

TROUT LINE

SUMMER
2012



Newsletter from the Montana Council of Trout Unlimited

Another bridge too far

Madison County case goes to Supreme Court

by Bruce Farling

The long running legal dispute over use of public bridges for recreational access to the Ruby River has landed in the Montana Supreme Court. In May, District Court Judge Loren Tucker ruled in favor of landowner and Atlanta media mogul James Cox Kennedy, declaring the public does not have legal access to the Ruby River from a county bridge at Seyler Lane. This comes four years after Judge Tucker ruled on summary judgment that access is legal from two other bridges on a county road that goes through private land, at Lewis and Duncan Lanes. The implications for statewide stream access of the recent ruling are profound.

The Seyler Lane dispute went to trial years after Montana's Public

Land and Water Access Association (PLWAA) sued Madison County to require Kennedy to remove fences designed to bar recreational access at public bridges. It differs from that of the Duncan and Lewis Lane circumstances in that the public easement for the county road and bridge through private land is prescriptive. The prescriptive easement had been established through regular, historical and non-contested public use and was not formally recorded. Judge Tucker found that an easement for a public right of way exists along Seyler Lane, but ruled it is only as wide as the actual road pavement. The judge ruled that PLWAA had not demonstrated the angling public had regularly gone

See *BRIDGES*, page 3



Litigation could lead to diminished access

Whirling disease still a problem...

...but much less than feared

by Morgan Sparks, MTU Intern

When Dick Vincent became a regional fishery manager for Montana FWP in the 1980s, whirling disease wasn't on the agency's radar screen. But after the numbers of juvenile rainbow trout in the Madison River declined precipitously in the 1990s, he eventually fingered whirling disease as the culprit. "Basically what we knew was almost nothing about what it might mean to wild populations and exactly how bad or not bad it might get," Vincent said.

But it was bad from the start. The Pine Butte stretch of the upper Madison averaged nearly 3,500

rainbow trout greater than six-inches per mile throughout the 1980s. In 1994, FWP found only 326 fish per mile, a decline of more than 90 percent. Soon whirling disease was detected in other Montana streams, including the blue-ribbon waters of the Missouri and Big Hole Rivers as well as Rock Creek. Whirling disease was suspected as a cause of reduced trout populations in some waters. Anglers across the nation feared for Montana's iconic wild trout fisheries.

Today it appears most infected trout populations have largely rebounded from initial declines. As

a result, efforts combating whirling disease in Montana have shrunk. The federally funded Whirling Disease Initiative ended in 2006 and FWP's whirling disease program was folded into the agency's larger effort combating all aquatic invasive species. "I think the bottom line is that whirling disease is everywhere that matters and we really haven't seen the sky fall anywhere, at least in Region 3," Travis Horton, the current fisheries manager in Bozeman, says.

Whirling disease is triggered by *Myxobolus cerebralis*, a pathogen with
See *WHIRLING DISEASE*, page 4

MONTANA TU'S MISSION is to conserve, protect and restore Montana's world-class coldwater fisheries and their watersheds.

Founded in 1964, Montana Trout Unlimited is a statewide grassroots organization comprised of 13 chapters and approximately 3,500 TU members.

www.montanatu.org

TROUT LINE is published quarterly by Montana Trout Unlimited.

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Printed on recycled paper using eco-friendly inks.

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Get your Montana TU plates at your county motor vehicle office!



I Fish and I Vote

--popular bumper sticker

In the 2004 election, Montana Trout Unlimited led the charge to defeat Initiative 147, which would have allowed new, polluting open-pit cyanide heap-leach mines in Montana. Canyon Resources Inc, seeking approval for a huge, risky project in the headwaters of the Blackfoot watershed, spent more than \$3 million to influence your vote. Despite being outspent more than 8 to 1, we won. Thanks to Montana's transparent campaign spending laws, voters could see where the big money came from. The result: Voters overwhelmingly chose clean water over a narrow-minded corporate interest.

Money in politics is not new. For years, most has come from individuals. We dutifully disclose our names and occupations to ensure transparency and accountability. We've been fine with legal limits on contributions.

The U.S. Supreme Court's Citizens United decision, which

influence elections. The result is an unprecedented deluge of print and electronic media ads criticizing candidates and sponsored by groups we have never heard of. Most of the expenditures, which technically can't support or oppose a candidate, are barely disguised ads for candidates or party campaigns. They are not subject to the disclosure requirements that you and I are. Unlike in 2004's I-147 campaign, we do not know exactly who funds them nor who, besides some politicians, stands to benefit from them.

