

MINUTES OF THE MEETING  
AGRICULTURE, LIVESTOCK AND IRRIGATION  
MONTANA STATE SENATE

March 11, 1983

The Agriculture, Livestock and Irrigation Committee meeting was called to order on the above date, in Room 325 of the State Capitol Building, at 1:00 p.m., by Chairman Galt.

ROLL CALL: All members present.

CONSIDERATION OF HOUSE BILL 888: Representative Bob Marks, House District 80, told the committee the bill is an effort to clarify the rights and privileges of both the recreational users of certain streams and at the same time recognize the landowners' rights of the land beneath and adjacent to the streams. His testimony is attached as Exhibit #1.

Representative Marks said HB 888, including amendments, will clean up some of the concerns since the bill was passed in the House of Representatives. Because of similar navigability bills in the Senate, it was necessary to present a compromise bill this session. Amendments are attached as Exhibit #2.

Representative Ted Neuman, HD 33, rose in support of HB 888. Full testimony attached as Exhibit #3.

Jo Brunner, WIFE, said their members support the bill. Exhibit #4.

John Skully, representing himself, said litigation has been filed in the state and promagated relative to liability. The HB can only make court decisions already rendered a way of life. He said we are trying to solve 5,000 problems in 500 words. The bill tries to deal with major issues. The bill came from a concern and emotional fervor of the court cases. It creates something now so the people in Montana won't fight for twenty years. The recreationalist contributes to the economy of Montana and the agriculturalist in the bill receives some of the contributions. The bill diminishes the definition of navigability from what the court case now says. There are two definitions of navigability, it includes any lands within the State of Montana and owned by the State of Montana. By explaining the definition of navigability, those streams under the broadened definition are included. The amendments on page 3 try to deal with the definition of flood. The flood water we are talking about is suggesting that we cannot define a navigable stream by the high water that we run on. One of the reasons the bill was late was that it tried to solve all the problems. It cannot do that. All it does is make a definition. It does not do some of the things suggested to the Legislature and the press. The language in the bill is not perfect but is the result of a lot of discussion.

Eugene Huntington was here on behalf of the Governor. The executive branch became aware that there was a great problem and is concerned because of the political divisions between sportsmen and land owners. They feel this is model legislation because of the compromises. It provides something for everybody. The best thing that

happened is the open communication. This legislation isn't drafted for one side or the other. He urged this committee to approve this legislation because if the Legislature is ever going to solve this problem, it could be now.

The following presented written testimony in support of the bill:

Jim Flynn, Department of Fish, Wildlife and Parks, Exhibit #5.  
Dennis Hemmer, Commissioner State Lands, Exhibit #6.  
Gene Chapel, cattle rancher, Vice President of the Montana Farm Bureau Federation, and representing that organization, Exhibit #7.  
Lorraine Gillies, rancher, Montana Farm Bureau Board member and appearing on behalf of her family and a number of Granite County ranchers, Exhibit #8.  
Willa Hall, League of Women Voters, Exhibit #9.  
James W. McDermand, President Medicine River Canoe Club, Exhibit #10.  
James D. Silva, Trout Unlimited, Exhibit #11.  
Richard Parks, on behalf of Dave Kumlien, President Fishing, Floating Outfitters Association of Montana, Exhibit #12.  
Robert J. Foukal, President and General Manager of Datel, Inc. Bozeman, Exhibit #13.

John Rich, Skyline Sportsmen, Butte, said their 700 members and other sportsmen, like himself, support the bill. It is a cooperation between land owners and sportsmen and an effort of both sides to compromise. He had some questions about amendments 6 and 7 and would like some clarification on manmade or natural obstructions as well as getting in and getting out of the waterways. Exhibit #14.

Having run out of time for further oral testimony from proponents, the following presented written testimony asking it to be made a part of the record:

Jack Atcheson, Butte  
Walter H. Carpenter, Great Falls  
George N. Engler, Wildlands & Resources Assn., Great Falls  
Frank Johnson, Missoula  
Arthur F. Kussman, Helena  
Tony Schoonen, President Skyline Sportsmen's Association  
Doug Smith, Sheraton Hotel, Billings  
Thomas M. Travis, Board of Directors FFOAM and alternate delegate  
Montana Outfitters Council  
Dick Clareest, Great Falls  
William KW Kanda, Great Falls  
Stanley D. Low, Great Falls  
Bill Bamas, Great Falls  
John Dehler, Great Falls

OPPONENTS:

Frank Grosfield, Exhibit #15.

Alexander Blewett, attorney from Great Falls, said he represents Mike Kerin in litigation on the Dearborn River. He told the committee

this legislation is necessary but at this point in time he would not recommend it. If the Supreme Court rules, there may be some need for legislation pro or con. The district courts have said we are going to change the law. He did not see one part of the bill as a compromise for farmers or ranchers. Once the Supreme Court rules, maybe it would be. Right now all it does is stress the rights of farmers and ranchers. Everyone is talking about rivers. What we are talking about in the bill, according to Blewett, is creeks, streams, riverlets or whatever you have that includes high water. In May or June it would mean whatever water you could navigate, so it is not even close to what you have in the Beaverhead or Dearborn rivers.

Proponents say there is a lot of benefit to fishing and recreation. It is beneficial not to have a prescriptive easement. It isn't a good concept to pass that for the farmer or rancher when you gave him an easement and now you are taking it away. The public would have a full easement to cross lands in this bill. You don't get a prescriptive easement when you have a public easement. Once you take away an easement, who cares if you have the land if you don't have the right to the land. He didn't see anything gained by having a title except you get to pay the taxes. He didn't think the Legislature should be able to change what the Supreme Court has tied up in litigation. He didn't know of this Legislature ever passing a law where the taking is so obvious. Taking without compensation, he called it. If you float, you have an easement. There is a fencing problem because if you fence you are liable. In this bill people have the right to float in fast water and they will be going fast. You have then violated the statute by putting a fence there. When you limit the liability there is no change from the Montana law that he could see. It wouldn't make any difference if someone walks across this land now. You don't owe them any more. But you put a fence down at the end of the hill and you will be subjecting them to liability.

The high water mark is already Montana law. You will have law enforcement problems. Now you have lakes and reservoirs. You have lakes and streams that feed these reservoirs. These are navigable and no longer owned by the land owner. Farmers and ranchers who have water rights have vested rights. Both sides will say you can't float because we own these water rights. What have sportsmen given up? By law they do not have the right to float these streams except on navigable rivers. Navigable under the federal rule. You can fish on high waters. When you change this law you change everything the Legislature has done to date and create a lot of new problems. He could see if the Supreme Court ruled one way or another there will be some need for litigation. There are so many problems with the bill, he said. You don't know who will be responsible for taking without compensation. Short testimony attached as Exhibit #16.

Ted Lucas, Highwood, Exhibit #17.

Mark Knops, Park County Legislative Association, Exhibit #18.

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Mrs. Arch Allen, on behalf of herself and husband, Exhibit #19.  
Bill Morse, Stillwater and Carbon County ranchers, Exhibit #20.  
Ralph Holman, land owner from Cloud, Exhibit #21.

J. B. Anderson, rancher, Big Hole Valley, felt the focus would merely be changed from rivers to streams to large streams. It does not include navigability of a stream. It does not have to be floatable ten months out of the year. For these reasons he would not support the bill.

As there was no further time for opponents, the following submitted written testimony and asked it be made a part of the record:

Lorents Grosfeld, Agricultural Preservation Assoc., and Sweet  
Grass Preservation Association  
Virge Holliday, Wilsall  
Doran Lynch, Highwood  
Barbara H. Morse, Big Timber  
Rex Rieke, Ox Bow Ranch, Billings  
Bonnie and Dock H. Workman, Norris  
Ron Schofield, Helena

Senator Boylan asked Mr. Bluit if, in the cases the courts held the stream navigable if you can float, and the law passed, what would be the result. Mr. Bluit answered that they would be asking the Supreme Court to step down from their ruling and the Legislature would have decided those cases.

Senator Aklestad asked Mr. Bluit if they would have less liability under this bill. Mr. Bluit said they wouldn't. There is a greater liability under the fencing concept. You can't willfully hurt anybody. If you have a pit or other hazzard on your property, you better warn the person before he goes out there. This bill creates more liability.

Boylan - In the nuisance cases in court, like the cow having a calf, or a structure or anything like that - the farmer isn't liable. Bluit answered that that is the situation now, but it didn't cover the fisherman on the stream. This doesn't change anything, it just made it worse.

Senator Graham asked Representative Marks if runoff water was considered navigable. He could just see someone coming down in an 8 foot canoe. Representative Marks called his attention to the Bennett decision of navigability for recreational use. (Transcript attached as Exhibit #22). He said this should be determined by state law. You have signed a water right on that and cannot be intimidated by this legislation.

Graham thought if you gave up the right you will be challenged on it even in you quote Bennett's decision. Marks said that, until Bennett's ruling is overturned, this is the law we are obligated to go under.

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Graham wondered if Representative Marks didn't think they were giving up quite a little.

Representative Marks said if you kicked someone off, if they come back you can kick them off again. Then if they come back you can take them to court. If he came back a second time and says he will take you to court, then you have a problem. He felt this settles it issue by issue and you have more protection than by the Bennett decision.

Senator Lee questioned Mr. Chappel about the Farm Bureau's opposition. He found it hard to believe 5,000 members supported the bill. Mr. Chapel said the members have policies supporting points within the bill. It is lined out in their policies that they address these points.

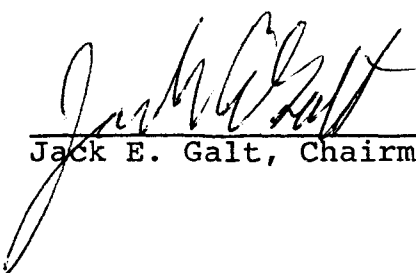
Representative Marks, in closing, said he had seen water bills come before the Legislature many times. He presented this bill in a manner he felt was in the best interest of landowners and the public. He did not think the Legislature should fool around with this. It has been mentioned the Legislature has failed to act. They are now trying to do that and now they are being criticized for acting. There has been some talk from opponents that they favor SB 347 and SB 348. SB 347 is in the House now and subject to he heard. SB 348 was tabled in the Senate and is not going anywhere. That is one of the reasons HB 888 was brought up.

In regard to liability, relative to landowners' liability, the question about fencing is a vested right, but you cannot harass. You have to put the fence up with the intent to keep cattle out. You cannot put the fence up to harass people.

Regarding the question about whether irrigation canals and ditches should be exempt, he asked the committee provide amendments to preclude man made ditches and canals.

He thinks this legislation is good. You can look to the actions of the Supreme Court in many states and, as to navigability, the landowner has yet to win the first one.

There being no further business, the hearing adjourned.

  
\_\_\_\_\_  
Jack E. Galt, Chairman

ROLL CALL

AGRICULTURE COMMITTEE

48th LEGISLATIVE SESSION - - 19 83

Date 3-11-83

NAME	PRESENT	ABSENT	EXCUSED
GALT, Jack E.	✓		
KOLSTAD, Allen C.	✓		
AKLESTAD, Gary C.	✓		
OCHSNER, J. Donald	✓		
GRAHAM, Carroll	✓		
BOYLAN, Paul F.	✓		
CONOVER, Max	✓		
LANE, Leo	✓		
LEE, Gary	✓		

Each day attach to minutes.

