



PLWA

The **KEY**

Unlocking access to public lands & waters

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Presidents Message

Sportsmen - Remember the Sordid Six

Think about the last legislative session and the onslaught of bills attacking the interests of resident hunters and anglers. Fortunately, resident sportsmen were successful in killing most of these really bad bills and the Governor vetoed others. Outdoor people from all over the state established a strong communication network that followed the legislature and legislators' voting records very closely.

Following are six bills that were the worst of the worst. Legislators who supported these bills need to be held accountable. In a way these are just examples. There are many others bills almost equally egregious.

House Bill 309. (Sponsor – Jeff Welborn - R Dillon) An attempt to gut the Stream Access Law by saying that any part of a stream used in any way for irrigation was not subject to the stream access law. Passed the House. Died in Senate committee.

HB 209: (Sponsor Ted Washburn- R Bozeman) Would have effectively destroyed the Habitat Montana Program: Passed by both houses. Habitat Montana protects wildlife habitat in perpetuity and is funded completely by sportsmen Bill vetoed.

HB285: (Sponsor Bill Harris - R Mosby) Required FWP to issue unlimited either-sex Elk archery permits – including non- resident permits. (Resident archers get most of the permits they ask for under existing system.) The bill would result in more commercialization, more roads closed and more land unavailable to resident hunters. Killed in Senate committee.

Senate Bill 400: (Sponsor Charles Vincent – R Libby) Added 2,000 more non-resident “wilderness” deer/elk combo licenses. Again would result in more commercialization, more roads closed and more land unavailable to resident hunters. Passed the Senate. Died in House committee.

SB 301: (Sponsor Rick Ripley – R Wolf Creek) Put a moratorium on the acquisition of land by FWP - including fishing access sites, state parks, and wildlife management areas. Tabled in House Committee

SB 255: (Sponsor John Brendan – R Scoby) Required the FW&P to use economic criteria rather than biological criteria when making decisions that affect seasons and bag limits. Our wildlife is not for sale. Bill vetoed.

If one looks closely at these bills there is a common theme: Nearly every one was designed to make it easier for commercial interests to sell our hunting and fishing opportunities to nonresidents. The equation is simple, land and wildlife set aside for paying customers from out of state will not be available to resident Montanans.

Fortunately, all of the Sordid Six died, but only because of fierce opposition from resident sportsmen or the Governor's veto.

If legislators who carried or voted for these bills think we have forgotten they are sadly mistaken. This is especially true of legislators from districts from urban areas. As an example, Billings and Bozeman legislators who voted to gut the Stream Access Law or destroy the Habitat Montana program were clearly not voting the wishes of the people who sent them to Helena.

Ethical sportsmen, opponents of the bills above, and proponents of Initiative 161, that eliminated outfitter sponsored licenses, believe management of wildlife in Montana should be guided by the U.S. Supreme Court decision that stated “Wildlife will be managed as a trust for the benefit of all people and not for the benefit of the government or private individuals.” Followed by “A state may favor its residents over residents from other states and limit their opportunities under any terms they see fit.”

Be sure and ask your legislators about their votes on these and other bad bills. Ask them what they are going to do to advance the agenda of Main Street hunters and anglers - not the “privateers”. (Just Google “montana legislature” and you will see links where you can see how your representative voted.)

One more thing: We had better elect a governor who is willing to stand up to these profiteers. We don't want to deal with a repeat of the Sordid Six during the next legislative session.

John Gibson

PLWA thanks Tester for work on LWCF

PLWA, the Billings Rod and Gun Club, the Laurel Rod and Gun Club, Magic City Fly Fishers, and Our Montana gathered at Big Bear Sports in Billings to thank Senator John Tester for his strong support of the Land and Water Conservation Fund. This fund comes not from taxpayer dollars but from offshore oil leases. It has been used to finance public improvements like parks and other recreation facilities and other developments to foster public access to recreational opportunities since 1965. Tester is also the chairman of the bipartisan Sportsman's Congressional Caucus.

In thanking Senator Tester, PLWA representative Ray Pearson said, “Large tracts of public land are essential to the great legacy of our American freedom. Whatever we can do to preserve and enhance access to them for future generations is money well spent. Pennies spent today will reap a fortune tomorrow. PLWA would like to thank the Senator for his strong support of LWCF and encourage him to continue his efforts to fund this important piece of legislation.”

