



The **KEY**

Unlocking access to public lands & waters

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Presidents Message

John Gibson

The 2013 Montana Legislature has many of the same characteristics of the last one (2011) in that it features a sustained attack on public land and wildlife.

As usual, our defense against this onslaught rests with the Montana Wildlife Federation with help from groups such as the Montana Sportsmen Alliance and clubs like Russell Country Sportsmen and Skyline Sportsmen.

Some of the bad bills have been tabled but other have passed one house and headed for the other. It is not known at this time how the new Governor will react to legislation that detracts from the public trust nature of land, water and wildlife.

Here are some bad bills that have been tabled or killed so far in the session:

SB 151 Unlimited Elk Permits in the Missouri Breaks.

HB 161 Increase number of available nonresident hunting licenses

HB 29 Allow trapping of Mountain Lions.

HB 198 Authorize late season deer and elk hunting.

There are also some bad bills that are still alive include several that want to manipulate sportsmen dollars.

HB404 would take money from Habitat Montana to fund Block Management .

HB375 Reimburse landowners for damage from deer and elk.

HB27 Authorize use of silencers.

It is still too early in the session to find the final action on many other bills.

A Members Take on the Legislature

Lou Goosey

There's an old adage that if you give an inch they'll take a mile. This couldn't be more true concerning Habitat Montana. In the 2011 Legislative Session, HB 607 basically destroyed funding for Block Management.

Now, in the 2013 session, we are trying to steal Habitat Montana money to fund Block Management. HB 404 takes funding from eighty percent to 55% and takes 25% for Block Management funding. Then comes HB 440 which takes another 25%. By the time we get done stealing Habitat Montana money, there (Continued on Page 2)

PLWA Annual Membership Meeting - April 27, 2013

The annual membership meeting of the Public Lands/Water Access Association ("PLWA") will be held on 10:a.m, Saturday April 27, 2013 – at the Holiday Express (formally the Wingate) 2306 Catron Street, Bozeman, MT.

PLWA is an all-volunteer, non-profit organization leading the fight to protect and advance public access to public land and water in Montana.

Attendees will get an update on issues, legislation, and court cases involving public access as well as an opportunity to share thoughts with access leaders.

The Keynote Speaker will be recently appointed Montana Fish, Wildlife and Parks Director Mr. Jeff Hagener.

(Continued from Page 1) isn't much left to acquire land for the public use. The goal of these two bills is to keep FWP from acquiring any more public land for the next two years.

They are supposed to sunset after that time but I'll believe that when I see it. When the sunset period is due, there will be more negotiations to extend, nullify, etc. Hunters, fishermen and all outdoor recreation people are getting short changed. We must oppose both of these bills. HB 404 has already cleared the house on a straight party line vote and 440 is probably going to follow suit. We must keep up the fight no matter the odds and hope that if we fail, the Governor will veto.

Major Victory in Montana Supreme Court

Boadle Road Bridge Case - February 2013

In a not so surprising decision, the highest court in Montana has held for PLWA in a case where a landowner, Jones, used every legal and illegal maneuver to keep a public road closed - including tearing out a bridge. PLWA beat him in the Montana Supreme Court repeatedly, but he just keeps coming back with one illegal action after another, and one appeal after another. Finally, the court has, in effect, said enough is enough and sent the case back to District Court for final resolution of damages and court ordered action on the part of the landowner.

HISTORY - As readers and members are no doubt aware, the Boadle Road in Teton County has been an endless saga of the associated landowner, Jones, losing round after round in the courts and defying court rulings. The latest deal was that he tore out a bridge on a public right of way. PLWA went into action and sued for punitive damages, and reconstruction of the offending bridge.

In April of 2012, Judge Nels Swandal ruled that there was, in effect, no foul when Jones destroyed the bridge because the bridge was "personal property". PLWA strongly disagreed with this opinion. We do not see how any "improvement" permanently affixed to the surface of the earth could be deemed personal property, and what's more, how anyone could remove an improvement or bridge on a public right-of-way without the consent of the public - particularly when the Montana Supreme court had told him on two occasions to quit messing with the road and right-of-way.

In May of 2012, the decision was again appealed by PLWA to the Montana Supreme court. As noted above, the high court threw out the Swandal decision in its entirety. The lower court now has some important decisions make.

Shields River Access Fiddle Creek Bridge Update

Hearing Scheduled on February 26, 2013

In the summer of 2012 a PLWA member reported 'No Trespassing' signs posted on the Fiddle Creek Bridge over the Shields River north of Livingston. A search of county records showed the bridge being on a county road with a 90 foot right of way by order of the district court and the signs are on public land.