TU members are enduring an onslaught of campaign ads in mailboxes, email in-boxes, phones (voice & text!), and print media. Radio and TV are saturated.

Before accepting any of these pitches as gospel, seek out the facts and ignore the rhetoric, irrespective of the decibel level delivering it. Find out who is behind the ads. Consider the motivations and how the messages are aimed at emotion instead of rationale thinking. Directly ask candidates in Montana how they will vote on the

issues important to TU, including recreational access, wild trout conservation, native species preservation, and protection of water quality and habitat. Research incumbents' voting records (Check with Montana TU on how Montana legislators have voted on key issues. We cannot endorse candidates, but we can provide information on voting records). If candidates support our issues, thank them. If they haven't, hold them accountable. Don't sell your mind and vote to the loudest shouter.

Vote Smart



Dan Short

prohibits government from restricting independent political expenditures by corporations or unions, has radically changed the landscape. Now, so-called "independent" political committees can spend unlimited dollars to



Bridge access law benefits cooperation between landowners and recreationists.

BRIDGES (from page 1) beyond the pavement at Seyler Bridge to reach the Ruby River, and therefore declined to extend the easement to a width that would allow fishing access. Oddly, Judge Tucker held that Madison County does have the right to go beyond the pavement to perform road maintenance activities, meaning that two separate easements exist at the bridge -- one for the public, and one for the county. Finally, and most crucially, he ruled that recreational use alone could never be sufficient to establish a prescriptive easement.

The upshot is that recreationists could now be breaking the law for doing something they've done for decades -- entering streams at county bridges with prescriptive easements. PLWAA is appealing to the Supreme Court, and Montana TU plans on filing a friend-of-the-court brief asking the court to reverse Judge Tucker's flawed ruling.

But that's not all. Kennedy's Missoula lawyer Colleen Dowdall also filed a cross-appeal in the Supreme

"The upshot is that recreationists could now be breaking the law for doing something they have done for decades--entering streams at county bridges with prescriptive easements."

Court seeking reversal of the 2008 decision that affirmed the public's right to enter the river at the Duncan and Lewis Lane bridges. It appears the intent of the cross-appeal is to eliminate Montana's bridge access statute, which an overwhelming bipartisan majority approved at the 2009 Legislature. That measure, which Montana TU was instrumental in both negotiating and seeing put into law, clarified a 2001 attorney general's opinion that said public access to rivers is legal at rights-of-ways at county bridges. Previous filings by Kennedy's lawyer indicate the landowner might also be seeking to eliminate an even more bedrock public right-of-way -- that of stream access for

the public between the high-water mark of streams that support recreation. PLWAA and Montana TU's briefs will also vehemently argue against the cross-appeal.

When the Montana Legislature passed the bridge access bill in 2009 after unsuccessful attempts in previous legislative sessions, it seemed like peace was at hand. The common-sense law allows for reasonable recreational access while

accommodating landowner concerns over trespass, fencing for livestock and potential liability. It also allows landowners to challenge in site-specific cases whether historical recreational use was established enough to merit a prescriptive easement. Kennedy's challenges blow all this up. It appears they might also be intended to completely eviscerate our balanced stream access law, which serves so many and merely requires a modicum of mutual accommodation from a few.

For more information contact Bruce Farling at bruce@montanatu.org

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WHIRLING DISEASE (from page 1) Eurasian roots that has two infective life forms. One form, myxospore, accumulates in sediment after being released from the flesh of dead salmonids. It is then ingested by the native aquatic worm, *Tubifex tubifex*. The worms convert the myxospores into triactinomyxons (TAMs), which are released into the water column where they attach to fish. TAMs then infect cartilage with an agent that eventually hits the central nervous system, creating malformed heads and twisted spines, causing fish to swim unnaturally, or “whirl.” Once infected fish die, newly replicated



Madison River

Doug O’looney Photo

myxospores are released, continuing the complex dual-host process. Until their bones harden, juvenile fish are most vulnerable to the physical effects of a TAM infection.

