



November 28, 2023

Dustin Temple, Director, Montana Fish, Wildlife & Parks  
P.O. Box 200701  
Helena, MT 59620-0701

Director Temple;

The Public Land Water Access Association (PLWA) is writing to express concerns regarding directives from Fish, Wildlife, and Parks (FWP) employees, to request clarity for the recreating public, and to make FWP aware of several ongoing access issues throughout our state. PLWA has over three decades of experience investigating and defending access to Montanan's public lands and waters. As a neutral entity, the organization evaluates the history and case for access, the level of evidence in existence, and the merits of every access issue before making a statement or taking action. Among PLWA's objectives are:

- Monitoring public land sales, exchanges, and purchases to ensure that no transfers are made without full consideration of conservation and recreational values;
- Monitoring public access routes and identifying access issues; and
- Pursuing every legal and ethical avenue to protect and maintain access to Montana's public lands and waters.

From your recent letter in the last issue of Montana Outdoors (November-December 2023), it seems you are familiar with PLWA's work on the Ruby River case and the 2014 ruling. PLWA embraced that litigation due to the lack of clarity offered by enforcement agencies up to that point. It signaled an important opinion by the State, and something we continue to have to fight to enforce today. As examples of our work and the issues we currently face, PLWA would like to present the following events:

**Camp Creek:** This spring, an angler ran into a highly charged electric fence strung across Camp Creek in Gallatin County, impeding fishing access. The fence has no passive way around it and poses a danger to the public. When the angler contacted FWP directly, they recommended he reach out to PLWA for assistance.

**Blackfoot River:** Over the 2023 summer months, an angler questioned FWP about accessing the Blackfoot River using the public road right-of-way (ROW). FWP responded they would not give the angler an answer on whether there was legal public access or not. However, FWP then went on to state that if a warden was called out to the situation by a landowner, the angler would be ticketed, and the issue could then be

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[WWW.PLWA.ORG](http://WWW.PLWA.ORG)

 @publiclandwateraccess

 @plwamt

2100 FAIRWAY DR., #211  
BOZEMAN, MT 59715

406-690-0960  
PLWA@PLWA.ORG

decided in court. This situation could represent a great potential cost to the angler with little or no financial liability to the landowner, who would, by default, be represented by the government. PLWA has concerns about the inequity created by FWP's response.

**Loch Leven Fishing Access:** Loch Leven Fishing Access in Park County contains a 50-foot public easement from the high-water mark. There are several areas in which private landowners continue to encroach upon the public's easement. FWP has been contacted numerous times by PLWA since summer of 2020 regarding this issue, along with requests for repair of damaged FWP signage indicating public access. As of 2022, we have not received a response on why the full 50-foot easement is not being enforced nor about when repairs to government property will commence.

**Madison River near Reynolds Pass:** In the summer of 2021, FWP was contacted many times regarding illegally posted signage with an incorrect definition of the high-water mark, as well as a hired private "game warden" patrolling the area harassing anglers. After initial discussions with FWP and several attempts to follow up, PLWA has received no further communication from FWP about the issue. It is unclear whether the signage has been removed or whether the private security illegally harassing law-abiding citizens has been addressed.

**Big Hole River:** FWP has been contacted numerous times since 2021 regarding excessive fencing under and along many bridges on the upper Big Hole River under the guise of keeping cattle contained. In many places, the river is entirely inaccessible. FWP responses are unclear concerning anglers portaging around these barriers in accordance with §§ 23-2-311, MCA, and whether or not they would be ticketed.

**Gallatin River near Norris Road Bridge:** A member of the public was incorrectly cited for criminal trespass while waterfowl hunting along the Gallatin River in 2021. The Gallatin County Sheriff's Office was called by the nearby landowner who built fences and posted illegal signage along the riverbank within the public road ROW. This issue was settled out of court, but at great expense to the individual.

