollections that the gate in

question was constructed by the defendants on or about the year 1940, when the defendants first acquired title to the South Half (S $\frac{1}{2}$) of Section One (1) and that it was not until that time that any locked gates interfering with the passage of the public were found and it was not until that time that the gate in question was even in existence.

Therefore, in closing, it is clear, as expressed in our original Memorandum, that the defendant has attempted, by subterfuge and indirection, to destroy the effect of the Court's Order and, by such conduct, has been in contempt of Court since the issuance of the preliminary injunction. By his conduct on May 20 and May 22, 1949, he clearly interfered with the performance of the duties of Government employees and clearly expressed to them his threat to lock the gate, even if it was contempt of this Court, and it, therefore, is clearly apparent that it is necessary that the order of this Court be enlarged to prohibit any conduct on behalf of the defendant which might, in any way, interfere, or impede with the free usage of the road in question by the general public, or the employees of the Government.

Respectfully submitted,

JOHN B. TANSIL,
United States Attorney,
District of Montana.


FRANKLIN A. LAMB,
Assistant U. S. Attorney,
District of Montana.

FRED L. GIBSON
DAVID B. FITZGERALD
RICHARD A. BODINE

GIBSON, FITZGERALD & BODINE
LAW OFFICES
127 NORTH MAIN STREET
LIVINGSTON, MONTANA

TELEPHONE 18

July 18, 1949

Clerk of the U. S. District Court
Great Falls, Montana

In Re: United States of America
vs. Paul L. Van Cleve, Jr., et al.

Dear Sir:

Enclosed herewith find additional brief of de-
fendants upon the motions now pending in the
above entitled case, a copy of which we are
serving on the district attorney.

Very truly yours,

GIBSON, FITZGERALD & BODINE

By:

Fred L. Gibson

FLG:js
Enc.

IN THE DISTRICT COURT OF THE UNITED STATES
IN AND FOR THE DISTRICT OF MONTANA,
BILLINGS DIVISION.

FILED

JUL 20 1949

H. H. WALKER, Clerk

UNITED STATES OF AMERICA,
Plaintiff,
-vs-
PAUL L. VAN CLEVE, JR., and
THE VAN CLEVE COMPANY, INC.,
a corporation,
Defendants.

DEFENDANTS' ADDITIONAL BRIEF
CONTRA PLAINTIFF'S MOTION
FOR CONTEMPT AND TO
ENLARGE INJUNCTION ORDER

Civil Action No. 1098 ✓

It seems necessary to file an additional memoranda on behalf of defendants, not to further argue the facts, but to defend the writer of defendants' brief from the charges made in reply brief of plaintiff, on page 2 thereof that "the defendants at this point have again misstated the true facts". This refers to defendants' statement that people traveling up The Big Timber Canyon road must open the gate at the forest boundary as well as the gates on Van Cleve's land. The argument was to press the point that the plaintiff by its action in constructing a gate across the road at the entrance to the forest reserve in effect admit the road is not a public road, as in this action it contends, but a private road of its own, or at least that travel thereon is subject to the inconvenience of impeding gates. The writer has never been to the Van Cleve dude ranch nor to the forest reserve area involved and from the record supposed that the gate that the forest service had maintained on the boundary at the entrance to the reserve was still there. There appears nothing in the

record to indicate otherwise, at least so far as we have been able to find. But counsel for plaintiff in the reply brief in this matter says on page 2 of his brief that there is no gate there. I assume from this that counsel has been on the ground (I have not,) and so if he says the gate is gone his statement is good. But when he says, as he does at page 2 of the reply brief that "there is no gate at the forest boundary and the testimony given at the various hearings discloses that there never has been" I must refer to the testimony in the record given on that. Mr. Rubottom who says he was in charge as a ranger of the area of the forest reserve here involved from about 1931 to 1944, (Br. p 73) testified on cross-examination: Q. "How many gates were there across the road from the forest boundary to Half Moon Park?" A. "One gate at the forest boundary there at the time. There was a gate on the west line of the homestead, east line, pardon me. And there was a gate maintained at the Van Cleve building, and another one on the present drift fence below Half Moon Park". Q. "Then there were three gates a traveler has to open or close going up to Half Moon Park besides the entrance gate?" A. "There was two gates on the Van Cleve property, one on the homestead line and one on the building". (Tr. 76-77). Again, Q. "I believe you described four gates?" A. "There were four gates in my time." Q. "Of course, the gate where you enter the forest reserve is maintained by the Government?" A. "Yes." Mr. Rubottom was testifying as to conditions existing, as he says, "in my time." And that apparently was, "from about 1931 to 1944" (Tr. 73) when Mr. Rubottom was "in charge of that area". (Tr. 77).

