



PLWA

The *KEY*

Unlocking access to public lands & waters

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Tony Schoonen Father of Montana Stream Access Passes On at Age 89



Photo courtesy of Roy Moore

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Tony was a hero to me for twenty years before I met him. He and his buddies shaped the Montana outdoor culture we enjoy today. All recreationists owe him a debt of gratitude on behalf of themselves, their children, their grandchildren and generations to come. I was honored to call him my friend. - Ray Pearson

A Vigil Service will be held at 5PM on March 27, 2020 followed by a Celebration of Life on Saturday, March 28, 11AM at Holy Spirit Catholic Church with a reception at the Maroon Activity Center in Butte immediately afterward.

TONY SCHOONEN TRUE BELIEVER!

by Bernard Lea

Tony was the true believer in access to public lands and water and refused to compromise on public access rights.

My first experience with Tony was when I was working on the Lewis & Clark National Forest. The Gallatin and Lewis and Clark Forests were involved with a land exchange on the north end of the Crazy Mountains with the Galt Family. The National Forest lands included in the exchange were on both forests. The exchange was in progress when I became involved in 1985. Several meetings had already taken place and some resolution had been agreed to by the Galts and the Forest Service. They were in the process of meeting with Public Land/Water Association (PLWA) to obtain their agreement to the exchange. At these meetings, the proposal agreed to by the Forest Service and Galts was presented to members of PLWA. Tony Schoonen was PLWA's spokesman.

The proposal generally included some modification, an access eliminated or some land not included, etc.

Tony wouldn't give an inch!! He would not agree to give up access to public lands. After several meetings with no agreement from PLWA, we were at a stand-off. About this time we got word from Washington that the Forest Service would buy the 36,000 acres of Galt property included in the exchange.

I happen to believe this purchase came about because of Tony's continuing message that there would be no compromise. He was right. The purchase turned out to be the best answer to these access issues.

After I retired and became more involved with PLWA, I began to understand where Tony was coming from. He was very involved in the issues of access to even expressing his un-compromising attitude in court proceedings while testifying on the stand.

Thankfully Tony's "True Believer" attitude has contributed to PLWA's success!

MABEE ROAD APPEAL ANNOUNCEMENT AND OTHER NEWS:

by Paul Burdett - Executive Director

A lot has happened since our last issue of The Key, so we have a lot to catch up on. Several reasons for this: first, we recently completed changing and updating our internal membership database and communications software. While this has been a time-intensive development, once finished the new software should help us better keep in touch with our membership and steward our limited resources. Second, we have been somewhat limited in what we could say publicly about the Mabee road due to still being involved in active litigation. Cases like this can take a long time (our litigation over the Boadle road and Ruby River bridges each took over a decade), so thanks to all of you for your patience. As you will see, we can now bring everyone up to speed on recent developments.

Mabee Road

Our biggest news involves the Mabee Road, which you can read more about on our website and in the featured articles by Don Thomas and Marshall Swearingen in this issue. If you haven't already heard, the district court ruled against PLWA, holding that the disputed section of the Mabee Road is private. To make matters worse, the court then requested briefing on whether or not PLWA should be required to pay for the landowners' attorneys' fees. Thankfully, we avoided a fees sanction, but a final appealable order was not issued until recently. The issue of fees was pending, which is why we're only talking about the result now.

The court ruled that the Mabee Road "abruptly ends" prior to reaching public lands beyond (you can find a link to the order on our website: <https://plwa.org/mabee-road-update-public-access-suffers-loss-in-central-montana/>). The decision gave little or no weight to much of our historical evidence and, we believe, represents a major blow to public access in the region. In spite of PLWA's maps, survey evidence, and the testimony from public land users, the court decided that "the disputed trail existing on the private lands of the defendant ranchers is a private trail subject to the ownership and control of the respective landowners through which it passes." As a result, the locked gate will continue to prevent access along the Mabee Road to the Upper Missouri River Breaks

National Monument and the Charles M. Russell National Wildlife Refuge—creating significant access difficulties to some of the best deer and elk hunting in the state. PLWA disagrees with the decision and we intend to appeal the district court's decision to the Montana Supreme Court. Of course, we will need financial support from our membership to do so. Unless we are successful, the landowners will be able to block access along the Mabee road forever. During the fees briefing, PLWA revealed that our litigation costs often exceed our monthly income (a fact that we are only able to work around due to the patience of our attorneys). This fact underscores how difficult it for any nonprofit to do the work that PLWA does. There is a reason that so few nonprofits are able to litigate disputed public access to public land. While we avoided a fee award this time, such an award could pose a significant threat to PLWA's financial ability to continue its important work. I believe that Montana needs PLWA to stand up against the threat of illegal privatization. We need your support to make this possible. Please consider a donation to help us appeal the Mabee Road decision to the Montana Supreme Court. We need to keep up our efforts to reopen this access to this beautiful place.

