

McGuane again. This time on tarpon. PG. 96

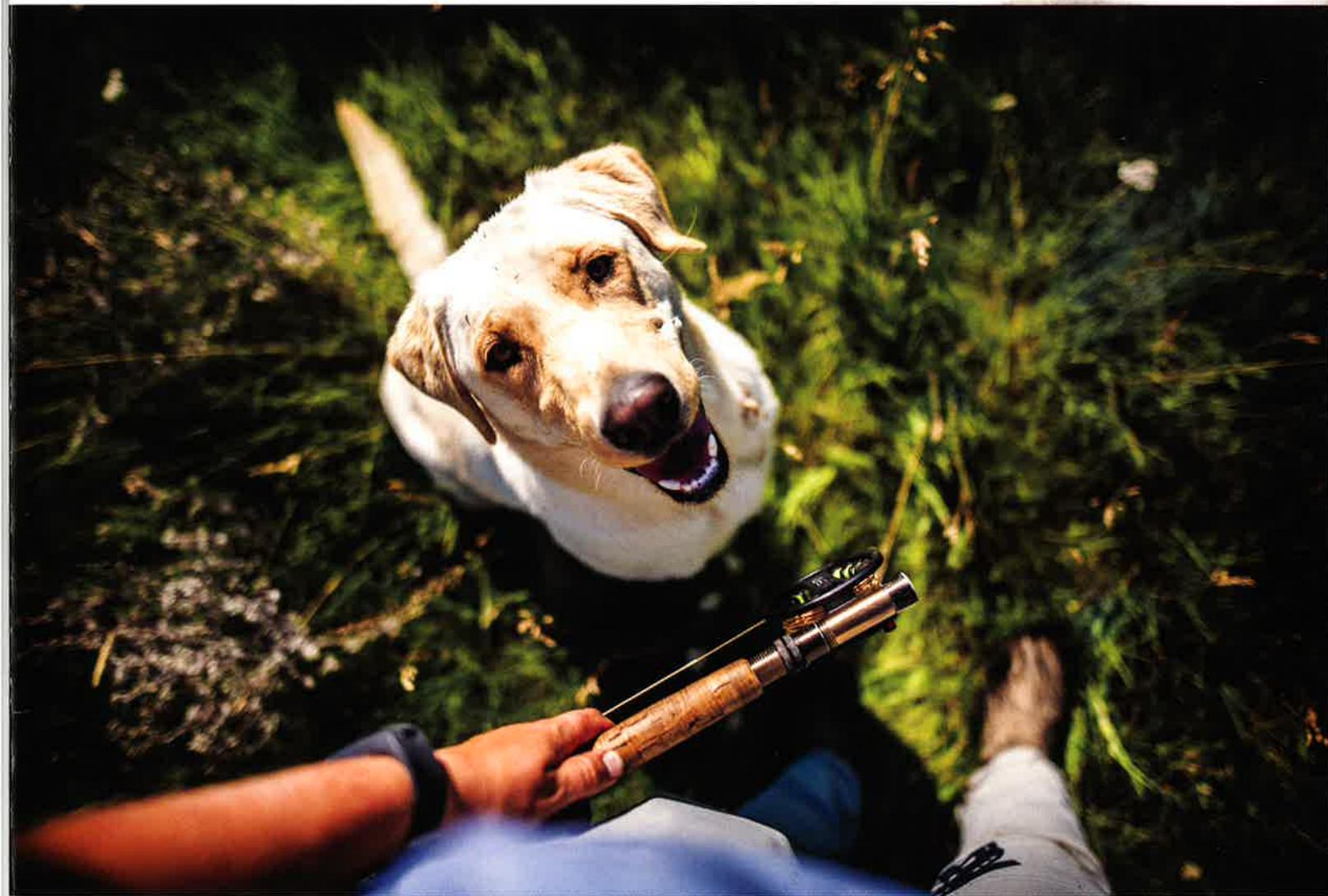
SEVEN BUCKS

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The Drake



FOR THOSE WHO FISH



INSIDE: Quebec brookies, Florida tarpon, Nebraska bass, Louisiana redfish, Anthony Bourdain, Arkansas streamer-love, Wyoming's North Platte, North Texas carp legend, Turkish brown trout, raising a flyfisher, panfish and family, backcountry Alaska, flyfishing Cleveland, palolo worm hatch, frogs, fishing in the rain, and... runoff is coming

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GOETZ
BALDWIN &
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ATTORNEYS

ATTORNEY JIM GOETZ CHAMPIONED MONTANA'S FARSIGHTED PUBLIC STREAM-ACCESS LAW IN THE MID-'80S. THE PRECEDENT HE SET CONTINUES TO HOLD FIRM TODAY.

