



PUBLIC LAND
WATER ACCESS
ASSOCIATION

THE KEY QUARTERLY

Unlocking Access to Montana's Public Lands & Waters

Winter 2021

HUGHES CREEK - A Big Win, But A Disturbing Trend

What is public access, and what importance does it hold to the average Montanan? What does the right to access our state's public lands and waters to recreate, to hunt for food, to fish with your family, mean to the people who make their homes here - who travel from other states and around the world to see the splendor of our mountains and streams?

With almost a third of the state being composed of public land, Montana represents an incredible opportunity for recreation without the requirement that one pay millions of dollars for the privilege. Here, there is no need to inherit the land you choose to recreate on - it is available out your back door. While Montana is not unique in the West - several states have a higher proportion of public lands - it does stand apart in one respect. Since the 1980's, time and again, the people and courts of Montana have chosen to enshrine the right of the public to access public lands and waters into law.

The Stream Access Law, passed in 1985, gives the people the right to recreate on navigable waters, regardless of who owns the lands on either side above the high-water mark. The subsequently passed Bridge Access Law built on this, confirming access to these waters at public road bridges. Both have stood in court against multiple attacks from private individuals seeking to undermine the freedoms held by the public, and these important rights remain in the hands of Montanans and written into our State Constitution.

While cases such as these can take years to win, the Public Land/Water Access Association along with other public access and conservation organizations are willing to fight on behalf of the public interest until they are resolved. Placing our trust in the system of justice and the State of Montana, the public

interest most often prevails. Yet what about when justice prevails in the courts, but not in the land?

One such disturbing case is Hughes Creek Road. The courts ruled multiple times that the gate blocking access at Hughes Creek was illegal and must be removed, yet it remained. Every legal option to block public access exhausted, the local landowners transitioned from plaintiffs into vigilantes. They threatened violence if local authorities removed the gate, and after letters and communications from PLWA and others, the local Commissioners stated they had no plans to remove the gate, nor would they further address the issue.

This then, suggests a question - what precedent do we wish to set for our state? Public access is valued by many within Montana and beyond; the power of judicial writ and confidence in our system of law held sacred by many more. If we allow these tenets to be undermined, and let officers of our government sit idly by while vigilantes steal our rights from us, then our legal victories become hollow. Trust in our officials shattered. Precedents are being set that see the promising future of our state slip through our fingers.

In early January, the legal team working on behalf of the Ravalli County Fish & Wildlife Association and PLWA issued a letter to Governor Greg Gianforte and Attorney General Knudsen, alerting them to the situation at Hughes Creek Road, and calling for immediate action by the State and a return to law and order. The public lobbied for action, and in a big win for public access, the gate was taken down. PLWA is accustomed to and most often successful in using patience, persistence, and facts to win back public access. But the question remains - should it really be this hard?

PLWA: A History of Access

PLWA Has Been Defending Public Access Since 1985

PLWA has a storied history, made up of individuals who believe that access to public lands and waters is fundamental to the identity of Montana.

It was,

"... during a public meeting called by an ad hoc group of public land users in 1984 when Gene Hawkes, a former Gallatin National Forest Supervisor, threw his \$25 on a table at the Bozeman Public Library and said, 'Here's my start-up dues. Let's organize a public land access group.' After more people threw their \$25 on the table that night, nine of us from Bozeman, Three Forks, and Livingston signed on as Founders and first Board of Directors of the Public Land Access Association. PLAAI* was incorporated as a Montana Corporation on April 18, 1985 by the Secretary of State."

- Excerpt of Our Vanishing Roads by Perry Nelson, one of the 9 Founders of PLWA

In 1990 Grace Lichtenstein wrote an article in the Los Angeles Times Magazine about the increasing number of public lands access issues, especially in Montana. Don't Fence Me Out detailed threats to public access already occurring over thirty years ago.

