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KITTITAS COUNTY

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JOYCE L JULSRUD, GLERK KIT ATAS COUNTY WASHINGTON

IN THE KITTITAS COUNTY SUPERIOR COURT, STATE OF WASHINGTON

TANEUM CREEK RANCH LIMITED PARTNERSHIP, a Washington limited partnership,

Plaintiff,

VS.

STATE OF WASHINGTON DEPARTMENT OF FISH AND WILDLIFE,

Defendant.

NO. 10-2-00574-7

COMPLAINT TO JUDICIALLY ESTABLISH AN EASEMENT

COMES NOW the Plaintiff above named, TANEUM CREEK RANCH LIMITED PARTNERSHIP, a Washington limited partnership, by and through its attorney, JAMES T. DENISON, JR. of LATHROP, WINBAUER, HARREL, SLOTHOWER & DENISON, L.L.P., and alleges as follows:

I. PARTIES

- 1.1 Plaintiff, TANEUM CREEK RANCH LIMITED PARTNERSHIP ("Taneum Creek") is a Washington limited partnership and owns real property in Kittitas County, Washington.
- 1.2 Defendant, STATE OF WASHINGTON DEPARTMENT OF FISH AND WILDLIFE ("DFW"), is an agency of the State of Washington and owns real property in Kittitas County, Washington.

COMPLAINT

Lathrop, Winbauer, Harrel, Slothower & Denison L.L.P.
Attorneys at Law
PO Box 1088/201 West 7th Avenue
Ellensburg, WA 98926
Fax (509) 962-8093

Tel (509) 925-6916

3.2 DFW owns real property legally described as follows:

Government Lots 5, 6 and 7; the Southeast Quarter of the Northwest Quarter; the East Half of the Southwest Quarter; the South Half of the Northeast Quarter; and the Southeast Quarter of Section 6, Township 18 North, Range 17 East, W.M., Kittitas County, State of Washington.

Tax Parcel No. 663633

(hereinafter the "DFW Property").

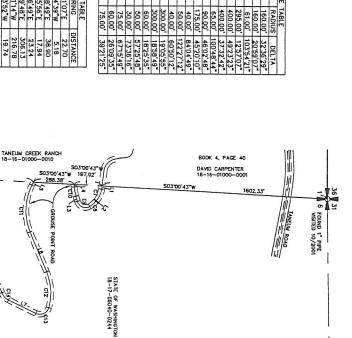
- 3.3 On the DFW Property lies a road that runs generally across the DFW Property in semicircular direction. The approximate path of the road is depicted on the attached Exhibit A (hereinafter the "Road"). The Road provides access to the upper portion of the Taneum Creek Property.
- 3.4 The DFW Property was acquired by the Defendant in 1971 by Statutory Warranty Deed. The Road was established over 25 years before Defendant came into possession of the DFW Property. The road was established and constructed by Plaintiff's predecessors in interest, Mike and Marge Ozanich.
- 3.5 The Road was used continually for ingress and egress, by foot and by motorized vehicles, to the upper portion of the Taneum Creek Property from the time it was established and constructed until the Defendant blocked the road. In 2003 or 2004, the Defendant intentionally and purposefully blocked, interfered and otherwise refused to allow Plaintiff to utilize the Road for purposes of ingress and egress into the Taneum Creek Property. Defendant allowed or hired a third party to dig up sections of the Road and place berms in the Road making travel along the Road difficult on foot and impossible with a vehicle.

IV. CAUSE OF ACTION

4.1 Plaintiff has an easement across the DFW Property for the purpose of accessing its property. The Easement is an easement created by prescription. Plaintiff's right to cross the DFW Property exists because for more than 10 years prior to Defendant coming into possession of the DFW Property, Plaintiff and its predecessors used the DFW Property for access over a uniform route as depicted in Exhibit A. Plaintiff and Plaintiff's predecessor's use of the DFW Property property has been

1 2	COMES NOW, Plaintiff, WARREN EUGENE BRAIN, agent for TANEUM CREEK RANCH LIMITED PARTNERSHIP, a Washington limited partnership, and states and declares that he has read the within and foregoing Complaint to Judicially Establish an Easement, knows the contents thereof and believes the same to be true and correct.		
3	SIGNED at Ellensburg, Washington this 22 day of December 2010.		
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TOWNSHIP 18 NORTH, RANGE 17 EAST, W.M., KITTITAS COUNTY, STATE OF WASHINGTON A PORTION OF THE NW 1/4 OF SECTION 6, RECORD OF SURVEY



