



**PUBLIC LAND
WATER ACCESS
ASSOCIATION**
· EST 1985 ·

THE KEY QUARTERLY

Unlocking Access to Montana's Public Lands & Waters
Spring 2021

A LOSS AT MABEE ROAD

With An Important Access Point to the Breaks Lost, We Are All Left Wondering What This Means for Montana's Future

After over a decade of work by PLWA, concerned members and supporters, and the excellent legal team of Redmon & Grisby Law Firms, the Montana Supreme Court handed down a decision in late March 2021 - the disputed portion of the Mabee Road was declared not open for public use.

This decision comes not only as a blow to the public and to all those who worked so hard over the past 13 years, but also to the incredible team that worked tirelessly on the case. Unfortunately, there does not seem to be much that can be learned from the decision. The justices reached their conclusion with a 5-0 majority even in light of the strong evidence provided by the PLWA legal team.

The Opinion provided by the justices does not seem to address the evidence furnished by numerous witnesses, including the original landowner Bob Fink's daughter, who testified stating that the road to her knowledge and her father's was indeed public. In PLWA President Bernard Lea's words:

I am very disappointed in the Supreme Court's decision because it appears to have ignored our evidence and state law...As you will see, the court agreed with the District Court, Brenda Gilbert's decision denying the road is a public road...One item I noted in the ruling was [they stated] that Bob Fink never thought the road was a public road. That is not true, [as] he was quoted in the BLM Management Plan that he always believed it was a public road. It appears they ignored the evidence and went out of their way to indicate it is NOT a public road. The evidence provided in the trial is similar to what we have used on other cases.

It is hard to make sense of this loss, and even more troubling are the implications for public access in Montana. In Redmon attorney Keeley McKay's summary to PLWA of the Opinion,

Beyond the primary impact on access to the Upper Missouri River Breaks National Monument, this Opinion will have an impact on public access litigation going forward. In the simplest terms, this ruling will be precedent for district courts and the Supreme Court to rely upon in determining that other, similar backcountry roads may not be used to access public lands, regardless of the historical use of the road in question...We expect that it will be relied upon in support of the position that maps depicting a road and other county records that are not specifically part of the petition process, no matter how voluminous, are not evidence which a court may consider in determining a road's status. Further, we expect that it will make it more difficult to receive a favorable ruling in cases where the primary use is recreational, such as here where much of the witness testimony spoke to use of the road for hunting purposes.

Rarely do we at PLWA have to write a summary about a public access issue that did not end in an access triumph, but we stand by our decision to take this case. The facts were on our side, the team did their very best, and witnesses spoke honestly and accurately.

Though the Mabee Road case did not provide the resolution we hoped for, it does not diminish our stalwart dedication towards protecting public access to your lands and waters, across Montana, now, and for generations to come.

PLWA Has Got Some Great New Programming

We're Heading into 2021 With New Ways to Get Involved

PLWA Access Ambassador Program



Montana is filled with talented individuals recreating and working on public lands. PLWA's Access Ambassador program focuses on partnerships with people who want to bring visibility to public access issues care about. PLWA's Access Ambassador program brings artists, athletes, entrepreneurs, and storytellers together to highlight important public land and water issues and connect users with access topics across the spectrum. Visit our website or social media to see what our PLWA Access Ambassadors are up to today.

PLWA Partner Program

PLWA partners with organizations that share common goals. Working to pool resources, raise awareness, generate excitement about public lands & access, conservation, and Montana wildlife, we are stronger together. This program allows PLWA to increase its reach while also offering our members an expanded breadth of knowledge about important issues and events across the state and the West. Check out our PLWA Partners and see how they are helping protect our Montana for future generations.



PLWA Access Advocate

Every day, all across Montana, there are people quietly working to safeguard public access to your public lands and waters. It takes time and effort from all types of land users. Do you know someone who deserves recognition?

Nominate someone as our Access Advocate of the Month. Selected individuals will be featured on our website and get a free annual membership to PLWA. Here at PLWA, we believe that *Access Is Everything*.

PLWA Sponsor

At PLWA we have Sponsors we believe in. Sponsorship isn't just funding or support - it is a mutual understanding of how to make the world a better place.

