

MINUTES FOR THE MEETING  
JUDICIARY COMMITTEE  
MONTANA STATE  
HOUSE OF REPRESENTATIVES

March 26, 1985

The meeting of the Judiciary Committee was called to order by Chairman Tom Hannah on Tuesday, March 26, 1985 at 7:00 a.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Krueger and Rep. O'Hara who were previously excused.

CONSIDERATION OF HOUSE JOINT RESOLUTION NO. 45: Mary Ellen Connelly, District #8, testified as its chief sponsor. House Joint Resolution 45 is a joint resolution requesting an interim study of the laws relating to the collection and disposition of fines, forfeitures, costs, and fees in civil penalty and criminal proceedings. She said this resolution came about as a result of a DUI bill she had introduced earlier in this session. She discovered the laws relating to the collection and disposition of fines, forfeitures, costs, and fees in civil penalty and criminal proceedings are a mess. If the Legislature finds that there is not enough money available to study the laws, they can direct the Legislative Council to carry out the technical components of the study.

There being no further proponents or opponents, Rep. Connelly, closed. There being no questions, hearing closed on HJR 45.

CONSIDERATION OF SENATE BILL NO. 435: Senator Jack Galt, District #16, sponsor of this legislation, testified. This is an act providing that permission of the landowner must be obtained prior to using private land for recreational purposes. Senator Galt feels that it is only fair that the landowner knows who is on his property recreating.

PROPOSERS:

Conrad B. Fredricks, representing the Sweetgrass County Preservation Association, testified in support of SB 435. He said that this bill is designed to alleviate a problem which exists with regard to persons who use the lands of another for recreational purposes without permission. A copy of his written testimony was marked Exhibit A and attached hereto.

Lorents Grosfield, a rancher from Big Timber, appeared and offered testimony in support of SB 435. A copy of his testimony was marked Exhibit B and attached hereto.

Mike Micone, representing the Western Environmental Trade Association, wished to go on record as supporting SB 435.

Bill Morse, representing Stillwater County Association of Taxpayers, testified in support of this bill. He said that the association is particularly concerned that a great many people have attached tremendous weight to the Montana Supreme Court decision that precipitated HB 265. They wish to reiterate that it is the posture of the Legislature to make the law; and once that law is passed, then it is incumbent upon the supreme court to follow the law rather than to make law.

Charles Howe, a rancher from Gallatin County, urged the committee to pass this bill. He said this bill is a land-use tool that affords agriculture the same kind of protection that other business have in a urban setting. The landowner needs protection so that he can conduct his business in order to be profitable.

Mrs. Arch Allen, a rancher from Livingston, stated that she and her husband are very concerned with the bills considered before this committee today. A copy of her written testimony pertaining to SB 435, 418, 421 and 424 was marked Exhibit C and attached hereto.

George Rossetter of Fishtail testified on behalf of this bill. A copy of his testimony was marked Exhibit D and attached.

Also testifying very briefly in support of this bill were Verna Lou Landis, representing Park County Legislative Association (She said she supported the concept of SB 435.); Fred Lucas from Highwood; Bud Pile; and Gene Chapel, representing the Montana Farm Bureau. (A copy of his written testimony was marked Exhibit E and attached hereto.) who supports the concept. He urged the committee to table SB 435 pending the final outcome of HB 911. A copy of the Montana Cattlemen's Association position supporting SB 435 was submitted and marked Exhibit E-1.

#### OPPONENTS:

Rom Waterman, representing the Montana Stockgrowers Association, Montana Wool Growers Association, the Montana Association of State Grazing Districts, Montana Cowbells, Montana Farmers Union, Montana Water Development Association, Women Involved in Farm Economics, and Montana Grange and Montana Irrigators, told the committee that it is with reluctance that he arises in opposition to this bill. Mr. Waterman does not believe that SB 435 extends the protection that many believe it does. He feels that it has language in it that will create the identical confusion to the language confusion of conspicuous posting. He feels that SB 435 may offer little, if any, protection. While he agrees that clarity is needed in this area, ambiguous and vague language

needs to be avoided. The vagueness in SB 435 will create problems of enforcement and leave landowners with the difficulty of adjusting and managing their land with reference to recreational use. He said those groups who he represents continues to support HB 911 and urge that SB 435 not pass.

Dan Heinz, representing the Montana Wildlife Association, said that as a freshman lobbyist, he didn't appreciate the efficiency and fairness that the committee dealt with the stream access and the trespass bill earlier in the session. However, he said he is beginning to understand how wisely that particular legislation was handled by the committee. He urged that the committee use the same wisdom in dealing a quick death to this bill. He said he would only testify on this bill but he would like to go on record as opposing the rest of the bills scheduled for hearing this morning.

Jim Flynn, director of the Department of Fish, Wildlife & Parks, testified as an opponent to SB 435. A copy of his written testimony was submitted and marked Exhibit F which is attached hereto.

Dianne McDermand, representing the Medicine River Canoe Club of Great Falls, stated her opposition to SB 435, 418, 421 and 424. A copy of her written testimony was marked Exhibit G and attached hereto.

Jo Brunner, representing the Montana Cattlefeeders and the Montana Grange, wished to go on record as being opposed to this bill. We feel that there needs to be an explanation. We testified before on this bill because we were assured by the sponsor of this bill and the other bills scheduled for today that these bills would not be used to kill HB 265. They were to be used as an insurance policy. She further said that she supports HB 911.

Walt Carpenter, representing himself and a number of friends and neighbors, said that SB 435 would preclude floaters from setting foot on land, even below the high water mark, without permission from the adjacent landowner, from the time they launch their craft until they reach their destination. A copy of his written testimony pertaining to this bill and the other bills to be later considered was marked Exhibit H and attached hereto.

Lavina Lubinus, representing WIFE, testified in opposition to the bill. A copy of her written testimony was marked Exhibit I and attached.

Tony Schooner from Butte, representing Skyline Sportsman, Coalition for Stream Access, and the Anaconda Sportsman's Fund, testified in opposition to the bill. They are opposed to this bill and the other bills before the committee this morning because these bills gut the stream access bill (HB 265) and make it worthless. He further said that HB 911

will take care of this issue satisfactorily.

Kevin Krumvieda, representing the Missouri River Flyfishers, submitted written testimony which was marked Exhibit J and hereto attached.

There being no further opponents, Senator Galt closed. He said that he certainly doesn't think that Mr. Waterman represents the views of most of the members of the organizations he spoke on behalf of although he may represent those organization's officers. Also, Senator Galt said this issue deals with a property right that doesn't have anything to do with HB 265; there is no connection between this bill and the other bills to be considered today. He feels landowners should have control over their property.

The floor was opened to questions from the committee.

Rep. Grady asked Mrs. Allen if her informant said anything about the decrease of the prices of land since the supreme court decision. Mrs. Allen said yes, he did, but he felt that with the guidelines that the legislature can establish or expand on with regards to the supreme court decision, it can be re-examined.

Rep. Eudaily said he is concerned with the penalty provision on line 17, page 1 of the bill. This language is going to add an extra penalty that the trespasser does not deserve. Mr. Conrad's only comment was that the committee could fix that language up any way it wishes.

There being no further questions, hearing closed on SB 435.

Because the next three bills, SB 421, 418 and 424 are related in content, Chairman Hannah said all of the chief sponsors of the bills could open. The committee would then hear testimony from proponents and opponents of the bills.

CONSIDERATION OF SENATE BILL NO. 421: Senator Pete Story, District #41, sponsor of SB 421, testified. This bill restricts landowner's liability towards recreational users. Senator Story said he would like to address the whole package of bills. He said the sponsors' intent with all these bills are not to pull anything over on anyone. When there is a compromise bill on a controversial subject, it may stumble and fall somewhere in the process. We feel that it is extremely important that this session addresses the relating stream access problems. If we don't, we fear very much that there will be hardening of the sides and that there will be polarization and bitterness, which would certainly not be in the best interests of this state. He feels it is the responsibility of this committee to represent those 250,000 who pay for fishing and hunting licenses and who are not represented by any one organization. These people do not want polarization. In closing, Senator Story said that these bills are needed especially if SB 265 doesn't get

through the Senate.

CONSIDERATION OF SENATE BILL NO. 424: Senator Bob Williams, District #15, chief sponsor of SB 424, testified on its behalf. This is an act defining "prescriptive easement"; providing that a prescriptive easement may not be acquired through recreational use of land or water; amending section 70-19-405, MCA. A prescriptive easement is a right to use the property of another that is acquired by open, exclusive, notorious, hostile, adverse, continuous, and uninterrupted use for a period of 5 years. Senator Williams said that SB 424 was the result of the supreme court decision regarding the stream access issue. He feels that this area needs to be addressed. He believes the language of this bill is simple and clear and that it is very important to the landowner.

CONSIDERATION OF SENATE BILL NO. 418: Senator Paul Boylan, District #39, chief sponsor of this bill, testified. SB 418 is an act defining "ordinary high-water mark." Senator Boylan feels that this particular bill is the most important bill in the package dealing with this issue. The bill defines "ordinary high-water mark" as the line that water has impressed on soil by covering it for sufficient periods of time to deprive the soil of its vegetation and to destroy its value for agricultural purposes. Senator Boylan suggested that the committee amend the bill on lines 16 and 17 by striking "except when they carry sufficient water to support fishing or floating".

PROPOSERS TO THE BILLS:

Conrad Fredricks, attorney/rancher from Big Timber, spoke as a proponent to this package of bills. A copy of his testimony as to SB 418 and SB 424 was submitted and marked Exhibit K and Exhibit K-1 respectively. Mr. Fredricks also urged the committee to adopt the amendment proposed by Senator Boylan to SB 418.

Gene Chapel, president of the Montana Farm Bureau, said the Bureau supports the concept of these three bills, but would like to see all three tabled pending the final outcome of HB 265. A copy of his written statements were marked Exhibit L, L-1, L-2 and attached.

Bill Morse, representing the Stillwater County Association of Taxpayers, testified in support of all three bills. Mr. Morse addressed the liability factor attached to Senator Story's bill. He said the insurance industry is in a state of violent upheaval. With the staggering liability judgments by courts and juries around the country, no one knows where it all will end. He feels that it is incumbent that a way be made to restrict liability.

Norm Starr, rancher from Belgrade, said he supports HB 435 in addition to the rest of the bills in this package deal-

ing with the stream access issue. These bills cover liability, prescriptive easement and the high water mark which are the three primary issues in stream access. The environmentalists claim that they have everything they want in the supreme court decision. Mr. Starr asked the question of why are they, now, so adamant about HB 265? He finds it hard to believe as a present property owner that someone in an adversary role over the years in many instances would now suddenly become so concerned about his private property. He submitted that the grassroots of this state are not as enamored with HB 265 as they were 30 days ago. HB 265 has slipped a long, long ways from the original interim legislation committee's HB 16. He feels it is very important to keep these bills alive. He said that the landowners need a good, strong trespass bill.

Charles Howe, a rancher from Gallatin County, said that each of these bills is a good tool. He asked the committee to consider each of the four bills in an orderly way for private property rights.

