

Refutation Documents

The Following documents provide refutation from false allegations levied against Forest Service employee, Alex Sienkiewicz, who was removed from his Yellowstone District Ranger position as a result.

See [EMWH's Public Comment Letter to the Forest Service](#), defending Alex Sienkiewicz as Yellowstone District Ranger.

<https://www.emwh.org/public%20access/Crazy%20Mountains/Sienkiewicz/EMWH%20Letter%20Defending%20Alex%20Sienkiewicz%20as%20District%20Ranger.pdf>

Letters are from the Montana Farm Bureau Federation and a small collective of Crazy Mountain landowners with lands adjacent to and/or with inholdings within, to Senator Steve Daines and US Agriculture Secretary Sonny Perdue and USFS Chief Thomas Tidwell.

1. May 26, 2017 Letter from Senator Steve Daines to USFS Chief Thomas Tidwell, carbon copying Secretary of Agriculture Sonny Perdue and Region 1, Regional Forester Leanne Marten, with forward from Montana Farm Bureau Federation, January 30, 2017 (PDF pgs. 2-5)
2. May 29, 2017 Open Letter to the Secretary of Agriculture and Senator Daines, (PDF pgs. 6-9) by 9 Crazy Mountains landowners with lands adjacent to and/or with inholdings within.
3. PLWA Facebook page screenshot while logged in as administrator, showing not then Yellowstone District Ranger Alex Sienkiewicz, but Lee Gustafson circled in red, as the poster. (PDF pg. 10)
4. June 28, 2016 seasonal email from Yellowstone District Ranger Sienkiewicz to FS employees, "Never Ask Permission; Never Sign in (concerns – come see me). (PDF pgs. 11, 12)
5. July 11, 2013, seasonal email from Yellowstone District Ranger Sienkiewicz to FS employees. (PDF pg. 13)
6. July 24, 2014, seasonal email from Yellowstone District Ranger Sienkiewicz to FS employees. (PDF pg. 14)
7. August 2002 Briefing Paper, National Forest System Trails across Private Land, Gallatin National Forest. (PDF pgs. 15-18)
8. 2000 late summer & 6/2001 FS and seasonal employees not signing per Office of General Council and Supervisor (prior to Sienkiewicz as Yellowstone District Ranger in 2011. (PDF pg. 19)
9. 6/22/01 Donnell Lovely account of not signing in per directions from supervisors. (PDF pg. 20)
10. August 22, 2016 meeting notes with Montana Outfitters & Guides Association Mac Minard and Chuck Rein (Vice-President and Crazy Mountain landowner, outfitter) with Yellowstone District Ranger and Custer Gallatin National Forest Supervisor Mary Erickson about signing and permission. (PDF pgs. 21, 22)
11. October 26, 2015 FS email from FS Law Enforcement Officer Shawn Tripp no landowner permission. (PDF pg. 23)

Documentation compiled by Kathryn QannaYahu, from FOIA's and other research.
Enhancing Montana's Wildlife & Habitat www.emwh.org

United States Senate

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FORESTRY
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HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
INDIAN AFFAIRS

May 26, 2017

The Honorable Thomas Tidwell
Chief
United States Forest Service
201 14th Street, SW
Washington, DC 20024

Dear Chief Tidwell,

I am writing today to request information regarding Forest Service policy for disputed access points near the Crazy Mountains in the Custer Gallatin National Forest. One of the important roles of the U.S. Forest Service (USFS) is to work with local stakeholders to facilitate access to public lands for recreational, agricultural, and economic benefit, while also requiring a balance for equally important ecological and environmental values. While I greatly appreciate the important work the USFS does to achieve access to public land for all of us, I am curious as to the specific policy or guidelines in place within the agency to achieve such access.

As a fifth generation Montanan and avid sportsman, I strongly believe that we must prioritize increasing access to public land, especially as nearly 2 million acres of public land are inaccessible in our state. In facilitating access, I believe it is critically important to protect private property rights and work with willing landowners. That is why I am a staunch advocate in Congress of vital programs like the Land and Water Conservation Fund that help facilitate access to public land for the many different uses Montanans treasure through work with willing landowners.

In Montana, where land is divided nearly equally between federal, state, and private ownership, access is a critical issue for all public land users, and the "checkerboard" nature of ownership presents unique challenges for local landowners, the general public, and the agency. There are various ways to achieve access, such as negotiating road or trail routes, land swaps, acquisitions, or invoking judicial action. However, we must be careful to avoid unintended consequences on landowners and on future management decisions.

As noted in the attached, the perceived directive coming from the USFS seems to promote controversy and aggressive action rather than the collaborative approach we all strive to achieve as public servants.

I am concerned that a lack of clarity on how to manage disputed access points presents problems for both agency personnel and landowners, which ultimately hurts not only local stakeholders, but also the general public.

