



PLWA

The **KEY**

Unlocking access to public lands & waters

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Montana Attorney General Steve Bullock to Address PLWA Annual Meeting

APRIL 4TH 2009, Bozeman, MT - The Public Land/Water Access Association annual membership meeting is scheduled for Saturday, April 4th at the Wingate by Wyndham Hotel in Bozeman beginning at 10 am.

We will be doing more than conducting routine business at this meeting. We are honored to have Montana Attorney General Steve Bullock, a strong supporter of public access law, as our keynote speaker. Steve did the legal work for the Attorney General's office when the stream access laws were challenged by the Mountain States Legal Foundation. He won.

In addition to the Attorney General, Shane Colton, the new Chairman of the Montana Fish Wildlife and Parks Commission and Ron Moody, a recently appointed FW&P Commissioner, have committed to attend.

Get Steve's insights into public access law, find out what's up with the FWP commission, get updates on access issues and meet your fellow access advocates. Your attendance is also an opportunity to demonstrate to our elected and appointed state officials the importance of access issues to the vast majority of Montana taxpayers.

No pre-registration is required. Bring a friend, or several. We hope to see you there.

NOTICE OF ANNUAL MEMBERSHIP MEETING

Notice is hereby given that the annual membership meeting of the Public Land/Water Access Association, Inc. will be held on April 4, 2009, commencing at 10:00 a.m. at the Wingate by Wyndham Hotel, 2306 Catron Street, Bozeman, Montana, just off exit 305, Interstate 90.

The business to be transacted shall include the election of three directors for three year terms to fill the vacancies caused by three expiring terms on the Board of Directors. In accordance with the Articles of Incorporation, the Directors have proposed a slate of candidates to be submitted at the Annual meeting. They are John Gibson, Dennis Grundeman and Tony Schoonen.

Additional nominations may be offered by members from the floor. Each member is entitled to one (1) vote for each vacancy. Members desiring that resolutions or other items of business be considered should notify PLWA President, John Gibson at jcgibson@imt.net.

Status of Stream Access at Bridges Bill - HB 190

As many of you know, the issue of Bridge Access to Streams became HB 190 and was carried by Representative Kendall VanDyk. It moved through the House Fish and Game Committee, then on to the House Floor with bipartisan support and passed the critical third reading in the House by a favorable vote of 97- to 3.

The only significant amendment was one that added PROPERTY MANAGEMENT to Livestock Control as a reason for legal fences to be constructed on the county road easement. I am not sure if there is more to this than meets the eye, but the bill sponsor didn't seem to think so.

So, now we deal with the Montana Senate. First, it's the Senate Fish and Game Committee. The way I see this is that there is so much momentum behind HB190 it will pass the F&G Committee and the Senate. What needs to be watched is any attempt to amend the bill in a manner that will send it back to the House and a conference committee. There has been a change in membership in the House F&G Committee that might mean trouble.

What we don't want to happen is an amendment that makes the role of the Fish, Wildlife and Parks subordinate to that of County Commissioners in the decisions concerning reasonable access.

Illegal Road Closures - Fighting Back

Road closures have become a major problem in Montana. There are a variety of reasons for these closures including the desire to control public land and wildlife for profit or personal use. If you become aware of a closure, you should contact the county commissioners in that county and request an opinion as to why they are allowing the road to remain closed. If you do this by letter you might include the following summary of a Montana Supreme Court decision. If the road in question is similar to the one in this case, ask why the commissioners are allowing the closure.

In McClurg vs. Flathead County commissioners 188Mont. 20,610P.2d 1153 (1980) The supreme Court held that "adverse control" is presumed when all other elements necessary for a prescriptive easement have been established. In McClurg the public had used the road in a continuous and uninterrupted way for over 25 years without objection by the McClurgs. Mc Clurgs sought unsuccessfully to close the road to public use. The undisputed facts supported rather than rebutted the presumption of adverse use. For example, most members of the public never asked permission to use the road, and the county graded and maintained the road and laid gravel on the road without Mc Clurg's permission.

Mc Clurg was distinguished from Leffengwell Ranch Inc. vs Cieri 276 Mont. 421 916 P.2d 751 (1996) where road work was based on courtesy and cooperation with local ranchers and not PUBLIC DUTY. Ask why the closed road is any different from the one in this case. Remind the commissioners of the last line in that decision that identifies the opening and maintenance of such a road as a PUBLIC DUTY. It is illegal to spend public funds on a road that is not open the public.

There are too many road closures going unchallenged by commissioners because they are reluctant to face a possible lawsuit. Remind the commissioners that the Attorney General of Montana will assist in any challenge to an illegal closure. All they have to do is ask.