George Rossetter of Fishtail spoke in favor of these bills. A copy of his written testimony has previously been marked Exhibit D. He feels that as a landowner, he needs every bit of protection he can get due to the deterioration he has witnessed on his own property.

Fred Lucas, another rancher, wished to go on record as supporting this package of bills.

Mike Micone, representing the Western Environmental Trade Association, urged the committee to hold these bills until the final outcome of HB 265 is known. He said that if HB 265 fails, landowners and recreationalists will have nothing.

Lorents Grosfield, a rancher from Big Timber, spoke in favor of these bills. (See written statement -- Exhibit B.)

Wes Henthorne from Big Timber, said that landowners would like to see a strong trespass bill to help the public use private property in a responsible manner. He also supports the rest of the bills.

Bud Pile, a rancher, told the committee that the damage done as the result of the supreme court decision can never be repaired by legislation with regards to the landowner/recreationalist relationship. He said that HB 265 takes care of the problems he, as a landowner, has because it expands on the supreme court ruling. He further urged, however, that the committee pass these bills under consideration today.

#### OPPONENTS:

Ron Waterman, representing the Montana Stockgrowers Association, Montana Wool Growers Association, the Montana Associa-

tion of State Grazing Districts, Montana Cowbells, Montana Farmers Union, Montana Cattlefeeders Association, Montana Water Development Association, WIFE, Montana Grange and Montana Irrigators, spoke in opposition to these bills. He said that each of the bills does touch upon important issues. These bills generally provide a one-sided approach to just some of the areas that are otherwise addressed in HB 265. He commented on each of the bills. SB 421 is a true insurance bill. It basically tracts HB 265 and says essentially the same thing and seeks to do the identical thing that HB 265 attempted to do in one of its sections. He said that he believes SB 421 is a bill the committee may wish to table in order to await the outcome of HB 265. Mr. Waterman said that SB 424 was offered as an insurance bill in the event that stream access legislation did not pass. But SB 424 does other things -- it has what Mr. Waterman called "hidden agenda". It touches on recreational use of all lands. It is not a stream access bill, and this committee and its subcommittee carefully crafted prescriptive easement language in HB 265 to address only prescriptive easement as it relates to access. He feels this bill does quite a bit more. It touches upon other recreational uses of other lands. For this reason, Mr. Waterman urged that SB 421 be killed. SB 418 was rejected by the House Judiciary Subcommittee and the House Judiciary Committee in addition to being rejected on the House floor. It was rejected because of the "ordinary high-water mark" definition. You will find that the example given i.e. where vegetation is absent from the line, is an example of the low water mark. In closing, Mr. Waterman said the organizations he represents do not oppose these bills because of their subject matter, but they oppose them primarily because of the impact they will have on HB 265. In essence, a vote for these bills is an opportunity for the committee to reconsider its vote on HB 265. He said these bills are causing HB 265 to trip.

Jim Flynn, director of the Department of Fish, Wildlife & Parks, submitted written testimony on this package of bills which was marked Exhibit M and attached hereto.

Jo Brunner, representing the Montana Cattlefeeders and Montana Grange, urged the committee to table these bills. Dianne McDermid, representing the Medicine River Canoe Club of Great Falls, expressed her opposition to the package of Senate Bills 421, 424, and 435. (See Exhibit G.) Walt Carpenter, representing himself, spoke in opposition to these bills. (See Exhibit H) Also speaking in opposition to the bills were: Tony Schooner, representing the Coalition for Stream Access and Skyline Sportsman; Lavina Lubinus, representing WIFE. She said that while WIFE agrees in principal with the concept of these bills, they feel the bills' subject matter is addressed adequately in HB 265. See a copy of her written testimony (Exhibit N).

There being no further opponents, Senator Story closed on

his bill and the other two bills on behalf of their sponsors. It was Senator Story's opinion that sportsmen will be better off with the passage of these bills. He said that there are many people who are very worried about what their organizations are doing for them and to them. Many representatives of these organizations do not support what the sportsman feels. These bills are necessary to alleviate problems, prevent polarization, prevent fear and prevent locked gates in the event that HB 265 does not pass.

The floor was opened to questions from the committee.

In response to a question asked by Rep. Cobb, Mr. Flynn said the subject of prescriptive easements as it pertains to both land and water for recreational purposes is of interest for the Department of Fish, Wildlife & Parks. Earlier on in this whole discussion on this issue of stream access, the department has been the proponent of eliminating the mechanism of discussion, the department has not come to any conclusion in being able to support the prescriptive easements by the use of land, so they have studiously tried to avoid getting that involved in the stream access. Rep. Cobb asked if existing rules that the department have now involving public water still apply to public nuisances, etc.. Mr. Flynn said that he assumes they do.

There being no further questions, hearing closed on SB 424; 418 and 421.

(Reps. O'Hara, Krueger, and Eudaily were excused.)

#### EXECUTIVE SESSION

ACTION ON HOUSE JOINT RESOLUTION NO. 45: Rep. Gould moved that HJR 45 DO PASS. The motion was seconded by Rep. Brown. There being no discussion, the question was called and the motion carried unanimously.

ACTION ON SENATE BILL NO. 418: Rep. Grady moved that SB 418 BE NOT CONCURRED IN. The motion was seconded by Rep. Brown. Rep. Grady further moved to amend line 16 following "purposes" by striking "except when they carry sufficient water to support fishing or floating". The motion was seconded by Rep. Hammond. Rep. Addy said this amendment defies reason and defies the supreme court ruling. Rep. Keyser spoke in support of the amendment. He said that Rep. Grady made the amendment because in case it gets out on the floor, at least the bill would read right and do what the sponsors want it to do. He said that HB 265 does not include the definition of "flood plain", but SB 418 clearly includes that definition. The question was called on the motion, and it carried on a voice vote.

Rep. Hammond moved that SB 418 BE NOT CONCURRED IN AS AMENDED. The motion was seconded by Rep. Brown. Rep. Cobb made a substitute motion to table SB 418. He said that no matter what happens to HB 265, legislation is needed to define the



"ordinary high-water mark." He said that the committee can always come back and rechange the whole definition and replace it with the old definition as was done in HB 265. He doesn't think the bill should die, but they should wait and see what happens to HB 265. The motion was seconded by Rep. Montayne and failed on a voice vote.

Rep. Brown said that he feels that the provisions in SB 418, 424 and 435 are clearly handled in HB 265. By killing these bills, the Senate will have to deal with HB 265 which would take care of any leverage they feel they have with these bills. Rep. Brown said he does think that Senator Story's bill, SB 421, should be tabled in case the committee wants to look at it again. The question was called on the BE NOT CONCURRED IN AS AMENDED, and it carried with Rep. Cobb dissenting.

ACTION ON SENATE BILL NO. 421: Rep. Keyser moved to TABLE SB 421. The motion was seconded by Rep. Hammond and carried on a voice vote.

ACTION ON SENATE BILL NO. 424: Rep. Hammond moved that SB 424 BE NOT CONCURRED IN. The motion was seconded by Rep. Rapp-Svrcek. Rep. Cobb made a substitute motion to table SB 424. The motion was seconded by Rep. Hannah. The question was called on the latter motion, and it failed on a voice vote. The BE NOT CONCURRED IN motion carried on a voice vote.

ACTION ON SENATE BILL NO. 435: Rep. Brown moved that SB 435 BE NOT CONCURRED IN. The motion was seconded by Rep. Montayne and discussed. Rep. Hannah said he feels this bill is different and that it is more in line with HB 911. He said he could support a tabling motion.

Rep. Brown said he was in favor of killing the bill for the same reasons he expressed earlier. He feels it would take substantial amendments to take care of this bill. However, it was Rep. Cobb's opinion that the committee needs to keep this bill until the final outcome of HB 911 is known. Rep. Mercer said that SB 435 is HB 17 all over again, and the committee has already dealt with this issue.

Rep. Cobb moved that HB 435 be TABLED. The motion was seconded by Rep. Keyser and failed on a voice vote. The question was called on the BE NOT CONCURRED IN motion, and it carried on a voice vote.

ACTION ON SENATE BILL NO. 321: Rep. O'Hara moved that SB 321 BE CONCURRED IN. The motion was seconded by Rep. Brown. A requested gray bill was submitted which was marked Exhibit O and attached hereto.

Rep. Mercer moved that the amendments as set forth in the gray bill be adopted. The motion was seconded by Rep. Darko

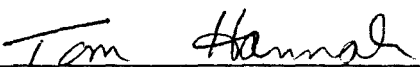
and discussed. Rep. Mercer explained that the amendment to SB 321 will expand bail insuring that an individual appears when requested to do so by the Court. Rep. Mercer explained in further detail the intent of the amendments. Rep. Addy thought that perhaps there was surplus language on page 4, lines 16 and 17 of the gray bill. He said he could support restrictions on travel but the language "personal associations, place of abode" seems to be a bit broad. Rep. Addy moved to amend page 4, lines 16 and 17 of the gray bill by deleting "personal associations, place of abode, or". Before Rep. Addy's motion was acted on, the question was called on the motion to adopt Rep. Mercer's amendments. That motion carried unanimously. The question was called on Rep. Addy's amendment, and it carried on a voice vote.

Rep. Darko further moved that SB 321 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. Hammond and it carried unanimously. Rep. Mercer will carry the bill on the floor.

ACTION ON SENATE BILL NO. 268: Rep. Keyser moved that SB 268 BE CONCURRED IN. Rep. Keyser also moved the amendments proposed by Steve Nelson from the Board of Crime Control. (Refer to standing committee report) The motion was seconded by Rep. Darko and discussed. Rep. Rapp-Svrcek wanted to know how this bill with proposed amendments parallels to HB 103. Brenda Desmond addressed the question by saying that this bill will not affect HB 103 at all. She said the crimes could be changed without having any affect on the new statutes or those crimes could be changed without having any affect on these statutes. Rep. Brown said that HB 103 addresses the question whether or not a youth should be sent to district court and tried as an adult or whether or not he should be tried in youth court. SB 268 applies to detention under HB 103. Brenda said this bill will cover the question of where youths will be detained before it is decided where to transfer those youths. The question was called and the motion to amend carried unanimously. Rep. Keyser further moved that SB 268 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. Darko and carried unanimously.

It was decided by the committee upon request of Rep. Eudaily that the standing committee report on HJR 45 will be held so that it may be further discussed tomorrow.

ADJOURN: Upon the motion of Rep. Keyser, the meeting adjourned at 9:50 a.m. Chairman Hannah informed the committee that an executive session will be held tomorrow morning at 8:00 a.m. to act on the remaining bills in committee.

  
TOM HANNAH, CHAIRMAN

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 3/26/85

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| NAME                       | PRESENT | ABSENT | EXCUSED |
|----------------------------|---------|--------|---------|
| Tom Hannah (Chairman)      | ✓       |        |         |
| Dave Brown (Vice Chairman) | ✓       |        |         |
| Kelly Addy                 | ✓       |        |         |
| Toni Bergene               | ✓       |        |         |
| John Cobb                  | ✓       |        |         |
| Paula Darko                | ✓       |        |         |
| Ralph Eudaily              | ✓       |        |         |
| Budd Gould                 | ✓       |        |         |
| Edward Grady               | ✓       |        |         |
| Joe Hammond                | ✓       |        |         |
| Kerry Keyser               | ✓       |        |         |
| Kurt Krueger               |         |        | ✓       |
| John Mercer                | ✓       |        |         |
| Joan Miles                 | ✓       |        |         |
| John Montayne              | ✓       |        |         |
| Jesse O'Hara               |         |        | ✓       |
| Bing Poff                  | ✓       |        |         |
| Paul Rapp-Svrcek           | ✓       |        |         |
|                            |         |        |         |
|                            |         |        |         |
|                            |         |        |         |

# STANDING COMMITTEE REPORT

March 26

19 35

Page 1 of 2

MR. Speaker:

## Judiciary

We, your committee on .....

