



PLWA

The **KEY**

Unlocking access to public lands & waters

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Presidents Message

The proper management of public resources is often not well understood or practiced. Politicians in particular often violate the mandates associated with managing resources that belong to everyone.

The cornerstone necessary for managing resources that belong to the public is to maintain a system that provides equal opportunity for all citizens.

That is the reason why there should never be programs that give away a portion of those opportunities or “pieces of the action” to service businesses. Examples of these giveaways are the Outfitter Sponsored Hunting Licenses and the allocation of a percentage of river floats on restricted rivers to commercial interests.

Almost without exception these “pieces of action” become sought- after and then, very soon, are for sale to the highest bidder. The primary reason for this is because the would- be participant can use money to participate and circumvent some fair and equitable system such as a random draw.

There will always be those who claim that these services provide a necessary service and deserve special treatment . There may be some truth to that idea but the allocation process must remain clean and recruitment of clients by commercial interests must take place **AFTER** a fair and impartial system has allocated winners and losers.

**Billings Area PLWA
Membership Meeting
7 pm November 30, 2010
Mark Your Calendar!**

A membership meeting of PLWA will be held **NOVEMBER 30, 7 pm**, at the Fish Wildlife and Parks Region 5 meeting room in Billings.

The meeting is open to the public and will feature a presentation by FWP on the 2010 elk season and related access problems.

We will also update members on specific access hot spots, get member input and host a debriefing session on access problems encountered during the then just ended big season.

Get up a car load of your friends and come on out! (The FWP Office is at the north end of Lake Elmo Road, on the south side of the lake.)

There are presently great potential profits associated with controlling land and wildlife in Montana. No one challenges a landowner’s right to control access to his or her land. But that does not include the wildlife on that land. Montana FW&P, the management agency we hire to manage wildlife harvest opportunities, must attempt to maintain equitable opportunities and not add to the inequity created by the advantage of land ownership. The agency must keep the allocation process first and fair. The constraints of land ownership can only be applied after the allocation process has been completed.

In recent years the desire to profit from controlling land, both private and public, has translated into closed roads, public land posting, hunter harassment and poaching rings.

It will require vigilance to ensure these resources are managed properly. - John Gibson

Cherry Creek Road Access

When the National Forest Reserve Act was passed in 1905 creating the National Forest System of public land management, Gifford Pinchot, the first Secretary of the National Forest System wrote:

“In the administration of the National Forests it must be clearly borne in mind that all land is to be devoted to its most productive use for the permanent good of the whole people and not for the temporary benefit of individuals or companies. ... And where conflicting interests must be reconciled, the questions will always be decided from the standpoint of the greatest good for the greatest number in the long run.”

Citizens of the United States of America cannot travel from the Gulf of Mexico to the Canadian Border or from the Pacific Ocean to the Atlantic Coast, without crossing private property on an easement granted by that private landowner to the public. Think about it, the minute you leave your private property you enter on to an easement granted from a private landowner to a public entity that allows you to travel across the private land. This is why the question has to be asked, why are the last few miles to the public land closed to the public.

This is the case of the Cherry Creek road south of Big Timber, in Sweet Grass County, Montana.

The Cherry Creek Road leaves its junction with the Main Boulder Road (State Route 298) about 8 miles south of Big Timber in Section 33, T. 2 S., R. 14 E., and accesses the National Forest in Section 4, T. 3 S., R. 14 E., P.M.M. after crossing about 1 mile of private land. This road provides the only reasonable access to approximately 36 square miles of National Forest System (NFS) land.

The unrestricted public use of the Cherry Creek Road dates back to 1896, when a petition for a County Road was filed with the Sweet Grass County Commissioners; a review of the county records completed in 1998 found no evidence that this petition was ever acted upon by the county.

There are forest maps dating back to the 1930s and aerial photos from the 1940s showing this road; documentation from the Montana Department of Transportation showing that Sweet Grass County collected gas tax revenue along the entire length of the road until 1991; and a Forest Development Road Cooperative Agreement between the Forest Service and Sweet Grass County from 1967 that designates the Forest Service as being the responsible party for maintenance on the entire length of the road.

Negotiation History

In February of 1999, the Forest Service completed a Transportation Analysis which examined all the possible routes into the area. This analysis documents that a route on the existing road or similar location is the only acceptable alternative, due to environmental constraints and road-less area protection.

In November of 2007, the Forest Service prepared a “Range of Options” briefing paper to consider alternatives to regain the lost access into the Cherry Creek area, involving various land exchanges or purchase options on the list of acceptable routes identified in the Transportation Analysis. This “Range of Options” briefing paper also validated the findings of the Transportation Analysis.