A meeting with Park County Commissioners has been scheduled for Tuesday, February 26, 2013, at the Park County court house in Livingston. The Park County attorney is expected to attend and Montana Fish, Wildlife and Parks department has indicated they will be sending a representative. PLWA will be representing the public. We will keep you posted.

Seyler Lane Hearing Scheduled for April 29th, 2013

Bridge and Stream Access Go to Supreme Court Again

As members are aware, PLWA has appealed an April ruling by Madison County District Judge Loren Tucker that limits stream access from bridges on roads with historic prescriptive easements. (A prescriptive easement is one created by continuous public use.) In that ruling, the lower court said that the public does not have the right of recreational access to the Ruby River from the Seyler Lane bridge - a bridge on an agreed upon prescriptive road. (The Ruby is a classic trout stream flowing north near Twin Bridges, Montana.) Essentially, he ruled that the public prescriptive right-of-way for most uses was just for the roadway surface - not the borrow pits or bridge abutments, and that prescriptive use did not include recreational use. PLWA believes that the right-of-way is the full 60 feet and that recreational use is allowed just like any other legal use. Based on consultations with PLWA lawyer Devlan Geddes of the Goetz law firm, we are optimistic about chances on appeal.

However, that same case has also prompted a challenge to two existing Montana statutes – the 2009 bridge access law and the Montana stream access law which has been around since 1985. A portion of the challenge is in the form of a “cross appeal” by the associated landowner, James Cox Kennedy, a billionaire media mogul from Atlanta. In that appeal he argues that the stream access law and the law allowing recreational stream access at county road bridges are an unconstitutional “taking” of his property. He further argues, along the lines of Tucker’s decision, that recreational use is not included in public prescriptive road easements. It is clear he will not be happy until our bridge and stream access laws are gone.

Montana is lucky to enjoy the best stream access in the U.S. We cannot stand by and see it eroded by this case or any other case. This is turning out to be a high profile case. Montana Trout Unlimited recognizes this and they have filed a friend-of-the-court amicus brief on our side, The opposition has also recognized this and United Property Owners of Montana (UPOM) and the Property and Environment Research Center (PERC) have both filed amicus briefs supporting Kennedy. (Just Google them to see what they are all about.)

In a somewhat unusual action, the court will hear this case in the Strand Union Ballroom of Montana State University Bozeman on April 29. The introduction to oral argument will start at 9:30 A M and will conclude that morning. Attendance by a large number of access supporters would be more than useful. You will learn a lot and it will show the court strong public interest.

HB 235 - CORNER CROSSING

Defeated in House Judiciary Committee.

This bill decriminalizes “corner jumping” and is strongly supported by PLWA. It would open thousands of acres of public land. Sadly, the bill was defeated in the House Judiciary Jan 30 on a straight party line vote with all the R’s voting against it. (Including co- sponsor Krayton Kerns of Laurel .)

The sponsor, Rep. Ellie Hill - a real firebrand from Missoula - , will try to ‘blast’ it out of Committee with a vote on the House Floor. She needs 60 out of 100 votes to succeed. This ‘blast’ motion is scheduled for Monday, Feb. 18th - the President’s Day holiday. There is a rally scheduled on the 18th at the Capitol after the vote.

The bill reads as follows:

HOUSE BILL NO. 235 - “AN ACT REVISING LAWS RELATED TO TRESPASS; PROVIDING FOR AUTHORIZATION TO REMAIN LAWFULLY AT CORNER OF PARCELS; PROVIDING AUTHORIZATION TO CROSS PRIVATE LAND AT CORNER OF PARCELS.”

Excerpt :(a) When crossing from one property in which a person is lawfully authorized to remain to another property in which the person is lawfully authorized to remain pursuant to subsection (1), a person is permitted

to cross private land at the geographic point that represents the corner of one or more parcels of private land so long as the person does not:

- (i) cause physical harm to a landowner's real or personal property; or
- (ii) unreasonably interfere with the quiet enjoyment or use of the landowner's property.

Corner Crossing Rally

Bill Goes Down - Associated Press - 2/19/2013

HELENA - The Montana House on Monday rejected a plan that aimed to give hunters and others access at corner crossings to public land that is intermingled with private land in a checkerboard pattern.

Hunters and advocacy groups packed the chamber in support of the measure, seeking access to patches of government land that meet at corners. Supporters of House Bill 235 said denying access at such corners ensures that mega-land owners like Ted Turner can lock up blocks of public land.

This law would no longer criminalize a Montana sportsman from jumping from one corner of public land to another corner of public land, said Rep. Ellie Hill, D-Missoula. We are talking about hopscotch folks, leaping from one corner of public property without touching any private land.

Hill said the measure would ensure access to more than 800,000 acres of landlocked public parcels.

