

**Subject:** Obstruction of our public access Porcupine Lowline Trail System in the Crazy Mountains  
**Date:** Wed, 11 Apr 2018 11:58:15 -0600  
**From:** Kathryn QannaYahu <kathryn@emwh.org>  
**To:** vcchristiansen@fs.fed.us  
**CC:** lweldon@fs.fed.us, llago@fs.fed.us, lmarten@fs.fed.us, Erickson, Mary C -FS <mcerickson@fs.fed.us>, Sienkiewicz, Alex -FS <alexsienkiewicz@fs.fed.us>

United States Forest Service

Dear Victoria Christiansen, Forest Service Interim Chief;  
Leanne Marten, Region 1 Regional Forester;  
Mary Erickson, Custer Gallatin National Forest, Forest Supervisor and  
Alex Sienkiewicz, Yellowstone District Ranger,

Below is a forward of an email I sent on July 31, 2017, to Marna Daley, acting Yellowstone District Ranger and FS Supervisor Mary Erickson, concerning the locked gate and other obstructions on the Crazy Mountain Porcupine Lowline Trail #267 I documented. I requested the Forest Service follow their policy in maintenance and removing the lock on the gate. Attached is a copy of the forest service response, which was received in a FOIA request on the Porcupine Lowline. No other reply was provided in the FOIA response, I do not know if it was simply ignored or if the replies were excluded from the Forest Service FOIA response.

As you can see from my forward below, I was not sharing my "thoughts" or submitting information for a file; I asked the Forest Service to follow their policy, take action to remove the lock on the gate, remove the brush pile intentionally placed on Trail #267, restore the Forest Service signage and the trail markers in the meadow.

A hunt club was created in 2002, which the landowners lease their lands adjacent to the Forest Service to. At that point they and the hunt club agents, began harassing the public from FS Trail #267 and the adjoining FS Trail #195, removing Forest Service signage, covering over blaze trees with No Trespassing signs, put locks on gates, and refused to stop these activities, when repeatedly contacted by District Rangers Ron Archuleta and Alex Sienkiewicz, according to FS policy, about the illegal obstructions to our public trails. FOIA documents show this communication between 2002-2014. As an example, on 8/26/2005, Archuleta notified the Zimmermans the FS planned to do trail maintenance (placing some sign route posts) on #195 and #267. Chloris Zimmerman stated if the FS did so, they would be "promptly removed".

Several times the District Rangers began the FS policy directed process of filing Statements of Interest and were working with the OGC towards that objective.

1994 R-1, 5460, Rights by Prescription / Protecting United States Interests states, "The interests of the United States in the road and trail system must be protected... If a Forest

discovers that use (and that use can be supported by historic evidence) of a road/trail is being challenged, the landowner must be contacted, informing them that the US claims an interest in the facility and that they are in trespass (this was done a number of times by the Yellowstone District Rangers). You should also require removal of any obstacle within a reasonable time period (this was done a number of times by the Yellowstone District Rangers). **If the landowner refuses to comply, the Forest should remove the obstacle and inform the owner that you are protecting the interest of the United States system. If the landowner is persistent in blocking access, legal action must be taken against the party."**

Additionally, the USDA USFS Gallatin National Forest, August 2002 Briefing Paper on National Forest System Trails across Private Land, "The growing demand for dispersed recreation on public lands, and the changes and trends in private landownership, have brought considerable attention to the trails issue on this Forest. At an increasing rate, landowners are questioning the status of trails across private land. Private land within and adjacent to this Forest continues to be sold. New owners may or may not recognize the existing public access through their lands. Some trails on private land are being lost through subdivision, closure or obliteration.

As a result, it is critical for the Gallatin NF to continue to have a strong and consistent policy and presence in: (a) signing and maintaining our trail system across private lands; (b) defending historic trail access rights if challenged; and (c) perfecting trail access rights across private lands whenever that opportunity exists."

In the Direction and Policy section they wrote, "Under FLPMA and FSM 5460 direction...In situation where an existing NFS trail crosses private lands, and no deeded easement exist, the Forest Service position is as follows: The United States has acquired a right-of-way from the trail through development, maintenance and continuous use of the trail. As a matter of law, the Forest Service believes that there is a public access easement for the trail. The Forest Service is a beneficiary of this public right of access, will continue its efforts to defend the public's right of access.