Senate

268

having had under consideration ..... Bill No. ....

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color

### REVISE CRITERIA FOR DETENTION OF YOUTH

Respectfully report as follows: That ..... Senate ..... Bill No. 268

Be amended as follows:

1. Page 2, line 2.

Following: "one of"

Strike: "those" through "or" on line 3.

Insert: the following:

- (i) criminal homicide as defined in 45-5-101;
- (ii) arson as defined in 45-6-103;
- (iii) aggravated assault as defined in 45-5-202;
- (iv) robbery as defined in 45-5-401;
- (v) burglary or aggravated burglary as defined in 45-5-204;
- (vi) sexual intercourse without consent as defined in 45-5-503;
- (vii) aggravated kidnapping as defined in 45-5-301;
- (viii) possession of explosives as defined in 45-8-335;
- (ix) criminal sale of dangerous drugs for profit as included in 45-9-101;
- (x) attempt as defined in 45-4-103 of any of the acts enumerated in subsections (1)(a)(i) through (1)(a)(ix):

DIQ/PASSI

March 26

19 85

Page 2 of 2 (SB 269)

2. Page 2, line 4.  
Following: "facility;"  
Strike: "or"

AND AS AMENDED,  
BE CONCURRED IN

# STANDING COMMITTEE REPORT

March 26

19 85

MR. Speaker:

We, your committee on Judiciary

having had under consideration Senate Bill No. 321

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**CONSIDER DANGER TO COMMUNITY, OTHERS TO SET BAIL; EXPAND BAIL CONDITIONS**

Respectfully report as follows: That Senate Bill No. 321

be amended as follows:

1. Title, line 7.  
Strike: "AND BAIL CONDITIONS"

2. Title, line 9.  
Following: "MCA"  
Insert: "; AND REPEALING SECTION 46-9-101, MCA"

3. Page 1, line 20.  
Following: "#####"  
Insert: "(a) A person intending to appeal from a judgment imposing a fine only or from any judgment rendered by a justice's or city court must be admitted to bail. (b)"

4. Page 1, line 20.  
Following: "#####"  
Insert: "for a person found guilty of an offense and sentenced to a term of imprisonment who has filed an appeal"

~~DO PASS~~

(continued)

March 26

19 85

5. Page 1, line 23.

Strike: "DENIED BAIL"

Insert: "admitted to bail only"

6. Page 1, line 24.

Following: "and"

Insert: "not"

Following: "also"

Strike: "or"

Insert: "and does not"

7. Page 2, lines 1 through 3.

Strike: subsection (2) in its entirety.

Re-number: subsequent subsection.

8. Page 2, following line 15.

Insert: "(1) sufficient to insure the presence of the defendant in a pending criminal proceeding;"

Re-number: subsequent subsections.

9. Page 2, line 19.

Following: "sufficient to"

Strike: "assure" through "endangered" on line 20.

Insert: "protect any person from bodily injury"

10. Page 2, line 25.

Strike: "and"

11. Page 3, line 1.

Following: "record"

Strike: ", employment" through "background" on line 2.

Insert: "; (9) considerate of the length of time the defendant has resided in the community and of his ties to the community;

(9) considerate of the defendant's family relationships and ties; and

(10) considerate of the defendant's employment status"

12. Page 3, line 5.

Strike: "before conviction"

13. Page 3, line 13.

Following: "required"

Strike: "and" through "community" on line 14

Insert: "and to protect any person from bodily injury"

14. Page 3, line 15.

Following: "person"

Insert: "admitted to bail"

(continued)

March 26 ..... 19 85

15. Page 3, line 20.  
Following: "required"  
Strike: "and" through "community;" on line 21
16. Page 3, line 25.  
Following: "on"  
Strike: "personal associations, place of abode, or" on Page 4, line 1.
17. Page 4, line 3.  
Following: "or"  
Insert: "limit contact"
18. Page 4, line 4.  
Following: "offense"  
Insert: "except that contact which is necessary to the preparation of the defense"
19. Page 4, line 16.  
Following: "purpose"  
Strike: " ;"  
Insert: " ;"
20. Page 4, lines 17 through 20.  
Strike: subsection (ii) in its entirety
21. Page 4, line 23.  
Following: "of bail"  
Insert: ". In addition to those set forth in subsection (1),"
22. Pages 4 and 5.  
Following: line 24 on page 4  
Strike: subsection (b) in its entirety and subsection (c) through "courts;" on line 3 of page 5  
Renumber: subsequent subsection.
23. Page 5, following line 6.  
Insert: "NEW SECTION, Section 4. Repealer. Section 46-9-101, MCA, is repealed."

AND AS AMENDED,  
BE CONCURRED IN



# STANDING COMMITTEE REPORT

March 26

19 35

MR. Speaker

We, your committee on Judiciary

having had under consideration Senate Bill No. 424

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**PRESCRIPTIVE LANDOWNER LIABILITY TOWARDS RECREATIONAL USERS OF LAND**

Respectfully report as follows: That Senate Bill No. 424

BE NOT CONCURRED IN

~~DO PASS~~

# STANDING COMMITTEE REPORT

March 26 19 85

MR. Speaker:

We, your committee on Judiciary

having had under consideration Senate Bill No. 435

Third reading copy ( Blue )  
color

**PRIOR PERMISSION WHEN USING PRIVATE LAND FOR RECREATIONAL PURPOSES**

Respectfully report as follows: That Senate Bill No. 435

**BE NOT CONCURRED IN**  
**OR PASS**

TESTIMONY RE SENATE BILL NO. 435

Submitted by Conrad B. Fredricks, Big Timber, Montana.

Senate Bill No. 435 is a bill designed to alleviate a problem which exists with regard to persons who use the lands of another for recreational purposes without permission.

At the present time, there is a statute on the books (Section 87-3-304, M.C.A.), enacted in 1965, which requires a person to obtain permission of the landowner, lessee, or their agents before hunting big game animals on private property.

This statute has helped to maintain better landowner-hunter relations by making it easier for the landowner to control big game hunting on his property, easier for the landowner to protect his livestock, crops and other property from uncontrolled hunting, and easier for the landowner to fix liability when his livestock or other property is damaged or destroyed.

However, Section 87-3-304 only applies to big game hunting, and does not apply to other uses of property which are also dangerous and troublesome to the landowner and his property, such as bird hunting, predator hunting, bow hunting, non-game animal hunting, target practice, camping, firebuilding and use of off-road vehicles, including snowmobiles.

The Department of Fish and Game has recognized the problem and, apparently, supports the concept of Senate Bill No. 435, as is evidenced by the Department's "ASK FIRST" campaign. This bill merely, as a practical matter, gives statutory sanction to the "ASK FIRST" campaign and only requires what common courtesy and a concern for private property dictates as a matter of course.

Certainly, no one who has any respect for private property or the rights of landowners to protect and control the use of their property, which they bought and paid for and pay taxes on, could object to a requirement that a person obtain permission before using private property for recreational purposes. This would seem to be particularly true in Montana, where large amounts of public land are available for public recreation.

The State and Federal Governments have the power to, and do, promulgate and enforce regulations governing the use of public

lands.. Certainly it is only fair for the State of Montana, through its Legislature, to afford the same protections to private property.

It is submitted that only a person who has no respect for private property or a landowner's right to protect his property from damage or destruction would oppose this legislation. Unfortunately, there are persons in this category and it is those persons that this legislation is designed to apply to.

It may be argued that permission should not be required to use land for recreational purposes unless the landowner posts his land, showing that permission is required to use it for recreational purposes. First, the burden should be on the person who wants to use another's property for recreational purposes to make arrangements to use it, and the burden should not be on the landowner to post property to control recreational use, with the resultant expense and trouble. Secondly, there can be little doubt that posting does not work for the type of people who would want to use a landowner's private property for recreational purposes without permission, as is witnessed by the frequent tearing down and disappearance of signs erected by landowners to post their property. The responsibility should be on the shoulders of the persons who want to use private property for recreational purposes, not on the landowner. Big game hunters have shouldered this responsibility for years -- why shouldn't other hunters and recreational users?

It is submitted that this bill does not conflict with HB 911, which this committee drafted and which has passed the House and is currently in the Senate. This bill no more conflicts with HB 911 than the present statute requiring permission of the landowner for big game hunting on private property conflicts with the present general trespass laws. This bill only deals with permission for recreational use and does not require permission for all uses of land. Thus it is complementary to the general trespass laws, which cover all uses of land, and not in conflict with these laws.

Some persons have objected to the penalty provision in HB 911, because it could involve suspension of a license to hunt and fish. The penalty provision of HB 911 is the same as the penalty applied to hunting big game animals without landowner permission. If it is felt that this penalty is inappropriate, then the bill could be amended on line 17, page 1 thereof, by striking "87-1-102(1)" and inserting in lieu thereof "46-18-212", thereby imposing the general misdemeanor punishment.

It is respectfully submitted that this Committee should pass this bill with a recommendation that it be concurred in.

(House Judiciary Committee, March 26, 1985)

TESTIMONY before the House Judiciary Committee, March 26, 1985. Helena, Montana, by Lorents Grosfield, cattle rancher from Big Timber, Montana.

Mr. Chairman, Members of the Committee:

I appear here today in support of SB 418, SB 421, SB 424, and SB 435. I must continue my opposition to HB 265 primarily because I believe that it is not a recreational access bill, but a land reform bill. An attempt has been made in HB 265 to greatly expand two specific Montana Supreme Court decisions involving two specific fact scenarios on two specific stream segments. The four Senate bills, together with HB 520, adequately address five of the six issues identified by virtually all Montana agricultural groups as needing attention. The sixth issue, that of portage, is not addressed, which leaves us with the language in the Supreme Court decisions as being current law.

On the afternoon of December 7, 1984, in a presentation on the stream access issue to the Water Forum held here in Helena primarily for the benefit of incoming legislators, Chief Justice Frank Haswell made the following statement: "Don't overanalyze the cases out of the context of the specific facts."

In HB 265, we see reference to all-terrain vehicles, big game hunting, other hunting, duck blinds and other permanent structures, overnight camping, and non-water related pleasure activities. While these activities may be addressed differently on Class 1 and Class 2 waters, I submit to you that none of them were in the "context of the specific facts" of either of the cases.

In HB 265, we see reference to required means of portage, easements that are to be donated and constructed at the expense of landowners, as required by Conservation Districts. This is completely out of the "context of the specific facts" of the cases. The Court said the public could portage around barriers "in the least intrusive manner possible, avoiding damage to the adjacent owner's property and his rights". That is substantially different from saying that landowners must provide and pay for portage means. One wonders how requiring a landowner to provide portage means at his own expense can be compatible with a "least intrusive manner", especially one that "avoids damage to the adjacent owner's property"--- is not a man's pocketbook, property?

