

No. of ~~Case~~ ^{Road} 136

GALLATIN COUNTY,
DISTRICT COURT,
NINTH JUDICIAL DISTRICT,
STATE OF MONTANA.

Dry Creek to Mandana,

FILED Plaintiff

SEP 8 1898

H. P. McNaughton
County Clerk

B. E. Schumacher vs
Defendant

Action for Parties interested
order notified to appear before board
Dec 10th 98 Board of Road
J. D. Patterson

Road viewers report
approved & Road ordered opened
J. D. Patterson

Attorney for Plaintiff

Attorney for Defendant

PETITION FOR ROAD.

To the County Surveyor of Gallatin County, Montana:

The Undersigned, your petitioners, citizens of the United States, respectfully show and represent that they are residents of Road District No. _____, in the County of Gallatin, State of Montana, where the road hereafter petitioned for, is to be located, laid out and established, if this petition be granted. That the proposed road will be a public convenience, and, we think, the public good requires it.

Your petitioners do respectfully ask and petition that a County road, sixty feet in width, to be a public highway, be laid out, located and established, and show:— (a) The general route of the proposed road; (b) over what lands it is proposed to be established; (c) who are the owners thereof; (d) whether such of them as can be found, consent thereto; (e) who of them do not consent; (f) the probable cost of the right-of-way where such consent is not had; (g) the necessity for and the advantages of the proposed road as follows, to-wit:

A The general Route of the proposed road from the head of Dry creek to Mandana on Sixteen mile creek
 B Commencing at the South East Corner of Section 13, T. 3, R. 4, E. Thence North one half mile thence west one half mile thence North westerly two miles on the East side of Paissee Hollow creek to the Top of Divide to Sixteen mile creek & thence in a North Direction over Public lands to Mandana

W. D. Brainard S. 1/2 of Sec. 18, T. 3, R. 5, E., N. E. 1/4 of Sec. 13, T. 3, R. 4, E.

M. F. McLaughlin S. 1/2 of Sec. 13, T. 3, R. 4, E.; N. W. 1/4 of Sec. 13, T. 3, R. 4, E.; J. H. Reed S. 1/2 of Sec. 13, T. 3, R. 4, E.

W. D. Brainard S. 1/2 of Sec. 13, T. 3, R. 4, E.

J. T. Huffine N. 1/2 of Sec. 13, T. 3, R. 4, E. & S. 1/2 of Sec. 13, T. 3, R. 4, E.

— of the S. W. 1/4 Sec. 12, T. 3, R. 4, E.

Susie White N. E. 1/4 of Sec. 11, T. 3, R. 4, E. thence to W. D. Brainard as mentioned above.

NAMES:

- 1 J. T. Huffine
- 2 W. D. Brainard
- 3 Levi McLaughlin
- 4 Frank Ballantine
- 5 J. H. Reed

NAMES:

- 6 Ernest Ballantine
- 7 J. W. H. Lux
- 8 Fair White
- 9 Susie White
- 10 Jennie Fry

Office of County Surveyor, Gallatin County, Montana.

Hon. J. L. Patterson

Chairman, Board of Commissioners, Gallatin County, Montana.

Dear Sir:-

You are hereby given notice, that a petition for a County road has been received, in this office, signed by Mr. J. T. Huffine and nine other residents of road District No. 6 through which district said proposed road is to run. Said road to commence

At the head of Dry Creek and to terminate at Mardena

You are hereby requested to appoint a viewer on the above proposed road.

Yours Respectfully

C. M. Thorpe
County Surveyor.

Dated at Bozeman, Montana. this 25th day of July 1898.

Office of Board of Commissioners, Gallatin County, Montana.

C. M. Thorpe, County Surveyor, Gallatin Co. Mont.

Dear Sir:-

In pursuance of the above notice, I hereby appoint Mr. J. A. Morgan to act on behalf of the Board of Commissioners as a viewer on the above petitioned for road.

Yours Respectfully,

J. L. Patterson
Chairman, Board of Commissioners, Gallatin County, Montana.

Dated at Bozeman, Montana. this 26 day of July 1898.

