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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FRIENDS OF THE CRAZY
MOUNTAINS, *et al.*,

Plaintiffs,

vs.

MARY ERICKSON, in her capacity
as Forest Supervisor for the Custer-
Gallatin National Forest, M
HANGING LAZY 3, LLC, HENRY
GUTH, INCORPORATED, *et al.*,

Defendants.

CV-19-66-BLG-SPW-TJC

DECLARATION OF
BRAD WILSON

I Brad Wilson declare as follows:

1. I reside in Wilsall, Montana. I am over 18 years of age and competent to testify. I have personal knowledge of each of the facts set forth below.

2. I was born and raised in Park County, on the northwest side of the Crazy Mountains in the Upper Shields Valley.

3. My family's connections with the Crazy Mountains run deep. My paternal grandmother's family, the Hamiltons, settled in the area in the 1870s. They were one of the earliest settlers in the area. My grandfather Fred Wilson, Sr., who came to the area in about 1919, tended and supplied sheep camps and logging camps in the Crazy Mountains, including the camps of one of the biggest sheep producers in this country, the Smith Brothers. In 1946, he and my grandmother, Victoria Hamilton, purchased the family homestead raising sheep and a few cattle. In 1983, my grandmother was a grand marshal of Old Settlers Day.

4. I have lived most of my life in Park County and raised my children there. I am the fifth generation of my family in Park County. In the 1980s, I was a deputy sheriff in Park County. Later, I worked for the Park County Road Department as an Operating Engineer and Assistant Road Supervisor. I have been retired for about four years.

5. I founded Friends of the Crazy Mountains to lend a public

hand to our public lands, by protecting and advancing public access, into and within, the Crazy Mountains. The mission of the group is to provide trail maintenance on existing National Forest System trails and roads in the Crazy Mountains, including the Porcupine Lowline trail (267), Elk Creek trail (195), Sweet Grass Trail (122), and East Trunk Trail (135/115). Friends of the Crazy Mountains is also dedicated to protecting wildlife and wildlife habitat in the Crazy Mountains, and watchdogging the county, state, and federal agencies who have jurisdiction over them.

6. The first goal of the Friends of the Crazy Mountains is to preserve the trails that provide public access to the Crazy Mountains. Our second goal, which evolved as we learned more about trail access threats, is to help preserve and protect our access points. The U.S. Forest Service's (USFS's) actions or failures challenged in this case directly frustrate and undermine Friends of the Crazy Mountains' mission and purpose. Friends of the Crazy Mountains also expended a significant amount of time and resources to research the issues involved in this case and participate in this civil action. In the end, however, it is necessary and worth the time and effort. We have to protect and defend

public access on our public trails and ensure the USFS does its job.

7. I am familiar with the USFS's Porcupine Ibex Trail Project and know that it involves: (1) building roughly 8 miles of new trail on National Forest land; (2) securing a permanent easement from a private landowner to accommodate the new trail; (3) closing and then obliterating portions of two existing National Forest System trails in the area, the Porcupine Lowline trail (267) and Elk Creek trail (195); and (4) relinquishing our easement interests to use and access portions of the Porcupine Lowline trail and Elk Creek trail. On February 23, 2018, I publicly objected to the project proposal in a guest opinion in the Billings Gazette.

8. I have an intimate knowledge of Trails 195 and 267. Since 1968, I have been on those trails hiking, backpacking, hunting, fishing, and taking photographs. I spent 30 years working as a professional trapper, including on the National Forest lands surrounding Trails 195 and 267. Nowadays, I go up there to rejuvenate. I especially love to spend time and fish at Campfire Lake off Trail 195. It is a special place to me, full of many memories. I've been to a lot of the remote wilderness areas in Montana, including the Absaroka-Beartooth Wilderness and the Spanish Peaks, but Campfire Lake is special. It's so wild that mountain goats will literally stick their head in your camp.

9. With my kids, I have hiked and hunted every drainage off Trails 195 and 267. We have had many hunting camps in that area when we were able to access private lands. Now, without access to those lands, our hunting camps are on the north end of Trail 267.

