



PLWA

The **KEY**

Unlocking access to public lands & waters

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The Ruby River Court Decision and The Passage of HB 190 - The Bridge Access Bill

Message from PLWA President John Gibson

I have followed the subject of access to streams at bridges since the Attorney General issued his positive opinion in the year 2,000. Everyone knew that legislation would have to follow to deal with the exact rules and regulations necessary to make this a reality.

Only a few sportsmen believed that there would be a full scale challenge to the AG opinion in the legislature since such a formal AG opinion has the force of law until (or if) it is successfully challenge by new legislation or a court decision.

Proposed legislation ran into trouble the first time during the 2005 session. Opponents argued several points then as they continued to do thru two more legislative efforts.

First and foremost among there arguments was...

1. Easements on county roads were created for transportation purposes. Access to the stream does not fall under the definition of transportation.
2. Road easements narrowed (bottlenecked) at bridges to the width of the bridge proper. This resulted in a slice of private land between the road easement and the stream below high water mark. Therefore, no one could enter the stream without trespassing on private property . The Stream access law clearly states that a person may not trespass on private land to reach the public easement under high water mark on streams.

There were other arguments to be sure but the lawyers for the opposition really hung their hat on these two claims. With them, they created enough doubt so that legislators who supported their cause could vote against bridge access legislation with a certain amount of immunity. In other words, they provided cover that resulted in a party line vote that defeated Bridge Access each session.

Now, fast forward to Sept 2008. Judge Loren Tucker issued Summary Judgments on the PLWA lawsuit regarding access at three bridges on the Ruby River in Madison County. Here are his findings:

1. Two of the three roads are county roads. On these two roads the easement or right of way is 60 feet in width.
2. The easement continues to hold the width of 60 feet as it crosses the river.
3. The public may conduct any legal activity within the 60 foot easement including access to the stream.
4. The third road, Seylor Lane, is not a county road will have to go to trial to determine how it relates to stream access.

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Implementing the Bridge Access Bill - Help Needed

Now that HB 190 is law, implementation is in progress. If you know of specific bridges with access issues , it would be a good idea to assemble some basic information and communicate with the appropriate FWP regional supervisor. (If you don't know who that is, just get it to us and we will forward.) Here is some of the essential information : (Submit whatever you have – even if you don't have it all.)

- 1/ River or stream name (i.e. Stillwater River) County where bridge is located (i.e. Stillwater County)
- 2/ Common description (e.g. Spring Creek bridge) , or location in terms of miles to or from significant point of reference (e.g. 3.5 miles downstream of Beehive) , or latitude / longitude from your GPS. (If you are a “Google Earth” user , you can easily get location coordinates off the website .)
- 3/ Bridge access status, describing which of the four corners where access is needed or most desirable . (e.g. Upstream river right , upstream river left, NW corner, SW corner etc.) Include other descriptions such as blocked by fence, blocked by natural barrier, blocked with posted No Trespassing, accessible with posted No Trespassing, etc.
- 4/ Parking description: (i.e. None, Some, Minimal, Several cars, Plentiful, etc)
- 5/ Photos !!!!!
- 6/ Landowner name - if known

(Note: Note the bill does not stop landowners from fencing across or into a river. However, under the stream access bill recreationists can portage around obstructions. - See “Know Your Rights” section of our website.)

Lincoln Ranch Property Access

According to Darlene Edge, Land Manager for Montana Fish Wildlife and Parks, access to the newly acquired Marias River State Park (Lincoln Ranch) via the Lincoln Road remains clouded. After FWP purchased the property for something in the neighborhood of 7.5m a neighboring rancher blocked the Lincoln Road access with 4 large round hay bails. He is maintaining that the portion of the road running through his property was not a public road.

FWP is not sure they agree with his assessment. A private contractor hired by FWP is currently researching records in Toole Co. and Pondera Co. to determine if they agree with the rancher's assessment. Assuming that FWP decides that the Lincoln Road is public (and at this point it appears that it is) the question of legal action would be up to the Director of FWP. Regardless of the outcome of the Lincoln Road issue, there will still be access for hunters this fall. The McCormic access on the north-west corner is open and there will likely be a new access (the Clark Access) located about midway through the property

Hughes Creek Road

The Hughes Creek Road, a county road located within the boundaries of the Bitterroot National Forest south of Darby, Montana, was recently closed by a private landowner. In May of this year , the Ravalli County Fish and Wildlife Association challenged this closure by researching county records and Commissioner's Journals . They presented the County Commissioners and County Attorney with copies of the original road declaration making it a public road, a copy of the original Commissioners Journal, documentation on attempts to have it abandoned, the documented refusal by the County Commissioners to abandon it in 1982, and the history of the road up to October 19, 1988 .

