

POSITION STATEMENT ON ACCESS IN MONTANA -- PROBLEMS AND SOLUTIONS

By: Paul F. Berg *

The State of Montana spans 93 million acres, of which 17 million are National Forests, 8 million Bureau of Land Management, 5 million State School lands, and 0.3 million acres controlled by the Montana Department of Fish, Wildlife and Parks, including administrative sites, wildlife management areas, fish hatcheries and spawning stations, fishing access sites, state parks, and recreation areas.

In the 6 eastside National Forests (Beaverhead; Custer; Deerlodge; Gallatin; Helena; Lewis and Clark), comprising 9 million acres, about 754 access routes leading to the forest boundaries are blocked from public use by locked gates or other barriers on private land denying public access to 3.7 million acres (41%) of these forest areas. An additional 3.2 million acres (36%) of these forests will likely be isolated from public use in a few years because of fee and lease hunting on adjacent private land, overcommercialization by outfitters, guides, dude ranches, and other economically oriented groups.

If we could buy these 754 access routes today, they would cost an estimated \$37.7 million.

Sixty percent (4.8 million) of the 8 million acres of BLM land has no legal public access. We estimate that the 500 access routes to BLM lands needed to provide reasonable public access would cost \$25 million.

Public access to the 5 million acres of State School lands for recreational purposes is denied by the State Land Board. This situation must be corrected.

The public demand for hunting, fishing, hiking, camping and other recreational pursuits on the public lands increased dramatically following WWII, and the public land management agencies failed to recognize and satisfy this need for more and better access.

Access and use of public lands is seldom a problem for livestock grazing, timber harvesting, oil and gas and mineral leasing, dude ranching, guides and outfitters, and other economic enterprises, because they make money, and the current administration and the public agencies tend to cater to these economic interests.

Hunters, fishermen, and other recreationists seek recreational and aesthetic values. However, they spend money. For example, based on MDFWP studies, the average daily expenditure by resident hunters in 1982 was about \$62 for elk; \$44 for deer. Nonresident hunters spent an average of \$198 for elk; \$114 for deer in 1982.

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* Legislative Committees, Billings Rod and Gun Club, Southeastern Sportsman Association; Walleye Unlimited; Conservation Chairman, Yellowstone Basin Group Sierra Club, 3708 Harry Cooper Place, Billings, Montana 59106, phone: (406) 656-2015. Representing 11 clubs and 9,300 Montana sportsmen.

Resident and nonresident hunters and fishermen devoted over 5 million days and spent over \$207 million in Montana in 1982 -- much of it on public lands and in public waters. These expenditures generated over \$800 million to the economy of Montana in 1982. More hunting, fishing, etc., could be enjoyed with more public access.

Sportsmen want reasonable public access through the private land to the forest boundary at about 5-mile intervals, and to selected parcels of the BLM and State School lands for hunting, fishing and other recreational activities. We do not want too much access. Some areas have too many roads and some of them should be closed during the hunting season and at other times as necessary to protect game animals from harassment and overhunting and habitat from abuse. Walk-in hunting areas should be established at suitable locations. Access sites should be selected on a case-by-case basis with cooperation from Federal and State agency personnel, sportsmen, other recreation seekers, and affected landowners. Private property rights must be respected. Section 205 of the Federal Land Policy Management Act (eminent domain authorization) should be implemented as a last resort to assure fulfillment of public access rights where adjacent private landowners attempt to exploit public lands and resources by blocking public access where public access is needed.

Road access to the boundaries of the public land is essential because most hunters drive to road ends and walk in to hunt and pack out downed game without benefit of horses. Guides and outfitters and others who hunt with horses prefer trails through the private property to the public land boundary because this puts good hunting areas further beyond the reach of walk-in hunters, giving horsemen a major hunting and profit making advantage on the public lands.