Judge Haswell said, "Don't overanalyze the cases out of the context of the specific facts." Why should the Legislature go substantially beyond the Court in deteriorating the rights of property owners along streams, as it is being asked to do in HB 265? I hope this committee will not be intimidated into killing these four Senate bills, but will pass them out in the event of the demise of HB 265. And even if HB 265 should survive, SB 424 and SB 435 deserve your support.

SB 424 is not, as some have claimed, a stream access bill. Insofar as it references prescriptive easements on land, it is a needed separate protection for all landowners. It is probably true that it may not be appropriate to address prescriptive easements on land in a stream access bill, such as HB 265, and that is precisely why this separate legislation is before you. There is simply not any good reason why a prescriptive easement should be available for recreational use of private land.

SB 435 is an excellent companion bill to HB 911, which is the posting law drafted by this committee. While I believe that a user of private lands should know where he is and be authorized to be where he is, I realize that there is a lot of resistance by some recreationists to the concept of getting permission before entering private property. However, if both these bills were to pass this Legislature, landowners would be well protected against all forms of trespass, including recreational trespass. Because of the tremendous losses that have occurred in these landowner protections through things such as the stream access court decisions, it is essential that this Legislature give careful consideration to the improvement of landowner feelings towards recreational users through passage of much-improved trespass legislation. The "big game hunting by permission only" bill of a few sessions ago did a lot to improve relations and mutual respect between landowners and recreational users. SB 435, together with HB 911, will do much more.

I urge your favorable consideration of all four bills. I especially urge your favorable consideration of SB 424 and SB 435 (in the event that HB 265 passes the Senate and the other two bills automatically die). These two are worthy on their own merits.

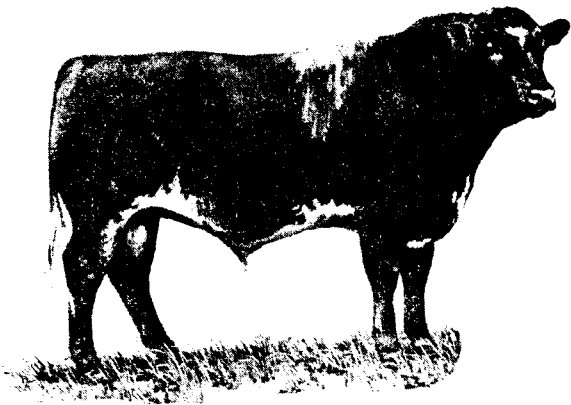


EXHIBIT C

3/26/85

SB 435; 418; 421; 424

## FA RANCH

BOX 868 • LIVINGSTON, MONTANA 59047

Mr. Chairman - members of the committee -

I am Mrs. Arch Allen of Livingston. As a rancher with a stream running thru the middle of our ranch, my husband and I support Senate Bills 418, defining "ordinary high water mark"; Senate Bill 421 which addresses land owner liability when the public uses surface water flowing over his property; Senate Bill 424 denying prescriptive easement, and Senate Bill 435 requiring permission to use privately held land for recreational purposes.

We urge you to keep these four bills alive as backups to HB 265.

SB 435 would go a long way to improve landowner-sportsman relations by putting communication on a one-on-one basis where friendly understanding and mutual consideration can result.

SB 435 also acknowledges private ownership and management of deeded lands. Without this, agricultural lenders justifiably will discount these so-called "prime lands" as no longer being controlled ~~or~~ or managed by the property owner and, therefore, greatly reduced in value as collateral on their agricultural loans.

Thank you for your consideration.

*Mrs. Arch Allen*



TO: HOUSE JUICIARY COMMITTEE  
MY NAME IS GEORGE ROSSETTER OF FISHTAIL MT. I AM A RANCH OWNER  
AND CATTLE GROWER.

STREAM ACCESS IS A COMPLEX SUBJECT. IF THE RECOMENDATIONS OF  
THE JOINT INTERIM SUBCOMMITTEE NO.2 GIVEN IN A REPORT TO THE  
49TH. LEGISLATURE HAD BEEN FOLLOWED, THE VIGOROUS OPPOSITION  
TO H.B.265 WOULD NOT BE APPARENT TO-DAY. THE REPORT PREPARED  
BY THE SUBCOMMITTEE NO.2 REFLECTS A WELL THOUGHT-OUT BILL UN-  
LIKE THE NON-CONSTITUTIONAL ANTI-LAND OWNER EPISTLE THAT 265  
HAS TURNED OUT TO BE. IN MY OPINION THIS BILL WITH ITS MANY  
FAULTS AND DEFICIENCIES WILL EITHER BE AMENDED DRASTICALLY BY  
THE SENATE OR FELT TO BE SO FLAWED THAT INSUFFICIENT TIME WILL  
BE AVAILABLE TO PROPERLY CORRECT IT. THUS THERE IS THE REAL  
POSSIBILITY THAT IT WILL DIE IN THE SENATE. IF THIS PROVES TO  
BE THE CASE, THE SENATE BILLS 418 AND 421 WILL BE NEEDED AS  
GUIDELINES BY BOTH THE RECREASIONISTS AND THE LAND OWNERS.  
BILLS 424 AND 435 WILL BE NEEDED BY THE LAND OWNERS TO ASSURE  
PROPER PROTECTION BOTH FOR THEMSELVES AND THEIR LAND.  
THANK YOU.

3/26/85

Bozeman, Montana 59715

502 South 19th

Phone (406) 587-3153

TESTIMONY BY: Gene ChapelBILL #: SB 435      DATE: 3/26/85SUPPORT XXX      OPPOSE \_\_\_\_\_

Mr. Chairman, members, of the committee, for the record my name is Gene Chapel, President of the Montana Farm Bureau.

Farm Bureau members support the concept of SB 435, however we feel that private property rights and land owner permission are better covered in HB 911; therefore we feel SB 435 complicates the problem and would like to see it tabled pending the final outcome of HB 911.

SIGNED: Gene Chapel



# MONTANA CATTLEMEN'S ASSOCIATION INTL

WITH A LARGE "Steak" IN MONTANA'S FUTURE

TESTIMONY PRESENTED TO HOUSE JUDICIARY

P.O. Box 1234  
Helena, Montana 59624

COMMITTEE CONCERNING SENATE BILL 435

Mr. Chairman, members of the committee, S.B. 435 represents a sensible, straightforward solution to the presently confused situation which both landowner and sportsman find themselves in concerning permission for recreational use of private land. While the Dept. of Fish, Wildlife, and Parks does enforce a rule prohibiting big game hunting without permission, other activities require no permission unless land is heavily posted. Misunderstandings are bound to occur under the present trespass law, especially in view of recent Supreme Court decisions allowing public access to all surface water. By simply stating that permission is required in order to recreate upon another's land, S.B. 435 clears the air and lays the issue to rest.

The Montana Cattlemen's Association is aware of H.B. 911, which is another effort to resolve the problem of defining criminal trespass. We do not oppose H.B. 911. It does improve the existing law in that it states exactly where and how land must be posted. The requirements specified are not unreasonable. Yet, any posting requirements invite trouble. The recreationist is led to believe that he will be welcome or at least tolerated wherever a landowner has neglected to place proper notice around a parcel of land. Frequently, this assumption turns out to be incorrect and an unpleasant confrontation results. While, under such a law, the sportsman need not fear prosecution, the experience of telling and being told to "get off" spoils yet another landowner-sportsman relationship. We must, therefore, support S.B. 435 as the best way to approach the question of when permission is required for recreational use of private land. We find that responsible sportsmen and recreationists have no desire to use another's property without permission, regardless of the presence or absence of signs or fluorescent painted posts.

The Montana Cattlemen's Association asks for a "do pass" on this welcome addition to the trespass law. Thank you.



# MONTANA CATTLEMEN'S ASSOCIATION INTL

WITH A LARGE "Steak" IN MONTANA'S FUTURE

P.O. Box 1234  
Helena, Montana 59624

## TESTIMONY CONCERNING HOUSE BILL 911

Mr. Chairman, members of the committee, H.B. 911 contains some real improvements to the trespass law, from both the landowner's and sportsmen's viewpoints. By defining exactly what constitutes effective notice, this bill clarifies the trespass issue to a great extent. Giving the landowner fluorescent orange paint as an alternative to printed "no trespassing" signs solves one of the mechanical problems involved in posting notice.

The Montana Cattlemen's Association has promoted S.B. 435 as a better alternative to H.B. 911. If we must choose between the two, we would rather have S.B. 435. We have attached a copy of our testimony on H.B. 435, in which we explain our preference for it. But, we would not want to see H.B. 911 killed under any circumstances. It represents a necessary improvement to the law. S.B. 435 deals only with recreational use of land; but, there are other uses, to which HB 911 would still apply. We find these two bills to be compatible and see no reason not to pass both of them.

Thank you.

3/26/85

SB 435

## SB 435

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

March 26, 1985

The department supports the expansion of authority for state game wardens to clearly enforce all recreational trespass. Under present law, such clarity only exists for big game hunting.

Additionally, we can support the premise in Section 1 of this bill that permission should be gained to use private property for recreational purposes.

However, we are concerned that this legislation eliminates the need for proper notice by posting before trespassing can occur. This legislation not only doesn't require such notice for other recreational uses, but would appear to remove the present statutory requirement for big game hunting.

As I have mentioned, there is no question that an individual who is recreating should have permission from the landowner if private land is to be used for recreation. But we must keep in mind that Montana is a large and diversified state with many different types of intermingled landownership. Some of this land is clearly fenced and some is not. Some is publicly owned and some is not. As a result, there are a variety of circumstances afield which can and do lead to unknowing trespass.

While it is not realistic to require an undue amount of posting, neither is it realistic to allow for no posting.

We have supported legislation this session to address trespass and posting. That legislation is more appropriate than SB 435. As a result, we would urge that this measure do not pass.

Medicine River Canoe Club  
Great Falls, Montana

MARCH 26, 1985

House Judiciary Committee  
State Capitol  
Helena, Montana

Chairman Hannah & Members of the Committee:

My name is Dianne McDermand. I am speaking today for the Medicine River Canoe Club of Great Falls. Our organization has been very closely involved with the stream access issue for over four years now. We have faithfully attended almost all hearings and meetings on this issue.

We wish to express our opposition to the package of Senate bills (SB 418, 421, 424 & 435).

In SB 418 the definition of ordinary high water mark is inaccurate and unrealistic. The soil is not necessarily deprived of vegetation although the type and amount of plant life is altered so that this line of demarcation can be recognized. This definition fails to recognize plants that require some water coverage for at least a period during their growth season. These plants often live just below the ordinary high water mark. Although high water will destroy many plant species as the water level drops from its spring highs, this soil is often revegetated by moisture loving or semiaquatic plants.

Perhaps a man can set on paper any definition of high water mark he wishes, but regardless of what he writes, Mother Nature will still persist in defining it in her own distinctive way. On the other hand, HB 265 does present a realistic depiction of the ordinary high water mark.