Backers, led by Democrats, were trying to get the measure out of a committee where it had been tabled. Republicans used their majority in the chamber to easily defeat that motion. It only received 45 votes, instead of support from 60 out of 100 in the chamber needed to meet a procedural threshold. (Continued)

(Corner Crossing Rally Continued) - Republican critics argued there is no way to cross at the corners without trespassing, even if a person knows exactly where the property lines intersect. They argued a person's hips and shoulders would cross the airspace at the intersection of the four corners while hopping between parcels.

SB237 - "No net gain"

SB 237 AN ACT REQUIRING APPROVAL OF THE BOARD OF LAND COMMISSIONERS FOR CERTAIN LAND PURCHASES; PROVIDING THAT TO THE EXTENT PRACTICAL AND CONSISTENT WITH THE BOARD OF LAND COMMISSIONERS' POWERS AND DUTIES, LAND PURCHASES MAY NOT RESULT IN A NET GAIN IN LAND OWNERSHIP BY THE STATE; has just been introduced by Senator John Brenden . This bill also calls for land board approval for all land purchases of more than 5 acres.

This bill is being heard in the Senate Natural Resources Committee. The first hearing date has not yet been scheduled so we will need to track it closely.

HB 147 - Hunting Trespass Penalties

Introduced by A. REDFIELD

"AN ACT REVISING PENALTIES FOR FAILURE TO OBTAIN LANDOWNER'S PERMISSION FOR HUNTING ."

This bill which significantly increases fines and penalties for hunting trespass is just another attempt to intimidate hunters. Given the imprecise marking of public land, the corner crossing ambiguity, and the de facto presumption of guilt when a hunter is accused of trespass, this bill is really a threat to public land access- and a threat to hunting .

PLWA STRONGLY OPPOSES !

Mabee Road Case

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.

PLWA filed a complaint in Fergus County District Court in August of 2012 seeking to have the northern portion of the Mabee Road reopened to the public. We will keep you informed of developments.

Montana Sportsmen Lose When Wildlife's For Sale

January 19, 2013 By NICK GEVOCK

Imagine giving up Montana's five-week deer and elk rifle season so hunters who can pay \$20,000 or more for a license can kill bigger bucks and bulls.

How about buying an elk tag only to find that sections of public land where you planned to hunt are only available to hunters who bought their license from a landowner who was given the tag from the state.

And try this one: picture the Montana Department of Fish, Wildlife and Parks letting a group sell special deer licenses and then having that same group lobby the state Legislature to overturn our stream access law.

If it sounds far fetched or like the workings of a banana republic, it isn't. Those things are happening throughout the West. And those same people want to bring this vision to Montana.

Ranching for wildlife

What do these states have in common? All of them have enacted various programs that are often dubbed "ranching for wildlife." The states give landowners tags to be sold in return for some limited access to private land for hunting.

Start with Colorado. Its "Ranching for Wildlife" program has allowed landowners to take over not only their land, but sections of public land. Average hunters have been told that their tags aren't even valid on some of these sections.

In New Mexico, landowners with as few as a couple acres are given tags by the state, which then get sold on the open market and can be used off the property. The program is obviously a joke, because such landscapes offer no real habitat benefit to wildlife, but it is deeply entrenched because of the money the landowner makes.

Utah leaves hunters out

But by far the most egregious example of selling out the public comes from Utah. The Beehive State has several programs that have turned its wildlife into a commodity, including a landowner tag program in which landowners are issued the majority of the tags to sell while the public gets a handful to hunt there.

Utah also issues special deer permits to groups, including Sportsmen for Fish and Wildlife, which they get to auction off in exchange for helping to fund habitat improvement projects. It sounds great, but last year the

Anchorage Daily News reported that SFW, which has chapters around the country, raised \$2.4 million by selling permits nationwide. SFW spent a whopping \$1.1 million of that on conferences and conventions, in part to help spread these programs to other states. The group also used some of that money to lobby its state legislature to weaken Utah's stream access law. That's right, money from the sale of a public resource was used to cut off the public from its public waters.

The trend goes on and on. But the results are always the same: as more states work to privatize wildlife, opportunity for average hunters and anglers to enjoy their fish and wildlife steadily goes down. Utah used to have a general, 11-day deer season in which everybody got to go. Now every big game permit is special draw only. (Continued on Page 6)

(Continued from Page 5) And now we've been told that the solution for Montana to deal with the always difficult issue of managing public wildlife on private land is to adopt one of these programs.

When Montanans hear that claim, we need to think about what our outdoors opportunities mean to us. What price can we put on time spent in the field with family and friends enjoying world-class hunting? How about the days on our state's rivers and streams while fishing or floating?

Wildlife issues are never simple. But what has consistently made the United States so different than other countries is a core principle that wildlife belongs to everyone, not just the ultra wealthy.