For reasons noted above, I respectfully request a response to the following questions:

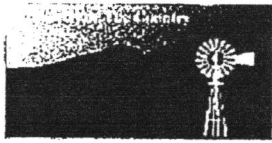
- 1) What are the statutory and regulatory guidelines agency personnel must follow when attempting to resolve private property disputes with local landowners? What local discretion is permitted?
- 2) If an access point is disputed, what are USFS management guidelines for continued engagement with landowners and the public?
- 3) Is the attached message a proper reflection of USFS policy concerning unresolved access points with private landowners?
- 4) What affect, and to what extent, does state law have on management guidelines related to private property disputes?

As a passionate outdoorsman and avid sportsman with a vested interest in land management, I greatly appreciate your willingness to respond to these important questions and hope to better understand the approach the agency takes in these matters. Private property rights are of the utmost importance, and ensuring we equally respect all stakeholders involved will only serve to strengthen the reputation of the USFS, thereby benefiting the greater American public and outdoor community as a whole. Thank you for the important work that you do on behalf of public land users like myself and I look forward to your timely response.

Sincerely,


STEVE DAINES
United States Senator

CC: The Honorable Sonny Perdue, Secretary of Agriculture
CC: Leanne Martin, Regional Forester, Region 1



**MT. MONTANA
FARM BUREAU
FEDERATION**
502 S. 19th Ave. Ste 104
Bozeman, MT 59718

January 30, 2017

Senator Steve Daines
320 Hart Senate Office Building
Washington D.C. 20510

Senator Daines:

I am attaching a Facebook post from the Montana Public Lands and Water Access (PLWA) organization where District Ranger Alex Sienkiewicz has stated; "Never ask permission to cross private land when accessing National Forest Service land through traditional routes shown on Forest Service maps." It is the assumption of the land owners in the Crazy Mountains as well as by the Montana Farm Bureau that this to gain access routes by prescriptive easement. According to Forest Service maps currently available online, there is only one access to the east side of the Crazies, Big Timber Canyon so the only traditional route would be through that access point. This brings up a couple of very disturbing questions for the landowners surrounding the Crazy Mountains as well as private property owners in other areas that border National Forest.

- Is it now the policy of the National Forest Service to abandon negotiating access to Forest Service property and proceed to encouraging trespassing in order to gain prescriptive easements?
- Does Mr. Sienkiewicz statement reflect the policy of the U.S. Forest Service?
- Is it proper for Mr. Sienkiewicz to post this kind of statement on a private land access organization's website using his official title and authority?

This issue was brought to the attention of Region 1 Forester Leanne Marten at a recent Montana Outfitters and Guides Association meeting where she wasn't willing to commit an answer to the questions above. Senator, could you please investigate whether the Forest Service and Ranger Sienkiewicz acted appropriately in regards to the Facebook post and what recourse the private property owners in the Crazy Mountains have in stopping what we see as a broad over-reach of the District Ranger's authority and if indeed it is Forest Service policy to encourage trespass to gain prescriptive easements. This kind of action does little to promote landowner/sportsman relations and in the end will do nothing to open up increased access to public lands.

Sincerely

John Youngberg
Executive Vice President

CC: MFBF Board
Sweet Grass County Farm Bureau



PLWA

@plwa

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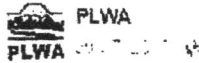
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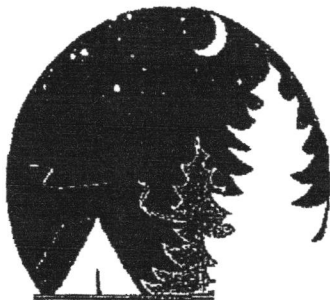


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Alex Corby Sienkiewicz
 District Ranger
 Forest Service
 Yellowstone Ranger District, Custer Gallatin National Forest
 p: 406-823-6066
 c: 406-930-2454
 alexsienkiewicz@fs.fed.us
 5242 HWY 89 South
 Livingston, MT 59047
 www.fs.fed.us

All—This is my regular reminder:
 NEVER ask permission to access the national Forest Service through a traditional route shown on our maps EVEN if that route crosses private land.
 NEVER ASK PERMISSION. NEVER SIGN IN (concerns—come see me)
 This includes BUT IS NOT LIMITED TO:
 -Sweet Grass Creek (Carrocia Rain attempting to extinguish public access)
 -Anywhere on the Lowline Trail (east and west Crazyes) (Zimmerman Guth, Groff, Langhuis and others trying to extinguish public access).
 -Swamp Creek (Grosfield trying to extinguish public access)
 -16 Mile north crazyes
 Whatever past ORs or colleagues have said, I am making it clear, DO NOT ASK permission and DO NOT ADVISE publics to ask permission. These are historic public access routes. By asking permission, one undermines public access rights and plays into their lawyers' trap of establishing a history of permissive access.
 Again, questions, concerns, come see me.