The only option left for the Forest Service to obtain an easement for an existing road across the private land, approximately 1 mile, is to use eminent domain. Before this process can be presented, a

very thorough analysis has to be completed. This process has been completed and is on file at the Gallatin National Forest office in Bozeman. It has been forwarded to the Department of Agriculture in Washington D. C. and is awaiting support from our three congressman, Senators Tester and Baucus and Congressman Rehberg.

There has been considerable public interest in the resolution of this access and the Sweet Grass County Commissioners have stated to the DR, in April, 2009, that an access to the approximately 16,000 acres (35 square miles) of public land in this area is necessary.

Before you vote please contact Congressman Rehberg and Dennis McDonald and ask their position on this situation. Also contact Senators Tester and Baucus and ask them to support the Gallatin National Forest in this endeavor.

An Open Letter to Senator Tester

Senator Tester, With Copies to Senator Baucus and Representative Rehberg .

Are you aware that the U.S. Forest Service has a mandate dating back to the time of Theodore Roosevelt and Gifford Pinchot?

It says...“In the administration of the National Forests it must be clearly born in mind that all land is to be devoted to its most productive use for the permanent good of the whole people and not for the temporary benefit of individuals or companies...and where conflicting interests must be reconciled: the question will always be decided from the standpoint of the greatest good of the greatest number in the long run.”

In the case of the Cherry Creek Road outside of Big Timber Montana we have a District Ranger, a Forest Supervisor, a Regional Forester and the Chief of the Forest Service all prepared to follow that mandate, (as well as the Secretary of Agriculture, I might add)

They are proposing to enforce the agency's power of Eminent Domain so that the public can maintain public access to over 16,000 acres of .the people's Gallatin National Forest on a road that has served as access for the public and the agency for at least eighty years.

Are we now going to allow Congressional Committees to make a political decision to trump the commitment of these employees? I would guess that most of the political decision makers have never heard of the mandate these Forest Service Employees are following.

I find it necessary to remind you of what happened to ex-Senator Conrad Burns when he tried to use a political decision to overturn Forest Service policy on Big Elk Creek in the Crazy Mountains.

I also understand the power of Eminent Domain has recently been granted to a Canadian pipeline company in the northeastern corner of the state.

Are we to believe that it is in the public interest for a foreign company to use that power of Eminent Domain to build a pipeline, but not in the public interest for the Forest Service to use that same power to ensure access for American Citizens to their land?

The support for opening this road is extensive, In addition to a local petition with over 300 names, the Billings Rod and Gun Club, the Montana Wildlife Federation, the Laurel Rod and Gun Club, the Park County Rod and Gun and others outdoor organizations are all in favor of opening this road.

Please do what you can to clear the way for the Gallatin National Forest to exercise the power given them to provide access to our National Forest.

John Gibson, President PLWA

County files complaint seeking public access to Scenic View Road

By Kay Braddock, Terry Tribune (reprinted with permission)

A 27-page legal brief filed by Prairie County last week in district court seeks a judgment declaring a 7-mile dirt road north of Terry a county road by virtue of prescriptive easement. Prairie County is also seeking a preliminary injunction from the court to remove a locked gate that is on the road.

The document lists Michael and Terry Karrels as defendants.

The Karrels placed a gate on Scenic View Road in 2007. A lock was added to the gate a year later. Talks between county officials and the Karrels came to an impasse after an October, 2009 public meeting between the two parties and officials from the Bureau of Land Management produced no compromise.

Scenic View Road leads to a popular overlook of the Terry Badlands, which rests on a large portion of BLM land. The road runs through portions of state, federal and private land.

According to court documents filed on Friday of last week, a 1965 cooperative agreement between the BLM and county commissioners extended and improved Scenic View Road, with BLM providing the equipment and materials for the work while the county provided the construction equipment and labor. This agreement places liability on the county to maintain the road for public use, according to court documents.

Prairie County also asserts the road has been used for both commercial and recreational use since at least 1965, according to court documents filed. Those who used the road included: Ranchers accessing BLM land where federal grazing permits were held; employees of Tongue River Electric, a local commercial well driller, and BLM officials to monitor federal grazing allotments, among others. None of these parties sought permission from landowners to use the road, according to the court documents.

The county is seeking a preliminary injunction to remove the locked gate in order to allow county road crews to maintain the road, preventing further deterioration.

Note: This is the latest development on a road closure case in a case with which PLWA has been involved for many months. Prairie County is protecting public access rights like every county should.

Membership and Support

We owe all that we accomplish to you – our dedicated PLWA members. Without your membership and support we would be a voice in the wind. Please give this newsletter to a friend who has a passion for the Montana experience and urge them to join us in protecting all of our rights.

Public Land/Water Access Association, P.O. Box 80987, Billings, MT 59108.

Name _____

Address _____ Zip _____

Phone _____ Email _____

Membership (\$20) _____ Contribution _____

(You can also join or make a donation via PayPal on our website at www.plwa.org .)

