



The **KEY**

Unlocking access to public lands & waters

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Presidents Message

Opinion pieces have recently appeared in several newspapers around the state claiming the Public Land and Water Access Association and the Montana Wildlife Association are engaged in undermining private property rights.

The folks making that claim should recognize they are actually railing against reality.

Much of the lands and waters of Montana is steeped in history. That history cannot be ignored, regardless of the status of the purchaser.

In Montana, our public trust resources of water and wildlife are protected by our state Constitution, by our laws, and by the courts. That same protection is afforded our transportation system of roads and trails that have a long history of public use; in many cases old stage coach routes or pack trails that have been in public use for over a hundred years.

It is these public trust resources that Public Land and Water Access Association defends. Although most of our legal activity involves maintaining public use of established transportation routes that serve as access to public land or water, we recognize that we must also be prepared to defend public ownership of the resources themselves.

We believe anyone purchasing property in our state is obligated to make an effort to recognize the existing conditions of acquisition such as the public water, in its natural channel, that flows across the land and the public wildlife that will utilize that land as it has done for centuries. Perhaps less clear cut, but equally important is the existence of roads and trails that have been used by the people for years without a challenge from the owner of the land they cross.

Montana law provides for public use of these routes through

claims of a prescriptive easement created by this continuous use.

As far as Montana water, the case is very clear. Our state Constitution states that all waters in the state belong to the people. Our Stream Access Law then provides the public the right to recreate on these streams below high water mark. The Montana Supreme Court has upheld that claim.

All these are matters of existing law and should not be ignored by those who consider purchasing land in our state.

We respect private property rights but we also recognize public property rights as equally valuable. Our success in court cases shows this to be the case.

PLWA and the Montana Wildlife Federation will continue to protect these public resources because we believe they are important components of the quality of life afforded Montana citizens as well as those who visit our state from other locales.

John R. Gibson

PLWA Membership Meeting December 20th in Billings

PLWA will be hosting a General Membership Meeting on Saturday, December 20th, 2014 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.

Bill Fairhurst - Access Pioneer - Passes Away

I was sorry to hear of the passing of Bill Fairhurst . He has been a great warrior in the fight to protect Montana's land, water and wildlife from becoming privatized. Long ago, men like Bill could see how valuable our public trust resources were to the quality of life in this state. He could also see that as their value increased the effort to privatize and commercialize them would rise accordingly and someone would have to fight to keep them, and the access to them, from becoming just another commodity, available only to the highest bidders. Many folks don't seem to realize how many years men like Bill have fought greedy individuals and corporations to protect our way of life here in Montana.

About twenty years ago Bill asked Bernie Lea and I to take over the leadership of PLWA (actually it went by PLAAI in those days) since his doctor told him his health was not going to hold up if he continued his present level of stressful activity.

We were frankly, honored, to be considered that worthy by Bill and Tony Schoonen and others. We agreed and, fortunately, about that same time a number of folks realized what we were up against and offered some financial help. We have won some notable battles in the years that followed.

I wish there were a thousand like the old fighter pilot, Bill Fairhurst, who were ready to join this fight. But people like Bill are hard to come by.

John Gibson

Modesty Gulch Road A Major Victory

Butte Montana -Tuesday - October 7, 2014 . In the latest episode of a long running dispute, Butte District Judge Kurt Krueger found that roads leading to both the lower and upper branches of the Modesty Road remain "dedicated to public use."

Modesty road connects to about 12,000 acres of the Beaverhead-Deerlodge National Forest, and a number of otherwise difficult-to- access lakes .

(Signs will have to be installed noting that land surrounding the road is private.)

An issue was Modesty Road gate on the Letica Ranch . The road was established in the 1800's but had been shut

down for 30 years . The ruling determined that the lower portion of the road began as a county road and was never abandoned by the county, and that the upper portion of the road was a "public preservation easement," a classification that relies upon continuous public use and an assumption of public control.

The primary litigant in this case was Anaconda Deerlodge county. Kudos to them for the guts to represent their county citizens ! Other counties need to go with this kind of chutzpah. Much of the research was done by folks from the Skyline Sportsman's Association of Butte and the Anaconda Sportsman's Club. PLWA is happy to provide support for local efforts as much as possible , and in this case provided expert witness testimony by Bernie Lea. It was a great collaborative effort and just one more chink in the armor to defend against illegal usurpation of the public estate .

The full story is in the Butte Montana Standard of Oct 14, 2014

Sand in the Wheels of Justice Ruby River Case Drags On

Here we go again.

After 10 years of litigation , and a clear decision by the Montana Supreme Court , that Montanan's have right to access rivers and streams from public roads, Madison county has thrown some sand in wheels of justice.