10. Since 2003, my girlfriend and I have hiked the Crazy Mountains. For example, in 2015, we backpacked from the Porcupine Ranger Station on Trail 195. Also in 2015, we snowshoed from the Porcupine Ranger Station to the North Fork of Elk Creek. In 2017, we again backpacked from the Porcupine Ranger Station on Trail 195 to Campfire Lake. In 2018, I walked in from the Porcupine Ranger Station on Trail 267 toward the North Fork of Elk Creek and jumped the lockedgate approximately three-quarters of a mile from the Porcupine Ranger Station in order to note (for later restoration) tree blazes and markers that have faded or disappeared over the years. I am planning on again hiking to Campfire Lake this summer. Because of the Porcupine Ibex Trail project, however, the portion of 267 that I and my family use to use and enjoy is no longer available and open to the public. The Forest Service “relinquished” this a large portion of 267 and a portion of 195 as part of the Porcupine Ibex Trail Project. This has harmed and continues to harm my interests in using this area.

11. In the summer of 2018, I hiked Trail 267 from the southern end by the Ibex Cabin. I used a GPS to locate the trail. I hiked the

trail several times, and each time, after going up the trail approximately one mile, the trail seemed to disappear. Even with a GPS, it was difficult to locate and stay on the trail. The Forest Service has allowed this trail to deteriorate and become so overgrown that users take the risk of going off the trail. This trail is an important access point allowing users to connect to Trail 195 to access Campfire Lake. Pasted below is a photograph of me hiking Trail 267 on the trip described above from the southern end by the Ibx cabin.



12. I have also been through and explored the country where the new trail re-route traverses, including while hunting. The terrain is very remote and difficult to get into. I think of this country as

offering me as a hunter “extreme fair chase.” That is, the animals have the extreme advantage. I have seen world-class animals in this area—amazing mule deer bucks and elk—but I have only *seen* them and then they were gone. I have also seen wolverine tracks in this area.

13. On June 16, 2019, I toured the undisturbed forested area where the new trail was proposed to be built. I started on the Porcupine trailhead at the northern end of 267, and followed Forest Service flags showing where the new trail is proposed. It is a steeper and higher trail than conveyed to the public (which did not have an opportunity to comment on it). Also, I came across a natural salt lick in the area with a lot of animal tracks and signs. Pasted below is a photo of me on the flagged trail during the June 16, 2019 trip:



14. On June 23, 2019, I returned and toured the area where the new trail was proposed to be built. I started on the Ibex trailhead at the southern end of 267. My goal was to get to section 35, but had great difficulty finding section 35, even using GPS. Parts of the trail are completely gone. I followed Forest Service flags showing where the new trail is proposed.

15. The area proposed for the trail re-route is beautiful, undisturbed forested country. It also includes some really scenic areas above timberline. At times, the flagged trail opens into open rolling parks with an abundance of spectacular wildflowers. At other times, the flagged trail enters old mature forests with moss on the trees, like

something out of a Dr. Seuss book. The views from the Trespass Divide are spectacular—you feel like you're on top of the world.

16. The best way I can put it is that the country where the Porcupine Ibex Trail Project is proposed, including the location of the new mountain bike trail, is special and fragile. It is critical to elk, mule deer, mountain goats, moose, and occupied by Canada lynx and wolverine. These animals only have a certain amount of land left. I believe the newly engineered mountain bike trail – as proposed by the Porcupine Ibex Trail Project – and the blasting and cutting of trees that will be necessary to construct it, will irreparably disrupt this undisturbed, forested land in the Crazy Mountains ecosystem and my interests in using and conserving it.

17. The Forest Service completed the first phase of the new Porcupine Trail in the summer of 2019, consisting of a little over 3 miles of trail. I hiked the trail in late May of 2020 and, unfortunately, my concerns about the trail proved to be accurate. Within the first two miles the trail rises 1,685' in elevation. Due to the steepness of the trail, there is a lot of loose material that, less than one year after the trail was constructed, was already sluffing off on the downhill side of the trail. Based on what I observed of the new trail, I am concerned that it will have erosion issues that will directly impact the headwaters of Porcupine Creek, a tributary to the Shields River, which is important to the conservation of the Yellowstone Cutthroat