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Cameron Shortell
 October 30, 2018 at 10:42am

Can someone clarify if the Madison river from Blacks Ford to the int... See more

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OPEN LETTER TO THE SECRETARY OF AGRICULTURE and SENATOR DAINES
May 29, 2017

Dear Honorable Sonny Perdue, United States Secretary of Agriculture, & Honorable Steve Daines, United States Senator,

This open letter is from ranchers who neighbor (adjacent to and/or with inholdings within) Forest Service ("FS") lands in the Crazy Mountains in southcentral Montana. Last year a FS District Ranger encouraged members of the public to trespass on some of our private land. The Ranger stated, **"NEVER ask permission to access the national Forest Service through a traditional route shown on our maps EVEN if that route crosses private land."** This statement is entirely contrary to previous District Rangers, who recognized the amount of private land in and around the Crazy Mountains and the need for permission. This aggressive attitude is also contrary to the Montana Access Guide. Obviously, this statement has caused concern by local landowners, ranchers, and local and state Farm Bureau and Stockgrowers organizations. (See attached for the complete version of this brief FS Ranger's facebook post on the litigious PLWA Facebook page, a memo from the prior District Ranger and the Montana Access Guide.)

Since this inflammatory statement by this FS District Ranger, local ranchers and others have met with different FS employees in an attempt to find common ground and diffuse the acrimony created by this statement. Also, Sen. Daines' staff met with a large group of locally affected private landowners to discuss FS policy and whether there was anything Congress could do to help alleviate the tension created by the FS aggressive position against private property rights.

We ranchers and members of the local and state Farm Bureau and Stockgrowers organizations, are not trying to stop public access, where it legally exists. However, based on this FS Ranger's statements and actions, the FS is attempting to create access rights across private lands where such access either: (1) never existed; (2) has long been abandoned (3) was extinguished or (4) was never perfected by obtaining an easement.

As a direct result of this inflammatory Facebook post, we have many questions about the FS position regarding access across our private property:

- Federal Land Policy Management Act ("FLPMA") sets out the FS authority to attain access, which does not discuss using a state-based prescriptive easement process to force access across private land. How can the FS use state prescriptive easement laws to force access across private landowners when prescriptive easements do not exist in federal law and are not authorized under FLPMA?
- Based on several Montana Supreme Court decisions, a prescriptive easement for a trail cannot be created by using the trail for recreational use. How can the FS expect to get prescriptive easements for trails by urging activist members of the public to try to establish them through 5 years of trespass?

- In addition, under state law and court cases, prescriptive easements in Montana can be lost or abandoned if the easement is not used for five years. They can also be extinguished by a process of adverse action by the landowner. Therefore, until there is a court decision on any claim for an easement, nothing exists as only a Court can determine if an easement claim is valid, if it has been extinguished, or what the limitations and conditions are on the scope of any easement. The use of federal funds to litigate these kind of cases, rather than to negotiate on exchanges and voluntary easements, does nothing to encourage landowners to provide access or to promote neighborly relations between landowners, the Forest Service and the public.
- Is it proper for a FS employee to put members of the public in jeopardy of a legal action against them for trespass, by telling them to cross posted private property to reach FS lands where no legitimate perfected public easement exists?
- How can the FS comply with the FSM 5403.5, which requires the FS to be a "good neighbor" and "avoid regulating private property" when the FS is actively attempting to unilaterally create access easements across private property?
- Is a FS employee complying with the FSM 6104.3, which requires all FS employees to "maintain high standards of honesty, integrity, impartiality, and conduct," if that FS employee is telling people to never ask for permission to cross private property where there is no perfected easement?
- We would request that you use the full power and authority of your offices to investigate and determine whether this FS Ranger has been acting in congruence with FS policy and his job duties when he has been instigating conflict and encouraging criminal actions by members of the public against private property owners in order to try to establish public access across private land.

In addition to reviewing the questions listed above, the landowners would ask you to review the following issues:

- ❖ Review FS policy to determine whether it is proper for FS personnel to draw new trails, or change the locations of trails, on maps across private property without first getting the proper easements from the private landowners. Also in this regard, is this happening in other areas of FS Region 1 besides the Crazy Mountains, or in other areas of the country for that matter?
- ❖ Review FS policy to determine whether it is appropriate for FS personnel to put private ranch roads and other private roads and trails on their maps (both inside *and outside* the Forest Boundary) without indicating in any manner that these roads and trails are private and not open to public use without landowner permission.
- ❖ Review FS policy to determine whether it is proper for FS and members of the public to attempt to force private landowners to allow public access across their lands without some type of written agreement with the FS prior to the public accessing private property.

- ❖ Review FS policy to determine if the reduction of historical uses and increased focus on recreational access has increased fuel loads and fire dangers, and whether there is adequate funding for such increased risks.
- ❖ Review FS management to determine whether the FS has, through travel planning or resource decisions, encouraged access disputes by shutting off existing legal accesses or restricting the use of such legal accesses, thereby increasing the pressure on private landowners who adjoin other national forest land to try to force other access routes.

Historically, the FS and private landowners had a cooperative and fairly cordial relationship, with various trails used by the landowner and the Forest Service for fire protection, livestock management and other administrative uses associated with timber and range management. This same relationship has existed among private landowners who allow neighborly use and access across each other's private lands.

However, some in the FS have moved away from any effort to be a good neighbor to private property owners. In fact, it seems the FS no longer focuses on managing the FS for multiple use, including grazing, timber, mining, wildlife, resources, and recreation. In doing so, the FS abdicates the primary purpose of the national forests, increases the risks of wildfire and human caused fires, and tramples over private property rights in its push for public access across private ground.