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So the argument the writer sought to make, somewhat clumsily it is true, that the government by putting the barricade of a gate across what it now says is a public road, treated the road, not as a public road, but as its own private road.

The gate which Mr. Rubottom said was at the entrance to the forest in his time evidently has been replaced by a cattle guard, because counsel for the plaintiff says it is not there. He must be mistaken, though when he says, as he does in his reply brief, that there never was a gate there.

If the plaintiff had a gate there it must then have considered the road to be not a public road but private. If some time after the time of which Mr. Rubottom speaks the gate was removed the question arises, does this indicate that the road then became a public road? If so, what grant of easement made it so? Or, did the plaintiff still maintain the thought that the substitution of a cattle guard for a gate, was a sufficient continuance of the inferential claim that it owned the road?

"THE FISHERMEN"

Plaintiff's counsel says defendants' brief "apparently attempts to convey the impression that Mr. Cramer was concerned because the fishermen 'didn't get their cars torn up', and for purpose of erasing this attempt to mislead the court" he says "we quote the sentence (Mr. Cramer's) in full". It was not to "convey the impression that Mr. Cramer was concerned because the fishermen "didn't get their cars torn up", but to convey the impression that the plaintiff was not worried about its own use of the road, but that it was much concerned

about the welfare of the fishermen and was working for their welfare in this regard. If the attempt conveyed this idea to the court it is what was intended. And it did not mislead the court because the statement of Mr. Cramer quoted in both briefs is to the certain effect that he was much concerned for fear that a bunch of fishermen might get their cars torn up on the road, and so the government employees or officials worked all the forenoon on a holiday, Sunday, to get the road in shape so the fishermen would not injure their cars on it. And this too on a road that the government had done no work on for many years--not since 1939 I believe the record shows. (Tr. 75) If this does not display great concern for the fishermen it is hard to conceive what would show it. Q. E. D.

"THE ROAD GRADING"

In his reply brief plaintiff's counsel now states that the action of defendants in preventing further grading of the road "interfered and impeded the government officials in the use of the road."

This appears to be a mere tentative suggestion hopefully put forward in the absence of evidence that there has been any violation of the injunction order. As stated in defendants' original memoranda herein the dispute about the grading of the road is not within the temporary injunction order. Counsel for plaintiff admitted it at the hearing and the record plainly discloses it.

The record shows that when counsel for plaintiff commenced to put in testimony of the road grading and the altercation following and concerning it counsel for defendant Van Cleve objected to the introduction of the testimony and in

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making the objection said: "I object to the testimony regarding the altercation and the stopping of these men from grading up this road because as admitted by counsel it is not a violation of the injunction order and it is immaterial to any issue here; the issue now is, did my client violate the court's order?" Counsel for plaintiff did not question this statement of his position. He said "there are two motions" * * *. "I can go on and show the first matter and get the matter of the contempt out of the way, and then proceed with this" * * *. He did not question that this statement of his admission was not correct. And "then proceed with this" did not refer to the contempt charge. "This" was the altercation between Mr. Van Cleve and Mr. Manry about the road grading. I am sure counsel does not want to mislead the court on this matter. It is adverted to here to keep the record straight. The injunction order may not be distorted from its intent and meaning to make a case of contempt where upon the record and the facts there is no contempt.

Respectfully submitted,

Fred L. Gibson

David B. Fitzgerald
Livingston, Montana
Attorney for Defendants.

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IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE
DISTRICT OF MONTANA, BILLINGS DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs)
)
PAUL L. VAN CLEVE, JR., and)
THE VAN CLEVE COMPANY, INC.,)
a Corporation,)
)
Defendants.)

Civil Action No. 1098

FILED

OCT 15 1949

H. H. WALKER, Clerk
BY *Chegel* Deputy Clerk

The defendant in the above cause was cited to appear and show cause why he should not be held in contempt for the alleged disobedience of the restraining order theretofore issued by the court.