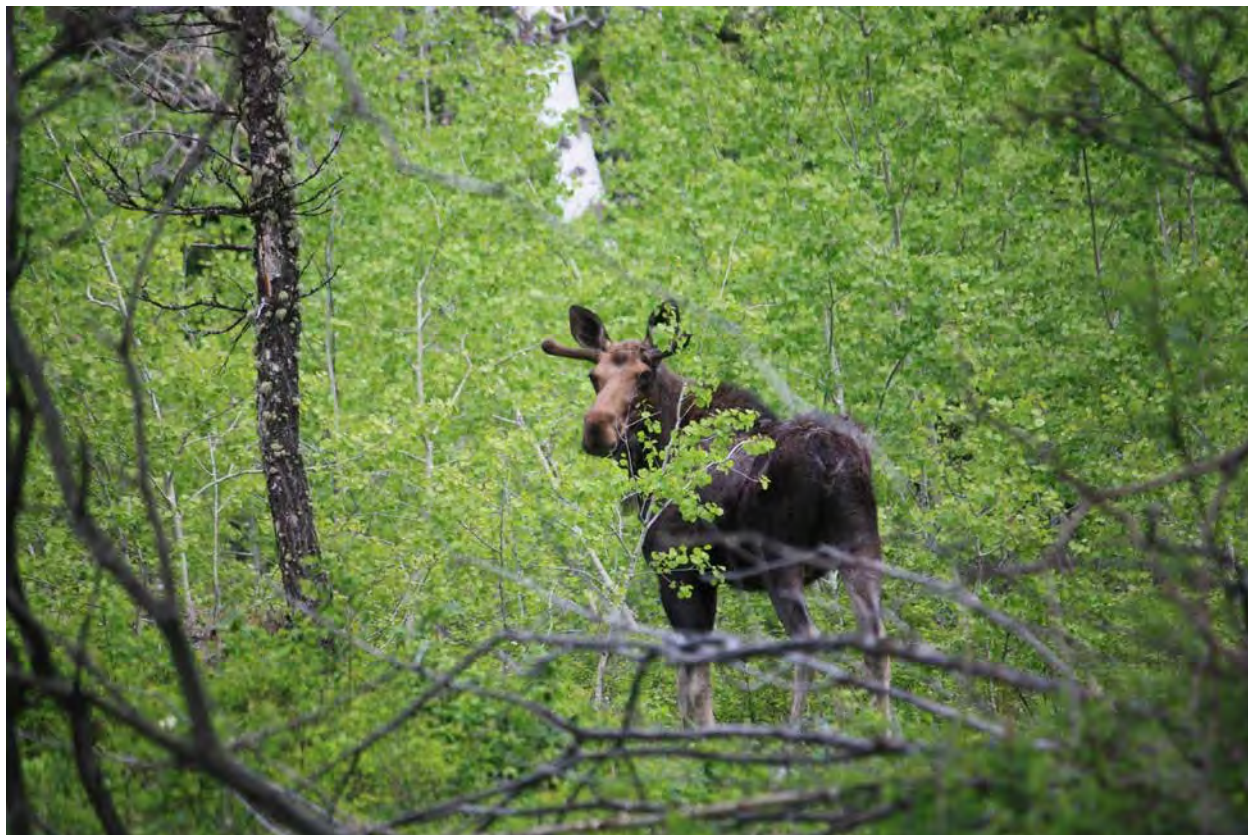
trout. Pasted below is a photograph I took of the new trail during my hike in late May of 2020:



18. The Crazy Mountains are sacred to me. When you go into them, you can almost feel a presence. I grew up in these mountains, and I just love them. I support Crow Nation, who has asked the Forest Service not to build trails in the higher elevations because it is sacred ground for them. Why would you go up into the higher elevations knowing full well that's sacred to the Crow? On May 2, 2018, in a guest opinion that appeared in the Missoulian, I questioned why tribal representation was absent from the Crazy Mountain Working Group.

19. I know from firsthand knowledge that have a unique and rare supply of wolverines and lynx in the Crazy Mountains. As a former professional trapper, I have identified wolverine tracks in the sand on the shore at Campfire Lake and in the North Fork of Elk Creek drainage. I also saw a wolverine on Buck Creek on the north end of the Lowline trail. A hunting guide told me he and his clients let a wolverine out of pine marten trap—quite an experience. I once saw a Canadian lynx sunning itself on a rock on the North Fork of Elk Creek. I have also legally trapped a Canadian lynx before they were protected under the Endangered Species Act. Now I simply enjoy hiking, backpacking, viewing and photographing wildlife, and “extreme fair chase” hunting in the area. The undisturbed landscape where the Porcupine Ibex Trail Project is proposed gives wolverine, lynx, mountain goats, and big game a place to get away from all of us.