WARRANT FOR ROAD VIEWERS.

County Surveyor's Office, }
 Gallatin County, Montana. }

MR. J. S. Morgan,

You are hereby notified that you were duly appointed Road Viewer by J. L. Patterson
 Chairman Board of Commissioners of Gallatin County, Montana, on the
26th day of July, 1898, to view and lay out a proposed road, as prayed
 for in the petition of J. T. Huffine and others, described as follows, to-wit.

Beginning at the southeast corner of sec.
13 Township 3 N. Range 7 E. Thence north
one half mile, thence west one half mile,
thence northwesterly two miles on the east
side of Poison Hollow Creek to the top of
divide to Sixteen Mile Creek, thence in
a northerly direction over the Public
lands to Mandena.

You are hereby ordered to meet, to be sworn according to law and assume the duties of your office, in
 company with Levi McCollough, who was duly appointed as a
 Viewer on said road by ~~the~~ C. M. Phelps County Surveyor, and by the
 County Surveyor, who is Chairman of said Board of Viewers, on the 25th day of
August, 1898, commencing at the place designated in said petition as the
 starting point of the road sought to be Established and proceed to view and
 lay out the same by setting stakes, blazing trees, turning furrows, or other appropriate monuments to the
 terminus named in said petition, by the most practicable route that you in your judgment can find.
 You shall notify the resident owner or agent of land over which it passes, of the proposed route; ascertain
 whether such owner consents thereto and the amount of damages, if any, claimed or demanded for the
 right of way over the same. You shall estimate the actual damage to any land over which the proposed
 road passes and the cost of any bridges or grading necessary. You shall report the necessity for and the
 public convenience to be subserved by the highway, if opened, and whether the opening thereof or the
 change therein proposed should be made, and make and sign a report of your proceedings, as required by law.

Roads shall in all cases, when practicable, be laid out on subdivisional or section lines.

In witness whereof I hereunto set my hand, at my office this 26th
 day of July, 1898.

C. M. Phelps
 County Surveyor.

By _____ Deputy.

RETURN OF SHERIFF

WARRANT FOR ROAD VIEWERS.

County Surveyor's Office,
Gallatin County, Montana.

MR. *Levi McCollough*

You are hereby notified that you were duly appointed Road Viewer by *C.M. Thorpe*,
County Surveyor, of Gallatin County, Montana, on the
26th day of *July*, 189*8*, to view and lay out a proposed road, as prayed
for in the petition of *J. Y. Huffine* and others, described as follows, to-wit.

Beginning at the South east corner of Sec. 13, T. 3 N. Range 4 E. thence north and half mile, thence west one half mile, thence northwesterly two miles on the east side of Bison Hollow Creek to the top of Divide to Sixteen Mile Creek, thence in a northerly direction over Public lands to Mandan.

You are hereby ordered to meet, to be sworn according to law and assume the duties of your office, in company with *J. S. Morgan*, who was duly appointed as a Viewer on said road by the *Chairman of the Board of Co. Commissioners* and by the County Surveyor, who is Chairman of said Board of Viewers, on the *25th* day of *August*, 189*8*, commencing at the place designated in said petition as the starting point of the road sought to be *Established* and proceed to view and lay out the same by setting stakes, blazing trees, turning furrows, or other appropriate monuments to the terminus named in said petition, by the most practicable route that you in your judgment can find. You shall notify the resident owner or agent of land over which it passes, of the proposed route; ascertain whether such owner consents thereto and the amount of damages, if any, claimed or demanded for the right of way over the same. You shall estimate the actual damage to any land over which the proposed road passes and the cost of any bridges or grading necessary. You shall report the necessity for and the public convenience to be subserved by the highway, if opened, and whether the opening thereof or the change therein proposed should be made, and make and sign a report of your proceedings, as required by law.

Roads shall in all cases, when practicable, be laid out on subdivisional or section lines.

In witness whereof I hereunto set my hand, at my office this *26th* day of *July*, 189*8*.

C.M. Thorpe
County Surveyor.

By _____ Deputy.