Swimming Woman Road Settlement Announced

After several years of uncertainty and negotiation, the Swimming Woman Road, leading to thousands of acres of Forest Service land, a settlement has been reached.

The Golden Valley County commissioners and representatives of the Lazy S Ranch agreed to reroute Swimming Woman Road west of its old easement and onto the Lewis and Clark National Forest. This will be of great value to hunters and other outdoor enthusiasts because it is one of the few public access points to the Big Snowy Mountains to the northwest of Ryegate.

The landowners wanted to close the road, but research aided by PLWA officer Bernie Lea, showed the county had a legal right and easement to the road in its existing location. The county found documentation that in 1933 the landowners sought and were given approval to establish a county road through the private property passed what was later the home of Guy Webber. The purpose of the road was stated to be to provide access to the forest reserve.

Apparently the county gave the landowners an option to either have the road rebuilt along its existing route, which runs next to the ranch's residence, or provide an easement to have the road moved to the west. The road had been washed out this spring, so resolution was urgent before reconstruction started. PLWA thanks the County Commissioners, County Attorney Ken Sipes, and Harlowton Times Clarion editor Shirley Wegner for their effective efforts on this issue.

Rocky Mountain Front Road Closures

From The Great Falls Tribune - 9-8-2011
by MICHAEL BABCOCK

CHOTEAU — A “private road no trespassing” sign on Road No. 380, also known as the Salmond Ranch Road, on the Rocky Mountain Front west of Choteau, surprised former Montanan Tim Callahan.

He first encountered the road closure in October 2009 while on a scenic drive in the area. At that time, there was just the sign saying the road was closed.

“We were out to see how close we could get to that part of the Rocky Mountain Front,” Callahan said of the 2009 trip.

Callahan was back recently to show John Gibson of the Public Lands Water Access Association and Dave Van Tighem of Russell Country Sportsmen in Great Falls the sign. But now, in addition to the sign, a new gate with a lock makes clear that Salmond Ranch Road is closed.

“This is just the tip of the iceberg,” Gibson said of the Salmond Ranch Road closing. “This is happening all over the state.”

Indeed, on the Public Lands Water Access Association website, a map of Montana is dotted with at least 20 different balloons indicating cases where a private land owner has locked a road that the association maintains is public.

“Lots of land is changing hands, and we are concerned that roads are used as a public travel-way for as much as 100 years, and somebody comes along and says it is private,” Gibson said.

What really angers Gibson and other members of the public who want access to public land is that they say government agencies tasked with managing that land are listless in the face of the roadblocks.

“I am getting tired of it. Here it is, a bunch of individuals try to fight this battle, and the agencies like the counties, the state, the (U.S.) Forest Service and the BLM (Bureau of Land Management) are not doing a damned thing to protect access to their land,” Gibson said. “They are letting someone else do their work for them. They have the legal equipment, the money and everything they need to challenge this.”

On that recent trip to the Deep Creek area west of Choteau, Callahan, Gibson and Van Tighem also found an ominous orange “Private Property No Trespassing” sign on the road going up the South Fork of Deep Creek. That road leads to the Gordon Dyal ranch. Dyal is co-chairman of global investment banking at Goldman Sachs.

The road leads to what used to be Elizabeth, a settlement with its own post office from 1898 to 1910. Such settlements are important points when determining previous public use of a road.

“These people are closing travel-ways that were there before they were born. They belong to Montana and history,” Gibson said. “People move in and close a trail or a road that was there before the land was patented, and suddenly they think they own it and you can’t travel it anymore.”

Attempts to reach both Dyal and Salmond on Wednesday were unsuccessful. While the roads travel through privately owned land, they also lead to sections of state and federal land that provide access to some of the most scenic parts of the Rocky Mountain Front.

“There is no other access road into that land,” Gibson said.

Callahan grew up in Montana — graduating from Malta High School in 1969, and later from the University of Montana. Now he lives in Seattle where he practices law. "I started hiking back there in the early 1970s," he said of the Deep Creek area. "That area is historically significant for me. I loved going into there."

Callahan also said previous owners were much more lenient when it came to access.

