



the Key

Unlocking access to public lands and waters

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GOVERNOR SCHWEITZER TAKES STRONG PUBLIC ACCESS STAND, GETS NRA NOD

By John Gibson
PLAAI President

PLAAI is coming from a position of strength on Access

On Tuesday May 22 Governor Schweitzer came to Billings to receive the endorsement of the National Rifle Association. After NRA President Wayne La Pierre spoke in support of Brian's candidacy, the Governor spoke – saying a little about guns and a lot about access.

Several of us PLAAI folks in the audience, including Lee Gustafson, Rod Moody, Irv Wilkey and my wife, Carol, and I were encouraged to here Gov Schweitzer say that as long as he is Governor,

there will be access to streams from bridges on public roads and he will continue to seek funds to improve public access in Montana.

It was also divulged at that meeting that a recent statewide poll showed that better access to public land and water was the issue receiving the highest approval rating from Montana voters. Better public access rated higher than issues such as health care, education and state spending.

Considering where PLAAI stands as the most action-oriented organization in the state, this is good news and should give us motivation to move forward on issues such as needed legislation.

NEW ACCESS LAWS PLAAI HOPES TO PASS IN THE 2009 LEGISLATURE

By John Gibson
PLAAI President

There are two bills that I believe we need to work hard to introduce and pass in this coming legislative session.

1. A bill that would require anyone planning to close a road presently being used by the public to present conclusive evidence that the road is a private road to the appropriate county commissioners. Only after the commissioners have agreed that the road is, indeed, private could the road be signed, gated or otherwise closed.
2. A Bridge Access Bill that includes stream access from all bridges on roads presently being used and maintained by the public. There would be no

exception for any road meeting the criteria set forth in the Curative Statute. (This statute states that all roads being used or maintained by the public are public highways)

Candidates for state offices such as the State Auditor, Attorney General, Superintendent of Education will be on the State Land Board that decides access policy on state lands. Ask them how they stand on public access when they ask for your vote.

And, finally, ask your local office of the Forest Service or BLM what they are doing to comply with the recent Presidential Executive Order directing them to emphasize outdoor recreation in their management plans.

GET THE LATEST NEWS FROM PLAAI USE WEBSITE TO SEND US YOUR EMAIL ADDRESS

If you are an Internet user and you are NOT receiving PLAAI E-Mail updates on access issues, please send us your email address. Go to www.plwa.org and fill out the member information form. Let us know if you would rather get this newsletter by email.

FIGHT BACK!

Your membership renewal and donation keeps PLAAI in the battle to open public access

If you have not yet returned your membership renewal and donation envelope please do so as soon as possible. Remember we unlock gates one dollar at a time. Without your help today future generations will lose the public land and water legacy you inherited.

Save a stamp! Go to www.plwa.org and click on the DONATE button. It only takes seconds and is a secure payment.

Your renewal is vital because you are our main source of funds. In access battles the deep pockets are always on the other side. We are an all-volunteer organization. Our only expenses are legal fees and other mission focused costs. Except for an occasional lunch, all directors are responsible for their own expenses. Few non-profit organizations can match our low overhead ratio to donations received.

'HOUR GLASSES', PARKING & SAFETY – ACCESS FOES CONJURE UP NEW BOGEYMAN AT PUBLIC BRIDGE CROSSINGS OVER STREAMS

By John Gibson

PLAAI is in a lawsuit to force Madison County to enforce state laws allowing public access to public streams where public roads cross those streams via bridges. A recent article in the Billings Gazette has quotes from the attorney representing the landowner on the Ruby River suggesting that the case is about safety and fences at bridges.

Actually our fight is about a lot more than that and always has been. Those fences at bridges on the Ruby were electric when this lawsuit started. It was obvious to everyone that they were intended to keep people from accessing the river going up or down stream.

They still are.

PLAAI has never challenged the power of county commissioners to control parking along roadways in the interest of safety. Parking on the public right-of-way is, however, the duty of the county commissioners and not nearby private landowners.

Another landowner contention is that roads on prescriptive easements “Hour Glass” at bridges. That is,

the width of the road right-of-way narrows to the width of the bridge when crossing a stream. The intent by lawyers representing landowners was to argue that there was not an intersection between the road easement and the stream easement. If there is no intersection there is no way the public can reach the stream without trespassing on private property. I have never seen a legal reference to this hour-glass easement even though there is one reference to right of way width being different at bridges. Not narrower or wider but ‘different.’