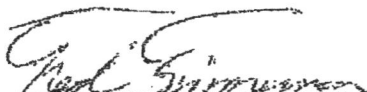
In sum, *our biggest concern* is that the current FS policy and *modus operandi* is creating significant conflict with private landowners. If the current FS policy in Montana of claiming a prescriptive easement or filing a Statement of Interest against private landowners is allowed to stand, then these actions gut the Takings Clause of the United States Constitution, shift the burden to individual private landowners to sue the federal government (at great expense to private citizens), and effectively allows the federal government to condemn private property without having to pay compensation. Is this really what we expect or want from our federal government? Can this even be constitutional?

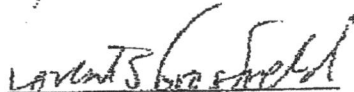
We thank you for the opportunity to meet with you and to present our concerns. We look forward to hearing your response and hope that the FS and private landowners can resolve these issues amicably without expensive litigation. There may be an opportunity for the FS to exchange some lands in order to block up FS and private land to create corridors for access that would not cross private land. There may be other mutually agreeable opportunities for the FS to obtain voluntary access from private landowners, especially if the FS is willing to allow the landowner to enforce access restrictions and safeguards, and to give up unperfected access routes not really needed anymore. But we believe it is **not agreeable** for the FS to unilaterally try to force public access across private land.

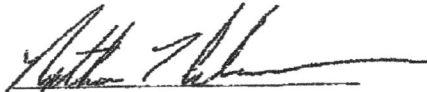
In the supplement to this letter, we have attached some short stories about the FS's interactions with local ranchers regarding access issues to illustrate some of the problems that have been caused by this local FS Ranger's statements and actions, as well as broader FS issues.

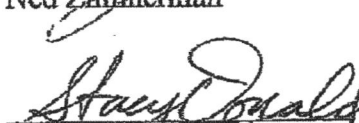
Please contact Ned Zimmerman 406-578-2114, Lorents Grosfield 406-537-4489, Nathan Anderson 406-537-4426, Stacy Donald 406-537-4445, Page Dringman 406-932-0440, or Hertha Lund 406-586-6254, if you have questions or need more information from us to assist you in resolving these issues. We would be happy to respond, and also to work with your offices on this matter.

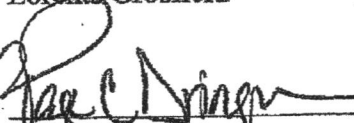
Sincerely,

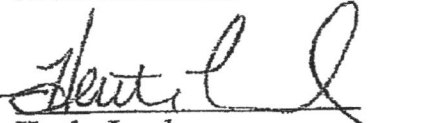

Ned Zimmerman

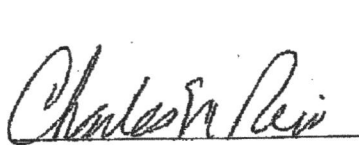

Lorents Grosfield

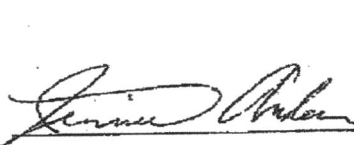

Nathan Anderson

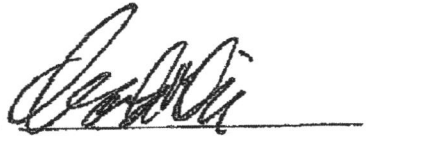

Stacy Donald

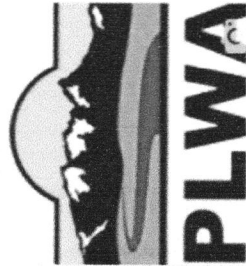

Sweet Grass Ranch


Hertha Lund


Rein Anchor Ranch







PLWA @plwamt

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PLWA Published by Lee Gustafson (P) July 7, 2016

Alex Corby Sienkiewicz
 District Ranger
 Forest Service
 Yellowstone Ranger District, Custer Gallatin National Forest
 p. 406-823-6066
 c. 406-930-2454
 alexsienkiewicz@fs.fed.us
 5242 HWY 89 South
 Livingston, MT 59047
 www.fs.fed.us

All— This is my regular reminder:
 NEVER ask permission to access the national Forest Service through a traditional route shown on our maps EVEN if that route crosses private land.
 NEVER ASK PERMISSION; NEVER SIGN IN (concerns—come see me)
 This includes BUT IS NOT LIMITED TO:
 -Sweet Grass Creek (Carrocia Rein attempting to extinguish public access)
 -Anywhere on the Lowline Trail (east and west Crazyes) (Zimmerman, Guth, Groff, Langhuis and others trying to extinguish public access)
 -Swamp Creek (Grosfield trying to extinguish public access)
 -16 Mile north crazies
 Whatever past DRs or colleagues have said, I am making it clear, DO NOT ASK permission and DO NOT ADVISE publics to ask permission. These are historic public access routes... By asking permission, one undermines public access rights and plays into their lawyers' trap of establishing a history of permissive access

Again, questions, concerns, come see me.