PLWA Executive Director at the time Gene Hawkes and former President Ron Stevens showed Lichtenstein what public land ownership in Montana was all about.

"It was a warm summer morning, and he and Gene Hawkes were about to show me how one landowner tried to block the public's entrance to a chunk of Montana that they believe everyone should be able to enjoy. Along a trail between a rocky ridge and granite-faced mountains, we paused to take in the view.

"See this?" Hawkes said, sweeping his arm at the landscape. "This is your ranch."

*PLAAI later became PLWA

"All Montanans are ranchers," Stevens chimed in.



"Their ranch is the Big Sky ranch, and it includes 8.1 million acres of BLM land, 10.2 million acres of National Forest and 5.2 million acres of state school-trust land. Our brand is the Flying R, which stands for freedom to recreate."

That sentiment - that desire to keep access to Montana's public lands and waters open to all who wish to travel them is central to PLWA's purpose, leadership, and base of support.



Championing Conservation in 2021

While PLWA does not have a legislative action arm, we know our members are interested in being more involved with direct action in legislative issues involving public access and conservation. Our partner organization MWF is an excellent resource that can help you be more in the know about important issues affecting Montana. Here's what they have to say:

"The Montana Wildlife Federation is Montana's oldest wildlife conservation organization. Since 1935 we have spoken up for wildlife and those who care about wildlife. This role is never more important than during the Montana legislative session. During this session, MWF will have four full-time staff members tracking bills, providing testimony, and keeping Montana's informed on the most important issues facing public lands and wildlife. Should you want to find out more, stay up to date, or get involved, visit <https://montanawildlife.org/news/capitol-report-2021-bills-and-budgets/>. Now is the time for Montanans to show up and strongly voice their support for their public lands and wildlife."



JOHN & CAROL GIBSON INDUCTED INTO THE MONTANA OUTDOOR HALL OF FAME ON DECEMBER 5TH, 2020

Access Heroes John & Carol Make Their Mark

John Gibson turns 89 this month. His late wife Carol would be turning 86 this year. Together, these two best friends spent lifetimes carving out and defending the public land and water access that Montanans have come to not only appreciate but to rely upon.

For all his jokes about being an artifact or behind the times, John has never let the needs of today outpace him. As public access has continued to be threatened, John Gibson has stepped up to the plate time and time again, helping in any way he can. During his tenure as President of the Board, John guided PLWA for over 20 years in its efforts to investigate access complaints, testified in court to re-open access, and championed the importance of public lands to anyone who would listen.

John's wife Carol was a teacher and an avid outdoorswoman; hooking salmon in Alaska and wingshooting in Montana. As John saw his career with the Forest Service take them from

California to Alaska to Montana, both John and Carol grew to love and understand the importance and inherent worth of public lands and waters, and why it was crucial to be involved in the effort to protect them. From the Montana Wildlife Federation to the Billings Rod & Gun Conservation Committee to the Montana Fish & Wildlife Trust, the Gibsons lent their support to a multitude of organizations that work towards preserving access to this state's wild places, and the special opportunities this access grants.

Whether it is behind the scenes working with Goetz Law Firm to defend the Stream Access Law or front and center testifying in court to re-open access to Boadle Road, John Gibson is still there.

John now serves as Vice President of PLWA's board, saying that he isn't done yet. "They aren't stopping, so we won't. I'm still here. PLWA is still here. Goetz Law Firm is still here. The Montana Supreme Court is still here."

View the Induction Ceremony at the Montana Outdoor Hall of Fame's [YouTube Channel](#).

*"I'm still here. PLWA is still here. Goetz Law Firm is still here. The Montana Supreme Court is still here."
- John Gibson*



From the President's Desk

We finally cleared the last hurdle of 2020. It is amazing to me what we were able to accomplish in spite of this being one of the most stressful times I have encountered in my 83 years. PLWA has taken care of business by taking advantage of telephone conference calls and even "Zooming" our last meeting. Quite an advancement for us old timers!