River Populist

The everlasting legacy of Jim Goetz

BY MILES NOLTE | PHOTOS BY ALISIA DUGANZ

LEGAL ACCESS to water is a major issue for anglers, determining which rivers, lakes, and shorelines we can fish, and how we can lawfully reach them. But water-access law, like pretty much all law, is boring and complicated. Few people read case law unless they're logging billable hours or have something to lose. Thing is, when it comes to water law, we all have something to lose.

Jim Goetz has been a practicing Montana attorney since 1972. Throughout his career, he's earned a reputation as one of the best trial lawyers in the state. Much of that reputation stems from his monumental influence on the stream-access law in Montana. In the early 1980s Goetz successfully argued a pair of cases in the Montana Supreme Court, and those cases ultimately led to the passage of H.B. 265, "Rights and Responsibilities of Landowners and Recreationists." That bill enshrined concrete and definitive language about public-water access into law: "all surface waters capable of recreational use may be so used by the public without regard to the ownership of the land underlying the waters . . . recreationists can use rivers and streams up to the ordinary high-water mark."

Montana is held as the gold standard for access rights, at least by those of us who think the public should be allowed a broad ability to fish, wade, and float. But in much of the West, particularly Wyoming and Colorado, Montana is the exception

rather than the rule. What may be most important, and rare, isn't Montana's expansive attitude toward public-access, it's the fact that those access rights are understandable, well-defined, and broadly known, which isn't the case in many other states.

The Public Trust Doctrine (the basis for access rights in the U.S.) dictates that all waters that are navigable in fact cannot be privatized and are held by the government for the good of the people. Individual states, however, can define "navigable in fact" in different ways, creating their own interpretation about what rights that gives the public. The only "navigable" water in the entire state of Arizona is the Colorado River. In Pennsylvania, water determined to be "navigable" is open to public use, but not public fishing. In other states, like Delaware, New Hampshire, Hawaii, and Utah, access rights are legally undetermined, making it difficult for visiting anglers and floaters to determine which waters they can access, where they can access them, and for what purposes.

We need more states to look at this issue and craft *definitive* legislation detailing what waters are public and what rights public users hold. Otherwise we're going to run into more incidents like the shooting death in 2013, which occurred when a group of floaters in Missouri came across an armed landowner who felt he owned the gravel bar they were standing on.

In order to get that broad clarity, we need more attorneys like Jim Goetz. Originally from a small town outside of Miles City, in Eastern Montana, Goetz spent most of his childhood growing up in Ennis in the late '40s and early '50s, where his father was the Superintendent of Schools, an avid angler,

president of the Madison Valley Rod and Gun Club, and an outspoken advocate for issues he felt strong about.

"My father was a very fiery Democrat in a very Republican county," Goetz told me.

"He was pretty aggressive and stood up for what he believed in. I suppose I got that gene. He influenced me by trying to do the right thing, and by believing in a kind of populist approach to recreation, fishing, public lands, and rivers."

In the 1950s, stream access wasn't the contentious issue that it is today, but Goetz saw attitudes about angling and access change from his childhood to his adulthood. As a young attorney, he found himself in a position to take those fiery, populist ideals his father passed on to him and direct them toward an issue they both cared about.

"I grew up floating the Madison," Goetz said. "Nobody ever said, 'You can't float the Madison.' Until Curren, and Hildreth, and some of the others that came about in the '70s, the rivers were always pretty open, and nobody had any problems."

Curren and Hildreth were Montana landowners who tried to prevent floaters from passing through their land in the 1970s, when both became infamous for harassing anglers. There are reports that Curran strung fencing across the Dearborn River and that he once ran his truck over a raft. But Goetz is also referencing two separate Montana Supreme Court cases he argued in the early '80s—*Montana Stream Access Coalition v. Curren* and *Montana Stream Access Coalition v. Hildreth*.