"I am saddened to see that the old-timers are disappearing and that it is becoming money property," he said. "Those old-timers would say 'as long as you close the gate and don't make a mess, it is OK to go.'

"I understand that times change, but it is sad to see," Callahan added.

After seeing the no trespassing signs, Callahan contacted the Public Land/Water Access Association Inc., a Billings-based organization with a mission to "maintain, restore and perpetuate public access to the boundaries of all Montana public land and waters."

The Salmond Ranch was once a huge, sprawling cattle empire on the Rocky Mountain Front that began in the late 19th century. It has since been divided up and handed down to succeeding generations of Salmonds. Two large parts of the ranch were sold — one to Dyal and another to David Letterman.

Gibson said his research shows that, in 1930, Frank Salmond asked Teton County to abandon the road and provide a public easement over it. In 1988, Jack Salmond petitioned the District Court to rule the 1930 abandonment as "ineffective," and terminate the public easement. It is unclear whether the court ruled on the petition.

Teton County Attorney Joe Coble, who met with Gibson and Callahan, told them it is likely a title search would be necessary to determine the validity of the 1930 abandonment and the 1988 petition. Coble said the title search would help clarify property ownership and whether the initial abandonment — and subsequent easement — or the later petition would take precedence.

Contributions from your IRA

If you are 70 1/2 or older, you can directly transfer up to \$100,000 tax-free to PLWA in 2011, without having the withdrawal being part of taxable income. The ability to transfer money tax-free from your IRA to a qualified "charity" can be an excellent way to advance both your philanthropic and estate plans. While you will not receive a charitable deduction for a transfer from your IRA to a charity, the amount of your transfer will never be included in your gross income. We encourage you to contact your tax advisor before year-end to help determine if this provision is appropriate for you. This is particularly useful if you must take the "Minimum Required Distribution", and don't really need the money, but only take it out to satisfy the IRS rules.

If you do not itemize your deductions and just take the standard deduction, additional write offs may not benefit you. But with the direct contribution you will, in effect, get the full write off.

This also has a place in estate planning. For example if you wish to leave something to PLWA, but don't want to go through the rigmarole of changing your will, a direct contribution from your IRA is a lot simpler, and you will get the advantage of knowing you did the right thing, right away.

One of our officers Lee Gustafson, at 628-7278, can give you more information on this if you wish. If you want to talk to someone who had done it call Russ Vance at 587-4987 in Bozeman.

Lock on Mabee Road in Fergus County Blocks Huge Public Land Area

Fergus County Officials 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 shirked 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 legal 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.

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.) 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.

What does one do when an arm of government chooses to selectively ignore portions of the law? We are weighing our options.

We Need You

PLWA is essentially an all volunteer organization. Much of our work is done by the board members. But, because of the vastness of the state, and the many challenges facing us available talent gets stretched pretty thin at times. If you have any interest in getting more involved, let us know. We can use help in everything from courthouse research, letter-to-the-editor writing, showing up at public hearings, literature distribution, making short presentations at club meetings, clerical help, organizing local meetings, etc. If you have any notions along these lines, contact John Gibson @ 698-6021 or 656-0384. (Or respond at www.plwa.org.)

Former PLWA Director Holdorf Passes

Long Time PLWA Director, Bill Holdorf, of Butte, passed away recently at age 85.

Bill was very active on access issues in southwest Montana, especially the Ruby River protest float against the electric fencing on bridge rights of way. Bill worked tirelessly on the closing of roads on BLM lands and state lands. Bill traveled all around eastern Montana, testifying for all recreational uses of school trust land every year.

Bill was a long time hunter and fisherman who wanted to see his children and grandchildren enjoy these same recreational opportunities.

Boadle Road Win in Supreme Court

The Boadle Road and Sun River Slope Canal Road lead to the south side of the Pishkun Reservoir, a Wildlife Management Area, to Tunnel Lake, and to public lands beyond. It had been illegally locked off by a private party around the year 2000. PLWA brought suit based on testimony that gas tax money had been used for public maintenance of the road and that it had been used by the public continuously for many years prior to 2000. In Nov 2010, the Montana 9th Judicial District in Choteau, Montana decreed the road located on Jones property, known as the Sun River Slope Canal Road is a public road and until abandonment may be used by the general public without interference from the owner of the underlying land. Essentially the judge said the road was a “public prescriptive easement” and that PLWA had proved through clear and convincing evidence, that the public had used the road for about 70 years.

