



THE KEY QUARTERLY

Unlocking Access to Montana's Public Lands & Waters

Fall 2022

What Does Access Equity Really Mean?

A Deeper Look At The Current Access Crisis in Montana

During PLWA's first *Public Access Investigation Certificate* class this fall, we began by speaking about several cases our organization has worked on during the past year. Two of these cases stand out, if only because at first glance they seem so simple. Hughes Creek Road in Ravalli County, an access issue which many readers are likely familiar with, is the case of a public county road that leads to hundreds of thousands of acres of National Forest. This public land stretches across western Montana and beyond, into Idaho. The road has been closed to the public for the majority of the past ten years, even though it has been used to transport timber from government sales out of the National Forest, and even though it has been declared public by both district and state supreme courts. Neither the local County Commissioners nor the Sheriff's Department, nor the National Forest (which used this road to the land beyond) worked to safeguard and restore the public's access.

A similar fate befell the public easement at Loch Leven along the Yellowstone River in Park County. In 1968, FWP purchased an easement granting access to the public to pass between a fishing access site and a day use site beside the Yellowstone River. It was signed by the Montana Attorney General, and granted fifty feet of easement and access to the river itself. PLWA received reports from users that a homeowner on the banks of the river had placed electrical fencing over the easement, forcing people down the banks towards the river. Signs alerting the public to the easement had been knocked over, yet FWP remained inactive regarding the issue. When

PLWA became involved and a resolution was finally offered, the full fifty feet was not advocated for by officials, merely a small distance large enough to allow safe passage. "Better than it was before" we were told. Since the public owns the easement, we did not agree.

These situations are concerning for a number of reasons. Firstly, they are access issues that should be simple. There is no question whether Hughes Creek Road or the Loch Leven easement are public – they have the appropriate paperwork and court determinations to prove that they are. Secondly, both are public access issues that require defense and advocacy from local, state, and federal officials which they are not receiving. These places offer numerous recreational opportunities to locals and visitors alike, enhance our quality of life, and support our local economies. They merit protection legally, ethically, and economically. These issues are also concerning because of the minimal legal awareness shown by officials in charge of enforcing both the access rights involved, and the violations committed by those preventing access. Lastly and most importantly, they demonstrate a disturbing trend of inequity shown by our state in its preference towards private land owners and simultaneous poor treatment of public land owners.

PLWA exists to investigate and advocate for public access. In truth, it should not be our organization's work to spend time and money forcing officials to maintain public access in places where it already so clearly exists, or to enforce penalties when

access is illegally blocked. In clear cases such as Hughes Creek and Loch Leven, education and enforcement are all that are needed to keep the public on their lands and waters. Montana Codes Annotated and publicly filed documents offer clear direction in regards to the access rights involved and the organizational responsibilities required by officials engaged with this work. While PLWA is happy to work to educate public and private entities about access rights, it should never be necessary for our organization to take cases to court or use the law to force entities such as County Commissioners simply to do their jobs. And yet, we see this happening more and more frequently.

We have all heard stories of folks issued trespassing tickets almost immediately after passing through disputed access points. In fact, often these tickets are rescinded because either the issuing official was unfamiliar with the applicable Montana laws, or the area turned out to be public. And yet, in the history of the state, Montana Codes Annotated 7.14.2136 & 7.14.2137, which allow for a \$10 a day fine for illegally obstructing a road have never been levied against offenders. All moves to increase this fine to deter repeat offenders have failed. In the case of Hughes Creek, when the road was obstructed, it took months for local officials to make any moves to unblock it, and they only did so after a mandamus action was lodged in the courts by PLWA. No one was ever fined. It begs the question, if a main street downtown was blocked, would it have taken so long? Would there have been no penalties for repeatedly blocking a public road?

Similarly, it took a year for action at Loch Leven, and then only a few feet of the 50 foot easement were proposed to be reopened for public access. If two private land owning individuals had a dispute about one fencing in part of the

other's yard and blocking access to their garage, would an acceptable solution have been to give back only a few feet for garage access but keep the rest of their yard? Likely not. And yet when the public's access or land is involved, it is often seen as acceptable to offer anything that is "better than it was", even if what it was constituted an illegal action or land grab. Why, again and again, are we, the public, asked to accept a raw deal?

