

Guest opinion: Private property rights get their due process in Montana

By TERRY ANDERSON | Aug 16, 2019



With the shoe on the other foot, public access zealots are whining because they lost two recent lawsuits. One involved Mabee Road in the Missouri Breaks and the other rerouting of a controversial trail in the Crazy Mountains.

In the former, the [Public Land and Water Access Association](#) filed suit against private landowners, the state of Montana, and Fergus County contending that the defendants had illegally closed a public road. PLWA claimed that the county road extended beyond its obvious terminus based on “permissive” use since 1903.

Fergus County District Court, however, [concluded](#) that the road clearly ended at the gate in question; that Fergus County had no easement beyond the gate; that the road had not been used continuously by the public; and that the road is a “private trail” consisting of nothing more than two tire tracks.

PLWA is now crying foul over its loss, calling the road “historic” and maintaining that lines on maps make it so, despite the court’s finding in law that “the appearance of a road on a map is ... unreliable evidence of public use or the validity of the claim for a public road.”

In the second case, access zealots including Skyline Sportsmen and Backcountry Hunters and Anglers filed suit to stop rerouting of the Low Line Trail on the west side of the Crazies. They contended that the U.S. Forest Service failed to conduct a full environmental analysis of the new route. U.S. District Court Judge Susan Watters, however, concluded that the environmental analysis was covered by the 2006 travel plan and the 2009 evaluation of roads and trails in the Crazies.

Though the plaintiffs based their case on environmental protection, John Sullivan, president of the Montana chapter of BHA, says the judge’s decision won’t “take away our fight to open these trails up.” These groups believe the USFS “caved” to private landowners, despite the fact that the new trail will have a legal easement across private property donated by the landowner. Moreover, the contested trail doesn’t provide access that isn’t available from other uncontested access points. Indeed, during construction of the new trail, the USFS urges people to use any of three trails offering similar access to that area. For the access zealots, it is access uber alles.

In both of these cases, access zealots claim that continuous public use constitutes proof of a right to cross private property without permission. Ironically, defendants in another case involving trespass on property bordering the Low Line Trail argued that the trail was “impossible to follow.” If this trail or Mabee Road are so important to access and so often used, why are they so hard to find?

Sanctity of private property rights was also the basis of a recent U.S. Supreme Court ruling in *Knick v. Township of Scott*. Rose Knick asked the U.S. Supreme Court to overturn a 1985 ruling that allowed federal courts to refuse to hear her challenge to a local ordinance that forced public access to her private farmland. In the majority opinion, Chief Justice John Roberts said, “Williamson County [Maryland] was not just wrong. Its reason was exceptionally ill founded and conflicted with much of our taking jurisprudence.” In other words, it is time to re-recognize the Fifth Amendment to the U.S. Constitution that prohibits the taking of private property “without just compensation.”

Contrary to the claim by PLWA that the Mabee Road “decision represents a significant loss for Montanans,” these decisions should renew the faith of all citizens in our judicial system based on the rule of law rather than the whims of special interest groups who have little respect for private property rights. Clamoring for more public access just to show private landowners that special interest groups have clout is not good for the environment or for our republic.