As you can see, PLWA is seeing an increase in complaints from the public concerning landowner harassment and threats of trespassing citations. PLWA is requesting FWP address the following situations to provide clarity for the public:

- Members of the public consistently receive conflicting information regarding the use of public road ROWs to access the high-water mark and public lands. FWP has recently been recorded in their own meetings stating this is considered corner crossing and that it is illegal in Montana. While we understand the recent events and court rulings in Wyoming do not extend to our state, the lack of laws regarding corner crossing does not mean it is implicitly illegal, and PLWA believes the agency is in error applying this interpretation to current access issues which fall outside of this jurisdiction. We believe Montana's access laws are clear in that, "the public has the legal right to access rivers and streams by crossing state or federal lands, including FWP fishing access sites and wildlife management areas, *and via public road right-of-ways and easements, including bridges,*" as stated by FWP in the last issue of Montana Outdoors (November-December 2023). PLWA asks that FWP please clarify their stance on this issue and to share that stance with the entirety of FWP's staff to avoid further confusion when recreating throughout Montana's regions.

- When contacting FWP to inquire whether access is allowed in certain locations/situations, the public has, on occasion, been told to call PLWA. PLWA does not have the legal authority to determine access. The decision whether access is allowed, and therefore whether one will be cited for trespassing, is held by FWP and local authorities. More often, the public is being told if an FWP warden responds to a situation, the accused will be cited, regardless of probable cause, and the case will be decided in court. Citations issued without probable cause are, in essence, illegal seizures (arrests) of a person. Such conduct is illegal, as provided by the 4<sup>th</sup> Amendment of the United States Constitution and exposes FWP and the state of Montana to immense liability. Additionally, this puts an overwhelming and unnecessary burden on the public to prove they were legally accessing their public lands/waters. PLWA asks how the public can be assured they will not be met with charges when legally recreating on public waters when the default option is to be ticketed and take the issue to court. Additionally, PLWA questions why FWP cannot provide legally defensible guidance on whether there is legal public access at a given site or in a situation over which they have the authority to do so.
- On several occasions, PLWA and the public have attempted to attend public meetings to address public access issues. Why are public meetings not ubiquitously posted and easily found for each region on FWP's website (i.e., for commission and citizen advisory councils)? It is unclear where one can find information regarding attending public meetings as multiple regions do not regularly update this information. PLWA would also ask that our requests for responses on access issues that are being investigated, and even referred to our office by FWP officials, be responded to in a timely manner.

As stated in the previous FWP Director's letter in the November-December 2022 issue of Montana Outdoors, "Montana's public resources are [our] public resources. [We] deserve a chance to weigh in on how they are managed." PLWA's understanding of FWP's mission is to "Steward the fish, wildlife, parks, and *recreational resources for the public, now and into the future.*" Therefore, PLWA implores FWP to provide clarity and transparency on how they will protect the integrity of what defines Montana, the Montana experience and our people. PLWA requests FWP's assistance in addressing the ever-increasing public access issues in our state and in ensuring the public does not inherit the burden of proving their public access. PLWA looks forward to public transparency and continuing this conversation in a joint effort to address the concerns of Montana's public landowners and users.

Thank you for your prompt consideration of these matters.

With regards,



Bernard Lea, PLWA President

cc: Lee Anderson, Region 1 Supervisor, 490 North Meridian Rd, Kalispell, MT 59901  
 Randy Arnold, Region 2 Supervisor, 3201 Spurgin Rd, Missoula, MT 59804  
 Marina Yoshioka, Region 3 Supervisor, 1400 South 19<sup>th</sup>, Bozeman, MT 59718  
 Jason Rhoten, Region 4 Supervisor, 4600 Giant Springs Rd, Great Falls, MT 59405  
 Mike Ruggles, Region 5 Supervisor, 2300 Lake Elmo Drive, Billings, MT 59105  
 Drew Henry, Region 6 Supervisor, 1 Airport Road, Glasgow, MT 59230  
 Brad Schmitz, Region 7 Supervisor, 352 I-94 Business Loop, Miles City, MT 59301