



January 26, 2021

sent via email

Kathryn McEnery
Powell County Attorney
409 Missouri Ave. Suite 301
Deer Lodge, MT 59722

Subject: Blocked Public Access on Jake Creek Rd.

Dear Ms. McEnery:

This letter is in response to your letter (copy attached) dated 10-22-2020 to Bernard Lea, President of the Public Land/Water Access Association (PLWA) regarding Jake Creek Rd (aka Old Stage or Stagecoach Road). In that letter, you asked that I provide you with results of my access research on this road and the names of those with whom I consulted in conducting my research. This letter provides the requested information.

Results of Research

As communicated in PLWA's 9-28-2020 letter (copy attached) to the Powell County Commission about blocked public access on Jake Creek Rd, my research indicates "that ample factual documentation exists that the road in question is a county road that has never been abandoned and that the public usage of the road is obstructed by locked, private gates occurring on the southwest (Deer Lodge) and northeast (Avon) ends of the road."¹ Following is a list of the documentation I found that led to this conclusion:

- *Powell County Attorney Legal Opinion 2010-01*, prepared by Lewis K. Smith, Powell County Attorney, dated June 16, 2010 (copy attached). This document provides the county records reference to the Commission's action declaring The Road a county road in 1907.

¹I have subsequently learned that, in the addition to the two gates identified in PLWA's 9-28-2020 letter, there is a third gate also blocking the county road on the Avon side (SE Corner of NE ¼ of Section 34, R8W, T10). This third gate is about ¼ mile SE of the previously identified locked gate on the north side.

- *Powell County Attorney Legal Opinion 2015-1 Amending 2010-1*, prepared by Lewis K. Smith in September 2015 (copy attached). The copy I had of this legal opinion was not signed so I do not know if it was finalized. Mr. Smith did not return my phone call to him requesting more information about this legal opinion and other case history. This opinion references a map (copy attached) produced by Powell County's GIS Technician that provides an overlay of the current and various road locations referred to in this legal opinion. Deer Lodge PLWA members Conn Coughlin and Ed Scharf have seen large versions of this GIS map and other maps of Jake Creek Road in the county planner's office but I have not yet requested road information from the county road or planning offices.
- *Spotted Dog Wildlife Management Area Habitat Plan*, dated March 2018, prepared by the Spotted Dog Work Group and Montana Fish, Wildlife and Parks (FWP).² There are several sections of this document that discuss Jake Creek Road. I did not review this document in its entirety, instead focusing on sections specific to access and travel management, including the public comments in Appendix H specific to the Jake Creek Road. Appendix A, Report of the Access, Travel, and Recreation Management Subcommittee of the Spotted Dog Working Group compiled by Bill Pierce (p.61; copy attached) references a 3-13-2016 letter to the Powell County Commission with comments regarding the opening of the Old Stage Road. I was not able to get a copy of that letter through contacts at FWP and the Working Group, thus I would appreciate getting a copy of it through Powell County. If you are unable to provide this letter, please forward my request to whomever at the County can assist in this matter.
- A research summary document prepared by the FWP as part of the due diligence associated with the State's 2010 acquisition of the Spotted Dog WMA (copy attached). This document references a June 2010 letter from Powell County to FWP about Jake Creek Road that I have not viewed. I would appreciate a copy of that letter.
- *FWP's Final Decision Notice for the Draft Environmental Assessment of the Proposed Spotted Dog WMA Acquisition*, dated August 2, 2010.³ This document addresses the issue of the public status and use of the Jake Creek/Old Stagecoach Road in several locations. Attached is a copy of some pertinent excerpts of the public comment response section of this document (pp. 33, 34, 38 see highlighted text). These excerpts, as well as other parts of the document, note the public status of the road, the intended re-opening of this public road for public travel, and "some misunderstanding" about the specific route of the county road access across some private property.

² This document is available under "Additional Files" on FWP's Spotted Dog WMA's website: (<https://myfwp.mt.gov/fwpPub/landsMgmt/siteDetail.action?lmsId=39754722>)

³ (https://leg.mt.gov/content/Publications/MEPA/2010/fwp0802_2010001.pdf)

The above list constitutes the documents I relied on most in my research that provided information specific to Jake Creek Road. I have not listed the more general-type documents/information I reviewed. While I recognize that the research I conducted was limited, the type and relative importance of the factual information I found and the consistency of that information led me to conclude that sufficient evidence exists verifying that Jake Creek Road is a county road. Further, I learned that while the public status of Jake Creek Road does not seem to be refuted by the County and land management agencies, the historical variation in the road's location has generated much indecision related to re-opening of the Road.

Information Sources

Deer Lodge PLWA members Ed Scharf and Conn Coughlin have provided me with background information on public access closures on Jake Creek Rd, primarily through phone calls and a Sept. 21, 2020 meeting/road reconnaissance road viewing.

In August 2020, I spoke via phone with two members of the Spotted Dog Working Group, John Hollenback (Chair) and Bill Pierce, who summarized their knowledge of and the Working Group's discussions/positions relative to Jake Creek Rd. issues.

I have communicated by phone or email with several FWP employees who are currently involved with managing Spotted Dog WMA or were involved with the acquisition of the WMA: Mike Thompson, Bill Schenk, Randy Arnold, and Ray Vinkey (past FWP wildlife biologist).

I also asked Doug Martin with the Department of Justice Natural Resource Damage Program (NRDP) about his knowledge of the Jake Creek Rd access problems. I worked for the NRDP from 2000 to 2014 and managed the grants program that funded the Spotted Dog WMA acquisition in 2010.

Follow-up Meeting Request

Your letter indicates Powell County's willingness to meet about the Jake Creek Road issue, if I wished to coordinate the meeting. I will contact the Chairman of the Commission to discuss that or other next step options for obtaining more specifics from the County regarding its plan and timeframe for re-opening the Jake Creek Road.

We look forward to working with Powell County to resolve the public access issues related to the Jake Creek Road. PLWA has decades of experience working on many public access issues in numerous Montana counties. Opening the Hughes Creek Road in Ravalli County to access the Bitterroot National Forest is a recent example.⁴ We

⁴ https://mtstandard.com/news/state-and-regional/ravalli-county-removes-controversial-gate-on-hughes-creek-road/article_7396016c-7628-54f0-a4a3-ce826f0d08f3.html

hope this issue can be resolved timely and amicably based on the facts and relevant history.

Sincerely,



Carol Fox
PLWA Board

cc:

PLWA: Bernard Lea – President, Drewry Hanes – Executive Director, and PLWA members Ed Scharf and Conn Coughlin

Powell County: Commissioners, Planning Department/Planning Board – John Hollenback and Bill Pierce

MT FWP: Randy Arnold, Bill Schenk, and Mike Thompson

MT DNRC: Brian Robbins

WWW.PLWA.ORG

 @publiclandwateraccess

 @plwamt

2100 FAIRWAY DR., #211
BOZEMAN, MT 59715

406-690-0960
PLWA@PLWA.ORG