

The east side of the Crazy Mountains, shown here, is notoriously lacking in public access. The Forest Service has only been able to secure one public easement on this 25-mile front of the range.

# Montana's Last Frontier

*In the Crazy Mountains, a series of management decisions and landowner disputes has left a crazy quilt of public access and closed-off routes into the wilderness*

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PHOTOGRAPHY BY ERIK PETERSEN

ENVIRONMENTAL QUALITY  
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Exhibit 15



**T**HE TRAILHEAD SIGN, crusted with lichen and cracked with age, points across the meadow, making the thread of dirt official: “PORCUPINE TRAIL NO. 267.” We follow into the cool of Douglas fir, the peaks of the Crazy Mountains looming behind foothills. Right away we’re on elk tracks, fresh after June rain.

Alex Sienkiewicz, the district ranger for this part of the Custer Gallatin National Forest, is in a jolly mood as he scans for the glint of rain-washed arrowheads. He spotted one here recently, and enjoys the idea that this trail might even predate early Forest Service maps, which show it connecting two ranger stations.

The trail leads us south, contouring the western foothills of the range. A half-mile in, I feel like we’re hitting our stride when we hit a horse gate. A fence, its posts unworn and wire tight, cuts in each direction. A “No Trespassing” sign makes it clear that the trail is crossing onto private land. Neither of us is surprised that the gate is locked — it’s the reason I asked Sienkiewicz to bring me here.

“It puts you in a tough spot,” he says. There’s no bitterness in his voice, but the frustration is obvious as he tells the story: About five years ago, the landowner locked this gate, blocking not only this trail but a connecting trail that branches into the heart of the range. Since then, Sienkiewicz has fielded numerous complaints from mountain bikers, hikers, motorcyclists and hunters, all wondering: Why is this trail closed?



**A gate and signs near the Ibex Cabin clearly identify private property within the national forest — a remnant of the checkerboard of private and public lands created by land grants to the Northern Pacific Railway Company in the 19th century.**

The simple answer is, there's a dispute over whether this trail is a legal, public access. And like the many other trail and road closures in the state, this one raises another question: Is it getting easier or more difficult to get to public land?

The Crazy Mountains provide some answers, because they're a sort of microcosm of the public access issue. The Forest Service and others have worked steadily to consolidate the public land here and secure the public's right to roads and trails. But there have been losses, too. And today, because access here is far from resolved, the stakes are probably higher than anywhere else in the state.

This is why Sienkiewicz and others call the Crazies the last frontier.

**I**n 1878, Andrew Garcia skirted the Crazy Mountains on a fur-trapping trip to the Musselshell River, later recounting his tale in *Tough Trip Through Paradise*. He mingled with horse-rustlers and camped with Blackfeet, but did not tangle with fences. The land was all more or less public—Indian Country or federal domain pocked with occasional homesteads.

By the early 1880s, the Northern Pacific Railway was marching into Montana Territory, bringing a new pattern of land ownership and setting the stage for today's access disputes. To spur frontier settlement, the federal government granted the railroad company 20 alternating, square-mile sections of land along every mile of new track, creating a checkerboard public and private land.

As the Northern Pacific passed the Crazies, the Crow Reservation to the south was off-limits to the land grants. So the Northern Pacific took a double share to the north, checkerboarding the Crazies entirely. This made sense only because the government intended all federal lands, even these rugged mountains, to eventually be sold.

Soon, though, the Forest Service was created to conserve the timbered lands and high country. Around 1905, as ranches girdled the Crazies with private land, men on horseback surveyed the boundary of the new Crazy Mountain National Forest.

To the fledgling Forest Service, the checkerboarded lands would have seemed absurd. Every square mile section of national forest was bordered on every side by private land. Like today, the agency could purchase or swap land to consolidate

its holdings. But early efforts to do so in the Crazies apparently went nowhere, even as ranches bought up many of the sections from the railroad.

The first land swaps occurred in the 1930s, with the Forest Service consolidating a few sections in the Crazies's eastern hills. Two more swaps in the 1940s—including one with the railroad—consolidated 9 square miles on the range's southern end. Another in 1950 blocked up 6.

By the 1960s, this kind of land work took on a new significance, as a wave of enthusiasm for outdoor recreation pushed the agency into a multiple-use mission. It now had a mandate to secure public access.

More progress came in 1975, when the Forest Service partnered with the Nature Conservancy and purchased seven sections in the core of the range. The \$300,000 for the deal came from the federal Land and Water Conservation Fund, established in 1965 with royalties from offshore drilling. Still, in the 1980s, the Crazies were so checkerboarded that the Reagan administration muttered about selling all public land in the range.

