

WHEREAS, Elizabeth Kelly filed Cause Number DV-12-863B, *Elizabeth Kelley v. Elizabeth F. Bunker, et. al*, seeking to quiet title to certain real property located in Gallatin County, Montana, and naming the State as one Defendant;

WHEREAS, the Court allowed the County to intervene in the case *Elizabeth Kelley v. Elizabeth F. Bunker, et. al*, No. DV-12-863B on July 5, 2013;

WHEREAS, The Court subsequently consolidated No. DV-12-863B and DV-12-707AX for all purposes on October 1, 2013;

WHEREAS, all defendants except the State have disclaimed interest or been defaulted out of the quiet title action, *Elizabeth Kelley v. Elizabeth F. Bunker, et. al*, No. DV-12-863B, leaving the State the only remaining defendant disputing title to what the real property known as the “Cooper Flume;”

WHEREAS, upon consolidation of the actions, one basis for the County’s claims against the State became that the County held an interest in a grant from the State of Montana to Walter Cooper on November 21, 1903, in the form of State Patent 456, known as the “Cooper Flume,” which states “the foregoing grant is made with the understanding that the right of the public to travel over, maintain and use the wagon road now in use through Bear Canyon, over and across said right of way shall never be denied;”

WHEREAS, on August 24, 1903, the State Board of Land Commissioners approved the sale of a right-of-way 100 feet wide or fifty feet on each side of the center line being a total of 16.09 acres at \$10.00 per acre to Walter Cooper and the price paid, as shown by historical records, is a price greater than the land was valued at the time of the grant, which was between \$1.00 and \$6.00 the per acre.

WHEREAS, upon payment of \$160.90, the State, through State Patent 456, granted to Walter Cooper “all real property situated in Gallatin County, State of Montana,” as described

therein, which also includes that “the foregoing grant is made with the understanding that the right of the public to travel over, maintain and use the wagon road now in use through Bear Canyon, over and across said right of way shall never be denied;”

WHEREAS, the existence of a public right-of-way pursuant to Mont. Code Ann. § 7-14-2622 and the validity and nature of the interest granted through State Patent 456 are disputed by the State;

WHEREAS, the approximate location of most of the purported “right of way” to the public in State Patent 456 is at or near the area set forth in Exhibit A, which is incorporated herein by reference, the “right of way” travels from the northern boundary of Section 1, Township 3 South, Range 6 East MPM to the southern boundary of Section 6, Township 3 South, Range 7 East MPM;

WHEREAS, both the County and Elizabeth Kelley intend to settle with, and dismiss with prejudice, the claims against the State in accordance with the terms and conditions of this Agreement;

WHEREAS, the County, Elizabeth Kelley, and State have engaged in good faith negotiations, to settle all claims and defenses;

WHEREAS, the Board of Gallatin County Commissioners have authority to resolve this matter pursuant to Montana law;

WHEREAS, the State of Montana, by and through the State Board of Land Commissioners, has authority to resolve this matter pursuant to Montana law;

and

WHEREAS, the County, Elizabeth Kelley, and State have discussed terms upon which to amicably resolve any and all disputes pertaining to the claims in this consolidated Action without any party admitting the validity or accuracy of any claims or defenses.

In consideration of the mutual promises contained herein and other good and valuable consideration, the parties agree that the foregoing recitals are true and correct and as follows:

Part 1: Elizabeth Kelley and State

1. Elizabeth Kelley and the State agree that Elizabeth Kelley's claims in this Action and any other action shall be dismissed with prejudice, without either party paying for damages, costs or attorney's fees at the time the following conditions are satisfied:

- a. Elizabeth Kelley records a real quit-claim deed to the property at issue in Cause Number DV-12-863B, known as the "Cooper Flume" with the Gallatin County Clerk and Recorder quit-claiming any interest in said real property.
- b. The State records an instrument with the Gallatin County Clerk and Recorder granting fee title to the Kelley's of certain real property, yet to be surveyed, but generally located in Section 1, Township 3 South, Range 6 East, MPM not to exceed five and three-quarters acres, more or less, which parcel shall contain at least 5 acres southwest of Old Pine Way.

2. Elizabeth Kelley and the State shall confer in good faith regarding the exact location, survey requirements, and grant for the instruments described above, although generally the parcel will be located within Section 1, Township 3 South, Range 6 East, MPM, with access off of Old Pine Way.

3. Prior to the grants being recorded, Elizabeth Kelly agrees to provide the State a survey of both State Patent 456 and the agreed upon fee title parcel.

4. The fee parcel size of approximately five and three quarters acres acre in Section 1, Township 3 South, Range 6 East, MPM is contingent upon the survey for State Patent 456 showing at least approximately five and three quarters acres surveyed within Section 1, Township 3 South, Range 6 East, MPM. In no case will the size of the fee patent grant to Elizabeth Kelley be larger than the acreage surveyed for State Patent 456 within Section 1, Township 3 South, Range 6 East, MPM, or the 16.09 acres paid for and granted in State Patent 456.

5. If, because of the requirement described above in Section 4, a fee parcel in Section 1 becomes an impossibility, the State and Elizabeth Kelly shall confer in good faith to find a suitable parcel in Section 6, Township 3 South, Range 7 East MPM. However, the same condition must apply. Specifically, the agreed suitable parcel identified within Section 6, Township 3 South, Range 7 East MPM is contingent the survey for State Patent 456 showing equal or less acreage surveyed within Section 6, Township 3 South, Range 7 East MPM. In no case will the size of the fee patent grant to Elizabeth Kelley be larger than the acreage surveyed for State Patent 456 within Section 6, Township 3 South, Range 7 East MPM, or the 16.09 acres paid for and granted in State Patent 456.