RETURN OF SHERIFF

Form 1548.
REGISTRY RETURN RECEIPT sent July 29, 1898
 Reg. No. 102 from Post Office at Bozeman, Mont.
 *Reg. Letter } Addressed to J. D. Morgan
 Reg. Parcel } Gallop Mont.
 After obtaining receipt below, the Postmaster will mail this Card, without cover and without postage, to address on the other side.
RECEIVED THE ABOVE DESCRIBED REGISTERED *LETTER. PARCEL.
 (Sender's name on other side.)
 SIGN ON DOTTED LINES TO THE RIGHT. J. D. Morgan
 When delivery is made to other than addressee, the name of both addressee and recipient must appear.
 *Erase letter or parcel according to which is sent.

REGISTRY RECEIPT.
 Post Office at Bozeman, Mont.
 Registered Letter } No. 102 Rec'd July 29 1898
 Parcel }
 of W. B. Burket
 addressed to J. D. Morgan
Gallop Mont.
W. B. BURKET. P. M.

REGISTRY RECEIPT.
 Post Office at Bozeman, Mont.
 Registered Letter } No. 15 Rec'd July 28 1898
 Parcel }
 of W. B. Burket
 addressed to Levin McCollough
Gallop Mont.
W. B. BURKET. P. M.

ROAD VIEWERS' NOTICE.

Notice is hereby Given to all whom it may concern. That we the undersigned Road Viewers, appointed by the Chairman of the Board of County Commissioners of the County of Gallatin, and by the County Surveyor of said County, Montana, on the 26th day of July, 1898, to view and mark out a proposed County road as prayed for in the petition of J. H. Huffine et. al., will in company with the County Surveyor, who is chairman of said Board of Viewers, meet for such view on the 25th day of August, 1898, the time fixed by said Surveyor, and at the point designated in said petition, as the starting point of said proposed road, to-wit:

Beginning at the southeast corner of Sec. 13 T. 3 N. R. 4 E. thence north one half mile thence west one half mile, thence north westerly two miles on the east side of Bison Hollow Creek to the top of divide to sixteen mile Creek, thence in a westerly direction over Public lands to Mandana.

Dated this 26th day of July, 1898.

C. M. Thorpe
J. S. Morgan
Levi McCollough } VIEWERS.

STATE OF MONTANA, }
 County of Gallatin. } SS.

C. M. Thorpe being first duly sworn deposes and says, that as the County Surveyor he received from the County Clerk of said County, on the 28th day of July, 1898, ~~three copies of the annexed notice, and that on the 28th day of July 1898 he posted a copy of said notice at each of the following points, on the line of road described in said notice, to-wit: One at the door of the County Clerk's office~~ the annexed

and further deponeth sayeth not.

Subscribed and sworn to before me this 8 day of Sept., A. D., 1898

C. M. Thorpe
H. P. McNaughton Cochran
By E. H. Schumacher Dejo

OATH OF ROAD VIEWERS.

STATE OF MONTANA, }
County of Gallatin. } ss.

I, the undersigned, having been appointed a road viewer, do hereby solemnly swear that I will faithfully and impartially perform, according to law, the duties of ROAD VIEWER, as per instructions embodied in the notice of appointment by the ~~Board of County Commissioners.~~ ^{C. M. Hooper.}

Levi McCallough

Subscribed and sworn to before me this 25th day

of August 1898

C. M. Hooper

C. Surveyor

This must be returned to the County Clerk after execution.

OATH OF ROAD VIEWERS.

STATE OF MONTANA, }
County of Gallatin. } ss.

I, the undersigned, having been appointed a road viewer, do hereby solemnly swear that I will faithfully and impartially perform, according to law, the duties of ROAD VIEWER, ~~as per instructions~~ embodied in the notice of appointment by the ~~Board of County Commissioners.~~

M. B. Dyer

Subscribed and sworn to before me this 25 day

of Aug 1898

C. M. Hooper

C. Surveyor

This must be returned to the County Clerk after execution.

REPORT OF ROAD VIEWERS.