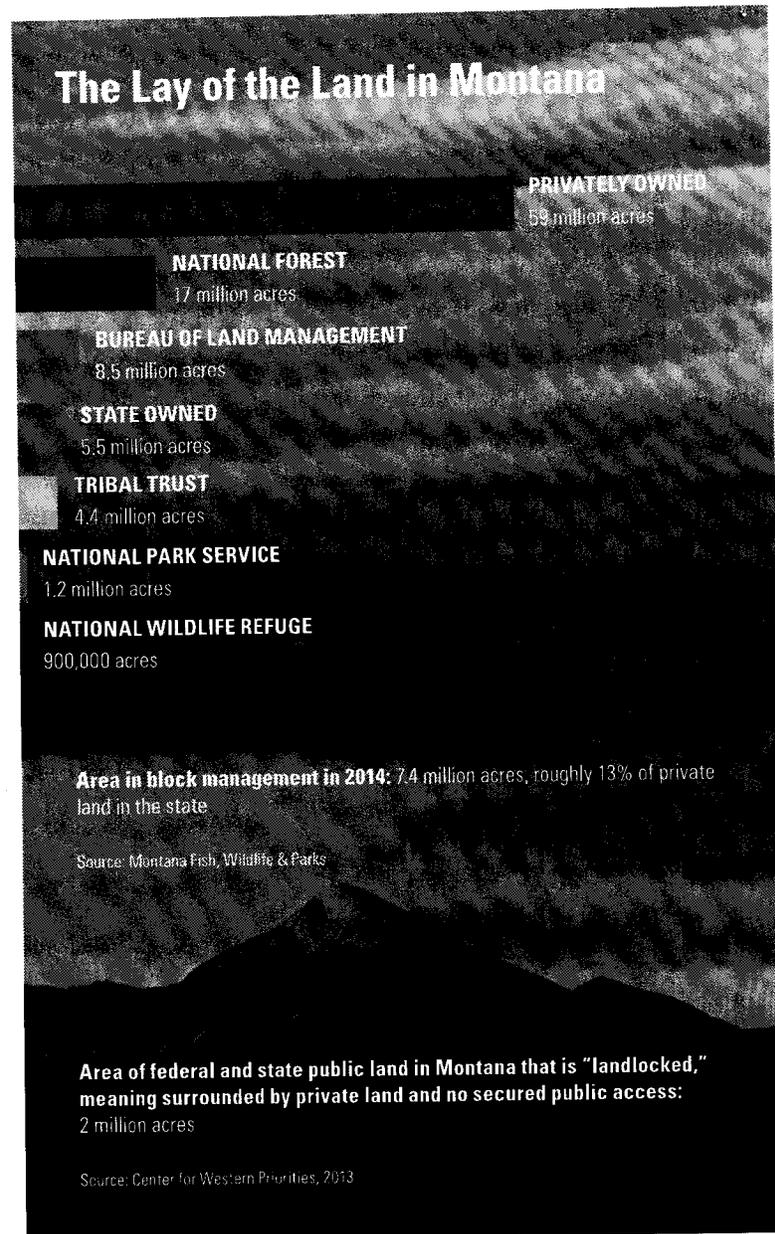
Bob Dennee remembers the next big move, because it's one of the high points of his 40-year career in the Forest Service. When I meet him at his office in the federal building in Bozeman, he explains how the agency, in the early '90s, arranged the purchase of 39,000 acres—roughly 60 sections—of checkerboard private land from the Galt family ranch. Much of that land had been logged, and \$7 million from the Land and Water Conservation Fund sealed the deal. The northern, less-rugged half of the Crazies was now almost entirely public land.

"The big opportunities for land purchase are few and far between," Dennee tells me.

He doesn't complain, but it must have stung when the agency missed a chance in 2012 to buy 11,000 acres in and around Big Timber Canyon, including the section that holds 11,214-foot Crazy Peak. The Van Cleve family, which had owned the property since 1922, listed it on the market. Before the Forest Service could act, the land was picked up for \$11 million by David Leuschen, a third-generation Montanan who has used his oil and gas fortune to amass 40,000 acres of ranch land in Montana and Wyoming.

Dennee is technically retired, but he still comes to the federal building most days to work on a proposed land swap in the southwest corner of the Crazies. The swap would trade five national forest sections to three ranches—including the Crazy Mountain Ranch, purchased in 2000 by tobacco magnate Philip Morris as a dude ranch—in return for six private sections, including two with alpine lakes.