The proof shows that the gate across the highway in question at the lower boundary of the Van Cleve property has never been locked since the restraining order was issued, and that all signs indicating a private road which had formerly been posted at the gate had been removed by defendant following the issuance of the restraining order. Although the above facts were clearly established at the hearing, counsel for the plaintiff has indicated that a species of deception was practiced by the defendant to deceive travelers on approaching the gate where they would be confronted by a "Positively No Trespassing" sign, and could see a chain over the gate with a padlock attached, and who, meeting such conditions, would be likely to turn back, gaining the impression from the appearance of the sign, chain and lock that passing the gate was prohibited. There appeared on the no trespassing sign written words to the effect that the traveler would be expected to keep to the road and not trespass on either side thereof.

The defendant was questioned as to whether one driving up to the gate could read the writing on the no trespassing sign, and he was not explicit in his answer but said that one on opening the gate could not help but see the written part and

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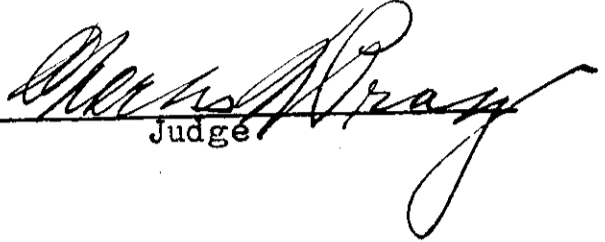
be able to read it. No question is raised as to the right of the defendant to post no trespass signs on his property, in fact he stated that all of his property was so posted.

From the foregoing recitation of facts the proof appears to be insufficient to enable the court to state in positive terms that it has been clearly and convincingly established that the defendant has violated the restraining order. It is possible that the defendant may have created a condition there that might have been misleading to a stranger driving that way, but the evidence shows that men in the forestry service and others, so far as the proof goes, passed through the gate and over the road without interference by the defendant or any of his employees, and none of them ever found the gate locked after the restraining order was issued.

While it appears that considerable ill feeling exists on the part of the members of the forestry service and the defendant it does not seem to be necessary to go into the quarrel over the attempt at road repairing on the part of the forestry crew or the abusive conduct on the part of the defendant for which he later apologized; he did not object to work done on the forest reserve, but only on his own land, and there might be some question raised as to whether it was proper during the pendency of the restraining order and the action to undertake extensive alterations in the condition of the road. It is evident that ~~the~~ forestry crew with their road machinery gained entrance over the road in question through the premises of defendant without obstruction. The court does not believe that this unfortunate incident should be accepted as proof of a violation of the restraining order which required the defendant to keep the road open for ingress and egress of members of the public generally during the pendency of the action, or until the further order of the court.

From a consideration of all the facts which the court regards as material to the issues raised in this hearing, the court does not believe the proof justifies holding the defendant

in contempt of the restraining order, and such is the order herein, without assessment of costs, each side paying its own costs.


Judge

FRED L. GIBSON
Attorney and Counselor at Law
Carnier-Miles Bldg.
Livingston, Montana

Livingston, Montana,
October 11th, 1950

Mr. Harlow A. Pease,
Assistant U.S. Dist. Attorney,
Butte, Montana.

Dear Mr. Pease:

This is regarding the case of the United States vs the VanCleve Company, et al, which you indicated was now in your charge since the resignation of Mr. Lamb, who had been in charge of the case.

As you know the case is for a declaratory judgment that a road through the VanCleve lands located in the National forest reserve is a public highway. Mr. VanCleve has requested me to have the case set for trial but before filing a note of issue I thought to write to you to inquire whether you think the case is one for a jury trial or not. If you do I will file a note of issue and ask to have the case set for trial at the next jury term at Billings. I have been told that Judge Pray expects to have a jury term there soon.

If you think it would be easier and more satisfactory to try the case before the court we should be able to agree upon a date convenient to both of us, subject to the pleasure of the court.

Will you kindly let me know what your thought and desire is in the premises.