To the Honorable, the Board of County Commissioners of Gallatin County:

C.M. Thorpe + Levi McCallough. Two of the

WE, the undersigned Road Viewers, appointed by the Board of County Commissioners, at the

Term of said Board to view a proposed road running from the S.E. Cor. of Sec. 13

N. 3/4 R. 4 E. North 1/2 mile, thence N 1/2 mile, thence N.W. 1/4, 2 miles to the divide to 1/6 mile

thence to Maudsma

That on the 26th day of Aug, 1898, we started from ^{W. J. Durham} ~~the place designated in the petition as the starting point of such proposed road and~~

proceeded to view and lay out the same, and submit the following report:

1. The course, termini, length and probable cost of constructing the proposed road, as follows:

The course of the proposed road is as follows to wit: Beginning at the S.E. corner of Sec. 13 T. 2 N. R. 4 E. thence N. 1/2 mile, thence well along the E & W 1/4 section line of said Sec. 13 to the bluff, thence S.W. 1/4 + N.W. 1/4 around the bluff to said 1/4 Sec. line (See back of Report)

2. The estimate of damages to the owner of any land over which it is proposed to run the highway, as follows:

We believe the benefits resulting from the proposed road to all land owners will be fully equal to the damages caused by the opening of the same.

3. The names of land owners who consent to give the right of way, and we hereto attach their written consent, as follows:

Wm. J. Fly. J. H. Reed. Susan White. W. D. Brainard. J. T. Steffens.

4. The names of land owners who do not consent and the amount of damages claimed by each, as follows:

M. F. McLaughlin consents to give the right of way but claims damages amounting to the cost of the

five meters for about 1 1/2 miles of fence ^{for above over all the owners from the beginning to the divide, the balance of the road passes over unimproved land.} (See back of report)

5. The following facts bearing upon the subject, which may be of importance to the Board:

The proposed road passes over ground suitable for road building with grades not exceeding 8 or 9%. The center line is marked by stakes & mounds of stone. We would recommend that if the proposed road is established that it be surveyed & platted.

We believe said road to be practicable and of public utility and necessity and do recommend the establishment of the same.

Dated Aug 26, A. D., 1898

C.M. Thorpe
Levi McCallough
W. J. Durham } Road Viewers.

side of same for a distance of about 400 ft, thence crossing said creek and continuing up said creek on west side of same to a point on section 11 T. 37 N. R. 4 E. near the E. line of said section thence crossing to the east side of said creek and continuing up said creek to the summer branch of said creek thence up said branch dipping on the east side of same to the divide between said branch and the N. fork of Berry Creek thence along said fork to the head of the rocky canyon thence northward over the divide a portion of the way following along the old traveled road to the land enclosed by David Bagby, thence along the fence around said enclosure dipping outside of the same to Mandana on the Mandana R.R.

The length of the proposed road is about 9 miles
 The probable cost of the proposed road sufficient to open same for work is.
 For culverts & bridges from the beginning to the divide \$120.
 " Grading " " " " " " 380 \$500.
 Total cost to the divide
 For culverts & bridges from the divide to Mandana \$140.
 " Grading " " " " " " 300
 Total cost from divide to Mandana \$440
 Total approximate cost of road 940.00

The portion of the road from the beginning to the divide between Raisin Hollow & 16 mile creek is greatly needed as an outlet for settlers who now have to open many gulleys. The other portion will be needed for hauling grain to Mandana at present it is most important that the road be located as the land is being taken up & fenced, it can be graded and opened for travel later on. We find a traveled road along or near this portion of the proposed road.

We find the people along said road willing to donate work toward building said road, herewith find a subscription list signed by a portion of those interested.

No 4 Continued
 David Bagby claims damages amounting to the cost of 2 miles of fence.

OATH OF ROAD VIEWERS.

~~STATE OF MONTANA, } ss.
County of Gallatin.~~

~~I, the undersigned, having been appointed a road viewer, do hereby solemnly swear that I will faithfully and impartially perform, according to law, the duties of ROAD VIEWER, as per instructions embodied in the notice of appointment by the Board of County Commissioners.~~

~~Subscribed and sworn to before me this day~~

~~of 189.....~~

~~This must be returned to the County Clerk after execution.~~

Dry Creek Aug 25 1898

We the undersigned residents along the
furrowed road from Dry Creek to Madras
agree to do the amount of work set opposite our
names toward building said road.