20. I took this picture of a moose (see below) near Ibex cabin, on National Forest lands in proximity to where the proposed trail re-route is slated to be built.



21. While hunting in 2016, some friends and I were running into blowdown on trails in the Crazy Mountains, including Trails 267 and 258. It was so bad in some spots that the trail was nearly impossible to get through. We discussed how we could sit and complain or maybe we could do something about it. We decided to check in with the Forest Service. District Ranger Alex Sienkiewicz gave us ideas and helped us plan a maintenance schedule we could follow. As volunteers, we are available to help maintain trails in need of repair. But on August 10, 2017, at a meeting arranged by Forest Supervisor Mary Erickson, she stated: “We would not, very candidly, we would not sign-up volunteers for trail maintenance on

disputed trails. We would not do that.”

22. I hope to be able to hike Trail 267 and 195 in the future, if this case is successful and we are able to get the two relinquished portions of the trails back, just like I and members of my family have for decades. I also believe that Porcupine Ibex Trail project’s re-route of Trails 195 and 267 cause me serious harm. I feel that I will lose a part of myself. As a public landowner, it’s like my rights are being taken away that I’ve had all these years. Everyone will lose, including the flora and fauna, except a certain select group of people.

23. If this Court will rule in favor of the Plaintiffs and 1) vacate the Forest Service’s decision to relinquish its easement interests to portions of the Porcupine Lowline and Elk Creek trails as part of the Porcupine Ibex project, and 2) order the Forest Service to do its job and maintain the Porcupine Lowline and Elk Creek trails and restore public use and access rights on the relinquished portions of those trails, this would rectify the harm that I have suffered because of the Forest Service’s decision and actions related to the Porcupine Ibex project.

24. Over the years, I also have used and explored the areas on the east-side of the Crazy Mountains. This includes the Sweet Grass Trail 122 and the East Trunk Trail 136/115. These areas are beautiful and prime habitat for wildlife. The Sweet Grass Trail 122

is particularly scenic.

25. Earlier this month I visited the trailheads for both the Sweet Grass Trail 122 and the East Trunk Trail 136/115 with John Daggett. I was disappointed in what I observed. The Sweet Grass Trail has been public for many years and has been clearly marked as public on Forest Service maps for as long as I have used the Crazy Mountains and well before. Despite this, when we visited the Sweet Grass Trail earlier this month there were no Forest Service signs or any indication at all making it clear to the public that the Sweet Grass Trail is public. The landowners, in contrast, have placed signs that were intimidating and made me uncomfortable, and I suspect would cause many members of the public to decide not to use the trail, even though they have every right to do so.

26. I also am aware that there have been confrontations between landowners near the Sweet Grass trail and members of the public using the trail.

27. In 2017, I was interviewed for an Outside Magazine article entitled “The Fight For Public Land in Montana’s Crazy Mountains.” That article is attached to this Declaration as Exhibit A. I believe the article accurately depicts the disputes over public access in the Crazy Mountains. The article includes a photograph of the landowner’s sign on the East Trunk Trail and a photograph that

shows two ranch vehicles pinning in and blocking a pickup of a family that went hiking on the Sweet Grass Trail 122. I believe that this photograph is a good example of the arrogant and confrontational attitudes of the landowners toward members of the public that are simply trying to enjoy using their public trail.

28. In light of the landowners' signs, the lack of Forest Service signs, and our knowledge of the landowners' past confrontational behavior toward members of the public, John Daggett and I made the decision to turn around and not go further up the Sweet Grass Trail. This was very frustrating and disappointing, but we didn't want to risk a confrontation with a landowner. I want to go back and hike the Sweet Grass trail from the trailhead, and I will do that in the near future if it is possible to do so and if the Forest Service does its job and manages this trail for public use and access. This is the relief we are requesting in this case.

29. John Daggett and I also went to the East Trunk Trail 136 trailhead on our trip a few weeks ago. It was disappointing to see that, like the Sweet Grass trail, the Forest Service has taken no steps to make it clear to the public that the East Trunk Trail is public. It also looked as if the Forest Service has not maintained the trail in recent years, as the first part of the trail was overgrown to the point that it would have been impossible to follow without GPS.

