PERMISSION DENIED

For decades, most landowners granted requests by hunters to access their property. Why so many are changing their answer, and what that holds for the future of public hunting.

BY HAL HERRING

AWAITING AN ANSWER A hunter and his son talk to a landowner about hunting deer. For decades, landowners and hunters found a mutual benefit from allowing public hunting on private land. But increasingly—for reasons both cultural and economic—that's no longer the case.

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In the first half of the 20th century, the United States' unprecedented military and economic power was a source of great pride to its citizens. It was a time to celebrate the success of the world's boldest experiment in democracy and individual freedom. It was also a time to undertake something else no other nation had ever considered: restoring its vast heritage of wildlife, an important part of America's frontier that had been lost during the tumultuous years of settlement.

At the beginning, the picture looked bleak. In the Great Plains, the major bison herds that once covered the region had been nearly killed off by 1883. That was the year of the "Starvation Winter" for Montana's Blackfeet Indians, when hunter and writer James Willard Schultz would note that "of big game, none remained, either on the plain or in the near-by mountains, and small game such as rabbits, grouse, porcupines and beavers becoming very scarce." By 1910, only scattered, tiny herds of pronghorn antelope remained on the prairies. Elk numbers had dwindled to fewer than 10,000, hidden in high mountains or protected on private lands. Soon, flocks of ducks and geese disappeared as their wetland habitats were drained. By the 1930s, it seemed as though a treasure house of wildlife, the richest in the world, had been forever emptied within the course of a few decades.

Most of us know this story. It would be too depressing to recall if we could not take a drive across Montana today and see that the wildlife, the big game animals and great flights of waterfowl that were almost lost, has been restored to an extent that few people could have imagined in the early decades of the 20th century.

The restoration of North America's wildlife remains an epic and still-unfolding success story. It's a triumph of vision and hard work by generations of Americans who helped draft conservation laws, bought hunting licenses, and gladly paid federal gun and ammunition taxes that funded winter range purchases and game species reintroductions. With their enthusiasm and dedication, these conservationists altered the way Americans viewed their wildlife.

In recent years, one chapter in the story of America and its wildlife has been taking a different turn, and raising new questions. Just as it must have seemed to early conservationists faced with the near-extinction of elk, pronghorn, and waterfowl, the answers to this newest challenge are not yet obvious.

THE FIRST GREAT WAVE

Beginning in the early 1980s, agriculture in much of Montana and other Rocky Mountain states underwent a great transformation. Consecutive years of narrow profit margins and debt drove out smaller operators. New landowners, often people whose sole income did not come from agriculture and who lacked connection to local communities, consolidated larger and larger holdings. This was no conspiracy to destroy the family farm but rather the simple, relentless logic of new economic conditions that favored larger economies of scale. A byproduct of this change was that local hunters, accustomed to asking permission by knocking on the neighbor's door or over a cup of coffee at the town cafe, now had trouble even finding the new landowners, many of whom didn't live in Montana. And the landowners, unconnected to the community, had little reason to allow people they didn't even know onto their property.

Changes in outfitting and guiding also began to appear across the state. Outfitters traditionally took clients into the backcountry of national forests and wilderness areas to hunt elk and mule deer. But increasingly, outfitters were leasing private property, where their big game and bird hunting clients would not have to compete with the growing number of hunters on public lands. By the early 1990s, according to Fish, Wildlife & Parks, roughly 5 million acres of private land in Montana was leased for outfitting, rendering it off-limits to public hunting. Making hunting access even more difficult was a decision by the 1999 Montana legislature to change a law that for years had allowed public upland bird hunting on any private land not posted with NO TRESPASSING signs.

Two sacred values had driven head-on into each other: the right of private property owners to profit from their land by leasing as they saw fit, and the public's tradition of free access to wildlife, which federal courts repeatedly had said the states hold in the public trust. Hunters pointed out that they paid—with money, sweat, and political capital—to restore wildlife populations, and that they continued to pay license fees and federal taxes to manage that wildlife. Landowners countered that they provided much of the habitat for wildlife, which ate the grass that could put marketable pounds on their cattle. Besides, it was their land. Who were hunters or state agencies to dictate what the owners could or could not do with it?

