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Gate-Crashing: Road Closure Gates Cannot Effectively Eliminate Trespass

*by
Keith J. Hammer*

*3165 Foothill Road
Kalispell, MT 59901
redraven@digisys.net*

Executive Summary

For more than a decade, land and wildlife management agencies have recognized that gates are largely ineffective in stopping motorized use of forest roads to provide wildlife security. In spite of concerted attempts to make gates effectively eliminate trespass by the public, a recent survey of Forest Supervisors in the Northern Continental Divide Grizzly Bear Ecosystem shows continued widespread failure.

Information provided by the Forest Supervisors for 1999 and 2000 show that violation and vandalism of gates remain a substantial problem in spite of efforts to monitor and repair them. On the Flathead National Forest, the problem could fairly be described as rampant. The Flathead reported knowledge of 114 road closure violations and 251 instances of damage to public property, the majority being damage to gates. Citations issued for these crimes, however, numbered only 4.

Land and wildlife management agencies are now attempting to reverse policy set in the early 1990s by proposing that gates once again be allowed preference over road obliteration and permanent barriers. While acknowledging the “effectiveness of the proposal will hinge upon the effectiveness of the gates in eliminating trespass by the public,” the agencies apparently hope their failure to achieve such effectiveness after more than a decade of concerted effort will go unnoticed.

History

In 1987, the Interagency Grizzly Bear Committee issued its Grizzly Bear Compendium, an assemblage of “all available information on the biology and management of the grizzly bear in North America.” Key among its findings:

Roads can be closed by physical barriers, gates or other means . . . but permanent closure with obliteration is more effective than just posting or gating the road . . . specific alterations to be made on closed roads . . . include: obliterate roads, including scarification, water-barring and revegetation of exposed soil. . . pull downfall back over the road. . . reshape a length of the roadbed to natural conditions to reduce road visibility from open roads. . . pull culverts and remove bridges. (IGBC 1987).

In 1993, Fish and Wildlife Service issued a “jeopardy” opinion on Noranda Minerals’ Montanore mining project in the Cabinet Mountains of Northwest Montana, concluding it was “likely to jeopardize the continued existence of the Cabinet-Yaak grizzly bear population.” Key among FWS’s findings:

The Service does not believe that seasonal road closures are an appropriate mitigation measure to offset impacts . . . Only yearlong road closures that are truly effective are considered appropriate . . . A fourth reason for doubting the effectiveness of [road] closures is the lack of compliance with designated road closures. . . The evidence suggests that maintenance of effective road closure programs requires more management commitment than currently available to the Forest Service. (USFWS 1993a).

Also in 1993, FWS reissued its Grizzly Bear Recovery Plan. Key among its findings:

Roads closed to public use through the use of only signs or gates are often not effective. . . Current road closure policies in many areas do little to minimize the negative impacts of roads to grizzly bears. . . In summary, public disregard of road closures, as well as continual administrative use, often reach such levels that the intent and objectives for the closures are no longer being met . . . it is recommended that closures be made more effective by, for example, building kelly humps or tank traps, piling logs, stumps, debris, and/or slash across the entire road grade, or physically obliterating the passageway and replanting vegetation. The optimum situation to maintain grizzly bear habitat effectiveness and minimize mortality risk is to obliterate the road. (USFWS 1993b; emphasis added).

In 1995, FWS and the Flathead National Forest approved and issued Amendment 19 to the Flathead Forest Plan. Amendment 19 prohibits the use of gates on roads closed to meet total road density and grizzly bear security core requirements, making permanent barriers and road obliteration the required methods. (USFWS 1995 and USFS 1995).

Current IGBC Proposal

The Access Technical Group is a part of the Interagency Grizzly Bear Committee's Northern Continental Divide Ecosystem Managers' Subcommittee. It has recommended to the Subcommittee that it adopt its Proposed Approach to road management, which would replace the Amendment 19 approach that has become the benchmark for management in the NCDE and elsewhere. The Proposed Approach would reduce Amendment 19 road obliteration by some 80% and replace the essentially permanent grizzly bear security core areas secured by road obliteration with moveable "seasonally secure areas" temporarily protected by gates. (IGBC 1999).

