



PLWA

Published by the Public Land / Water Access Association

The **KEY**

Unlocking access to public lands & waters

Fall 2018

Issue 25

Where the Rubber Meets the Road

In court for public lands

by Don Thomas

I have lived in Lewistown off and on for 40 years, and I'm no stranger to the Fergus County Courthouse. Most of those visits involved nothing more than truck titles or voter registration, but I've also spent time in the courtroom itself—as an expert witness in medical cases, or just to be there for a friend or two who made bad choices. This time was different. I was there as a witness—albeit an unofficial one—for public lands.

Non-attorneys like me who rarely visit courtrooms feel a sense of gravitas whenever they enter one that evokes the performances of Jimmy Stewart in *Anatomy of a Murder* or Henry Fonda in *Twelve Angry Men*. No matter how certain you are that the figure wearing the robe is just a human like the rest of us—in this case, Judge Brenda Gilbert of Livingston—that all ends when the bailiff says, "All rise!" This is the seat of our society's legal authority.

The case in question involved the public's right to use the Mabee Road north of Roy to access some 10,000 acres of public land in the Missouri River breaks, as both local residents and visitors have done for a century. PLWA contends that the road is public throughout its length. Outfitter Mark Robbins claims it isn't, at least for the fraction of a mile of road that

crosses his private land. Since purchasing the parcel the road crosses, Robbins has claimed exclusive access to a huge tract of the country's best elk hunting for his clients, even though the land—and the elk, for that matter—belong to all of us.

That's the case in a nutshell, and I'll leave it to others to describe the legal details. Here, I simply want to convey to other PLWA members what it *feels* like to watch one of these conflicts play out

Thank You Mabee Road Donors

The Mabee Road Trial, held on September 10 – 14, 2018 in Lewistown, Montana, was completed on schedule. Our attorney's, Troy Redmon, Paul Grigsby and Keeley McKay presented the evidence gathered in a very precise and deliberate manner. The Judge who administered the trial was Brenda Gilbert and in my opinion she conducted the trial in a fair and efficient manner.

The reason for this note is to thank those of you who responded to our request for funds to help finance the additional costs associated with this trial. The contributions from our very dedicated membership were beyond our expectations! The leadership of PLWA recognizes we, PLWA, are on the right side of the access to public lands and water issue because of the number of members that generously responded to our request.

Thank you all for your support,
Bernard W. Lea, President

in court as a matter of last resort. (PLWA, the plaintiff, does not initiate legal action until all attempts at reasoned negotiation have failed.)

The hearing lasted for a week in September, and I wasn't there for all of it. (Hunting season had just begun, after all.) PLWA stalwart Bernie Lea was, and whenever I saw him he looked like Patton trying to decide how best to take a hill from the enemy. I did see the PLWA legal team work competently to establish the criteria for an unperfected prescriptive easement—that the public's use of the road had been open, notorious, exclusive, adverse, and continuous. (Some of those terms don't mean quite what they sound like they mean, which is why we have lawyers.) They left me convinced, although I can't claim to be an unbiased observer. I also found the opposing counsel largely ineffective.

The room was moderately full, since the state, the county, and other landowners along the road were of necessity named in the suit. The ranchers, some of whom were old friends I hadn't seen in years, sat together looking glum and uncomfortable. The young legal teams from the government entities, in contrast, appeared animated and engaged. I regretted the appearance of a partisan divide similar to the one that has affected the country as a whole.

The trial ended without theatrics. There was no "Aha!" moment. No one expects a decision until the end of the year. My final impression was that a tremendous amount of money and effort that could have been put to better use had been expended addressing a problem that arose solely because of one individual's selfishness and eagerness to exploit public resources for private gain.

But those were the cards we had been dealt, and I left the court thankful that PLWA had done it's best to correct a grievous wrong.

Executive Director's Notes

by Paul Burdett

Mabee Road

The big event of the past month was obviously the Mabee road trial. I can personally attest that it went well. No guarantees that we will succeed, which is always true of litigation, but I believe that our attorneys put on a great case. Our witnesses were convincing that the road is public. We will not know the result until proposed orders are submitted by both parties and the judge issues an order. This will likely take several months.