Very truly yours,

/s/ Fred L. Gibson

UNITED STATES ATTORNEY
FOR MONTANA

JOHN B. TANSIL

Butte, Montana
Oct. 12, 1950

Fred L. Gibson, Esq.
Attorney and Counsellor
Garnier-Miles Building
Livingston, Montana

Re: United States v. Paul L. Van Cleve, Jr.

Dear Judge Gibson:

This will acknowledge your letter of October 11th. It has been my definite understanding that this is an equity case seeking a permanent injunction against the obstruction of the road which is in controversy, and accordingly that the case is triable without a jury. The case is, of course, among Judge Pray's trial agenda, as you have mentioned.

This office will be compelled to spend about six or ten weeks, commencing October 18th, in the trial of cases at Glasgow, Butte and Missoula before Judge Murray, in all three of which Divisions juries will be in attendance. I am of the impression that Judge Pray is aware of the terms of court I have mentioned and intends to relieve this office of any possible conflict by not setting the Van Cleve case for trial until a time when this office can give its entire attention to it. I, therefore, believe that the observation in your third paragraph will apply to the satisfaction of your office as well as the undersigned.

Sincerely yours,

For the United States Attorney

HARLOW PEASE
Assistant U. S. Attorney

HP:V

DEPARTMENT OF JUSTICE
UNITED STATES ATTORNEY
FOR MONTANA

JOHN B. TANSIL

Butte, Montana
October 27, 1950

Honorable Charles M. Pray
United States District Judge
Federal Building
Billings, Montana

Dear Judge Pray:

Enclosed herewith I am handing to you a Motion with supporting Affidavit for the vacating of the setting in the Van Cleve case.

It was impossible to give attention to this matter at Glasgow by reason of our office being engaged in a trial of cases and not having the Van Cleve file available. It was given the utmost priority and deligence immediately upon the return of Mr. Carmichael and myself to Butte. A service copy is being mailed to Mr. Fred L. Gibson of Livingston by this mail.

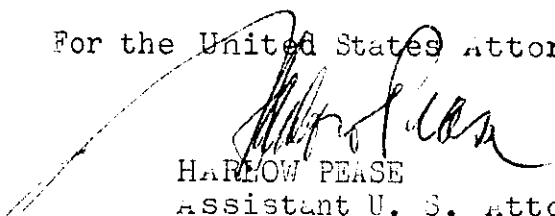
I am sure that you will appreciate the gravity of the subject matter, not only the conflict with Judge Murray's calendar but also the unexpected fresh development which has necessitated the immediate inquiry into an unknown number of facts which it is believed pertain to the very heart of the controversy.

I am transmitting this Motion to your own desk rather than to the clerk of the court by reason of the urgency of the situation.

With kind personal regards, I remain,

Very truly yours,

For the United States Attorney


HARLOW PEASE
Assistant U. S. Attorney

HP:W



NOTICE OF _____

D. C. Form No. 18

United States District Court

Billings DIVISION, ----- DISTRICT OF Montana -----

United States

vs.

Paul L. VanCleve, et al.

No. 1098 - civil

To Messrs. Gibson & Fitzgerald, Livingston, Montana.

TAKE NOTICE that the above-entitled case has been set for TRIAL in said Court at Billings, Montana, on November 15, 1950, at 10:00 A. M.

H. H. WALKER, Clerk

United States District Court

FOR THE

DISTRICT OF MONTANA.

United States of America

vs.

Paul L. Van Cleve, Jr., et al.

No. 1098

To United States Attorney, Butte, Montana.

Messrs. Gibson & Fitzgerald, Attorneys at Law, Livingston, Montana.

TAKE NOTICE that the above-entitled case has been set for TRIAL in said Court at Billings, Montana, on November 16th, 1953, at 10:00 A. M.

Date Oct. 27, 1953

H.H. Walker, Clerk US Court

CGK.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA,

Plaintiff, :

v. :

No. 1098✓

PAUL L. VAN CLEVE, JR.;
THE VAN CLEVE COMPANY, INC.,
a corporation; and
SWEET GRASS COUNTY, MONTANA,
a quasi-municipal corporation,

Filed Oct-31-1950,
N. H. Waack
Clare

Defendants.