I would be remiss if I didn't mention the job the latest person to be added to our management team, Executive Director Drewry Hanes, is doing. She hit the ground running with a very aggressive agenda and has put our organization in front of many additional persons and groups, and has improved our financial situation substantially. Thanks Drew.

Our future looks bright and we will be continuing our role in keeping access to public lands a priority to members of the public.

Remember what Texas Bix Bender says:

"If you get to thinkin' you're a person of some influence, try orderin' somebody else's dog around."

Happy New Year.

Bernard Lea

Bernard Lea, President

Access Issues You Should Know About Ravalli County

The Hughes Creek Gate

After over a decade of work and two Supreme Court rulings in 2019 upholding the public status of the road, the illegal gate blocking public access on the Hughes Creek county road in Ravalli County has been removed. It is a big win for the Ravalli County Fish and Wildlife Association, PLWA, Goetz Law Firm, and public access supporters across the state.

A detailed chronology of the Hughes Creek Road case is available on PLWA's website, but here are the basics: A gate blocked access to public lands on a county road for over 40 years. An abundance of factual evidence and multiple court rulings verified the illegality of this gate blocking public access. Yet the gate remained.

Since 2016, PLWA, in partnership with the Ravalli County Fish and Wildlife Association and legal assistance from the Goetz law firm, worked together to compel the Ravalli County Commission to fulfill their legal obligation to remove the gate. Gate removal seemed guaranteed in 2019 following two Montana Supreme Court decisions upholding that the Hughes Creek Road was a public highway, and that the gate illegally blocked public access. Despite these Supreme Court rulings, the Ravalli County Commission waffled on its position regarding gate removal and failed to act to remove the gate.

In 2020, PLWA and the Ravalli County Fish and Wildlife Association worked with PLWA's legal team at the Goetz Law firm on next steps to obtain gate removal.

The first of those next steps entailed an October 2020 legal request in the form of a letter from our legal team to the Ravalli County Commissioners to remove the illegal gate without further delay.

That letter summarized the factual record and multiple court rulings recognizing the public status of the Hughes Creek Road. It also indicated the next recourse PLWA and the Association will take if the Commission failed to fulfill its legal obligation to remove the gate. Unfortunately, the Commission maintained its reluctance to pursue needed actions, citing safety concerns. In January 2021, PLWA and the Ravalli County Fish & Wildlife Association issued a letter to Governor Gianforte and Attorney General Knudsen requesting intervention and re-opening of the road. The gate was removed less than a week later.

The Hughes Creek Road access dispute represented yet another important precedent setting complaint, and PLWA is tenacious when the law is clear. President Bernard Lea reiterates PLWA's perseverance in this case and others like it: "The long road to restore public access along the Hughes Creek Road has been one of many twists, turns, starts, and stops, but we were in it for the long-haul, with the law, the facts, and a great legal team guiding our way."

Fergus County

The Mabee Road Case

PLWA has appealed the 2019 District Court's adverse decision on the Mabee Road to the Montana Supreme Court. Our reply brief was filed in late November, 2020.



We believe the evidence presented that the Mabee Road is a public road with use dating back more than a century is compelling. We remain hopeful that the Supreme Court will reverse the District Court's decision and forever provide that the Mabee Road is open to the public. We do not know when the Supreme Court will rule on the appeal.

The Mabee Road litigation remains important for public access to a significant portion of the Missouri Breaks and for the precedent that will ensue – good if we win, bad if we don't. We litigate with reluctance but once it is apparent that litigation is the only remaining means to settle a public access dispute for the public's benefit, we pursue it with commitment. All litigation is expensive. An appeal to the higher court makes it more so. Mabee Road is just one issue of public access that PLWA is fighting for and we need your financial support to see each of these cases through the lengthy process of litigation.

Go to plwa.org/donate to support our work or reach out to plwa.org with questions or comments.