SB 424 would prohibit prescriptive easement for all recreational uses. We believe that in a stream access issue, denial of prescriptive easement should be confined to water related activities as is done in HB 265.

We oppose SB 435. The real intent of Section 1. is difficult to pin down. What are the activities that are "incidental to and necessary for the recreational use of surface waters"? HB 265 is much more specific and would therefore seem to be of greater benefit to both the landowner and recreationist by letting each know what is or is not allowed. Regarding the trespass aspect of SB 435, we feel that HB 911 much more appropriately addresses this.

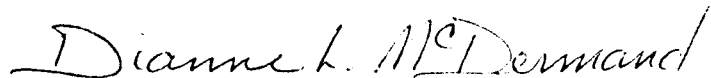
HB 265 is a comprehensive bill that addresses all aspects of the stream access issue fairly. On the contrary, this package of Senate bills appears to be a piecemeal and somewhat haphazard approach to the issue. If these bills were to become law I could foresee much time being spent in the next legislature trying to fill in the gaps.

Another consideration to be carefully weighed is the broad support by recreationists and agriculturalists for House Bills 265 & 911 compared to the support of these Senate bills proffered by a vocal minority. There must be a reason for the broad support for the House Bills. I believe that this comes from a multitude of people using sound reasoning, good judgement and a spirit of cooperation and conciliation.

Please reject this package of Senate bills that offer only the necessity of future legislation and the potential for further, wasteful litigation.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Dianne L. McDermand". The signature is written in dark ink and is positioned above the typed name and address.

Dianne McDermand, Spokesman  
Medicine River Canoe Club  
3805 4th Avenue South  
Great Falls, MT 59405

March 26, 1985

Mr. Chairman and Members of the  
House Judiciary Committee:

I live in Great Falls, and I speak this morning for myself, and a number of friends and neighbors who were unable to attend this early morning session. We are opposed to Senate Bills 418, 421, 424, and 435, as the issues to which these bills relate are better addressed by House Bill 265, which is now being considered in the Senate Judiciary Committee.

HB 265 has a considerably better definition of the high water mark than SB 418. While I have no particular fault to find with the intent of Senate Bills 421 and 424, the matters of prescriptive easement by recreational use, and landowner protection from liability due to recreational activities are adequately covered in HB 265.

Senate Bill 435 would preclude floaters from setting foot on land, even below the high water mark, without permission from the adjacent landowner, from the time they launch their craft until they reach their destination. This is contrary to the two recent Supreme Court decisions, and is completely unacceptable <sup>To</sup> Montana sportsmen.

I urge you to reject this entire package of four Senate bills, as they seriously discriminate against the recreating public.

Respectfully,

*Walt Carpenter*  
Walt Carpenter  
320 40th Street South  
Great Falls, MT 59405

Attachments



18 MAR '85

# Opinion

The Billings Gazette

## Stream-access bill in danger

A Senate Judiciary sub-committee has attempted to design a horse and turned up with a camel.

And that misshapen camel — amendments to a stream access bill being considered by the Senate — should be put out of its misery as quickly as possible.

### Gazette opinion

The access bill, House Bill 265, was born of compromise and reason.

The Montana Supreme Court ruled in a recent landowner case that recreationists have legal access to the state's streams for recreational purposes. They also have a right, according to the ruling, to portage past barriers in the stream in the least obtrusive manner possible.

The ruling was a landmark. It held, basically, that most of the state's streams are the property of the public and denying the public access to its property was wrong.

That, of course, put the hairs up on the napes of landowners' necks. Landowners pay taxes on some of the land addressed by the ruling. How could the state demand taxes and

exercise control over the land at the same time? And what about the "sportsmen" who litter the land and endanger cattle and ranchers alike.

At this point, the advantage obviously lay with recreationists. The court had given them widespread powers, but the ruling was open to question on some points, too.

So the recreationists and the landowners took the matter to the Legislature in an attempt to reach a more stable middle ground.

The result was House Bill 265. That bill isn't perfect of course. For example, it offers a rather nebulous definition of what represents class I and class II streams — class II being limited in recreational uses.

But it was a compromise gnashed out in the House and transmitted to the Senate. Then, the Senate Judiciary Committee appointed a sub-committee to study the bill, and all sense of reason fled.

The subcommittee offered proposals which would preclude portaging around "natural" barriers, big game hunting, camping, or building temporary duck blinds on all streams.

Additionally it defined the "high-water"

mark as the point at which the water touches the shore: summer, fall, winter or spring.

Those amendments, of course, are patently ridiculous.

Under the provisions of the amendment recreationists would be banned from eating lunch on shore, seeking refuge on land from a storm, stopping to fish. Camping would still be permitted provided the campers were willing to camp in the water.

Basically, the floaters would be precluded from setting foot on land from the time they pushed their boats into the water to the time they reached their destination.

Recreationists have bridled at the amendments the court ruling offered them free rein. Sportsmen don't have to make any concessions.

Landowners fear the amendments will jeopardize any reasonable solution to the problem.

The subcommittee has threatened the spirit of compromise that prevailed until last week. Members ought to rethink their positions before releasing their "camel" on the public. The public simply isn't in any mood to buy camels.

Lewistown News Argus

3/17/85

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## Guest opinion . . .

### Stream bed access bill is a good bill, fair to landowners

by Gene Chapel  
President, Montana Farm Bureau

House Bill 265, the stream bed access bill, has taken a bum rap for many things that it doesn't do and hasn't got credit for the good it will create for Montana landowners.

The Montana Farm Bureau, and 13 other state ag organizations, spent the last year researching with landowners and lawyers to create a bill to protect landowners within the confines of two Supreme Court decisions. The court took all control and rights (except paying taxes on the stream bed) away from landowners 18 months ago.

HB 265 has the support of major state recreational groups but there are a few landowners and hunting groups that

would harpoon this bill and live with the court decisions.

I can guarantee the good people of Montana that the Farm Bureau and groups such as the Stockgrowers and Woolgrowers have never given away landowner rights and never will. The Supreme Court took away these rights and we seek to regain as much control of the waterways as we can so we can manage our operations with the least possible interference from the recreating public.

Below is a comparison of where we are now and where we will be with HB 265. Read this, then please call your senator or as many senators as possible and help get HB 265 passed.

Thank you.

| <u>Supreme Court Rulings</u>   | <u>Result</u>   | <u>HB 265 provisions</u>  | <u>Result</u>   |
|--|---|---|---|
| Landowner has no right to control use of surface waters, except to satisfy prior appropriation uses  | Full public use of water without regard to land ownership   | Public recreational rights recognized but certain activities (vehicle operation big game hunting prohibited, camping and creating certain structures banned on smaller streams)   | Public right defined and limited where recreational use would conflict with private rights                            |
| Recreational use of waters recognized, but water capacity alone determines types and availability  | No definition of recreational use, reference to other state statutes will supply definitions          | Recreational users defined and restricted to water-related activities with some restrictions  | Recreational activities on water restricted to water activities   |
| Public trust doctrine does not permit private party to interfere with public's right to recreational use of surface waters   | Unlimited public use of all state water with no interference  | Limits on public uses imposed to assure activities are water related, bans use of diverted or impounded waters, landowners may fence across streams and rivers  | Landowner management options protected and preserved, recreational activities limited to stream use only              |
| Public trust doctrine permits full recreational use of surface waters  | Public easements on waterways, potential prescriptive easements on private property.                  | Prescriptive easements cannot be developed through use of waters, beds, banks, portage routes or across private land to reach waters  | No potential prescriptive easements developing on private land  |
| Public trust doctrine permits full recreational use of surface waters  | Unlimited public use of all state water with no interference  | Fish and Game Commission must formulate rules limiting, restricting, or banning types and extents of recreational use of waters   | Limits recreational use of water for health, safety and protection of public and private property                     |
| Public prohibited from crossing private property to reach waters   | Public trespassing across private land not permitted  | Public prohibited from crossing private property to reach waters  | Public trespass across private land not permitted   |
| Public's use of water is, under normal circumstances, allowed to high water mark of waters   | No definition of high water mark and potential of including flood plains while wet or dry             | High water mark defined to mean line impressed on land by water for sufficient periods to distinguish areas, banning recreational use of flood plains   | Contains recreational activities to within banks of a stream  |
| Public's right to use stream includes right to portage around all barriers which interfere with right, allows portage in least intrusive manner avoiding private property damage | No definition of barrier. Public alone determines manner and method of portage                        | Barriers defined as only objects which totally or effectively obstruct recreational use of water; portage permitted avoiding damage to private land and rights, route determined to preserve landowner management needs | Public given right to portage around barriers, landowner can restrict portage to exclusive route for management needs |
| Surface water user has right to make full recreational use of water without control by landowner   | Recreational user present on land as a matter of right, landowner probably owes duty of ordinary care | Landowner and supervisor liability to recreational user limited to willful or wanton misconduct   | Limited duty of care owned recreational user, prohibits intentional acts designed to ignore                           |
| Public has right to use water, the bed and bank up to ordinary high water mark and to portage around barriers.   | Recreational use includes water, beds and banks of streams  | Surface waters defined to include beds and banks of streams up to ordinary high water mark  | Public recreational uses include water, beds and banks of streams   |

WITNESS STATEMENT

NAME Lavina Lubinas 5B  
BILL NO. 435  
ADDRESS 1501 Chestnut DATE 3/26/85  
WHOM DO YOU REPRESENT? WIFE  
SUPPORT ~~S~~ OPPOSE XX AMEND \_\_\_\_\_

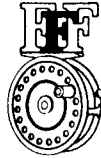
PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

*This is already being done by law. so the  
bill is redundant.*



**MISSOURI RIVER  
FLYFISHERS**




P.O. Box 6398  
Great Falls, MT 59406

March 26th, 1985

Mr. Chairman and Members of the House Judiciary Committee:

Again I appear before you on behalf of the Missouri River Flyfishers to testify on the stream access issue. You have before you four bills, Senate Bills 418, 421, 424, and 435, that either duplicate or usurp House Bill 265. These bills have been touted as "back-up" bills in case H.B. 265 fails in the Senate, but they are actually being pushed through whether H.B. 265 passes or not. These bills are counter-productive and offer no real compromise on the stream access issue, as does H.B. 265, and in fact muddy the waters.

The Missouri River Flyfishers reiterates its support of H.B. 265 as the only true vehicle of compromise on the stream access issue. It alone encompasses all the issues brought up by these other bills, save the trespass issue, which H.B. 911 adequately addresses. We ask you to continue your support of H.B. 265 by killing these duplicative and non-productive bills.

  
Kevin Krumvieda  
Secretary

TESTIMONY OF THE MONTANA COUNCIL, TROUT UNLIMITED

S.B. 435

HOUSE JUDICIARY COMMITTEE

March 26, 1985

Mr. Chairman and Members of the Committee:

My name is Mary Wright, and I represent the Montana Council of Trout Unlimited. Trout Unlimited is a national fishing conservation organization with over 330 chapters in the United States, including ten chapters and one affiliated organization in Montana.

