

Glenda Wiles

From: Tom Hyde [tom@hydelaw.com]
Sent: Monday, October 21, 2013 10:48 AM
To: Ravalli County Commissioners
Subject: Mitchell Slough Portage Request

Dear Commissioners,

I have owned property along the Mitchell for more than 23 years and am responding to your letter of September 20, 2013. I apologize for the delayed response, but the subject matter is not a pleasant one for me. As well intentioned stewards of the land, we, along with many other property owners along the Mitchell, spent hundreds of thousands of dollars improving its habitat for fish and wildlife. Among other things, the spawning gravel we introduced became a wonderful nursery for the Bitterroot. Unfortunately, we may have done our job too well because the improved fishery became the envy of local fishermen. At the urging of FWP, the Montana Supreme crafted a new definition for what constitutes a "natural" stream. Instead of following the definition found in Webster's Dictionary that was undoubtedly used by the Legislature when the Stream Access Law was enacted in 1985 and that was applied by both the Bitterroot Conservation District and the District Court when they each separately determined that the Mitchell was diverted water and not a natural stream, the Montana Supreme Court concluded that natural water, like diverted water, can, in fact, flow uphill. Although none of the justices had ever visited the Mitchell or listened to any of the many experts who testified about the Mitchell, the Montana Supreme Court found as a matter of law that the Mitchell fit its new definition and was now open to public. The decision was a blatant and corrupt taking of private property in violation of the US Constitution.

As land owners, we are no longer spending money to maintain the fishery habitat, and the Mitchell is degenerating into the silt-filled, marginal fishery that it historically was. Nevertheless, the stories of large fish in the Mitchell continue to proliferate, and fishermen (and hunters) regularly pass through our property in the hope of catching one of these vanishing fish or shooting a duck and hoping it doesn't fall onto land. The violation of our privacy and the compromise to our security is significant. The wanton waste of waterfowl is inexcusable. But FWP, the ultimate stewards of our land, remain mute and indifferent and instead promote the interests of their recreational friends.

Apparently, a kayaker has enlisted the support of FWP to spend tax dollars to make it easier for even more people to traverse our property, further invade our privacy, and compromise our security. Why? There is hardly a shortage of floatable water in the area for kayakers. The main stem of the Bitterroot River, as well as its multiple channels through this area, offer abundant opportunities for boaters. This request is not based on a legitimate need to float. It is driven by a desire to either aggravate the property owners along the Mitchell or create an opportunity to charge fishermen and hunters for transporting them along the Mitchell.

I am hoping the Commissioners may have some sympathy for what the Montana Supreme Court and FWP has done to the land owners along the Mitchell and that you will refuse to approve this request. FWP has far better ways to spend its money than on portage devices along the Mitchell that will only benefit a handful of kayak owners. FWP has spent NO dollars maintaining the nursery that the Mitchell had become for the Bitterroot. Where is Trout Unlimited? Where are genuine conservationist? What is wrong with the priorities of the FWP? I'm afraid this may be just another sad example of the tragedy of the commons.

The existing barriers have not interfered with fishing as the public routinely fishes the Mitchell. FWP has already inflicted more than enough damage on our privacy, our security, and the value of our property. I hope you have the courage to tell FWP that Ravalli County will not be a part of an FWP political agenda that does nothing to enhance fish and wildlife.

If you have no alternative other than to approve some type of portage, I would much prefer a portage route via land around the barrier instead of through devices in the Mitchell. Before you do anything, however, I urge you to research and carefully consider the ramifications to the County if a handicapped fisherman, hunter, or boater sues for access to the Mitchell (at the expense of the County) under the Americans with Disabilities Act.

Because the ADA is a federal law, the Montana Supreme Court is not the last voice. FWP's shortsighted desire to confer a benefit on a few kayakers may backfire and embroil the County in good deal of expensive litigation.

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