

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
February 16, 1983

The twenty-ninth meeting of the Senate Judiciary Committee was called to order by Chairman Jean A. Turnage on February 16, 1983 at 10:10 a.m. in Room 325, State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF SENATE BILL 348:

AN ACT TO AMEND THE DEFINITION OF "NAVIGABLE STREAM"; AMENDING SECTION 85-1-112, MCA.

Senator Galt, principal sponsor of this bill, advised that SB348 was precipitated by the recent court decision of Montana Coalition for Stream Access v. Hildreth. In the past the legislature has let various courts decide the definition of a "navigable" stream, but there is now a need to provide a definition through the statutes. Various problems arise from the district court's decision which only a legislative definition of navigability can correct.

PROPONENTS: Ronald Waterman, an attorney representing the Montana Stockgrowers Association, emphasized the importance of this legislation to landowners and sportsmen, and the need for a balance between these two groups.

Stan Milesinck, representing the Montana Stockgrowers Association and also a rancher in Belgrade, supported SB348. He stated that a livestock operation is dependent on the use of streams. Currently the landowners are maintaining the streams and he questioned who would maintain them if SB348 does not pass. It has been his experience that floaters who ask permission are always allowed access to his stream.

Gordon Darlenton, representing Agriculture Preservation Association, Park and Sweet Grass Counties Preservation Association, and a rancher in Three Forks, testified in favor of the bill and submitted his written testimony (attached as Exhibit "A").

Mayor John Drivdahl, supported the bill as a concerned citizen from Big Timer. He spoke briefly about the surveying of meandering streams for tax purposes and stated that the landowners have not paid taxes on the stream beds.

Rex Reike of Billings supported the bills and gave examples of vandalism and trapping which had taken place on his land without his permission. He further described fences that had been cut and barriers, intended to be used to retain his livestock, which had been destroyed.

Lorraine Gillies, a Montana State Farm Bureau Board Member and a rancher, urged the passing of SB348 and submitted her written testimony (attached as Exhibit "B").

Franklin Grosfield urged a do pass recommendation on SB348 in light of the recent court decision and submitted his written testimony (attached as Exhibit "C").

Jo Brunner, representing Women Involved in Farm Economics, testified in favor of SB348 and submitted her written testimony (attached as Exhibit "D").

Gene Chapel, Vice President of the Montana Farm Bureau, testified in support of SB348 and SB347 and submitted his written testimony (attached as Exhibit "E").

There being no more time for the proponents of SB348, a show of hands was given by the other supporters and the hearing was opened to the opponents.

OPPONENTS: Don Peoples, the Chief Executive for Butte-Silverbow, opposed both bills. He felt there would be a serious impact on the economy of Montana if the use of the rivers were curtailed. He felt that Montana was striving to develop tourism and limiting the use of the rivers would have drastic economic consequences for the state's tourist industry.

Dave Kumlien, owner and operator of the Wild Wings Orvis Shop which sells fly fishing equipment, outdoor clothing, wildlife and western art, opposed these bills as they would cause a direct impact on his business. His business relies on the public's use of the rivers. Written testimony was submitted (attached as Exhibit "F").

Larry Aiuppy, a fisherman, testified in opposition to the bill and submitted his written testimony (attached as Exhibit "G").

Gary Buchanan, representing the Montana Department of Commerce, advised the Committee not to overlook the economic impact these bills would have on Montana. He stated tourism and outdoor recreation are vital to Montana's businesses and submitted his written testimony (attached as Exhibit "H").

Robert Foukal of Bozeman testified in opposition to the bill and submitted his written testimony (attached as Exhibit "I").

Jim Flynn, representing the Department of Fish, Wildlife and Parks, opposed both bills and submitted his written testimony (attached as Exhibit "J").

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Tim Sullivan opposed the bills saying that Colorado has placed streams in private ownerships. He told of experiences the people in Colorado have had when required to obtain permission to float a river. The Committee was advised that the passage of these bills would be detrimental and the long term consequences should be considered. He felt the legislature should designate that all water belongs to the people of Montana. His written testimony was submitted (attached as Exhibit "K").

Jim McDermand, representing the Medicine River Canoe Club, opposed the bills. He advised that the sportsmen are willing to cooperate with the landowners to solve any problems. He then suggested a state administered fee system and urged the Committee to consider this idea.

Bob LeFever of Fram Johnson's Sport Shop in Butte opposed the bills. He advised that the sale of river boats and products accounts for 20% of his business; while fishing tackle and equipment accounts for another 27% of his business. Written testimony was submitted (attached as Exhibit "L").