We question certain aspects of this bill. While we generally support the concept of obtaining landowner permission before using private land for recreation, we believe that this bill imposes too heavy a burden on recreational users to know the land ownership and boundaries at all times. A sportsman could use all the usual tools at his disposal, including maps, posting, inquiries and personal knowledge, and still be mistaken about ownership and boundaries. Many thousands of acres of land have changed from public to private ownership since maps have been revised, and not all lands are accurately posted. Therefore, this bill would criminalize good faith behavior on the part of a sportsman who made a thorough good faith effort to do the right thing. It would also essentially impose absolute liability for an activity not inherently dangerous or threatening.

In addition, we do not believe that the term "incidental to and necessary for" the recreational use of surface waters is sufficiently clear to give guidance to the same class of sportsmen who are trying to do the right thing. We would also point out that the penalty for violation would include not only a fine and a jail sentence, but also loss of the privilege to hunt, fish or trap for a period of at least two years following the date of conviction. We believe that the penalty is inappropriate for what would be essentially a trespass situation which could occur without knowledge, intent or even negligence on the part of the defendant.

Our position is not that there is no need for legislation in this area. The purpose of the bill could be accomplished in other ways, for example, by a legislative statement of what constitutes adequate posting on the part of a landowner. That approach could provide more certainty for the landowner while not requiring sportsmen to shoulder a potentially impossible burden.

As introduced, however, we must oppose S.B. 435 and request that the Committee not take favorable action on it.

Thank you.

TESTIMONY REGARDING SB 418

Submitted by: Conrad B. Fredricks, Big Timber, Montana.

Senate Bill No. 418 is a bill which defines "ordinary high-water mark" for the purpose of defining the public's right to make recreational use of the waters of the state given by the Supreme Court of Montana in the Curran and Hildreth decisions.

The Supreme Court of Montana, in stating the principle that the public had the right to use the surface waters of the state for recreational purposes within the ordinary high-water mark, did not define what it meant by "ordinary high-water mark".

In order to avoid continuing litigation over the uncertainty created by this lack of definition by the Supreme Court, it was the feeling of most persons concerned with the public's recreational use of the waters of the state that it was imperative that the Legislature define "ordinary high-water mark".

The definition contained in the first sentence of Senate Bill No. 418 is the one used by Soil Conservation District Supervisors for years in administering "The Natural Streambed and Land Preservation Act of 1975" (Title 75, Chapter 7, Part 1, M.C.A.).

This definition is one that is easy to administer and which follows the plain-English meaning of "ordinary high-water mark". It is readily visible, is capable of clear delineation, and corresponds to what any reasonable person would consider to be the "ordinary" high-water mark, as opposed to an "extraordinary" high-water mark.

There is currently a very similar version of the definition contained in SB 418 presently under consideration by a subcommittee of the Senate Judiciary Committee, in their consideration of HB 265. The definition of the Senate subcommittee of ordinary high-water mark currently under consideration is as follows:

"'Ordinary high-water mark' means the line that water impresses on land by covering it for sufficient periods to cause physical characteristics below the line from the area above it. Characteristics of the area below the line include, when appropriate, but are not limited to deprivation of the soil of

substantially all terrestrial vegetation and destruction of its agricultural vegetative value. A flood plain adjacent to surface waters is not considered to lie within the surface waters' high-water mark."

In order to make SB 418 consistent with HB 265, as currently in the Senate subcommittee, it certainly could be amended by amending line 12 to read "for sufficient periods of time to deprive the soil of substantially all of its terrestrial" and by inserting, on line 13, between the words "its" and "value", the word "vegetative".

Certainly, there is no quarrel with the version currently before the Senate subcommittee in HB 265, except that a dry flood channel should also be not considered to be within the ordinary high-water mark for recreational purposes. Dry flood channels are not covered by the current Senate subcommittee definition.

It is respectfully submitted that SB 418 should be passed, as amended, by the House, in the event that HB 265 should not be concurred in by Senate. It is important to have a definition of "ordinary high-water mark", in order to eliminate the uncertainty caused by the Supreme Court's failure to define this term.

(House Judiciary Committee, March 26, 1985)



TESTIMONY ON SENATE BILL NO. 424

Submitted by Conrad B. Fredricks, Big Timber, Montana

Senate Bill 424 is designed to meet a problem which might exist because of the Supreme Court's decisions allowing persons to use the beds and the banks of streams, as well as surface waters, for recreational purposes, even though the bed and banks of the stream are owned by a private landowner.

Some concern was generated by the Supreme Court decisions that use of the public of the privately-owned bed and banks of a stream might give rise to a prescriptive easement in the public to use this privately-owned land forever.

Senate Bill 424 is designed to make it clear that a prescriptive easement to use privately-owned lands cannot be acquired, under any circumstances, through use of either land or water for recreational purposes.

The provisions of Senate Bill 424 are very straightforward and cannot be misinterpreted.

House Bill 265, which has passed the House, also tries to deal with the problem of potential prescriptive easements.

One of the problems with the provisions of House Bill 265 is that it only relates to a prescriptive easement through recreational use of surface waters, including the beds and banks up to the ordinary high-water mark. It does not provide that recreational use of lands which are privately owned, other than recreational use of surface waters, cannot give rise to a prescriptive easement. It is possible, and, perhaps, probable that some person might be using lands for recreational purposes, which the landowner might consider to be covered under the use of surface waters, and then, after the 5 year period for acquiring a prescriptive easement had passed, successfully claim, or try to claim, before a court that the use really wasn't connected with use of surface waters and that the person could continue this recreational use forever.

It would seem a lot better to make it clear that no recreational use of privately-owned lands creates a prescriptive easement, without the problem of trying to determine whether or not the use is connected to recreational use of surface waters, including the bed and banks thereof.

There is a provision of House Bill 265 which could be included in Senate Bill 424. This could be included by amending Senate Bill 424, on page 1, line 16, to insert, at the end of the sentence, before the period, the words "or for the purpose of crossing the land to reach surface waters".

It is important that Senate Bill 424 pass the House, in the event that House Bill 265 should be killed in the Senate and would thus be unavailable as a means of addressing this important prescriptive easement problem.

(House Judiciary Committee, March 26, 1985)



502 South 19th

EXHIBIT L  
3/26/85  
Bozeman, Montana 59715  
Phone (406) 587-3153

TESTIMONY BY: Gene Chapel

BILL #: SB 418                      DATE: 3/26/85

SUPPORT XXXX                      OPPOSE                     

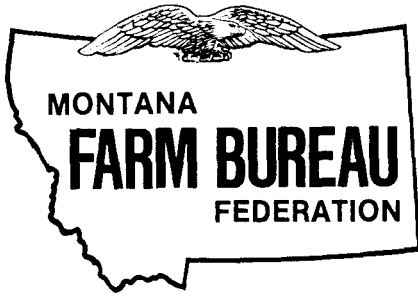
Mr. Chairman, members of the committee, for the record my name is  
Gene Chapel, President of the Montana Farm Bureau.

Farm Bureau supports the concept of SB 418, but we believe the  
definition of high water mark is better defined in HB 265, therefore  
we feel SB 418 complicates the problem and would like to see it  
tabled pending the final outcome of HB 265.

SIGNED: \_\_\_\_\_

502 South 19th

Phone (406) 587-3153



TESTIMONY BY: Gene Chapel

BILL #: SB 421                      DATE: 3/26/85

SUPPORT XXXX                      OPPOSE \_\_\_\_\_

Mr. Chairman, members of the committee, for the record my name is Gene Chapel, President of the Montana Farm Bureau.

Farm Bureau supports the concept of SB 421, but we believe that landowner liability is covered in HB 265; therefore we feel SB 421 complicates the problem and would like to see it tabled pending the final outcome of HB 265.

SIGNED: \_\_\_\_\_

3/26/85

502 South 19th

Bozeman, Montana 59715

Phone (406) 587-3153



TESTIMONY BY: Gene Chapel

BILL #: SB 424                      DATE: 3/26/85

SUPPORT XXXX                      OPPOSE                     

Mr. Chairman, members of the committee, for the record my name is Gene Chapel, President of the Montana Farm Bureau.

Farm Bureau supports the concept of SB 424, however we believe the subject of "Prescriptive Easement" is covered in HB 265 and feel it would be redundant to have two (2) bills covering the same subject; therefore we would like to see SB 424 tabled pending the final outcome of HB 265.

SIGNED: \_\_\_\_\_

SB 418, SB 421, SB 424

Testimony presented by Jim Flynn, Department of Fish, Wildlife & Parks  
March 26, 1985

Each of the subjects covered in these three pieces of legislation has been the subject of much discussion over the past year. Most recently, that discussion has centered around legislation which is now before this body in the form of HB 265.

Much time, effort and compromise have gone into that legislation, and we commend it to this body as the preferred mechanism for addressing the concerns that have resulted in Senate bills 418, 421 and 424.

With respect to SB 418, we concur with the basic definition as laid out in this measure. The basic concept is the same as embodied in HB 265 and in fact may have been improved by amendment by the Senate subcommittee.

With respect to SB 421, again we concur with the bill and agree that landowner liability should be limited. This basic concept is embodied in HB 265 and appears to have been accepted by the Senate subcommittee.

With respect to SB 424, while we agree with the premise that no prescriptive easement should be acquired through the recreational use of water, the addition of land is an addition to which we cannot agree.

We would again recommend the language in HB 265 on this subject for your consideration.

Mr. Chairman, it is unusual for the situation which we have before this committee today. Those of us who appear before this committee in opposition to the measures up for consideration do so even though agreeing with the concepts contained in each bill.

We are concerned with the singular approach each portrays and we must express that concern.

The overall subject of stream access is difficult, complex and highly emotional. We feel the people of Montana, and particularly those who have worked closely on this issue, are to be commended for arriving at a truly comprehensive bill to address the many facets of the issue.

A single bill covering a single subject is not going to relieve the anxieties which exist nor is it going to establish the proper guidelines for all members of the public as they begin to deal on a day-to-day basis with the results of the Supreme Court decisions of last year.

We urge the committee to consider the need for a comprehensive approach and the wisdom of such an approach.

We are confident that such consideration will result in a piece of legislation that will serve all the public well and which will address the many uncertainties which now exist.

WITNESS STATEMENT

S B 424  
S B 421  
S B 418

NAME Laurina Lubinas BILL NO. \_\_\_\_\_

ADDRESS 1501 Chestnut Helena DATE 3/26/85

WHOM DO YOU REPRESENT? Women Involved in Farm Economics

SUPPORT \_\_\_\_\_ OPPOSE X X X AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: While we agree in principal with the concepts of these bills we feel Each of these bills ~~was~~ addressed in detail and quite well in H.B. 265. Weta has 9 business who do not support or have no opinion on them or another defined in H.B. 265. It is important to protect the private land owners.

S.B. 418 - Ordinary HiWalu - We oppose this quite strongly. We do not want the flood plains or channels to ever be considered for recreational use. The ever flowing streams are enough.

S.B. 424 - prescriptive Easement. - This is very well covered in the H.B. 265 - prescriptive easement has been on the books for a long time - and has worked.

