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**MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY**

BACKCOUNTRY HUNTERS &
ANGLERS and PUBLIC LAND
AND WATERS ACCESS,

Plaintiffs,

vs.

MONTANA FISH, WILDLIFE &
PARKS, by and through its Director,
CHRISTY CLARK, in her official
capacity,

Defendant.

Cause No:

Dept.:

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Plaintiffs Montana Backcountry Hunters & Anglers (“BHA”) and Public Land and Waters Access (“PLWA”), by and through counsel, brings this action for declaratory and injunctive relief against Defendant Montana Fish, Wildlife & Parks (“FWP”), and alleges as follows:

INTRODUCTION

1. This case deals with a matter of tremendous public importance: public access to public land.
2. Across Montana, there are more than 870,000 acres of publicly-owned land that are “corner locked”, meaning public land that is inaccessible to the general public because there is no public road or trail to get there and because the state has determined corner-crossing “remains unlawful.”
3. This lawsuit challenges FWP’s recent legal determination that crossing from one piece of public land to another at the common corner (i.e. “corner crossing”) is, has ever been, or “remains unlawful.”
4. More specifically, on January 21, 2026, the Director of FWP issued an internal policy memorandum stating that “corner crossing remains unlawful in Montana” and thus members of the public who access public land in this manner are either violating § 87-6-415, MCA (Hunting without Permission), or §45-6-203, MCA (Criminal Trespass to Property). See generally, Exhibit A.
5. The memorandum constitutes a statewide interpretation of law that is designed to guide law enforcement, agency personnel and the public, regarding the legality of crossing between public land parcels that meet at a common corner.

6. Count One of this Complaint challenges as unlawful, this agency “rule” adopted by the Defendant, without compliance with the procedural requirements of the Montana Administrative Procedure Act.
7. The memorandum was adopted without rulemaking procedures required by the Montana Administrative Procedure Act (“MAPA”), including notice, opportunity for public comment, and publication in the Montana Administrative Register, thus violating Plaintiffs’ constitutional rights to public participation as enumerated in Article II, Sec. 8 of the Montana Constitution and directly implemented by MAPA.
8. In short, Plaintiffs seek a declaration under Montana Code Annotated § 2-4-506 that the memorandum constitutes an invalid rule because it was adopted without compliance with MAPA and exceeds the statutory authority of FWP.
9. Furthermore, Count Two of this Complaint asks this Court to declare that FWP’s interpretation of law included in that “rule” is incorrect and unlawful.
10. In addition, Plaintiffs seek a declaratory judgment that FWP’s interpretation and determination of corner crossing as a violation of Montana’s criminal and hunting laws is an incorrect statement of Montana law and directly in conflict with federal law governing much of the lands at issue in FWP’s Memo.
11. More specifically, Plaintiffs seek an affirmative declaratory judgment that FWP’s legal interpretation that corner crossing is a crime is incorrect and violative because it is in conflict with existing legal authority, is not based on an established statute or common law precedent in this state, is an abrogation of the state’s public

trust duties, and is in direct conflict with the recent adjudication of the merits of this issue by the 10th Circuit Court of Appeals.

12. Plaintiffs also seek injunctive relief permanently prohibiting FWP from enforcing or relying upon the memorandum and the legal analysis contained therein.

JURISDICTION AND VENUE

13. This Court has jurisdiction pursuant to § 2-4-506, MCA, which authorizes declaratory judgment actions challenging the validity or applicability of administrative rules.

14. Additional jurisdiction exists under the Montana Declaratory Judgments Act, §§ 27-8-101, MCA et seq.

15. Venue is proper in this Court pursuant to Montana Code Annotated § 25-2-126 because Defendant is a state agency and the challenged rule is enforced statewide.

16. Venue is appropriate in Lewis and Clark County pursuant to § 2-4-506(4), MCA.

PARTIES

17. Plaintiff Backcountry Hunters & Anglers (BHA) is a nonprofit organization dedicated to the conservation of wildlife habitat and the protection of public access to public lands.

18. BHA has thousands of members throughout the State of Montana who regularly recreate on public lands, including lands administered by the Bureau of Land Management and the U.S. Forest Service, and the state of Montana.

19. These members are being denied access to these public lands by Montana FWP as described and alleged herein.

20. Plaintiff Public Land and Water Access Association (PLWA), Inc. has a storied history in Montana's public access battlegrounds, and is an organization made up of individuals who believe that access to public lands and waters is fundamental to the identity of Montana.
21. Founded in 1985 and headquartered in Bozeman, PLWA is a small nonprofit with a simple mission focused on ensuring that the recreating public can access Montana's public lands and waters.
22. As Montana continues to grow, pressure from development, shifting demographics, and changing land ownership incentives are shrinking the corridors by which the public reaches public places. PLWA's work is key in resisting this erosion of access. Their efforts include investigating individual complaints where people report barriers to public trails, rivers, streams, forest roads, or other public land boundaries. PLWA helps untangle legal questions about rights of way, easements, and ownership, and will litigate when necessary. PLWA relies heavily on volunteers and contracted (and discounted) legal help to address the complexities (and legalities) of access issues. PLWA uses a mix of research, advocacy, outreach, legal action, and education to accomplish their mission.
23. As described below, many of Plaintiffs' members seek to access public lands that are arranged in a checkerboard pattern with private lands, where adjacent public parcels meet at common corners.

