



MONTANA WILDLIFE



**LOCKED OUT:**  
HOW ILLEGAL ROAD CLOSURES KEEP  
MONTANANS FROM THEIR PUBLIC LANDS

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## **Montana Wildlife Federation**

Founded in 1936, the Montana Wildlife Federation is Montana's oldest and most effective sportsmen's conservation organization. MWF works to protect and enhance Montana's public wildlife, lands, waters and fair chase hunting and fishing heritage.

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# INTRODUCTION

Public lands are one of the great amenities in Montana and throughout the West. Our stunning public lands are home to the abundant big game, game birds and fisheries that offer incredible hunting and fishing for all Montanans and visitors to our state. These lands include mountains and forests, sagebrush steppe grasslands and open foothills. They include lakes and streams, and rivers that support some of the finest fisheries in the country.

Montanans overwhelmingly support public land, and hunters and anglers are among the biggest supporters. The 2016 Conservation in the West poll conducted by Colorado College found that Montana ties Wyoming for having more hunters and anglers per capita than any other Rocky Mountain state, with 63 percent identifying as hunters or anglers. And Montana tops all Rocky Mountain states with 46 percent saying they are both a hunter and an angler.

Beyond hunting and fishing, Montanans love to recreate on their public lands. Polling conducted by Colorado College in 2014 showed that two thirds (66 percent) say they visit public land at least six times a year. Even more telling, 38 percent of Montanans said they visit public land more than 20 times a year.<sup>1</sup>

The wildlife abundance in Montana and public land to enjoy it on also supports a healthy and growing outdoor recreation industry. A 2012 report by the Outdoor Industry Association found that outdoor recreation is a major economic driver in Montana. Outdoor recreation accounts for \$5.8 billion in economic activity, directly supports 64,000 jobs with \$1.5 billion in wages, and pumps \$403 million of tax revenue into local and state coffers in Montana.<sup>2</sup>

Montana is roughly one-third public land, including a mix of U.S. Forest Service, Bureau of Land Management and other federal lands, as well as state Department of Natural Resources and Conservation school trust lands and state Wildlife Management Areas. These are the places where many Montanans and non-residents come to hunt, fish, camp, hike, and recreate in a variety of ways. To enjoy these lands, we must be able to get to them. That means the ability to reach the boundary of public lands and access them for hunting, fishing and other outdoor recreational pursuits.

The Treasure State has a large network of public roads that allow us to get to public lands. These go beyond the highway system and include thousands of miles of country roads that pass through private land. They are roads that are managed by a public agency, whether it's the county, a federal land management agency such as the U.S. Forest Service, or another public agency. Although these roads can sometimes be less developed than a paved highway, the public has a recognized legal right of passage on them. These roads have been used for decades by the public, including by ranchers to move livestock, businesses to deliver goods and services, as well as hunters, anglers and other recreationists. In many cases, these roads are maintained by local governments.

Unfortunately, not everyone wants to allow Montanans to use public roads to access public lands. To block public access, some individuals put gates and other barriers across public roads that lead to public land.

It's a common problem that has only grown in recent years. One public road leading through private land can access thousands of acres of National Forest or Bureau of Land Management land. Gating these roads can provide one person with exclusive access to these public lands, making it a private hunting, fishing and recreation playground at the expense of the public. It reduces public hunting and fishing opportunity, impedes sound wildlife management and further increases crowding of public hunters and anglers onto accessible lands. In fact, a 2014 study conducted by the Center for Western Priorities found that Montana has more inaccessible public land than any other state, with nearly 2 million acres of state and federal land unable to be accessed.<sup>3</sup>

The problem is not new, but it is growing. For decades, hunters and anglers have been forced to fight these road closures through expensive court battles. These can drag on for years, and in the meantime these areas remain off limits to the public. It drains dollars from the pockets of working hunters and anglers who want to access their public lands and waters.

Montana hunters and anglers often win these fights, forcing the opening of these roads. Volunteers like the Public Land/Water Access Association (PLWA) invest time, energy and money in doing the research on individual roads and go to court to reopen them. But the damage is still done, as areas remain off limits as court fights drag on.

Montana has some of the best hunting and fishing in the world. It's available to everyone, regardless of income or social status. It's a big reason why many people choose to live in Montana. And it draws tens of thousands of hunters and anglers to our state every year to enjoy public fish and wildlife resources.