- (1) Protect and maintain historic evidence, including trail blazes, signs, maps, photos and maintenance records.
- (2) Maintain and sign the trail on a regular basis, and keep records and photos of this maintenance, and
- (3) Take prompt action in the event that landowners threaten or take action to close or obliterate the trail."**

Important, is the fact that we have a 1934 Northern Pacific Railway Company deed to McReynolds I researched, among many others, for T4NR10E, Section 15 (within the Forest boundary and just south of the Porcupine Cabin and Trailhead, Sec. 10) which states, "...**the land hereby conveyed, being subject, however, to an easement in the public for any public roads heretofore laid out or established, and now existing over and across any**

**part of the premises."**

Both #267 and #195 were in existence at that time, evidenced by the 1925 and 1937 Absaroka National Forest maps of the Crazy Mountains; probably well before that, as there were Crow Nation settlements and trail systems already in place before the second Laramie treaty removing them from the landscape and giving the odd numbered sections to the Northern Pacific, and establishment of the Crazy Mountain Forest Reserve in 1906. Trail #267 connected the Porcupine Ranger Station and the Ibex Ranger Station, now the rental cabins at each location.

In 1948, the Forest Service utilized just such a Railroad grant deed easement in the public towards its legal case against a Crazy Mountain landowner on the east side, Van Cleve, in restoring public access at Big Timber Canyon Road (U.S. v. Paul L. Van Cleve et al, 1098), as well as the court ordered injunction to remove the illegally obstructing lock and signage that had been obstructing the public and the Forest Service. The DOJ, on behalf of the Forest Service and the public stated, "That the United States has a special right, title and interest in said highway and trail and all parts thereof, including the parts thereof situated upon lands now owned by the defendants, amounting to an easement and right-of-way for said purposes by reason of the facts that said road and trail were established upon said land when it was in part public land of the United States of America and in part in the ownership of the Northern Pacific Railroad Company, and its successor in interest, the Northern Pacific Railway Company, which said railroad company and railway company dedicated the same as a public highway, which was appropriated by the United States and the general public prior to the issuance of any patents therefor, thereby reserving unto itself and the general public said public highway, road and trail, and by reason of the fact that the United States and its permittees and the public have for more than 50 years used said road and trail for said purposes and the United States has, during said period from time to time, expended upon said road and trail monies appropriated by the Congress, for its construction and maintenance to the end that it might serve said purposes; and the United States in common with the public is entitled to the possession of the right-of-way for said highway and that the same is necessary for the protection, use and administration of the national forest and other property of the United States. "

In a sworn affidavit, by then FS employee Robert Dennee, to the US District Court (2007), "It is the Forest Service position that the United States, on behalf of the public, has an easement interest in these roads and trails due to the historic and ongoing public and administrative use and maintenance. The public is the beneficiary of this right of access and the Forest Service defends and maintains that right."

As a member of that public, I am once again asking the Forest Service, who is tasked with managing our public lands and trails, to remedy this situation; follow FS policy to protect and maintain our public access trails; properly sign and mark the trails; and to take action to remove the obstructing and threatening signage, brush piles and locks that are a theft of our

public trust.

Thank you,

Kathryn QannaYahu  
Enhancing Montana's Wildlife & Habitat  
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----- Forwarded Message -----

**Subject:** Porcupine trail obstruction and downed fences  
**Date:** Mon, 31 Jul 2017 12:32:22 -0600  
**From:** Kathryn QannaYahu <[kathryn@emwh.org](mailto:kathryn@emwh.org)>  
**To:** [mdaley@fs.fed.us](mailto:mdaley@fs.fed.us)  
**CC:** Erickson, Mary C -FS <[mcerickson@fs.fed.us](mailto:mcerickson@fs.fed.us)>

Marna Daley, here are the photos I mentioned on the phone.

While on the Porcupine FS trail #267, July 18, 2017, we encountered a landowners locked gate on the Zimmerman boundary line, directly in front of the trail. There used to be a metal sign on one of the fence posts claiming there was no FS easement there. private property, no trespassing, which we found off the trail on forest service public land. I was using my Garmin 650 GPS with ONXmaps landownership, which also has the American satellite constellations and the Russian Glonass satellite constellations, making it accurate within a foot. I also had my FS map and the Avenza map application on my smartphone. We climbed the gate and I continued to document the blaze trees on the trail, until we hit the end of the trees and the meadow began. Brad explained there used to be rock cairns showing the trail, but those are now missing. There is a brush pile over part of the trail, which I had to carefully walk through to continue on the trail. The Forest Service signs on the fence posts have been ripped off, only fragments left. And the fence between the property line is down, allowing cows to go back and forth, but the public is obstructed by the closed, locked metal gate, unless they climb over as we did.

As a member of the public, I request the Forest Service to follow their own policy to maintain this trail, remove the lock on the gate, replace the signage and rock cairns for the public to be able to identify the trail. The Friends of the Crazy Mountain, led by Brad Wilson, reached out to then Yellowstone District Ranger, about this access issue, offering assistance to maintain this and other trails on the northwest side of the Crazy Mountains. I would also like to offer assistance, as I am sure we can get some additional volunteers to assist in getting this trail up



to standard.

Thank you,

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