24. The FWP memorandum stating that “corner crossing remains unlawful in Montana” discourages Plaintiffs’ members from accessing such lands due to the threat of enforcement under Montana trespass laws.
25. Plaintiffs’ members are therefore adversely affected by the challenged rule.
26. Defendant Montana Fish, Wildlife & Parks is an agency of the State of Montana responsible for the management of wildlife and enforcement of certain state laws related to hunting and recreation.
27. FWP employs wardens and enforcement personnel who interact with hunters and recreational users of public lands.
28. On January 21, 2026, the Director of FWP issued the memorandum that is the subject of this litigation.

LEGAL FRAMEWORK

A. The Montana Administrative Procedures Act

29. The Montana Administrative Procedures Act (MAPA) defines a ‘rule’ as ‘each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy.’ § 2-4-102(11)(a), MCA.
30. MAPA categorizes “substantive rules” as either “legislative rules” or “adjective and interpretive rules.” § 2-4-102(14), MCA.
31. ‘Legislative rules’ have the force of law and are invalid unless adopted via rulemaking. § 2-4-102(14)(a), MCA.

32. 'Adjective or interpretive rules,' in contrast, lack the force of law, § 2-4-102(14)(b), MCA, and may be adopted with publication of a statement of the advisory nature of the rule in the Administrative Rules of Montana. § 2-4-308, MCA.
33. Prior to the adoption, amendment, or repeal of any rule, the agency shall give written notice of its proposed action. § 2-4-302(1), MCA.
34. A rule may be declared invalid or inapplicable in an action for declaratory judgment if it is found that the rule or its threatened application interferes with or impairs or threatens to interfere with or impair the legal rights or privileges of a plaintiff. § 2-4-506(1), MCA.
35. A rule may also be declared invalid in the action on the grounds that the rule was adopted with an arbitrary or capricious disregard for the purpose of the authorizing statute. § 2-4-506(2), MCA.
36. A declaratory action under §§ 2-4-506 *et seq*, MCA, is distinct from contested case proceedings under §§ 2-4-601 *et seq*, MCA.
37. A plaintiff bringing an action seeking declaratory judgment under MAPA may bring such suit in the county in which the agency maintains its principal office. § 2-4-506(4), MCA.
38. Contested case means a proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. § 2-4-102(4), MCA.

B. Public Participation Requirements

39. The Montana Constitution provides that government agencies are to afford “such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided at law.” Mont. Const. art. II, § 8.
40. “[N]o person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.” Mont. Const. art. II, § 9.
41. MCA § 2-3-101 et seq. effectuates the Right to Know under Section 8, and its requirements apply to FWP as an “agency” of the state.
42. MCA § 2-3-103(1)(a) requires each state agency, including FWP, possess procedures that “ensure adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public.”

C. Due Process

43. Article II, Section 17 of the Montana Constitution provides that “[n]o person shall be deprived of life, liberty, or property without due process of law.”
44. The process due in any particular case varies according to the factual circumstances, the nature of the interests at stake, and the risk of making a wrong decision. *McDermott v. McDonald*, 2001 MT 89, ¶10, 305 Mont. 166, 24 P.3d 200; *Sage v. Gamble*, 279 Mont. 459, 465, 929 P.2d 822, 825 (1966).

45. “[D]ue process requires fundamental fairness of procedure which includes notice.”
Gazette v. State ex rei. Com’n on Practice, 2008 MT 287, ¶ 12, 345 Mont. 385,
190 P.3d 1226 (internal citations omitted).
46. “Notice sufficient to comport with due process is that which is reasonably
calculated, under all circumstances, to inform parties of proceedings which may
directly affect their legally protected interests.” *Pickens v. Shelton-Thompson*,
2000 MT 131, 3 P.3d 603, 300 MT 16 (Mont. 2000).
47. Federal interpretations of the due process notice requirement are applicable in
Montana. *Id.* ¶ 19.
48. A primary purpose of notice required by due process is to ensure that the
opportunity for a hearing is meaningful.
49. Notice that is confusing, misleading, or inaccurate, is insufficient to meet
procedural due process requirements because “such notice does not adequately
safeguard a person’s concomitant due process right of an opportunity to be heard.”
Id. ¶ 18 (internal citations omitted).
50. Agency action infringing on due process is subject to a multi-part test including
evaluation of the interests at stake, the risk of wrongful deprivation of protected
interests, the value of additional procedural safeguards, and the government’s
interests and prospective burdens. *Mackey v. Montrym*, 443 U.S. 1, 10, 99 S.Ct.
2612, 2617, 61 L.Ed.2d 321 (1979).

D. The Public Trust Doctrine

51. The rights of the public and future generations as beneficiaries under the Public Trust Doctrine are an attribute of sovereignty that predate Montana's Constitution, they are secured by the Constitution, and they cannot be abrogated. *Montana Coalition for Stream Access v. Curran*, 210 Mont. 38, 682 P.2d 163 (1984); *Montana Coalition for Stream Access v. Hildreth*, 211 Mont. 29, 684 P. 2d 1088 (1984).
52. The Public Trust Doctrine imbues the state with a fiduciary duty to protect and conserve common pool natural resources, (particularly land, water and wildlife), for public benefit. The roots of the public trust doctrine are found in sixth-century Roman civil law. *See* J. Inst. 2.1.1. (Emperor Justinian declaring "By the law of nature these things are common to all mankind - the air, running water, the sea, and consequently the shores of the sea..."); Joseph L. Sax, *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*, 68 Mich. L. Rev. 471 (1970.)
53. Under Article X, Section 11, "All lands of the state that have been or may be granted by congress, or acquired by gift or grant or devise from any person or corporation, shall be public lands of the state. They shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised." Mont. Const. Art. X, § 11.