PLWA Sponsors are companies and organizations that give back, and that care about engaging in ethical business practices. Many participate in 1% for the Planet, 2% for Conservation, or have taken the step to become Certified B Corporations. They don't work with us to look good, **they work with us to do good.**

Keeping Montana's Landscapes Wild

PLWA PARTNER:
Friends of the Missouri Breaks Monument

"The Friends of the Missouri Breaks Monument is a small nonprofit based out of Helena, MT dedicated to the protection and preservation of the Upper Missouri River Breaks National Monument through stewardship, education and advocacy. For the last twenty years, the Friends have been the leading voice in conservation for the monument and its surrounding landscapes and the only group focused solely on the protection of the Breaks region. Every year, with the help of our dedicated volunteer force, the Friends hosts several on-the-ground stewardship events on the monument to restore diminishing cottonwood galleries, improve recreational opportunities and connect individuals with their public lands in a meaningful and impactful way. "

To get the latest updates on their activities, become a member, or learn more about the Friends' work, visit their website at www.missouribreaks.org and follow them on social media.



missouribreaks.org

Special Thanks To Our Sponsors & Donors:

PLWA is lucky enough to have some great donors and sponsors for this year's 2021 Annual Meeting, including:

- Yellowstone Sporting Goods
- The Trail Head Missoula
- Dan Bailey Outdoors
- Yellow Dog Outfitters
- High Water Mark Custom Calls
- RiflesandRecipes.com of Townsend
- Smashem Sports of Colstrip
- Blackfoot River Brewing Co. of Helena
- REI of Bozeman

Visit www.plwa.org/annual-meeting-2021 for more information.

We will also have an online auction going on starting May 31st which will run through 8 PM on Wednesday, June 2nd. We've got great items available such as:

- REI outdoor gear / Orvis Waders / Yeti Cooler
- Custom duck calls from High Water Mark Custom Calls
- Blackfoot River Brewing gift certificate & growler
- Beautiful Sage fly rod / NRS Raven II inflatable kayak
- & much more!

Annual Meeting 2021

Online with Increased Access!

Join Us Wednesday, June 2nd 6-8 PM MST!

Join virtually and attend from anywhere! In response to requests from members around the country, this year we are taking our meeting online. Stay tuned for info about an in person event to connect with members that will be held later on in the summer.

A link will be e-mailed to members, or you can go to www.plwa.org and click to connect. On the Agenda for 2021:

- Guest Speaker **Kyle Nelson** from Goetz, Baldwin, & Geddes, P.C. will talk about your public access rights to your public lands and waters, and what we can expect moving forward in Montana.
- Reports from Officers & the Executive Director on current access issues and ways to get involved with PLWA.
- New Board of Directors Candidates & more!

Go to our website to submit access questions for our speaker ahead of time, or to nominate board candidates for vetting.

We plan to record the event and make it available on our YouTube page afterwards for those unable to attend.

From the President's Desk

Well, what can I say about 2021 so far? The positive is, we're on our way to conquering COVID! Folks are receiving the vaccine which will provide a protective net for the majority. My wife and I have been vaccinated and had no reaction to the second shot. Not bad for our age, which is 83 and counting.

The negative for 2021 so far is the Montana Legislature's attack on our public lands and access. The most concerning was Senate Bill 354 which would have eliminated our ability to prove a road is public by prescriptive use, along with other serious hurdles in defending public access. These amendments were removed, but the future for public access this coming year remains in limbo after a tough session. PLWA supported the changes in SB 354 to eliminate the amendments and saw great success with their removal and our member involvement.

We are in contact with members across the state from

Madison to Carbon County, and are working on access issues that threaten our ability to recreate. Keep up with all these issues and learn about research and reporting on our website.

And last but not least, as most of you are aware, the Supreme Court ruled in favor of the landowners on the Mabee Road case. In our opinion, they ignored evidence we have presented successfully in other cases based on prescriptive use. More information is included in our lead article and online.

Remember what Texas Bix Bender says,

*"Makin' it in life is kinda like bustin broncs:
you're gonna get thrown a lot.*

The simple secret is to keep getting' back on"

Let's keep getting back on!!!!



Bernard Lea, President

2021's legislative session was fast-paced and challenging for public access advocates. PLWA remained active with membership and partner organizations to keep involved with bills that sought to protect access rights or those that threatened access heritage across Montana.

As a small 501c3, PLWA does not have the bandwidth to focus heavily on legislation. However we made our voices heard where it counted this season, and achieved some important results for public access.

Senate Bill 256 sought to increase penalties for illegally gating public roads and preventing access to public lands and waters for the purpose of hunting and fishing. This bill, which Executive Director Hanes and other Montana organizations testified in favor of at the Senate Judiciary, would have added penalties of hunter harassment, including fines and loss of hunter licenses, making the punishment fit the crime. Though the bill was voted down, there was widespread support among access and conservation organizations across the state.