The highest risk period for infection in Montana is usually June to September, when water temperatures are ideal for the pathogen. Consequently, because this is the period when the fry of spring-spawning fish such as rainbows and cutthroats emerge from spawning gravels, these species are at higher risk than fall spawners, such as brown trout.

Montana fishery professionals have investigated options for mitigating the disease’s impacts and largely concluded a silver bullet does not exist. It is impossible to eliminate whirling disease once it is established in a waterbody. Still, the Madison’s rainbow fishery rebounded. In the Pine Butte section, catchable rainbow trout now number more than 2,700 per mile since 2000.

“There is no doubt in my mind whatsoever the resurrection of the Madison River occurred because of resistance, no other reason,” Vincent said.

Hypotheses abound about resistance. It is possible wild fish accidentally mixed with resistant stocked fish from Hebgen Lake, or that some form of accelerated natural selection occurred, resulting perhaps from the presence of a unique life history strategy, such as for fish that spawn in whirling disease-free tributaries, or, which produce young at a time when water temperatures dampen TAM production. “Yes, it wasn’t the end of fishing as we know it and probably there was a great deal of overreaction to what might happen,” said Dave Kumlien, former director of the Whirling Disease

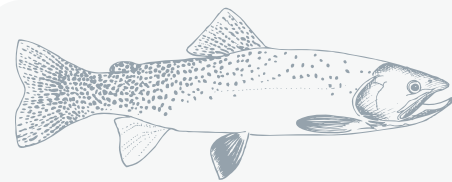
Foundation and current head of Trout Unlimited’s Aquatic Invasive Species program. Kumlien and Vincent believe Montana’s policy of managing for wild trout might be the saving grace. Managing for wild fish helps maintain genetic diversity and varied life-history in trout populations. This can provide a measure of resilience when diseases emerge.

That’s not to say whirling disease still isn’t at work. Biologists believe the rainbow trout populations in Rock Creek and the upper Bitterroot River have been reduced by whirling disease,

making way for increased numbers of resistant brown trout. Kumlien worries that whirling disease could eventually crash local populations of mountain whitefish, which are an important forage species for large trout. He also worries whirling disease might be significantly harming isolated populations of native cutthroats, such as those in Yellowstone National Park.

“I think it’s just premature to say that whirling disease is gone and because we see some rainbows in the Madison everything is fine there,” he said.

Vincent believes the best step managers can take to mitigate for whirling disease is restoring damaged habitat. Still, he fears wild trout could suffer inordinately when a warming climate is added to a mixture of threats that include new invasive species and whirling disease. He doesn’t think whirling disease will ever disappear, and that it will function as an inhibitor of trout populations. But he’s cautiously optimistic. “Hopefully it will never be an issue again, but I wouldn’t bet the farm on it,” Vincent said.



Employee Contributions

Does your company match employee contributions to nonprofits? Many businesses will match charitable donations made by their employees and retirees. Some even double the money. It’s an excellent way to stretch your conservation dollars with a gift to Montana TU.

For more information on how you can make a gift to Montana TU, please contact us.

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CHAPTER NEWS

Big Blackfoot Chapter

In partnership with agencies, landowners, foundations and conservation groups, BBCTU is managing a restoration project on Cottonwood Creek as well as projects that improve fish passage on South Fork Poorman and Frazier Creeks. Project components include water quality improvement and instream flow conservation. For details and a summary of the chapter’s accomplishments to date, visit www.bbctu.org.

Joe Brooks Chapter

Concerned with nearby Mill Creek’s resident cutthroat trout, the chapter recently joined forces with other conservation groups and local residents concerned about air and water quality to oppose a large-scale tire dump in the Paradise Valley. Contact President Sharon Sweeney-Fee at ssfee123@yahoo.com or 406-579-7735.

West Slope Chapter

Coordinated by board member Jamie Short and supervised by Casey Hackathorn, TU national’s upper Clark Fork Watershed restoration coordinator, chapter volunteers collected field data for a fish passage

study in Harvey Creek, a key tributary for native trout recruitment to the upper Clark Fork River. Chapter members also volunteered as councilors, instructors and guides at Montana TU’s annual Flyfishing and Conservation Camp in July. See article, p. 6.