54. The Montana Supreme Court has recognized that state ownership of natural resources is subject to the Public Trust Doctrine under the Montana Constitution. *Galt v. Montana*, 225 Mont. 142, 731 P.2d 912, 914-15 (1987); *see also, Montana Trout Unlimited v. Beaverhead Water Co.*, 2011 MT 151, ¶¶ 29, 30, 361 Mont. 77, 255 P.3d 179.
55. Pursuant to the plain language of Art. X, §11, the state holds its public lands in trust from the beneficiaries of the trust, who are the people of the state, *i.e.* Montana's state lands constitute public trust resources.
56. The Public Trust Doctrine requires all sovereign governments, including Defendant as trustee, to maintain control, protect, preserve, and prevent substantial impairment to and waste of Public Trust Resources for the benefit of all Montanans, including Plaintiffs, their members, and future generations of Montanans.
57. Defendant, as trustee, has an obligation to account for the Public Trust and refrain from exercising its authority in manners that wastes, abandons, or prohibits access to public trust resources. *Galt v. Montana*, 225 Mont. 142, 731 P.2d 912, 914-15 (1987), *Illinois Central R. Co. v. Illinois*, 146 U.S. 387 (1892).

FACTUAL BACKGROUND

A. Checkerboard Land Ownership in Montana and the Necessity of Corner Crossing

58. The patchwork of public and private lands that checkerboards the American West today was a result of policies made by the federal government starting after the

revolutionary war and continuing through the 19th century, though its long-term consequences for land access were unforeseen.

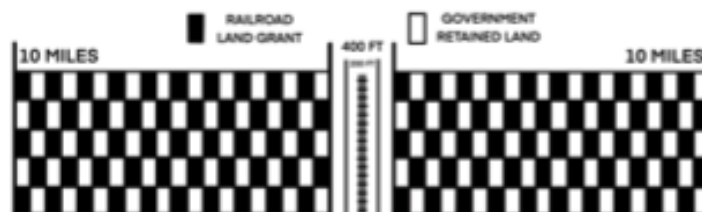
59. Large portions of Montana contain a checkerboard pattern of land ownership resulting from nineteenth-century federal railroad land grants authorized by the Pacific Railway Act of 1862. Pacific Railway Act of 1862, NAT'L ARCHIVES, <https://www.archives.gov/milestone-documents/pacific-railway-act>.

60. Through the Act of 1862, in exchange for constructing the railroad, the government granted the Union Pacific Railroad Company every alternating square mile of land within ten miles on either side of the railroad track.

61. This unique pattern persists today, with alternating sections (one square mile) of public and private land inextricably locked together in a checkerboard pattern.

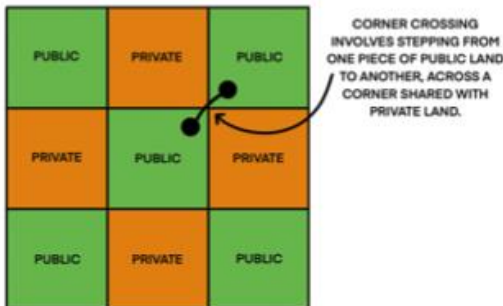
62. In addition, a variety of other land grant statutes were authorized by Congress, including The Pacific Railway Act of 1864, The Homestead Act of 1862, The Timber Culture Act of 1873, and the Desert Land Act of 1877.

63. Each of these laws further contributed to the number of checkerboard land parcels in both Montana and the American West as a whole, as shown below.



64. As a result, many public land parcels meet only at a common corner point shared with privately owned parcels.

65. In these locations, two public parcels may be diagonally adjacent while the other two parcels are privately owned.
66. “Corner-locked” land refers to the checkerboarded pattern where public and private lands meet only at the corners and other than corner crossing (or a helicopter), the public has no legal means of access, either via a road or trail.
67. As a direct result of FWP’s Memo and its state-wide interpretation of law, it has unilaterally “corner locked” 871,000 acres within the boundaries of Montana.
68. Like a checkerboard, the black squares represent public lands and the white squares represent private lands. The intersection, where only the tips of two black corners and two white corners touch, is where the legal grey area of corner-crossing was born.
69. Corner-crossing is the act moving directly from one public parcel to the other without touching private land, as shown below.



70. Public lands are economic drivers that are increasingly important in western state economies. For example, in Montana the outdoor recreation annually creates \$7.1 billion in consumer spending, \$2.2 billion in wages, \$286 million in state and local

taxes, and 71,000 jobs. MONTANA OFFICE OF OUTDOOR RECREATION, Outdoor Recreation & Montana's Economy, <https://perma.cc/4HGV-3SRS> (last visited May 13, 2026).