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Danny T-bomb
 January 26 at 5:16pm
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Derek Bailey
 January 14 at 10:05am
 I'd like to know what PLWA thinks of this. Laws are great to read ... See More
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From: Sienkiewicz, Alex -FS

Sent: Tuesday, June 28, 2016 9:38 AM

To: FS-pdl r1 custer gallatin yellowstone <pd1_r1_custer_gallatin_yellowstone@ms.fs.fed.us>;

FS-pdl r1 custer gallatin gardiner <pd1_r1_custer_gallatin_gardiner@ms.fs.fed.us>

Cc: FS-pdl r1 custer gallatin leadership team <pd1_r1_custer_gallatin_leadership_team@ms.fs.fed.us>; Dennee, Robert L -FS <robertldennee@fs.fed.us>

Subject: Please Read YRD

All—This is my regular reminder:

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NEVER ASK PERMISSION; NEVER SIGN IN (concerns—come see me)

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ADVISE publics to ask permission. These are historic public access routes... By asking permission, one

undermines public access rights and plays into their lawyers' trap of establishing a history of permissive access.

Again, questions, concerns, come see me.

Thank you--Alex



Alex Corbly Sienkiewicz
District Ranger
Forest Service

Yellowstone Ranger District, Custer Gallatin National Forest

p: [406-823-6066](tel:406-823-6066)

c: [406-930-2454](tel:406-930-2454)

alex sienkiewicz@fs.fed.us

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Livingston, MT 59047

www.fs.fed.us



Caring for the land and serving people

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Sienkiewicz, Alex -FS

From: Sienkiewicz, Alex -FS
Sent: Thursday, July 11, 2013 5:46 PM
To: FS-pdl r1 gallatin yellowstone
Cc: FS-pdl r1 gallatin custer joint leadership team
Subject: Do Not Sign in to Access Sweet Grass Creek or other YRD sites...

Gang—I am again emphasizing to the District that no one should be signing in to access Sweet Grass Creek or other sites on the District. With the one exception of Cherry Creek—which is close to being “resolved” (i.e. clarified as to legal rights...) You should not be signing in ANYWHERE to access NFS lands. Furthermore, the PUBLIC should not be signing in to access YRD-NFS lands either. Please ignore any existing or new sign-in stations at traditional NFS access sites. These are deliberate efforts by private individuals to extinguish public rights. I am CC-ing the FLT as an FYI. I am happy to provide my business cards and or letters for any USFS personnel carry should landowners request that one sign in.

Thank you for your attention to this matter.--Alex

Alex Corbly Sienkiewicz

District Ranger
Yellowstone Ranger District
Big Timber & Livingston, MT
Gallatin National Forest
(406) 932-5155 Big Timber
(406) 823-6066 Livingston
(406) 930-2454 Cell

From: Sienkiewicz, Alex -FS
Sent: Thursday, July 24, 2014 12:12 PM
To: FS-pdl r1 gallatin yellowstone; FS-pdl r1 gallatin gardiner
Subject: Sweetgrass Creek Access to Crazyes: DO NOT SIGN IN

Importance: High

Dear Colleagues,

Attached is a photo of the sign at one of the gates at the Carrocia property along Sweetgrass Creek Road (Chuck Rein calls this Road Rein Road). This road runs west of Melville and passes through the Rein and Carrocia properties. I was there on Monday. I was able to drive through all gates and access the forest without encountering anyone. Come elk hunting season, however, all of these gates will be locked in order to keep the public from hunting the national forest. In the past, there was a Forest Service trailhead kiosk which they ripped down. This is still demarcated on older USFS maps.

I am herein emphasizing AS I DO EVERY YEAR that you DO NOT SIGN IN to access the National Forest as the sign demands. Never. As the legalese in the sign indicates, this is a deliberate effort upon advice of their attorneys to extinguish public access rights. Signing in will aid them in their efforts.

The Forest Service maintains (reinforced by opinion from OGC)that the agency and public have ("unperfected") legal rights of access based on a 100 year history of use, maintenance, and historic access that is now "adverse" (adversarial).

Obviously, if you encounter conflict, just turn around and leave. But if anyone asks, please note the agency's position that there is indeed legal access. Please refer all questions to me. Again, your own safety takes priority over your work, so please, walk away from prospective conflicts.

Thank you,

Alex

Alex Corbly Sienkiewicz
District Ranger
Yellowstone Ranger District
Big Timber & Livingston, MT
Custer-Gallatin National Forest
(406) 932-5155 BIG T
(406) 823-6066 LIV
(406) 930-2454 CELL

"...old trees just grow stronger, and old rivers grow wilder every day..."

--John Prine



Briefing Paper

United States
Department of Agriculture

Gallatin National Forest
P.O. Box 130
Bozeman, Montana 59771

August 2002

National Forest System Trails across Private Land

Purpose and Need: Many of the long standing National Forest System (NFS) trail segments that cross private lands lack recorded easements. In other words, rights to most existing trail segments across private lands have not been “perfected” by acquiring written (deeded) easements, or through legal (adjudicative) procedures. In some cases, however, trail easements have been acquired and recorded. And in a few instances, rights have been perfected through a court ruling that NFS trails across private lands are in fact public trails.