Joel A. Shouse of Bozeman testified in opposition to the bill and submitted his written testimony (attached as Exhibit "M"). He had conducted a study as to the direct and indirect economic value of recreational use of the Madison River. The results showed that the recreational value could be measured in terms of several hundred million dollars annually.

Kevin Krumvieda, president of a flyfishing club, testified in opposition to the bills and submitted his written testimony (attached as Exhibit "N").

James Silva of Butte expressed concern from a legal standpoint and opposed the bills. He felt their passage would be legislating new law suits. Excerpts from an article entitled "Farmers Dispute River Use Claims" were read to the Committee (attached as Exhibit "O"). Mr. Silva then asked all the people who were opposed to these bills to stand up, which they did.

Representative Ted Neuman stated that he was neither an opponent or proponent, but believes that the water belongs to the people of the state. He acknowledged the concerns of the landowners and urged the sportsmen and landowners to reach a mutual agreement.

CONSIDERATION OF SENATE BILL 347:

AN ACT PROVIDING THAT A PRESCRIPTIVE EASEMENT  
CANNOT BE ACQUIRED BY RECREATIONAL USE;  
AMENDING SECTION 70-19-405, MCA.

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Senator Galt distributed a proposed amendment which would replace subsection 2 of the bill as introduced (attached as Exhibit "P"). He stated that the purpose of SB347 is to provide the landowners with assurance that people going on to their property cannot acquire a prescriptive easement.

PROPOSERS: Ronald Waterman, an attorney representing the Montana Stockgrowers Association, stated that SB347 seeks to allow cooperation between the landowners and sporting groups. He suggested that tourism is not the largest employer in the state, but that agriculture is.

Representative Ellison supported this bill as a landowner in Park and Sweet Grass Counties. He stated his land was always opened to hunters and fisherman, but now he is afraid that people may acquire a prescriptive easement to his property. He does not want to close his land to the sportsmen, but can't afford to take the risk of losing his land.

Everett Miller, an outfitter, supported SB347 and the rights of the landowner. He felt all fishermen and hunters should seek permission before using private land. He also stated that fishing would deteriorate if all streams were open to public access.

OPPOSERS: Bert Grosso, opposed SB347 and SB348. His written testimony was submitted (attached as Exhibit "Q").

PROPOSERS: Ed Grady, representing the Montana Farm Bureau, supported these bills. He also supported good landowner-sportsmen relationships and felt these bills would help both groups. He allows people to hunt and fish on his land, but feels this bill would give him protection and control of his property.

Pete \_\_\_\_\_, of Eastern Fergus County, stated that he has always tried to work with the sportsmen. He supported the passing of SB347 so he would have no question of his rights as a landowner.

Lorraine Gillies testified in support of this bill and submitted her written testimony (attached as Exhibit "R").

Jo Brunner, representing Women Involved in Farm Economics, testified in support of this bill and submitted her written testimony (attached as Exhibit "S").

Teddy Thompson, a Sweet Grass County rancher, appeared and distributed his written testimony which supported both SB347 and SB348 (attached as Exhibit "T").

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Esther Ruud, representing the Montana Cattlemen's Association, testified in favor of the bill and submitted her written statement (attached as Exhibit "U").

Don McKamey, representing the Montana Wool Growers Association, supported these bills as he owns land along a river. He has seen an increase in floaters during the past year, but has not experienced any problems with them respecting his land. He did feel the passage of these bills is essential for the protection of his property rights.

John McDonald, a ranch owner, stated he had closed his lands to the public as a result of the recent court decisions and he would not reopen them until this issue is resolved. He urged the Committee to support SB347 and SB348.

Joyce M. Grande, representing the Montana CowBells, advised that their Board of Directors had passed a resolution which supports these bills. This resolution was submitted for inclusion in these Minutes (attached as Exhibit "V").

Josephine Lobby of Wolf Creek supported these bills. She stated that she has had good relations with the people accessing her river in the past, but she is now concerned they may try to acquire a prescriptive easement.

Windsor Wilson testified in support of the bills and submitted his written testimony (attached as Exhibit "W").

Joel Pruitt of Sweet Grass County, supported both bills. He stated that the problem has been caused by the courts. He felt the landowners have no choice but to make their property unaccessible until the legislature determines what is to be done.

There being no further time for proponents, the hearing was opened to the opponents.

Bill Fett testified in opposition to SB347 and SB348 and submitted his written testimony (attached as Exhibit "X").

Ken Knudson, representing the Montana Wildlife Federation, opposed SB348 as he felt it was restrictive and regressive. His written testimony was submitted (attached as Exhibit "Y").