71. Access to and abundant public lands are consistently identified as important for Montana's economy. <https://www.daines.senate.gov/2018/02/14/access-to-montana-public-lands-critical-to-montana-jobs-economy/>.

72. The issue of public land access in relation to Corner Crossing goes beyond simple entry, it directly affects conservation funding, hunter participation, and the capacity of agencies to manage wildlife populations effectively.

73. State fish and wildlife agencies rely heavily on hunting license sales and taxes on outdoor gear to support conservation (Association of Fish & Wildlife Agencies, 2022). Additionally, agencies often use regulated harvest through hunting to manage wildlife populations (Fontaine et al., 2019).

74. In Montana alone, general hunting license sales are projected to generate nearly \$70 million in revenue for 2025 (Montana Fish, Wildlife & Parks, 2022). These funds, which support conservation and wildlife management, are increasingly at risk as the national number of hunters decreases. Yet, reduced hunter participation threatens financial support for conservation and the cultural significance of hunting itself (Fontaine et al., 2019).

75. Public lands are essential to sustaining hunting participation as in the western United States more than 70% of hunters spend their hunting days on public lands. (Congressional Sportsmen's Foundation, n.d.)

B. The January 21, 2026 Memorandum and FWP's Public Testimony

76. On January 21, 2026, the Director of FWP issued an internal memorandum addressing the legality of corner crossing. Exhibit A.
77. The memorandum states, in relevant part: "Corner crossing remains unlawful in Montana."
78. The memorandum does not cite any Montana statute or court decision establishing that corner crossing is illegal, nor did it address a recent Federal Circuit Court Decision directly addressing the issue.
79. The memorandum was not promulgated through the rulemaking procedures required by the Montana Administrative Procedure Act.
80. Nevertheless, the memorandum is intended to be treated by agency personnel and the public as legal instruction and guidance regarding the legality of corner crossing within the state of Montana.
81. Director of Montana FWP appeared before the Environmental Quality Council in March of 2026 and stated unequivocally "Corner Crossing has always been and always will be illegal in Montana."
82. At the May meeting of EQC, scheduled to occur on May 13, 2026, the Lieutenant Governor is giving a presentation in regards to the State's interpretation of law in relation to Corner Crossing – i.e. it has always been and always will be illegal.

C. Impact on Plaintiffs' Members

83. Plaintiffs' members regularly seek to access public lands for hunting, fishing, and other recreational purposes.

84. Many public lands in Montana can be accessed only by crossing at a shared corner between public and private parcels.
85. Because the FWP memorandum states that corner crossing is unlawful, Plaintiffs' members face the risk of investigation or enforcement if they engage in such crossings.
86. The memorandum therefore deters Plaintiffs' members from accessing public lands that would otherwise be available for recreational use.
87. As described in the Affidavit of BHA member John Sullivan, he has been hunting and fishing on Montana's public lands for decades. Aff. of John Sullivan at ¶ 4.
88. Mr. Sullivan has relied on Corner Crossing as a valid means of access to high quality public lands that are inaccessible in any other manner. *Id.* at ¶ 7,
89. These public lands are at risk from losing all public access because of FWP's actions as alleged herein. *Id.* at ¶ 10.
90. As a direct and proximate result of FWP's actions, Mr. Sullivan has lost the ability to utilize these lands and the opportunities they provide *Id.*
91. This loss of opportunity has harmed Mr. Sullivan personally. *Id.*
92. As described in the Affidavit of PLWA Member Dylan Pipinich, FWP's Memo has caused him harm because he personally is being deprived of access to public lands that he historically has freely used and enjoyed. Aff. of Dylan Pipinich at ¶ 10.
93. More specifically, Mr. Pipinich has, for decades, utilized Corner Crossing as an unchallenged means of access to important lands that are otherwise wholly inaccessible.

94. Mr. Pipinich is personally harmed by FWP's actions as alleged herein and those harms are the direct and proximate result of FWP's actions.
95. Plaintiffs bring this case pursuant to the doctrine of associational standing, on behalf of and by and through their members.
96. An organization may have standing in either of two ways: it may file suit on its own behalf to seek judicial relief from injury to itself and to vindicate whatever rights and immunities the association itself may enjoy, or it may assert the rights of its members under the doctrine of associational standing. *Irish Lesbian and Gay Org. v. Giuliani*, 143 F.3d 638, 649 (2d Cir.1998). In the latter situation, the association and its members are "in every practical sense identical." *United Food and Com. Workers v. Brown Group, Inc.*, 517 U.S. 544, 552, 116 S.Ct. 1529, 1534, 134 L.Ed.2d 758 (1996) (internal quotation marks omitted).
97. Here, Plaintiffs do not seek judicial relief from an injury to itself; rather, they seek to represent the legal interests of their members. *Id.* at ¶ 43. It is well established that an association has standing to bring suit on behalf of its members, even without a showing of injury to the association itself, when (a) at least one of its members would have standing to sue in his or her own right, (b) the interests the association seeks to protect are germane to its purpose, and (c) neither the claim asserted nor the relief requested requires the individual participation of each allegedly injured party in the lawsuit. *Heffernan v. Missoula City Council*, 255 P.3d 80, 95 (Mont. 2011)

98. Plaintiffs each have at least one, but also more members who have standing to bring this case on their own.

99. As stated above, the interests that Plaintiffs seek to protect here, by and through this lawsuit, are directly relevant to their individual missions and purpose and neither the claims or relief sought necessitate the individual participation of all allegedly injured citizens, because no monetary damages are being sought or relief specific to any individual injuries.