People who say that these other states are the model for Montana are right - they're exactly what we never want our state to become.

Survey: Public Land Aids State - Montanans asked about wide open spaces

GREAT FALLS TRIBUNE - February 8, 2013

By Erin Madison - Tribune Staff Writer and The Associated Press

Montanans place a high value on public land, according to a poll Thursday by Colorado College's State of the Rockies Project.

Ninety-one percent of voters in Montana say public lands are an essential part of the state's economy, according to the survey, 72 percent believe public lands support the economy, provide recreation opportunities and enhance quality of life, rather than being a fiscal burden and preventing creation of jobs.

The majority of voters in the six Western states covered in the survey — Arizona, Colorado, Montana, New Mexico, Utah and Wyoming — agreed, with 79 percent saying public lands support the economy and enhance the quality of life in their state.

While Western voters remain concerned about the nation's dependence on foreign oil, 59 percent supported "strong standards" to limit drilling near recreation areas, water sources and wildlife. Only 35 percent supported opening more public lands to energy exploration.

"I'm astounded at how strong their beliefs on conservation in relation to energy development remain" in light of the weak economy, said Walter Hecox, an economics professor at Colorado College and director of the school's State of the Rockies Project.

Voters often tolerate more development when the economy is in the doldrums.

"Given all the economic stress, people in the region call for a planned approach to energy development," Hecox said. "The region is holding on to its core values."

The poll did find that 89 percent of voters regionwide viewed dependence on foreign oil as a serious problem, and 56 percent backed the concept of drilling on public lands, provided environmentally sensitive places are protected.

In Montana, 57 percent of voters say environmentally sensitive places should be permanently protected from oil and gas drilling, while 37 percent say more public lands need to be opened to responsible energy development.

Montana voters are in favor of renewable energy, with 53 percent of voters listing wind power as one of the top two sources of energy they would encourage the state to develop. One-third of voters favored developing natural gas and 28 percent favored coal.

Colorado College started this survey three years ago as a way to gather nonpartisan, statistically valid data on what people think about public lands, Hecox said. Prior to that, politicians and the media frequently talked about the public opinion of land and energy development without any real data to back up their theories.

A separate study by Bozeman-based Headwaters Economics also found that public lands bolster a state's economy.

On average, nonmetropolitan counties in the West see an increase in per capital income of \$436 for each 10,000 acres of protected public lands, such as national park or designated wilderness areas, in that county, according to that study.

"The West is outpacing the rest of the country in terms of income, jobs and population growth," said Ray

Rasker, economist with Headwaters Economics.

CEOs are seeing the benefits of open space and an amiable quality of life as a tool for recruitment.

“Globally, we’re in a race to attract the most talented people,” Rasker said.

Colorado College’s poll was conducted jointly by Republican and Democratic polling firms. It sampled 400 voters in each state with a margin of error of 2 percentage points at the regional level and 4.9 percentage points at the state level.

Reach Tribune staff writer Erin Madison at 791-1466 or emadison@greatfallstribune .com. Follow her on Twitter@GFTrib_EMadison

Silver Bow Creek Headwaters Coalition - Restoration Needed

Silver Bow Creek Headwaters Coalition LLC - February 15, 2013

Silver Bow Creek Headwaters Coalition filed a lawsuit against the State of Montana on November 4, 2010. The lawsuit requires the State to call the portion of Silver Bow Creek flowing through Butte by its proper name— Silver Bow Creek! The trial is scheduled in Judge Brad Newman’s Butte District Court on April 8, 2013.

The group believes the State’s repeated references to Silver Bow Creek flowing through Butte, as “Metro Storm Drain” in public documents and other references are illegal, and degrade the Creek’s status as the headwaters of Clark Fork and the Columbia Rivers.

Groundwater in this section of the Creek is more toxic than Berkeley Pit water. The attempted name change and irresponsible cleanup of this section of the Creek places at risk the cleanup and restoration of the \$80 million cleanup of the Creek from Butte to the Warm Springs Pond. It would be a tragedy, as pointed out in a State of Montana letter to the EPA in 2006, if re-contamination of the Creek resulted from discharge of this contaminated water.

The group has worked diligently for the past several months with the State of Montana and the Director of the Department of Natural Resources to resolve this issue. Unfortunately, they have failed to reach a settlement.

The George Grant Trout Unlimited chapter has made a financial donation to help pay expenses. If you would like to assist them, please send your tax free donation to Project Green, PO Box 4268, Butte, Mt 59701.

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 .)

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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.)

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.)

Monitoring and keeping track of legislative , executive and agency actions. (Just time and smarts.)

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 Lee Gustafson @ 406 671-4340.