No one in agriculture or a landowner along a stream is happy about the Supreme Court decision - However ~~that~~ ~~is~~ that decision is a fact of life - To now beat our heads upon a brick wall ~~is~~ is denying reality. That fact and unwilling to accept it is to do us a great deal of harm. Sort of like shooting our selves in the foot !! The pressure on landowners to open their land while the FW + P close or closely control these public land has been great. But to ease these 3 or 4 small bills to one that hurt is not going to do it.

H.B. 265 - gives us protection, protection these piece meal CS-34 bills cannot offer.

SENATE BILL NO. 321

INTRODUCED BY FULLER, MAZUREK, B. BROWN, O'HARA

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAWS RELATING TO BAIL; TO REQUIRE CONSIDERATION OF THE DANGER A PERSON POSES TO OTHER PERSONS OR THE COMMUNITY IN SETTING BAIL AND--BAIL--CONDITIONS; TO EXPAND THE LIST OF BAIL CONDITIONS WHICH MAY BE IMPOSED; AMENDING SECTIONS 46-9-103, 46-9-301, AND 46-9-501, MCA; AND REPEALING SECTION 46-9-101, MCA."

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

Section 1. Section 46-9-103, MCA, is amended to read:

"46-9-103. Bail ~~after--conviction pending sentence or appeal.~~ (1) ~~After--conviction-of-an-offense-not-punishable-by death,-a-defendant-who-intends-to-appeal-may-be-admitted--to bail-~~

~~(a)--as--a--matter-of-right,-from-a-judgment-imposing-a fine-only-or-any-judgment-rendered-by-a--justice's--or--city court;~~

~~(b)--as--a--matter-of-discretion-in-all-other-cases.~~ (A) A PERSON INTENDING TO APPEAL FROM A JUDGMENT IMPOSING A FINE ONLY OR FROM ANY JUDGMENT RENDERED BY A JUSTICE'S OR CITY COURT MUST BE ADMITTED TO BAIL.

(B) A person found guilty of an offense and awaiting





1 imposition or execution of sentence OR A PERSON FOUND GUILTY  
 2 OF AN OFFENSE AND SENTENCED TO A TERM OF IMPRISONMENT WHO  
 3 HAS FILED AN APPEAL may not-be-admitted-to-bail-unless BE  
 4 DENIED-BAIŁ ADMITTED TO BAIL ONLY IF the judge finds by  
 5 clear--and--convincing--evidence that the person is not NOT  
 6 likely to flee or AND DOES NOT pose a danger to the safety  
 7 of any other person or the community.

8 {2)--A--person--found--guilty--of--an--offense--and--sentenced  
 9 to--a--term--of--imprisonment--who--has--filed--an--appeal--may--not--be  
 10 admitted--to--bail--unless--the--judge--finds--by--clear--and  
 11 convincing--evidence--that--the--person--is--not--likely--to--flee  
 12 or--pose--a--danger--to--the--safety--of--any--other--person--or--the  
 13 community--and--that--the--appeal--raises--a--substantial--question  
 14 of--law--or--fact--and--is--not--for--the--purpose--of--delay.

15 {2}{3}(2) A defendant-convicted person found guilty of  
 16 the offense of deliberate homicide is presumed to be pose a  
 17 danger to others-and-not-entitled-to-be-admitted-to-bail the  
 18 safety of the community, which presumption is rebuttable."

19 Section 2. Section 46-9-301, MCA, is amended to read:

20 "46-9-301. Determining the amount of bail. In all  
 21 cases that bail is determined to be necessary, bail must be  
 22 reasonable in amount and the amount shall be:

23 (1) SUFFICIENT TO INSURE THE PRESENCE OF THE DEFENDANT  
 24 IN A PENDING CRIMINAL PROCEEDING;

25 {1}(2) sufficient to assure compliance with the

1 conditions set forth in the bail;

2 (2)(3) sufficient to assure that the safety of the  
 3 community, the defendant, or any other person will not be  
 4 endangered PROTECT ANY PERSON FROM BODILY INJURY;

5 (2)(3)(4) not oppressive;

6 (3)(4)(5) commensurate with the nature of the offense  
 7 charged;

8 (4)(5)(6) considerate of the financial ability of the  
 9 accused; and

10 (5)(6)(7) considerate of the defendant's prior record,  
 11 employment status, and family background;

12 (8) CONSIDERATE OF THE LENGTH OF TIME THE DEFENDANT  
 13 HAS RESIDED IN THE COMMUNITY AND OF HIS TIES TO THE  
 14 COMMUNITY;

15 (9) CONSIDERATE OF THE DEFENDANT'S FAMILY  
 16 RELATIONSHIPS AND TIES; AND

17 (10) CONSIDERATE OF THE DEFENDANT'S EMPLOYMENT STATUS."

18 Section 3. Section 46-9-501, MCA, is amended to read:

19 "46-9-501. Form of conditions of bail. (1) If a person  
 20 is admitted to bail before conviction, the conditions of  
 21 bail shall be:

22 (a) that he will appear to answer in the court having  
 23 jurisdiction on a day certain and thereafter as ordered by  
 24 the court until discharged on final order of the court and  
 25 will not depart from this state without leave; and

1 (b) any other conditions that the court may reasonably  
2 prescribe to assure his appearance ~~when--required:~~ as  
3 required ~~and--the--safety--of--any--other--person--and--the~~  
4 community AND TO PROTECT ANY PERSON FROM BODILY INJURY  
5 including but not limited to a condition that the person  
6 ADMITTED TO BAIL:

7 (i) remain in the custody of a designated person who  
8 agrees to supervise him and to report any violation of a  
9 release condition to the court, if the designated person is  
10 reasonably able to assure the court that the person will  
11 appear as required ~~and--will--not--pose--a--danger--to--the--safety~~  
12 of--any--other--person--or--the--community;

13 (ii) maintain employment or, if unemployed, actively  
14 seek employment;

15 (iii) maintain or commence an educational program;

16 (iv) abide by specified restrictions on ~~personal~~  
17 associations, place of abode, or travel;

18 (v) avoid all contact with an alleged victim of the  
19 crime or LIMIT CONTACT with a potential witness who may  
20 testify concerning the offense, EXCEPT THAT CONTACT WHICH IS  
21 NECESSARY TO THE PREPARATION OF THE DEFENSE;

22 (vi) report on a regular basis to a designated law  
23 enforcement agency or other pretrial services agency;

24 (vii) comply with a specified curfew;

25 (viii) refrain from possessing a firearm, destructive

1 device, or other dangerous weapon;

2 (ix) refrain from the use of alcohol or a dangerous  
 3 drug without a prescription from a licensed medical  
 4 practitioner;

5 (x) undergo available medical or psychiatric  
 6 treatment, including treatment for drug or alcohol  
 7 dependency, and remain in a specified institution if  
 8 required for that purpose;

9 ~~(xi) return to custody for specified hours following~~  
 10 ~~release for employment, schooling, or other limited~~  
 11 ~~purposes;~~

12 (2) The judge may at any time amend his order to  
 13 impose additional or different conditions of release.

14 ~~(2)~~ (3) If the defendant is admitted to bail after  
 15 conviction, the conditions of bail, IN ADDITION TO THOSE SET  
 16 FORTH IN SUBSECTION (1), shall be that:

17 (a) he will duly prosecute his appeal;

18 ~~(b) he will appear at such time and place as the court~~  
 19 ~~may direct;~~

20 ~~(c) he will not depart from this state without leave~~  
 21 ~~of the court; and~~

22 ~~(d)~~ (B) if the judgment is affirmed or the cause  
 23 reversed and remanded for a new trial, he will forthwith  
 24 surrender to the officer from whose custody he was bailed."

25 NEW SECTION. SECTION 4. REPEALER. SECTION 46-9-101,

1 MCA, IS REPEALED.

-End-

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March 26, 1985

Mr Chairman and members  
(of the committee.

I am Verna Lou Handis  
representing Park Co. Legislative  
Cass in.

We support the concept  
of Senate Bills 418 - 421 - 424  
and 435. We feel they  
should be left viable,  
in the event that H. B.  
265 does not carry  
sufficient support to be  
passed into law.

( Thank you.

---

March 16, 1985

Senate Bills 418 - 421 - 424 - 435

We of the M.C.A.P.A. do support these bills and ask fair hearing and a do pass recommendation.

Thank you.

Meagher County Agricultural Preservation Ass'n.

George Zieg, Jr.  
White Sulphur Springs, MT

March 24, 1985  
Greenough, MT 59836

Representative Tom Hannah  
Chairman, House Judiciary Committee  
Capitol Station  
Helena, MT 59620

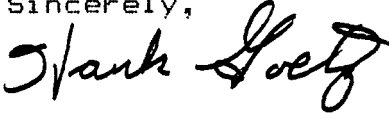
Dear Representative Hannah:

This brief letter is in regards to S.B. 435, which is currently before your committee.

I believe that the issue of recreational trespass and concurrent enforcement by the Department of Fish, Wildlife and Parks must be addressed in any stream access legislation considered this session. In my opinion, S.B. 435 treats this issue in a simple and straight foreward manner. It requires the recreationist to obtain permission before using private land, which is reasonable; and it gives game wardens the authority to enforce recreational trespass on private land. This extension of game warden authority is logical because the Department is the primary state agency responsible for the management of public recreation in Montana.

In closing, I urge your favorable consideration of S.B. 435. and thank you for this opportunity to comment.

Sincerely,



Hank Goetz



TESTIMONY OF THE MONTANA COUNCIL, TROUT UNLIMITED

S. B. 418

HOUSE JUDICIARY COMMITTEE

March 26, 1985

Mr. Chairman, Members of the Committee:

My name is Mary Wright, and I represent the Montana Council of Trout Unlimited. Trout Unlimited is a national fishing conservation organization with over 330 chapters in the United States, including 10 chapters and one affiliated organization in Montana. TU opposes S.B. 418 because of its substance and because of its relationship to H.B. 265 as that bill passed the House.

S.B. 418 proposes a definition of "ordinary high-water mark" based on the definition that has been used in carrying out the Natural Streambed and Land Preservation Act of 1975. It is argued that that definition, which appears in the administrative code and has not been adopted by the Legislature, has been in place and effective for ten years and therefore should be adopted for the purposes of stream access-related use.

The purpose of the Streambed Preservation Act is to protect streams and lands adjacent to them in their natural or existing state. The definition of "ordinary high-water mark" in that context, however, may not provide the guidance required to prevent landowner-sportsman conflict in the stream access context.

When the Montana Supreme Court issued its two stream access decisions last year, it left to the Legislature the task of defining "ordinary high-water mark," which in turn defines the limits of sportsmen's right to use surface waters in the state. For this reason it is important that the Legislature articulate a useful definition.

The principal area of difference between the definitions in S.B. 418 and H.B. 265 is in their treatment of vegetation. In describing the area below the line that is the ordinary high water-mark, S.B. 418 refers to "depriv(ing) the soil of its vegetation," while H.B. 265 refers to "diminished terrestrial vegetation." On most Montana streams and rivers there is a community of terrestrial vegetation that is hydrophilic and grows down to and sometimes in the water. Mint is a good example. If S.B. 418's definition is adopted, then wherever mint grows, even in steep, gravelly banks clearly without agricultural value, the ordinary high-water mark would be at or below the level of the water. Because the Court was talking about the public's right to use land above the actual water level, this cannot be what it had in mind when it issued its decisions. The definition in H.B. 265 provides a more meaningful criterion, that is, diminished terrestrial vegetation, while affording protection of the land by stating that floodplains adjacent to the stream, even though they may have diminished terrestrial vegetation, are not considered to lie within the ordinary high-water mark.