Don't give up because they tell you some story about a side pocket agreement with the landowner. Ask to see the agreement in writing. Sometime pressure in the form of letters to the editor in the local newspaper will work to your advantage.

Maybe Road Update & Public Access Teams In Action

A meeting was conducted in Lewistown to organize the local PLWA access advocates. About 20 people attended including four from Great Falls who came down to raise the flag and get ideas for starting an Public Access Action Team in Great Falls.

The Maybee Road closure was discussed. Team members volunteered to go out and do ground-truthing along the road. Several volunteer's stated they would contact folks in the Roy area who can give affidavits as to the length of time the road has been open to the public.

The research continues for evidence concerning the Maybee Road. PLWA board member Bernard Lea spent 2 days in the Fergus County Courthouse and discovered the portion of the road in question was surveyed in 1913. The original survey notes and a plat are a matter of public record in the Clerk and Records Office. When we have completed our research we will make the decision on what the next step will be.

The Founding of PLWA (PLAAI)

The following account is an excerpt from an article by Perry Nelson in the 1994 Montana Game Wardens Association Newsletter titled "Our Vanishing Roads ". Perry was a retired biologist with the Montana fish and Game Dept.

"Basic to the roads closure problem is the fact that in recent years many private landowners, especially those with land adjoining public land or water, have ignored or forgotten the law and origin of these roads and have promoted the idea of sovereignty for themselves "

"After retirement from the state I vowed that if I was able, and could meet up with enough citizens willing to pass through the hard knocks school of public interest activism, and research the historic laws regarding public roads, and promote their restoration, I would join with them."

"The opportunity came during a public meeting called by an ad hoc group of public land users in 1984 when Gene Hawkes, a former Gallatin National Forest Supervisor, threw his \$25.00 on a table at the Bozeman Public Library and said, 'Here is my start- up dues. Let's organize a public land access group.' After more people threw their money on the table that night, nine of us from Bozeman, Three Forks and Livingston signed on as the founders of the Public Land and Water Access Association."

Our organization faces many of the same problems today as the founders faced in 1984. We are, however, now some 800 strong, with a long string of victories behind us.

Leave a Legacy

The purpose of this article is to let you know about a wonderful way to donate money for a worthy cause. As most of you are aware, the Public Land Access Association is a non-profit corporation whose primary purpose is to preserve access to public lands and waters in Montana. We are instrumental in preserving existing access routes to the borders of both state and federal lands and waters by doing the necessary research to persuade and enable the government officials to make the determination and order the road open. This sometimes involves the expertise of an attorney and the subsequent legal fees.

The PLWA is continuously in need of financial help to cover these costs. We are usually in a David vs. Goliath position. The generous contributions of PLWA members, individually and through membership renewals, contributions from others and our raffles are our total source of income. As supporters of PLWA'S mission and objectives, we rely on you to maintain a consistent revenue flow.

The "Leave a Legacy Program" is an organized way to help future generations to experience some of what we have all enjoyed. It is a simple process and requires limited information that will enable you to identify the non-profit beneficiary you want to bequeath to, we hope to the Public Land/Water Access Association. If you are interested in making this type of donation, we encourage you to visit the Leave a Legacy website at www.leavealegacy.org. We thank you for your consideration.

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PLWA News

As we've hoped you've noticed, we've put some new systems in place at PLWA this past year. Foremost among them is our new website, www.plwa.org, which has already become a respected treasure trove of information about public access issues in Montana. Our efforts have not gone unnoticed.

This quote is from 'TROUT LINE' the newsletter of Montana Trout Unlimited - Fall 2008 edition "...anglers owe a debt of gratitude to to PLWA for taking on this cause (Stream Access). Please contact PLWA at www.plwa.org . Thank them and ask them how you can help the organization."

And from The Montana Wildlife Federation: "River recreationists across the country owe a great debt of gratitude to the dedicated members and leaders of PLWA. Anglers, family water enthusiasts, and floaters- old or young - we should all be allowed to walk on the public right-of -way attached to a public road and bridge to get into public water."

Your dues and donations are our primary source of income. PLWA has no paid staff, we all volunteer our time to the ongoing battle to keep the public on public land and water. We do it because we treasure our outdoor experiences in Montana and want to pass the same opportunity on to future generations. Your donation goes directly to the fight to protect access to public land and water in Montana.

We have also added an automated membership billing system to help streamline our systems. Dues can now be paid securely online with a credit card using PayPal. Go to plwa.org and click on Membership. This saves the expense of billing membership dues and saves paper, postage and human resources. We have gone to a quarterly billing cycle. Members who haven't renewed their membership in one year will receive a renewal notice quarterly. Thank you for your continuing support.