SENATE Agriculture COMMITTEE

BILL HB 888

VISITORS' REGISTER

DATE 3-11-83

NAME	REPRESENTING	BILL #	(check one)	
			SUPPORT	OPPOSE
FM GANNON	SELF	888		✓
<del>Gene H. ...</del>	<del>...</del>	<del>888</del>	✓	
John Sully	Self	888	✓	
JERRY MANLEY	BOTTE	888	✓	
Bob DeFever	Self	888	✓	
Bob BUGNI	SELF - <del>...</del> E. ALN	888	✓	
Frank Johnson	Self	888	✓	
Bill Asher	APA - SCPA - PCA	888		✓
R.P. ...	self			✓
DAN CAUBLE	self	888	✓	
DAN MORTAG	self	888	✓	

SENATE Agriculture COMMITTEE

BILL HB 888

VISITORS' REGISTER

DATE 3-11-83

NAME	REPRESENTING	BILL #	(check one)	
			SUPPORT	OPPOSE
<u>Don Welles</u>	<u>Self Bleeker Co 4B</u>	<u>888</u>		<input checked="" type="checkbox"/>
<u>DON CIANCA</u>	<u>SELF</u>	<u>888</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<u>Ron S...</u>	<u>Hell...</u>			
<u>John Fich</u>	<u>Self Skyline Sportsman</u>		<input checked="" type="checkbox"/>	
<u>Randall Waterman</u>	<u>USGA</u>	<u>888</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<u>W. Christman</u>	<u>Rancher</u>			<input checked="" type="checkbox"/>
<u>Frank D...</u>	<u>Sheldon Rancher</u>			<input checked="" type="checkbox"/>
<u>DORAN H. LYON</u>	<u>HARRIS Lumber &amp; Cattle Co</u>	<u>888</u>		<input checked="" type="checkbox"/>
<u>James J. Reese</u>	<u>RIVER FRONTIER</u>	<u>888</u>		<input checked="" type="checkbox"/>
<u>Clifford L...</u>	<u>Skyline Sportsman</u>	<u>888</u>	<input checked="" type="checkbox"/>	
<u>Joe Johnson</u>	<u>Citizen</u>		<input checked="" type="checkbox"/>	
<u>Bill Morse</u>	<u>St. Louis Park Ranchers</u>	<u>PPJ</u>		<input checked="" type="checkbox"/>
<u>Barbara H. Morse</u>	<u>Self</u>	<u>888</u>		<input checked="" type="checkbox"/>
<u>Ralph Holman</u>	<u>Self</u>	<u>888</u>		<input checked="" type="checkbox"/>
<u>Allen Schmitt</u>	<u>Lawyer</u>	<u>888</u>		<input checked="" type="checkbox"/>
<u>Richard Parks</u>	<u>FFUAM</u>	<u>888</u>	<input checked="" type="checkbox"/>	
<u>Thomas M. Travis</u>	<u>FFOAM</u>	<u>888</u>	<input checked="" type="checkbox"/>	
<u>J.B. ANDERSON</u>	<u>RANCHER-BIG HOLE LAKE</u>	<u>888</u>		<input checked="" type="checkbox"/>
<u>W.L. Staudenmeyer</u>	<u>RANCHER BEAVERHEAD</u>	<u>888</u>		<input checked="" type="checkbox"/>
<u>Ed Malesich</u>	<u>RANCHER BEAVERHEAD</u>	<u>888</u>		<input checked="" type="checkbox"/>
<u>Bonnie Workman</u>	<u>Rancher - Madison</u>	<u>888</u>		<input checked="" type="checkbox"/>
<u>Doch Workman</u>	<u>Rancher - Madison</u>	<u>888</u>		<input checked="" type="checkbox"/>
<u>R.R. Ellis</u>	<u>Self</u>	<u>888</u>		<input checked="" type="checkbox"/>



SENATE AGRICULTURE COMMITTEE

BILL HB 888

VISITORS' REGISTER

DATE Mar. 11, 1983

NAME	REPRESENTING	BILL #	(check one)	
			SUPPORT	OPPOSE
MARK KNOPS	PARK COUNTY LEGISLATIVE	888		✓
DICK CHAREST	SELF	888	✓ without amendments	
John James Kelly	SELF	888		✓
Marquerita Fulker	Self	888		
Horace Fulker	Self	888		
HORACE MORGAN	self	888		✓
Mrs. Arch Allen	Self	HB 888		✓
Stan Milesnick	Self	HB 888		
James W. McDermand	Medicine River Canoe Club	HB 888	✓ without amendments	
Margaret C. Cantley	Self	888	without amendments	
Howard R. Dove	Self	888	without amendment	
Lillian B. Dove	Self	888	without amendment	
Lucas Cantley, Jr	SELF	888	✓ without amendments	
Jo Brunner	W.I.F.E	888		
D.L. McDermand	self	888	with out amendments	
Walter H. Carpenter	self	888	with out amendments	
Franklin Crostfield	VVETA	888		✓
VIRGE HOLLIDAY	SELF	888		✓
Yvonne Holliday	self	888		✓
Nancy McElhattan				✓
Russell Dime	Self	888	✓	
Benjamin Goodwin	Self	888	✓	
Alexander Blewett	Curran-Hildreth & Other Ranchers	888		✓
Gordon Donahue	APA	888	✓	✓

HB  
BILL 888

SENATE AGRICULTURE COMMITTEE

VISITORS' REGISTER

DATE 3/11/83

NAME	REPRESENTING	BILL #	(check one)	
			SUPPORT	OPPOSE
Willa Hall	League of Women Voters	HB 888	✓	
Lorents Gnsfeld	APA, SGPA	HB 888		✓
James [unclear]	T. U. Butte	H 888	✓	
Jim Silva	T U Butte	H 888	✓	
ALVAH F. HUGHES	GTF	H 888	✓	
Robert L. KORB	G. Falls	H 888	✓	
Robert J. Foukal	Bozeman	H 888	✓	
Dean R. Larson	Bozeman	H 888	✓	
Ted [unclear]	Highwood	H 888		✓
Dennis Hemmer	Dept of State lands	H 888	✓	
Gam Schneider	Great Falls	H 888	✓	
Lin Schneider	GREAT FALLS	H 888	✓	
George [unclear]	"	H 888	✓	
E. Carroll Speck	self	"	✓	
Doug Smith	SHERATON GREAT FALLS	H 888	✓	
R. K. VERNON	SELF	H 888	✓	
Ken Knudson	MT Wildlife Fed	H 888	✓	
Karen Zackheim	self	HB 888	✓	
Hugh Zackheim		HB 888	✓	
Melvin E. Dawson	Self	H 888		✓
Jim FLYNN	DEPT FWP	HB 888	✓	
Rex Ricks	Self	H 888		✓
Lorraine [unclear]	Self	H 888	✓	
Gene Chapel	FARM Bureau	HB 888	✓	

Exhibit #1  
3-11-83  
Agric.

Mr. Clem. I am Rep Bob Weaver

Rep West #10 chief sponsor of HB 888.

HB 888 is an effort to clarify

the rights and ~~and~~ privileges of both the  
recreational users ~~and~~ <sup>certian</sup> streams and

at the same time recognizing the landowners  
rights of the land beneath <sup>and adjacent</sup> the streams. ~~and~~

An view of the recent court actions relative  
to ~~the~~ ~~to~~ navigability of ~~those~~ in those cases it

<sup>statute</sup> appears necessary to adopt a compromise  
which will develop some <sup>definitions</sup> ~~clarifications~~ and  
thus avoid worsening of the ~~the~~ relationship  
between recreation users and landowners.

I ~~am~~ ~~am~~ am a landowner

~~project~~ and not a floater and I may be affected by this legislation. I would not ~~for~~ introduce this legislation if I <sup>truly</sup> thought it would not be in the best interests of landowners in the long ~~the~~ term, recognizing the broad impacts of the court decisions in the cases I alluded to previously. Likewise, I believe floaters do have rights to certain recreational opportunities on certain streams.

I offer to you some amendments to HB 888 which I ask you to incorporate into the bill. My remarks to HB 888 will be to the bill including the amendments which ~~are~~ clarify and clean up some of the concerns which have

been expressed to me subsequent to, the passage  
 of AB 888 by the House of Rep.

Sec I defines state ownership - existing law

Sec II provides that the title of the  
 of stream beds,  
 land, remains with the adjoining landowner

except when the question of navigability has been  
 determined under the federal definition.

Sec III defines navigability ~~before 1850~~

NAME \_\_\_\_\_ BILL NO. HB 888  
ADDRESS \_\_\_\_\_ DATE 03/10/83  
WHOM DO YOU REPRESENT \_\_\_\_\_  
SUPPORT \_\_\_\_\_ OPPOSE \_\_\_\_\_ AMEND XXX

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Page 2, line 9.  
Strike: "WHEN"  
Insert: "EVEN THOUGH"
2. Page 2, lines 12-13.  
Following: "WATER"  
Strike: "HAS BEEN DECLARED MEANDERED BY GOVERNMENT SURVEY OR DETERMINED AT ANY TIME TO BE"  
Insert: "IS"
3. Page 3, line 9.  
Following: "FACT."  
Insert: "STREAM FLOWS DURING FLOOD WATER PERIODS ARE NOT CONSIDERED IN EVALUATING WHETHER A STREAM IS CAPABLE OF BEING NAVIGATED."
4. Page 3, line 15.  
Strike: "kayak,"
5. Page 4, line 3.  
Following: "other"  
Insert: "man-made"
6. Page 4, line 6.  
Following: "the"  
Insert: "man-made"
7. Page 4, line 7.  
Following: "below the"  
Insert: "man-made"
8. Page 5, line 4.  
Strike: "land"  
Insert: "navigable stream or land bordering or underlying"

HOUSE BILL NO. 888

INTRODUCED BY MARKS, NEUMAN, VINCENT,  
REAM, DEVLIN, BOYLAN, GALT, SWITZER, JACOBSON

A BILL FOR AN ACT ENTITLED: "AN ACT TRANSFERRING--TO--THE  
ADJOINING--LANDOWNERS CLARIFYING TITLE TO THE BED OF A  
NAVIGABLE STREAM BETWEEN--THE--LOW-WATERMARKS; ALLOWING PUBLIC  
USE OF NAVIGABLE STREAMS BY CERTAIN CRAFT; LIMITING THE  
LIABILITY OF CERTAIN LANDOWNERS; MAKING USERS OF CERTAIN  
LAND LIABLE FOR DAMAGES; PROVIDING THAT A PRESCRIPTIVE  
EASEMENT CANNOT BE ACQUIRED BY RECREATIONAL USE WHEN  
PERMISSION HAS BEEN GRANTED; AMENDING SECTIONS 70-1-202,  
70-16-201, 70-19-405, AND 85-1-112, MCA; AND PROVIDING AN  
IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 70-1-202, MCA, is amended to read:

"70-1-202. Property of the state -- what included. The  
state is the owner of:

(1) all land below the water of a navigable lake or  
stream;

(2) all property lawfully appropriated by it to its  
own use;

(3) all property dedicated or granted to the state;  
and

(4) all property of which there is no other owner."

Section 2. Section 70-16-201, MCA, is amended to read:

"70-16-201. Owner of land bounded by water. Except where the grant under which the land is held indicates a different intent, the owner of the land, when it borders upon a navigable lake ~~or-stream~~ takes to the edge of the lake ~~or-stream~~ at low-water mark; when it borders upon a navigable stream or any other water, the owner takes to the middle of the ~~lake-or~~ stream WHEN <sup>①</sup> even though NAVIGABILITY HAS BEEN DETERMINED USING THE DEFINITION IN 85-1-112(3), TITLE IS NOT VESTED WITH THE ADJACENT LANDOWNER WHENEVER THE BODY OF WATER HAS BEEN-DECLARED-MEANDERED-BY-GOVERNMENT-SURVEY-OR-DETERMINED-AT-ANY TIME-TO-BE <sup>②</sup> is NAVIGABLE UNDER THE FEDERAL NAVIGABILITY DEFINITION."