S.B. 418 was passed by the Senate as insurance in the event H.B. 265 did not pass. Now the opponents of H.B. 265 are using S.B. 418 and its companion bills as a reason to kill H.B. 265. We still believe that H.B. 265 addresses all the issues raised by the Supreme Court and that to deal with only part of the issues is unfair and illogical. We therefore ask the Committee not to take favorable action on this bill.

Thank you.

TESTIMONY OF THE MONTANA COUNCIL, TROUT UNLIMITED

S. B. 421

HOUSE JUDICIARY COMMITTEE

March 26, 1985

Mr. Chairman and Members of the Committee:

My name is Mary Wright, and I represent the Montana Council of Trout Unlimited. Trout Unlimited is a national fishing conservation organization with over 330 chapters in the United States, including ten chapters and one affiliated organization in Montana.

Our testimony today is neither in favor of or in opposition to S.B. 421, but we would like to offer some comments. Our organization participated in the process of developing the proposal on stream access that is now embodied in H.B. 265, which passed the House last Tuesday. As the bill passed the House, it is, we believe, a reasonable, fair and balanced treatment of the issues raised by the Montana Supreme Court in its Curran and Hildreth decisions handed down last year, as well as the issues considered by Interim Subcommittee No. 2.

One of the provisions of H.B. 265 is a restriction on landowner liability found in section 4. It differs somewhat in substance from S.B. 421. We believe that the most appropriate forum for addressing the differences between the two provisions would be in the Senate's deliberations on H.B. 265.

S.B. 421 was passed by the Senate as insurance in the event H.B. 265 did not pass. Now the opponents of H.B. 265 are using H.B. 421 and its companion bills as a reason to kill H.B. 265. To deal with only part of the issues raised by the Court is unfair and illogical. We therefore ask the Committee not to take favorable action on this bill.

Thank you.

TESTIMONY OF THE MONTANA COUNCIL, TROUT UNLIMITED

S.B. 424

HOUSE JUDICIARY COMMITTEE

March 26, 1985

Mr. Chairman and Members of the Committee:

My name is Mary Wright, and I represent the Montana Council of Trout Unlimited. Trout Unlimited is a national fishing conservation organization with over 330 chapters in the United States, including ten chapters and one affiliated organization in Montana.

Our testimony today is neither in favor of or in opposition to S.B. 424, but we would like to offer some comments. Our organization participated in the process of developing the proposal on stream access that is now embodied in H.B. 265, which passed the House last Tuesday. As the bill passed the House, it is, we believe, a reasonable, fair, and balanced treatment of the issues raised by the Montana Supreme Court in its Curran and Hildreth decisions handed down last year, as well as the issues considered by Interim Subcommittee No. 2.

One of the provisions of H.B. 265 deals with prescriptive easements in the context of recreational use found in section 5. It differs somewhat in substance from S.B. 421. We believe that the most appropriate forum for addressing the differences between the two provisions would be in the Senate's deliberations on H.B. 265.

S.B. 424 was passed by the Senate as insurance in the event H.B. 265 did not pass. The opponents of H.B. 265 are now using H.B. 424 as a reason to kill H.B. 265. To deal with only part of the issues raised by the Court is unfair and illogical. We therefore ask the Committee not to take favorable action on H.B. 424.

Thank you.

(This sheet to be used by those testifying on a bill.)

NAME: Conrad B Fredricks DATE: 3/26/85

ADDRESS: Big Timber

PHONE: 932-5440

REPRESENTING WHOM? Sweet Grass County Preservation Assn.

APPEARING ON WHICH PROPOSAL: SB 424

DO YOU: SUPPORT? X AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENT: See prepared statement

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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Conrad B Fredricks DATE: 3/26/85

ADDRESS: Big Timber

PHONE: 932-5440

REPRESENTING WHOM? Sweet Grass County Preservation Association

APPEARING ON WHICH PROPOSAL: SB 418

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENT: See prepared statement

Amend by striking all after "purposes" on line 16 and all of line 17.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: Conrad B Fredricks DATE: 3/26/85

ADDRESS: Big Timber

PHONE: 937-5440

REPRESENTING WHOM? Sweet Grass County Preservation Assn.

APPEARING ON WHICH PROPOSAL: SB 435

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENT: See prepared statement.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

WITNESS STATEMENT

NAME Bill Larson BILL NO. SB 418  
ADDRESS P.O. Box 136 Alder Mt. DATE 3/26/85  
WHOM DO YOU REPRESENT? land owners  
SUPPORT X OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I believe SB 418 defines "high water mark" well. I hope you will pass this bill.

Thank you  
Bill Larson



WITNESS STATEMENT

NAME Bill Larson BILL NO. SB 421  
ADDRESS Box 136 Alder, Mt. 59710 DATE 3/26/85  
WHOM DO YOU REPRESENT? Land Owners  
SUPPORT X OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I believe SB 421 protects the land owners.  
I do not believe that a land owner should  
be held liable for persons not being invited  
on your land.

Thank You  
Bill Larson

WITNESS STATEMENT

NAME Linda Larson BILL NO. SB 421  
ADDRESS Box 136 Alder, MT. DATE 3/26/83  
WHOM DO YOU REPRESENT? Land owners  
SUPPORT X OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I hope you will pass SB 421. I believe if you really want to protect the land owner. this is the bill you should pass.

Thank You  
Linda Larson

WITNESS STATEMENT

NAME Sam P Maloney BILL NO. SD 435  
ADDRESS Box 139 Alder Mt 59710 DATE 3/26  
WHOM DO YOU REPRESENT? \_\_\_\_\_  
SUPPORT X OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: *this Bill is a masterpiece of simplicity.  
It grants the private landowner the same  
privileges currently reserved only for the state.*

WITNESS STATEMENT

NAME Linda Larson BILL NO. SB 435  
ADDRESS Box 136 Alder Mt. DATE 3/26/85  
WHOM DO YOU REPRESENT? Land owners  
SUPPORT X OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I hope you will pass SB 435, I think it protects the landowner from trespass without permission.

Thank you  
Linda Larson

WITNESS STATEMENT

NAME Bill Larson BILL NO. SB 435  
ADDRESS P.O. Box 136 Alder, Mt. DATE 3/26/85  
WHOM DO YOU REPRESENT? Land owners  
SUPPORT X OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I believe SB 435 protects the land owners from all forms of trespass without land owner's permission. I hope you will pass this bill.

Bill Larson

WITNESS STATEMENT

NAME Bill Larson BILL NO. SB 424  
ADDRESS P.O. Box 136 Alder, Mt. DATE 3/26/85  
WHOM DO YOU REPRESENT? Land owners  
SUPPORT X OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I believe SB424 protect the land owner and keeps the control of the land to the owner.

Thank you  
Bill Larson

WITNESS STATEMENT

NAME Linda Larson BILL NO. SB 424  
ADDRESS P.O. Box 136 Alder, Mt. DATE 3/26/85  
WHOM DO YOU REPRESENT? land owners  
SUPPORT X OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I hope you will pass SB 424 and protect the land owners since we are the people who pay taxes on the private property.

Thank you  
Linda Larson

WITNESS STATEMENT

NAME Linda Larson BILL NO. SB 418  
ADDRESS Box 136 Alder Mt. DATE 3/26/85  
WHOM DO YOU REPRESENT? Land owners  
SUPPORT X OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I think "ordinary high watermark" is well defined in this bill (SB 418). I hope you will pass this bill.

Thank You  
Linda Larson



VISITORS' REGISTER

HOUSE JUDICIARY

COMMITTEE

BILL NO. SB 418 (Sen. Boylan);  
 SB 421 (Sen. Story);  
~~SB 424 (Sen. Williams);~~  
 SPONSOR SB 436 (Sen. Galt)

DATE March 26, 1985

| NAME (please print) | <del>REPRESENTING</del><br>REPRESENTING | SUPPORT | OPPOSE   |
|---------------------|---|---------|----------|
| George Zief Jr      | MC HPA                                  | ✓       |          |
| Lorna Frank         | Mt. Farm Bureau                         | ✓       |          |
| Gene Chapel         | Mount Farm Bureau                       | ✓       |          |
| George Rossetta     | Self                                    | ✓       |          |
| Margery Rossetta    | Self                                    | ✓       |          |
| Hal Price           | Mont Wildlife Fed                       |         | ✓        |
| T. Lucas            | Self                                    | ✓       |          |
| Conrad B. Fiddich   | Sweet Bros Co. Pres. Assn               | X       |          |
| Wes Heathorn        | self                                    | X       |          |
| Van Waterman        | USGA, et al                             |         | ✓✓<br>✓✓ |
| Bud Pila            | Self                                    | ✓       |          |
| <del>Tom Don</del>  | <del>Self</del>                         | ✓       |          |
| Mike Mason          | WETA                                    | ✓       |          |
| John Brown          | On Len Hill                             |         | ✓✓       |
| Margaret Wheeler    | Mt. Farm Bureau                         |         | ✓        |
| Loren Grofield      | self                                    | ✓✓      |          |
| Land M. Rindberg    | self                                    | ✓✓      |          |
| <del>John ...</del> | <del>self</del>                         | ✓       |          |
| Bill Morse          | Stillwater Co Ass'n<br>The Foyles       | ✓       |          |

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

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COMMITTEE

BILL NO. SB 418 (Sen. Boylan);  
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DATE March 26, 1985

SPONSOR \_\_\_\_\_

| NAME (please print) | RESIDENCE REPRESENTING   | SUPPORT        | OPPOSE        |
|---------------------|--|----------------|---------------|
| Lavina Lubinus      | WIFE   |                | LL<br>LL      |
| Linda Larson        | Land owners  | LL<br>LL       |               |
| Bill Larson         | Land Owners  | VV<br>VV       |               |
| ROSABELLE MALONEY   | LAND OWNERS  | VVVV           | <del>LL</del> |
| CHARLES HOWE        | land owner   | VVV            |               |
| Dance Howe          | landowner  | VVV            |               |
| Travis McDermott    | self   |                | LL            |
| Walter Kahlert      | self   |                | LL            |
| Craig Martin        | self   |                | LL            |
| Tom Schreiner       | Capitola Bay Stream Access<br>Skyline Sportsman                      |                | ✓             |
| Bob McPherson       | Holmen   | 424            |               |
| Tom Maloney         |  | VVV            |               |
| Mrs. Arch Allen     | Self   | VVV            |               |
| Verna Lee Rindia    | P.O. Box Park Co.  | VVV            |               |
| Sam Schreiner       | Bellings Red & Gun <sup>5000</sup> fault <sup>at</sup> <sup>in</sup> |                | ✓             |
| Kevin Z. Krummholz  | mineral Rich Flycatcher, <sup>Great</sup> Falls                      | <del>VVV</del> | ✓             |
| Walt Carpenter      | Myself + Friends   |                | ✓             |
|                     |  |                |               |
|                     |  |                |               |

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PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.