It looked to me like the landowner had taken steps to try to make the trail hard to find and confusing to the public, including putting a jack leg fence across the trail on public land. Despite the landowner's efforts to make it difficult, and the Forest Service's failure to protect the public's right to access this trail, I want to go back and use and hike the East Trunk trail in the future, and I will do that if the Forest Service will just do its job and maintain the trail and protect public access.

30. I hope that this Court will rule for the Plaintiffs and require the Forest Service to do its job and 1) maintain and sign the East Trunk Trail 136 and the Sweet Grass trail 122 and 2) protect public access to both of these trails by pushing back against the efforts by landowners to keep members of the public from using their public trails. If the Court does this, it will alleviate or at least minimize the harm that I have suffered because of the Forest Service's actions and inactions regarding these two trails.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 23rd day of April, 2021.



Brad Wilson



The Fight for Public Land in Montana's Crazy Mountains

In the last 18 months, long-simmering disputes have boiled over amid claims of trespassing, political meddling, government bullying, and retaliation. Some worry that what's happening there may harbinger what's to come on public land across the nation. It's enough to call the situation, well, you know.

In the fall of 2016, Rob Gregoire, a hunter and nearly life-long Montanan, won a state lottery for a permit to take a trophy elk in the Crazy Mountains, which rise from the plains about 60 miles north of Yellowstone National Park. Landowners around the mountains were charging about \$2,000 for private hunts on their ranches. "That's just not what I do, on principle," Gregoire <https://www.facebook.com/outsidemagazine/> or <https://twitter.com/outsidemagazine> <http://crazytalk.com/staryant.com/outsidemagazine/> <https://pinterest.com/outsidemagazine/> permit, which in total cost about \$40.

Outside



(/)



Such trails have led into the Crazy Mountains for generations. And disputes between landowners and those who would cross their properties on these trails reach back nearly that far, too. By 2016, the trailhead Gregoire found was “the last non-contested public access point on the 35-mile-long eastern flank of the Crazy Mountains,” he would write (<http://www.emwh.org/public%20access/Crazy%20Mountains/crazy%20mountain%20115%20136/Rob%20Gregoire%20Letter%20to%20Senators>) later to his U.S. senators.

Yet even on what Gregoire thought was a public throughway, the Hailstone Ranch had posted game cameras and signs claiming that the Forest Service didn’t have an easement to use the segment that crossed the private property. After consulting with the Forest Service, Gregoire was convinced he had the right to hike the route. Once on it, he used an app to stay on trail where it seemed faint, to make sure he kept to public land. Then one evening as he returned toward the trailhead after an unsuccessful hunt, Gregoire found a deputy sheriff from Sweet Grass County waiting for him. The deputy handed Gregoire a ticket for criminal trespass. After court costs, the ticket cost \$585.

The Crazy Mountains—brief, tall, rugged—resemble a crown that a careless ruler has dropped among the sage. Lakes of golden trout sit in the lap of their rugged cirques. Elk bugle in uncrowded forests. In the Last Best Place, they are one of the last best places.

The problem is, you increasingly can't get there.

In the last 18 months, long-simmering disputes over access to these publicly-owned mountains have boiled over amid claims of trespassing, political meddling, government bullying, and retaliation. Some worry that what’s happening there may haringer what’s to come on public lands across the nation.

On one side of the dispute are people such as Gregoire who want to access the public mountains, which means traversing private land. That access, they contend, is enshrined by decades of historic use. On the other side are several ranch owners who disagree,

and instead call it a trampling of their property rights.



Signs posted by landowners where disputed Trail 136 crosses a private ranch in the east Crazies on its way to public lands. Advocates say the trail appears on forest maps at least as far back as the 1930s.

For the past eight years, the main defender of those public-access corridors has been Alex Sienkiewicz, the district ranger for the million-acre Yellowstone District, which encompasses most of the Crazies. Every year since he started his job, in 2011, Sienkiewicz, who has a law degree, reminded his staff

(<http://www.emwh.org/public%20access/Crazy%20Mountains/Sienkiewicz/Refutation%20Documents%20Defending%20Alex%20Sier>

not to sign in or ask permission to use many of the trails around the Crazies. The Forest Service's stance is that the agency possesses historic access to many of these routes. Signing in or asking permission could later be used in court to show that the public had given up its right to access, Sienkiewicz told his staff in memos.