The deal would also re-route about 5 miles of trail onto the newly consolidated national forest, resolving a dispute over a section of trail that was fenced off by the Philip Morris ranch.



Dennee points to the proposed swap as an example of how land deals often go hand-in-hand with the other half of the access equation—securing roads and trails.

Overall, consolidation of national forest land in the Crazies—which has grown to more than 270 square miles—means that many roads and trails now pass continuously through public land. But Dennee is the first to admit there's more to be done. At least 13 sections of national forest here are effectively inaccessible to the public, because no public roads or trails lead to them (and "corner crossing" diagonally between checkerboard sections is technically illegal).

Several roads and trails still weave through the checkerboard, or else cut through miles of private land just to reach the national forest. So here on the last frontier, several public-access disputes smolder—and sometimes flare up.

“It’s gotten so crowded anymore ... and [the landowners] can get a lot of good money for elk hunting. So they’ve decided to close it up. That’s the way it is all over the state.”

**A** 1930 FOREST SERVICE MAP SHOWS THE CRAZIES WITH about as many roads and trails as there are today. “Access” then was an issue for getting timber to sawmills and reaching ranger stations and homesteads as much as it was for mountain trails and campsites on lakes.

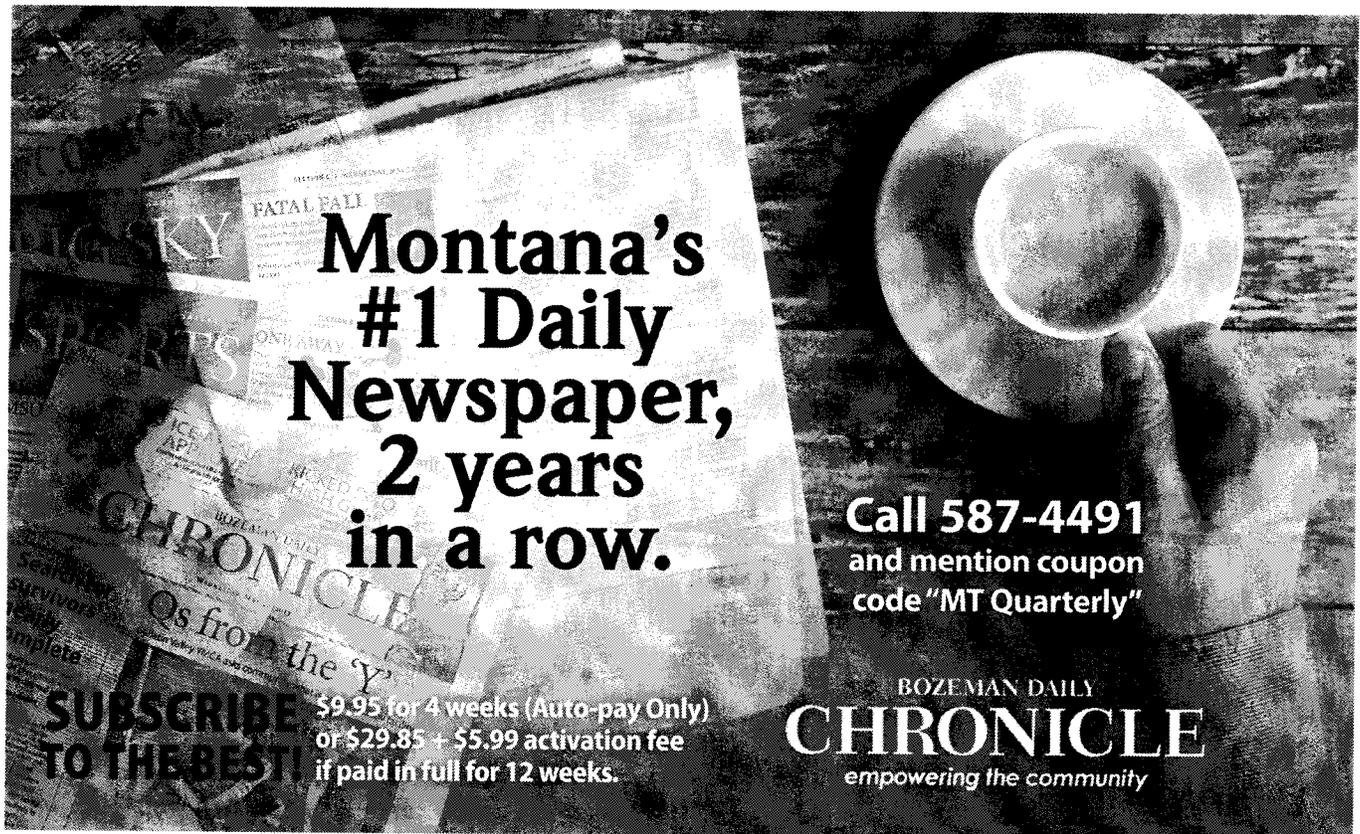
Most Forest Service access roads and trails in those days lacked “easements,” which are legal documents that establish right-of-way. For decades, in a less-populous and less-uptight era, informal arrangements often sufficed. But without a documented public easement, a road or trail is de facto private, so the access is vulnerable.