PLWA also sent a veto request to Governor Gianforte in respect to Senate Bill 115, a serious move towards overturning the gains achieved through PLWA's 2018 amicus brief regarding Land

Board oversight of Habitat Montana, and the importance of this landmark program. Over twenty organizations across Montana reached out to the Governor's office requesting veto, however the bill was signed into law in early April, seriously compromising past public access gains.

The biggest threat to public access this spring came in the form of Senate Bill 354, which threatened prescriptive easements, PLWA's and other organizations' ability to take easement cases to court, and even the ability to recognize and classify public access points and prescriptive easements after December 2022.

Attorney Jim Goetz wrote a legal assessment (available online) of the myriad of problems constituted by amendments tacked on after public comment, which allowed PLWA and members of the public more time for action as the bill went to Free Conference Committee. PLWA then spearheaded an action campaign aimed at educating the public and government officials about the danger of these possible threats to public access and encouraging constituents to make their voices heard. After weeks of incredible action by PLWA supporters & partners organizations, the amendments were struck from the bill in late April.

Read more about these bills and our work this season at www.plwa.org/legislative

Park County

Loch Leven

In March 2021, a concerned Park County resident reached out to PLWA about encumbered public access at the Loch Leven fishing access site on the Yellowstone River.

There are two separate FWP sites at Loch Leven Fishing Access Site - a boat launch, campground, and twenty acre park, and another Day Use site with picnic tables and an outhouse. A trail system connects the two FWP sites, and between the sites are four privately owned properties. When the properties were developed, FWP purchased a fifty foot easement from the high water mark to allow trail users to traffic between the two sites. Upon purchasing the properties in the area, as far back as thirty years ago, property owners were required to sign an access easement on the deed of property including a commitment to maintain the trail. On both sides of the entrances of the trail there are FWP signs stating the trail was purchased by FWP and is for the use of the public.

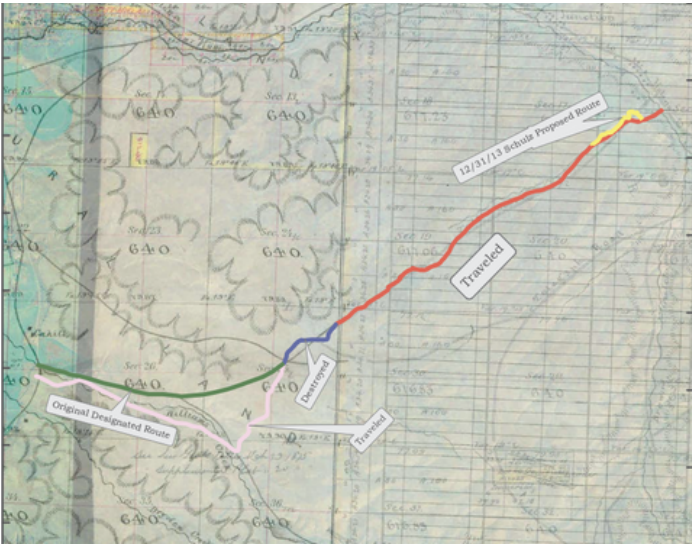
Currently, at the edge of a single property which borders the day use side in question, the FWP sign is broken and lying face down in the grass. The owner has erected an electric horse fence, bottlenecking the trail straight towards the high water mark. As such, trail users are being forced to walk on river rock to make their way to the next property where the trail then picks up and follows the fifty foot easement, as agreed.

After contacting the FWP and the game warden multiple times without success, the concerned resident reached out to PLWA to assist in the matter. PLWA undertook a rigorous review of deed documents, maps, and conducted a site visit of the area. We found that the fencing does direct traffic below the high water mark, creating a risk for anglers and aquatic fauna. Over the past months, PLWA has been in contact with FWP about removing the fence and restoring legal access to the public. As of yet, there is no resolution to this access problem

Read more at:
www.plwa.org/issues

County Road #71, also known as Adobetown Road in Madison County, was established in 1871, and then further established by petition in 1916. The road makes its way through private property, ultimately providing important access to BLM lands.

Unfortunately, the current land owner installed a locked gate and posted "Private Property" and "No Trespassing" signs on the road. In 2013, at the behest of the current landowner, a sympathetic former County Commissioner wrote a letter suggesting a reroute of the road. To date, there has been no public process resolving the matter, and there is no evidence suggesting a move to abandon or reroute the original road. And yet, the original road remains locked by the landowner.