Bitter Root Chapter

In May the chapter teamed up with Fly Fishers of the Bitterroot to host a successful four-session fly-fishing workshop for beginner and intermediate anglers. Chapter volunteers worked with TU national staffer Heather Whitely and other partners in June to plant seedlings in the Piquett Creek drainage of the West Fork of the Bitterroot. The chapter also helped fund riparian plantings along a 1-mile section of the Burnt Fork of the Bitterroot, on the Ellison Cattle Company ranch. The area was fenced earlier this year with the financial support of Montana TU, the Westslope and Bitterroot Chapters and others. The chapter’s annual banquet and auction is Friday, Sept. 28 at the Bitterroot River Inn in Hamilton. The chapter will host Montana TU’s fall State Council meeting September 29 at GlaxoSmithKline in Hamilton. Contact Kate at kate@montanatu.org or 543-0054.

Flathead Valley Chapter

In late August, chapter volunteers will help net and process lake trout at Swan Lake with Montana Fish, Wildlife & Parks and the U.S. Fish & Wildlife Service. Captured fish will be donated to local food banks. This effort is part of a larger project to reduce lake trout in order to reduce predation and competition with kokanee salmon and native bull trout. See article on page 7.

Most monthly chapter meetings are held September through May. For contact information, see list of TU chapters in Montana on p. 7.

These TU Chapters have contributed financially to Montana TU in our 2012 fiscal year. Please support your local chapter by attending annual fundraisers!

**Big Blackfoot Chapter
Bitter Root Chapter
George Grant Chapter
Joe Brooks Chapter
Lewis and Clark Chapter
Madison-Gallatin Chapter
Snowy Mountain Chapter**

Thank You!

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Fishery harm on Bighorn averted

Thanks to the vigilance of local anglers, especially Doug Haacke, Montana TU's vice chairman and head of Friends of the Bighorn River, the already stressed Bighorn fishery won't be put at risk this summer from a proposed project to relocate a utility line. In late July, the Bureau of Reclamation proposed accommodating the federal Western Area Power Authority line-relocation project by modifying operations at Yellowtail Dam. Relocating the line isn't an issue. When the project occurs is. BOR proposed doing the work in mid-August, a time when flows in the river had already been stuck below 2,000 cfs since early May. This level is recognized as a minimum for short-term maintenance of the Bighorn's



Fishing the Bighorn

Doug Haacke photo

acclaimed trout fishery.

The project would require routing discharge around the turbines, either over the spillway or through the holosets in the dam, potentially spilling very warm surface water from Bighorn Reservoir or discharging flows with supersaturated gas, which can cause gas-bubble disease in fish. This would have been on top of the low flows in the tailwater section. After Friends of the Bighorn and Montana FWP raised red flags, BOR heard from anglers that doing this in August was a very bad idea. Also weighing in were staff from Senators Tester and Baucus. In early August, BOR backed off, delaying the project until early October when conditions will be more conducive for minimal impacts.

by Staff

Montana TU Conservation and Fly Fishing School

Under the invaluable direction of Westslope TU chapter volunteer Penny Ritchie, 19 young anglers attended Montana TU's 2012 Conservation and Fly Fishing Camp at Georgetown Lake in July. Penny recruited more than 20 volunteers, organized the camp schedule, set up catering and program schedules, rounded up boats and guides and followed up with each participant.

The camp "graduates" and their parents were impressed. Ria Overholt reports that her daughter Grace

told an academic gathering later in the summer that her mentors were, "The instructors from TU who shared their time and passion and taught her skills such as identifying fish and understanding hatches and were patient with her every time she hooked a tree...." Instructor James Quigley says, "Teaching kids to fly fish builds stewards to the environment through a personal connection with nature. It also gives youth the opportunity to learn a pastime that can provide a lifetime of enjoyment in the outdoors!"

Next year's camp is scheduled for July 14-18, once again at Camp Watanopa at Georgetown Lake.

Many thanks to volunteers Alex Casbara, Gordon Claytor, David Gordon, Roger Harvey, Ed Igarek, George Kesel, Bob Knapp, Bert Lindler, Nick Littman,



Fish on!

Rita Quigley photo

Edward Monnig, Christopher & Wendy Nardacci, Elmer Palmer, Ana Pederson, James & Rita Quigley, Bill & Penny Ritchie, Carey Schmidt, Morgan Sparks, Chuck Stokke, Jackie Wedell, Timothy Wiersum, Carrie & Mike Willett, Ray Willms, Angela Smith, Vivica Crowser, Ryan Chapin, Deana Dewire and Matt Vincent.