The road at Big Timber Canyon, for example, provided access through miles of checkerboard into the range’s high peaks and lakes. Around 1940 the Van Cleve family allegedly began barring the public from the Big Timber Canyon Road, which

passed through two-plus miles of their private inholdings. The road lacked an easement but led to a well-used Forest Service trailhead and the agency fired back with a lawsuit asserting “prescriptive” access rights: it claimed that the history of public use and maintenance—going back more than 50 years—now merited an easement from a federal judge.

Court documents paint a story in which the Van Cleves resisted judicial orders to open the road, climaxing in a standoff in which Paul Van Cleve threatened Forest Service workers with a rifle as they attempt to grade the road. As the case dragged into the 1950s, the Van Cleves settled, accepting a public easement.

The Forest Service has also purchased and exchanged easements. In 1956, the agency bought easements from four landowners to secure the Shields River Road, the major access on the range’s west side. The agency negotiated a complicated exchange



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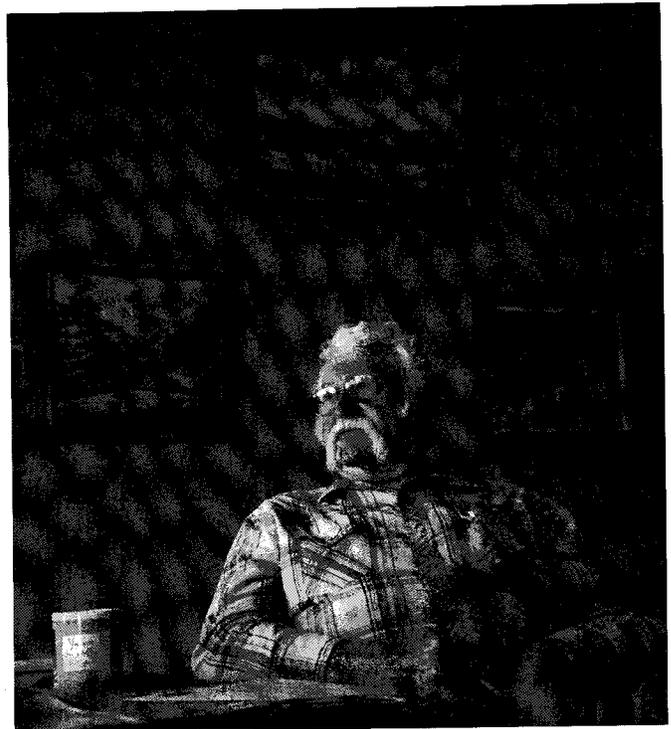
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of easements on several roads in the Crazies' northern half in the 1960s, opening up public access as well as the timber harvest of private lands. In the 1970s, the agency purchased easements for two more key access points on the west side.

But other deals have fallen through. In 2001, for example, rancher Mac White approached the Forest Service and requested four short easements across national forest, so that he could thin timber on his checkerboard inholdings. The agency said it would grant the easements only in exchange for a public easement on a road that crosses two miles of White's ranch and connects to a Forest Service trail at Big Elk Canyon. The Forest Service's requirement for reciprocity was routine policy for the agency.

White refused to grant the public easement, so the Forest Service denied his request. In 2006, White's friend Senator Conrad Burns took up the cause by attaching a rider to a federal budget bill that would have directed the agency to approve White's easements with no public access in return. The Public Land/Water Access Association, Inc [PLWA], Montana's public

**Rancher Mac White allows some hunters and other visitors onto his property so they can access adjacent national forest, but refused to grant a public easement to the Forest Service as part of a proposed easement exchange in the 2000s.**