First Gulch

Now for some good news. After several years of work by PLWA president Bernard Lea and long-time PLWA member and former director Rod Bullis, I have the great pleasure announcing that the Forest Service has completed a new road and trailhead into First Gulch, near Lincoln, Montana. This access will help remedy the loss of access along Bartlett Creek in years prior. I personally field reviewed the First Gulch Road access this summer, accompanied by Rod Bullis. We discovered a locked gate installed across the newly extended road. After a PLWA letter to the Lincoln Ranger District, the gate has since been taken down. This new access point restores the public's ability to practically and conveniently access a significant chunk of amazing public land between MT Highway 200 and the Scapegoat wilderness. It is a big win. PLWA gives a hearty thank you to the Forest Service and to our membership for their work and support in making this happen.

Hughes Creek

Early on in my tenure with PLWA, we celebrated a victory before the Montana Supreme Court regarding

a gate near Hughes Creek in Ravalli County that has blocked public access for more than 40 years. As it turns out, our celebration was premature: the landowners had a second case pending that we did not know about. That second appeal took a while to work its way through the system until this summer, when the Montana Supreme Court once again affirmed the Commissioners' ruling that the Hughes Creek road is public. The Ravalli County Commission has stated that the gate needed to be removed after the Montana Supreme Court denied the landowners' second appeal. A commissioner later publicly confirmed that the gate will come down: (https://ravallirepublic.com/news/local/article_9f4f69ae-d6bb-5d73-833c-15f599ab5e67.html).

After losing the second appeal, one of the landowners reached out to Ammon Bundy for help. You may have seen the subsequent blog post referenced in the news: (https://ravallirepublic.com/news/local/article_93213542-43c7-5012-b577-0eeaa10d98ff.html). Of course, the decision that the road is public has already been upheld in court twice. The facts of the matter remain the same as they were at the outset: Hughes Creek road was accepted as a statutorily created public highway in 1900 following submission of a valid petition for creation of the road. The public road stretches from the old Alta Post Office for approximately 12 miles to where the road now ends at the seat of the former Wood Placer Mining Company's placer claims—far beyond the location of the illegal gate. Under Montana law, the Ravalli County Commissioners have no authority to abandon or vacate the public road even if they wanted to.

Our friend over at Ravalli County Fish & wildlife, Jim Olsen, recently drove out to Hughes Creek and found that the gate is still up. This dispute cannot continue indefinitely. This matter has been settled before the Commissioners and in court, twice. The Commissioners cannot continue to delay. It is time that the Commissioners act on the correct decision they made years ago and finally resolve the matter by ensuring that the infringing gate is taken down. PLWA will continue to monitor the situation and push the commissioners to act.

Big Elk Canyon

The U.S. Forest Service and rancher Mac White have signed an access agreement to offer the public access into the eastern side of the Crazy Mountains up Big Elk canyon. For years, Mac White sought

motorized access across forest service land to some of his other property in the region. Mr. White lost a lawsuit seeking such access in 2008. Now, he has finally agreed to a reciprocal public access that will allow the public to access public lands through his property in exchange for the access he initially requested. During the negotiations, PLWA offered comments to the Forest Service regarding the scope of the access and kept close watch over the deal as it developed. While the negotiations could have been more transparent, PLWA commends forester Bill Avey for his efforts in negotiating the deal on behalf of the public. The new access should be of interest to hunters, hikers, mountain bikers, backcountry horsemen and others. Keep an eye out for an announcement that the new trailhead on Big Elk Road is opened sometime before next fall.

Conclusion

I can't go without thanking the fine folks over at Meateater for supporting PLWA through all of the above with the proceeds from their infamous (and hilarious) "Smell Us Now" t-shirt. The full story behind the shirt is available in a video on the Meateater website, so go check out <https://store.themeateater.com/products/smell-us-now-lady-t-shirt>. While you're there, you might as well poke around and learn more about the other great media they produce.



I also want to thank the Trailhead in Missoula for its steadfast support for PLWA. They recently picked up a bunch of PLWA shirts to help support us—now available in the Trailhead's Missoula stores. Once they sell out, that's it, so get one while you can! Another hearty thanks is due to the folks that put on the Last Best Outdoors Fest in Missoula on September 4, 2019. It was a great event where I spoke with so many like-minded people about the importance of protecting our access to public lands. Finally, if you have the chance, check out the fall edition of Outside Bozeman. They included a great article about PLWA. It's a good read and a nice primer on a bit of Montana's public lands history. Enjoy the rest of our newsletter!



Thoughts on Access

by Marshall Swearingen

I hear it more and more, enough that it seems it could someday be an old-time saying: It's a lot easier to lock a gate on a public route than it is to get the lock off.