FIRST CLAIM FOR RELIEF: DECLARATORY JUDGMENT

Violation of Art. II, Sec. 8, of the Montana Constitution, The Public Participation in Government Act and the Montana Administrative Procedure Act

100. Plaintiffs incorporate by reference, the preceding paragraphs.

101. MAPA allows a plaintiff to seek a declaratory judgment declaring an agency “rule” invalid on one of two grounds: (1) where the rule or its application threatens to or in actuality does “interfere[] with or impair[] . . . the legal rights or privileges of the plaintiff” or (2) where the rule “was adopted with an arbitrary or capricious disregard for the purpose of the authorizing statute[.]” Section 2-4-506, MCA.

102. Both are applicable here.

103. However, more importantly, under MAPA, a “rule” is specifically defined in Section 2-4-102(11)(a), MCA. There, it states that the word “rule” means “[a] statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an

agency.”

104. On January 21 2026, Director of FWP Christy Clark signed an internal Memo (Exhibit A).
105. This Memo meets the qualifications of a Rule pursuant to MAPA because it is a “standard, or statement of general applicability that implements, interprets, or prescribes law or policy.” Section 2-4-102(11)(a), MCA.
106. More specifically, it “interprets” the legal demands of the Hunting Without Permission statute and the criminal trespass statute and “implements” them by expressly setting out agency “policy” that “corner crossing remains unlawful”. Thus, the Memo is a reviewable “rule” under § 506 of MAPA. *See S. Montana Tel. Co. v. Montana Pub. Serv. Comm’n*, 2017 MT 123, ¶¶ 18-20, 387 Mont. 415, 395 P.3d 473 (agency “rubric” for public disclosure of utility spending of federal subsidies constituted a “rule” under MAPA); *Nw. Airlines, Inc. v. State Tax Appeal Bd.*, 221 Mont. 441, 445, 720 P.2d 676, 678 (1986) (agency determination that non-stop flights through Montana airspace without landing counted towards in-state mileage tallies for transportation company taxation purposes “qualifies as a rule” under MAPA).
107. FWP is specifically “interpreting” the momentary act of *de minimus* airspace crossing as “entering private land”.
108. Furthermore, because this interpretation is being made in a “statement of general applicability”, it constitutes a “rule” pursuant to the plain language of MAPA as described above.

109. When a “rule” interferes with citizens legal rights, such as here, they have the right to ask a court for a declaration that the rule is unlawful and Plaintiffs do so here.
110. FWP’s Rule on Corner Crossing, as described in the Memo, “interferes with . . . the legal rights” of Plaintiffs’ members, both in procedural and substantive ways.
111. “The rulemaking procedures of MAPA are not just a bureaucratic hoop. Rather, federal courts have recognized that the “essential purpose” of requiring notice-and-comment rulemaking is “to reintroduce public participation and fairness to affected parties after governmental authority has been delegated to unrepresentative agencies.” *Citizens for a Better Flathead vs. DNRC*, First Judicial District of Montana, Cause No.: DDV-2024-496, Order dtd. 9/5/2025., citing *Batterton v. Marshall*, 648 F.2d 694, 703 (D.C. Cir. 1980).
112. Article II, Section 8 of the Montana Constitution directed the legislature to provide measures by law to “afford. . . reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision.” Among other measures, the legislature has chosen to implement this mandate through MAPA. See Mont. Code Ann. § 2-4-101(2)(a).
113. Additionally, the legislature has deemed public participation in rulemaking sufficiently important, that if an agency has a rule that was not adopted in conformity with MAPA’s notice-and-comment rulemaking provisions, the rule should be invalidated. Mont. Code Ann. § 2-4-305(7).

114. “The purpose of MAPA is to safeguard their ability to participate in the agency’s discussion and offer views to the agency before it takes action potentially adverse to their interests. If the Department has adopted a *de facto* rule but not afforded the public participation contemplated by Mont. Code Ann. § 2-4-302, the Department has indeed invaded their legal rights and privileges.” *Citizens for a Better Flathead vs. DNRC*, First Judicial District of Montana, Cause No.: DDV-2024-496, Order dtd. 9/5/2025.
115. Because the Department determined that “Corner Crossing” is unlawful and a violation of the Hunting Without Permission Statute, subject to criminal prosecution, without any public process whatsoever, the Memo acts to violates Plaintiffs’ members fundamental constitutional rights to participation and their statutory procedural rights as enumerated in MAPA. (When “matters of significant interest to the public” are involved, the “agency shall schedule an oral hearing” and “assist public participation” before a final action. Sections 2-4-302(4), - 103(1)(a), MCA), See also Mont. Code Ann. § 2-4-101(2)(a) (“The purposes of the Montana Administrative Procedure Act are to. . . (a) generally give notice to the public of governmental action and to provide for public participation in that action.”).
116. In addition, FWP lacks statutory authority to promulgate rules interpreting the scope of Montana criminal trespass law under Title 45 of the Montana Code.