Section 3. Section 85-1-112, MCA, is amended to read:

"85-1-112. Navigable waters. (1) All lakes wholly or partly within this state which have been meandered and returned as navigable by the surveyors employed by the government of the United States and all lakes which are navigable in fact are hereby declared to be navigable and public waters, and all persons shall have the same rights therein and thereto that they have in and to any other navigable or public waters.

(2) All rivers and streams which have been meandered and returned as navigable by the surveyors employed by the



0888/02

government of the United States and all rivers and streams which are navigable in fact are hereby declared navigable.

~~(3)(a)-Members-of-the-public-have-the-right-to-navigate-and exercise-the-instance-of-navigation-in-a-lawful-manner-at-any point-below-the-ordinary-high-watermark-on-waters-of-the-state that-are-capable-of-being-navigated-by-oar,-paddle,-or-motor propelled-craft-~~ (A) ALL WATERS OF THE STATE THAT ARE CAPABLE OF BEING NAVIGATED BY A CRAFT AS DEFINED BY 85-1-113(3) (B) ARE NAVIGABLE IN FACT. Stream flows during flood water periods are not considered in evaluating whether a stream is capable of being navigated. MEMBERS OF THE PUBLIC HAVE THE RIGHT TO NAVIGATE AND EXERCISE THE INSTANCE OF NAVIGATION IN A LAWFUL MANNER AT ANY POINT BELOW THE ORDINARY HIGH WATERMARK ON ALL WATERS OF THE STATE THAT ARE NAVIGABLE IN FACT.

(b) For purposes of this section, "craft" means a canoe, kayak, inflatable boat, skiff, or any other boat designed to be propelled by oar, paddle, or motor. Craft does not include a float-fishing tube, inflatable tire tube, air mattress, or other floatable object not designed for use as a craft to be propelled by oar, paddle, or motor.

(c) for purposes of this section, "ordinary high watermark" means the line that water impresses on the soil by covering it for sufficient periods of time to deprive the soil of its vegetation and destroy its value for agricultural purposes.

(4) Nothing in this section authorizes the entering on or

crossing over private land at any point other than within the ordinary high watermark of navigable streams, except that where irrigation dams or other MAN-MADE obstructions interfere with the navigability in fact of a stream, members of the public may remove themselves and their craft from the stream and walk or portage that craft around the MAN-MADE obstruction, reentering the stream immediately below the MAN-MADE obstruction at the nearest point where it is safe to do so."

NEW SECTION. Section 4. Limitation of liability of landowner. (1) An owner or lessee of land bordering or underlying a navigable stream is not required to keep the premises safe for entry by others for recreational purposes or, except as provided in [section 4], to give any warning of a dangerous condition, use, structure, or activity on the premises to persons entering for such purposes.

(2) An owner or lessee of land bordering or underlying a navigable stream who either directly or indirectly invites or permits without charge a person to use the land for recreational purposes does not thereby:

(a) extend any assurance that the premises are safe for any purpose;

(b) confer upon that person the legal status of an invitee or licensee to whom a duty of care is owed; or

(c) assume responsibility or incur liability for any injury to person or property caused by an act or omission of

the person using the land.

(3) This section does not apply to an owner or lessee of land bordering or underlying a navigable stream who for compensation permits the ~~land~~<sup>§</sup> navigable stream or land bordering or underlying to be used for recreational purposes OR WHO CREATES AN OBSTRUCTION TO THE NAVIGATION OF THE STREAM FOR THE HARASSMENT OF PERSONS NAVIGATING THE STREAM.

NEW SECTION. Section 5. User liability for damages. A person who uses the land bordering or underlying a navigable stream for recreational purposes, with or without permission, is liable for any damage to property, livestock, or crops that he causes while on the land.

NEW SECTION. Section 6. Prescriptive easement -- not acquired by recreational use. (1) Prescriptive easement means a right to use another's property that is acquired by open, notorious, adverse, and continuous use for a period of 5 years.

(2) A prescriptive easement FOR NAVIGATION UPON A STREAM, RIVER, OR LAKE cannot be acquired through use of or entry upon land or water for recreational purposes when that use or entry was acquired by permission of the landowner or his agent OR OCCURRED WITHOUT OBJECTION BUT WITH THE KNOWLEDGE OF THE LANDOWNER OR HIS AGENT.

Section 7. Section 70-19-405, MCA, is amended to read:

"70-19-405. Title by prescription. Occupaney Except as

provided in [section 7], occupancy for the period prescribed by this chapter as sufficient to bar an action for the recovery of the property confers a title thereto, denominated a title by prescription, which is sufficient against all."

NEW SECTION. Section 8. Codification instruction. Sections 4 and 5 are intended to be codified as an integral part of Title 85, chapter 1.

NEW SECTION. Section 9. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

SECTION 10. EFFECTIVE DATE. THIS ACT IS EFFECTIVE ON  
PASSAGE AND APPROVAL.

-End-

Ex H 3  
3/11/83  
agric

HOUSE BILL NO. 888

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

I AM TED NEUMAN, REPRESENTATIVE DISTRICT 33. I RISE AS A CO-SPONSOR IN SUPPORT OF HOUSE BILL 888, A BILL TO ALLOW FLOATERS THE USE OF NAVIGABLE RIVERS AND STREAMS IN MONTANA. HB 888 ALSO GUARANTEES THAT CERTAIN RIGHTS AND PRIVILEGES REMAIN WITH LANDOWNERS' LIABILITY WITH REGARD TO FLOATERS AND OTHER RECREATIONISTS. HB 888 ALSO GUARANTEES THAT ALL RIGHTS OF TITLE REMAIN WITH THE LANDOWNERS SAVE THE RIGHT OF RECREATIONISTS TO FLOAT THE NAVIGABLE WATER.

SECTION I OF THE BILL AMENDS 70-I-202, MCA., AND IS INTENDED TO MAKE CLEAR THAT THE TITLE TO THE LAND BETWEEN THE ORDINARY HIGH-WATER MARKS OF NAVIGABLE RIVERS AND STREAMS REMAIN WITH THE ADJACENT LANDOWNERS WHEN A STREAM IS DECLARED NAVIGABLE, USING THE RECREATIONAL TEST DEFINED IN SECTION 85-I-112, MCA. IT IS THE INTENT OF THIS ACT TO ALLOW RECREATIONISTS TO FLOAT THE NAVIGABLE RIVERS AND STREAMS--BUT DOES NOT GIVE THEM ANY OTHER RIGHT NOT PREVIOUSLY GRANTED UNDER MONTANA LAW TO THE USE OF THE STREAM BANKS BELOW THE ORDINARY HIGH WATER MARKS OF THE NAVIGABLE STREAMS. SPECIFICALLY, ANGLERS OF MONTANA HAVE THE RIGHT TO WALK UPON THE BANKS OF NAVIGABLE STREAMS AND THAT RIGHT SHOULD BE EXTENDED ALSO TO FLOATERS. ] THIS ACT DOES NOT, HOWEVER, ALLOW RECREATIONISTS OR OTHERS TO USE THE LANDS BETWEEN THE ORDINARY HIGH WATER MARKS FOR SUCH ACTIVITIES AS HUNTING, TRAPPING, SNOWMOBILING, CAMPING, MOTORCYCLE RIDING, CROSS COUNTRY SKIING, HIKING, OR OTHER RECREATIONAL OR BUSINESS ACTIVITIES. SPECIFICALLY, SNOWMOBILERS SHALL NOT, WITHOUT THE PERMISSION OF THE ADJACENT LANDOWNERS, BE ALLOWED TO RIDE UPON THE SHORE OR THE ICE OF A NAVIGABLE RIVER OR STREAM.

NEITHER SHALL FLOATERS OR OTHERS BE ALLOWED TO DRIVE VEHICLES BELOW THE ORDINARY HIGH WATER MARKS EXCEPT WHERE PUBLIC ACCESS IS PROVIDED OR PERMISSION IS RECEIVED FROM ADJACENT LANDOWNERS.

NAVIGABLE, IN FACT, AS USED IN THIS ACT MEANS THAT A COURT OF COMPETENT JURISDICATION MUST BY FINAL DECREE DECLARE A RIVER OR STREAM, OR PORTION THEREOF, TO BE NAVIGABLE FOR PURPOSES OF THIS ACT. IT IS THE INTENT OF THIS ACT THAT THE ORDINARY HIGH WATER MARK SHALL BE THE AREA BELOW THE MARK WHERE THE WATER REMAINS FOR SUCH TIME AS TO UNDER NORMAL CIRCUMSTANCES PROHIBIT VEGETATION FROM GROWING, BUT DOES NOT INCLUDE FLOOD CHANNELS OR OTHER CHANNELS THAT MAY FROM TIME TO TIME CARRY THE FLOW OF A RIVER OR STREAM, EVEN THOUGH THESE FLOOD CHANNELS DO NOT HAVE VEGETATION GROWING UPON THEM. TAKE FOR INSTANCE A RIVER OR STREAM THAT HAS DURING A FLOOD SCoured A LARGE AREA. RECREATIONALISTS OR OTHERS SHALL NOT HAVE THE RIGHT TO GO UPON AN AREA ANY GREATER THAN THE STREAM WOULD NORMALLY IMPRESS DURING ITS ORDINARY HIGH WATER PERIOD, EVEN THOUGH NO VEGETATION MAY GROW IN THESE SCoured AREAS.

WHERE AN IRRIGATION DAM OR OTHER MAN-MADE OBSTRUCTION, INCLUDING A FENCE OR BRIDGE, PROHIBIT THE SAFE PASSAGE OF A FLOATER IN HIS USE OF THE LAWFUL PRACTICE OF NAVIGATION, HE MAY CROSS OVER THE LAND ABOVE THE HIGH WATER MARK TO GET AROUND THE OBSTRUCTION AND ENTER THE STREAM BELOW THE OBSTRUCTION AT THE NEAREST SAFE PLACE.

SECTION 5 OF THE BILL SPELLS OUT THE LIABILITY OF PERSONS WHO USE THE LAND ADJACENT TO OR UNDER NAVIGABLE STREAMS BELOW THE HIGH WATER MARK FOR RECREATIONAL PURPOSES. THE INTENT IS THAT ANY DAMAGE TO PROPERTY, LIVESTOCK OR CROPS WHILE PRACTICING THE LAWFUL RIGHT OF NAVIGATION UNDER THIS ACT SHALL BE THE RESPONSIBILITY OF THE RECREATIONIST. THIS INCLUDES CUTTING OF FENCES,

UNCONTROLLED FIRES, LITTERING, DAMAGE TO VEGETATION, OR OTHER SUCH ACTS THAT WOULD DEFACE OR DETRACT FROM THE NORMAL BEAUTY OF THE SURROUNDING OR THE NORMAL OPERATIONS OF THE ADJACENT LANDOWNER.

MR. CHAIRMAN, I REQUEST THAT THIS TESTIMONY AND THAT OF REPRESENTATIVE MARKS BE WRITTEN IN THE RECORD AS A GUIDE IN ANY FUTURE APPLICATION OF THIS ACT. THANK YOU.

REP. TED NEUMAN

TN/DH

Ex #4  
agric



# WIFE Women Involved In Farm Economics

NAME OF BRUNNER BILL NO. HB 888  
 ADDRESS 567 3RD ST TERRELLA DATE Mar 11, 1983  
 SUBJECT WOMEN INVOLVED IN FARM ECONOMICS  
 SUPPORT  OPPOSE  ABSENT

COMMENTS:

Mr. Chairman, members of the committee, my name is Jo Brunner and I wish to speak today for the members of the Women Involved in Farm Economics organization.