As more ranches are sold to out-of-state corporations and other affluent groups, and the economic and commercial interests become more dominant, more locked gates will appear on private and county roads leading to our public lands. People who now enjoy access to these public lands likely will be locked out as ownerships change. Therefore, people who do not now support public access to public lands should consider this accelerating trend and reconsider.....they, and their children and friends may be locked out in the near future.

Montana has about 1,412 hunting outfitters and guides; over 4 times more than the 310 in Alaska; over 6 times more than the 216 in Idaho. There are 567 in the Bozeman area alone! Guides and outfitters and dude ranches derive their primary source of income from nonresidents. They do not want any competition from hunters who do not hire them.

We, the people, originally paid for a network of county roads to provide access to farms and ranches. Many of these roads lead to the public land boundaries. Over the years some landowners petitioned the county commissioners and the roads were closed to public use a short distance from the public land boundaries. We paid for these roads a second time by financing public agency personnel salaries and expenses for meetings and studies trying to reopen some of these roads to public use -- with little success. We will have to pay a third time to get them reopened.

It is a policy of the public land management agencies to grant access to private landowners across public land when there is need. We believe that private landowners should recognize the public need and reciprocate when their land blocks public access to public land.

Some ranchers, guides and outfitters who benefit economically from the use of public lands by blocking public access claim that public access would destroy wildlife habitat and hunting on public lands, and that the public will trash the place. We reject that claim. The Forest Service, BLM and state must have permanent, legal, administrative and public access and management control of public lands and freedom to work in concert with the Montana Department of Fish, Wildlife and Parks, U. S. Fish and Wildlife Service and other Federal, State, and private agencies to satisfy the overall public interests respecting the multiple-use philosophy and sustained yield management principles. The public agencies are capable of maintaining a desirable balance of uses on public lands to perpetuate quality wildlife habitat and public hunting and other recreational pursuits consistent with established management policies, laws, and public input.

Public access is related directly to big game winter ranges. The Montana Department of Fish, Wildlife and Parks currently owns and leases 17 key big game winter ranges (Wildlife Management areas) comprising 227,000 acres. These areas (purchased with money collected since 1937 from a 11% tax on sporting arms and equipment, and hunting license fees) winter about 10% of the estimated 100,000 elk in Montana. The remainder of the elk winter on a mixture of Forest Service, BLM, National Park Service, State School, Burlington Northern, Champion International, and other private lands. A few elk winter exclusively on privately owned ranches.

About 80% of the elk are harvested by hunters on public land, mostly National Forests.

If Montana Department of Fish, Wildlife and Parks does not get control of the 32 tracts of winter ranges comprising about 155,000 acres which are threatened with imminent destruction by intensive agricultural practices, homesite developments, and other causes, the 11,000 elk and 13,000 deer that depend upon these winter ranges for winter food and survival will be lost from the populations within a few years. Current acquisition costs are estimated at \$62 million. These acquisitions for public access and winter ranges could be made by extending the Land and Water Conservation Fund Act to the year 2000, and amending it to accomplish a funding schedule to enable completion of agency right-of-way and winter range acquisition by 1995. Grants to the U. S. Forest Service for \$37.7 million, and to the BLM for \$25 million for rights-of-way acquisition, and of \$62 million to the Montana Department of Fish, Wildlife and Parks for winter range acquisition would be required over the time period stated above.

According to the November 15, 1984 National Recreation and Parks Association Newsletter, the Land and Water Conservation Fund contained \$5 billion. On January 16, 1986, the LWCF contained \$3.143 billion. No one knows what happened to the \$1,857 billion. Was it sequestered by the administration for some purpose other than directed by the Land and Water Conservation Fund Act of 1965? Some of this money should be used for access and winter range acquisition.

Public access to our public lands is a basic public right, and the Federal and State agencies are responsible for providing it pursuant to the following laws:

The Multiple Use Sustained Yield Act of 1960 directs the Forest Service to include outdoor recreation and fish and wildlife in its management programs.