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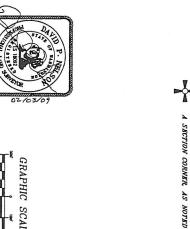
- I. THE PURPOSE OF THIS SURVEY IS TO DENTIFY THE LOCATION OF GROUSE POINT ROAD AS IT IS SITUATED IN SECTION 6, TOWNSHIP 18 NORTH, RANGE 17 EAST, W.M., KITITAS COUNTY, STATE OF WASHINGTON.
- 2. THIS SURVEY MAY NOT SHOW ALL EASEMENTS WHICH MAY PERTAIN TO THIS PROPERTY.
- 3. FOR ADDITIONAL SURVEY INFORMATION SEE THE FOLLOWING SURVEYS OF RECORD:

BOOK 4 OF SURVEYS, PAGE 40; BOOK 7 OF SURVEYS, PAGE 31; BOOK 7 OF SURVEYS, PAGE 73; BOOK 18 OF SURVEYS, PAGE 144; BOOK 27 OF SURVEYS, PAGE 71, MAD BOOK 27 OF SURVEYS, PAGE 194, RECORDS OF KITITA'S COUNTY, STATE OF WASHINGTON AND THE SURVEYS REFERENCED THEREON, BASIS OF BEARMOS ARE PER BOOK 18 OF SURVEYS, PAGE 144, RECORDS OF KITITA'S COUNTY, STATE OF WASHINGTON.

4. THIS SURVEY WAS PERFORMED USING A TRUBBLE SO SERES TOTAL STATION. THE CONTROLLING MONUMENTS SHOWN HEREON MERRE LOCATED AND CHEORD FROM A CLOSED FIELD TRAVERSE IN EXCESS OF 1:10,000 LINEAR CLOSURE AFTER AZIMUTH ANDUSTMENT.

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INDEX LOCATION: SEC. 06 T. 18N. R. 17E. W.M.



DETAIL - N.T.S

FOUND GAME DEPT. MONUMENT
LCR - BOOK 1 OF MONUMENTS, PAGE 167
BOOK 18 OF SURVEYS, PAGE 144
VISITED 10/1991





(IN FERT)	GRAPHIC SCALE
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	TANEUM CHEEK BANCH	
Ϋ́	RECORD OF SURVEY	RE

FILED FOR RECORD THIS...
BOOK.....OF..... DAVID P NELSON RECORDER'S CERTIFICATEAT PAGE.....

COUNTY AUDITOR DEPUTY COUNTY AUDITOR ... 20.....ATM INAT THE REQUEST OF

DAMO P. MELSON CERTIFICATE NO....18092. 02/63/09

Encompass ENGINEERING & SURVEYING

108 EAST 2ND STREET CLE ELUM, WA 98922 PHONE: (509) 674-7433 FAX: (508) 674-7419

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7	STATE OF WASHINGTON		
8	KITTITAS COUNTY SUPERIOR COURT		
9	TANEUM CREEK RANCH LIMITED NO. 10-2-00574-1 PARTNERSHIP, a Washington		
10	Limited partnership, Plaintiff, ANSWER		
11	V		
12	WASHINGTON STATE		
13	DEPARTMENT OF FISH AND WILDLIFE,		
14	Defendant.		
15	COMES NOW the Defendant State of Washington, Department of Fish and Wildlife		
16	(State), by and through its attorneys of record, ROBERT M. MCKENNA, Attorney General,		
17	and JAMES SCHWARTZ, and JESSICA FOGEL, Assistant Attorney Generals, in answer to		
18	the Plaintiff's Complaint.		
19	Under Civil Rule (CR) 8, defendant generally denies each and every allegation of the		
20	Complaint that the defendant does not expressly admit. The defendant also expressly denies some		
21	allegations without affecting its general denial of other allegations. The defendant will not		
22	respond to allegations that present purely legal arguments. If an answer to any such allegation is		
23	required, defendant denies each such allegation that is not expressly admitted.		
24	In addition to the above general responses, defendant answers the specific allegations in		
25	the Complaint as follows:		
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V. COUNTERCLAIM FOR DECLARATORY JUDGMENT

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Defendant, State of Washington, complains of plaintiff, TANEUM CREEK RANCH LIMITED PARTNERSHIP, for declaratory judgment as follows:

- 5.1 The Forest Practice Rules, chapter 222-24 WAC, require large landowners, such as the State of Washington, to maintain active forest roads according to standards prescribed in the rules. WAC 222-24-010 et al. A road that is not used may be exempt from meeting the standards set forth in the rules if the landowner complies with road abandonment procedures under WAC 222-24-052(3).
- The Road identified in paragraph 3.3 of the complaint is no longer used by the 5.2 State. As a result, the State placed the road on inactive status and placed the road in abandonment condition required by the Forest Practice Rules WAC 222-24-052. cannot be reopened for traffic without incurring the expense of meeting the current road standards under the Forest Practice Act.
- 5.3 Plaintiff alleges that it has a prescriptive right to use the road. Plaintiff has asked this court to require the State to place the road in active condition under the Forest Practice Rules at state's sole cost and for the sole benefit of Plaintiff.
- 5.4 Plaintiff alleges that the Forest Practice Rules place liability for road condition under the Forest Practice Act entirely on the landowner, even if the road is used solely by Plaintiff.
- 5.5 The common law of Washington places responsibility for maintaining a road that is used solely by the easement holder solely on the easement holder. Washington Real Property Deskbook, 3rd ed. Vol. 1 § 10.4(2)(c)(Wash. State Bar Ass' n 1997)(citing C.J.S. Easements § 94 (1941)); See also Dreger v. Sullivan, 46 Wn.2d 36, 278 P.2d 647 (1955).
- Wash. Const art. VIII § 5 prohibits a state agency from making gifts of public 5.6 funds by spending public money solely for the benefit of a private entity where no fundamental public purpose of government is served by the expenditure.

1	6.5 Plaintiff's demand, that this court	declare that a prescriptive easement was	
2	acquired, has created an actual, present and exis	ting dispute, or the mature seeds of one	
3	regarding the burden imposed on the State land. Should an easement be granted, the State ar		
4	Plaintiff shall have opposing interests in the scope of the easement acquired. The interest		
5	State and Plaintiff in determining the amount of traffic on this road along with an increase		
6	administrative burden on the State to potentially maintain the road to Forest Practice standard		
7	is direct and substantial. The court's construction	n of the scope of the easement would be	
8	conclusive and final as to any controversy between	hese two parties.	
9	VII. PRAYER	FOR RELIEF	
10	Wherefore Defendant, State of Washington,	prays for relief as follows:	
11	7.1 That Plaintiff's claim of a prescriptiv	e easement be dismissed with prejudice;	
12	7.2 That title to the property be quieted in	n the State of Washington;	
13	7.3 Should this Court grant Plaintiff a pro-	escriptive easement, then this Court should	
14	declare the rights and obligations of both the State	and Plaintiff regarding who must bear the	
15	cost of bringing the road up to Forest Practice stand	lards during such periods when the road is	
16	used solely by Plaintiff; and		
17	7.4 Should this Court grant Plaintiff a pre	escriptive easement, then this Court should	
18	declare the scope of use to be limited to recreational	access to one residence; and	
19	7.5 For State's cost and attorney's fees	; and for such other relief as this Court	
20	deems just and equitable.		
21	DATED this <u>20</u> day of January, 2011.		
22	ROBERT M. MCKENNA	ROBERT M. MCKENNA	
23	Attorney General	Attorney General	
24	Lemes Schwork	gessica Fogel	
25 26	JAMES SCHWARTZ, WSBA # 20168 Assistant Attorney General Attorneys for Defendant	JESSICA FOGEL, WSBA 36846 Assistant Attorney General Attorneys for Defendant	





Rob McKenna ATTORNEY GENERAL OF WASHINGTON

Fish, Wildlife & Parks Division
PO Box 40100 • Olympia, WA 98504-0100 • (360) 753-2498

January 20, 2011

Dan Valoff/Jeff Watson Kittitas County Community Development Services 411 N. Ruby St, Suite 2 Ellensbeurg, WA 98926

Christina Wollman Kittitas County Department of Public Works 411 North Ruby St, Suite 1 Ellensburg, WA 98926

RE: Brain SG-10-00018

Dear Dan and Christina:

I write this letter on behalf of my client, the Department of Fish and Wildlife (WDFW), to express a concern regarding the proposed or potential access to certain lots that are identified in the above lot segregation application. I reviewed the application for the proposed lot segregation. It was not apparent from the document on file just how the lots identified as 3, 4, and 5 would be accessed. I understood from a conversation with Christina that the applicant hoped to build a road within the lot boundaries to address access to the above mentioned lots. There may be some environmental concerns and restrictions that prevent the proposed road from being constructed within the lot boundaries.

At this time, I want to put the county on notice that Taneum Creek Ranch has filed a lawsuit against the WDFW alleging that Taneum Creek Ranch has a prescriptive right to cross the WDFW land to the east of the proposed lots to be created by this segregation. WDFW disputes that the easement exists and the scope of any such prescriptive easement: any prescriptive easement would be limited in scope to the historical use of the road prior to WDFW acquiring the property in 1970.

ATTORNEY GENERAL OF WASHINGTON

January 20, 2011 Page 2

I am attaching a copy of the complaint and answer. Please place me on the list of parties that get notice should this segregation reach final approval. Thanks for your cooperation.

Sincerely,

James Schwartz

Senior Assistant Attorney General

P.O. Box 40100

Olympia, WA 98504-0100

(360) 586-4034

Attachments

cc: Dan Budd (w/o attachments)

Elyse Kane (w/o attachments) Cindi Confer (w/o attachments) James Denison (w/o attachments)