Part 2: County and State

6. The County and State stipulate and agree that the County's claims in the Action and any other action shall be dismissed with prejudice, without either party paying for damages, costs or attorney's fees, at the time the following condition is satisfied:

- a. Upon the recording of the instruments described in Part 1 above, an additional real property instrument is recorded with the Gallatin County Clerk and Recorder in the name of the County for a right of way for use as a 60 foot and 30 foot public access from the northern boundary of Section 1, Township 3 South, Range 6 East, MPM to the southern boundary of Section 6, Township 3 South, Range 7 East MPM, Gallatin County, Montana, substantially in the location at or near that set forth in Exhibit B to this Agreement ("Public Access Easement").
- b. The County and State agree that Exhibit B to this Agreement is an approximate location of the Public Access Easement right of way including references to the use and scope of the right of way based on location and sets forth the approximate location of the right of way to the public referred to in State Patent 456 relevant to the Action. The final location, use, and scope of the right of way will be set forth in the instrument itself.

The State will not object to the County holding a public hearing after notice in order to adopt a resolution pursuant to Sec. 7-14-2101(2), MCA which will declare the Public Access Easement a county road under Montana law. Additionally, the State will not object to the Court

recognizing, in its order dismissing the Action, the County's resolution declaring the Public Access Easement a county road under Montana law.

7. No party shall post fencing, signage or notices inconsistent with the public right to travel over or across the lands set forth in the Public Access Easement. The County and State will consult on the posting of any fencing, signage or notices.

8. As additional consideration for this Agreement, County shall not be liable to the State for any value of the area set forth in any part of the Public Access Easement right of way pursuant to any law, including Mont. Code Ann. § 77-1-130, as the cost of the initial right-of-way through State Patent 456 which includes "the right of the public to travel over, maintain and use the wagon road now in use through Bear Canyon, over and across said right of way shall never be denied;" has already been paid to the State, *inter alia*.

9. The County and State shall confer in good faith regarding the scope, language, exact location of the Public Access Easement right of way and potential conflicting rights pertaining thereto. The State will initiate the Public Access Easement right of way document through presentation of its standard Trail Easement form to the County. The Public Access Easement right of way document will recite the basis of the grant to the County is State Patent 456 dated November 21, 1903. The act of presentation of the standard Trail Easement form shall not bind the County to any of the terms set forth therein and such form will be negotiated in good faith. The County acknowledges that grant of the Public Access Easement right of way may be affected by:

- a. The ability of the State to grant rights to the County based on State Patent 456 (November 21, 1903), for that part of the proposed Public Access Easement right of way that is currently subject to Right of Way Deed, Easement No. D-14509 which the State granted to the Forest Service on April 10, 2013. The State shall work in good faith to resolve or mitigate conflicts with the Forest Service in order to make such a grant to the County or to allow the Forest Service to make the grant directly to the County. The County recognizes that if the State is unable to make or facilitate such a grant that it could be argued that the right of

way granted from the State to the County as set forth herein could have a gap for that portion of the right-of-way already granted to the Forest Service through Right of Way Deed, Easement No. D-14509.

10. The County acknowledges that grant of the Public Access Easement right of way is contingent on the necessity of filing the quit-claim deed by Elizabeth Kelley to the State for the real property described in State Patent 456 as set forth in Part 1 above.

11. The County acknowledges any planned construction or improvements (bridges, trail grading or surfacing) related to the location depicted as a 30 foot trail use in Exhibit B that is immediately adjacent to, and intersects "Bear Creek", a perineal class 1 stream, will be conducted in accordance with relevant law in order to protect the stream bed, banks, riparian vegetation and associated water quality.

12. The parties agree that they have entered the contract evidenced by this Agreement as a bargain, supported by consideration, between mutually situated parties represented by legal counsel. The parties agree that pecuniary compensation does not afford adequate relief pursuant to the terms of this contract and thus they agree that the Montana Eighteenth Judicial District Court will retain personal and subject matter jurisdiction to entertain requests by a party to grant injunctive relief or specific performance to compel compliance with its terms.

13. The provisions of this Agreement, including the recitals set forth above, shall apply to and be binding upon the parties, their heirs, assignees, successors, agents, subsidiaries, affiliates, and lessees, including the officers, agents, servants, corporations, and any persons acting under, through, or for the parties agreeing hereto.

14. The terms stated in this Agreement constitute the entire and exclusive agreement of the parties. There are no other obligations of the parties, be they express or implied, oral or written, except those that are expressly set forth herein. The terms of this Agreement supersede

all previous letters, memoranda of understanding, notes, conversations, and agreements, whether expressed or implied. This Agreement may not be modified verbally.

15. The Parties shall execute any additional documents and cooperate as reasonably necessary to effectuate the terms of this Agreement.

16. The parties acknowledge by signing this Agreement that they have read and understand its terms and that they have the legal authority to bind the entity or agency on whose behalf they sign.

17. The parties agree that this Agreement may be filed with the Court by their respective legal counsel.

GALLATIN COUNTY, MONTANA

Chair, Board of County Commissioners

STATE OF MONTANA

Name:
Title:

ELIZABETH KELLEY

Elizabeth Kelley

FILED with the Eighteen Judicial District, Gallatin County, Montana on the ___ day of _____, 2019.

For Gallatin County, Montana:

GRAY LAW OFFICE

Christopher B. Gray

For the State of Montana:

MONTANA ATTORNEY GENERAL

Mark Phares

For Elizabeth Kelley:

Alanah Griffith