Mr. Chairman, the members of our organization wish to support HB 888. While our members would certainly prefer to have complete control of our lands and the waters running through them, we recognize the fact that this is 1983, not 1893, and our state and our citizenship have progressed since that time.

W.I.F.E. does not wish to throw our lands open to invasion by floaters, hunters, picnickers or to encourage vandilism or enroachment on private property. We know that the same irrisponsible people who committed such offenses in the past may perhaps continue to do so in the future. And we recognize that some of our own industry may not be in complete accordance with this bill; however we do not look on the passage of HB as giving our lands away, or our rights away.

We are of the opinion that if you are forced into a game, you had better help make the rules of that game, or you might find yourself at more of a disadvantage than had you not participated.

We are in agreement of definitions in this bill concerning high water mark, crafts and the changes in the existing law as defined here.

We believe that this bill will protect our privacy on our lands and while we recognize that it will certainly be a nuisance and a hindrance to many of our operations, and to many of our people, costly because of the change in operations needed, we ~~are hopeful~~ <sup>believe this legislation will encourage</sup> that those using the waters running through and over our lands will also recognize the problems we are faced with, and make efforts to encourage even more than in the past, good sportsmanship and beneficial relationships with the landowners.

We support the new sections to this law, specifically Sections 4-5-6. Weask concurrance of HB 888. <sup>the amendments offered by Rep. Mack,</sup>

"Hell has no fury like a woman scorned"



Ex # 5  
agric

HB 888

Testimony presented by Jim Flynn, Department of Fish, Wildlife & Parks

March 11, 1983

The Montana Department of Fish, Wildlife and Parks supports House Bill 888. We feel embodied in this legislation is the common ground needed by all sides presently involved in this issue.

This bill gives assurance that rivers which can be floated in the traditional context of that term will be accessible to the public. The definition of "craft" is a reasonable one and we believe it is fair to recreationists.

The definition of "high water" mark is likewise reasonable and we feel that it will generally be a discernable mark in the field.

Our Department, and we believe most recreationists, recognize the needs landowners have for irrigation diversions, fences and bridges. The provision that accommodates portaging around these structures is reasonable and fair.

In the case of "prescriptive easements" our Department agrees with the language in this bill. We appreciate the indulgence of many Montana landowners who allow recreational use of their property. This generosity cannot and should not be taken for granted. It certainly should never work to the disadvantage of the property owner. This bill clarifies that this will not occur.

In conclusion, we feel House Bill 888 clarifies key stream access issues in a fair and equitable manner. We urge its passage.

EX #6  
agric  
3/11/83

DEPARTMENT OF STATE LANDS TESTIMONY ON HOUSE BILL 888  
BEFORE THE SENATE AGRICULTURE COMMITTEE

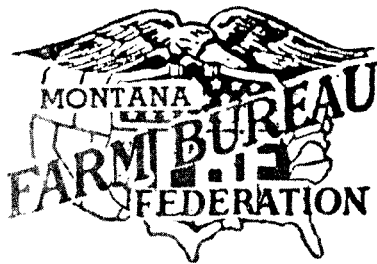
The Department of State Lands supports House Bill 888 as amended and passed by the House. The bill as originally introduced was unconstitutional because it transferred the ownership of the beds of navigable streams from the state to adjoining owners. The bill, as amended on page 2, lines 10 through 14 makes it clear that title to stream beds is not transferred and that existing law concerning state ownership of the beds of navigable streams is not changed.

When Montana became a state it also, pursuant to the equal footing doctrine, became the owner of the beds of all navigable streams. Navigability for title or ownership purposes is determined by a federal commercial use test. No determination has yet been made as to whether many streams meet the federal test. Thus, the amendment provides that title is not vested with adjacent landowners if the stream is determined to be navigable, at any time under the federal test. It is important to understand that the intent of the amendment to section 70-16-201 is that the determination may be made either previous to passage of this bill or at some time in the future.

The Department of State Lands supports House Bill 888 as amended.

*James R. [unclear]*  
[unclear]  
[unclear]

E-2 #7



# MONTANA FARM BUREAU FEDERATION

502 SOUTH 19th

Dial 587-3153

BOZEMAN, MONTANA 59715

DATE March 11, 1987

NAME GENE CHAPEL BILL NUMBER HB 888

SUPPORT XXXXX OPPOSE \_\_\_\_\_ AMMEND \_\_\_\_\_

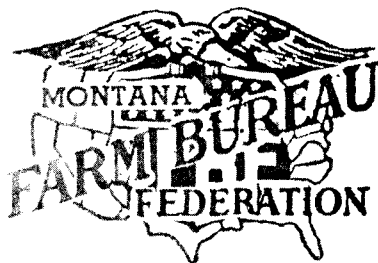
MR. CHAIRMAN AND MEMBERS OF THE SENATE AGRICULTURE COMMITTEE:

My name is Gene Chapel. I own and operate a cattle operation in the foothills of the Snowy Mountains in Fergus county. I'm State Vice President of the Montana Farm Bureau Federation. I'm representing that Agriculture organization today in support of HB 888.

We have over 5000 member families that elect 140 delegates to convene each year and set our policy that determines what we feel is best for Agriculture in Montana. We have policy that supports HB 888 from 37 organized counties. We have 1 county Farm Bureau, namely the Beaverhead County Farm Bureau, that has sent in an official dissention to our policy where it applies to HB 888.

Our delegates clearly stated that they needed legislation enacted that would define and clarify Navigable Streams. They asked for legislation that would protect their property rights especially in light of the fact that they have been paying the taxes on these stream beds.

HB 888 does define the criteria that would be used in future court cases to define Navigable streams. It does ensure that the land stay in psssession of adjoining landowners.



# MONTANA FARM BUREAU FEDERATION

502 SOUTH 19th

Dial 587-3153

BOZEMAN, MONTANA 59715

DATE March 11, 1983NAME GENE CHAPELBILL NUMBER HB 888SUPPORT XXXXOPPOSEAMMEND

What this piece of legislation does is ensure a good neighbor policy. It relieves a land owner of liability that may be incurred by recreationist's. It preserves the right of landowners to allow access across his land without having to worry about recreationist's acquiring prescriptive easement because of their continued use. It gives the landowner the right to create an obstruction such as fence's, bridges or other management practices that is necessary to run a good operation, and eliminates the danger of a Recreationist dragging him into court because of the inconvenience or liability that the obstruction has caused.

By preserving the ownership of the land in the operator's control vs. state control, he will keep his deeds intact for mineral or oil exploration and not have to worry about fee's being charged for his use of the waterway.

The bill clearly states the criteria used for determining navigable streams both from the type of craft that the stream must be capable of floating to the definition of the high water mark.

The section of the bill dealing with lakes or meandering streams is nothing new. Opponents of HB 888 may try to make this section an issue but this section has been law since the 1930's



# MONTANA FARM BUREAU FEDERATION

502 SOUTH 19th

Dial 587-3153

BOZEMAN, MONTANA 59715

DATE March 11, 1983

NAME GENE CHAPEL

BILL NUMBER HB. 888

SUPPORT X

OPPOSE

AMMEND

Because of the recent decisions by the two district court cases which clearly state that if a stream will float a 2 x 6 and you can dangle a fish line in the water then it is navigable and belongs to the state. We need something such as HB 888. Property owners cannot take the chance of this criteria holding up if they want to continue viable operations.

The legitimate recreationist will have to admit that their concerns have been addressed and their continued use of these waterways are being protected simply by using common sense and practicing a good neighbor policy.

By and large the majority of landowners do not object to recreationist's using of the waterways so long as they do not have to give up the management practices that they need to be good operators. All we ask in Agriculture is to help us protect our basic property rights and let us do what we know best,--- Feed the World,--- without undo harassment from the public and government.

We wish to thank the authors and sponsors of HB 888 for taking on a controversial subject and we are asking this committee for a DO PASS recommendation and continuing support on the floor.

Thank You.

Gene Chapel, State Vice President

agric  
Et # 8 3/11/51

TESTIMONY IN SUPPORT OF HB 888

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

For the record, I am Lorraine Gillies, rancher, Montana Farm Bureau Board Member, and today I speak on behalf of my family and also a number of Granite County ranchers who, together, own approximately 50,000 acres in the Rock Creek and Flint Creek Drainages. We speak in support of HB 888 as a reasonable approach to a problem that is causing irreparable damage to the landowner-recreationist relationship. We feel that this bill, although a compromise, secures for the landowner his constitutional right to the land on which he has paid taxes.

The clear definition of "navigable" and "high water mark" in section (3) should alleviate many fears of unreasonable interpretation. Sections (4) and (5) dealing with the responsibility and liability of both recreationist and landowner indicate a sincere effort on parties concerned to resolve differences in a reasonable manner.

Although we, as agriculturists, feel this bill is a concession on some points, we are willing to work toward reasonable resolution of access problems.

Thank you.

We urge passage of this bill



HB 888 Senate Agriculture hearing Mar. 11

testimony by

League of Women Voters of Montana

The rights of both the land owner and recreationalist must be protected. We believe HB 888 will help. The League is a strong supporter of the Montana Constitution which states that the waters of Montana belong to all the people and also that recreation is a beneficial use of those waters.

This bill may not be perfect but it clarifies navigability, the land owner's and recreationalist's liability and protects the land owner from prescriptive easment by recreation. We endorse HB 888 as written and urge the committee to do the same.

Willa Hall  
 Water Chairman  
 League of Women Voters

March 11, 1983

Chairman Galt & members of the Committee  
Senate Agricultural Committee  
Helena, Montana

I'm speaking today on behalf of the members of the  
Medicine River Canoe Club.

We support House Bill 888 in its present form. Many  
people, representing both landowners and recreationists,  
have worked hard to produce this fair and reasonable  
compromise bill. We feel that it protects the rights  
of both groups.

Our Club is very aware of the apprehension that is felt  
by some landowners towards the recreationists. H.B. 888  
will help alleviate these conditions by defining the  
parameters of the recreationists and, at the same time,  
reinforcing the rights of the landowners.

One of our primary goals as a Club is education; not  
only in the skills of canoeing but also by promoting  
respect for the land and landowner. We also abhor  
littering, trespassing, and vandalism. These infractions  
by a few only hurt our image as a responsible group.

Most of our members are city dwellers; businessmen,  
construction workers, and housewives. This does not,  
however, mean that we don't love and respect the out of  
doors. In fact, it enhances our appreciation of  
Montana's magnificent lands; the streams, the mountains,  
and the wildlife.

I, personally, want my eight year old daughter to be able  
to love and enjoy the outdoors by canoeing and fishing as  
I have done. I feel that passage of H.B. 888 will help  
to accomplish this; for her and for future generations.

Please support House Bill 888.

Respectfully yours,

*James W. McDermand*

James W. McDermand, President  
Medicine River Canoe Club  
3805 4th Ave. South  
Great Falls, Montana 59405



EX #1  
3/11/83  
agric



President: George Grant, Chapter of T. U.

Re: House Bill #888

The following statement represents the objective views of the membership of this Chapter of Trout Unlimited with regard to H. B. #888. It is the opinion of this membership that this bill is not satisfactory in all of its parts. It is at best a minimal point of agreement. Because of these points of agreement which will reduce the level of conflict and because we feel that those legislators, Marks, Neuman, Vincent, Ream, Devlin, Boylan, Galt, Switzer and Jacobson are representing the feeling and wishes of the majority of their constituents, we would endorse this bill without any amendments at this time. This last statement implies that a certain percentage of people on both sides will have objections to any and all bills and that no bill is ever final that involves a natural resource such as water; but it must be remembered that at subsequent sessions and following years these points can be refined. We will at future sessions of the legislature assist in the refinement of this bill as necessary.

