



PLWA

The **KEY**

Unlocking access to public lands & waters

Published by the Public Land / Water Access Association
www.plwa.org

Winter 2011

Issue 12

The 2011 Montana Legislature

An Assault on Montana Sportsmen

As I write this column the Montana Legislature is moving at full speed. Multiple bills are heard every week that are a threat to the people who hunt and fish in Montana.

The majority party rode to power in Montana claiming they would create jobs, reduce government spending and eliminate unnecessary regulations.

It appears that's not quite what they really had in mind. A review of the bills tell a different story. There are a great number of bills that would turn public trust resources such as wildlife and water into private property.

Take HB309 that would make half the rivers and streams in Montana into private ditches or SB 344 that would allow landowners to claim damages from any state regulation or law that might reduce the value of their property. Does anyone believe these bills would reduce spending if they became law?

How about those bills designed to allow outfitters and property owners control of big game license allocation or prevent the FWP to prefer resident hunters over nonresident hunters through the issuance of permits?

I understand that the bill to repeal Initiative 161 (that eliminated thousands of outfitter sponsored licenses) has been dropped but two bills to make citizen initiatives more difficult are still on the books.

The thing about it is, citizens initiatives are seldom heavily influenced by campaign contributors or other financial advantages. Consider the results of I-161. It passed by a whopping margin in spite of a lawsuit by the the Montana Outfitters and Guides Association and organized opposition from many other outdoor and business groups. To me, this is as close to true democracy as we will ever see.

Here in Montana we have a great heritage of hunting and fishing with large quantities of public land and water to enjoy that heritage. But don't for a minute believe that it is there to stay unless we fight for it. Part of that fight is right there in front of us today as we work to stem the onslaught of bills that would privatize and commercialize those public trust resources that are so valuable to Montana.

As you challenge these proposals that threaten our resources remind the legislators that in Montana both water and wildlife belong to the people and we have court decisions to prove it.

Please do your part.
John Gibson

Some 2011 Montana Legislative Bills

All Out Attack on Public Land and Wildlife Management

Courtesy of Vito Quatraro, Headwaters Fish and Game - Bozeman

For whatever reason, legislators have submitted a large number of bills which are designed to strip authority from the FWP Commission, strip authority from the dept. of FWP, take funding away from the FWP, and may not be in the best interests of the Montana resident hunter. Below is a list of some of the bill or drafts presently being considered by the Senate and House Fish & Game Committees.

HB 148, sponsored by Rep. Kary-R, would allow motorized OHV access to public lands for game retrieval from 10 am to 4 pm. This bill allows cross country travel away from established roads and trails to retrieve game. It also places a burden on block management cooperators to allow the same cross country travel.

HB 159, sponsored by Rep. Smith-R, would restrict authority of FWP to regulate ammo or firearms for hunting.

HB 228, sponsored by Matthew M. Rosendale-R, would revise hunting privileges for youths by eliminating the minimum age requirements. Do we really want 7 year old children hunting big game with high powered rifles?

HB 214, sponsored by Rep. Bill Harris-R, would manage bison as livestock.

HB 272, sponsored by Rep. Kelly Flynn-R, would eliminate ability for FWP to use hunting access fees to acquire fee title lands. Evidently, we have too much public land to hunt on already

SB 83, sponsored by Senator John Brenden-R, would have FWP bear the cost of removing road kill by reimbursing the dept. of Transportation.

SB 84, sponsored by Senator John Brenden-R, would revise the deposit of FWP fines, restitution and damages to the general fund as opposed to the FWP fund.

SB 119, sponsored by Senator Steven Gallus-D, would allow rifles for spring turkey hunting.

SB 136, sponsored by Senator Joe Balyeat-R,, would revise residency requirements for hunting so that anyone born in Montana could buy a big game combo license or bird license for resident fees, no matter what state they live in today, thereby creating a dual residency for hunting purposes.

SB 144, sponsored by Senator John Brenden-R, would prohibit free-roaming bison
Currently in LC draft format, not yet formalized as Bills are the following:

LC 0578, sponsored by Rep. Bill Harris-R, would revise elk hunting permits for limited drawing districts to allow for unlimited archery permits in any unit where there is not a general rifle season.

