

REQUEST TO CUSTER COUNTY COMMISSIONERS

Introduction

Hello, I am Robert Hamilton. I have been a rancher and resident of Custer County for approximately 37 years.

It is my understanding the County Attorney has filed a motion on behalf of the County to dismiss this longstanding case; my attorney has filed a brief to object to this dismissal, as there are still unresolved issues to be decided.

I am very grateful to have this opportunity to speak with our entire Board of County Commissioners in executive session, without prejudice, for whom I have the greatest appreciation for, without any attorneys present, and be heard. Thank you.

The court case(s) regarding my properties has been ongoing for over 15 years, with numerous wrongful actions by the County and Courts which resulted egregious wrongs to me personally, severely limited the effective use and access to my property for cattle grazing, taking of my land by adverse possession, incurring high legal fees, and resulted in the wasteful spending of Custer County taxpayer dollars in excess of \$500,000.

Regardless of past inequities, I respectfully present what would be an acceptable and reasonable outcome from my perspective. It is my hope that this will be acceptable to the Board, and would result in the termination of continuing legal matters between the County and myself, and perhaps even Mr. Halpin.

Thank you for allowing me an opportunity to express my proposed resolution to resolve the current outstanding litigation and eliminate continuing future expenditures by all parties.

Summary of Request to County

Item No. 1 - Ownership of County Road 390 - The County of Custer shall retain county ownership of the easement of County Road 390 to Halpin's western property line.

To clear the property records at the Custer County Clerk and Recorder Office, the following recordation should be completed for clarity regarding future real estate transactions:

- The Halpin's shall execute a quitclaim deed transferring and granting to the County any and all interest they may have in County Road 390 and the property described in the deed from the County of Custer to the Halpin's dated September 30, 2010 and recorded October 15, 2010 in Book 661 at Page 135 under Reception 215607.

Item No. 2 - Remove Fencing Along County Road 390 - The County of Custer shall acknowledge Hamilton shall be removing all fencing parallel to County Road 390, from Hamilton's western property line on County Road 390 (to the extent Hamilton has property on both sides of County Road 390) to Halpin's western property line.

- The removal of this fencing will allow unrestricted access to Hamilton's property for his cattle grazing operations.
- The road as it now exists on the ground is 16-foot wide. In Item 3 below, we are requesting a 20-foot wide easement: 10 feet on each side of the centerline of the road as it now exists on the ground.
- With the removal of the fencing, there would no physical encumbrance on snow and ice removal from the road by the Benefitting Parcel (Halpin).

Item No. 3 – Installation of Cattle Guards

Hamilton is formally requesting the County to purchase, install and maintain two cattle guards on County Road 390 where Hamilton has property on both sides of County Road 390 and they cross a fence line.

- The location of the cattle guard is dictated by the two parcel property boundaries.
 - This allows for rotational grazing across the original parcel boundaries.
- Hamilton is requesting the County pay for the cattle guards and their installation as partial settlement of egregious wrongs suffered by Hamilton and eliminate any potential liability asserted regarding the improper installation of the cattle guards; the County would be required to maintain them thereafter as being integral to County Road 390.
- Hamilton requires unrestricted access to his deeded property for the purpose of his grazing his livestock on both sides of County Road 390 without the use of a gate. This is an acceptable alternative to the erection of gates that would need to be opened and closed when a vehicle passed, and are common where roads cross open rangeland maintained by grazing.
 - The cattle guard is an obstacle used to prevent livestock from passing along a road, which penetrates the fencing surrounding an enclosed piece of land, but sufficiently narrow not to impede a wheeled vehicle or human foot. This provides an effective barrier to animals without impeding wheeled vehicles.

Item No. 4 – Maintenance of County Road 390 – The following sets forth the parties responsible for the maintenance of County Road 390:

Responsible Party – Maintenance by Custer County -

- County Road 390 from where it goes east from County Road 391 to the stop sign or alternatively the second proposed cattle guard, is regularly maintained by the County Road & Bridge Department and would not be affected in any manner by any agreement we reach to settle the lawsuit.

Responsible Party – Snow and Ice Removal by Halpin -

- The remainder of County Road 390, from where it goes east from the stop sign or alternatively the second proposed cattle guard to Halpin’s western property line, shall be Halpin’s responsibility for snow and ice removal.

Responsible Party – Road Maintenance by Hamilton and Halpin –

- All costs and expenses of maintaining the County Road 390 from where it goes east from the stop sign or alternatively the second proposed cattle guard to Halpin’s western property line, shall be paid 50% by the owner(s) of the Burdened Parcel (Hamilton) and 50% by the owners(s) of the Benefitted Parcel (Halpin). This portion of County Road 390 shall be maintained as an all-weather dirt driveway. The owner(s) of the Benefitted Parcel shall have the option, at the owner(s) of the Benefitted Parcel’s expense, to improve the driveway using gravel or asphalt materials.