If Montana is going to maintain its fair chase hunting and fishing traditions, we must improve public access to public lands. That means strengthening laws to prevent people from gating public roads that lead to public lands. It means getting government officials involved in road access disputes. And it will require numerous stakeholder groups to come together to crack down on lawbreakers who want to privatize our public lands by cutting off access.

Here are three examples of longstanding road disputes in which everyday hunters and anglers prevailed to restore public access to public land and water. And following that are three examples of ongoing road disputes that remain in court, despite years of legal wrangling. It's time to strengthen Montana law and get government officials more engaged to crack down on violations that cut the public out of public land.

### **Private Property and Public Access: Two Fundamental Montana Values**

Respect for private property is as essential to Montana's outdoor way of life as the right to access public lands. Hunters, anglers, and other recreational users have a legal obligation and an ethical responsibility to absolutely respect private property. The intent of this report is to point out instances where people are blocking public roads and the effect that these closures can have on public access while they are being resolved.

## **RECENT SUCCESSES: ACCESS RESTORED, AT A PRICE**

### **Boadle Road, Teton County**

Over a decade ago, the volunteers at the Public Land and Water Access Association (PLWA) were alerted to the closure of a public road that served as access to Pishkin Reservoir near Fairfield, in Teton County. The road had a long history of unchallenged public use. In fact, the local school bus used this route when snow blocked its regular route.

When Teton County was unable to reopen the road, PLWA was forced to file a lawsuit to reopen the road as a legal, public prescriptive route. The District Court found in favor of the individual who closed the road, but the Montana Supreme Court agreed with PLWA that the road needed to be re-opened. After the road was closed yet again, more legal wrangling was required before the case went to a jury trial. The jury found in favor of opening the road. It awarded PLWA court costs as well as funds to build a new bridge that had been torn out. The bridge is slated to be built in the fall of 2016.

### **Tenderfoot Road, Meagher County**

A landowner several years ago had blocked this long-established road on Tenderfoot Creek, a tributary of the Smith River west of White Sulphur Springs. The gated road impacted both public land and stream access. The landowner claimed the road was no longer a county road because it was not receiving regular maintenance.

The Montana Attorney General was asked to intervene since PLWA demonstrated that the blockage was against state law. Meagher County commissioners refused to take action. A District Court judge determined the road was a county road and lack of use or maintenance did not constitute abandonment of the public's right to use it. Tenderfoot Road has been reopened and thousands of acres of public land that includes great elk and mule deer hunting is again available to the public.

### **Teton County Road 380**

After decades of being blocked, a meeting between PLWA, Russell Country Sportsmen and an attorney who once frequented the area served by the old road confirmed that this route had been illegally blocked. The road accessed a portion of the Rocky Mountain Front that offers excellent elk and mule deer hunting. It is a key point that has no other access to the Front in either direction for miles, and is incredible habitat for not only hunting, but also hiking and wildlife watching.

When Teton County commissioners were informed of the evidence they resolved to amend the situation and opened road access to a huge body of public land that included Montana Department of Natural Resources and Conservation, BLM and national forest lands.

Legal proceedings followed and a piece of Road 380 was opened then tied into an alternate route that gains access to public land extending west for many miles. Motorized access ends at a parking lot on public land that provides the only public access along a 20 mile stretch of the Rocky Mountain Front. The agreement includes seasonal closures to protect elk winter range and calving areas.

## **PENDING DISPUTES: ACCESS DENIED WHILE CASES DRAG ON**

### **Hughes Creek Road, Ravalli County**

This public route is blocked by private individuals in spite of the fact that it provides access to a trail system in the Bitterroot National Forest. PLWA and the Ravalli County Fish and Wildlife Association are working on this road in an effort to get it reopened so the public can access the area for hunting and other recreation.

The first petition to establish the road was filed in the late 19th Century, and it was historically used until the early 1970s. Reopening the road would be a major victory for hunters and anglers, as the road opens up access to excellent hunting for elk, mule deer and other species up the West Fork of the Bitterroot River.

### **McGregor Lake Road, Flathead County**

An individual built a house on the easement for McGregor Lake Road about 40 miles west of Kalispell, and Flathead County commissioners have refused to fully address the situation. They have instructed road users to drive around the house if they want to use the road. The situation is in need of a long term solution to restore full public access.