Ex. #12 3/11/83  
agric  
parks ?

# THE WILD WINGS ORVIS SHOP

2720 West Main Street  
Bozeman, Montana 59715  
(406) 587-4707

Senator Jack Galt, Chairman  
Senate Agriculture Committee  
State Capitol  
Helena, Montana 59601

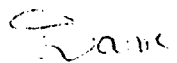
Senator Galt, Members of the Committee,

My name is Dave Kumlien. I am from Bozeman, I own a flyfishing specialty shop, I am an outfitter, and I am President of Fishing, Floating Outfitters Association of Montana (FFOAM). I support House Bill 888.

At the beginning of this legislative session, sportsmen, ranchers, and farmers operated under the idea that the two District Court decisions concerning navigability might be upheld in the State Supreme Court. Both sportsmen, ranchers, and farmers agreed that the wording of the Dearborn decision posed problems for farmers and ranchers that needed to be addressed. House Bill 888 addresses those problems such as streambed ownership and landowner liability, and does so in favor of farmers and ranchers. House Bill 888 does give a favorable definition of navigability to the sportsmen. My point is this is a COMPROMISE bill. Each side is giving up something, and I honestly feel, due to the two court decisions, the sportsmen are potentially giving up the most. Yet, we are willing to do that to insure or at least to attempt to try and hold some type of positive relationship between landowners and sportsmen together.

I urge your support of House Bill 888.

Sincerely,



Dave Kumlien  
President, Fishing, Floating, Outfitters Association Of Montana



TESTIMONY OF ROBERT J. FOUKAL ON H.B. 888 BEFORE THE SENATE  
AGRICULTURAL COMMITTEE  
FRIDAY, MARCH 11, 1983

MR. CHAIRMAN AND FELLOW COMMITTEE MEMBERS:

MY NAME IS BOB FOUKAL, I AM VICE PRESIDENT AND GENERAL MANAGER OF DATATEL, INC. OF BOZEMAN. OUR CORPORATION IS IN THE TELECOMMUNICATIONS BUSINESS.

EIGHT YEARS AGO AT FIFTY YEARS OF AGE I CHOSE TO MOVE TO MONTANA FROM DETROIT MICHIGAN TO START A NEW LIFESTYLE AND BUSINESS CAREER. THERE WERE TWO PRIMARY REASONS FOR CHOOSING MONTANA AS THE LOCATION FOR MY "SECOND LIFE".

THE FIRST REASON FOR CHOOSING MONTANA AND EVENTUALLY BOZEMAN WAS THE FACT THAT SOUTHWESTERN MONTANA ENJOYS THE ENVIABLE POSITION OF HAVING THE FINEST WILD TROUT FISHERY IN THE ENTIRE UNITED STATES AND IN THE MINDS OF MANY OF MY FELLOW TROUT FISHERMAN, MAYBE THE, FINEST IN THE WORLD.

THE SECOND AND EVEN MORE COMPELLING REASON FOR CHOOSING MONTANA WAS THE UNIQUE CHARACTER OF ITS PEOPLE.

IT IS FOR BOTH OF THESE REASONS THAT I AM HERE THIS AFTERNOON TO URGE YOU TO PASS H.B. 888.

I AM DEEPLY CONCERNED THAT DEFEAT OF THIS BILL WILL CREATE FOR MANY YEARS TO COME AN UNNECESSARY ADVERSE POLARIZATION OF RELATIONSHIPS BETWEEN FARMING AND RANCHING PEOPLE OF MONTANA AND THE FISHERMEN WHO CHERISH THE ENJOYMENT OF THE FISHERY RESOURCE WE ARE ALL BLESSED WITH.

THE UNIQUE CHARACTER OF MUTUAL APPRECIATION AND STEWARDSHIP OF THIS PRECIOUS MONTANA RESOURCE MUST NOT BE THREATENED.

EACH OF US MUST BE WILLING TO ACCEPT OUR MUTUAL RESPONSIBILITIES AS MONTANA STEWARDS TO PRESERVE, PROTECT AND ENHANCE OUR GOD GIVEN FISHERY RESOURCE. EACH OF US ALSO MUST BE WILLING TO MUTUALLY PRESERVE, PROTECT AND ENHANCE THE LEGACY OF FREEDOM AND OPENNESS THAT HAS MADE MONTANA A STATE TO BE ADMIRER, A STATE WE CAN ALL CONTINUE TO BRAG ABOUT.

IT IS A UNIQUE PRIVILEGE TO LIVE, WORK HARD, AND PLAY HARD IN MONTANA. PLEASE . . . . LET US ALL WORK A LITTLE HARDER TO PROTECT A HERITAGE THAT CAN ONLY BE PERPETUATED BY MUTUAL APPRECIATION OF OUR RESPECTIVE CONCERNS, AND MUTUAL WILLINGNESS TO ACCEPT COMPROMISE.

WITHOUT THE BUILT IN PROTECTIONS AND COMPROMISE AFFORDED ALL OF US IN THE LEGISLATION BEING CONSIDERED HERE TODAY, THE LEGACY OF FREEDOM AND OPENNESS THAT IS MONTANA MAY VERY WELL BECOME A LEGACY OF CONFRONTATION, HARRASMENT AND FEAR. I DON'T BELIEVE ANY OF US WANT THAT TO HAPPEN. - - - - -THAT IS NOT THE MONTANA WE ALL KNOW AND LOVE.

I URGE YOU TO CONSIDER THESE THOUGHTS AND CONCERNS AS YOU PONDER THE PROPOSED LEGISLATION BEING CONSIDERED HERE THIS AFTERNOON.

THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU.

ROBERT J. FOUKAL  
2020 South Rouse A1  
Bozeman, MT 59715

agric  
Ex #14  
for

WITNESS STATEMENT

Name John Rich Date 3-11-83  
Address 734 W. Park Butte, mt. Support ?   
Representing \_\_\_\_\_ Oppose ? \_\_\_\_\_  
Which Bill ? 888 Amend ? no amend #  
Comments: Cannot support with amendment #7.

Please leave prepared statement with the committee secretary.

marks is RIGHT

agic  
for

WITNESS STATEMENT

Name JACK ATHERSON Date MARCH 11 53  
 Address 3210 OTTAWA Support? X  
 Representing BUTTE, MONT Oppose? \_\_\_\_\_  
 Which Bill? 888 Amend? \_\_\_\_\_

Comments:

— NEW VIEWPOINT —

PASS AS IS

A VOTE AGAINST 888 IS A VOTE  
FOR STRONGER LEGISLATION NEXT TIME

MANY FISHERMEN WANT IT TO FAIL  
They know they will be STRONGER  
NEXT TIME.

~~PAP~~

Please leave prepared statement with the committee secretary.

B

March 11, 1983

Mr. Chairman and Committee Members  
Senate Agricultural Committee  
Helena, Montana

My name is Walter H. Carpenter, and I reside in Great Falls. I was born and raised on a ranch in northwestern Montana, and ranched during my younger years. Three popular fishing lakes were accessible through our land, and in spite of the occasional unfavorable incident, we never refused responsible people passage across the land.

I have floated and fished Montana's streams since I was twelve years old, a period of more than fifty years, and have never had a problem of any kind with the landowners whose land I was crossing with permission. I have respected the owner's rights by leaving no litter, closing all gates that I found closed, and travelling only on established roads. I have no wish to trespass on any persons land.

In my opinion House Bill 888 is a very fair compromise between Montana landowners and sportsmen, and should go far to solve the conflict that has recently arisen between the two groups. It protects the rights of both groups.

It does this by giving adjacent landowners the streambed to the middle of the stream, by giving them the right to build fences across streams for livestock control, by protecting them from liability from persons using the streams to the high water mark, provides that users will be liable for damages, disallows prescriptive easements by recreational use, and protects their property from trespass. It defines navigability and the high water mark.

For the recreational people, it defines what is, and what is not, a "craft." It permits the use of the streams up to the high water mark, upon access from a public access point, or from an adjacent landowner's property with permission only.

I strongly support this bill in its present form, and urge the Committee to give it favorable consideration, and to refrain from any amendments that would dilute the interests of either the landowners or the recreational people.

Respectfully,

*Walter H. Carpenter*  
Walter H. Carpenter  
320 40th Street South  
Great Falls, Montana 59405

WILDLANDS AND RESOURCES ASSOCIATION  
GREAT FALLS, MONTANA

Senate Agricultural Committee  
Montana State Senate  
Helena, Montana

March 11, 1983

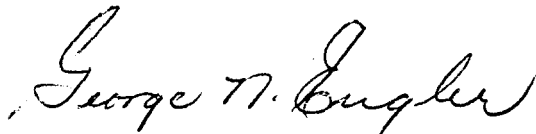
Mr. Chairman and Members of the Committee:

We wish to commend Representatives Bob Marks and Ted Newman for having drafted, what we feel, is a very fair and understandable Bill in HB 888,

We feel that the Bill represents significant compromise and protects the rights of both landowners and sportsmen. It does this by ceding the streambeds to the landowners, by giving them the right to build fences across streams for livestock control, by protecting them from liability, by disallowing prescriptive easements, by protecting the landowner from trespass, and by making recreationists responsible for damages they incur. It also clearly defines navigable streams and ensures sportsmen the use of navigable streams up to the high water mark, which is also clearly defined.

The Wildlands and Resources Association of Great Falls urges that this Bill be supported in essentially its present form. We would oppose any amendments that would significantly alter the intent of the Bill.

Respectfully,



George N. Engler, President  
Wildlands and Resources Association  
2412 5th Ave. South  
Great Falls, MT. 59405



for

March 11, 1983

HB-888 COMMENT

From: Frank F. Johnson  
327 Livingston Avenue  
Missoula, MT 59801

To: Senate Agriculture Committee

Recent court cases, confrontations, and legislation have all indicated a great need for the people of Montana to get a handle on the issues of navigability and angler access.

Although I, as an angler-sportsman would prefer to see more liberal provisions regarding this issue I feel that it is also very important to maintain good landowner-sportsman relationships. To this I would recommend passage of HB-888 without any changes.

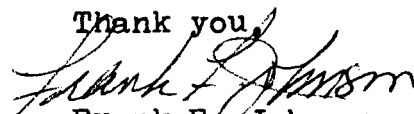
The provisions of this bill protecting landowner rights, denying prescriptive easements, creating user liability for damages, and defining ownership of streambeds are less desirable to sportsmen than at least one of the recent court decisions. As a sportsman, however, I can live with this compromise bill.

You, as a legislature, have directed the Department of Fish, Wildlife, and Parks to protect and improve fishing opportunities in Montana. They have done so. In fact, during the past ten years they have done a magnificent job improving fishing opportunities in Montana. Montana anglers, as well as visiting anglers, would like to have the privilege of exercising this opportunity that you have created. HB-888 will go far to do so. Montana's heritage as the "Trout Fishing Capitol of America" should be provided and protected.

Also, the economic impact of angling in Montana should not be ignored in light of the not-so-good economic situation.

Again, I would recommend passage of HB-888 as it is written.

Thank you,



Frank F. Johnson

Arthur F. Kussman  
409 South Montana  
Helena, Mt. 59601  
Phone 442-6642

for

March 11, 1983

TO: The Senate Agricultural Committee

SUBJECT: HB 488

COMMENTS: If this bill will result in clearer definition of sportsmen-landowner rights, it should result in better cooperation between <sup>individual</sup> landowners and sportmen.