There have been reports of the landowner harassing those who try to access the road, whether via the original route or by the "suggested" reroute. Clarification has been requested from Madison County Commissioners as to where the public can legally access the road to reach BLM lands, causing them to confer with the landowner, establishing a "temporary agreement". However, the agreement suggested an obscure and hazardous reroute.

On two separate occasions in the fall of 2020, the landowner denied access to PLWA member Andy Thomas, charging him with criminal trespass and failure to obtain landowner permission to hunt, even after he followed all recommendations of the Commissioner and the Madison County Sheriff. After discussion with the Sheriff's Department and the Game Warden, no citations were issued, largely due to uncertainty as to where the road currently exists.

In November 2020, PLWA was brought in by Mr. Thomas to advise in the process, working with the Madison County Commissioner, landowner, and to represent the public interest. This represents both an important access issue in that PLWA must prevent legal access from being blocked off, but also an opportunity to work productively with landowners, government officials, and the public.

PLWA urges supporters to reach out to the Madison County Commission and urge them to re-open this access point as we continue to work to provide the legal rationale for doing so.

Carbon County

Red Lodge Resort Access

Recently Red Lodge Mountain (RLM) Ski Resort announced a decision to start charging hikers \$20/day to access Grizzly Peak. This decision is problematic due to the existence of a public easement through the base area which was created as a contingency of a land swap with the forest service several years ago. Forest Service Trail #108 represents a public easement, negating the ability for the resort to charge for access. PLWA's constituent Caleb Laszloffy lodged the access complaint due to the fact that he felt it didn't "seem right or legal that they should be monetizing that access".

The resort has effectively reframed public access as a privilege when, in fact, it is a right predating its existence and guaranteed

by the terms of their own land exchange. There is concern that if they are able to curb public use enough, they could establish the precedent necessary to get rid of the easement entirely.

In December 2020, PLWA President Bernard Lea undertook the research to examine the issue, reaching out to the Forest Service for clarification on their position of a private entity charging the public for access to their public lands. Since then, multiple communications have gone back and forth regarding the Forest Service's position on this issue, that RLM has the right to charge access fees, and PLWA's assertion that Trail #108 represents a public easement. As of yet, there is no resolution, and PLWA continues to push for a repeal of the fee.

PLWA Has A New Website

We're excited to announce that after months of hard work, PLWA has a new look!

Our website address is the same, but we took the feedback from all your survey responses, messages, and ideas and integrated them into a platform that we think will serve PLWA members even better. Our new site should make it easier to find information about current access issues, learn about your access rights, and get to know us & our history. Use it to reach out to us with questions, concerns, and ideas, and learn how you can partner with PLWA to achieve our goals of protecting access for generations to come.

Visit us at plwa.org today and see how you can be a part of our mission!

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"It's critical work in keeping our state truly one of the 'Last Best Places!'"

- Member Gene Kopy

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There Are Many Different Ways You Can Help PLWA Protect Access to Your Public Lands & Waters

Individuals:

Volunteer. We're always looking for team members who love public access. We need:

- Public access complaint researchers
- Fundraisers; Volunteers for events
- Grant writers / article contributors
- Graphic artists

Host. Grab some friends and throw an event to raise money and awareness for public access:

- Have a BBQ and share our mission. Ask each person to donate, throw an event, or become a member.
- Get folks together for a public lands activity like a bike ride or climb, and ask them to tell 5-10 friends about what PLWA does to safeguard access.
- Share photos of events by tagging #PLWAMT on Instagram.

Organizations/Businesses:

Partner. Are you an organization that cares about public access? We work with people who share our ideals, and together we're stronger and more effective.

- Become a Partner Organization and work on important public access issues with us.

Sponsor PLWA. There are many different ways to help PLWA thrive.

- Sponsor our organization's applications for grants and programs to help us succeed in protecting access.
- Match a donation, sponsor a campaign, or contribute to our access work in Montana.
- Provide a location for a public access awareness event and help the community learn how they can protect access to their public lands and waters.



EXECUTIVE DIRECTOR'S MESSAGE

Spring has been an exciting and a challenging time for PLWA. We have released our new website, offering exciting new opportunities for engagement and access information. We faced strong opposition with a myriad of legislative bills aimed at stifling public access and limiting means to protect Montana's public lands and waters.

Our loss at Mabee Road is both disappointing and bewildering, but it only strengthens our resolve to work harder to safeguard Montana's public access heritage now and for the future. The support we have felt going into 2021 has been incredible, and we look forward to many new accomplishments in the coming year.