Amendment 19 and the Proposed Approach were submitted for peer review. The Peer Review found "the simplicity of A19 and its ability to permanently secure areas for grizzly bears makes it a powerful tool in the conservation of the grizzly bear in the NCDE." Conversely, the Peer Review found that the newly proposed approach relies too heavily on the use of gates and seasonally secure areas that change from season to season, concluding the "proposed approach's added complexity unfortunately necessitated several additional assumptions, some of which are tenuous." More particularly, the Peer Review found "bears may not use areas with seasonally closed roads because of previous experience during seasons when the roads are open. There appears to be no data on the effectiveness of seasonally closed roads." (McLellan et al 2000).

In its Response to Peer Review, the Technical Access Group wrote:

We agree with the reviewers that the assumption that gated roads will provide security is a critical one in assessing the merits of the Proposed Approach. . . . The effectiveness of the proposal will hinge upon the effectiveness of the gates in eliminating trespass by the public and on the commitment by Federal Agencies to reducing administrative use to near zero However, the ideal of 'no use' will not always be met - there may be trespass and administrative use is allowed for some short-term activities that cannot be done in other seasons. (IGBC 2001; emphasis added).

As if wishing upon a star, the Technical Access Group concludes "As a result, the team decided (on Jan 10, 2001) to recommend adding a requirement for monitoring the effectiveness of gates with consistent methods and intensity across the NCDE." (IGBC 2001; emphasis and parenthesis in original).

Monitoring Violations is Not Eliminating Trespass

The Technical Access Group, in hoping for a consistent program "to monitor gate violations," fails to acknowledge that monitoring gate violations is not the same thing as elimi-

nating trespass by the public. This has been demonstrated by concerted monitoring attempts over the past decade.

For example, monitoring of 11 closures, conducted by the Forest Service on the Sullivan Lake Ranger District, found that 53% of the closures had entries in excess of the standard of 2 or less entries per week. The standard was exceeded by 444%. Eighty five percent of these entries were unauthorized. (Bertram 1992).

Sullivan Lake's monitoring averted none of the recorded closure violations. As will be discussed later in this report, the Flathead National Forest's reporting of 365 incidents of road closure violations and vandalism did nothing to avert those incidents, nor does issuing only 4 citations in the matter serve as an effective deterrent to future violations and vandalism.

Simply put, monitoring and experience has shown gates are largely ineffective and must be replaced by permanent barriers and road obliteration. More monitoring is not going to effectively "eliminate trespass by the public," it is simply going to present a better record of the trespass that occurs. Agency policy has recognized this fact over the past decade by establishing road obliteration programs like the Flathead's Amendment 19 and by issuing the findings detailed earlier in this report.

A Survey of the NCDE National Forests

In January 2001, Swan View Coalition used identical Freedom of Information Act requests to survey the five National Forests in the NCDE relative to the formality and results of their gate effectiveness monitoring and repair during the calendar years 1999 and 2000. (SVC 2001). While Swan View's requests were still pending, the Access Technical Group wrote in its Response to Peer Review that "Some Forest Service Districts in the NCDE are collecting information on how often gates are broken or evaded and on the interval between detection and remedy of the situation." (IGBC 2001). Responses received from the Flathead, Lolo, Kootenai, Lewis and Clark, and Helena National Forests suggest that the Lolo's Seeley Lake Ranger District is attempting to do so.

While the Lolo provided the best records of when gate violation or vandalism was discovered and repaired, it provided absolutely no indication of how long the violations were allowed to occur or the gate damage allowed to persist prior to discovery and repair. The Lolo reported it monitors gates on an annual basis, "in the fall before and during the Montana General Big Game Hunting Season." Indeed, all of the gate violations and vandalism it reports are for this time period, with absolutely no data provided for other times of the year. (Lolo NF 2001).

The Helena National Forest's Lincoln Ranger District reports all of its gates "are within a one-hour drive of the Ranger Station" and are monitored "as a matter of daily management of the district." In spite of apparently frequent monitoring, Lincoln reports "In the

last 24 months there have been a total of 63 violations on 10 of the 31 roads in the [NCDE] recovery area.” (Helena NF 2001).