Our contact with the Bitterroot National Forest substantiates the claim of Ravalli County Fish and Wildlife and they tell us their findings have been submitted to the County Commissioners. The facts have now been presented and with patience we believe the public will prevail .

This is an excellent example of what private citizens and organizations can accomplish to counter road closures. (Some of the early successes of PLWA were in Western Montana and Ravalli County as a result of citizen involvement of this type and cooperation with county Clerk and Recorder offices.)

The Ruby River Court Decision (continued) ...

The point here is that the Judge destroyed the opposition's main arguments completely. Since the Bridge Access ruling by the Attorney General and HB 190 only apply to county roads there was nothing the lawyers for the opposition to argue or for legislators to use for cover. Instead, the lawyers changed strategy and tried to prevent any ruling on roads other than formal county roads.

Judge Tucker also ruled that fences on the easement are not encroachments since they are authorized by the County Commissioners. Our lawsuit challenged these fences because many of them were constructed to keep people out rather than livestock in. We got what we wanted because if fences are authorized by the county commissioners they must allow for stream access as directed by the judge.

My point here is that as much as we appreciate the hard work by various groups including Montana Wildlife Federation, Trout Unlimited and especially Representative Kendall Van Dyke, the summary judgment decisions by Judge Tucker went a very long way in resolving the Bridge Access issue before the legislature convened.

Maybee Road Update

We are continuing the research on the status of the Maybee Road that runs north from Roy, Montana and connects with the Knox Ridge Road in Fergus County. We have found additional maps and other information that reflects the road has existed in approximately the same location since 1913. The next step is to ask persons who have traveled the road sometime in the time period from the early 1900's to 2007, when the road closed. If you or anyone you know traveled this road during this time, not having to ask permission or encountered any locked gates or a "Road Closed" sign, please contact any member of PLWA. We will ask you to sign an affidavit stating the fact that you were on the road. The affidavit only states the facts and truths. Anyone signing an affidavit is not putting themselves in any illegal situation if what you say and sign is the truth.

Membership and Support

Due to your past generous support we've had a very successful year. In addition to our legal victory over Madison County on the Ruby river, the Bridge Access bill passed through the legislature with overwhelming support. However, the stream access fight goes on in court. Judge Tucker did not rule on the Saylor Lane road and bridge portion of our case, and it is likely to go to a trial which will determine access on roads deemed 'prescriptive easements'. What's more, our anti-access adversaries may choose to appeal Judge Tucker's rulings. So, "it isn't over 'till its over".

And there is a lot more to access than stream access. Private parties continue to close public roads. We know of at least 5 or 6 road closures that cry out for attention. This will be major thrust in coming months.

We hate to be in the mode of always asking for money, but, sadly, that is what it takes to keep the pressure on. We also need members. So maybe take a look at what you can do, or pass this newsletter on to a friend who wants to be part of the fight. (Send us \$50.00 or more and we will send you a world famous PLWA logo embroidered cap). If you have any questions or comments, please email us at membership@plwa.org or drop us a note in the mail.

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

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

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New Long Awaited Access on Stillwater River Jeffrey's Landing Fishing Access Site

On Friday June 26, 2009 , a ceremony was held marking the grand opening of a new fishing access site on the popular Stillwater river. Formerly referred to as the Riverside Inn site , about 2 miles downstream from Absarokee, this site fills a vital need for access lost when a new bridge was built just upstream..

Now called "Jeffrey's Landing" the 3.7-acre site is a victory for access advocates and Fish , Wildlife and Parks staffers who have spent a decade securing public access in the vicinity.

Gary Hammond, the Region 5 FWP Supervisor who ramrodded this acquisition said "It's our new crown jewel . This has been a place we've wanted for such a long time."

PLWA President John Gibson recalled a meeting several years back, when a FWP commissioner from Billings stated unequivocally that the state had no need for more access sites. John commented "Look at this, a public river with public fish within 50 miles of the largest metropolitan area in Montana - and 99 percent of the shoreline is private property . I'm glad to see all these kids here today. They're the ones who will benefit."

PLWA officers and members have been key players in securing this access and a strong direct force in its creation.