I think PLWA members, more than most, have a sense of that. But without seeing the work that PLWA does behind the scenes, many of us might not understand the full significance.

I got a glimpse of that work in 2015, when I joined Bernard Lea as he researched the history of the Mabee Road in the Fergus County Courthouse in Lewistown. I was a journalist interested in public lands access, and I wanted to see PLWA in action. Bernard said he wouldn't mind a bit of help combing the century-old survey records and hand-written commissioners' journals. As I found out, it's a lot of effort just handling these tomes — some make an encyclopedia look like a pocket copy of *Beyond Fair Chase*.

Not long after that May day, I became a PLWA member. I liked how determined Bernard was in gathering the evidence on the Mabee case. And I'd begun to realize there's basically no other group doing this work. It's work that the official custodians of the public estate — the Forest Service and BLM — increasingly struggle with in an era of dwindling budgets and political pushback.

While it's disappointing that PLWA didn't clinch a victory in the first round of court challenges to the Mabee Road closure, I don't view it as a defeat. For starters, the case isn't over yet — there's the pending appeal. And if a higher court upholds the road closure, there's value in knowing that PLWA dredged to the bottom of the facts and that our state's laws were applied to those facts.

In other words, barring a land swap or other move that only the agencies can make, if PLWA couldn't keep the route open then probably nothing could. That's as good a reason as any to keep up the fight.

If you would like to opt out of the paper version of the Key in lieu of a digital version, please send an email to membership@plwa.org.

You Can't Win Them All

by Don Thomas

Last September, I spent a couple of perfectly good hunting days in the Fergus County courthouse listening to the climax to a saga that began in 2007, when a local outfitter purchased a tract between the little town of Roy and a vast parcel of public land in the Missouri River Breaks. A segment of road that the public had used for decades ran across the property. The outfitter soon closed the road, effectively reserving the public land beyond for his high-dollar clients. Thus, the now infamous Mabee Road case was born. Most PLWA members are familiar with the details.

In late July 2019, nearly a year later, Judge Brenda Gilbert issued her opinion, which, if nothing else, proves just how slowly the wheels of justice grind. That opinion is not good news for PLWA members, hunters and other outdoor recreationists, legal precedent, and just about anyone else other than the defendants in the complaint and their anti-public land allies.

The decision was as surprising as it was disappointing. I left the courthouse last year feeling confident that PLWA and its legal team had made compelling arguments that Mabee Road met the requirements of an unperfected prescriptive easement all the way to the Breaks, which would have allowed the public to continue using it as had been the case since the homestead days. The judge did not agree, and unfortunately hers is the opinion that counts.

That opinion is lengthy and no more entertaining to read than most legal documents. Interested parties are best advised to review it for themselves. If nothing else, doing so will educate you about the legal process and inform you of what PLWA and other access advocates may come up against in the future.

Over the years, PLWA has enjoyed a long string of successes in similar matters, made all the more remarkable by the David vs. Goliath nature most of these cases represented in terms of resources and money. What happens next with Mabee Road? I don't know. But I do know that PLWA members and supporters should not let one courtroom defeat make us succumb to pessimism and discouragement. No one can win them all, and there is still much work to be done.

PREZ SAYS

by Bernard Lea

I have very little to add to the articles included in this newsletter. Marshall and Don have covered issues we are involved in at the present very well. Our Executive Director put together a very complete analysis of the situations we are presently involved in.

For those of you that don't know, my wife Marvis and I made a big change last summer. We moved to Utah to be near our son and his family. Our two children, Brenda, who lives in Washington near Seattle and Brian who lives in Utah near Salt Lake City, decided we needed to be near one of them to keep watch over us. Marvis and I just turned 82 years old so there was some justification for their decision. I like to tell people when Brenda and Brian decided we needed to move, they flipped a coin and Brian lost. A joke. We have a home 30 miles west of Salt Lake City, Tooele. We are finally getting settled and it was a good decision to move.

I am still the president of PLWA. We can have board meetings by telephone, which we did while everyone was in Montana. I will continue until the next Annual meeting in April and decisions will be made on how to proceed from there.

PLWA is in a good position to continue our endeavors keeping access to public lands and waters. The court cases cost money and we have been able to keep our heads above water financially by receiving contributions from our very dedicated and loyal members. You recently received a dues notice and your support with your dues and any additional monies you can donate, is greatly appreciated.

I would like to take this opportunity to thank the PLWA board members who continue to share their free time to provide support for our cause.

A special thanks to our Executive Director, Paul Burdett for his expertise and commitment to PLWA. He has kept on the right path.

Thanks to our members and volunteers who are keeping on the right track.

And remember what Texas Bix Bender says, "If you get to thinkin you're a person of some influence, try orderin' somebody else's dog around".

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