117. The agency cites to no case law or statutory authority for the interpretation it provides, nor does any exist in this state.
118. Said another way, not a single Montana Court decision supports FWP's position.
119. Thus, the FWP memorandum: (1) interprets criminal trespass law; (2) applies it statewide; and (3) guides agency enforcement policy.
120. As a result, Plaintiffs are entitled to a declaration that FWP's Corner Crossing Memo was promulgated in violation of their legal rights as described herein and is thus, void *ab initio*.

SECOND CLAIM FOR RELIEF: DECLARATORY JUDGMENT

FWP's Interpretation of law that Corner Crossing Constitutes Trespass under Montana Law is Incorrect as Matter of State and Federal Law and Pursuant to the Public Trust Doctrine Constitutes and Abrogation of its Obligations as Trustee of Montana's Public Trust Lands.

121. Plaintiffs incorporate by reference, the preceding paragraphs.
122. Because of FWP's promulgation of its interpretation of law, there exists a very ripe and real case and controversy regarding the legality of "Corner Crossing in Montana, which is a specifically defined action:
- a. When public and private land is arranged in a checkerboard pattern, the corner is where the tips of the four squares meet.
 - b. Only the corners of the public land and private land touch.
 - c. A person crosses diagonally from one square of public land to another, never touches the surface of the two adjoining private land squares.

123. Within this act exists a legal paradox. The public owns the airspace above the two public squares. The private landowner(s) own the airspace above the two private squares. At the exact point where the four squares meet, is an infinitesimal space, which is shared. Neither interest can assert a right of exclusive and absolute control over the space without infringing upon the rights of the other.
124. The origins of private property rights are found in the common law. *See generally, e.g.,* David J. Seipp, *The Concept of Property in the Early Common Law*, 12 LAW AND HIST. REV. 1 (1994) (summarizing the development of property ideas in English common law).
125. Property rights are not absolute, especially in relation to public rights. *United States v. Causby*, 328 U.S. 256 (1946).
126. Plaintiffs are entitled to an affirmative declaration of their rights in relation to corner crossing, because FWP's legal interpretation is incorrect and interferes with their legal rights in at least four ways:
- a. Montana's state criminal trespass and hunting without permission statutes do not hold the act of Corner Crossing as violations because both focus on and require *more* than momentary crossing of undefined airspace – instead statute and case law in Montana focus on physical contact, occupation of land, and actual interference with property rights owned. Private landowners have no protectable interest in excluding members of the public from public lands;

- b. The *ad coleum* doctrine of airspace ownership is not absolute and has been rejected as applied to transient passage. This is especially true where the Public Land Survey corner is a geometric point with no surface area and no determinable private airspace column above it and the *de minimus* doctrine defeats criminal liability for technical, harmless contact with boundary airspace;
- c. Montana's constitution includes a trust relationship and obligation between the state government and the public for which it holds title to and manages lands known as the public trust doctrine and that relationship requires Defendant FWP (and other state agencies) to take affirmative steps to protect public access to trust resources. Montana's constitution thus affirmatively balances fundamental property rights in exclusion, where public resource access is at stake; and
- d. The vast majority of Corner Locked lands in Montana are owned by the federal government and are subject to federal law, which acts to preempt Montana state law in relation to Corner Crossing. To that end, the 10th Circuit Court of Appeals just last year held that Defendant FWP is wrong in its interpretation of federal law because the Unlawful Inclosures Act prohibits any person (or the government itself) from blocking public access to public land by way of Corner Crossing and that law directly preempts any form of state law to the contrary. *Iron B. Holdings, LLC v. Cape*, 131

F.4th 1153, 1167, 2025 WL 840797 (10th Cir. 2025), cert. denied, 146 S. Ct. 327, 223 L. Ed. 2d 162, 2025 WL 2949573 (2025).

A. *State Trespass law*

127. Montana statutes do not explicitly address airspace ownership or trespass.

However, they do focus specifically on the criminal defendants interaction with and occupation of property.

128. Montana’s primary criminal trespass statute is § 45-6-203, MCA – Criminal Trespass to Property. Under this statute, a person commits trespass if they:

knowingly enter or remain unlawfully in or upon the premises of another. *Id.*

129. Premises, in turn, “includes any type of structure or building and real property.” Section 45-2-101(60).

130. The Hunting Without Permission statute in Montana does not include any expressed language discussing the issue of airspace in relation to corner crossing.

Instead, it states in pertinent part that:

A person may not hunt or attempt to hunt furbearers, game animals, migratory game birds, nongame wildlife, predatory animals, upland game birds, or wolves on private property without first obtaining permission of the landowner, the lessee, or their agents.

...

(5) For the purposes of this section, the term “hunt” has the same meaning as provided in 87-6-101 and includes entering private land to:

(a) retrieve wildlife; or

(b) access public land to hunt.

131. Thus, FWP is specifically “interpreting” the momentary act of *de minimus*

airspace crossing as “entering private land” or being “on private property” with no statutory direction from the legislature.

132. This interpretation interferes with Plaintiffs’ members legal rights to access publicly owned land, both federal and state land held in trust for them.

133. Similarly, the Montana Supreme Court has not addressed the issue either, at least in the context of corner crossing.