THE BIG SIT-DOWN

"Landowners, outfitters, and hunters were all bringing proposals to the legislature, and every one of them was in direct opposition to all the others," says Kathy Hadley, a Deer Lodge rancher and former board member of the Montana Wildlife Federation. "Nothing was moving at all." Hadley was among a group of citizens representing sportsmen, landowners, and outfitters appointed in 1993 by then-Governor Marc Racicot to come up with solutions to the impasse. Known as the Private Lands, Public Wildlife Council, or PL/PW, the group was charged with increasing public hunting access and protecting wildlife habitat while supporting the outfitter industry and providing benefits to landowners who allow hunter access. One concept the group unanimously agreed to early on, and has continued to support, was that wildlife is a public resource and not a commodity that can be bought and sold. "We did not want to set a precedent by having the state pay for public access to the public's wildlife on private land," says Hadley. "But we were more than happy to pay for any impacts to private land that might be caused by allowing public access."

To raise money to compensate landowners who allowed public hunting, the PL/PW recommended that the state sell "guaranteed" big game hunting licenses, at market-driven prices, to nonresidents who didn't want to take the 50:50 chance of obtaining a big game license through the existing lottery sys-

tem and agreed to hire an outfitter. The idea had something for everybody. Outfitters could make annual business plans knowing that a certain number of nonresident clients would get big game licenses. The revenue from nonresident licenses would help compensate landowners for opening their property to public hunting. Hunters would have more places to hunt.

Legislation resulting from the PL/PW recommendation gave FWP's fledgling Block Management Program a huge financial boost. "Enhancing Block Management was the PL/PW's response to the growing amount of private land being leased for outfitting, and we used outfitter-sponsored nonresident licenses as the way to pay for it," says Hadley. (In recent years, Montana has added several other funding sources.)

Block Management has been a great success. Hunters in Montana have access to more than 8 million acres of private and isolated public lands, from whitetail woods in the Flathead Valley to pronghorn antelope in the Terry Badlands to pheasants in the windbreaks by Glendive. According to FWP surveys, most hunters and enrolling landowners say the program works well. Yet despite the popularity of Block Management, the hunting access controversy continues to grow.

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▸ THE RECREATIONAL RANCH

Over the past few decades, another wave of change has swept across Montana, rolling in from more populated states such as Colorado and California. Like the previous wave, this one began with changes in agriculture, especially on ranches at higher elevations, where growing seasons are short and profit margins especially slim. The scenery, wildlife, and isolation of these sites became commodities far more valuable than any return the land produced in cattle, sheep, or hay. New landowners began buying property in Montana to experience a lifestyle and a freedom no longer available where they had made their fortunes or spent their working lives. During just three years, from 1999 to 2001, according to a University of Colorado study, 25 percent of all large ranches in the 27,500 square miles around Yellowstone National Park changed hands. Thirty-nine percent of those were purchased not for raising cattle or crops but for recreation such as hunting and fishing or privacy in a beautiful setting. Buyers priced out of places like Big Sky and the Paradise Valley soon discovered wildlife-rich and relatively affordable ranches and farms elsewhere in Montana.

Entering into this booming industry are powerhouses such as Orvis and Cabela's Trophy Properties unheard of in the real estate business 20 years ago, as well as longtime property marketing and management businesses. The boom has created a new term for these properties: amenity ranches. And some of the most sought after amenities are abundant wildlife and hunting opportunities.

The amenity ranch boom raises new challenges, and new fury, in the traditional-yet-delicate alliance among hunters, landowners, and outfitters. Once again, the conflict boils down to public wildlife living on private land. But in the new land ownership environment, many long-established relationships no longer exist. Traditional farmers and ranchers often come from a culture that values hunting and views wildlife as belonging to the public. They believe that elk, deer, pheasants, and other game are treasured resources that nevertheless should be harvested at the appropriate season like any other bounty of the land. Many amenity ranch buyers have never imagined such a concept. Some consider hunting a strange, if not distasteful, activity. And amenity buyers who purchase a ranch for personal hunting or leasing are unlikely to open their gates to local hunters they have never met.

"The traditional concept of public hunting has always been closely tied to traditional landowners," says Quentin Kujala, chief of the FWP Wildlife Division Management Bureau. "Farmers and ranchers who wanted hunters to come in and reduce the numbers of big game animals on their land had a partnership of mutual interest with those hunters. These days, in cases where recreation is the primary reason for owning a ranch, you have less of an overlap of those interests. And whether the gate is open to hunters always depends on the landowner."

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In addition to reducing public hunting access to private land, increased leasing and new amenity ranches make it harder for wildlife managers to keep overabundant elk and deer populations in check. In the Madison Valley, for example, FWP has been working with the Madison Valley Ranchlands Group to find hunting seasons acceptable to both ranchers and hunters. One goal is to reduce the number of wintering elk that congregate and eat haystacks, overgraze range, and knock down fences. "We had roughly 7,700 elk on our private lands last winter," says Lane Adamson, project manager for the coalition of landowners, which works on preserving ranchlands from housing development and other issues. "We are so far down the slope on range conditions it will be hard for some of these lands to ever recover."