MOTION TO VACATE SETTING FOR TRIAL

The plaintiff respectfully moves the Court that the setting for trial of this cause for November 15, 1950, be vacated, on the following grounds:

1. That it is impossible for the plaintiff's attorneys to prepare for trial and try this cause on November 15, 1950, by reason of conflicting duties required of them at a trial term of this Court in the Butte Division, which term had been called and cases set previous to the making of the said setting hereby moved to be vacated, and which term commences with a calendar November 7, 1950, and trials commencing November 13, 1950.


2. That recent transactions affecting and involving the merits of this cause have occurred and been brought to the attention of the United States Forest Service, which has put in motion diligently an investigation, to complete, report upon and act upon which cannot be carried out in time to prepare for the presentation thereof at so early a time as November 15, 1950.

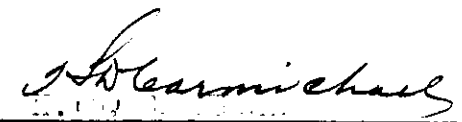
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3. That the matters for trial in the Butte Division include a number of cases for jury trial, whereas the instant case is triable to the Court.

This motion is made on the affidavit of Harlow Pease, Esquire, Assistant United States Attorney, and upon the minutes and records of the Butte Division of this Court.

Dated at Butte, Montana, October 27, 1950.


Assistant United States Attorney


Assistant United States Attorney

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA,

Plaintiff, :

v. :

No. 1098 ✓

PAUL L. VAN CLEVE, JR.;
THE VAN CLEVE COMPANY, INC.,
a corporation; and
SWEET GRASS COUNTY, MONTANA,
a quasi-municipal corporation,

Filed Oct-31-1950.
H. H. Waack, Clerk

Defendants.

AFFIDAVIT SUPPORTING MOTION
TO VACATE SETTING FOR TRIAL

UNITED STATES OF AMERICA }
DISTRICT OF MONTANA }

Harlow Pease, being first duly sworn, on oath says;

This affidavit is made in support of the motion of the plaintiff herein to vacate the setting for trial of this cause, which affiant is informed has been by the Honorable Charles N. Pray, United States District Judge, set for November 15, 1950, at Billings, Montana. Affiant was informed by phone of such setting on October 20th, 1950, at Glasgow, Montana, but no written notice thereof has as yet been received. At the time of receipt of such information this affiant and his associate, Assistant United States Attorney Hugh D. Carmichael, were both at Glasgow, Montana, and were without the file of this case, without which this motion could not be prepared.

1. The said setting for trial is in conflict with engagements in line of official duty of the Assistant

1 United States Attorneys in the Butte Office, who are the
2 only attorneys conversant with this case, and who are the
3 attorneys to whom the case has been assigned by the Honorable
4 John B. Tansil, United States District Attorney, to prepare
5 for and try the same, although the case was originally pre-
6 pared by another Assistant United States Attorney and by
7 him handled up to the month of June, 1950. A trial term
8 of this Court in the Butte Division has been called by the
9 Honorable W. D. Murray, United States District Judge (and
10 was called previous to the order setting this case for
11 November 15, 1950) which includes a criminal and civil
12 calendar at Butte on November 7, 1950, and trial of cases
13 by jury and otherwise commencing with the coming in of a
14 jury at Butte on November 13, 1950. Both this affiant and
15 his associate Hugh D. Carmichael, Esquire, are required to
16 be in attendance upon the United States District Court at
17 Butte at said term of court, in which cases have now been
18 set up to and including December 6, 1950.

19 It is impossible for the personnel of the Butte office
20 to prepare for trial and try the matters which are in-
21 cluded in the said term at Butte, and at the same time
22 prepare for the trial of the above entitled cause at
23 Billings at the time now set.

24 2. It is further impossible for the attorneys in
25 charge of this case for the plaintiff to go to trial at
26 the time now set by reason of the fact that a recent ob-
27 struction of the Big Timber Canyon road in controversy
28 has occurred and been reported to the Forest Service and
29 made known to the affiant and his associate, which re-
30 quired an immediate and thorough investigation to be made,
31 which investigation has been requested (and was requested
32 before it was known that said setting for trial had been

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ordered) and is now in progress, but has not been completed and reported upon. Affiant is informed that a report thereon cannot be made to the attorneys for plaintiff prior to about November 10, 1950, the basis for this statement being an inquiry by long distance telephone to the Regional Forester's office at Missoula on yesterday, October 26th, 1950. The evidence concerning the said recent obstruction will have to be assembled and coordinated after the receipt of the expected report, which cannot be done in time for a trial on November 15th, 1950.