Jay White 3 days man + team.

J. H. Reed

2 " " " "

375
12
1125
275
4875

Levi McCallough

2 " " " "

J. D. Huffins

3 " " " "

W. L. Brainerd

3
13

To the County of Gallatin, State of Montana:

I **Hereby Agree**, and consent to give 60 feet for a Right of Way, for a County Road, through or along the N. 1/2 of S. 1/2 + S. 1/2 of N. 1/2 of Sec. 2, T. 3 N R 4 E., as viewed and surveyed by Levi Mc Collough, Wm Burkam + C. M. Thope on the 25th day of Aug, 1898. And hereby agree to place my fences on said lines without charge to the County.

Signed: J. I. Huggins

Dated at _____ this 25th day of Aug, 1898.

To the County of Gallatin, State of Montana:

I **Hereby Agree**, and consent to give 60 feet for a Right of Way, for a County Road, through or along the E. 1/2 of Sec 11 Sec. _____, T. 3 N R 4 E., along the East side of the emersion branch of Pains Hollow creek as viewed and surveyed by C. M. Thope, Levi Mc Collough, Wm Burkam on the 25th day of Aug, 1898. And hereby agree to place my fences on said lines without charge to the County.

Signed: Susie White

Dated at _____ this 25 day of Aug, 1898.

To the County of Gallatin, State of Montana:

I **Hereby Agree**, and consent to give 60 feet for a Right of Way, for a County Road, through or along the SW. 1/4 + NW. 1/4 + SE. 1/4 of the SW. 1/4 of Sec. 12, T. 3 N R 4 E., as viewed and surveyed by Levi Mc Collough, C. M. Thope + Wm Burkam on the 25th day of Aug, 1898. And hereby agree to place my fences on said lines without charge to the County.

Signed: J. H. Reed

Dated at Aug. 25 this _____ day of _____, 1898.

To the County of Gallatin, State of Montana:

I Hereby Agree, and consent to give 30 feet for a Right of Way, for a County Road, through or along the N. side of S.W. 1/4 of Sec. 18, T. 37 N. R. 5 E., and along the S. side of the N.E. 1/4 of Sec. 18, T. 37 N. R. 4 E. as viewed and surveyed by Levi McCallough, C.M. Thors & Wm Durham on the 25 day of Aug, 1898. And hereby agree to place my fences on said lines without charge to the County.

Signed: Jennie Fly Admire
Dated at this 25 day of Aug 1898.

To the County of Gallatin, State of Montana:

I Hereby Agree, and consent to give 30 feet for a Right of Way, for a County Road, through or along the East & north sides of the S.E. 1/4 of Sec. 13, T. 37 N. R. 4 E., and 60 ft. when it may be necessary to cross the north line on account of a bluff as viewed and surveyed by Levi McCallough, C.M. Thors & Wm Durham on the 25th day of Aug, 1898. And hereby agree to place my fences on said lines without charge to the County.

+ the County to furnish wire & posts for the necessary fence
Signed: M. J. McLaughlin
Dated at this 25th day of Aug 1898.

To the County of Gallatin, State of Montana:

I Hereby Agree, and consent to give 60 feet for a Right of Way, for a County Road, through or along the N.W. 1/4 of Sec. 13, T. 37 N. R. 4 E., as viewed and surveyed by Levi McCallough, C.M. Thors & Wm Durham on the 25th day of Aug, 1898. And hereby agree to place my fences on said lines without charge to the County.

+ the County to furnish wire & posts for the necessary fence
Signed: M. J. McLaughlin
Dated at this 25th day of Aug 1898.

BOZEMAN, MONTANA, Sept 9th 1898

To the Honorable Board of Commissioners of
Gallatin Co. Montana.