The National Forest Roads and Trails Act of 1964 directs the Forest Service to construct and maintain an adequate system of roads and trails within and near the forests for public recreational use.

Section 6 of the National Forest Management Act of 1976 provides the means for identifying access needs and funding requirements.

The Federal Land Policy and Management Act of 1976 (FLPMA) directs the Bureau of Land Management to manage its lands on a multiple use sustained yield basis.

The Forest Service and the BLM have public access programs, but they are inadequate because of insufficient funding and lack of support by the current administration.

Additional funding should be obtained from the 1908 Forest Service 25% Law, Bankhead-Jones Act, Taylor Grazing Act, Payment in Lieu of Taxes Law, Refuge Revenue Sharing Act, and the 1902 Reclamation Act through appropriate amendments. ^{1/}

For example, the payments from all the Federal lands to the 7 Montana counties which contain Custer National Forest lands was \$1,580,521 in FY84.

Under the Forest Service 25% Law, all of the National Forests in Montana paid \$5.8 million in FY84 to all of the Montana counties containing National Forest lands.

The 1902 Reclamation Act established the Bureau of Reclamation to develop irrigation of the arid lands of the 17 western states. At present, 40% of the receipts under the Mineral Leasing Act and various amendments go to the Reclamation Fund, 50% to the states earmarked in Montana for state highway and state school funds, and 10% to the federal treasury.

In FY84 in Montana, the 40% of the Mineral Leasing Act revenues that went to the Reclamation Fund amounted to almost \$15 million.

The Reclamation Fund was needed to stimulate settlement of the western states. However, today, there is little water available for new irrigation projects and some of the money could go to other public needs.

Sportsmen and other outdoor recreationists have tolerated this lockout, defacto management and control, and overcommercialization of our public lands by a few selfish, profit seeking private landowners and their lessees, and other exploitive groups long enough.

We, the people, value our public property just as much as private property owners value theirs. Public land does not serve the public needs when it is not accessible to the public.

There are about 200,000 sportsmen in Montana. We are not well organized. Thus, the powerful ranchers, outfitters and guides, timber, oil, gas, mineral, and other profit seeking groups dominate and wield their power in the Federal and State legislatures to force the Federal and State agencies to respond to their specific needs.

^{1/} Brief summaries of the laws and types of payments made to the state and counties are contained in pages 2-5, and details of the laws on pages 16-28 of the report entitled "Fiscal Year 1984 Payments to Counties and States Under 7 Federal Land Laws for all Federal Lands in the 22 Counties Containing Lands or Minerals Administered by the Custer National Forest," by Dr. Wilson F. Clark, Custer National Forest, P. O. Box 2556, Billings, MT., 59103, phone (406)657-6361. The other National Forests have similar programs.

Sportsmen and other recreationists are concerned about equal rights, and we look to justice for leadership in solving our access and winter range problems.

The Honorable J. A. Turnage, Chief Justice of the Montana Supreme Court, said it best in his State of the Judiciary address to the 49th Legislature:

"...Force must give way to reason and power to justice." (Jan., 1985).

Therefore, we recommend that:

1. The Land and Water Conservation Fund Act of 1965 be extended to the year 2000 and amended to establish a funding schedule to enable Federal and State agency acquisition or conservation easements of public access rights-of-way and big game winter ranges in Montana by 1995.
2. The Forest Service 25% Law, Bankhead-Jones Act, Taylor Grazing Act, Payment in Lieu of Taxes Law, Refuge Revenue Sharing Act, and the 1902 Reclamation Law be amended to earmark 10% of the funds for Federal and State agency acquisition or conservation easements of public access rights-of-way and big game winter ranges in Montana, all acquisitions and easements to be completed by 1995.
3. Section 205 (eminent domain authorization) of the Federal Land Policy Management Act of 1976 be invoked as a last resort to acquire public access rights-of-way and winter ranges in the public interest.

Paul F. Berg