



PLWA

The **KEY**

Unlocking access to public lands & waters

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PLWA AND INITIATIVE I-161

Initiative I-161 would eliminate the outfitters sponsored license that allow the holder to hunt and harvest elk and deer along with small game if he or she signs up with an outfitter (55,000 elk combos and 2300 deer combos). Some of the money raised by these licenses has been funding the Block Management Program. The Initiative would replace that money thru an increase in all non resident big game license fees.

I suggest that PLWA fully support this initiative. Let me tell you why. Some of us have been in this access fight for over 30 years. We have seen too many roads blocked either directly by an outfitter or through a landowner working with an outfitter. Outfitting is a service offered to those who wish to hire someone to assist them in hunting or fishing or some other activity. PLWA has no problem with that idea.

The problem arises when these outfitters use the money they make from this guaranteed client base to exclude the public from public roads and public land. Many thousands of acres of National Forest and BLM land are presently unavailable due to blockage directly by an outfitter or by a landowner who receives more money from his outfitter lease by blocking the public from public land.

PLWA fights these blockages where we can. Examples are roads such as the Washington Gulch and Jefferson Gulch outside of Ovando and the Mabee Road north of Roy, Montana. There are many others.

Wilderness outfitters will be impacted by this change, and to some degree that is unfortunate. To them I would say. Tell your private land outfitters to clean up their act and provide a service, not just the key to a locked gate; a gate that prevents the public from accessing public land and wildlife.

John Gibson
President

Fergus Co. Attorney Responds to Mabee Road Closure

Urges County Commissioners to Take No Action

Todd Gunderson, a PLWA volunteer attorney, received a copy of a letter Fergus County Attorney Thomas P. Meissner sent to the Fergus County Commissioners regarding the closure of Mabee road.

Mr. Meissner advised the county not to get involved in this case. He stated, "I am sure there are dozens of roads in Fergus County where the issue of prescriptive use could be argued. I believe it would be a mistake for the Board of County Commissioners to support one position or the other in these situations". (Continued on Page 2) ...

The Mabee Road runs north from Roy, Montana in Fergus County, and provides the only road access to a large area of the Missouri Breaks National Monument and the CMR Wildlife Refuge.

Since Todd received this letter, a major event has taken place. The Montana Supreme Court ruled in favor of a prescriptive easement on a road similar to the Mabee Road. It is the Perkins Gulch Road in Deer Lodge County. The case was resolved through the District Court, which determined the road was public under prescriptive easement. This decision was appealed to the Montana Supreme Court and they upheld the District Court decision.

It is our opinion that we have a similar case and would be able to prove Prescriptive Easement rights based on the testimony provided by the court records on the Perkins Gulch Road. PLWA will now review our situation, gather information and advice and then call a meeting of the board of directors and fully discuss our options and what we do next.

Notice of Annual PLWA Membership Meeting

Saturday April 10 in Bozeman, MT

Gov. Brian Schweitzer invited to speak

Notice is hereby given that the annual membership meeting of the Public Land/Water Access Association, Inc. will be held on April 10, 2010, commencing at 10:00 a.m. at the Wingate by Wyndham, 2306 Catron Street, Bozeman, Montana, just off exit 305, Interstate 90. The business to be transacted shall include the election of three directors for three year terms to fill the vacancies caused by three expiring terms on the Board of Directors. In accordance with the Articles of Incorporation, the Directors have proposed a slate of candidates to be submitted at the Annual meeting. They are Lee Gustafson, Tom Harmon and Colter Pearson. Additional nominations may be offered by members from the floor. Each member is entitled to one (1) vote for each vacancy. Members desiring that resolutions or other items of business be considered should notify the PLWA President, John Gibson.

Anatomy Of A Win

Finley Basin Rd. - Granite County

We recently received notification from one of the County Commissioners in Granite County in Philipsburg Montana. It seems that a long established road had been closed and barricaded by the owner of a patented mining claim. This road known as the Finley Basin Road predated the patented claim based on old records. In this case the Commissioners and the local Forest Ranger worked together and the County attorney was directed to write a letter to the landowner instructing him to remove the barriers.

As of today the barriers are down. If there is a legal challenge it will occur with the road open, not closed. This is a good example of how road closures should be handled.