Drewry Hanes

Drewry Hanes, MS, MPH

PLWA Access Ambassador: *Dakota Chapman*

Dakota Chapman, 22, lives in Bozeman, MT, and is currently in his second year of the physics PhD program at Montana State. Dakota grew up in a small mountain town, Victor, ID, nestled in the middle of the Teton mountain range with a family full of outdoors enthusiasts. Naturally, this cultivated a huge appreciation for the wilderness and public lands. He mainly skis in the winter and bikes in the summer, but dabbles in a bit of everything. His PhD thesis will address creating a mesoscopic quantum system in a magneto-gravitational trap. Ultimately, he would like to continue to do experimental physics after he graduates.

What made you fall in love with biking and skiing?

I grew up in a big skier family so I didn't really have a choice in that matter. However, after numerous mornings of my mom dragging me out of bed and up to the ski hill I started to see and feel how amazing it is to flow down a mountain and to have full control of every aspect of it. It really is just a roller coaster that you are in control of. This was great and I was so happy to have that realization but then I found a big hole during the summer months I couldn't quite get that same feeling. I tried everything from whitewater kayaking to mountaineering but when I finally truly discovered mountain biking - meaning the first ride where I felt that same flow I felt on my skis - I absolutely fell in love. The ability to be out in the mountains with just you and your bike or skis and explore is a magical thing and when you see that, it is hard to not fall in love with it. This is something you can find without the bike or skis as well, but I love the bike so much because it allows me to get further into the wilderness and also have a really fun time getting out. Oh and also, I love to go fast.

Why is public access an important issue to mountain biking in Montana?

Public access is everything when it comes to mountain biking in Montana. Without public access there is no mountain biking here in Montana. Most of the trail systems in the state are built on public lands and losing access to that would be detrimental to not only the biking community but the entirety of the outdoor community within Montana. No public access means way less accessibility to mountain biking throughout the state which would essentially eliminate the next generation of mountain bikers in Montana and deprive so many people of the ability to enjoy and learn to appreciate the wilderness like I and so many others have. And let's be honest, if we don't use something much we tend to forget about it and let it deteriorate. The wilderness is not something we want

that to happen to.

Do you see any important connections between your study of physics and your sporting pursuits?

There is a huge connection between the two! Skiing and biking is all physics and my understanding of physics helps me to improve my skiing and biking. Conversely, my skiing and biking helps me understand physics better as well. When you are skiing or biking a big or technical line, you have to be able to visualize your moves which requires an understanding of how you actually move (analyzing the forces acting on you). I would say that growing up a skier and biker helps me drastically when it comes to visualizing a physics problem. You can't ski or bike without physics.

How do you see recreation and public access issues evolving in the coming years as the population in Montana grows?

It is tough to say. What I would like to see is that as more people come to Montana and use our public lands, we will realize that there needs to be access to those lands and that in fact having more access can not only help improve the lives of people in Montana, but it could also improve the economy within Montana. Skiing tourism has been boosting the Montana economy for a while now but mountain biking is becoming a huge sport and a lot of people are looking to travel and find new places to ride. By becoming a place that has access to large trail networks we would bring in a huge demographic of tourists that would in turn bolster the Montana economy. I see more and more interest in trail networks and I think the only way that's going to happen is if people start to take responsibility for and take care of the networks we currently have and advocate for the creation of new ones.

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

Without a voice no one gets heard. You can sit around and complain about the lack of access as long as you want but if no one hears it then it does no good. In order to protect the public lands that we all appreciate so much the public needs to make their voices heard. We need to tell people that we are using these trails and that we need more. It is up to us to keep our public lands public. Like I said earlier, if we don't use something much it tends to deteriorate and usually after that we throw it out or give it away. Public land access is not something we want to let be given away.





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Lance during a day on the Stone

PLWA *Who We Are* Highlight: Lance Gray

Lance joined PLWA as a Board Member in 2018.

Lance Gray is an avid outdoorsman, hunter, uplander, and fly fishing guide in Southwest Montana. Public access and stream access have become a growing issue throughout the West, none more than right here in Montana. PLWA has been the dog in the fight since the mid 80's. Lance joined the board to help bring other outdoor enthusiasts into the fray of public lands and waters and to lend another perspective to the board.

Quote of the Quarter:

"Just living is not enough. One must have sunshine, freedom, and a little flower."

— Hans Christian Andersen