Jerry Manly and Tom Bugni, two fishing buddies from Butte, started the Montana Stream Access Coalition in the mid-1970s. In 1979, the pair hired Goetz to help them define and codify public rights to water. "That was the whole intent [codifying stream-access law]," Goetz said. "I wasn't sure where it would go, but that was the idea. I billed them I think \$40 an hour, which was well below the going rate, but it was a worthwhile cause."

Manly, Bugni, and Goetz felt that the time was right to push ahead on crafting, defining, and solidifying the rights of the public to recreate on Montana waters, not only because of the increasing tension between landowners and anglers, but also because of the makeup of the court at the time.

"We had a pretty receptive supreme court," Goetz said. "We looked first at the Dearborn River that was dominated by a large landowner, D. Michael Curren, and he was a suitable asshole."

Goetz wore a mischievous grin when he told me about one of his courtroom spars with Curren. "In court, I asked him, 'Have you ever personally floated the Dearborn?' And he said, 'Oh

yeah.' And so I started saying, 'Well, let's take this section, who owns that?'

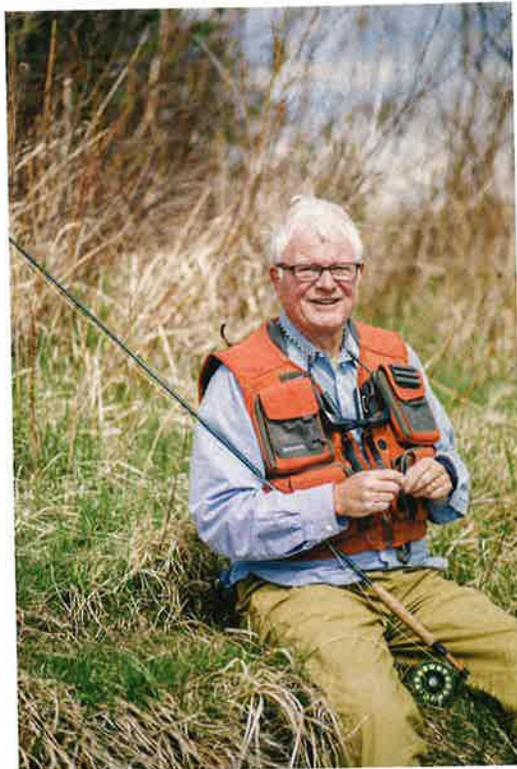
'I don't know.'

'Does the river flow through there?'

'Yes.'

'Did you get permission from whoever the owner is to float it?' And I just went on with my crucifixion from there. So that was kind of a fun one."

Goetz won both cases in 1984. The following year, the Montana legislature passed the stream-access law. That



law remains contentious, but the ruling it supports has been widely upheld by the courts. Every few years the state supreme court hears a challenge—typically by large landowners with deep pockets and teams of attorneys—to the legality of the public's right to access rivers. Those challenges are still fought by the Montana Stream Access Coalition, though it has since been renamed the Public Land and Water Access Association (PLWA). So far, thanks to the fundraising of PLWA and the continued support of Goetz's law firm, the court has consistently come out on the side of public-access, despite dark money from wealthy landowners like Charles Schwab having been injected into Montana Supreme Court justice races in recent years, in an attempt to try and tip the balance of power on Montana's highest court.

"There are wealthy people who want it all for themselves," Goetz says, "but I

think we're pretty firm in Montana. It's become a kind of legacy. I think we established the precedent."

That precedent has indeed been established and continues to hold. Now in his 70s, Goetz can look back on a renowned career. Among other achievements, he won a case that prevented a second dam from being built on northern Montana's Kootenai River; fought for equitable allocation of state funds to public schools; drafted the state's conservation easement law; represented Montana ACLU in favor of same-sex couple partnership rights; and fought for the maintenance of water rights on behalf of the Salish-Kootenai native peoples. Despite all these impressive wins, he still sees stream access as his greatest achievement.

"I've done some other landmark litigation, but I think that stream access is probably the best."

Every state could use a few attorneys like Goetz. Fighting to maintain or expand water-access is important, but at the very least, anglers and floaters should have clear, well-defined, and understandable laws. 🐾