# OUTDOORS

# 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 vou to share their property.

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.

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.

### 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 mountainside. Snowmobiles and snowbikes are providing adrenaline adventures for girls and guys on the Uncompanyere 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 skinon-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



**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

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 makeup 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")

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,

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

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.

See CROSSINGS page A12

the types of people in our group directly impact how

group of six were wearing such, and these three were

See SKI page A12



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



# **OUTDOORS**

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#### CROSSINGS

FROM PAGE A11

The corner crossing case is scheduled to be heard in the U.S. District Court for Wyoming next summer. The Colorado stream access case is proceeding, but slowly. Perhaps the court is waiting for a decision in the Wyoming case.

I wish we could go back in time to when we just asked permission, acted like responsible outdoor people, and shared our bounty with the rancher. Stay tuned, as

#### SKI

FROM PAGE A11

I have found that classes and certifications offered by the Silverton Avalanche School, Mountain Rescue Aspen, and others, are well-taught and very satisfying in learning about these principles and how to manage one's risk in snow.

Due to the Whitewater Rescue Technician three-day course I took in a freezing cold river in 2021, I now realize how applicable these same principles are to groups forming for river trips. It is still about having adventure

this one will affect us all. Mark Rackay is a columnist for the Montrose Daily Press, Delta County Independent, and several other newspapers, as well as a feature writer for several saltwater fishing magazines. He is an avid hunter and world class saltwater angler, who travels around the world in search of adventure and serves as a director and public information officer for the Montrose County Sheriff's Posse. For information about the posse call 970-986-1071 (leave a message) or email info@mcspi.org

and maximizing fun, while managing risks.

After all, whether it is in the form of tons of crystalline snow, or tons of liquid river water, we still want to ride on top of it.

John T. Unger is a Diplomate of the American Chiropractic Board of Sports Physicians, and in 2022 achieved the credential of Fellow of the Academy of Wilderness Medicine. He wishes everyone good water, good snow, good judgment, and good luck. Your feedback and ideas for future columns are welcomed at www.sportsdocunger.com

# Wildlife Commission to meet March 15 – 16

Special to the MP

The Colorado Parks and Wildlife Commission will meet in person, with a virtual option available, in Aurora, on March 15 and 16.

The commission will make final considerations Area closure period, on changes to small game and game bird seasons, excluding turkey, including creation of a white-tailed ptarmigan, greater sage-grouse, and Columbian sharp-tailed grouse permit that would be required in addition to a small game license to Ruby Mountain State take these species.

The commission will also make final considerations of:

• Changes to no longer Easement. require sportspersons only pursuing furbearers to take the Harvest Information Program (HIP) survey.

• A cleanup to the season dates for big game lines in Chapters P-7 and previously adopted by

the Commission.

waterfowl and migratory bird hunting seasons, including the closure of the crow, sora and Virginia rail seasons.

• Modification of the Colorow State Wildlife the hunting restrictions at Oxbow State Trust Land, adoption of permanent regulations for the new SKCK fishing access easement, and administrative cleanups for the Bill Patterson State Wildlife Area, the Wildlife Area Fishing Easement and the **Bighorn Springs State** Wildlife Area Fishing

• Wildlife possession, scientific collecting and special licenses regulation changes.

• A cleanup to the U.S. Federal Poverty Guide-W-0.

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The commission will • Regulations related to also open for consideration a review of general provisions and property-specific provisions in Chapter W-9 for state wildlife areas, and any necessary changes to implement and administer the Search and Rescue program.

onn. • Roku TV

The Colorado Parks and Wildlife Commission will also consider changes to big game license distribution, including preference point banking, averaging group points, an acrossthe-board allocation, and/or updating the high-demand hunt code split, such as from 80% for residents and 20% for nonresidents to 90% for residents and 10% for nonresidents.

The meeting is scheduled to begin at 8:30 a.m. on Wednesday, March 15, and adjourn at 5 p.m. The commission will reconvene at 8 a.m. on

Thursday, March 16, enter a closed executive session at 9:40 a.m. and adjourn at 4:30 p.m. The meeting will be streamed live on CPW's YouTube page.

#### Additional agenda items include:

• Department of Natural Resources update

• Department of Agriculture update

- Financial update
- GOCO update

• Overview of the City of Fort Collins' Halligan Water Supply Project

• 2023 Non-Motorized Trail and Land and Water Conservation Fund Grant Funding Recommendations

• Habitat Stamp Committee Updates

 Golden Gate Canyon State Park Management Plan

 Colorado Wildlife Habitat Program — 2022 **Recommended** Proposals Overview and vote

• Wolverine Update • Furbearer Program

Update

• Public Comments The commission will also enter executive session to interview can didates seeking to serve as the director of the division and maintain the confidentiality of such applicants, identifying two preferred candidates to refer to DNR Executive Director Dan Gibbs. The commission will further consider the purchase of private property for public purposes, receive legal advice, and maintain the confidentiality of analyses and maps compiled or maintained by CPW related to private lands. A complete agenda along with all materials for this meeting can be found at https://cpw. state.co.us (search the "About Us" tab). The public is encouraged to email written comments to the commission at dnr\_cpwcommission@state.co.us. Details on providing public comments for hybrid meetings are available on the CPW website.





**Store Hours** Mon. - Sat. 9:00-5:30



#### Upcoming wolf reintroduction plan meetings

The final Wolf Reintroduction Plan, and associated regulations, will be adopted via a twostep approval process at commission meetings on April 6 in Steamboat Springs and on May 3 — 4 in Glenwood Springs.

Visit CPW's informational page at cpw.state. co.us page for information about reintroduction. (Click the "Learn" tab, then "Wolves in Colorado.")

Information from news release.