The Kootenai and Lewis and Clark report they monitor road closures on a biweekly basis, as well as randomly during other day-to-day activities. In spite of frequent monitoring, the Kootenai reports 31 known violations of gates and other closures during the past two years. (Kootenai NF 2001; Lewis and Clark NF 2001).

The “public disregard of road closures” noted in the Grizzly Bear Recovery Plan indeed is not limited to gates, as the Kootenai reports:

In the last five years, there seems to be an increase in the number of violations to year round closures. This is in part attributed to earthberms that have become worn down over the years and no longer deterring vehicle access effectively. . . the district will move toward more permanent closure devices. . . In some cases total obliteration of the roadway is necessary. Violations with off road vehicles used to access restricted roads and areas continue to be a problem. (Kootenai NF 2001).

The situation on the Flathead National Forest indicates Amendment 19’s requirement that many gates be replaced with road obliteration is the only way to make road closures secure for grizzly bear and other wildlife. Last fall, a gate-crashing campaign was launched at the Flathead and reported in the media with headlines that included “Campaign seeks to crash gates on forest.” (See the attached 10/20/00 Daily Inter Lake news article).

In response to the gate-crashing campaign, the Flathead essentially responded that having eight locks cut off gates in one week “sounds like there were a couple more than normal.” This spawned headlines that included “Vandalism of gates a yearlong problem for the Flathead Forest: Eight locks cut off during past week.” (See the attached 10/24/00 Daily Inter Lake news article).

In response to Swan View Coalition’s FOIA request, the Flathead provided a six-inch stack of Inspection of Closure Device forms for the past two years, but could provide no summary of the data collected. (Flathead NF 2001a). The Flathead did provide a summary of its law enforcement efforts, however, and the results are sobering. The Flathead reported knowledge of 114 road closure violations and 251 instances of damage to public property, the majority of which are damage to gates. Citations issued for these crimes numbered only 4. (Flathead NF 2001b).

The facts on the Flathead reveal that there is little deterrent to violating gates and that such activity can fairly be characterized as rampant, if not a popular “sport” among some segments of the public. The facts also demonstrate that the number of citations issued is a poor indicator of reported road closure violations, let alone unreported violations, although this appears to be the base indicator used by the Lewis and Clark’s Rocky Mountain Ranger District. (Lewis and Clark NF 2001).

Reality Check

The Access Technical Group expects that, by simply recommending that a consistent monitoring program be required, a system of road closure gates can and will effectively eliminate trespass by the public. All history and experience indicate that this is an entirely unrealistic expectation.

As this report has detailed, the Access Technical Group's Proposed Approach and recommendations are preceded by more than a decade of concerted and failed attempts to effectively eliminate trespass by the public behind gates. The interagency response to these failures has been a concerted shift away from the use of gates wherever possible in favor of the use of permanent barriers and road obliteration.

Simply put, a properly obliterated road renders it physically impossible to violate with conventional vehicles and, on steep terrain, physically impossible to negotiate even with off-road vehicles. A properly obliterated and revegetated road requires no further investment in maintenance or monitoring. This is partly why FWS has found "The optimum situation to maintain grizzly bear habitat effectiveness and minimize mortality risk is to obliterate the road." (USFWS 1993b).

In light of the real on-the-ground facts, a reasonable person must conclude increased monitoring of gates may further document violations and vandalism, but will not effectively "eliminate trespass by the public" unless the monitoring takes the form of omnipresent enforcement - something no land or wildlife management agency can provide. These agencies have failed to develop gate programs that effectively eliminate trespass by the public over the past decades due to the fact it is physically impossible to do so. There is no reason to believe that such a program can somehow be created now.

Conclusion

In its Response to the peer reviewers' doubts about the effectiveness of gates, the Access Technical Group acknowledges the "effectiveness of the proposal will hinge upon the effectiveness of the gates in eliminating trespass by the public." (IGBC 2001). Having for the moment set aside the science of grizzly bears, this report has simply examined the Group's Proposed Approach within the context of interagency history and on-the-ground realities.

The Proposed Approach is fatally flawed because it hinges upon the entirely unrealistic expectation that gate programs can be made to effectively eliminate trespass by the public, even though history has shown they cannot. The Proposed Approach must be rejected and the agencies must return their attention to improving existing programs that eliminate trespass by requiring more road obliteration and fewer gates.