LC 1058, sponsored by Rep. Wendy Warburton-R, would revise fish and game enforcement laws so as to reimburse attorney fees and court costs to anyone charged but not convicted of a FWP violation, limiting search and seizure powers of game wardens, and removing negligence as a basis for violating a fish & game law.

LC 1145, sponsored by Rep. Wendy Warburton-R, would reclassify mountain lions as a predator that could be shot any time of year without a hunting license.

LC 1366, sponsored by Senator Jim Peterson-R, would establish criteria for FWP commission decisions. This draft must be read to fully appreciate the additional burden being placed on the FWP commission.

LC 1455, Sponsored by Rep. Mike Milburn-R, increase hunting license fee to fund livestock loss reduction mitigation fund.

This is just a few of the pieces of legislation facing the FWP and hunters of Montana. The future of wildlife management and hunting in the State of Montana could change dramatically if the some of the above listed bills become law. Contact your legislators to voice support or opposition for these bills. If you would like the link to the bills going thru the House & Senate Fish and Game committees, please e-mail me at the address below.

Vito Quatraro is the president of Headwaters Fish & Game Association in Bozeman and a past member of the Private Land/Public Wildlife Council. He can be reached at vrq@montana.com.

The 2011 Legislature Where We Must Draw The Line !

by John Gibson, PLWA President

As the 2011 Montana Legislature convenes we can expect some serious attempts to privatize and commercialize elements of the Public Estate. Foremost among these is public wildlife. THE PUBLIC TRUST DOCTRINE. Our bedrock position comes from the U.S. Supreme Court and Montana Supreme Court decisions which clearly state that wildlife is owned by the people and held in trust for them. In every case decided, wildlife ownership is connected to THE PEOPLE and NOT THE LAND. We oppose any legislation that would erode that relationship - including issuance of tags or permits by anyone other than the Montana Fish, Wildlife and Parks. Only that agency should issue authority to legally hunt and harvest wildlife.

- 1.) Current law allows landowners to obtain 20 percent of the big game permits issued on their property for use by their family members or full time employees. These must remain NON TRANSFERABLE. (Someone may try to sneak in a bill to that effect.)
- 2.) We support the policy of the ten percent limit on non-resident big game permits in any category (Nonresidents as defined in current law). This is consistent with the U.S. Supreme Court Case of Baldwin vs. Montana where the court determined that "A state may prefer its residents over the residents of other states or condition the enjoyment of nonresidents upon such terms as it sees fit."
- 3.) We oppose any increase in the number of nonresident big game licenses. (We are likely to see bills increasing the number of elk licenses (17,000) in order to give non residents a better chance in the draw.)
- 4.) We also oppose any reduction in the number of streams that have been classified as navigable. These streams are qualified as navigable as a result of historic use as commercial waterways and the

beds of the rivers so classified are owned by the public. (A bill has been introduced changing the definition of navigability.)

PLWA will try to keep you up to date on significant bills as the session proceeds, but do what you can to take action by calling, emailing or writing your legislators. It makes a BIG difference when these negative bills come up. Please pass this and other emails on the subject to a list of your hunting and angling friends. Let's make it viral. (Some legislators say that is what turned the tide in the 2009 session for the bridge access bill.)

Boadle Road Court Victory

10 year legal battle ends

On Nov 30, 2010, Judge Nels Swandal of the Montana 9th Judicial District in Choteau Montana , decreed as follows: "The road located on Jones Property known as the Sun River Slope Canal Road ("Canal Road") , from the intersection with Boadle Road up to Pishkun Reservoir, is a Public Road and until abandonment may be used by the general public without interference from the owner of the underlying land". This simple declarative sentence sums up the result of legal action lasting over 10 years. It was a great victory for access advocates.

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 finding took 10 years and 4 different court cases. Whew! Thanks to the support of members, the perseverance of volunteers, and the skills of the Goetz law firm . (Ben Alke was the lead attorney for the final hearing.)

The Boadle Road and Sun River Slope Canal Road lead to the south side of the Pishkun Reservoir, a Wildlife Management Area, Tunnel Lake, and public lands beyond. It had been illegally locked off by a private party around the year 2000. (It starts at a missile site west of Fairfield) PLAAI (Now "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. PLWA won a court decision to get that road open. However, the landowner then blocked it again at a point not covered by the court decision.