Flathead Wildlife Inc. has led the effort to reopen the road by joining Montana Fish, Wildlife and Parks in court. The effort successfully, got a judge's order to restore the right of way and reopen full public access. The county went in with equipment several years ago and got one lane reopened. However, the road still passes very close to the home and has been blocked at times, with trailers and other impediments. The road accesses 64 acres of FWP land as well as almost half a mile of shoreline on McGregor Lake.

Flathead Wildlife has requested of Flathead County that it do more to get the road fully restored so that people can get a boat or camper down there to fulfill the court order.

### **Mabee Road, Fergus County**

In the Fergus County records, the Mabee Road is a 'fuel tax road' and is listed in the 2010 inventory of roads as "open to public travel." The Mabee has been listed on county maps as a 'county road' since 1919. Maps dating to 1915 clearly show this road, commonly referred to as 'The Old Missouri Trail' connecting the old wagon road along the north end of the Judith Mountains with the Missouri River.

In 2007 an outfitter purchased half a section of private land the Mabee Road traverses. Shortly thereafter, a locked gate was erected across the public road, blocking public access to some 25,000 acres of public land. The area is excellent hunting for elk, mule deer, bighorn sheep and upland game birds, and is currently off limits to the public. Reopening Mabee Road is crucial to provide public access to these public lands along and around the Missouri River.

## CONCLUSIONS AND RECOMMENDATIONS

When cases of illegally closed roads end up in the news, it often looks like an isolated incident. Local hunters and anglers are outraged, and eventually the problem fades from view. Taken as a whole, however, illegal road closures are a significant threat to public access to public land.

Montanans are fed up with people blocking public access to public lands and waters and forcing every dispute into court. Hunters, anglers, and other outdoor recreation enthusiasts are looking for more permanent solutions to improve public access to public lands. Montanans need solutions that prevent illegal road closures and other barriers to public access.

Our recommendations include:

**1. Meaningful Fines for Illegal Roadblocks.** At present, the fine in state law for illegally blocking a public road is \$10 per day (Montana Code Annotated 7-14-2136). This far too low to be a real deterrent to prevent this illegal activity. The benefits of gaining exclusive access, whether it's for exclusive use for a few hunters or for outfitting on public lands, are too great.

A real deterrent is to set the fine at a meaningful level that will serve to prevent this activity, a minimum of \$100 per day. It will not only serve as a deterrent, but also direct the revenue from the fines to the county where the road is located to provide an incentive for counties to get engaged in road closures.

The onus to reopen illegally gated public roads falls with county officials. It's imperative that we get local elected officials more engaged in ensuring public access to public lands. Stepping up the fine for gating a public road is a good start.

**2. State officials need to prioritize an inventory of public roads.** A thorough, statewide assessment of public roads could help pre-empt situations in which public roads leading to public lands are blocked. It could also help provide historical context in cases of blocked roads.

Montana under the direction of the governor has recently hired a public access specialist who is based in the Department of Natural Resources and Conservation. This position is tasked with looking for ways to get to isolated parcels of state school trust lands, as well as other public lands. This could go a long way toward helping work out access to these parcels.

According to a recent report by the Center for Western Priorities, Montana has the largest amount of inaccessible public lands at roughly 2 million acres. This includes landlocked public lands as well as large portions of federal public lands that cannot be reached. An access specialist could help resolve conflicts with solid historical research to document whether a road is public.

**3. Get the state Attorney General's office engaged in ensuring public access.** Road disputes break out when a public road leading to public land is gated. These roads have often been used by the public for decades, yet suddenly they get gated. As in the examples above, in every instance these are challenged by everyday Montanans looking to get to their public lands.

Even when these cases are resolved in court, they come at a tremendous price to sportsmen's groups, or others, who are forced to fight lengthy, expensive battles in court. It should not be the burden of the public to ensure that public roads remain open.

The Montana Attorney General's office needs to engage in these cases and, when necessary, get involved in court. These are public servants who work for all Montanans, and their presence outside of county courthouses gives the Attorney General's office the unique impartiality necessary in these cases.

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<sup>1</sup> The 2014 Conservation in the West Poll, The Colorado College State of the Rockies Project

<sup>2</sup> The Outdoor Recreation Economy 2012, The Outdoor Industry Association

<sup>3</sup> Landlocked: Measuring Public Land Access in the West, Center for Western Priorities