3. Affiant received from Fred L. Gibson, Esquire, the defendant's attorney, a letter dated October 11, 1950, and at once answered the same on October 15th, 1950, copies of which are attached to this affidavit, and in the second of which affiant advised said attorney of the terms of Court already called by the Honorable W. D. Murray, and of the conflict which would be created should the case be set during those terms. By reason of the said exchange of letters, and by reason of said attorney failing to reply to affiant's letter so stating, and also by reason of plaintiff's attorneys' not being notified of the application to have the cause set for trial, the affiant and his associate did not have an opportunity to make any objection thereto more seasonably than the instant application.

Affiant also adverts to the fact that said cause is not triable by jury, being equitable in nature and neither party having requested a jury.


 Assistant U. S. Attorney

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Subscribed to and sworn to before me this 27th day of
October, 1950.

H. H. WALKER
Clerk, United States District
Court

By *Helene Roseland*
Deputy Clerk

Billings, Montana
Oct. 31, 1950

Mr. Fred L. Gibson, and
Mr. David B. Fitzgerald,
Attorneys at Law
Livingston, Montana
and
Mr. John B. Tansil
United States Attorney
Billings, Montana.

No. 1098, US vs. Paul L. VanCleve,
et al.

Gentlemen:

Plaintiff's motion to vacate setting of
case for trial was received in this office and
filed October 31, 1950.

Judge Pray has set said motion for hearing
at Billings, Montana, on Monday, November 6,
1950, at 10:00 A. M.

Very truly yours,

H. H. Walker, Clerk

United States District Court

Billings.....DIVISION,.....DISTRICT OF Montana.

United States of America
vs.
Paul L. Van Cleve, Jr., et al.

No. 1098

Filed January 17, 1953
H.H. Walker, Clerk.

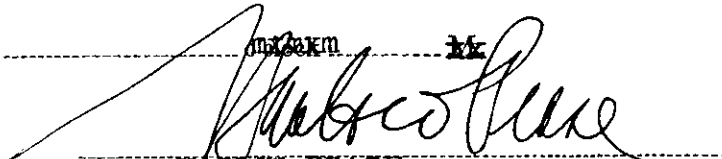
By Ch. Kezel
Deputy.

To the Clerk of said Court:

Please ~~issue Subpoena~~ withdraw ~~the~~ my name as attorney for the plaintiff in the above entitled cause.

~~Witness~~ ~~Subscribed~~ ~~at~~
~~City~~ , ~~State~~ ~~County~~ ~~at~~

Jan. 17, 1953,
~~Subscribed~~, ~~at~~


HARLOW PEASE
Attorney at Law,
Billings, Montana.
~~Attest~~

Great Falls, Montana.
November 4, 1953.

Messrs. Gibson & Fitzgerald,
Attorneys at Law,
Livingston, Montana.

Dear Sirs:

This is to advise that at the session of Court this day held at Billings, Montana, the Court, on motion of Mr. Krest Cyr, United States District Attorney, ordered that the setting of Civil Action No. 1098, United States vs. Paul L. Van Cleve, Jr., et al, for trial on November 16, 1953, be and is vacated, and that said case will be re-set for trial later in the term.

Notice of new trial date will be given when date is set.

Respectfully yours,

H.H.Walker, Clerk.

By

Ch. Keigel
Deputy.

THE BILLINGS GAZETTE

BILLINGS, MONTANA

11 June 1954

Clerk of U. S. District Court
Post Office Building
Great Falls, Montana

RE: U.S. vs Paul Van Cleve
Civil No. 1098

Dear Sir:

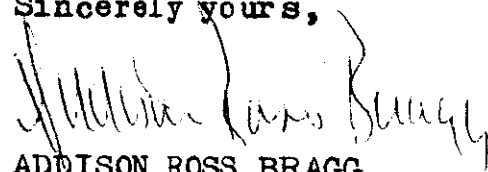
Reference is made to the above case heard
by the U. S. District Court.

According to a release issued by J. C.
Urgurhardt, supervisor of the Gallatin National
Forest, last Dec. 13, this case involving a right-
of-way was settled out of court with execution of
a deed by the Van Cleves to the government.