Hughes Creek and the Crazy Mountains

Other issues include our work to open up Hughes Creek Rd. in Ravalli county and the access issues on east side of the Crazy mountains. The recent meeting of the Ravalli county commissioners revealed that the landowners are pursuing a second appeal before the Montana Supreme Court. The commissioners decided to delay taking the gate down until a decision is reached in this second appeal. The prudent course for PLWA is to wait until the second appeal, then if the decision stands, make sure the commissioners act promptly to get that gate down. It has been there far too long.

With regard to the Crazies, we are still gathering evidence from the national archives. When our research is complete we will contact the Forest Service to discuss their position. We will then determine our next course of action.

Events

We have several community events coming up. In addition to our "Community Monday" event at Blackfoot River Brewing in Helena on October 29. Thirsty Street in Billings has agreed to give PLWA \$1 from every drink sold between 5:00pm and 11:00pm on October 15. Please come to one or both events and invite your friends!

A New Sheriff in Town

More on the Mabee Road

by George Bauer

There was a parade in Lewistown the other day. But it wasn't down Main Street - it was to the witness stand in the 10th Judicial District Court. The parade featured Montanans testifying on day one of the long-awaited trial on the public's right to again travel the Old Missouri River Trail - known today as the Mabee Road. This historic trail runs north out of Roy and crosses Armells Creek to meet the Knox Ridge Road with recorded travel back to when riverboats were making the run from St Louis to Fort Benton, some 150 years ago.

On the witness stand, a dozen hunters, wood gatherers, and locals just out for a drive all told a similar story. For decades they openly used the Mabee Road with the understanding that it was a public road. Several witnesses related how a rancher whose property straddled the road told them how they needed permission to hunt his land but not to travel the road "because it's public."

All that changed in September 2007 when Mark Robbins, who owns and operates Armells Creek Outfitters, acquired that piece of land where the owner had told everybody the road was public. Robbins introduced himself to hunters camped nearby with "There's a new sheriff in town," padlocked the gate and posted NO TRESPASSING signs.

Not to be deterred, the hunters asked around about the closure in Lewistown, talking with the county sheriff, the BLM, the Montana Fish and Game and the feds from the CMR Preserve. All of them told them what had been understood for years – that the Mabee Road was a public road. When the hunters later

returned and walked up the road past the locked gate, Robbins called the law on them and they were issued a trespassing citation. The case was later dismissed without prejudice. Had there been enough evidence they would surely have been prosecuted and convicted.

Robbins has kept the gate locked for 11 years now and is a co-defendant in a lawsuit filed by PLWA in 2012 asking the court for an opinion on whether Robbins can privatize the road. An opinion can be expected some time after the turn of the year.

Ref: PLWA v. Robbins et al. DV-2012-85,
Montana 10th Judicial District Court, Lewistown

PLWA Secretary JW Westman Steps Down

by Bernard Lea

JW Westman, current board member and secretary has resigned as both secretary and board member. I had a long telephone conversation with JW relating to his resignation.

He made this move for all the right reasons. He is involved in other sportsman groups and in union issues with his employment. And not least, but the most important, he needs more family time. Just as John Gibson gave up the presidency to take care of his wife Carol prior to her passing, these decisions are necessary and respected.

JW has served several years in the secretary's position, and has re-arranged his schedule many times to accommodate a PLWA meeting. I have complete confidence he will continue to support our cause and will someday be back.

We will call a board meeting to elect someone to serve out the remainder of JW's term..

The KEY published by
The Public Land/Water Access Association
(PLWA)
P.O. Box 80987
Billings, MT 59108
www.PLWA.org

NON-PROFIT ORG
US POSTAGE
PAID
BILLINGS MT
PERMIT NO. 88

The KEY is published by the
**Public Land/Water
Access Association**
www.PLWA.org

Contact PLWA:

Phone: 406-690-4623
Email: membership@plwa.org
Mail: PLWA
P.O. Box 80987
Billings, MT 59108

President: Bernard Lea
Vice President: John Gibson
Secretary: JW Westman
Treasurer: Ray Pearson



PLWA