This paper summarizes the current situation on the Gallatin NF, and Forest Service direction and policy regarding existing NFS trails that cross private lands.

On the Gallatin NF, our system of trails crosses intermingled public and private lands throughout much of the Forest. This situation results from historic land ownership patterns, ie. private lands in the valleys, public lands in the mountains, the checkerboard land grants to railroads, homestead acts, and mining patents.

Most of the NFS trails on this Forest were constructed in the 1920's and 30's. Over the years, these trails have been maintained and signed by the Forest Service. The trails have been used by the public for recreation, and also by the agency, our permittees and contractors, for management purposes for decades. Forest Visitor Maps have displayed the NFS trail system across intermingled lands, with trail numbers and any Travel Management restrictions. A variety of other historic and current National Forest, BLM, USGS and GLO maps also display the system of trails across intermingled lands.

The growing demand for dispersed recreation on public lands, and the changes and trends in private landownership, have brought considerable attention to the trails issue on this Forest. At an increasing rate, landowners are questioning the status of trails across private land. Private land within and adjacent to this Forest continues to be sold. New owners may or may not recognize the existing public access through their lands. Some trails on private land are being lost through subdivision, closure or obliteration.

As a result, it is critical for the Gallatin NF to continue to have a strong and consistent policy and presence in: (a) signing and maintaining our trail system across private lands; (b) defending historic trail access rights if challenged; and (c) perfecting trail access rights across private lands whenever that opportunity exists.

Gallatin National Forest Situation: This Forest has made considerable progress over the past 20+ years in addressing the trail access issue. Numerous (perhaps 50) trail easements have been acquired from landowners by various means available to the agency. The Forest's land purchase and exchange programs, and reciprocal access agreements, have been particularly effective in recent years in securing legal access to existing trails. Since 1989, over 120,000 acres of private land inholdings, containing over 70 miles of existing system trails, have been consolidated into public ownership.

Today, our system of NFS trails consists of about 2,200 miles, excluding winter use trails. Despite the substantial progress made in consolidating lands, an estimated 200 to 250 miles of the Forest's trail system cross private and other non-federal land. And despite the numerous trail easements now of record, **the Forest Service has not perfected easement rights for the majority of NFS trail segments on private lands.** This situation occurs throughout most of the Forest, but is most prevalent in the Crazy Mountains, Paradise Valley, North Bridgers, Cinnabar/Tom Miner Basin, and north Madison, where most of the trails across intermingled private lands remain.

Two important local trail access cases directly affect the management of unadjudicated Gallatin NF trails across private lands today. A synopsis follows:

- (1) **Trail Creek litigation.** In the early 1980's, new owners of the Windy Waters Resort attempted to close the Trail Creek trail across ranch lands. This trail has been in existence for many years. It extends from Ennis Lake up to Cowboy's Heaven and Cherry Creek on the B-D NF and Gallatin NF (Bozeman RD). It has been signed and maintained by the Forest Service. Sportsman and access groups filed suit to keep this trail open, citing state prescriptive rights law. The court ruled that Trail Creek trail is in fact a Forest Service trail open for public use across private lands.
- (2) **Donahue Trail.** In this mid to late 1980s case, the new landowners of Point of Rocks Ranch threatened to close this historic trail system on the Livingston District. Negotiations with the owners to re-open the trails were not successful. The Gallatin NF, OGC and DOJ then compiled information about historic use and maintenance, and developed a legal position asserting that Donahue Trail was in fact a system trail across private lands. As DOJ prepared to file a complaint in federal court, the landowners conceded and granted permanent trail easements for this trail system.

Direction and Policy. National and Forest direction (FLPMA, FSM 5460, and Gallatin Forest Plan) is to acquire perpetual easements for all NFS roads and trails across non-federal lands. Deeded easements give the Forest Service management, jurisdiction and maintenance rights. We typically acquire twenty (20) foot wide trail easements. We strive to acquire all rights needed to manage the trail in the future, without restrictions, regardless of our current travel management plans. Easement language must follow the format approved by OGC. Any deviations require OGC approval. A formal right-of-way survey and exhibit (map) is required to record an easement.

Under FLPMA and FSM 5460 direction, the Forest Service uses a variety of methods to acquire and protect road and trail access: negotiate to acquire easements by purchase or donation, land exchange and purchase, cooperative and reciprocal access agreements, establish existing rights through adjudication, and as a last resort, condemnation.

In situations where an existing NFS trail crosses private lands, and no deeded easements exist, the Forest Service position is as follows:

The United States has acquired a right-of-way for the trail through development, maintenance and continuous use of the trail. As a matter of law, the Forest Service believes that there is a public access easement for the trail. The Forest Service is a beneficiary of this public right of access, will continue its efforts to defend the public's right of access.