At this point the road is called the "Sun River Slope Canal Road" A subsequent law suit by the landowners contended that PLWA did not have standing to sue because the Bureau of Reclamation held the road easement - not PLWA. PLWA appealed that decision to the Montana Supreme Court and prevailed in early 2008 . PLWA then had status to proceed. While this was a victory, the case was far from over. The issue of illegal closure in the second part of the road went back to District Court in December of 2008. Finally, a June of 2010 District Court hearing resulted in the November of 2010 decree noted above.

Judge Swandal allowed the landowner to keep the road closed until the Supreme Court hears his appeal. We don't know why.

Bullwacker Road Update

Road Opening Appealed

As most of you will remember, in 2007 PLWA supplied evidence that this 2 miles of road leading to

approximately 50,000 acres of previously inaccessible BLM acres north of the Missouri River in Blain County. Based on this evidence County Attorney Donald Ranstom ruled that the road was a public road.

In October 2009 a lawsuit was filed by the landowners that the road was NOT a county road. This case was presented on January 11, 2011 in Blaine County. I called the County Attorney and he said he was going to present the 2009 Perkins Gulch and most recent Boadle road decision that the courts decided, based on similar evidence, that the roads were public. Mr. Ranstom does not know when the decision from the judge will be handed down, but he will keep me informed as I will our members.

Mabee Road Update

The Mabee road case is progressing. PLWA officers are scheduled to have a meeting with Attorney General Steve Bullock in Helena on February 25. He will have reviewed the extensive evidence we have submitted to the county and hopefully will be able to give us advice and provide some help to resolve this case. We are not giving up on this one.

The PLWA Road Closure Bill - HB 290

House Bill 290 was heard by the House Transportation Committee on Wed. Feb 2 at 3:00 PM.

This bill was short and sweet. It said: "If a landowner or other party plans to close a road that is presently being used by the public for normal vehicle travel, they are required to submit evidence to the County Commissioners that that road is a private road and not a public road. The commissioners will schedule a hearing on the proposed closure. This hearing must take place before any signs, barriers or other indicators of closure are erected. The commissioners will schedule a hearing on the proposed closure far enough in advance to allow testimony from other parties. The individual proposing the closure or his or her agent must be present at the hearing."

The bill did not make it out of Committee in our politically polarized legislature.

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.

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

THE KEY published by
The Public Land/Water Access Association
(PLWA)
P.O. Box 80987
Billings, MT 59108
www.plwa.org

US Postage Paid

Permit No. 104

Billings, MT.

Yellowstone County Commissioners to Open Wise Lane

Access to Yellowstone River near Billings

Wise Lane is an official county road leading to the north bank of the Yellowstone River between Billings and Laurel. In addition to leading to the river, PLWA research indicates it also leads to an important public island at that point. The road was created when "Petitioned" by citizens in the early part of the last century. Sadly, it was unilaterally closed by the adjacent landowner in the 1980's.

PLWA had been unsuccessfully talking with the Yellowstone County Commissioners for years on this issue. However, in 2010 PLWA took direct action to again notify the commissioners of the continued closure and demand action. Finally, in a meeting with the Commissioners in early November of 2010, the Commissioners agreed there was no doubt that the road was an illegally blocked, official county road. They intend to enforce the decision with a court injunction if necessary.

While this specific access point is significant, the principle and precedence may be of greater significance in the long run. County commission compliance and cooperation on these types of closures has been very spotty throughout the state. They usually have to be drug screaming and kicking, sometimes with a lawsuit, to comply. Thus, the action of the Yellowstone County Commissioners to disallow illegal and unilateral closing of county roads is an important progress milestone.

They further indicated they would erect a safety barrier at the end of the road together with a widening as necessary to allow vehicle turn around. The Billings Rod and Gun Club will cover a portion of the expense to build a walk-thru as part of the barrier and explore options to facilitate entry of light watercraft at that point.

Many thanks to PLWA Director George Bauer from Livingston MT, whose diligent research and effort spearheaded the latest effort.