Jefferson County

Hadley Park

Thanks to the vision and dogged persistence of PLWA founder and public access hero Tony Schoonen over 20 years ago and recent funding by the United States Forest Service and Rocky Mountain Elk Foundation, the recreating public can now enjoy permanent access to and ownership of the 598 acre Hadley Park Property in Jefferson County. This section of property is located in the Bull Mountains about 17 miles north of Whitehall and 7 miles south of Boulder. This property had been an in-holding within the Beaverhead-Deerlodge National Forest that was a popular hunting and recreation area recognized both for its valuable habitat and beautiful scenery.

Here's how this Win/Win for the public came about:

In the 1990's, the Forest Service and prior Hadley Park property owner were in litigation regarding the use and ownership of the Hadley Park Road. In 1995, the Forest Service filed a Statement of Interest that claimed an easement on this road across the private property. In 1999, PLWA's predecessor organization, the Public Land Access Association (PLAAI), through Tony Schnoonen and PLAAI's attorney, also filed a Statement of Interest on behalf of the public pursuant to a prescriptive right that claimed an easement covering the entirety of the road across federal and private lands. Through a subsequent settlement, the Forest Service acquired an easement over the private property that enabled the road to be open year round to the public under Forest Service jurisdiction.

Given its important wildlife habitat and recreational attributes, the Forest Service and conservation partners prioritized the Hadley Park Property public acquisition.

For almost one hundred years, conflicts over public access in the Crazy Mountains east of Livingston have been brewing. The primary reason? Checkerboard public/private ownership.

PLWA's major involvement in protecting these historically used public roads and trails began in 2017, when a District Ranger and PLWA member working on the conflict was unjustifiably reassigned from the case.

PLWA subsequently voted to fund historical and legal research into several disputed roads and trails around the

A change in property ownership helped spur the potential acquisition. In September 2020, the property owners (Roland Durocher family), Forest Service and RMEF finalized this public acquisition. As part of that finalization, PLWA relinquished its Statement of Interest in the Hadley Park Road easement because the public acquisition and easement eliminated the need for it. In addition to the transfer of 598 conservation acres from private to public ownership, the Hadley Park acquisition enables public access to an additional 1,130 acres of public lands. By preventing development and subdivision, the acquisition protects important elk summer and winter range and good habitat for moose, mule deer, black bear and other wildlife.

PLWA President Bernard Lea credits Tony for assuring the Hadley Park purchase included permanent public access:

"If Tony had not presented the Statement of Interest on behalf of PLWA in 1999 to protect the existing access, it may have not been a factor in the purchase. PLWA also would not have been able to be involved in the purchase. The reason we are successful is because of this type of action to protect access."

He also notes that the Goetz Law firm provided the legal expertise for the unique approach used to solidify public access to Hadley Park back in 1999 and continues to provide excellent legal services to PLWA to further its public access mission.

Park County

East Side Crazy Mountains

Crazy Mountains, also during this time participating in related Freedom of Information Act requests.

PLWA's efforts are now focused on the disputed public access in the east-side of the Crazies. In 2020, PLWA offered official commentary on the proposed east-side land trade, indicating its inadequacy in addressing public access problems in the Sweet Grass drainage. In December the board voted to designate funding to move ahead with increased research on access issues in the East Crazy Mountains.