We have fallen into the trap of treating public lands and waters and their access points and easements as being of less worth than private lands and waters. Enforcement of hunter and angler harassment or blockading access to public lands is routinely addressed with less expediency than trespassing on private land or border disputes between private individuals or companies. When did our public resources become less precious than those we hold privately, and when did our public officials become servants not of the common man, but of private interests and individuals?

In order for the public access movement to survive in Montana, we must re-frame the discussion. Private land and water rights and personal property must be seen with respect and fair treatment by individuals and under the law. But so must public access, public lands, and public waters. We must walk back the idea that Montana exists only when you are wealthy enough to buy your piece of paradise. That officials and the protection they offer exist only for hire or if they sit around your dinner table. Montana has become a place where many people want to live and thrive for a reason, and equity of our outdoors is a big part of that. It behooves us not to let that change now. Or, like a swarm of locusts, the people will come, they will take, and they will leave a shell of the place we loved in their wake.

PLWA
PARTNER:
Western
Montana
Climbers
Coalition



<https://www.wmtcc.org/>

A Voice for Montana's Climbing Community

"We're a nonprofit founded to support continued access to climbing areas, safe and environmentally conscientious development of new sites, climbing for climbers of all abilities, and continued development of opportunities for young climbers. We have forged an alliance with the Access Fund, and work with land managers, for the benefit of the climbing community. We'll also have a little fun sponsoring events, trail days, and social opportunities for climbers across Western Montana."

Reach out to WMTCC to join, get involved, or donate today. Visit their [website](#) to learn more.

PLWA Out In The Community

This summer and early fall, PLWA put a lot of miles on the odometer connecting with partner organizations and hearing from our members around the state. It is one of the things we like best about our jobs, and we look forward to even more events on the ground and in our communities coming up.

If you would like for a PLWA staffer or board member to speak to your organization or at an event, please reach out to us. We love talking about our work and educating the public about their access rights. From a small dinner to an annual meeting, we are happy to participate. Send us a message to plwa@plwa.org to set up a time for us to come speak or table.

Keep up with us here



[publiclandwateraccess](https://www.instagram.com/publiclandwateraccess)



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Did you know that 70% of people don't have a will?

PLWA's Executive Director Drewry Hanes notes, "Until a recent conference, I hadn't realized that the number was so high. Many folks don't have an idea of where their assets may end up, nor about how much tax laws will affect their estate without proper planning. This information has spurred me to talk to my family members about their estate plans and to have a conversation about my own will so that my wishes are known. Feeling secure that the causes I care about will be taken care of is important to me."

In as little as a day you can figure out whom will receive your assets currently, and use an online will creator to make a bequest and ensure that the things you care about will be safeguarded for generations to come.

Visit the Giving section of www.plwa.org/giving to learn more about asset planning and ensure that your wishes are known by those you love.

From the President's Desk

We continue to be on a roll! With Drew and Haley's determination we completed our first Public Access Investigator Certificate class with nine students participating. This class was a great success, and we will continue to update and improve the material for our future course offerings.

We are in the process of rounding out our evidence on the Sweet Grass access issue in the Crazies. We have accumulated numerous documents and they are being reviewed by our attorneys and others. We have also brought in our attorneys to review the Adobetown Road case in Madison County. We will share information as we confirm our plans of action.

As I get along in years this access work has come to be a great experience to be involved in. It wasn't always this way through my past employment years.

Again, as in the last newsletter, I cannot overstate state my complete pleasure in working with this group of individuals. Communication is completely open and I don't believe anyone is afraid to express their opinion. My Texas Bix Bender quote book is with an ill friend to inspire smiles this fall, but he'll be back next edition!

Bernard Lea

Bernard Lea, President

Fall 2022 Case Updates from Public Access Investigator Haley Sir

It was a busy summer/fall and heading into winter we have plenty of work on our plates. Currently PLWA has 34 active cases in 19 counties and has resolved 22 access investigations since February. Below you will find a selection of access issues PLWA has been monitoring and working on. Reach out for information on issues in your area.