# ARMSTRONG SPRING CREEK

*The O'Hair Ranch*

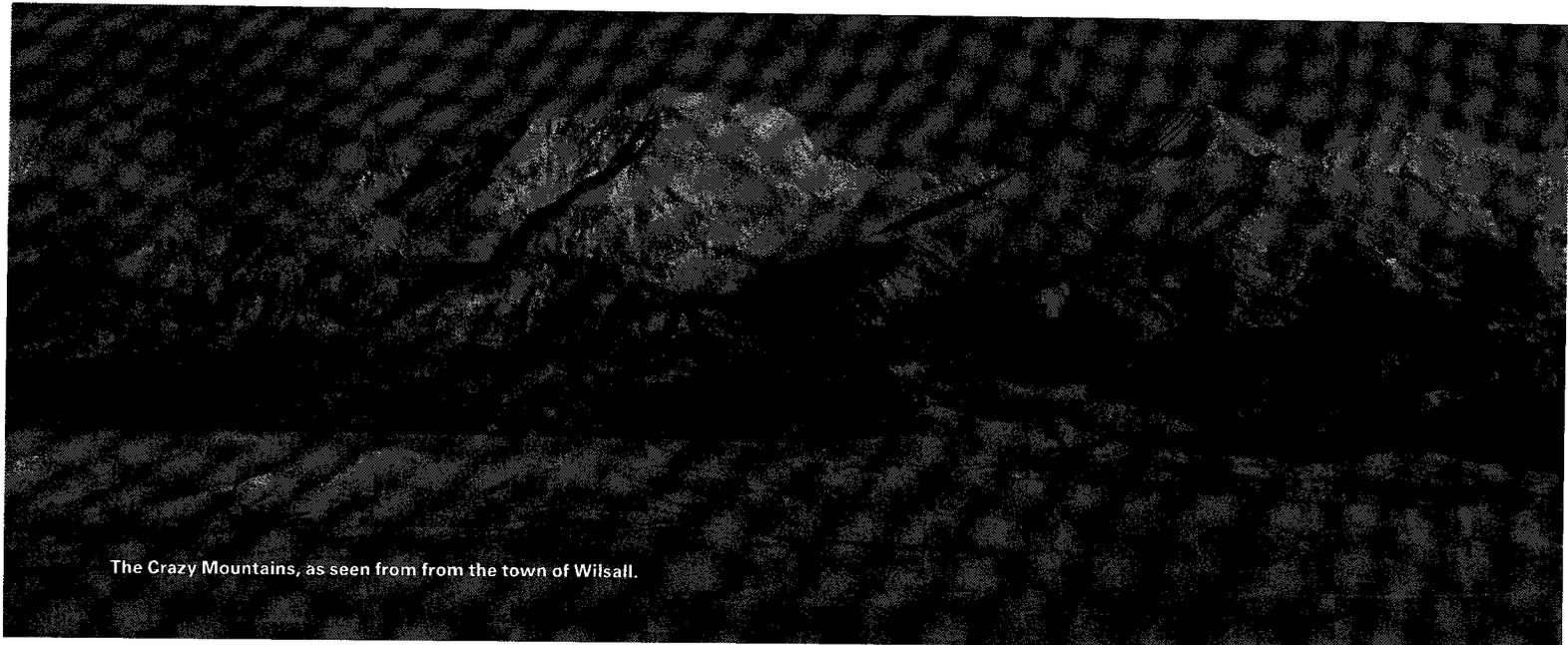


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The Crazy Mountains, as seen from from the town of Wilsall.

Service trail in a major canyon on the range's east side.

A 1984 Forest Service map shows a public trail-head here, and the Forest Service says it holds historic rights of access to the road. But the owners of the Sweet Grass Ranch, using their own forceful signage, require visitors to park on ranch land and sign in before proceeding to the trail. During hunting season, another landowner, Chuck Rein, closes the road entirely.

Situations like this are complicated by the fact that public easements can be held by counties, too. Often, documentation of

a county's stake in a road is buried in dusty courthouse records dating to the homesteading era. According to a 1976 Montana legislative study on public access, road records are inaccurate or nonexistent in many counties.

So even though there are reasons to believe that the county may have had a stake in the Sweet Grass road (including that the road once served a school), it's not clear whether anyone has dug deep enough to find the documentation. In the meantime, the landowners resist talks of a public easement, and the Forest Service shies from a risky prescriptive rights case.