This ruling was appealed to the Montana Supreme Court by the landowner. In September of 2011, the court ruled in favor of PLWA in a very brief opinion statement. In effect they said that the case for a public prescriptive easement was so strong that did not need to render deliver a full blown opinion. It is significant that PLWA had argued that recreational use was a valid use during the prescriptive period and that argument was implicitly recognized by the court.

Annual PLWA Raffle

PLWA does more with less resources than any other organization that I know of. However, we do need money to pursue our mission to protect, maintain, and enhance public access to public land in Montana. We could never have accomplished all that we have without your political, financial and moral support.

Keep an eye on your mailbox, there will be a letter with some raffle tickets arriving soon. Montana is under assault from some very wealthy elements who want to make the state their own private playground. We need your support to continue the fight for public access to public land and water. Go peddle some tickets to your family, your friends and your outdoor loving acquaintances . While you're at it spread the word. Tell them there is a wealth of information about what is going on on our website at plwa.org.

There are some nice prizes in the raffle but even if you don't win you know that you are supporting an organization that does the right thing. Let's see what we have this year:

1st Prize - A Rocky Mountain Elk Foundation Edition Browning bolt action 300 Winchester Short Magnum rifle with a walnut stock.

2nd Prize - An Orvis trident 9 foot 6 weight flyrod.

3rd Prize - A classic LaFever 32" single barrel 12 guage Trap Shotgun

4th & 5th Prize - \$50 Gift Certificates to Scheel's All Sports

PLWA Membership Meeting

December 3rd in Billings

PLWA will be hosting a General Membership Meeting on Saturday, December 3rd, 2011 at the Region 5 Montana Fish, Wildlife and Parks headquarters at 2300 Lake Elmo Drive in Billings. The meeting is scheduled from 10 am until noon.

There will be a review of current public access issues around the state, then the floor will be opened to membership concerns. We want your input on the ever increasing number of public access to public land issues arising frequently now across Montana. In December, with hunting season drawing to a close, there is a good chance that some of you will have recently been cut off from accessing tracts of public land. Come on, meet the PLWA leadership and let's talk about it,

Bridge Access Fight Continues

Seyler Lane Case to go to Trial in January

The hearing for the Seyler Lane portion of the Madison County Lawsuit is scheduled for January of 2012 in Madison County with Judge Tucker presiding.

The original suit involved three bridges on the Ruby River. In 2008 the court ruled for PLWA on two of the roads –Duncan Road and Lewis Lane - which were established county roads. The court ruled that the right of way did not narrow at the bridges and thus the stream access law was in full force at the bridge abutments. However, the court did not rule on Seyler Lane because of its prescriptive status. These bridges were on roads crossing the property of James Cox Kennedy from Atlanta, Georgia who joined in the suit on the side of the county. (continued...)

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 _____

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

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Ruby River / Seyler Lane Trial (continued)

Seyler Lane is an old established road – probably around 100 years for all sorts of uses. It has also been maintained by the county and bridges on the road have been built by the county. It is clearly a “public prescriptive easement” and that has been agreed upon. However, the “scope” and width of the public easement created during the prescriptive period are at issue.

The opposing attorneys argue that the scope of the easement is just for ordinary vehicular travel on a 16 foot right of way. PLWA contends that the scope of use on the easement includes all legal uses such as herding cattle, road maintenance involving the borrow pit, recreational use, etc., - which all require much more than 16 ft.

The opposition contends that the width of the road is the “travel way” or only the 16 or so feet of the hard surface – unlike county roads which have a 60 foot right of way. PLWA contends that it is at least 40 feet based on historical use during the prescriptive period. PLWA also contends that whatever the width of the prescriptive road, it does not narrow at bridges.

The stakes are high. There are many, many roads used by the public and maintained by the public which are neither fish nor fowl. They have not been officially accepted by the county as county roads but have also not been through the courts and found to be public prescriptive easements. If PLWA prevails, it will set a precedent for all public prescriptive easements, and the bridge access law will presumably apply – as it does to all county roads. If the other side prevails, it could mean years of litigation on a case by case basis and the presumption that the bridge access law does not apply to public prescriptive roads.