▸ A NEW WAY?

Jeff Hagener, FWP director, recognizes the plight of landowners beset with too many hungry big game animals. He also acknowledges the right of landowners to do with their land as they wish and, equally, the fact that Montana holds wildlife in the public trust. "The historical foundation of wildlife management, where landowners allow the public hunter onto their land, has done a great job of restoring elk, deer, and other wildlife," says Hagener. "But for many reasons—some economic, some cultural—we're seeing that more and more landowners no longer want the public hunting on their land." The continual decline of hunting access, Hagener worries, could lead to less hunter participation, reduced hunting license revenue for habitat conservation, and waning citizen support for wildlife management. "The public hunter helped build the same wildlife populations that now make Montana so appealing to new landowners," he says. "If hunters start dropping out, we could see a reversal in the great gains we've made over the past century."

Hagener believes that hunters, landowners, outfitters, and other interested parties need to find new ways to manage wildlife that recognize both private property rights and public hunting traditions in light of Montana's changing social and economic landscape. For that to happen, the state will need to convince more landowners to allow public hunting on their property. Years ago, most ranchers opened their gates during hunting season because they wanted help reducing overabundant elk or deer populations, or simply liked the idea of sharing their land each fall with town and city folk. Though these reasons still apply, a growing number of landowners are finding that financial payments from outfitters and hunters outweigh any warm feelings they may get when consenting to requests from nonpaying hunters. Block Management has helped, but only to a certain extent, as the rising value of hunting leases outstrips the state's ability to compensate landowners.

"The PL/PW, Block Management, and our other access and acquisition programs have been a great start, but we need to do more," Hagener says. "Public access is a top priority for this department, and that won't change, but neither will the new social and economic realities. All we know for certain is that successful wildlife conservation in the past has worked only if all parties are involved in working out solutions and all parties benefit from those solutions. That's not happening right now. And until it does, hunting access will remain the single biggest issue facing this department."

A MODEL OF WILDLIFE CONSERVATION MODELS

In 1842, the U.S. Supreme Court affirmed the legal notion that America's wildlife should be held in trust for the public and could not be owned, as wild game had been in Europe, by a ruler or any individual. This was in keeping with America's fledgling experiment in democracy, and it would have enormous implications over the course of our history. As this radical notion evolved, it would become the basis for what modern wildlife managers and hunters call the North American Model of Wildlife Conservation.

At first, the concept of wildlife as a public resource belonging to everyone probably worked against any notion of conserving it. Certainly the histories of the buffalo or the pronghorn during most of the 19th century offered little encouragement. They more accurately illustrated the so-called "tragedy of the commons," where unregulated resources belonging to everyone are valued by no one.

But by 1870, when it became clear that apparently inexhaustible numbers of wild animals were, in fact, extremely finite, the radical—and unique—notion of public wildlife became the salvation of those dwindling populations. Conservation leaders such as President Theodore Roosevelt saw the fate of America's wildlife as tied to the fate of the nation: Americans' willingness to squander such a commonly held treasure did not bode well for democracy's future. These leaders, almost all of them hunters and fishermen who had either lived or traveled on the western frontier, were the spokesmen for a citizenry anxious to save what was left of the nation's wildlife heritage. As early as 1876, before the last great buffalo slaughter near Miles City, roughly 500 sportsmen's groups had formed across the country to advocate for game laws and conservation. It took a while, but by the mid-20th century wildlife losses were slowly turning to gains.

Under the North American model, everyone in the United States and Canada had the right to hunt and fish within the boundaries of laws—laws made in a democratic manner by the same people who owned the resources. In its way, it was as revolutionary as the idea of democracy itself. Because wildlife belonged to everyone, it could not be bought and sold, and laws were enacted to halt the market hunting that had devastated populations across North America. Hunters and anglers agreed to buy licenses, and their license fees were used to purchase habitat and restore fish and game populations. The Pittman-Robertson Act of the early 1930s, designed by hunter-conservationists, was a tax on firearms and ammunition that has raised over $5 billion for wildlife and habitat. The Migratory Bird Hunting and Conservation Stamp Act of 1934 provided the money to purchase and maintain America's federal system of wildlife refuges. The system now contains 5.2 million acres of waterfowl habitat that also provide refuge to at least one-third of all endangered and threatened species in the United States.

The North American model worked, like no other system of conservation on the planet. And it remains unique to North America, the only continent that retains a modern culture of hunting and fishing along with the world's healthiest populations of

Theodore Roosevelt, 1905. He saw the fate of America's wildlife as tied to that of the nation.

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