Gentlemen:

In the matter of the road petitioned for
J. P. Huffine et al, running through from
Dry Creek to Mandana, and which as viewed
passes through my land. if the road is
laid out as viewed I would want damages
amounting to the cost of two miles of fence
I do not consider it necessary for the road to
be laid out through my land in order to reach
Mandana, as it could continue down the
west Fork of Brauer's creek and intersect the
road built last year. with much easier grades
than on the line as viewed.

Respectfully

D. Bagby

To the County of Gallatin, State of Montana:

I hereby Agree, and consent to give 60 feet for a Right of Way, for a County
Road, through or along the S. 1/2 of S. 1/4 of Sec. 2, T 3 N R 4 E.,
as viewed and surveyed by Levi McCallough was Surkhan + C.M. Thope
on the 25th day of Aug., 1898. And hereby agree to place
my fences on said lines without charge to the County.

Signed: W D Brainard

Dated at this 26 day of Aug 1898.

Notice of Opening Public Road.

Notice is hereby given that after sixty days from the date of posting this notice, a public highway will be opened over the following route, to-wit: Commencing at the S.E. corner of Sec. 13 T.3 N. R.4 E. thence N. 1/2 mile, thence west along the E. & W. 1/4 section line of said Sec. 13 to the bluff, thence S. W/4 and N. W/4 around the bluff to said 1/4 sec. line, thence west along said line to Prison Hollow creek, thence up said creek on the east side of same for a distance of about 400 ft. thence crossing said creek and continuing up said creek on the west side of same to a point on sec. 11 T.3 N. R.4 E. near the E. line of said section thence crossing to the east side of said creek and continuing up said creek to the Emerson Branch of said creek, thence up said branch keeping on the east side of same to the divide between said branch and the west fork of Brown creek, thence along said fork to the head of the Rock Canyon on said branch thence north up over the divide a portion of way following the traveled road to the land enclosed by David Bagley, thence along or near the fence around said enclosure keeping out side of the same to Mandena on the Montana R.R. as the same is marked by stakes, the above described line to be the center of the 60 ft. right of way.

By order of the Board of County Commissioners of Gallatin County, Montana.

Dated Dec. 21st 1898

A.P. McNaughton
Clerk,

By _____
Deputy.

Date of Posting Jan 11th 1899

STATE OF MONTANA, }
County of Gallatin. } ss.

Levi McCallough being first duly sworn deposes and says, that as the person appointed _____ he received from the County Clerk of said County, on the fifth day of January, A. D., 1899, three copies of the annexed notice, and that on the 11 day of January, 1899, he posted a copy of said notice at each of the following points, on the line of road described in said notice, to-wit: One at the starting point, one on the divide between Prison Hollow and one at the terminus.

and further deponeth sayeth not.

Subscribed and sworn to before me this 17 day of January, A. D., 1899

Levi McCallough
C. M. Thorpe
Co. Surveyor.

Bozeman, Montana, Sept. 7th. '98.

To the Honorable Board of Co. Commissioners.

Gentlemen; -

I have the Honor to submit herewith the following papers in the matter of the petition of J.T. Huffine and others for a Co. road from Dry Creek to Maudina on the Montana R.R. as follows; -

First, The petition.

Second; Notice to the Chairman of the Board to appoint viewers and the appointment of the same.

Third; Copy of warrants to viewers with registered letter receipts showing that the same had been duly received.

Fourth; Sworn proof of posting notices with copy attached.

Fifth; Oath of road viewers.

Sixth; Report of road viewers, subscription work and consent of land owners where given.

All matters pertaining to the above road will be found in the papers hereto attached.

I have no suggestions to make other than those embodied in my report of the viewers.

Yours Respectfully,



Co. Surveyor.

Maudlow mont Oct 27

Mr Thorne Dear Sir
you have always been very kind
please let me tax your kindness a little
farther if that Road question comes
up at the next court will you please present
the following plea the Road would involve
the Building of 2 miles of extra fence
and would pass through a strip of
ingble about 100 yards wide spoiling it
for all use and the damage could not
be less than four Hundred Dollars
and as there is one County Road thraigh
the same section it is not needed and
the west fork of burnes creek is the
best route with no expense please
present these facts with what you know
yourself and oblige me
yours Respedly D Bagby