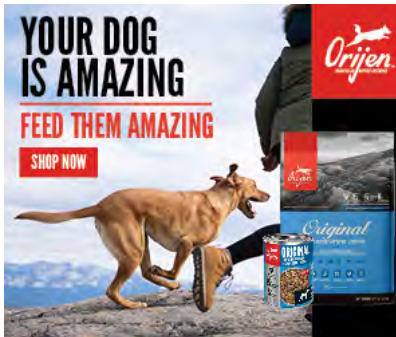
Across Montana, disputes over the public's ability to access and use the lands and waters it owns have been on the increase, including in the Crazies. "There have been upwards of ten disputed or lost access points on the [Yellowstone] District in the last decade

(<http://www.emwh.org/public%20access/Crazy%20Mountains/Sienkiewicz/Refutation%20Documents%20Defending%20Alex%20Sier>

wrote Mary Erickson, forest supervisor for the Custer Gallatin National Forest, to Montana Republican Senator Steve Daines in 2015.

History helps explain why. To encourage westward expansion in the 19th century, the federal government gave the railroads every other square mile (or more) as incentive to build more, creating a checkerboard pattern of land ownership throughout much of the West. Around the Crazies, many of the squares that weren't consolidated into national forests became private ranches.

People don't always cotton to other people using their property, particularly in the rural West, which has long harbored a deep suspicion of the federal government while triumphing private property rights. Today those impulses are compounded by still other changes in southern Montana—a booming Bozeman that's sending more people looking for places to play, and wealthy newcomers buying trophy ranches and hanging “Keep Out” signs.



The Crazy Mountains—brief, tall, rugged—resemble a crown that a careless ruler has dropped among the sage.

In the Crazies, some ranchers have also discovered they can charge thousands of dollars for big-game hunts (<http://www.anchoroutfitting.com>). By blocking access to the federal land behind their ranches, public-land advocates charge, a landowner can effectively take over those acres and create large, nearly-private hunting preserves. “You can't harvest elk without public access,” says Dan Vermillion, chairman of the Montana Fish and Wildlife Commission. “There's no question that has occurred on the east side of the Crazies.”

Across the nation, trails cross private land to reach public places. Very often, no legal document exists in these instances giving the public the right to do so. This doesn't mean the public is in the wrong, though. That's thanks to a legal concept called “prescriptive easement.” The idea, which dates to centuries-old English common law, allows the public to access another's property if that access has been known, open, and continually used over a certain period of time. (In Montana, it's five continuous years.) Under a prescriptive easement, the public doesn't have to pay to access the land, nor ask for permission (hence Sienkiewicz ordering his staff not to sign ranchers' logbooks).

Prescriptive easements have been acknowledged by the courts recently in Montana. In October 2016, after the Wonder Ranch in the state's Madison Valley tried to block key access to the Lee Metcalf Wilderness by putting up gates and no trespass signs (https://www.bozemandailychronicle.com/news/environment/judge-rules-madison-valley-trail-is-public/article_48a2075a-b8e7-5240-9ac3-7945c6c3651b.html), a federal judge upheld the Forest Service's claim that a trail crossing the ranch fell under a prescriptive easement and must remain open.

And so Sienkiewicz appeared to be doing what the job called for. Take a 2002 (<http://www.emwh.org/public%20access/Crazy%20Mountains/Forest%20Service%20Documents/2002%20Trails%20Across%20Priva>) (<http://www.emwh.org/public%20access/Crazy%20Mountains/Forest%20Service%20Documents/2002%20Trails%20Across%20Priva>) the then-Gallatin National Forest—one of many documents (<http://www.emwh.org/public%20access/Crazy%20Mountains/Crazy%20Mountain%20Public%20Access.htm>). *Outside* links to in this story that were obtained through a public records request by Kathryn QannaYahu, a hunter, angler, and self-described

“public trust advocate.” That document said it was “critical” for the forest to maintain its trail system across private lands, to defend “historic trail access rights if challenged,” and to legally “perfect” such rights “whenever that opportunity exists.” (Roughly put, “perfected” means that the access has been filed in documents at a courthouse. Disagreements are much more likely to arise from “unperfected” access.) The paper also called on the forest to “take prompt action in the event that landowners take action or threaten to close or obliterate the trail.”