In situations where an existing NFS trail crosses private lands, and no deeded easements exist, it is very important for the Forest and District to:

- (1) Protect and maintain historic evidence, including trail blazes, signs, maps, photos and maintenance records,**
- (2) Maintain and sign the trail on a regular basis, and keep records and photos of this maintenance, and**
- (3) Take prompt action in the event that landowners threaten or take action to close or obliterate the trail.**

Statements of Interest

Current policy (R-1 Supplement 5400-93-2, 7/1/93, 5460.2 - Policy) provides direction for filing "Statements of Interest" in the appropriate county, in situations where continued use of a historical access route across private land is or may be threatened. Statements of Interest are designed to provide **constructive notice** in the public record that the United States, on behalf of the public, claims an interest in a road or trail facility.

On the Gallatin NF, Statements of Interest were filed in the early 1990s on the extensive system of trails across Plum Creek (later sold to BSL) lands, across the other private lands in the Taylor Fork area, and in certain other areas. We have not filed Statements of Interest on most other NFS trails on this Forest, but this remains a viable tool.

Filing an SOI must be supported by evidence adequate to document the claim of interest and must be coordinated with RO Lands and OGC. We need to inform the landowner of our intentions to file an SOI. When filed, landowners need to be notified by certified letter, and provided a copy of the recorded SOI. A sample SOI is attached.

###

STATEMENT OF INTEREST

The **UNITED STATES OF AMERICA** hereby asserts that it has and claims **EASEMENTS** for the **NATIONAL FOREST TRAILS** over and across the real property described below, located in **Gallatin County, State of Montana**.

The purpose of this statement is to:

1.Affirm that the **UNITED STATES OF AMERICA** does claim **EASEMENTS** under the jurisdiction of the Forest Service, and

2.Establish that said **EASEMENTS** for **National Forest Trails** traverse the following described real property, as shown on **EXHIBIT A** attached hereto and made a part hereof:

Township 8 South, Range 3 East, P.M., Gallatin County, Montana:

CINNAMON-BUCK TRAIL NO. 6:

Section 24: W1/2 0.6 mile

MEADOW CREEK-ALBINO LAKE TRAIL NO. 33:

Section 24: W1/2 0.6 mile

For additional information, contact the Forest Supervisor, Gallatin National Forest, Federal Building, P.O. Box 130, Bozeman, MT 59771. Phone (406) 587-6701.

Dated this _____ day of _____

UNITED STATES OF AMERICA

By: _____

Forest Supervisor
Gallatin National Forest
USDA - Forest Service

9/4/96: Internal Memo from Acting DR: JD Lumber plans to apply for a road use permit to reconstruct and haul from Carroccia's Section 7 in Sweetgrass. JD's Forester was told, by the Acting Ranger Gordon Schofield, that the Carroccias would need to apply for a road SUP, since it wasn't an FS road across forest and, we would probably condition it on the reciprocal needs of the public.

3/8/97: Letter from Shelly Carroccia to DR: This points out to the new ranger that people have to get permission, etc.

8/97: Sweetgrass Road identified by the Forest as a possible RS 2477 case.

Late summer 2000: District Resource Assistant attempts to enter Sweetgrass through the Carroccias on the trail/road. Assistant was stopped at the gate by Pat Dringman and passage refused until the US personnel signed in. After discussing the situation with Page and Pat Dringman for a couple hours, and because the Forest had been closed and was in extreme fire danger, the FS employee consented to sign in. After discussing this situation with Forest Lands Staff and OGC, OGC advised the District not to sign in.

6/2001: D-1 seasonal employees refused to sign in at Carroccia Ranch (OGC had advised us not to sign in). These employees were threatened with arrest for criminal trespass. One employee was "banned forever" by Page Carroccia from going up Sweetgrass. They were just doing what they were told by their supervisor.

6/28/2001: Page Carroccia to Acting DR: This letter complaining about FS and threatens that future attempts by FS to cross Carroccia property on SG trail without permission will be considered trespass. This letter was cc'ed to other neighboring landowners and Sheriff.

7/2/01, documented in 7/5/01 memo to files: Phone call from Carroccia neighbor Ralph Cosgriff to D-1 lands staff in which Mr. Cosgriff says the Carroccias have "gone to far". Mr. Cosgriff stated he had proof that the County and Forest Service had maintained portions of the road/trail across private land in the Sweetgrass drainage which he provided as referenced in earlier correspondence. Around this time, OGC advises the District not to ask permission and not to cross Carroccias property.

7/2/01: SO Lands attempts to set up a meeting with Susan Brookes and Page Dringman.

7/17/2001: Forest Supervisor response to Dringman's 6/28 letter. Let's meet 7/24/01 to resolve matter. Meeting never took place, canceled by Dringman.