134. Montana law does recognize rights in airspace however. *Herrin v. Sutherland*, 74 Mont. 587, 241 P. 328, 333, 42 A.L.R. 937 (1925). *Herrin* establishes that landowners have rights to low-altitude airspace, but those rights are balanced against public rights (hunting ducks and fishing) and it does not define the vertical boundary and it does not address instantaneous crossing.

135. Thus, *Herrin* does not stand for the proposition that Corner Crossing is a crime.

B. *Ad Coelum Doctrine*

136. The maxim *cuius est solum, eius est usque ad coelum et ad inferos* — whoever owns the soil owns it up to the heavens and down to the depths — was never applied literally even at common law.

137. In *United States v. Causby*, 328 U.S. 256 (1946), the Supreme Court explicitly rejected the *ad coelum* doctrine as applied to airspace, stating that it “has no place in the modern world” if applied without limitation.

138. Montana has not explicitly adopted or rejected *ad coelum* by name in the

corner-crossing context, but Montana courts and the Montana Legislature have consistently treated airspace rights as bounded and functional, not absolute.

139. *Severson v. Barstow*, established early on that property rights must be interpreted in light of their reasonable use and the rights of others. 103 Mont. 526 (1937).

C. Public Trust Doctrine

140. Public rights also have origins in the common law principles *res communes* and *jus publicum*, meaning what no one owns, everyone owns and a right of public ownership, respectively. See Joseph L. Sax, *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*, 68 MICH. L. REV. 473, 475–84 (1970) (discussing the origin of the public trust). These principles established certain resource must be held in trust for public use and developed into the public trust, later coined as the Public Trust Doctrine.
141. To this end, the Court has addressed, on several occasions, stream and river access principles that Plaintiffs believe are instructive of how this Court should address this issue. Importantly, *Herrin* has been cited to and relied upon by the Montana Supreme Court in *Public Lands Access Ass’n v. Board of County Comm’rs*, 2014 MT 10, 373 Mont. 277, 321 P.3d 38 (“*PLAA*”); *PPL vs. State* 2010 MT 64, 355 Mont. 402, 229 P.3d 421 *overruled by PPL Mont., LLC, v. Mont.* 565 U.S. 576 (2012), and *Curran*.

142. To this end, Stream access and its legal history provides an important and strong analytic comparison to consider in the Corner Crossing context. Most recently, in the *PLAA*, the Montana Supreme Court held that:

The public has a broad use right to surface waters and private landowners may not place obstacles that impede the public's exercise of its right. *Curran*, 210 Mont. at 52–53, 682 P.2d at 170–71. This use right is not a property right, or an interest in the landowners' property. See § 23–2–309, MCA. Rather, it amounts to a recognition of the physical reality that in order for the public to recreationally use its water resource, some “minimal” contact with the banks and beds of rivers is generally necessary.

PLAA, at ¶ 66.

143. As a factual matter, the “physical reality” of public access to public land at common corners is the same as public access to public water.

144. Half of the airspace at the shared corner in the checkerboard is public airspace overlaying public land, and half of the airspace at the shared corner in the checkerboard is private airspace overlaying private land. “In order for the public to recreationally use its [public land] resource, some ‘minimal’ contact with the [airspace] is generally necessary.” *PLAA v. Madison County*, 2014 MT 10, at ¶ 66.

145. Plaintiffs seek and are entitled to a declaration that the Public Trust Doctrine imposes an affirmative duty on FWP to take the public trust into account in interpreting the law as applied to public access to public land at common corners.

146. The public trust doctrine is an affirmation of the duty of the state to protect the people's common heritage of public land, water, and wildlife.

147. Parties acquiring rights in trust property generally hold those rights subject to the trust, and cannot act in a manner to harm the trust.
148. It is the State's responsibility to account for the public's ability to access public land resources, because the interdependency of access is related to the benefit that is derived from the trust and the state must manage those resources for the greatest public benefit.
149. By and through FWP's Corner Crossing Memo and its pattern and practice criminalizing those citizens who seek lawful access to their public lands at common corner without physically interfering with or contacting adjacent private lands, Defendant has unconstitutionally caused, and continues to cause, impairment to Public Trust Resources, including the publicly held wildlife and waters and other life that exists thereon.
150. FWP may no more grant away exclusive access to public land to adjacent private landowners by incorrectly rejecting state, federal and constitutional law, than it can actually sell away title to those lands without just compensation to the public.

D. Federal Preemption and Precedent on Corner Crossing:

151. The interplay between public and private rights in relation to public land has been the subject of both federal legislation and federal case law as well.
152. In fact, Congress specifically passed the Unlawful Inclosures of Public Lands Act of 1885 (UIA), in response to the significant and prolonged conflict

over cattle grazing on public land. *Leo Sheep Co. v. United States*, 440 U.S. 668, 683-84 (1979).

153. However, that law recently has been directly applied to the issue before the Court here. *Iron B. Holdings, LLC v. Cape*, 131 F.4th 1153, 1167, 2025 WL 840797 (10th Cir. 2025), cert. denied, 146 S. Ct. 327, 223 L. Ed. 2d 162, 2025 WL 2949573 (2025).