To refresh the readers' memory, in the last 10 years PLWA won court cases and helped pass legislation that solidified the right of recreational stream access from county roads . However, a technical issue on "prescriptive" roads - roads created by public use - was the final chink and went to court as the Seyler Lane case . The case involved a bridge on that road . The Montana Supreme Court ruled that all legal uses including recreation were allowed on that prescriptive right-of-way including the bridge. They sent the case back to district court for determination of the width of the Seyler Lane road based on history and need. The key phrase in their ruling was that it had be "reasonably necessary and convenient" for foreseeable maintenance in the future.

However, according to the Bozeman Chronicle, Madison

County Commissioner Dan Happel, apparently speaking for the entire commission, says they don't even need a right-of-way wider than the travel way for maintenance of the bridge. This, of course, does not make common sense, let alone pass legal tests.

As PLWA president John Gibson says:

"How can they claim they can create a safe and convenient public road with something like a 20-foot easement? You're lucky to pass two cars, let alone if someone has a breakdown. Are kids waiting for a school bus to be considered trespassing?"

"We're asking the attorney general to step in and enforce state law. The commissioners want to say 'we're the monarchs of this county.' But they're not. Not when the state has the ultimate responsibility. If we have to, we will take this back to the Supreme Court."

BLM starts process to restore Bullwhacker access with by-pass

(LEWISTOWN, Mont.) – The Bureau of Land Management announced today, it has begun the process required to reestablish road access into the Bullwhacker Coulee area of the Upper Missouri River Breaks National Monument.

"We are currently investigating four separate alternatives, to reestablish road access into the Bullwhacker drainage, using portions of existing roads whenever possible. Once these alternatives have been identified and flagged on the ground, we will carefully analyze the impacts of each alternative in an environmental assessment to determine future public access," said Michael Kania, the Upper Missouri River Breaks National Monument Manager.

The BLM would consider mitigation, including the option of closing, rehabilitating, or reclaiming other existing roads to off-set the resource disturbance. The intent would be to ensure no net gain in the present miles of road within the area.

Historic public access to approximately 50,000 backcountry acres in the Bullwhacker area within Blaine County had been lost following a 2011 court decision declaring a portion of the Bullwhacker Road crossing private lands to be a private road. A proposed land exchange to restore access was considered, but was determined to be not in the best interest of the American people who have

entrusted the BLM to manage their public lands for them.

The BLM has initiated an open and transparent public process in which the public will have a number of opportunities to participate in a resolution long-sought after for restoring motorized public access to the Bullwhacker area. The Bureau is preliminarily considering four potential options to find a viable access solution that would garner substantial public support and be in the best interest of the American public the BLM serves.

"Public access to public lands continues to be one of BLM Montana/Dakotas' top priorities," said Stan Benes, the BLM Central Montana District Manager. "Our charge in this particular situation is actually to restore the access the public historically had for many decades."

The 60-day scoping period will begin with public scoping meetings tentatively scheduled for Great Falls Dec. 2, Chinook Dec. 3, and Lewistown Dec. 4. An environmental assessment is expected to be available by May. The goal is to complete the decision process in summer 2015.

The BLM will also look to the valuable insight offered by the trusted members of the Central Montana Resource Advisory Council throughout this process.

For more information, contact Upper Missouri River Breaks National Monument Manager Mike Kania (406) 538-1950.

Transfer of Public Land to the State of Montana

It doesn't take much for certain groups and individuals to jump on the "Fantasy Wagon". Like with so many of these situations, some believe the fantasy and others use it for political advantage. Does anyone really think the citizens of the United States, who own these lands, are going to allow a small state like Montana to take control of a huge chunk of their National Forest and other public property?

One does not have to be too bright to realize that the State of Montana has neither the financial capability nor the organizational structure to manage more than 20 million acres of additional land. So, the option would be to sell some of the best of it. I'm sure some people are seeing dollar signs and licking their chops over the very idea of such a transfer and sale.

The words of Theodore Roosevelt ring out as they have every

twenty years or so when such a proposal gains political favor with the government haters.

This is what Teddy said after greatly expanding the National Forest System in part, to prevent another disaster such as that perpetuated by private timber companies on the forests of our lake states.

“ Here is your country. Do not let anyone take it or its glory away from you. Do not let selfish men or greedy interests skim your country of its beauty, its riches or its romance. The world and the future and your very own children shall judge you accordingly as you deal with this sacred trust.”

Boadle Road - A Victory Over Arrogance

Jury Finds for PLWA

After fourteen years PLWA found itself in court in Choteau, Montana on June 16, 2014. The Boadle Road had been closed that long ago by a new owner even after being told that the road had been used as a public road for nearly a hundred years.

PLWA had taken the landowner to court four times and won every time. In fact, at the last trial the Montana Supreme Court had instructed the landowner to not do anything to interfere with the public easement on this Boadle Road.