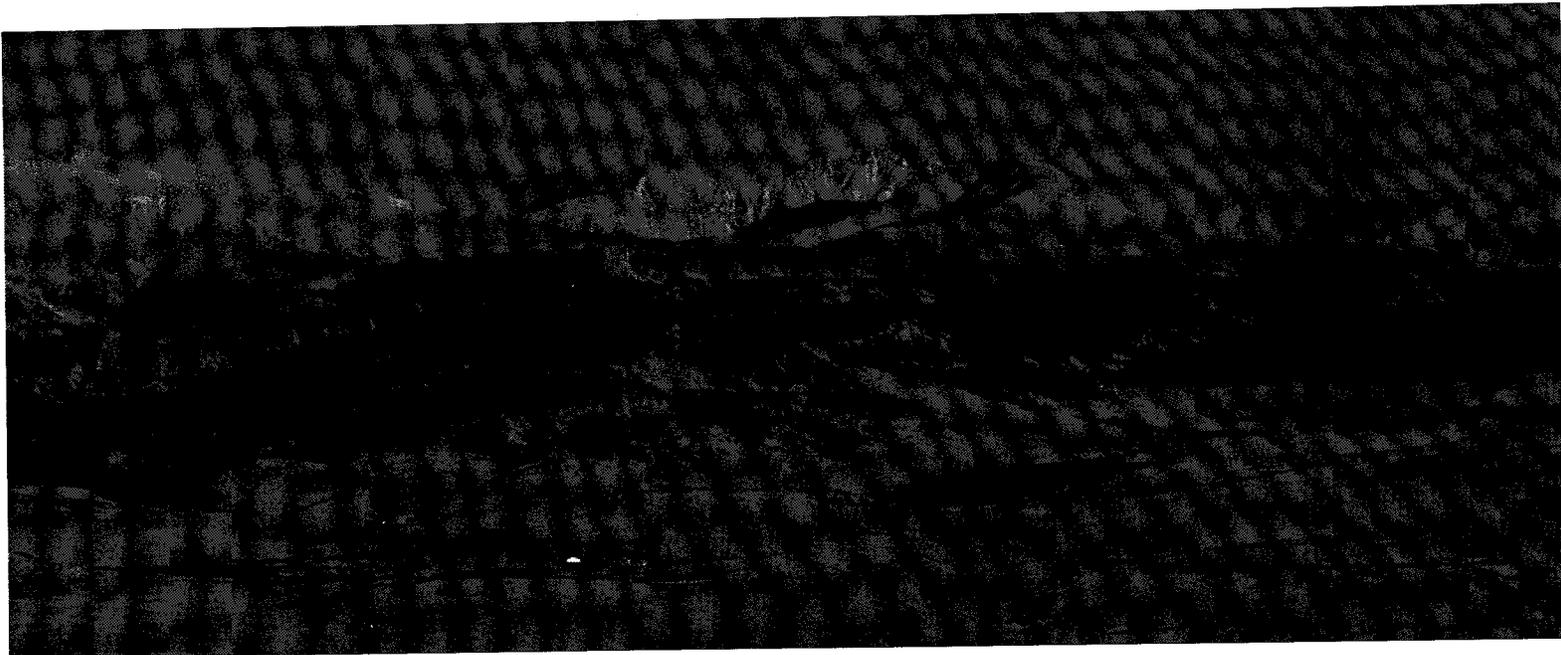


Alex Sienkiewicz, a district ranger for the Custer Gallatin National Forest, staples Forest Service signs on each side of the locked gate that blocks the Porcupine Trail. There is no easement on this section of trail, so the Forest Service has no legal basis for cutting the lock, but the agency claims it has access rights based on decades of trail marking and maintenance.

access watchdog, raised a stink in the newspapers, helping to defeat the measure.

White then sued the Forest Service in 2008, claiming the Forest Service's policy of reciprocity was unfair. The judge upheld the agency's decision, setting a national precedent that withstood White's appeal. But the trade hasn't budged since.

Other access roads and trails in the Crazies sit in limbo, lacking public easements. At Sweet Grass Creek, for example, a road threads through several miles of private land, then through checkerboard national forest, before connecting to a Forest



All this means that Big Timber Canyon is the only established public access along the 25-mile east front of the Crazies. Montana Fish, Wildlife, & Parks management biologist Justin Paugh voices frustration through the numbers: since 2000, this district's elk population has climbed from around 1,000—the agency's preferred number—to over 4,000.

Fish, Wildlife & Parks, like the Forest Service, can purchase access easements, typically for around \$50,000. The agency can also compensate landowners up to \$12,000 for hunter access to private lands—in some cases opening access to adjacent public lands—through its Block Management program, which enrolled 13 percent of Montana's private lands in 2014. But on the east side of the Crazies, says Paugh, “We don't have landowners who are interested in what we have to offer.”