“[Sienkiewicz] worked for everybody,” says Brad Wilson, a member of the group Friends of the Crazy Mountains, and a hunter and a retired deputy sheriff in Park County. “He wanted to see everyone enjoy the mountains.” (Sienkiewicz declined to comment for this story.)



Ranch vehicles block a car parked by a family that went hiking at what is now a disputed access on the east side of Montana's Crazy Mountains earlier this year.

But the district ranger’s approach rankled some landowners. In August 2016, after one of Sienkiewicz’s annual notices to staff appeared on the Facebook page of a public-lands access group, a local landowner and outfitter, along with the executive director of Montana Outfitters and Guides Association, held an angry meeting with Sienkiewicz and district forester Erickson. Erickson seemed to back up Sienkiewicz, according to notes taken by Sienkiewicz at the meeting and shared with his boss, then obtained through the records request. The issue appeared to quiet down.

In December, three landowners (one of whom is a former Montana Republican state legislator) wrote (<http://www.emwh.org/public%20access/Crazy%20Mountains/MT%20Stockgrowers%20letter%20resolutions%20Dec%2030%202016>) district forester Erickson to demand she reprimand Sienkiewicz or remove him. They complained that the ranger was encouraging trespassing by pushing for access to trails that, they claimed, had long-ago been abandoned. The letter also included resolutions

condemning the ranger by a property rights group and two stockmen's groups, the Crazy Mountains Stockgrowers Association and the Montana Stockgrowers Association.

From there, things seemed to snowball. This past May, nine Crazy's landowners complained

(<http://www.emwh.org/public%20access/Crazy%20Mountains/Sienkiewicz/Refutation%20Documents%20Defending%20Alex%20Sier>) to Senator Daines and the new Secretary of Agriculture, Sonny Perdue, about Sienkiewicz's "aggressive attitude." They asked for a review of agency policies. Daines in turn wrote

(<http://www.emwh.org/public%20access/Crazy%20Mountains/Sienkiewicz/Refutation%20Documents%20Defending%20Alex%20Sier>) to the then-chief of the Forest Service, Tom Tidwell, about the problems in Montana.

In June, Sienkiewicz was suddenly moved from his job as the district ranger to the forest supervisor's office, ostensibly to help evaluate a mine proposal in the Paradise Valley, near Yellowstone. Officials insisted it was a temporary assignment. But the Forest Service also announced that an investigation was underway, though it refused to discuss the purpose of the investigation. "There are things I can't talk about it," Erickson said in an interview, calling it "an internal Forest Service issue."

In the last 18 months, long-simmering disputes over access to these publicly-owned mountains have boiled over amid claims of trespassing, political meddling, government bullying, and retaliation.

For many, it was hard to view the reassignment as anything but retaliation against Sienkiewicz. The move reminded some of the recent case of Joel Clement, (<https://www.outsideonline.com/2251961/inside-department-interior>) who worked mostly on addressing the effects of climate change in Alaska as the head of the Department of Interior's Office of Policy Analysis, and who's been vocal about the danger of climate change. Clement was abruptly moved to a position auditing royalty payments from energy companies. He resigned and is currently suing the government.

"Consider the implications of the message sent by Daines and Perdue," longtime outdoor writer Don Thomas wrote (http://billingsgazette.com/opinion/columnists/guest-opinion-forest-disservice-in-crazy-mountains/article_1b08d683-cofo-5050-912b-0dao4f2eff69.html) in the *Billings Gazette*. "Federal employees who upset influential constituents are at risk even when operating within the parameters established by their own agencies. Montanans of all political affiliations should find this chilling."

Others also see broader ramifications for public lands.

In June, Texas Republican Representative Pete Sessions wrote

(<http://www.emwh.org/public%20access/Crazy%20Mountains/Texas%20Representative%20Pete%20Sessions%20Letter%20to%20Sec>) to Perdue asking the secretary to "issue a directive precluding the Service from acquiring interests in lands by prescription." (One of Sessions' constituents owns the Wonder Ranch that had lost the 2016 public access case, according to news reports.) Both the local and state stockgrower associations also issued resolutions encouraging the Forest Service to note on maps that private roads and trails "are available for public use only with permission of the landowner."