As a private citizen, not affiliated with any special group, I would urge passage of this proposed legislation, without amendment.

Sincerely,

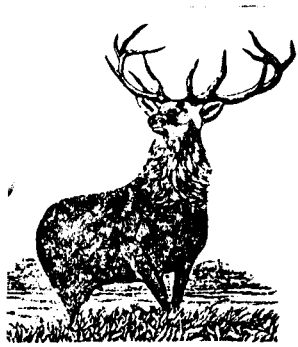
Art Kussman

for

# SKYLINE SPORTSMEN'S ASSOCIATION, INC.

P. O. BOX 173 BUTTE, MONTANA 59701

March 10, 1983



Chairman & Members  
Senate Agricultural Committee  
Capitol Building  
Helena, Montana 59601

Dear Sirs:

The hundreds of members of the Skyline Sportsmen's Club of Butte would like to go on record in support of House Bill 888 in its present form as it was transmitted from the House.

We feel that this bill is a reasonable compromise between land-owners and sportsmen throughout Montana and should put an end to the expensive court litigation and hard feelings that have been pending. It would also help preserve the state's third largest industry, a large part of which is fishing our Montana waters.

If the bill is amended in any manner, then it should be killed, because the whole intent of the bill would be changed and deluted.

Your favorable action to support an unamended House Bill 888 will be greatly appreciated.

Thank you.

Respectfully,

Tony Schoonen, President  
Skyline Sportsmen's Association

for

WITNESS STATEMENT

Name Doug Smith Date 3/11  
 Address 400 10th AVE SOUTH Support ?   
 Representing SHERATON HOTEL- Oppose ?   
 Which Bill ? HB 888 Amend ?

Comments:

Tourism must be encouraged and cannot be discouraged.

IN REGION 1-5 THERE WERE IN 1982 118,570 FLOAT TRIPS

IN 1982 120,900 NON RESIDENT Fishing Licenses were issued. IN A INSU STUDY IT WAS ESTIMATED THAT THESE LICENSES ACCOUNT FOR \$1,217,994.00 IN TOURISM EXPENDITURES

IT IS FURTHER ESTIMATED THAT 9% OF THE LICENSE HOLDERS EMPLOY OUT FITTERS PROVIDING EMPLOYMENT TO THIS IMPORTANT SECTOR,

LET US NOT PULL UP OUR WEICONS MAT AND PULL IN OUR CATAL STRING AND DISCOURAGE THOSE WHO FLOAT THE RIVERS

Please leave prepared statement with the committee secretary.

Support

**YELLOWSTONE CUSTOM FLIES  
& TACKLE SERVICE**

THOMAS M. TRAVIS  
P. O. Box 1320  
Livingston, Montana 59047  
Phone 406 - 222 - 0783



**YELLOWSTONE GUIDE SERVICE**

LICENSED HUNTING AND FISHING GUIDE

11 March 1983

Sen. Jack Galt  
Chairman  
Senate Agriculture Committee  
Rm 415  
Helena, Montana

Mr Chairmen and Honorable Members

I strongly urge that HB 888 be given a due pass out of this committee. As a Fishing and Floating Outfitter I fully understand what the Tourist Industry means to Montana economy. I am also fully aware of the strained Landowner/sportsman relations in the state and I feel the Bill 888 goes a long way toward solving the problem.

To those who speak against Bill 888, it seem to me that they want no settlement of any kind for this very serious problem. Nothing that is proposed seem to please these poeple. I feel that they would like own and control the streams so they could sell the fishing right as these people are fully aware of the value of a fisheries. They would denie access to the small business man and to the general public wno floats and fishes montana streams.

Even if these individuals controled the streams they would want the Dept of Fish, Wildlife & Parks to care for and manage these streams as they could neither afford to, nor do they have the expertise to do so. Yet they would deny the poeple access yet exspect the people to pay the bill for proper mangement.

I commend the sponsors of this bill and those who worked so hard on it. as it show an effort by both landowner and sportmen to set down and work out there problem in a most sensible manner. I fell that if there is an area in the bill with one party or the other need better definition, I would fully support such changes and amendments as long as the main focus of the bill wasn't changed and as long as such changes were fair to both sides of this issue.

Thank you for your time.

Sincerely,

Thomas M. Travis Member Board of Directors F. F. O. A. M.  
Alternate Deligate Mt Outfitter Council, T.U. Member,

WITNESS STATEMENT

Name DICK CHAREST Date 11 MAR 83  
Address 4708 3RD AVE S. G. Falls Support ?   
Representing SELF Oppose ?   
Which Bill ? HB 888 Amend ?

Comments:

The ATTACHED LETTERS WERE WRITTEN BY FRIENDS WHO COULD NOT ATTEND.

*Richard J. Charest*

Please leave prepared statement with the committee secretary.

TO: Representative Bob Marks  
House of Representatives  
Capitol Station  
Helena, Montana 59620

I support H.B. 888 in its  
present form as passed by the  
House of Representatives but  
am opposed to any amendments.



William K.W. Kanda,  
4202 B Elder St  
Gut Falls, MT 59405

Rep. Bob Marks  
House of Representatives  
Capitol Station  
Helena, Mt.

8 March 1983

Dear Sir,

It has been brought to my attention that House Bill 888 is about to be heard by the Senate Agricultural Committee. As a concerned sportsman and outdoors person I support this Bill in its present form. This Bill should be passed in its present form without any amendments as this would be detrimental to all the people of Montana who enjoy the various natural beauties of this state.

Yours truly  
Stanley R. Howe  
RR 2 Box 2100  
Gardiner, Mt 59401



8 Mar 83

Dear Mr. Marks,

I really appreciated the legislative response to our opposition to Senate Bills 347 and 348. The compromise bill, House Bill 888 looks very fair.

I really support your efforts toward this legislation, but have worries about the amendment efforts under way.

Please support House Bill 888 as it now stands,

Thanks,

Bill Banas  
614 Linden St.  
Great Falls  
59404

8 Mar 83

Dear Mr. Newman,

I really appreciated your help  
in opposing Senate Bills 347 and 348.  
The compromise bill, House Bill 888  
looks very fair.

I support your efforts toward  
this legislation, but have worries  
about the amendment efforts under  
way. We need your help,

Please support House Bill 888  
as it now stands.

Thanks,

Bill Bonas  
614 Linden St,  
Great Falls, VT  
59404

3209 Dove Court  
Great Falls, MT 59404  
9 Mar 83

Rep. Bob Marks  
House of Representatives  
Capital Station  
Helena, MT 59620

Dear Representative Marks:

I want you to know I support H.B. 888 in its present form as passed by the House of Representatives. I am opposed to any amendments to the bill.

Thank you ~~for~~ your consideration in this matter.

Sincerely,  
John Dehler  
John H. Dehler, A15W

Ext. # 15  
2/11/83  
agric

TESTIMONY - SENATE AGRICULTURAL COMMITTEE

H. B. 888

Franklin Grosfield

THIS BILL HAS BEEN CALLED BY MANY A COMPROMISE BETWEEN RECREATIONISTS AND LANDOWNERS THAT WILL HAVE A MAJOR IMPACT ON BETTER LANDOWNER - RECREATIONIST RELATIONS. EVIDENTLY, BOTH GROUPS MUST HAVE GAINED SOMETHING AND LOST SOMETHING TO ARRIVE AT A COMPROMISE.

WHAT RECREATIONISTS GAINED APPEARS TO BE COVERED IN SECTIONS 1, 2 and 3. BASICALLY, THEY GAIN THE RIGHT TO NAVIGATE ALL WATER OF THE STATE BETWEEN THE ORDINARY HIGH WATER MARKS, AND TO PORTAGE OR WALK AROUND ANY OBSTRUCTIONS THAT INTERFERE WITH THAT RIGHT. IF RECREATIONISTS LOST ANYTHING IN THIS COMPROMISE, IT IS NOT READILY APPARENT.

LANDOWNERS ALLEGEDLY GAIN CERTAIN PROTECTION DESCRIBED IN NEW SECTIONS 4, 5 and 6.

DOES THE LIMITATION OF LIABILITY LANGUAGE IN SECTION 4 GIVE THE LANDOWNER ANYTHING HE DOESN'T ALREADY HAVE? THEN IN SUBSECTION 3, WE SEE THAT THERE ARE THINGS THAT WE AREN'T ALLOWED TO DO WITH OUR PROPERTY IF WE WANT THE LIABILITY PROTECTION BEING OFFERED.

FIRST, WE CAN'T TAKE MONEY FOR RECREATIONAL USE OF LAND BORDERING STREAMS. WHAT IS RECREATIONAL USE AND WHAT IS LAND BORDERING STREAMS? SUPPOSE I OWN A BLOCK OF 10 SECTIONS WITH A STREAM RUNNING THROUGH ONE CORNER AND MY CORRALS ARE IN ANOTHER CORNER. IF THE LOCAL ROPING CLUB PAYS ME \$5.00 TO USE THE CORRALS ON A SUNDAY AFTERNOON, IT SEEMS TO ME THAT SUBSECTION 3 COULD BE APPLIED TO THAT BLOCK OF LAND.

THE SECOND THING WE CAN'T DO IS CREATE AN OBSTRUCTION TO NAVIGATION FOR HARRASSMENT OF PERSONS NAVIGATING THE STREAM. THIS CLEARLY IMPLIES THAT WE'D BETTER NOT FENCE ACROSS THE STREAM BECAUSE IF WE DO SOMEONE WILL PUNCTURE HIS RUBBER BOAT AND IF THAT OCCURS, HE WILL FEEL HARRASSED.

SECTION 5 MAKES THE RECREATIONAL USER LIABLE FOR DAMAGES HE CAUSES, AND AGAIN, I WONDER IF THIS GIVES ME ANYTHING I DON'T ALREADY HAVE? EVEN IF IT DOES, I'VE STILL GOT A COUPLE OF PROBLEMS.

FIRST, I'VE GOT TO CATCH THE GUY AND PROVE TO THE COURT THAT HE DID THE DAMAGE. SECOND, I'VE GOT TO FIGURE OUT HOW TO COLLECT FROM SOMEONE WHOSE TOTAL ASSETS ARE LIKELY TO BE LESS THAN THE DAMAGES AWARDED BY THE COURT.

I HAVE TO WONDER WHY SECTION 6 EVEN APPEARS BECAUSE IT IS TOTALLY MEANINGLESS WITHIN THE CONTEXT OF THE BILL. THE FIRST PART OF THE BILL GIVES THE PUBLIC THE RIGHT TO NAVIGATE ALL WATERS OF THE STATE BETWEEN THE ORDINARY HIGH WATER MARKS SO IT MAKES NO SENSE TO SAY HERE THAT THEY CAN'T ACQUIRE THIS RIGHT BY PRESCRIPTIVE EASEMENT.

SO TO SUMMARIZE WHAT LANDOWNERS GAIN IN THIS BILL, WE GAIN NOTHING IN SECTIONS 4, 5 and 6 EXCEPT PERHAPS SOME SUGAR-COATING TO HELP THE REST OF THE BILL SLIDE DOWN EASIER.

BY FAR THE MOST SERIOUS CONSEQUENCES OF THIS BILL INVOLVE A COUPLE OF THINGS THAT WE STAND TO LOSE. ONE IS TITLE TO LAND, AND THE OTHER IS THE ABILITY TO USE AND DEVELOP WATER RESOURCES FOR PURPOSES OTHER THAN RECREATION.