It was listed again, however, on the docket
at the recent term of court held in Billings.

Could you please advise as to whether or
not this was a date set before the out-of-court
settlement was reached -- or whether it came up
for approval by the judge -- or just what transpired
at this time, if anything?

Sincerely yours,


ADDISON ROSS BRAGG
Reporter
The Billings Gazette

Great Falls, Montana.
June 12, 1954.

Mr. Addison Ross Bragg,
Reporter,
The Billings Gazette,
Billings, Montana.

Dear Sir:

In reply to your letter of June 11, 1954,
re: Case #1098, US vs. Paul Van Cleve, et al, you
are advised that the case was on the Trial Calendar
of Civil Cases, it being at issue, so far as the
Clerk's Docket shows.

The case was passed for the term, at the
request of the United States Attorney, who stated that
a settlement of the case has been, or is about to be
reached.

We have no record of the actual negotiations
for settlement, and do not know just what has transpired
in the case.

Respectfully yours,

H. H. Walker, Clerk.

By C. G. KEGEL
Deputy.

Reproduced at the National Archives & Records Administration

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MONTANA
3 BILLINGS DIVISION

4 UNITED STATES OF AMERICA, :
5 Plaintiff, :

6 -vs-

: CIVIL NO. 1098 ✓

7 PAUL L. VAN CLEVE, JR.; :
8 THE VAN CLEVE COMPANY, INC., :
9 a corporation; and :
10 SWEET GRASS COUNTY, MONTANA, :
11 a quasi-municipal corporation, :
12 Defendants. :

FILED

SEP 10 1954

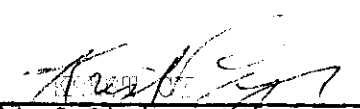
H. H. WALKER, Clerk

11 MOTION TO DISMISS

BY *Chapel* Deputy Clerk

13 Comes now Krest Cyr, United States Attorney for the District
14 of Montana, Attorney for the Plaintiff, and moves the Court to
15 dismiss the above-captioned action, in which the Plaintiff seeks
16 a declaratory judgment establishing the existence of a public road
17 through defendants' lands, and to restrain the interference with
18 the use of said road, for the reason that an easement and road
19 right-of-way over this land was conveyed to the United States of
20 America by the defendants in said action, under deed dated December
21 10, 1953, which was filed for record on December 11, 1953 and re-
22 corded in the office of the County Clerk and Recorder in and for
23 Sweet Grass County, State of Montana, in Book "43" of Deeds, at
24 page 435; and under a deed correcting the description contained
25 in the deed dated December 10, 1953, recorded in Book "43" of Deeds
26 at page 435, aforesaid, said correction deed being dated May 26,
27 1954, filed for record on May 26, 1954, and recorded in the office
28 of the county Clerk and Recorder in and for Sweet Grass County, State
29 of Montana, in Book "44" of Deeds at page 5; and that the United
30 States Forest Service is now constructing a road on the right-of-way
31 granted by the defendants. This motion is made pursuant to Rule
32

1 41 (a) (2) Federal Rules of Civil Procedure. Movant further
2 states that no counter-claim has been pleaded by the defendants,
3 or any of them.

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6 United States Attorney for
7 the District of Montana

8 Attorney for the Plaintiff.
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FILED

SEP 10 1954

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3 UNITED STATES OF AMERICA,

4 Plaintiff, :

H. H. WALKER, Clerk
BY C. J. Keigel Deputy Clerk

AFFIDAVIT OF MAILING

5 v. :

6 PAUL L. VAN CLEVE, JR.; THE VAN
7 CLEVE COMPANY, INC., A Corporation;
8 and SWEET GRASS COUNTY, MONTANA,
9 a quasi-municipal corporation,

Civil No. 1098 ✓

10 Defendants.
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16 KREST CYR, first upon his oath being duly sworn, deposes and says:

17 That he is the United States Attorney in and for the District of Montana;
18 that on the 10th day of September, 1954, he deposited franked envelopes
19 addressed to the attorneys for the defendants in the above-entitled case
20 at their last known post office addresses as follows:

21 Fred L. Gibson, Esq.
22 Attorney at Law
23 127 Main Street
24 Livingston, Montana

25 David B. Fitzgerald, Esq.
26 Attorney at Law
27 127 Main Street
28 Livingston, Montana

29 And that said envelopes contained copies of Motion to Dismiss and Notice of
30 Motion To Dismiss, and that the envelopes containing said copies were clearly
31 and plainly addressed to the attorneys above-named.
32

Krest Cyr

Subscribed and sworn to before me this 10th day of September,

1954.