Prescriptive easements exist in countless places nationwide, says advocate QannaYahu. Such a change would, in the name of private property rights, restrict public access in large swaths of the nation, she says. "This is a huge land grab."

Just putting up gates and signs—even if the landowner ends up being in the wrong—can have a chilling effect. "They scare the public off," says Gregoire. "They know the Forest Service is a paper tiger and can't do anything about it, for the most part. And then the public stops using it." He considered fighting that \$585 ticket and even raised several thousand dollars on a crowdfunding site.

But he realized his case wouldn't solve the access issue. So in lieu of the fine, he donated \$500 to a local charity in exchange for accepting a deferred prosecution.



Gregoire isn't the only one who's been put off by these policies. This fall, Joe Rookhuizen, a building contractor, youth ministry leader at his church, and self-described "Crazy boy" who grew up in the Montana mountains, said he called the Forest Service about using a trail to Swamp Lake. The Forest Service said it was a public access, but that he still might get fined. Rookhuizen had heard Gregoire's story. In the end, he didn't go to Swamp Lake. "I don't consider myself a quitter," Rookhuizen says, "but I don't want to go through the hassle."

Sweet Grass County landowner Page Dringman told *Outside* via email in early November that she and neighbors were frustrated to be painted as bad guys. "This issue keeps getting bandied about as private landowners closing existing legal access to public land," Dringman wrote. "For landowners, the issue is trying to force landowners to give up rights in their private property to facilitate access to public land, when no legal easement exists." She added, "I am not aware of situations where private landowners have prevented access on a trail that has an existing legal easement."

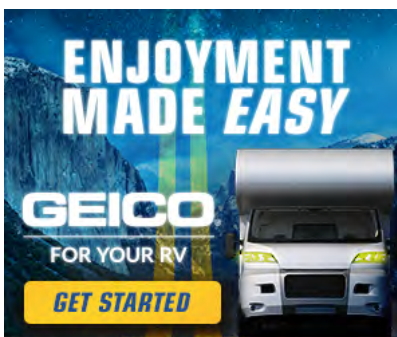
Asked why ranchers don't go to court to resolve some of these problems, she replied that isn't the landowner's responsibility to prove why the public should have access to his or her property.

She has a point. If the courts have no record of a formal agreement when a disagreement arises over access, "the burden of proof is upon the party seeking to establish a prescriptive easement," says Sandra Zellmer, a distinguished visiting professor at the University of Montana School of Law. In other words, it's up to the county, state, or an agency like the Forest Service to maintain access. (This burden of proof shifts, Zellmer says, if you're a property owner who, say, wants to get someone in trouble for trespassing on your land. In that case, she says, you'd have to prove that the person didn't have legal right to be there.)

If a landowner shuts down historic access—for whatever reason—and then isn't challenged, that access may, after a time, be lost to the public. "American property law is based in large part on use: 'use it or lose it,'" says Zellmer.

Forest Service officials say they're trying their best to preserve this access. The agency isn't afraid to stand up to landowners when needed, Erickson, the forest supervisor, wrote in an email to *Outside*. But these cases are often complicated, and they require time and resources. "We can't drop everything else we do across the forest" to work on them, she says in an interview. Complicating the disputes even further is the fact that many of these landowners are neighbors to the Forest Service—neighbors it may need to continue working with. So it behooves the agency "to really have that dialogue, look for other ways to resolve this," says Erickson.

Some resolution came in late October when, after months of continued outcry in Montana about Sienkiewicz's reassignment, the district ranger returned to his job and the investigation quietly ended.



The Crazy Mountain Working Group, which includes local landowners, state agencies, and the Forest Service, has been meeting since last spring in hopes of trying to reduce tensions and come up with creative solutions to access. Ideas so far include ironing out the easements and private and public land exchanges, says Colleen Coyle, an attorney facilitating the group.

Meanwhile, the Public Lands / Water Access Association, a group that fights for public access in Montana, is gathering information about historic access to various Crazy's trails. "I know there's lots of evidence there. We'll get it," says Bernard Lea, the group's president and a former Forest Service realty specialist who's spent hours digging through musty courthouse records. When his group finds historical documentation proving access, Lea says that courts "have ruled in our favor, almost every time."

Lead Photo: Public Domain/Westland Views