BLM Lands Southeast of Big Sandy: Complaints continue to roll in regarding public lands in this area of Choteau County. PLWA contacted BLM's regional range management specialist regarding Brewer Road and verified a private, locked gate has been placed on the road on public lands. The local BLM office is aware of the issue, but has made it clear it is not a priority. We have asked members and concerned citizens to call or write in to the Havre field office expressing their concerns and to request immediate removal of the gate on their public lands. PLWA is working to verify the numerous other complaints we have received in this area, including a recent issue involving harassment and threats with a weapon.

Elk Meadows Road: PLWA continues to monitor the bridge over Lolo Creek in Missoula County closely in an effort to obtain appropriate signage and a proper entrance for public access, as agreed to by the property caretaker. During recent conversations with the regional office, PLWA obtained materials from Forest Service staff indicating a sixty foot easement on the road. A meeting is being scheduled with the property owner and Forest Service personnel. We are waiting to hear back on the proposed resolution of this access point.

Madison County: Issues in Madison County persist. Gates remain locked on County Roads #45 and #49 (Bertha Kennet and Granite Creek Road), however a survey for Bertha Kennet Road should be completed in the coming months that will reveal more information. Landowners continue to encroach on Adobetown Road by erecting posts within the road right-of-way. The County Commissioners will no longer address the issue. Discussions with the Forest Service regarding USFS Road #9657 indicate there is no public easement. It is our understanding the regional Forest Service office was meeting with the landowner to discuss plans for the area and hopeful resolutions, but PLWA has not heard back on what those might be. PLWA continues to work with agency staff and members of the public to resolve these access issues.

Meyers Creek Road (aka Lodgepole Dead Indian Road): After almost two years of conversations and due diligence from the Stillwater County community, the County made the necessary repairs to make Meyers Creek Road passable and it has reopened to the public.

“Landowners continue to encroach on Adobetown Road by erecting posts within the road right of way. The County Commissioners will no longer address the issue.”

Skunk Creek Road: PLWA was forwarded a complaint regarding harassment from a new landowner near a gate accessing public lands on Skunk Creek Road in Gallatin County. The landowner requested to close or move the access gate to avoid people parking within the public right-of-way near his driveway in the winter months when the gate is closed. After a thorough discussion with the regional Forest Service office, PLWA verified they are aware of the issue and the public is legally allowed to park within the road right-of-way for up to 48 hours, as long as they are not blocking the gate or driveways nearby. The Forest Service will not concede to moving the gate unless it is at the landowner's expense and includes an agreement to maintain and plow the road of snow up to the new gate location. The Forest Service confirmed that the gate will not be moved unless there is a benefit to the public or an administrative need. PLWA encouraged the complainant to get the County Sheriff involved if harassment continues.

Bickle Access Road: A 1987 petition to Fallon County Commissioners to abandon a county road led to a district court lawsuit filed in January 2021 by a private party. Because this matter had already proceeded to lawsuit, PLWA has not officially engaged in the case. However, a ruling for this case was made detailing the following; 1) Fallon County failed to comply with the statutory process to abandon a county road and therefore did not have jurisdiction, 2) the purported abandonment is void and unenforceable, & 3) the county must remove all obstructions within 30 days. The road has been reaffirmed as a county road.

Continued on Page 6

Notes from PLWA's Annual Meeting this August

PLWA's Annual Meeting was held on August 18th

Many thanks to all who attended and contributed to our 2022 Annual Meeting. A few announcements:

- We welcome board members Amelia Flannery (new board member 2022-2025) and Matt Lussier (elected after previous board appointment 2022-2024). Officer appointments to follow.
- Two additional board seats are to be appointed in the Fall.
- Watch everything that happened at this year's meeting on the [annual meeting page](#) at PLWA's website.

Carol Fox's Comments on PLWA's 2022 Auction:

Longtime PLWA members and staunch supporters Bert Lindler of Missoula and Harvey Nyberg of Lewistown were our lucky big ticket auction winners. Bert won the Abel fly reel donated by the wife of the late Dr. James Johnson. Bert celebrated his good fortune on a week-long fly fishing trip with longtime friends in September.