He chose to ignore the court so PLWA filed a civil case against him and asked a jury of his peers to determine from the evidence presented if he has engaged in the following activities:

Violated a court order

Created a nuisance

Acted with malice

Took actions that resulted in his being subject to paying damages

If so, what would the type and amount of those damages

On the third day the jury found in favor on all counts and instructed the landowner to pay the following damages:

Damages causing the public to be unable to use the road for fourteen years; \$375,000

Damages inflicted on PLWA: \$25,000

Punitive Damages: \$10,000

We were very satisfied with the results even though most of the \$375,000 will have to pay for replacing a bridge across a canal.

One of the good results of this trial will be the precedent it sets. It might cause others to think twice before closing roads that the public have used for decades as part of the county road system.

This verdict will probably be appealed back to the Montana Supreme Court on some claim that it was conducted in an illegal manner, but for now it was quite a victory. It is hard to believe the court will overturn their own decision.

A sad foot note to our victory is that Jim McDermand had represented PLWA's early efforts to open the Boadle Road fourteen years ago.

Jim didn't live to see the results of this trial. I attended his funeral just a few days before it began

But we can say to his memory, "You finally won. Jim."

John Gibson

Townsend Ranch Sold to Helena National Forest

PLWA member and friend Bob Denee plays key role .
“The thousand-acre acquisition also improves access to more than 6,000 additional acres of land. The property, located in the Ray Creek drainage about a mile south of Mount Baldy in the Big Belt Mountains, extends the national forest into the foothills of the valley, along with connecting public lands to a private ranch enrolled in the Block Management Program. ‘By acquiring this property, we’ve opened up a stringer of connected pieces of land,’ said now-retired Forest Service land manager Bob Denee. ‘And if you listen to the public in Montana today, what’s the No. 1 issue? It’s access.’

While the property provides quality habitat for elk, deer and other wildlife, Ray Creek contains a 5-mile stretch of water housing a pure strain of westslope cutthroat trout that does not share habitat with nonnative fish, said Forest Service biologist Archie Harper. ‘This is one of about four pure

populations of cutthroat that remain in this mountain range,' he said. 'We got about 5 miles of habitat, and usually we're lucky if we can get one or two.'

Roadblocked and Landlocked Report

Montanans are increasingly being kept out of their public lands by people gating public roads through private land, a new report titled "Roadblocked and Landlocked" has found.

The joint Montana Wildlife Federation and Public Land/Water Access Association report details the growing trend of gated public roads that has cost hunters, anglers and all outdoor recreationists access to tens of thousands of acres of their public national forests, grasslands and rivers.

"This report shows how ordinary Montanans have lost access to some of our most treasured public lands," said Skip Kowalski, President of the Montana Wildlife Federation. "Public access is essential to get to the places that Montanans love to hunt, fish, hike and pursue all kinds of outdoor recreation."

The report illustrates case studies of routes formerly open to the public that have been gated. These closures have forced everyday Montanans into expensive, lengthy court battles to gain what is rightfully theirs – the ability to use public roads that have long been open to everyone. These rural roads have often for decades been used by ranchers to

move livestock as well as by the public for recreation purposes.

But one gate, as with the Tenderfoot Creek Road north of White Sulpher Springs, can block off huge swaths of public land behind them, said John Gibson, president of the Public Land/Water Access Association. With the Tenderfoot, the gated road cut off 8,200 acres of prime national forest land that offers excellent public hunting for elk and deer.

"For over two decades we've seen some people work to privatize our public lands by cutting off public access," Gibson said. "And once somebody controls the access, they control all the public resources, including the fish and wildlife on those lands."

PLWA has been at the forefront of working to maintain and restore public access throughout the state by going to court to ensure these roads remain open. The group has also been a staunch defender of Montana's stream access law, which gives the public the right to use public rivers and streams by staying within the high water mark.

The report is meant to spotlight the problem. MWF along with PLWA will be working on several bills in the 2015 Legislature to address the problem and guarantee the public maintain access to its public lands.

Contacts for additional comment:

Dave Chadwick, MWF executive director, 458-0227 ext. 102
Nick Gevock, MWF conservation director, 533-9432
John Gibson, PLWA president, 698-6021

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.)

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HELP WANTED

PLWA is essentially an all volunteer organization. Board members and volunteers spend thousands of hours every year making it work. But the organization and workload is growing. New challenges appear all the time. We need to expand our volunteer force to take on these new challenges, free up senior board time for higher and better uses, and increase the participation base of our membership.

Specifically some of the areas we could use help with are:

Researching and writing news articles and newsletter pieces on issues and activities. (Journalism or English skills.)

Graphic Design

Researching county records on road status. (No particular skill – just smarts and hard work.)

Non-profit accounting and compliance. (Accounting or bookkeeping skills.)

Legal research and case following. (Legal or Para-legal skills.)

Event organizing (Again just time and smarts.)

These are just some of the possibilities. Right now most of our volunteer corps is in Billings, but that is both a strength and a weakness. We need help in the outlying areas. If you have some specific skill, time, or talents that you think could help, let us know. Contact membership@plwa.org or call George Bauer @ 406 294-5499.