The people of Montana cannot settle for bridge access legislation that makes exceptions for public roads with different origins that must be settled by the courts. Regardless of whether the road is a county road or public highway, stream access must be available to the public.

Many Montana roads have become public highways as a result of the state Curative Statute. It calls all roads used or maintained by the public “Public Highways”. This is the criteria we need shoot for with legislation.

BE A 10-BUCK BUDDY – HOW A SMALL DONATION MAKES PLAAI GROW STRONG

Closed public roads and other lost-access challenges are coming faster than PLAAI can handle them. Much of our work is done by volunteers, but volunteers usually need legal or professional back up when facing up to the people who try to take away our rights to enjoy public lands and waters. Such assistance requires a lot of money. Sometimes the help needed is just an opinion from a surveyor. Sometimes, however, the fight becomes a full blown lawsuit going all the way to the Supreme Court. Access battles all take funds – particularly if litigation is required. Because PLAAI is a volunteer organization our overhead costs are very low. But our fight budget is never full. PLAAI needs your donation and we need

new members - a broad base of support keeps PLAAI vital and connected.

Send a contribution for whatever you can afford and include a list of friends you think would be good members.

WE WILL ADD ONE OF YOUR FRIENDS FROM YOUR LAST AS A MEMBER FOR EVERY 10 BUCKS YOU DONATE ABOVE THE \$20 BASIC MEMBERSHIP FEE. There is a very good chance they will become a long-term member, and we all win by strengthening our organization and effort.

How Access Activism Pays off

CIRCLE R RANCH PURCHASE WILL ADD THOUSANDS OF PUBLIC ACCESS ACRES

Purchase by FWP of the nearly 4,000-acre Circle R Ranch east of Billings passed its last regulatory hurdle recently when the State Land Board approved the deal. The FWP Commission had previously endorsed the agreement between FWP and the Conservation Trust to spend \$5.3 million of Habitat Montana and Access Montana money to buy the land.

The ranch sits along the north bank of the Yellowstone River, 30 miles east of Billings and 2½ miles west of Pompey's Pillar National Monument. Public ownership will open access to more than 9,000 acres of previously closed public land in addition to the private land being bought.

"Access to the 7 1/2 sections just West of the Circle R has been a major focus of PLAAI for many years. The "Old Bozeman Trail" road from the East had been long locked up by previous owners. Our thanks go out to the FWP staff for this outstanding effort," said PLAAI President John Gibson.

PLAAI Billings Activist Mike Whittington added: "The lobbying and support from many of us individually and the MWF, PLAAI, Billings Rod and Gun and Magic City Fly Fishers no doubt helped greatly in getting this accomplished."

Under the proposal, The Conservation Fund will purchase the property from the current owners this month. FWP will

purchase the land from the fund and assume management responsibilities later.

FWP would purchase the ranch for \$5,298,300, which is \$267,000 less than its appraised value and nearly \$1 million less than the \$6.25 million listed price. The money would come from a combination of sources, including FWP's Habitat Montana program and the Governor's Access Montana Initiative.

Habitat Montana is funded exclusively by hunting license fees.

In addition to the access routes being opened up, the ranch includes 3,976 deeded acres, 621 acres of leased State School Trust land managed by the Montana Department of Natural Resources and Conservation and 69 acres of federal Bureau of Land Management land.

Public ownership of the land would provide access to an additional 4,760 acres of school trust and BLM land that is reached only by boat from the Yellowstone River.

The ranch has about five miles of river frontage and includes river bottoms, sagebrush grasslands and ponderosa pine forests that provide habitat for numerous wildlife species.

16-MILE CREEK ACCESS GETS \$250,000 BOOST THANKS TO LOCAL LEADERS

Public access to one of Montana's premier scenic streams moved a giant step forward recently when the Joint Board of the Montana Fish and Wildlife Conservation Trust granted \$250,000 in funding to buy a parcel of old railroad bed along the creek.

With the leadership of Steve Johnson and John Leeper, two PLAAI members in the area, PLAAI has been active in advocating for the purchase.

Steve Johnson of Big Sky, commented after the decision was announced: "Thanks to your (PLAAI) efforts, over 25 letters of support were received, and none in opposition. Our proposal was granted the largest single award, and described very positively in the discussion. It is clear that with your help the Joint Board was convinced that this truly is a special area of Montana worthy of this investment to preserve it for the future.