12/21/2001: District Resource Assistant gives Shelly Carroccia a draft trailhead sign the Forest has been working on for the Crazy Mountains and asks for comments from her family. The purpose of the sign is to better inform the public of private lands in the Crazies. Page Dringman calls immediately after seeing the draft and threatens to sue the FS if the sign is published citing inaccuracies regarding

doi
5/11

6/22/01

On 6/18/01, myself (Donelle Lovely) and Kris Norris parked our vehicle at the trailhead of Sweet Brass Creek. We did not stop and talk to the landowners; as ~~before~~ ~~before~~ per directions from our supervisors. We spent 6/18/01 through 6/21/01 clearing the trails up that drainage. On 6/21/01 when I reached our vehicle back at the trailhead there was a note (I gave it to Frank) asking us to come and check in with the landowners. Kris and I walked up and spoke with Rocco Carroia. He did not know about the note and asked if we had checked in before we went up the trail, I told him we didn't. Most of the interaction was between Kris & Rocco. Rocco proceeded to tell us that he could have us arrested for trespassing. He told Kris that he could not come back up there again. Rocco became very

Sienkiewicz, Alex -FS

From: Sienkiewicz, Alex -FS
Sent: Monday, August 22, 2016 4:01 PM
To: Taylor, Nancy -FS; Dennee, Robert L -FS; Oswald, Lauren M -FS; Erickson, Mary C -FS; McFarland, Elizabeth A -FS
Subject: Letter to File re: MOGA meeting and Chuck Rein

This letter to the file documents that on 17 August 2016, after the MOGA leadership meeting with Custer Gallatin NF leadership; Chuck Rein presented Alex Sienkiewicz and Mary Erickson with a copy of an EMAIL Alex had sent out to staff with CC to Forest Leadership Team. Rein complained that he was NOT trying to extinguish public access to public lands.

This email had subsequently been posted to PLWA's facebook page by an unknown 3rd party. The 6/28/2016 email follows:

All—This is my regular reminder:

NEVER ask permission to access the national Forest Service through a traditional route shown on our maps **EVEN** if that route crosses private land.

NEVER ASK PERMISSION; NEVER SIGN IN (concerns—come see me)

This includes BUT IS NOT LIMITED TO:

-Sweet Grass Creek (Carrocia Rein attempting to extinguish public access)

-Anywhere on the Lowline Trail (east and west Crazies) (Zimmerman, Guth, Groff, Langhuis and others trying to extinguish public access).

-Swamp Creek (Grosfield trying to extinguish public access)

-16 Mile north crazies

Whatever past DRs or colleagues have said, I am making it clear, **DO NOT ASK permission** and **DO NOT ADVISE** publics to ask permission. These are historic public access routes... By asking permission, one undermines public access rights and plays into their lawyers' trap of establishing a history of permissive access.

Again, questions, concerns, come see me.

Thank you—Alex

Mac Minard of MOGA also sat in on the conversation. Chuck Rein asserted that he was NOT trying to extinguish public

access, and stated as much firmly. Alex responded that when he (Rein) and Carroccias locked gates across century-old roads like Sweetgrass Creek and put up signs drafted by lawyers stating that all access was "permissive"; that indeed he was working to extinguish public access to public lands. Both Mac Minnard and Chuck Rein asked Mary Erickson if she agreed with my (Alex's) position regarding never signing-in and never asking permission of private landowners at traditional forest access points, and Mary stated that she did support this position. All could see the parties were in disagreement, and Mr. Rein acknowledged that it would likely be unproductive to debate further. I asserted I was simply doing my job and that citizens expected me to defend public access. I noted that I was trying to "get kids to the their public lands" via traditional, century-old routes.

When the tension eased a bit, I invited Chuck to coffee or a meal to discuss possible alternative resolutions (including land exchanges or trading easements), and Chuck said he would consider it, but that "It's not just me up there"... suggesting that the Carroccias and others are involved in the gating of the Sweetgrass Creek Road in multiple places.

I emphasize in this writing that the agency's and Rein's positions as regards this access point were "adverse" in nature in that Rein asserted any and all prospective visitors needed to ask his permission, While I (Sienkiewicz with Erickson's concurrence) asserted USFS and publics should indeed NEVER ask his permission NOR that of any other landowners (e.g., Carroccia, Cosgriff, Anderson) flanking traditional routes on the official forest map). I also asserted that USFS and publics need never sign in to access the forest via these traditional routes.

/s/ Alex Sienkiewicz



Alex Corbly Sienkiewicz
District Ranger
Forest Service
Yellowstone Ranger District, Custer Gallatin National Forest

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Caring for the land and serving people



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Livingston, MT 59047

Sienkiewicz, Alex -FS

From: Tripp, Shawn -FS
Sent: Monday, October 26, 2015 5:00 PM
To: Robb, DorisJean -FS; Phariss, Judith -FS
Cc: Sienkiewicz, Alex -FS; Bolte, Bradley -FS; Smith, Sandra J -FS; Sites, Ashley -FS; Kelher, Andrew -FS
Subject: Trail 136, formally 115 - East side of Crazy Mtn - Big Timber Canyon - North Ranger Trail

Please provide anyone with questions or comments on the Crazy Mtn North Ranger – Trail 136 to me and Alex.

And don't refer folks to the landowner for permission.

Thank You

Shawn



Shawn Tripp
Law Enforcement Officer
Forest Service
Law Enforcement and Investigations,
Northern Region SAC, Southeast Zone
 Serving the Custer Gallatin National Forest and Dakota Prairie Grasslands

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