Developments on Mabee Road Case

Commissioners Refuse to Act

The Fergus County Commissioners are still refusing to acknowledge that the Mabee road is a public road! We believe this is a serious abdication of their duty as public officials. We also believe the Fergus County Attorney has also abdicated his duties in this regard by allowing the county commissioners to go on with this denial of facts and law.

The Mabee Road runs north from Roy, Montana in Fergus County, and provides sole road access to a large area of the Missouri Breaks National Monument and the CMR Wildlife Refuge. The road status is presently in legal limbo after a lock was put on a gate in 2007 by an adjacent landowner/ outfitter who asserts the road is private, not public.

In 2009 PLWA prepared a presentation of the public records that show without question that the road existed prior to any homestead patents being issued in the vicinity, and is therefore an "RS2477" public road. The Fergus County Attorney gave a copy of our information to the landowner's attorney who responded in an eight page document that argues the road is not an RS - 2477.

In early 2010 the Fergus County Attorney advised the County Commissioners stating that "I believe it would be a mistake for the Board of Commissioners to support one position or the other in these situations". We believe this is an abdication of the duty of the Commissioners.

Since that time significant additional evidence was discovered and submitted to the commissioners. It included maps and other information that reflects the road has existed in approximately the same location since 1913 along with a copy of patent files from the National Archives in Washington D.C., and a copy of the letter submitted by the former owner of the property, Mr. Fink, stating in 2000 that the Mabee Road had provided access to the area for 90 years without anyone asking permission. The original patent files state that when filled out, November 16, 1920, the applicant, Leonard Ellis filled in the blank under Rights of Way as "Designated". It is safe to assume that the only place he could have found this information was in the County Courthouse, the same place we found the plat of the surveyed road in 2009.

(We also included copies of the Perkins Gulch court decisions - both District Court and Montana Supreme Court, The Perkins Gulch case in Deer Lodge County, affirmed by the Supreme Court in January 2010, ruled that a road with very similar conditions to the Mabee Road was in fact, a public road. See PLWA website for details.)

This additional evidence supports the case for a Prescriptive Easement as well as RS 2477 status. (See PLWA website for definitions.)

We submitted this additional evidence to the Fergus County Attorney and Commissioners in mid 2010 and requested they reaffirm that the Mabee Road has been, and is now a public road. (We also sent copies of our evidence to Attorney General Steve Bullock's office in Helena.) As of October 2010 the position of the commissioners is that they are not going to act on our new evidence as submitted. Again, we feel this is a further abdication of their responsibility.

If you know of persons who traveled the road anytime from 1913 to 2007 and did not have to ask permission or encounter any locked gates or "Road Closed" signs, please contact any member of PLWA. We may ask you to sign an affidavit to that effect. (An affidavit only states the facts and truths. Anyone signing an affidavit is not putting themselves in any legal jeopardy.) We do not want to litigate this case, but if we do, any evidence of this type is very useful.

If you are a resident of Fergus County demand the commissioners study the evidence we provided and reaffirm that Mabee Road is still a public road. - Bernard Lea, PLWA Board

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Annual PLWA Raffle

Our annual raffle is one of our critical sources of income. We finance all that we do from membership dues, the occasional endowment from concerned individuals, foundations and estates, and this raffle.

Why should you support PLWA? When you consider the resources of those we battle, this organization performs miracles. The BIG MONEY is all on the other side. We do it through research, patience, tenacity, respect for all and above all a dedication to protecting one of our elemental rights as Americans, access to our Public Domain. We believe this is one of the things that sets the U.S. apart from every other nation on earth. We ALL have a stake in one of the greatest natural resources on the planet; not only our public lands but also the flora and fauna that occupy them. Please help us to insure that this resource will remain free and help to pass it on to future generations.

Fill out your raffle tickets today. Check out the prizes at www.plwa.org/raffle. We have some great prizes:

- 1.) **Rifle** - Remington .270 Mag - from Fran Johnson Sporting Goods, Butte MT
- 2.) **Shotgun** - Browning B80 12 ga. Auto - Ducks Unlimited Edition - donated by Bob Korb, Great Falls MT
- 3.) **Fly Rod** - Orvis Trident 9' #6 weight
- 4.) **Game Processing** - for 1 elk, deer, antelope or moose - donated by Timber Ridge Meat Processing 406-545-4645 - timberridgemeats.com/
- 5.) **Karen Boylan Framed Limited Edition Print** - "Bull Sessions"
www.kboylanart.com/gallery/details/Bull-Session/
- 6.) **Angela Babby Framed Limited Edition Print**- "Diaphanons"
- 7.) - 8.) **Gift Cards - \$50.00 at Scheels** - donated by Scheels Sports, Billings MT