"Now the next step will be to fully engage Montana FWP to move forward with an appraisal and negotiation with the seller to come to terms on the acquisition of this property. We have two years in which to do that, and will hope to move forward quickly.

Many thanks again for your willingness to get in the mix on this, and back it with your personal efforts. You are what makes conservation initiatives happen here in Montana, and we're all the richer for it."

Sixteen-Mile Creek is one of the more historically important areas in Montana. Its name derives from the fact that it enters the Missouri River 16 miles from its origin at Three Forks. Without the proposed purchase virtually no public access exists to this magnificent area of Montana.

The rail bed of the original Montana Railroad ran through this creek canyon, which includes some really outstanding scenery. The Milwaukee Road abandoned this line in 1980 and the ownership of the right of way was sadly allowed by the state to revert to adjacent landowners.

The land parcel proposed for purchase is on the eastern edge of this area. It comprises five miles of the rail bed. This parcel links to an otherwise isolated section of state land creating public access to that 640 acres as well, which also adds another mile of fishing along Sixteen Mile Creek. The rail bed is in decent shape and will allow hiking, biking, riding, and fishing.

The local access leaders "have worked tirelessly to plead the case for the purchase of this property in conjunction with a developing of a trail system linking many parts of Montana," said Dennis Grundman, PLAAI Director. "They have obtained partial success. The Montana Fish and Wildlife Conservation Trust funds will pay for approximately half the cost of the acquisition. We are all confident the balance of the purchase will become available now."

MEMBERSHIP TIPS

If you have a question on your renewal date E-Mail us at membership@plaa.org.

If you choose to mail an additional donation, please express your intent on the envelope.

Get straight answers from candidates who want to represent you in the 2009 State Legislature

The single most important person in Montana who has the power to improve public access to public lands and waters is the State Senator and Representative who represent you in the Montana State Legislature.

The laws they either pass or defeat will make future access efforts easy or impossible.

PLAAI will propose new laws that will help improve public access. We will oppose new laws that close or restrict public access. Know where your candidate stands.

The 2007 Legislature killed a good bill that would have resolved the conflicts over public access at bridge crossings (Senate Bill 78). If your candidate is an

incumbent asked how they voted when the effort was made to blast this bill out of a hostile committee for a floor debate in the House of Representatives.

To help you in this important conversation PLAAI has developed a list of questions you should ask the candidate who is asking for your vote. (the questions are listed on our website: www.plwa.org)

Most important of all, when you vote on election day, vote for the pro-access candidate and don't vote for the candidate who talks a great story but who voted against access when the roll was called in the Legislature.

In-Your-Face Road Closures

LOCKED GATES REVEAL INJUSTICE IN MONTANA STATE LAW

Prairie County commissioners are in a quandary about what to do after a landowner recently erected a gate, installed a cattle guard and posted a sign across a road that leads to a popular scenic overlook north of the town of Terry.

Locked gates across roads used for decades by the public are increasingly common everywhere in Montana.

"We don't want to tread on any private-property rights," said County Commissioner Bill Leach to a Billings Gazette Reporter. "But having public access to public lands is pretty important to these little communities' survival. That's one of the reasons people live out in this part of the state, to have a little elbow room."

This Prairie County road closure and another of a road leading west off of the same highway have had the attention of PLAAI for some time. Inability to stop road closures until ownership of the right-of-way is proved points out a very significant problem with the way Montana state laws give adjacent landowners freedom to lock gates across roads without government approval. The current state laws also put the burden of defending the public access right of way on individual citizens when local government refuses to act.

The Public Land / Water Access Assn is the only public interest group in Montana actively fighting such road closures. Because of the imbalance in current state law, PLAAI spends virtually its entire budget on legal battles to break the locks on closed public roads.

Montana counties do not have the money, legal resources, or political will to stop unlawful road closures. Recent opinion polls and recurring letters to the editor make clear that the people want unjustified road closures to stop. They don't want to put up with it any more. But state laws and county commissioners often let the public down.

County attorneys in small counties do not have the time or resources to pursue the civil law violations associated with the closures. (Also keep in mind they are elected officials, and the rural ag interests are politically very powerful.) Organizations such as PLAAI do not have the time or budget to pursue more than a handful of locked-gate cases.

So the closed of roads behind locked gates continues.

PLAAI believes the state has an obligation to step in to these cases to see that the public interest is protected. This current injustice cannot continue. Too much is at stake.