Lake trout suppression on Swan Lake to continue

by Michael Gibson

Montana FWP's Region One recently extended gillnetting of non-native lake trout in Swan Lake for another five years. The project aims to reduce lake trout competition pressure and predation on native bull trout and the lake's popular kokanee fishery. Gillnetting from 2009-2011 has already produced progress. More than 21,000 lake trout have been removed in late summer netting for juvenile fish and fall netting of adult spawners. By strategically targeting both young and old fish, managers feel they may be tipping the balance in Swan Lake, possibly providing relief for struggling bull trout and kokanee populations.

Unlike attempts to remove predacious lake trout from other western lakes, the Swan Valley Bull Trout Working Group,

a collaboration of federal and state fisheries managers and Montana TU formed in 2004, made it a priority to estimate the lake trout population size and demographics before suppression occurred. This better enables managers to measure gillnetting success. After collecting data in 2006-07, managers estimated the lake held 8,800 lake trout longer than six inches. Three years of gillnetting removed twice that number of fish, indicating the lake trout population is robust and if not controlled would expand. The gillnetting catch-rate peaked in 2010 at around 10,000 fish. The same amount of effort in 2011, however, produced

5,450 fish, indicating the number of fish removed outstripped the natural replacement rate.

In addition to the gillnetting, researchers from Montana State are gathering follow-up data on population dynamics to determine long-term effects. Others are experimenting with modified electro-fish gear to see if electrical current applied to spawning areas could reduce lake trout reproduction, thereby potentially complimenting or replacing gillnetting in the long run.

Last year's surveys of bull trout redd counts in the Swan Basin (part of



Gillnetting Swan Lake

Laverne Sultz photo

a long-term data set to monitor numbers of adult fish) indicate spawning activity continues to decline. This prompted FWP to change fishing regulations recently by requiring catch and release for all bull trout caught in Swan Lake. For years

FWP had allowed anglers to keep one bull trout a day, a measure that appeared sustainable with a robust, stable population. Because bull trout don't spawn until they are five-years-old, biologists will need a few more years before they can determine with any certainty whether the native fish are responding positively to lake trout suppression. We can only hope we're doing enough to save one of the most vital populations that remain anywhere of this iconic native species.

For more information contact Michael Gibson at michael@montanatu.org

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THIS ISSUE:

Bridge Access

Page 1

Whirling Disease

Page 1

TU Chapter Updates

Page 5

Swan Lake Bull Trout

Page 7

TROUT LINE Summer 2012

UPCOMING EVENTS

www.montanatu.org

9/8/12

Lower Madison River Clean Up

Sponsored by the Madison-Gallatin Chapter. Meet at Warm Springs parking lot at 9 a.m. Free barbecue to follow at 1 p.m. Contact Travis Morris at 219-7691.

9/29/12

Montana TU's State Council Meeting

10 a.m. to 4 p.m. in Hamilton, hosted by TU's Bitterroot Chapter. All TU members welcome. Includes lunch. Contact Kate for details at kate@montanatu.org or 406-543-0054.

9/11/12

Native Trout Restoration in Yellowstone Park

Presented by Magic City Fly Fishers with guest Dave Sweet from Wyoming TU. 6:30 p.m. at the Billings Rod and Gun Club. Contact Lyle Coutnagne at 896-1824

10/1/12

TU Chapter Annual Reports Open

Online forms available for chapters to complete until the 11/15/12 deadline. TU training available for treasurers/chapter leaders 10/17/12. Contact Rob Keith at rkeith@tu.org or 703-284-9425.

9/14/12

Trout Unlimited National's Annual Meeting

Sept. 14-16 in Asheville, N.C.. Details and registration at tu.org/events.

10/9/12

Yellowstone Lake Native Fish Conservation Training

TU offers this free web conference to members, 6 p.m. Mountain Time. Contact Rob Keith at rkeith@tu.org or 703-284-9425.

9/28/12

Bitterroot TU's 33rd Annual Banquet & Auction

5 p.m. at the Bitterroot River Inn, Hamilton. Gourmet dinner at 6:30 p.m. Event features live auctions, silent auctions, door prizes & raffle drawings. Reserve \$50 tickets with Marshall Bloom at drtrout@mtbloom.net.

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Please contact the Missoula office at 888-504-0054 or kate@montanatu.org to get the word out in Trout Line



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