“
 "Keep up the
 good fight!"
 - Members Bill
 and Jen McCaw
 ”

2020 FUNDRAISING MILESTONE! End of Year Campaign a Success

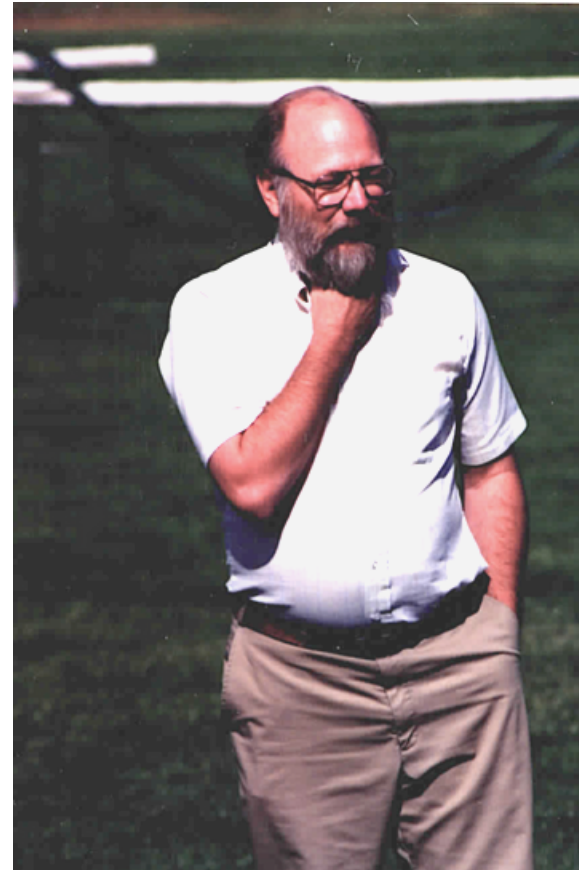
A huge THANK YOU is due to PLWA's amazing membership this month! Our 2020 PLWA End of Year Fundraising Campaign was an enormous success. We put it out there, and you responded with a resounding yes - public access is important and something worth fighting for! Over the month of December you donated over \$20,000 to help PLWA continue its work in Montana courts to protect public access, increase outreach and partner with new organizations, and educate Montanans about their rights to access our incredible public lands and waters. From all of us here at PLWA - thank you! We couldn't do it without you!

A Legacy of Access Support

Guy Schmidt's Lasting Impact on Public Access

PLWA and Montana have lost an ardent outdoorsman and supporter in Guy Schmidt. We are honored to have been remembered as part of Guy's estate with an incredible gift of \$10,000 this November to support the protection of public access in the state he and his wife loved so much.

Guy was a long-time resident of Great Falls, a graduate of Montana State University, and a Veteran. Working as a Civil Engineer and Forest Transportation Planner for the Lewis & Clark National Forest, Guy helped to ensure the health and future of Montana's wild places by locating, surveying and drawing right-of-way plats to be included with easements for acquisition. The majority of these acquisitions were used to provide access from a public road, county, or state pieces for public recreation or timber sales. PLWA President Bernard Lea remembers being stationed at the Supervisor's Office with Guy, commenting that he was always good for a laugh, friendly, and easy to visit with. Guy was a constant supporter of our annual meeting, coming to PLWA with donations and always insisting on buying extra raffle tickets to support public access. His kindness will be missed, but he will certainly not be forgotten.



EXECUTIVE DIRECTOR'S MESSAGE

As we come into 2021, PLWA stands ready as ever to defend challenges to public access across the state. We continue to fight across Montana to ensure access remains open. We are working to increase our ability to address access complaints, perform outreach, enhance access education, and build relationships with partner

organizations. We could not enjoy the success we do without the volunteers, members, partners, advocates, and allies that care passionately about these issues. I invite you to join us this year as we work together to protect public access.

Drewry Hanes

Drewry Hanes, MS, MPH

WAYS YOU CAN SUPPORT ACCESS

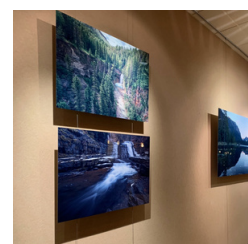


PLWA is able to protect public access and fight challenges when they arise due to the support of members and organizations that care about Montana's public lands and waters. Here are some ways you can help us succeed:

- Pledge an annual membership and volunteer your skills to help PLWA research and perform outreach.
- Host (virtual) events that get the word out about our work to protect public access.
- Donate quality items to PLWA for re-sale or for our annual auction.
- Recruit your organization to partner with us to defend public access today and in the future.
- Become a major Sponsor and help PLWA grow and take on more cases and access issues.
- Help us secure important grants and pledges to carry out our work.
- Make a gift of stock or property which benefits PLWA and you.
- Make a bequest and allow your lawyer or advisor to put us in your will.