At least three landowners here capitalize on the overgrown eastside elk herd by outfitting. Mac White has outfitted on his ranch and the adjacent public land since the 1980s. When Chuck Rein locks the gate at Sweet Grass in September, he charges up to \$6,000 for five-day hunts, mostly on his land but also on national forest. Both have outfitting permits from the Forest Service. Several other landowners in the area admit hunters willing to pay a “trespass fee.”

Rein and White do allow some hunting on their land, on their own terms. White says he also grants national forest access to the few hikers who ask permission.

Wayne Butts worked 26 years for the Forest Service out of Harlowton and has continued to hunt in the area in the eight years since. “The only reason people want in there is because of the good hunting,” he says. “And the only reason there's good hunting is because of the private landowners [restricting access],” because the hunting crowds that gather around a public access drive the animals away.

But he also recalls a time, maybe 30 years ago, when both the access and the hunting were better. “The outfitting hadn't

really took hold yet. [The landowners] didn't know what the value of their wildlife was. You could have a cup a coffee with them and they'd let you hunt.”

“But it's gotten so crowded anymore ... and [the landowners] can get a lot of good money for elk hunting. So they've decided to close it up. That's the way it is all over the state.”

**W**HERE THE PORCUPINE TRAIL LEAVES NATIONAL FOREST, it traverses about 4 miles of open country owned by Ned and Cindy Zimmerman. When they greet me at Ned's grandfather's old farmhouse just outside Wilsall, Ned looks like he's been in the sun all day, and I'm reminded that there are few, if any, villains in these disputes.

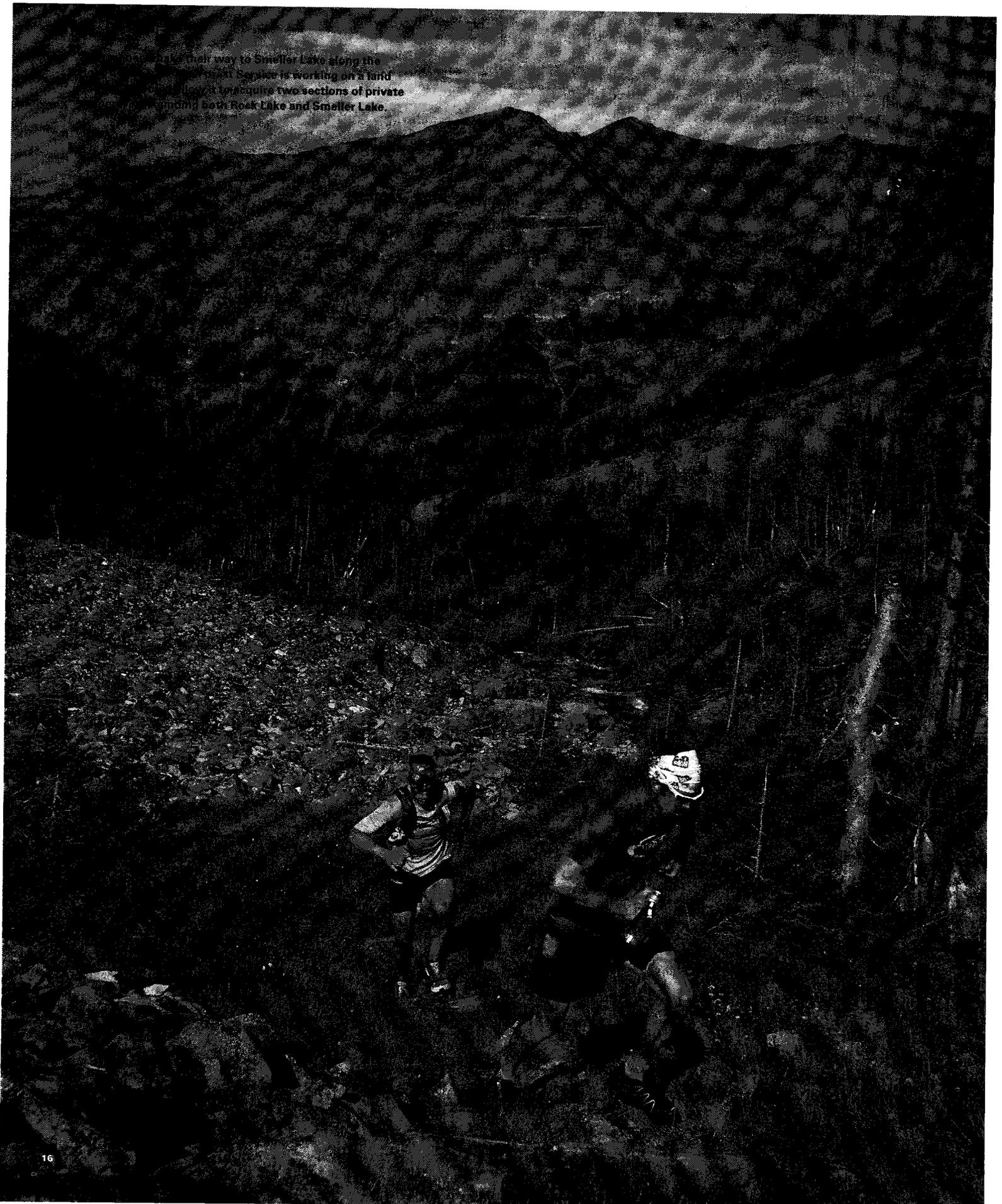
As hail batters the farmhouse roof, Ned explains how he strung the fence across the trail around 2000, to keep his 100-odd cattle on his national forest allotment and private inholding, and how he kept the gate unlocked for years afterward. He found trespass camps on his property, and feared fire caused by a careless visitor. He grew tired of ATV and motorcycle traffic, which he says stressed his cows and cut up the land.