"Getting a good deal on a very special fly reel, contributing to PLWA, and spooling fresh memories with old friends - I guess I won the auction," notes Bert. Harvey won PLWA Board member John Gibson's hunting rifle, which is fitting as John and Harvey are longtime friends that share a passion for hunting and the public access work of PLWA. John is happy to pass on his rifle to Harvey "because he's a good friend, and he'll take care of and respect my old gun."

PLWA is grateful to all our members for their work to pass

2022 ANNUAL AWARD WINNERS

PLWA's Leadership in Access Award
CAROL FOX

This award is given to a person whose efforts have imparted a significant impact upon public access in Montana. The *Leadership in Access Award* acknowledges the incredible amount of time, ideas, and outreach it requires to carry out PLWA's mission and safeguard public access in Montana. Award winners set the highest bar for all of us as stewards of access to our public lands and waters, and serve as shining examples for every passionate advocate of access now and in the future.

PLWA's Public Access Champion Award
JEN ADAMS

This award is given to someone whose work, day in and day out, has helped PLWA thrive and grow as an organization of service. The *Public Access Champion Award* recognizes individuals who commit their time without fanfare or ego, and who make it possible for our initiatives to succeed. These award winners are the super stars of our movement, and the heart of our organization.

along traditions of public access support from one friend to the next.



As my colleagues and I convened the first ever PAIC class this fall, I looked out over the class and was heartened. Folks were volunteering their time to learn how to investigate access issues and advocate for their communities. Guest speakers took the time to join our nascent effort, strengthening the movement,

EXECUTIVE DIRECTOR'S MESSAGE

connecting people, and sharing new ideas. *This is what partnership looks like*, I thought to myself.

Together, we are a community with strength and intention. Together, we will achieve great things.

Drewry Hanes

Drewry Hanes, MS, MPH

Cyr-Mountain (USFS Road 344): In February of 2020, PLWA received a complaint that a private landowner had blocked access to one mile of road and adjoining public lands via a locked gate. The complainant, an avid public land supporter, did the necessary research to determine that a county road had been declared in 1903. The Mineral County Attorney and Commission drafted a letter to the landowner to have the gate removed. To our knowledge, the Deputy County Attorney intends to move forward with the road reopening even in the face of a possible lawsuit by the landowner.

Bitter Root Road: Public meetings continue to be held regarding a public right of way discovered in Missoula County that provides access to the Bitterroot River and FWP lands. Two petitions have been filed with the County Commissioners - one to alter the right of way to the nearby Bitter Root Road and one to abandon the road entirely. Several site viewings and hearings have been scheduled. The next road viewing is scheduled for October 25th to look at potential alternative access. The public is welcome to attend. A hearing is scheduled for November 3rd at which the county is hoping to make a final decision on both petitions.

Lyons Creek Road: Thousands of acres of public lands are being blocked via a gate on Lyons Creek Road in Lewis and Clark County. Some landowners are even being blocked from their own land. The issue was brought before the Supreme Court by the complainant prior to PLWA's involvement. The courts ignored both the title of deeds showing Lyons Creek as a conservation easement and the ruling of the County Commissioners to declare the road a public highway in 1923. Most recently, the issue has been brought back down to the county level by the complainant to submit further documentation into public record and to ask the Commissioners to reopen the road for public use. We are waiting to hear back from the Commissioners to determine next steps.

Something to keep an eye on:

Robin's Gulch (Wilkins vs. U.S.): PLWA was alerted to the following case being heard by the supreme court: The submitted petition for this case raises the issue of two Montana landowners filing a quiet title action seeking to resolve a dispute over easements held by the U.S. that run across their land. There are concerns the case could result in a major loss of public access. PLWA is monitoring the case.

PLWA's Inaugural PAIC Class Graduates!

PLWA is thrilled to announce the graduation of its first Public Access Investigation Certificate (PAIC) Program class this fall. Students hailed from all across the state and multiple disciplines were represented. We had students from Anaconda, Missoula, Lewistown, and Bozeman among other places. From lawyers to state employees, all our students brought incredible insights and enthusiasm to the class.

Topics students were trained in included:

- legal codes involved with access investigation (state and federal),
- field & records research methodology,
- map and record location methods and interpretation
- advocacy and partnership work
- grassroots lobbying and media/outreach training
- how to administer an access complaint from start to finish

PLWA is proud of and impressed with all that our students achieved during the semester, and is looking forward to

working with these new volunteers on access issues. Our organization is thrilled to have so many well trained access investigators in locations across the state, providing aid to local communities and organizations.

