

A STATEMENT FROM THE BOARD OF COUNTY COMMISSIONERS TO THE CITIZENS OF CUSTER COUNTY

The Board of County Commissioners for Custer County (BOCC) is issuing this statement to inform the public about the status of the lawsuit involving Dr. Robert Hamilton (Las Mojadas, LLC), Mike and Laura Halpin, and the County. This lawsuit has received a substantial amount of media and public attention over the last year. A portion of County Road 390 runs over property previously owned by Dr. Hamilton and now owned by Las Mojadas, LLC, a company controlled by Dr. Hamilton. The road provides the only access to property owned by the Halpins. Dr. Hamilton and the Halpins have a long-standing dispute over ownership of the road. The following is a short summary and clarification of the events that led up to the lawsuit, what the legal issues were, the court rulings that have been made, and where the lawsuit stands now.

THE FACTS: In 2002 the differences between Dr. Hamilton and the Halpins finally resulted in the filing of a lawsuit in the District Court for Custer County. The County was not named as a party to this first lawsuit and did not participate in that case. In 2006, after four years of litigation, the district judge handling this lawsuit dismissed the case, stating that the “right-of-way easement” across Dr. Hamilton’s land was a County road and that the matter was “incapable of judicial determination without the County as a party”. Despite this ruling, the dispute between Dr. Hamilton and the Halpins continued, only now they were calling the County Sheriff’s Office to try and resolve their ongoing disagreements about the road.

The County attorney met repeatedly with attorneys for both sides to try and resolve their dispute. When these negotiations failed, the BOCC believed it was only a matter of time before Dr. Hamilton/Las Mojadas sued the County. To avoid expensive litigation, the BOCC determined that the County should divest itself of its interest in the road easement. The BOCC knew that the County did not own Las Mojadas’ land, but rather had a road easement over the land. The BOCC also knew that Colorado law prohibits a county from “land-locking” property and leaving its owners with no right of access. As a result, the County decided it should transfer its road easement to the Halpins because Las Mojadas had access to its property without the road, but the Halpins did not. The County had an absolute statutory obligation to assure that the Halpins continued to have access to their property.

In October of 2010 the BOCC unanimously voted to transfer the road easement to the Halpins by means of a County deed. Importantly, the County did not attempt to transfer actual ownership of Las Mojadas’ land to the Halpins, but intended to transfer the road easement only. Although much has been written and said about the fact that the deed was signed on September 30, 2010, five days before the Resolution was passed by the Board on October 5, it was judicially determined in 2015 that that there was nothing improper about this procedure and that claim was not pursued on appeal. By issuing the County deed, the BOCC believed the County was saying, “We don’t need this road easement, we don’t want this road easement, and we don’t want to be dragged into a lawsuit over this road easement.” Unfortunately, the County deed did not resolve the matter. In 2012, Las Mojadas sued the County and

the Halpins, claiming that the County deed was illegal and that Las Mojadas owned the road easement. This forced the County to hire a law firm with expertise in the complex area of road law.

THE LEGAL ISSUE: After the lawsuit was filed in 2012 the County again tried to work out a settlement through mediation and negotiations, but again these efforts failed. On March 18, 2015, District Judge Stephen A. Groome ruled that the County had acted properly when it issued the County deed and granted the County’s Motion for Summary Judgment, dismissing Custer County from the lawsuit. Dr. Hamilton appealed this ruling, and on May 19, 2016, the Colorado Court of Appeals reversed Judge Groome’s decision. Here is an excerpt from the Court of Appeals opinion written by Judge Navarro: *This case presents the following question: Does section 43-1-202.7, C.R.S. 2015, grant a county the authority to abandon a county road and convey ownership of that road to a third party by deed? The answer is “no”.* The Court of Appeals held that the County deed was “invalid and void”; it never used the word “illegal” in reference to the County deed. The Court of Appeals did not hold that the County cannot transfer its road easement to the Halpins; it only said that the County could not do so by means of a deed; that there is a statutory procedure for doing so.

WHERE THE CASE STANDS NOW: The case has been remanded back to the District Court for Custer County. The County still owns the road easement and again finds itself caught in the middle of a private dispute between Dr. Hamilton and the Halpins. The County owes no money to Dr. Hamilton. This case is not about a claim for money; the sole issue was about the transfer of the road easement by means of a deed. The County thought it could divest itself of ownership of the road easement by deed, but the Court of Appeals said no, it could not be done that way. The County accepts that ruling and does not intend to appeal to the Colorado Supreme Court. The County believes it has two options at this point: To retain ownership of the road easement (and to maintain it), or to transfer ownership of the road easement to the Halpins pursuant to the correct statutory procedure. The County attorney will again explore the possibility of a settlement agreement with the attorneys for Las Mojadas and the Halpins without the necessity of further court proceedings.

Lynn Attebery, Chairman

Kit Shy, Vice-Chairman

Bob Kattnig, Commissioner