C. J. Keigel
Deputy Clerk, U. S. District Court,
District of Montana.

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MONTANA
3 BILLINGS DIVISION

4 UNITED STATES OF AMERICA, :
5 Plaintiff, :

6 -vs- : CIVIL NO. 1098 ✓

7 PAUL L. VAN CLEVE, JR.; :
8 THE VAN CLEVE COMPANY, INC., :
9 A Corporation; and :
10 SWEET GRASS COUNTY, MONTANA, :
11 a quasi-municipal corporation, :
12 Defendants. :

FILED
SEP 10 1954

H. H. WALKER, Clerk
BY *C. Keigel* Deputy Clerk

NOTICE OF MOTION TO DISMISS

13 To: Fred L. Gibson, Esq. and David B. Fitzgerald, Esq., Attorneys
14 for Defendants, 127 North Main Street, Livingston, Montana:

15 PLEASE TAKE NOTICE that the undersigned will bring the
16 annexed Motion to Dismiss on for hearing before this Court at the
17 Court Room, Federal Building, Great Falls, Montana, on the 27th
18 day of September, A. D., 1954, at 10:00 o'clock A. M. of that day,
19 or as soon thereafter as counsel can be heard.

Frank A. ...
United States Attorney for the
District of Montana,
Federal Building,
Butte, Montana.

Attorney for the Plaintiff.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

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3 UNITED STATES OF AMERICA,

4 Plaintiff, :

ORDER DISMISSING ACTION

5 v. :

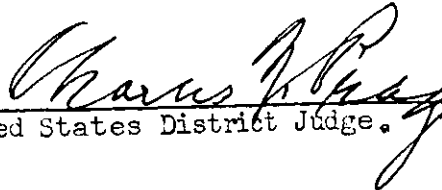
6 PAUL L. VAN CLEVE, JR.; THE VAN :
7 CLEVE COMPANY, INC., A Corporation; :
8 and SWEET GRASS COUNTY, MONTANA, :
a quasi-municipal corporation, :
Defendants, :

Civil No. 1098. ✓

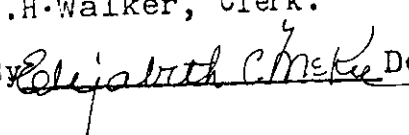
9
10 The Motion of the United States of America, the above-named plaintiff,
11 for an order of this Court to dismiss the above-captioned action, came on
12 regularly for hearing this 27th day of September, 1954, and ^{notice of} motion was duly
13 given counsel for the above-named defendants as required by law. Dale F.
14 Galles, Assistant United States Attorney for the District of Montana, one of
15 the attorneys for plaintiff herein appeared in open Court at the time set for
16 the hearing of said motion and counsel for defendants not appearing and the
17 Court being fully advised in the premises,

18 IT IS ORDERED, and this does order, that the motion of plaintiff to
19 dismiss the above-captioned action is granted and this action is dismissed
20 provided that each of the parties herein shall bear the costs and disbursements
21 expended by them respectively.

22 Dated and signed in open Court at Great Falls, Montana, this 27th
23 day of September, 1954.

24
25 
United States District Judge.

26 Filed, entered & noted in
27 Civil Docket September 27, 1954.
28 H.H. Walker, Clerk.

29 BY  Deputy.
30
31
32

FILED

SEP 27 1954

H. H. WALKER, Clerk
BY *C. Keigel*
Deputy Clerk

United States of America
District of Montana

} ss:

I, H.H. Walker, Clerk of the United States District Court for the District of Montana, do hereby Certify that the foregoing papers hereto annexed constitute the Judgment Roll in the above-entitled action.

WITNESS my hand and seal of said Court this 27th day
of September, 1954.

H. H. Walker Clerk
By *C. Keigel* Deputy

For hearing Monday
Nov 6 10 am
Notify Council