We do not suggest that any individual remove barriers that close a road. It is proper, however, for citizens to request that the County Attorney and /or the County Sheriff notify those responsible for the closure to remove the barriers by a certain date. If the deadline is not met, the authorities will remove the barriers at the expense of those responsible for installing the barriers.

Cherry Creek Road

Advocate Action Needed

The Cherry Creek Road nine miles south of Big Timber, east off of Highway 298, crosses about a quarter-mile of Lee Smoot's property and then three-quarters of a mile of George Matelich and Michael Goldberg's ranch before reaching the Gallatin National Forest boundary – and 16,000 acres of public land. (Matelich and Goldberg, as we understand it, are Wall Street executives.) Years of negotiations have failed to gain access and the Forest Service is considering pursuing an easement through using "eminent domain".

Here is the status of that action as of Feb 2010, as we understand it:

U.S.F.S. is briefing agency leadership, and then, because of a rider to the current Forest Service appropriations bill for the FS, they must get approval of the House and Senate Appropriations Committee before it is taken to the Undersecretary of Agriculture for final approval.

Here is the process:

- 1) The F.S. must brief the Chief in the next few weeks, disclosing that Matelich, Goldberg and Smoot are not willing to negotiate, despite repeated attempts and that eminent domain is the only option to provide public access.
- 2) After the Chief is briefed, they then brief the Montana Congressional Delegation (Baucus, Tester and Rehberg). If they do not oppose the action, then the House and Senate Appropriations Committees will not. If they do oppose it, however, the issue will be dead. This is why it is so important for folks to contact the delegation NOW and write letters to the editors NOW, so the delegation understands that there is widespread public support for access.
- 3) If there is no opposition from the House and Senate Appropriation Committees, then it will be forwarded to the Undersecretary of Agricultural for Natural Resources and Environment (Harris Sherman) for approval. (A package of staff work, like some additional surveys, appraisal, etc. will need to be done at that point as well.) The delegation and the administration must know there is widespread public support for access to be willing to even consider this step. Once the package is completed and the Undersecretary signs the declaration of takings and Matelich, Smoot and Goldberg receive just compensation for the easement, the title vests in the United States and the road will be open.

If Matelich, Goldberg and Smoot at any time come back to the table with a proposal to negotiate for public access, we will do that, and the eminent domain proceeding will be put on hold until the negotiations are completed and access is obtained.

No one wants to go down the eminent domain road, but it appears to be the only option to get public access at this point.

All of the information and addresses of the congressional delegation and Montana newspapers are listed on our website www.plwa.org . Look for the "Take Action" tab on the left.

Loss of a True Access Champion - Brad Heinrich

We all lost a wonderful friend, Brad Heinrich, age 66, of Ronan on Thursday, Jan. 15, 2009, as a result of a vehicle accident near Perma. Brad was doing one of the things he really enjoyed, cruising along in his '65 'Stang.

Brad was born in Seattle, Sept. 11, 1942, the son of Leo and Viola Heinrich. It was there he grew to manhood, graduated from Queen Anne High School near Seattle, and learned to love the outdoors.

An Army veteran, Brad received his degree in forestry from the University of Washington and later attended the University of Montana to receive histeaching endorsement. He then began a wonderful adventure as a teacher in Alaska where he made a host of very special friends, and those bonds endure today. He not only loved teaching in remote locations, he also enjoyed his hands-on experiences working alongside friends in the fishing industry.

After his retirement from teaching, he bought a home near Ronan but returned to Alaska many times to visit and help his friends. Brad especially enjoyed his time spent at the island cabin he built with his close friend, Earl Jeffrey, after having hauled the building materials from Montana in his dad's 1960 Ford pickup with the homemade topper (aka the Green Hornet). Brad loved planning his trips to Alaska, and it was amazing at how much thought and organization he put into his travels. His favorite traveling partner was his beloved black lab, Callie, and how his heart was broken when she was killed by a car on Christmas a few years ago.

Brad was always ready for a fishing adventure whether it was in the deep seas of Alaska or a newly discovered fishing hole in Montana. Many, many pleasant hours were spent in his quest for those elusive fish and the stories that came out of those endeavors. He freely expressed his disappointment when friends didn't take time away from their work to enjoy fishing more.