IT IS GENERALLY AGREED THAT QUESTIONS OF STREAMBED TITLE ARE DECIDED ACCORDING TO FEDERAL LAW AND THE BILL REFERS TO THIS ON PAGE 2, LINES 10-14. IT IS ALSO CLEAR THAT THE STATE OWNS THE STREAMBEDS WHENEVER THE BODY OF WATER HAS BEEN DECLARED MEANDERED BY FEDERAL SURVEY. BEYOND THIS, HOWEVER, THE TITLE QUESTION BECOMES VERY MURKY VERY QUICKLY, AND IT BECOMES DIFFICULT TO SEE CLEARLY WHAT THE END RESULT OF THIS LEGISLATION WOULD BE IN REFERENCE TO TITLE.

IT DOES NOT APPEAR THAT THE BILL INTENDS TO GIVE TITLE TO ALL STREAMS TO THE STATE BASED ON THE DEFINITION IN 85-1-112 (3). HOWEVER, THAT COULD VERY WELL BE THE RESULT IF A COURT WERE TO SOMETIME DECIDE THAT THIS DEFINITION MEETS THE REQUIREMENTS OF THE FEDERAL DEFINITION.

THEN, WHAT IMPACT WILL THIS LEGISLATION HAVE ON WATER USE AND WATER DEVELOPMENT? IF WE GIVE THE PUBLIC THE RIGHT TO NAVIGATE ON WATERS OF THE STATE THAT ARE NAVIGABLE AS DEFINED, IT WOULD SEEM THAT RECREATIONAL USERS HAVE ACQUIRED A VESTED RIGHT TO USE CERTAIN STREAMS. WOULD THE STATE THEN BE PUT IN A POSITION OF HAVING TO DEFEND THE RECREATIONAL USERS AGAINST ANY ACTIVITY THAT MIGHT DIMINISH THEIR RIGHTS? WOULDN'T THE STATE HAVE TO STOP ALL WATER DEVELOPMENT PROJECTS THAT INVOLVED DIVERSION OF WATER FROM NAVIGABLE STREAMS?

IN CONCLUSION, I WOULD SUGGEST THAT YOU KILL H.B. 888 BECAUSE THERE JUST ISN'T ENOUGH TIME BETWEEN NOW AND THE END OF THE SESSION TO ADEQUATELY ADDRESS THE QUESTIONS THAT HAVE BEEN PRESENTED. I WOULD FURTHER SUGGEST THAT AN INTERIM STUDY OF THE NAVIGABILITY ISSUE BE PURSUED AND I CAN ASSURE YOU THAT WETA, WITH IT'S BROAD-BASED MEMBERSHIP FROM AGRICULTURE TO BUSINESS AND INDUSTRY TO ORGANIZED LABOR AND RECREATIONAL GROUPS AND PROFESSIONAL PEOPLE, WILL BE ACTIVELY INVOLVED IN ANY EFFORT TO FIND THE BEST POSSIBLE SOLUTION FOR THE PEOPLE OF MONTANA.

copy  
Ex. #16

WITNESS STATEMENT

Name Alexander Blewett III Date 3-11-83  
 Address 1324 4<sup>th</sup> Ave N Great Falls Support ?         
 Representing Curran, Hildreth & Otta Ranchers Oppose ? X  
 Which Bill ? 888 Amend ?       

Comments:  
 I have handled the Dearborn River litigation and I wish to address the various legal problems with this bill and the disastrous consequences to be faced by farmers-ranchers if the bill passes.

*Alexander Blewett III*

Please leave prepared statement with the committee secretary.

3-11-83  
# ~~12~~ agric  
Ex # 17

TESTIMONY ON HB 888 BEFORE THE SENATE AGRICULTURE COMMITTEE

by Ted Lucas

I concur with Franklin Grosfield's testimony and wish to address the property rights value issue.

Fish and Game saw fit in July of 1979 to pay \$924,635 for 441 acres, putting a value of \$2,096 per acre for land on the Beaverhead for fishing access.

This bill will strip away the possibility of other property owners making such sales by providing legal entry to water. Are we not protected by the Montana and U.S. constitution from such taking?



# MONTANA

## DEPARTMENT OF

## FISH, WILDLIFE AND PARKS

Helena, MT 59620  
March 9, 1983



Dick Gilbert, Assistant Analyst  
Legislative Fiscal Analyst's Office  
Room, 109, Capitol Building  
Helena, MT 59620

Dear Dick:

You have requested information on the number of acres of fishing access sites owned by the department and the amount of funds spent statewide for fishing access site acquisition.

We own two sites on the Beaverhead River with acreage as follows:

<u>Site</u>	<u>Acreage</u>
Pipe Organ	645 - 245,000 - June 77 \$1380/acre
Poindexter	441 - 924,635 - July 79 2096/acre
	1086

During the past six years the department funded the acquisition program from the federal Land and Water Conservation Program and from earmarked funds as provided for in 87-1-605 MCA. The funds spent are detailed below.

	<u>LWCF</u>	<u>State Earmarked Funds</u>
1979 Biennium	\$ 520,796	\$ 790,000
1981 Biennium	604,476	1,000,000
1983 Biennium (to date)	-0-	195,000
	\$1,125,272	\$1,985,000

If I can be of further assistance, please advise.

Sincerely,

*Dave*

Dave Mott, Administrator  
Centralized Services Division

E4 #18  
3-11-83  
Agric.

## STATEMENT

BY Mark Knops of Livingston, Montana, on behalf of the Park County Legislative Association

BECAUSE of the difficulty in determining the extent of existing public rights to lawful travel and transportation on Montana surface waters, as well as the potential impact of the hasty formulations contained in House Bill 888, we urge this body to table any further consideration of House Bill 888 at this time, but not of the issues raised by it. Instead, we urge this body to provide for an appropriation of funds and authority by the state for the express purpose of creating a temporary special commission empowered to take testimony and other evidence in order to prepare a comprehensive report to the next legislature regarding public travel and transportation on Montana surface waters. This report would be available to the general public before the next legislature, and should contain at least the following items:

- a historical summary of the nature and extent of such travel and transportation in this state, past and present;
- a compilation, summary and evaluation of public rights in this regard, past and present, as guaranteed in this state under both federal and state law;
- an appraisal of the future potential for such travel and transportation in this state, with attendant benefits and costs;
- recommendations for specific legislation to amend or supplant existing state law in light of the foregoing.

WE believe strongly that such a report, together with the informed public discussion on this issue that it would generate, should enable the next legislature to more effectively and judiciously evaluate the thorny questions raised by House Bill 888, but not adequately resolved therein.

Allen

E19 3/11/83

House Bill 888 - Senate Ag Committee

I am Mrs. Arch Allen from Park County speaking in behalf of myself and my husband in opposition to HB888.

We raise cattle on a mountain valley ranch with a stream running through the middle of it for approximately 1 1/2 miles. To contain the cattle, we fence across the stream in low water at several points.

We purchased this land in good faith with the stream bed included in the patent homestead deed. Never did we think the public could or would legislate away from us our decisions on managing our cattle, or in effect confiscate the stream bed.

We have posted our land against trespass for 38 years after having livestock chased through barbed wire fences by dogs, calves stoned by children, fires left burning by picnickers, etc. All of these recreationalists left the scene with no sense of responsibility to us or our livestock.

However we have granted permission to fish on our property to all those who came to us and agreed to respect our ground rules of No Fires and No Dogs and to report to us any persons who were abusive or harassing our livestock.

This has worked very well with hundreds of fishermen enjoying the waters on our property with no damage to us other than human erosion. This has been accomplished by establishing individual responsibility and the understanding that violators would not be tolerated.

H.B. 888 TAKES AWAY OUR RIGHT OF REFUSAL TO GRANT PERMISSION TO OBJECTIONABLE PEOPLE.

The question of navigability and property rights as it arises in HB 888 has such far reaching serious repercussions, I pray you gentlemen have the wisdom to table this HB 888 for further study and research by a qualified impartial committee to come up with a fair and just legally sound solution once and for all.

Thank you,

Mrs. Arch Allen  
Box 868  
Livingston, Mont. 59047

agric.

Morse #20

WITNESS STATEMENT

Name Bill MORSE Date 3-11-85  
 Address #13 SAROKEE Support ?         
 Representing Stillwater + Carbon Co. Ranchers Oppose ? X  
 Which Bill ? HB 898 Amend ?       

Comments:  
 We resist this bill as an encroachment upon property rights which is probably an unlawful taking of property and unconstitutional.

The bill would open every stream to at least a claim of a right of use.

Taxes would have to be reduced as the property rights are reduced.

Land values would deteriorate as the "encroachment" broadens.

We oppose ... A dangerous compromise.  
*Bill Morse*

Please leave prepared statement with the committee secretary.

March 11, 1983

Senate Agriculture Committee  
Montana State Legislature  
Helena, Montana

Chairman: Senator Jack Galt

Re: H.B. 888

Mr. Chairman and members:

My name is Ralph Holman, McLeod, Montana. As a landowner I rise in total opposition to H.B. 888 due to the fact it (1) reaches far beyond the intent of navigability, (2) will result in the take over of private property without due process of law, (3) will drastically reduce property values, both current and potential, will encourage and assure litigation and direct conflict between landowners, recreationists and neighbors, (4) attempts to circumvent private property rights, (5) contains considerable ambiguity, it will have an overall adverse effect upon landowners, and if not unconstitutional, it is certainly on the border.

- 1- Navigability generally provides for the right to float crafts and use navigable rivers that have been historically used to transport the products of the land on a commercial basis, a far cry from the rights to trespass on the bed of a trickle of water 18 or 20 inches wide and 2 inches deep as proposed via H.B. 888. It also goes far beyond the request of the floaters, according to statements credited to Montana Wildlife Federation spokesman Ken Knudson, to the effect that "the Federation's approach has been to seek logical and rational ways to establish common grounds concerning the use of Montana rivers and to attorney Jim Goetz's "that Senator Galts introduced legislation was an over reaction spawned by unfounded landowner fears that sportsmen want every stretch of water declared navigable." and "when you talk about recreational floating you are talking about substantial streams. There has been exaggeration about every little creek that goes through a ranch and it's just not that way." These and other like statements reflect that floaters want the use of navigable rivers as determined by law. Let the law decide how far up the river the right to float will stop.
- 2- Land proposed for take over includes private property, surveyed, titled and deeded by abstract to original homesteader and subsequently to following landowners which specifies surveyed acres and acres owned upon which owners have been taxed by the state. State or Federal reservations, if any being listed. Titles and taxes include the land upon which creeks, brooks and trickles of water flow over. Note that there is no provisions in the bill for due process of law, compensation for property loss, or depreceiated property values, fair market value or even reimbursement of taxes collected under threat of delinquency. It is hard to believe that such massive land take over is being proposed in Montana, one of the few states that has so generously reserved millions of acres of wilderness and public lands, (nearly 1/3 if our state) thousands of miles of streams and countless lakes for our recreationist. Will our generosity be our downfall?
- 3- Reduction of property values is certain on any ranch through which creeks flow due to the right of access into the ranch itself granted by H.B. 888. The right of the public to pursue fishing, hunting, trapping, camping and other recreation at any point below the high water mark. Consider also the claim of misrepresentation of a ranch purchaser against seller of property and second party litigations against the state for damages. Do faulty titles exist? Has the landowner been led to believe he owns something he does not? Consider the family who paid a premium for a creek side lot, built a cabin on the creek bank who wake up to the fact that trappers, hunters, gold panners or even

a tent can be set at their front door, consider the instant depreciated property value. Consider the purchaser who sought seclusion and paid a premium for land with a creek. Who will reimburse that person for drastically reduced property value? Put yourself in the landowners shoes. Will this access be followed by litter containers being placed on stream banks and access for garbage pickup?