“It's a different public, and there's a lot more of them,” adds Cindy. So around 2009, knowing that the Porcupine Trail lacked a public easement, they decided to lock the gate.

The closure has been hard for locals like Mark Hoffman, who says he considers Ned a friend. He recalls motorecycling the trail as part of a big loop into the Crazies's high country. With some of those upcountry trails now closed to motorized use under the Forest Service's 2006 travel plan, “It's just unacceptable for us to lose more [access],” Hoffman says.

Other locals complain that the Zimmermans have leased hunting rights on their land to a hunting club. For his part, Ned says it's a relief that the club obeys his terms of access, including keeping out entirely when fire danger is high.

...take their way to Smeller Lake along the  
...is working on a land  
...to acquire two sections of private  
...Rock Lake and Smeller Lake.



The Forest Service has records of marking and maintaining this trail for decades. The agency could sue the Zimmermans on the basis of prescriptive rights, securing a public easement. But that approach risks political backlash, and wouldn't resolve the underlying tension caused by a public trail passing through miles of private land.

"Whenever possible, we want to work with the landowners," says Bob Dennee. He doesn't rule out a lawsuit, but he hopes the proposed land swap in the southwest Crazies will set an example for resolving this dispute and others. A swap with the Zimmermans might consolidate public land around the trail, rerouting it as necessary. But so far, talks with the Zimmermans haven't opened any possibilities.

Dennee's view is a reminder of how the Forest Service has improved access here incrementally, sometimes playing hardball but mostly waiting, sometimes for decades, for a deal to take shape. Even as the old, informal access arrangements are whittled back by outfitting and other landowner restrictions, public access in the Crazies—in terms of consolidated public land and documented easement—is more secure than ever.

It's uncertain, however, whether that progress will carry into the future. For one thing, the Forest Service is cutting back its land staff as its budget is gobbled up by firefighting. A decade ago, each national forest in Montana had a land specialist like Dennee; now, only three staff cover the better part of Montana and into the Dakotas. "I'm very concerned about our capacity," says Dennee.

The cuts shift more burden to PLWA, which struggles to fight the most egregious road and trail closures in the courts on a shoestring budget of \$40,000. "We can't take on everything we should," says PLWA president John Gibson. The group is embroiled in a stream-access case and fighting a road closure in the Missouri Breaks, so it hasn't acted on the Porcupine closure.

Back on the gate on the Porcupine Trail, Sienkiewicz points out where Forest Service signs have been ripped down. The trail is hard to see, beyond the gate. It's a monument to an era, now mostly gone, when public routes cleaved more to the land than to property boundaries. Now it symbolizes what continues to be at stake in the Crazies, and elsewhere in the state.

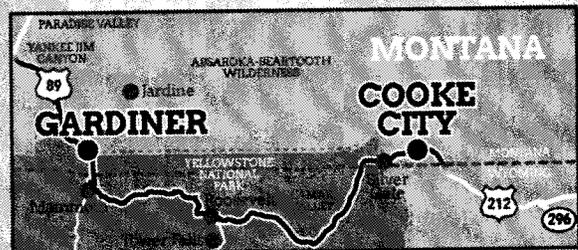
An elk in the timber snags my glance. Two more appear, all beyond the fence. They look at us inquisitively. Then they turn and run, not following any trail at all. ❏

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