Reach out to us at plwa@plwa.org or visit our website to learn more about increasing your engagement with our organization. **We couldn't do what we do, without you!**

Matt MaCoy is a Montana-based photographer and PLWA's first **Access Ambassador**. Through adventure MaCoy seeks a balance between fine art and outdoor commercial photography. Not looking to market outdoor products but rather advertise the Great American Treasure of public land and advocate for conservation of this invaluable resource. www.matthewmacoy.com



ERA Landmark Show,
Bozeman



Matthew MaCoy



PLWA Access Ambassador

Matt MaCoy's Recent Show in Bozeman Put the Spotlight on the Beauty of Montana As Well As the Importance of Access

What is your favorite artistic medium?

Photography, and more specifically making hand-bound photo books that can tell a story better than any single picture could. I love sketching and I find it helps me understand the light of a scene much better, although my talents live mostly in the digital realm. My favorite medium to appreciate is either watercolor with pen, or charcoal. Masters of these mediums bewilder me with their subtleties and finesse. And they lend themselves to great outdoors companions.

Why do you think the artistic medium is so effective at conveying messages to the public?

Firstly there is the realism of a photograph. Even with the possibility of doctoring or manipulating a photograph, there is a visceral reaction to seeing a realistic representation of a scene. My message in particular, one of conservation and celebration of public land, has its roots in the early photographic history of America.

How does public access inform your work?

Access to space to roam has been a pillar in my life for much longer than photography. Public access has been a place for me to learn, grow, explore, and become the person I am today. It is a mental and physical retreat to our natural beginnings, a metaphorical garden of eden. Photography is simply a means of communicating, of showing others the splendor of our public lands from my perspective.

Growing up in the West, how do you think public access and the outdoors has affected your life?

Access to public lands has been a cornerstone of my life since early in my upbringing. Space to roam has been a consistent theme that has followed me through my life. I'm extremely fortunate to have grown up in a time and place where I did have access to public land right out my back door, and this connection has certainly defined the person I am today.

Why do you think it is important for people to get involved and take an active role in protecting public access?

It is a fallacy to believe public lands are a given. We've seen many attempts, some successful, to reduce the treasures of American public lands to a simple line item. The truth is the wealth of these lands far exceeds their capital value, and without the passion of people defending them, these lands will erode over a few generations. We need to recognize the collective wealth that access provides. From hunting and fishing to recreation to scientific research, the value of public land is boundless.

PLWA *Who We Are* Highlight: Carol Fox

Carol is a long time PLWA supporter & current PLWA Secretary.



Carol and Her Dog Helga

"Recreating on public lands in Montana has been my favorite pastime since I came to MT for graduate school in 1980. I enjoy hiking, biking, kayaking, camping, and bird-hunting. Spending precious moments gawking at Montana's majestic mountain and prairie landscapes, birds, & wildlife, and big skies gives me great joy; I'm addicted. I retired in 2014 from the State of Montana where I managed environmental cleanup and restoration programs. Now through my volunteer work with PLWA both as a Board Member and researcher, I am able to give back to Montana and Montanans by helping to protect and enhance public access to public lands. It is a most enjoyable and satisfying endeavor."

Quote of the Quarter:

"There are some wild places across our nation's public lands that physically move you, creating a tightening in the chest, a loss of breath, or a tingling along the spine."

— Mark Kenyon, *That Wild Country: An Epic Journey through the Past, Present, and Future of America's Public Lands*



Public Land Water Access Association

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