Proposed classification "Navigable in fact" attempts to supercede private property rights. These rights are as old as the Montana Territory itself and the pioneers who fought and died to establish these rights. Will you now by a sweep of a pen attempt to undo the efforts of those hardy souls? I venture that landowners will stand in strong opposition when made fully aware of the dangers of the loss of these rights.

The bill contains a definite lack of clarity. It states that waters capable of floating a one man craft shall be navigable in fact, it does not state craft is to be empty or loaded, or if a man must be in craft, only that a craft must float. It does not clarify whether total length of a creek must be floatable or if only a small floatable area will qualify total length of stream for public trespass, will a craft capable of floating a midget qualify? If a creek is capable of floating said craft during spring runoff, is said creek open to public during low water, is a dry creek bed legally open for public use? What procedure will be used to determine if public user is trespassing or to prove said charge? Would it float yesterday but not today? Will not each case encourage litigation?

The bill states that title to the land beneath the low water mark will belong to landowner. How will this property be defined on an abstract? Will owner be required to pay taxes? How will low water mark be determined, how will acreage be determined? Will landowner lose title during periods when stream bed is completely dry? Will public retain right to use dry creek beds that are unfloatable due to temporary or even permanent total water loss? It does not say water must exist. Will the strips of land between high and low water marks be deleted from title? If you own a stream bottom will you ever be able to disturb it? If not, what value does it have? Is not a person walking on said property trespassing?

The bill states the public have the right to leave the stream upon encountering an obstruction. Will not a down tree, a large boulder, a beaver dam, etc. qualify as an obstruction? Will not a steep bank or a deep hole also qualify?

As a landowner I am very concerned as to where this bill will lead. There have been previous attempts through our Legislature to turn our land over to the public for recreational use. It is the opinion of many landowners and sportsmen that this type of Legislation can only result in scares that discourage and depreciate land values, a back lash of landowner opposition to sportsmen via posted property, litigation and direct conflict between recreationist and landowners with everyone being loser. Today we defend a strip of creek bottom, landowners fear that tomorrow we will defend our land itself.

If this bill or one like it becomes law, that day will live in infamy as the start of the process of elimination of private property rights, detrimental to all property owners. This bill may be a recreationists dream but it will prove to be a landowners nightmare. I implore you ladies and gentlemen " do not pass H.B. 888."



Ralph Holman, landowner

McLeod, Montana

Ex # 22  
3-11-83  
agrlc.

Questions have arisen whether the use of the term "navigation-in-fact" within HB 888 will result in a conclusion that streams are navigable without any court decree, depriving landowners of the opportunity to contest the issue of navigability in a court. Such issue fails to appreciate the purpose of the bill and overlooks fundamental principles of due process available to all landowners.

HB 888, like many other bills passed by the legislature, advances a definition, in this instance a definition of navigability, which the court must apply in reaching a determination of whether the public can obtain access to a particular stream. The creation of the definition, however, is only part of the process to be followed in making a determination of navigability of a particular stream.

With the definition advanced by the bill, a district court will still be required to consider the evidence offered by both parties, make findings of fact and then apply the definition to the developed facts to determine whether the stream is indeed navigable. The opportunity for a landowner to contest the question of navigability of a particular stream is not lost by passage of the bill.

3-11-83  
Agric  
HB 888  
Ex # 22

FILED

DEC 14 1982

COUNCIL

1 IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF  
2 MONTANA, IN AND FOR THE COUNTY OF LEWIS & CLARK.

3  
4 THE MONTANA COALITION FOR  
5 STREAM ACCESS, INC.,

No. 45148

6 Plaintiff,

7 and

INDEXED

8 MONTANA DEPARTMENT OF FISH,  
9 WILDLIFE & PARKS and THE STATE OF  
10 MONTANA,

MEMORANDUM RE MOTIONS  
FOR SUMMARY JUDGMENT.

11 Involuntary  
12 Plaintiffs,

13 and

14 THE MONTANA DEPARTMENT OF STATE LANDS,

15 Plaintiff,

16 vs.

17 DENNIS MICHAEL CURRAN,

18 Defendant.

19 RECREATION USE UNDER MONTANA LAW

20 Plaintiff and defendant have both moved for summary judgment on  
21 the question of whether the public has the right to use the waters  
22 and banks of the Dearborn River, as it travels through the lands of  
23 defendant, up to the ordinary high water mark, for recreation  
24 purposes. Both assert they are entitled to judgment under Rule 56(C)  
25 as a matter of law because there is no genuine issue remaining as to  
26 any fact. (Defendant nevertheless stoutly maintaining throughout his  
27 briefs that there are numerous unresolved questions of fact.) The  
28 question has been fully briefed and considered by the Court.

29 To arrive at the answer to the question certain other questions  
30 must be considered. They include:

- 31 1. Is the question of recreation access determined according to  
32 state or federal law? We have decided it is determined in accordance  
with state law.



SENATE AGRICULTURE COMMITTEE

against  
3-11-83

My name is Lorents Groffeld. I was here representing  
The Agricultural Preservation Association and the  
Sweet Grass Preservation Association in OPPOSITION  
TO HB 888.

Though time did not permit my testimony, I  
have mailed in several pages of testimony to  
all members of the Committee. This testimony  
represents myself and the above organizations.

Please note especially my request for  
further interim study.

Thank You,

Lorentz Groffeld

WITNESS STATEMENT

Name Virge Holliday Date 3/  
 Address Rt 2 Box 355, Wilsall Support ?         
 Representing Self Oppose ?   
 Which Bill ? HB 888 Amend ?       

Comments: This bill is only muddying up the waters and confusing what laws we already think we have. It is taking rights of landowners for recreation and would become a real problem to agriculture.

I feel this bill should be killed and a fair and knowledgeable committee be appointed to check out and see what we already have as law, what navigable really is, and maintain the rights of landowners. Then recommendations can be made to solve what problems there are.

Water is too important to agriculture which is a need of all rich and poor, to harass or take for recreation.

HB 888 enforces the 2<sup>nd</sup> court cases that were for access to streams and floating it does not in any way help landowners retain their rights or give them anything they don't already have.

Please leave prepared statement with the committee secretary.  
 We have a cattle ranch on the Shields River and have always paid taxes on the river bed.

against

FROM DORAS LYNCH, Highwood, MT. 59450

LANDOWNER ON Highwood Creek.

Owning property is a wonderful thing & sharing that property with others is the right of the landowner - it is a privilege granted to the recreationist by the landowner - not the right of the public to use your land.

with our permission Hundreds of people use our property each year for hunting fishing <sup>trapping</sup> camping floating & other recreational uses - it is a privilege we grant them - we view it AS good for land owner/sportsman relations & it has worked very well for many many years - we do not need <sup>this</sup> ~~legislation~~

Common law which our country is based on has always held that you ~~must~~ received permission to use another's property - this bill rewrites the common law & now says you have a <sup>public</sup> ~~an~~ easement and permission is no longer required -

along with the seizure of the lands without compensation you are now forcing upon landowners the concept of free right of passage to waters that were heretofore un-navigable

I feel this legislation is a knee jerk response to a couple of ~~scattered~~ <sup>scattered</sup> court cases & I feel that the legislation should ~~be~~ <sup>be</sup> be tabled awaiting the outcome of the court cases, in order that the property rights of landowners

against

WITNESS STATEMENT

Name Barbara H. Morse Date 3/11/83  
Box 351 Address Big Timber, Montana 59011 Support ?         
Representing Self as rancher Oppose ? X  
Which Bill ? 888 Amend ?       

Comments:

I feel this bill would be  
unconstitutional & violate my property rights  
I strongly oppose bill 888.

Please leave prepared statement with the committee secretary.

Members of the Committee:

My name is Rex Rieke. We live on and own land along the Yellowstone River near Billings. Our land has a particularly heavy recreational use because of its easy access and close proximity to Billings.

Two points that I feel need addressing in HB 888 are the defining of overflow areas and the defining of recreationalists.

This bill states that "ordinary high watermark" means the line that water impresses on the soil by covering it for sufficient periods of time to deprive the soil of its vegetation and destroys its value for agricultural purposes.

I object to the use of the word "agricultural" as the only criteria for control of private land along rivers and streams. It is too limiting to define "ordinary high watermark" as land deprived of vegetation and of having no other value than agriculture.

Recreationalists should have no right to an overflow area which is dry eight or nine months of the year and may be several hundred yards from the main course of a river. In my particular case, it is the difference of limiting recreational use to three quarters of a mile of river frontage or the opening up of sixty or more inland acres of my land to the public. Many other Montanans who live along our sprawling river beds share this same situation. Recreational use should be limited to the active rivers edge and not dry inland overflow areas.

My second point is that this bill addresses recreationalists mainly as floaters and fisherman, to that use of my land I have little objection. But once these lands are opened up for public recreational use, Montana land owners will have to contend also with shooters, trappers, motorcyclists, and more. You must understand, these also are recreationalists.

There are thousands of Montanans who own land and live close to the rivers edge, many of which are not farmers or ranchers. To allow all forms of recreation collectively without permission is to deny the landowner of his right to safety and the pursuit of peace and tranquility. Shooting and trapping are particularly dangerous and should only be by permission or at least governed by the laws regarding other private property. A stray bullet is just as deadly from below the high water mark as from anywhere else.

Thank You

Rex Rieke  
Ox.Bow Ranch Inc.  
Rt. 9  
Duck Creek Road  
Billings, MT 59101

## Opposition to H.B. #888

Bonnie & Dock H. Workman, husband and wife, as private landowners of 44.54 acres with approx 3/4 mile of River frontage along the Lower Madison adjoining BLM & State Lands and the only private landowner in the Primitive Area that adjoins the Proposed Lee Metcalf Wilderness Area, situated 1/8 mile from the Red Mountain Campground site are in opposition to this Proposed Bill #888. for the following reasons:

1. This bill is a "to fix guide bill" wiping out alot of other previous legislation regarding the rights of deeds that date back to origin. - thus the land owner is losing the say of his rights.
2. We can go ahead a pay taxes with no say, while it devalued our land, & our water rights.
3. Our liability is increased & insurance premiums become higher should we wish to divert to recreation use of our

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and the way it is described in #888.

4. It does not address navigation canals and the owners rights.

5. It does not address floaters on public water & river lakes. It is felt that this bill encourages another abuse floaters will be charged a fee to float.

6. We disagree with the term "navigable" by including canoes etc when these waters are not open to motor boats except for F. S. use only.

Navigable water should stop with open motor boat travel!

7. The land owner should have some control and definitions should include in "navigable - depth & width of water"

We are in support of landowners, fishermen, & recreational and we

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all a part of all 3, but feel  
this bill has too many amendments  
and need more careful thought.

We certainly are interested in  
future decisions of all concerned  
in Montana and would appreciate  
the chance of participation & notification  
of the same.

Sincerely,

Donnie Gene Workman

Black N Workman

Box 2886

Norris, Mont. 59745.



WITNESS STATEMENT

Name RON SCHOFIELD Date 3-11-83  
Address 3840 N. MONTANA HELENA Support ?         
Representing HELENA VALLEY IRR. DIST. Oppose ?         
Which Bill ? HB 888 Amend ? ✓

Comments:

I FEEL THAT HB 888 SHOULD BE AMENDED TO SPECIFICALLY EXCLUDE~~D~~ MAN MADE WATER CONVEYANCE SYSTEMS ; INCLUDING BUT NOT LIMITED TO IRRIGATION AND DRAINAGE CANALS, FLOODWATER DIVERSION CANALS AND CANALS USED FOR DOMESTIC, MUNICIPAL, INDUSTRIAL AND POWER GENERATION DELIVERIES.

Please leave prepared statement with the committee secretary.