Anyone who called Brad a friend probably doesn't know a more kind, loyal and generous man. He truly enjoyed his friendships and would spend most of December making those special Christmas phone calls to each of them or remembering them with gifts from his heart. He always looked out for those less fortunate and down on their luck even when they weren't aware of it.

Per Brad's wishes, no formal services will be held and his ashes will be placed alongside those of his parents. His friends are planning a celebration of Brad's life to take place in Montana this summer. So we say so long for now, our friend, we'll see you again on the other side. We are so blessed to have had you in our lives, and you'll be in our hearts always.

Brad, true to his generous character, bequeathed \$10,000 to PLWA in his will. We thank him posthumously and promise to use these funds to help pass along the access legacy that Brad so cherished on to future generations.

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 .)

BLM Access Team addresses public need

Story by: Mark E. Jacobsen
BLM Public Affairs

MILES CITY, Mont. --- The BLM Miles City Field Office Access Team has addressed a series of access-related concerns on eastern Montana public land, the most recent of which was the Lone Tree project located about nine miles south of Jordan in Garfield county.

Boundary posting of the first phase of the project was completed Sept. 16, clarifying the boundaries and removing some of the guesswork for the public. The rest of the project will be completed at a later date

The Lone Tree project area includes several BLM sections accessible from State Highway 59 that link to a partial section of State land which gives access to an additional 12-plus sections of federal land. Due to the somewhat flat topography, the surrounding private land and the lack of adjacent block management parcels, access for the public was confusing and problematic.

The Access Team identified this area as a "Tier 4" project and later confirmed the need for signage with Montana Fish, Wildlife and Parks Region 7 conservation officers and staff.

To quantify access projects, the Access Team devised a methodology in February of 2008 that separated project types into four categories or "tiers" to better prioritize action items. The tier levels categorize projects that increase in complexity, expense and time; in ascending order.

A Tier 4 project is generally the least-expensive and time-consuming of the levels and is commonly addressed by boundary signing, easement identification and alternative route development. Sometimes it's as simple as ensuring BLM maps are updated accurately.

Tier 3 projects deal with easement acquisition; both short and long-term. Tier 2 projects cover travel management scenarios and Tier 1 items deal with land exchanges.

BLM Access Team members have met with local sportsmen and have added team members from FWP, Montana DEQ and the USFS Custer National Forest who have requested involvement and input.

The BLM Miles City Field Office partnership with Montana FWP Regions 6 and 7 has been particularly productive from both a manpower and information perspective. Both FWP regions have completed extensive BLM boundary signing projects in several eastern Montana counties beginning in the early 2009 spring season up until the end of this summer.

The Miles City Field Office and FWP Regions 6 and 7 also share GPS data on sign locations, building a database to accurately reflect what is on the ground. BLM summer seasonal personnel have also assisted the Access Team in ground-truthing roads and easements which has improved project list accuracy and identified additional access options.

Currently the team is tracking 121 projects. More will be added as they meet to discuss findings by BLM staff and FWP throughout the remainder of 2009. For more information regarding BLM access projects contact Shane Findlay at the Miles City Field Office, (406) 233-2800.

What Others Are Saying About PLWA

From the Fall / Winter 2009 edition of THE DRAKE
(A national fly fishing magazine.)

(In regard to the Ruby River / Madison county case.) “The amazing thing is not that PLWA won the case---all the judge did was uphold the law. What’s impressive is that they were ever able to bring it at all, against a man whose resources surely dwarf their own. PLWA is an organizational model that should be copied in every state, as more and more wealthy landowners try turning the West into a series of English chalk streams. There will be plenty more public access battles, that is for sure. And each of them will be expensive. This country fought the Revolutionary War because we figured a monarchy was a pretty lame idea and we preferred independence instead. It’s nice to see at least one small organization that is still willing to fight for it.”

If anyone thinks this access problem is cooling off, consider this ...

The Hell Canyon Road in Madison County has recently been blocked by a new landowner. This road has been used by the public for decades. After it leaves the 320 acres of private land it becomes the only road access to more than a Township of National Forest Land in the Beaverhead-Deer National Forest. So far, no one except PLWA has stepped forward to challenge this closure. We have alerted the Attorneys General office and his staff is looking into it. Madison County has taken a "hands off" attitude as has the Forest Service.

Ain't it great to have such courageous officials looking out for our interests?

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