"This is a course every Montanan who cares about public lands should take. We must all be able to spot issues and act on them."

- Fall 2022 PAIC Student

To learn more about the program, connect with a Public Access Volunteer Corps member, or to sign up for a future course, visit our [Public Access Volunteer Corps](#) page on the PLWA website.

We would like to thank the [Cinnabar Foundation](#) and [Spark R&D](#) who made this first PAIC Course possible through their generous support. Please reach out to us at plwa@plwa.org if you would like to support future PAIC courses.

MEET ASHLEY HELM

PLWA Welcomes Director of Volunteer Services

Ashley decided to escape the desert and travel to the mountains in 2012, when she moved from Arizona to Bozeman, MT. In 2017, she began dating an avid second-generation hunter who would later become her husband, Shay. Listening to Shay describe his hunting experiences, Ashley started to take note and appreciate public land and water access in an entirely new way. Now, Ashley is well versed in how to instantly spot a Whitetail versus a Mule deer, and the important role public access plays in Montana's recreation tradition.

Ashley has a Bachelor's degree in Public Management from Northern Arizona University and she is an Associate Financial Advisor at Northwestern Mutual, where she spends her days assisting clients with their holistic financial planning. Ashley is looking forward to contributing towards PLWA's mission to maintain, restore, and perpetuate public access to the boundaries of all Montana's public lands and waters in her role as Director of Volunteer Services.

How can supporters get involved with PLWA?

There are a lot of volunteer opportunities at PLWA - in fact, PLWA runs on volunteers. They are the heart of the organization! Here are some ways you can jump right in:

- First off, reach out to Ashley about volunteering. She can match you up with the best program depending on your time availability and interests. She can be reached at ashley@plwa.org.
- Sign up for our newsletter & socials, and stay up to date on everything that is happening in access news.
- We need community outreach volunteers to connect businesses with our programs such as the AIRS and PLWA Plate programs. This helps us widen our net and let everyone know about the work we are doing. If you are active in your business community this could be a great fit.
- Are you a lawyer or title expert that has time to give? You could make an enormous difference in public access across the state. Reach out - we'd love to work with you!
- Do you love investigating access issues, or have an interest in public access activism? Consider taking our PAIC course and being part of our Public Access Volunteer Corps. We need folks around the state to conduct access investigations and work with their communities to safeguard access.
- Are you a social butterfly? Could you help arrange events, fundraisers, or just have a BBQ and talk to people about what PLWA does and why you are passionate about public access in Montana? We would love to help you set up events in your area. Reach out and let us hear your ideas or allow us to share some possibilities with you.
- Do you have experience with Canva, SquareSpace, Bloomerang, or publication writing? Help our team keep everyone up to date about PLWA activities.
- Lastly, [join our organization!](#) Basic membership starts at just \$20 a year and makes a huge difference in what we are able to accomplish.

Reach out, share our newsletters, get our [license plate](#), refer friends, and join the movement. It takes all of us working together to safeguard public access.

Learn more at www.plwa.org.





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Amelia in the Mountains

PLWA *Who We Are* Highlight: Amelia Flanery

Amelia settled in Montana in 2020, after she accepted a position with the State while finishing up her graduate degree in civil engineering at Virginia Tech. Prior to graduate school, she received her undergraduate degree in environmental science at the State University of New York (SUNY) Plattsburgh. Growing up, Amelia lived all over the country & participated in many outdoor activities. Spending most of her time in New Hampshire, Amelia's hobbies adapted depending on the accessibility of the public lands that supported them within the state she lived. One of the biggest draws for moving to Montana was the access to the abundance of public lands and waters. Since moving here, she's been spending her time gardening, backpacking, biking, hunting, fishing, cross-country skiing, or trying out something new.

The fight to keep public lands and water accessible is something that she became interested in while in college. Since then, she's been working to find a way to both give back to her community and support our public lands and waters, and she is honored to play a bigger part in advocating for access by being a Board Member for PLWA.

Quote of the Quarter:

"And into the mountains I go to lose my mind and find my soul."

— John Muir