154. In *Iron Bar*, a landowner brought action against hunters for civil trespassing, alleging damages from hunters' corner-crossing of private land in landlocked checkerboard pattern of private and public lands. The United States District Court for the District of Wyoming entered summary judgment for hunters and denied landowner's cross-motion for summary judgment. 674 F. Supp. 3d 1059. The landowner appealed and the Appeals Court held that: The Unlawful Inclosures Act prevents any landowner from implementing a program that prevented hunters from corner-crossing as long as they did not physically contact its land. *Id.*

155. "It is perfectly proper for [Montana courts] to use criteria developed in federal cases" when state law is silent or lacking. *Pfost v. State*, 219 Mont. 206, 216, 713 P.2d 495, 501 (1985) overruled on other grounds *Meech v. Hillhaven West, Inc.*, 238 Mont. 21, 26, 776 P.2d 488, 491 (1989).

156. Furthermore, the Constitution's Supremacy Clause provides that federal law is "the supreme Law of the Land" notwithstanding any state law to the contrary. U.S. Const. art. VI, cl. 2.

157. This language is the foundation for the doctrine of federal preemption, according to which federal law supersedes conflicting state laws. *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1479 (2018); *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 108 (1992).

158. The Supreme Court has identified two general ways in which federal law can preempt state law. First, federal law can expressly preempt state law when a federal statute or regulation contains explicit preemptive language. Second, federal law can impliedly preempt state law when Congress's preemptive intent is implicit in the relevant federal law's structure and purpose. *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 98 (1992).

159. Thus, pursuant to the holding and the legal analysis in *Iron Bar*, Montana law, in relation to Corner Crossing from one federally owned public parcel to another, has been preempted by the Unlawful Inclosures Act. *Iron B. Holdings, LLC v. Cape*, 131 F.4th 1153, 1167, 2025 WL 840797 (10th Cir. 2025), cert. denied, 146 S. Ct. 327, 223 L. Ed. 2d 162, (2025).

Conclusion:

160. For all of these reasons, Plaintiffs seek and are entitled to a declaration that FWP's interpretation of "Corner Crossing" – as defined herein - is in violation of their rights and is incorrect as a matter of law.

THIRD CLAIM FOR RELIEF: PERMANENT INJUNCTION

1. Pursuant to § 27-19-102, MCA., a permanent injunction should be issued if:
 - (1) pecuniary compensation would not afford adequate relief;

- (2) it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief;
- (3) the restraint is necessary to prevent a multiplicity of judicial proceedings;
2. As alleged above, Defendant FWP's actions cause continuing injury to Plaintiffs' rights as plead herein.
 3. Monetary relief is inadequate to afford relief created by these harms because money cannot replace the harm which is occurring every day by the breach of the State's affirmative trust obligations to the citizens of the state and to Plaintiffs' members who are every single day being denied access by FWP to land owned by both the federal government and lands owned by the state, constitutionally held in trust for them by the state.
 4. If FWP's illegal practices are allowed to continue as plead herein, an infinite multiplicity of challenges will have to continue because each day the illegal denial of access and harm ensues.
 5. The Court should enjoin this unlawful practice and order Defendant FWP to reverse its position to avoid harm from the unconstitutional and unlawful actions described here.
 6. If the Court does not enjoin this practice, FWP will continue to deny the public access to public land in violation of their constitutional rights as alleged herein.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- A. Declare that the January 21, 2026 memorandum issued by the Director of Montana Fish, Wildlife & Parks constitutes a rule under the Montana Administrative Procedure Act;
- B. Declare that the memorandum is invalid because it was adopted without compliance with MAPA rulemaking procedures and in violation of Art. II, § 8 Mont. Const.
- C. Declare that the memorandum exceeds the statutory authority of FWP because its interpretation and application of the physical act of corner crossing to Montana Trespass Law is in violation of both state and federal law and is in violation of its constitutionally enshrined trust obligations pursuant to the Public Trust Doctrine.
- D. Enjoin FWP from enforcing, implementing, or relying upon the memorandum;
- E. Award Plaintiffs their reasonable attorneys' fees and costs where authorized by law; and
- F. Grant such other relief as the Court deems just and proper.

DATED this 14th day of May 2026.

Respectfully submitted,

FERGUSON & COPPES, PLLC
A Natural Resource Law Firm

By: /s/ Graham J. Coppes
Attorney for Plaintiffs

Exhibit A

FWP.MT.GOV



THE **OUTSIDE** IS IN US ALL.

TO: FWP Enforcement Division
FROM: Ron Howell, Game Warden Chief *Ron Howell*
Christy Clark, Director *Christy Clark*
DATE: January 21, 2026
RE: Corner Crossing History and Enforcement Direction

This memo supersedes the previous memo dated April 12, 2023.

The Montana Fish Wildlife and Parks (FWP) Enforcement Division continues to have a long history of answering questions regarding corner-crossing for access to public lands.

In November 2025 Director Clark confirmed FWP's position on corner crossing stating "corner crossing remains unlawful in Montana, and Montanans should continue to obtain permission from the adjoining landowners before crossing corners from one piece of public land to another."

CURRENT ENFORCEMENT DIVISION DIRECTION

Corner crossing while hunting continues to constitute a violation of MCA § 87-6-415 (Hunting Without Landowner Permission). Alternatively, individuals *not* hunting while corner crossing can be cited for violating § MCA 45-6-203 (Criminal Trespass to Property) if the requisite statutory elements regarding posting and notice are met.

Accordingly, when wardens find probable cause in the instances above, wardens are authorized to issue the appropriate citation.