

## The legal battle over corner crossings



An upcoming court decision may affect your ability to access public lands. (Mark Rackay/Special to the MDP)



### Tips from the Posse

By Mark Rackay

Every outdoor person has at least one chink in the armor of their honesty. From personal experience, I can attest that it is a rare stretch of river that doesn't look more inviting to a fisher but for a couple of "No Trespassing" signs.

As a fid, getting permission to hunt or fish on neighboring ranches and farms was no big deal.

You stopped at the farmhouse and asked permission, agreeing to close all the gates and not do any harm to the property. On the way out, you would stop back at the farmhouse and offer to share a pheasant, rabbit, or some trout with the landowner as a thanks for their allowing you to share their property. And the fish or game was already cleaned for them too. It was called respect.

Most of us have to rely on the vast number of public lands available to us in the West, and herein lies the controversy around "corner crossing."

Many of the rural areas have fence lines that mark where private lands end, and public lands begin. This is a leftover from the 1800s when railroad companies were granted plots in a checkerboard pattern as they traversed the region.

The leftover today, is parcels of public land and parcels of private land are intermingled with fences connecting at their corners. People recreating rely on GPS and topographic maps to negotiate public land boundaries.

It is simply a matter of finding the corner pin,

marking the land boundaries, and stepping from one parcel of public ground to another parcel of public ground, without stepping on private lands. This usually happens without any conflict. Many landowners allow people access or grant easements for just such purposes.

It is estimated that 404,000 acres of land in Wyoming and 1.6 million acres across the Western states are "landlocked" and off-limits to the public because of no public access. Another study that includes all the lands of the Western United States found that more than 8 million acres have a corner-lock, and tens of thousands of corner locks exist throughout the region.

The issue of corner crossing came to light after four hunters from Missouri used a ladder to climb over a fence to access public lands near Elk Mountain, Wyoming, never setting foot on the adjacent 22,000-acre private ranch.

The landowner sued the hunters and charged them with trespassing, stating that stepping over private property violates the landowner's airspace.

Theoretically, a landowner owns a parcel in fee simple absolute, has title that goes to the center of the earth, and reaches out into the atmosphere over the parcel. This is where the whole "airspace argument stems from.

The hunters in this case were charged with criminal trespassing but were found not guilty for the charge by a jury in Carbon County, Wyoming. There is a federal civil case against the hunters that could have major repercussions for all of us. This lawsuit will hopefully sort this out.

Some proposed compromises suggest creating a corridor on each corner, defining where the public can and cannot cross. Many of these proposed corridors would be restricted to foot traffic only.

The Stock Growers

Association recommends land exchanges to eliminate these choke points where private landowners don't want to cooperate or where a corner crossing isn't feasible. There already exist many tools that allow landowners to grant access on a volunteer basis.

This issue is not just being decided over the Wyoming case. In Utah, tensions are escalating between the U.S. Forest Service and a landowner over a road to a popular skiing and hiking spot. Closer to home, Colorado anglers are sparring with private clubs over their fishing rights on streams across the state.

With the continuously improving technology with mapping programs and GPS, more people are taking to public lands, so these cases are probably just the beginning.

The hunters in the Wyoming case have asked that the civil case in federal court be dismissed based on the interpretation that it runs afoul of laws passed by Congress, including the Unlawful Enclosures Act that generally prohibits landowners from fencing people out of public property.

The Wyoming Legislature's Joint Judiciary Committee has proposed that trespass be its No. 1 topic for study before lawmakers begin their 2023 session. This committee will also be investigating the issue including trespass by drone and a comparison of criminal trespass with trespass for hunting purposes. The outcome could potentially lay the groundwork for Colorado to follow.

The west continues to change, and not necessarily for the better. Billionaires are buying up longtime family-owned ranches, and the changing climate and droughts are drying up grasslands and ranch land. Throw the legal issues into the mix, and public access as we know it may no longer exist.

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## Group matters: ski runs or rivers

Here we all are, on one day in the middle of March.

Some of us are still looking forward to (and hoping for) another eight weeks of snow sports. Giggling children are still sliding on skis at a nordic ski area or a lift-served mountain-side. Snowmobiles and snowbikes are providing adrenaline adventures for girls and guys on the Uncompahgre Plateau and on the Grand Mesa.

They want it to go on and on. And, given the snow depths this wonderful winter, it can yet, for a good long while.

Others of us are feeling the recent warm temperatures, hearing the birds singing in the sunshine again, and yearning for the sight of the first crocus pushing up through the melting snow on the edge of the neighbor's flower bed.

Still others, on this same day, are calling, texting, and penciling weekend dates onto calendars. River permits (for floating the spring run-off of all of this snow) are becoming available today and everyday now for overnight paddling trips. Inflatable kayaks and rafts, aluminum canoes and their Kevlar cousins, and skin-on-frame touring kayaks are all being primed and checked. Personal flotation devices (formerly called lifejackets, now known as PFDs) are being dusted off and prepared.

As groups are forming, important choices are being made. Whether yours is a group passionate about your snowsports, or a group whose members are aching for paddling down the river, they share a common trait. That is that the types of people in our group directly impact how



### Outdoors

By John T. Unger

we behave if an avalanche surprises us or a fellow boater suddenly disappears beneath the surface of a very cold river rapid.

This sobering fact comes to mind now, on the heels of avalanche tragedies that both occurred exactly two weeks ago today.

The full/final reports for each of these two events have recently been completed and released. In addition to the details of slope angle, circumstances, and the rescue or recovery actions of the deceased's group members, the Colorado Avalanche Information Center finishes each report with a "Comments" section.

That section always, admirably, begins with the following three straightforward sentences.

"All of the fatal avalanche accidents we investigate are tragic events. We do our best to describe each accident to help the people involved and the community as a whole better understand them. We offer the following comments in the hope that they will help people avoid future avalanche accidents."

One of the two tragic incidents that day involved a group of six snowmobilers. The one who died was not wearing an avalanche transceiver. Three of that group of six were wearing such, and these three were

carrying avalanche probes and shovels, and knew that the rider who disappeared into the avalanche would, therefore, not be searchable by transceiver. They did their best searching that they could.

The other of the two tragic avalanche incidents in Colorado that same day took the lives of two backcountry skiers, who were skiing uphill on their climbing skins. Their group was made up of just these two men.

These were very experienced and well-equipped backcountry tourers. They each carried an avalanche transceiver, probe pole, shovel, and inflatable airbag. Sadly, they both were buried in a single avalanche. One was found directly below the other.

Some years ago, the American Institute for Avalanche Research and Education (AIARE) classes focused primarily on facts and skills relating to snow skills, digging skills, and searching skills. In the past decade or two, however, the subject matter has increasingly stressed group dynamics, and the make-up of the group with whom you are choosing to ski and ride the snow.

Knowing it or not, our behaviors are affected by the type of group we are in, whether we are out to ride the snow or to ride the river. As for groups in snow sports, some elements to consider are the individual members' risk tolerance, risk aversion, and safety equipment.

Other elements involve over-familiarity with a region, acceptance by others, commitment to a particular goal for the day, the expert "halo", and scarcity of resources ("first tracks").

See SKI page A12



After a morning of cross-country skiing at Spring Gulch near Mt. Sopris, Hamilton Pevce's three kids are charged up and full of playful antics. (John Unger/Special to the MDP)



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