Item No. 5 – County Road 390 / Easement Language – We are requesting the County consider the following easement language to provide “clarity” to the Parties to the Burdened Parcel (Hamilton) and the Benefitted Parcel (Halpin):

- The Benefitted Parcel (Halpin) shall have unrestricted ingress and egress to their property. The benefits of such permitted uses shall be extended to and may be enjoyed by the owner(s) and lessee(s) of the Benefitted Parcel, and their respective agents, employees, contractors, guests and invitees.
- The Burdened Parcel (Hamilton) shall also have such permitted uses to and may be enjoyed by the owner(s) and lessee(s) of the Burdened Parcel, and their respective agents, employees, contractors, guests and invitees.
- The County shall establish that the County Road 390 easement, for the length of the road from the point of turn-around at the stop sign or alternatively the second proposed cattle guard to the Halpins' western property line, would be a 20-foot wide easement: 10 feet on each side of the centerline of the road as it now exists on the ground. ***Note: the road as it exists now is 16-foot wide.***
- The County shall, at its own expense, survey and provide a legally recordable description of the Easement.
 - The Easement shall constitute a covenant running with the land and shall be binding upon the Burdened Parcel, the owner(s) thereof (current owner – Hamilton), and any and all persons now holding or hereafter acquiring any ownership or beneficial interest therein, including without limitation any mortgagees thereof, and shall inure to the benefit of the Benefitted Parcel, the owner(s) thereof (current owner – Halpin), and any and all persons now holding

or hereafter acquiring any ownership or beneficial interest therein, including without limitation any mortgagees thereof, and all of the heirs, legal representatives, successors, and assigns of each of the foregoing.

- The Easement may be amended, modified, terminated, or extinguished only pursuant to a written instrument duly executed by all of the then-owner(s) of the Benefitted Parcel (Halpin) and the Burdened Parcel (Hamilton) and all of the first mortgagees, if any, then having a record interest in the Benefitted Parcel and the Burdened Parcel, and placed of record in the Custer County, Colorado real estate records. The owner(s) of the Burdened Parcel and the owner(s) of the Benefitted Parcel shall maintain the Easement in good repair.
- Neither the owner(s) of the Benefitted Parcel nor the owner(s) of the Burdened Parcel shall do anything to harass the other in the use of the Easement, or to block or obstruct the Easement. The Easement shall not be used to park or store vehicles, equipment or materials, with the limited exception of short term parking for ongoing ranch or farm activities.

Summary of Request to Halpin

Item A - To clear the property records at the Custer County Clerk and Recorder Office, the following recordation should be completed for clarity regarding future real estate transactions:

- The Halpins shall execute a quitclaim deed transferring and granting to the County any and all interest they may have in County Road 390 and the property described in the deed from the County of Custer to the Halpins dated September 30, 2010 and recorded October 15, 2010 in Book 661 at Page 135 under Reception 215607.
- The Halpins shall execute a quit claim deed granting and transferring to Hamilton/Las Mojadas any and all interest they may have in the so-called Howard Easement dated June 25, 1985 and recorded on June 26, 1985 in Book 197 at Page 5-6 under Reception No. 140454.
- The Halpins shall execute a quit claim deed transferring and granting to Las Mojadas any and all interest they may have in the property described in the Decree, dated October 20, 2005, in the case of *Michael P. Halpin and Laura J. Halpin v. Robert S. Hamilton, JR., d/b/a R.S. Hamilton Ranches*, District Court, Custer County, Colorado, Case No. 02-CV-33.

Item B – Recognize the existing Howard easement or create an easement from Halpin’s western property line to provide access to two parcels:

- Halpin’s 40 acre property to the northeast, and
- Hamilton’s 40 acre property furthest to the east, formerly known as the Howard property, this property formerly had a house that was demolished.

- Hamilton is requesting access to this parcel to enhance his ability to access and build a house on this property in the future. Note: this property is not part of the conservation easement and Hamilton would like the ability to utilize this property in the future.

Conclusion / Request of County

My request is for the Custer County Board of County Commissioners to exit this executive session with one member making a motion to direct the County Attorney to implement Items No. One through Five enumerated above.

It is my sincere hope my request are viewed as reasonable and acceptable to the BOCC, and would result in the termination of future legal matters between the County, myself and perhaps Mr. Halpin.

If Mr. Halpin is in attendance, we are hopeful that Mr. Halpin would concur with our request of Item A and B as enumerated above as well.

Respectfully Submitted,

Robert S. Hamilton