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Campaign seeks to crash gates on forest

By JIM MANN

The Daily Inter Lake 10-20-00

A call for frustrated citizens to force their way past locked Forest Service gates this weekend has the Flathead National Forest's attention.

Local talk about "Gate Opening Days" has circulated mostly on KGEZ radio in recent weeks. Station owner and morning talk show host John Stokes said he has encouraged conversation, but he has not been inciting anarchy on federal forests.

"I've heard that from the environmental extremist side," Stokes said. "I told them I'm reporting the story and I'll interview anybody on the air who wants to express a viewpoint."

But Stokes said he is sympathetic with people who are unhappy with the steadily increasing number of closed roads on federal forests.

"I can see their frustration," he said. "They've tried all the other routes and they see more and more (closures) every day."

An e-mail circulated by Stokes explains Gate Opening Days, and asks that the message be forwarded to others.

"Heads up ... Citizens fed up with the federal land closures and locked gates and federal extreme environmental policies, will be permanently opening as many federal Forest Service locked gates as possible Oct. 20, 21, and 22," the e-mail says. "No organization, no committees, just citizens."

But Stokes said the message was merely an advisory of the topic he was going to discuss on one of his morning shows. The advisory, he said, was sent across the country.

And now he is hearing from people in Oregon, Washington, Idaho, Montana, Wyoming and as far as Virginia on the topic.

Stokes said he's heard from unidentified callers, both on-the-air and off, who say they've already cut locks off Forest Service gates.

Stokes said Gate Opening Days is a form of civil disobedience, and gates and locks are an "immediate symbol that people can put their hands on."

Flathead National Forest spokesman Allen Rowley said there will, as always, be an increased presence of Forest Service field workers and law enforcement officers for the Oct. 22 opening of the big game hunting season.

And Forest Service staffers will be keeping an eye out for gate vandalism.

"We think it's important for people to obey the travel plans, the road closures and hunting regulations," he said. "But we don't think we need to escalate confrontations in the woods over a couple of locks. And a heavy-handed patrol could do that."

Rowley said forest officials are concerned that gates could be vandalized on lands adjoining federal forests.

"Not all the gates that people find outside of town are managed by the Forest Service," Rowley said. "I'd feel real bad if those other agencies and private landowners ended up with vandalized gates because of people trying to target the Forest Service."

Vandalism of gates a yearlong problem for Flathead Forest

Eight locks cut off during past week

By JIM MANN

The Daily Inter Lake 10-24-00

A few gates were vandalized on the Flathead National Forest over the last week, possibly as a result of a protest campaign.

Flathead Forest spokesman Allen Rowley said Monday that six locks were cut off gates in the Flathead's North and South Fork drainages sometime last week. And over the weekend, it appears that two were cut off gates on Crane Mountain south of Bigfork.

The vandalism may have been the result of a "Gate Opening Days" campaign that has circulated on the Internet, rallying people frustrated with more restricted motorized access to federal forests to open gates. The campaign has been a frequent topic of discussion during the morning talk show at KGEZ Radio in Kalispell.



Karen Nichols/Daily Inter Lake

JAY DEIST, a law-enforcement agent for Flathead National Forest, displays vandalized locks.

"It sounds like there were a couple more than normal," Rowley said. "But at this point, it doesn't

look like a massive effort."

Rowley said the forest contends with gate vandalism all year, every year.

"If I went out on any given day of the year, just to check gates, I could find a gate that had been vandalized, with the lock cut off, on the forest," Rowley said.

Forest Service law enforcement officers keep a couple of dozen broken, cut-off locks in a display case at the Flathead supervisor's office.

Rowley said Forest Service field workers report any broken padlocks they find to the law enforcement office. But there are usually few leads to follow.

"We investigate it just as far as the leads will take us," he said.

State and federal land managers frequently have to deal with gates that have been rendered useless because new routes are cut around them. And occasionally, gates are torn down or pulled out.

Rowley said the most recent vandalism is not so extensive.

"To our knowledge, all of our reports have involved broken locks," he said. "We didn't see broken gates or gates knocked down."