Louise Bruce, representing the Montana Audubon Council, agreed with the Montana Wildlife Federation's position. Her written testimony was submitted (attached as Exhibit "Z").

John Corwin, representing Timberline Reclamations, testified in opposition to the bills and submitted his written testimony (attached as Exhibit "AA").

David Mason testified in opposition to both bills and submitted his written testimony (attached as Exhibit "BB").

Walter Carpenter testified in opposition to SB347 and SB348 and submitted his written testimony (attached as Exhibit "CC").

Bob Jacklyn, owner of a tackle shop in West Yellowstone and an outfitter, opposed both bills. It was his opinion that water is state owned. He said he wants to "float through property" not "get out" on it. He also stated that the passage of these bills would have a direct impact on his business.

Mike Mosolf of Dillon voiced his disapproval of these bills because of the economic impact they would have.

Dave Andishid testified in opposition to the bills and submitted his written testimony (attached as Exhibit "DD").

Mary Hamilton felt that legislation is not the answer to the problem of public access rights. She went on to say that "navigability is defined by a floater on the day of the float."

William Holdorf of Butte spoke about the history of rivers and the types of boats used on them. He stated that rivers were used for transport of furs and have historically been considered navigable. He opposed the definition of navigable and the whole concept of these bills.

Chris Kronberg of Missoula testified in opposition to the bills. He stated that the intent of the bills makes fishing in Montana a property right. His written testimony was submitted (attached as Exhibit "EE").

Tony Schoonen, representing Skyline Sportsmen's Association, testified in opposition to the bills and submitted his written testimony (attached as Exhibit "FF").

LeRoy Corbin, a teacher in Butte, testified in opposition to the bills and submitted his written testimony (attached as Exhibit "GG").

Carroll Peck of Whitehall testified in opposition and made the interesting parallel that these bills are like the man whose dog had fleas so he shoots the dog.

Keith Placer opposed SB348 as it refers to the year 1889. He stated we cannot live in the past and felt a new bill should be drafted which would assist the property owners in solving their problems.

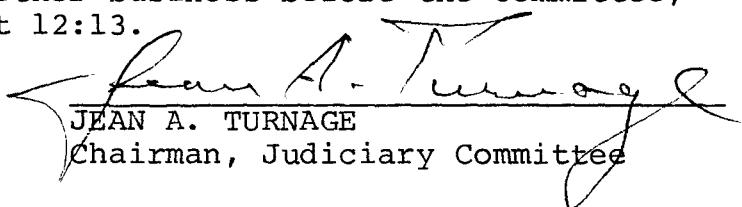
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Sandy Hetner opposed SB347 and stated that she didn't think the property owners should worry about losing their land.

Representative Robert Ellerd advised that he had constituents on boths sides of this issue. He urged the Committee to carefully consider both sides and to work out a compromise between the agricultural people and the sportsmen.

Senator Galt closed by stating he feels there is a misunderstanding as to the intent of these bills. It is his interpretation that the floaters will have every right that they have now. These bills were introduced to define navigable rivers and were only introduced because of Judge Bennett's ruling which takes away private property rights.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 12:13.

  
JEAN A. TURNAGE  
Chairman, Judiciary Committee

## ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983

Date 2-16-83

BILL SB 347 + 348

VISITORS' REGISTER

DATE 2-16-83

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPC
J. Stanley Snilesnick	Montana Stockgrower	348	X	
David M. Mason	Self	347 & 348		X
David W. Decker	THE COMPLETE FLY FISHER	347 348		X
Robert N. Stephenson	Self	347 348		X
Kevin M. Wagner	Self	347 + 348		X
Art Callan	Self	348		X
Franklin Crossfield	Self	347 and 348		X
Todd Van Cleve	Self	347 & 348	X	
Alvin S. Stenberg	Self	347 348	X	
Gordon Darlyton	APA	347 348	X	
Donald H. Kueck's	Self	347 348		X
John L. Canta	MT. CATTLE FEEDERS ASS.	347 348	X	
Beet Yucca	2527 Locust St	347 348	X	
Bill Fett	Self	347 348		X
Bob LeFever	Self	347 348		X
Butt Henderson	Self	347 348		X
in 2. Krummida	Missouri River Flyfisher	347 348		X
Donna Adriana	Self	347 348		X
Erman E. LeFever	Self	347 348		X
Ervin Johnson	John Johnson SPORT FISH	347 348		X
Joel Shouse	Self	347 348		X
Dave Kumlien	FFOMN - Boeman	347 348		X
Bill Pruitt	Self	347 348		X
Larry C. Johnson	Self	347 348		X

COMMITTEE ON

Judiciary

## VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Ross McPherson	self	347 348		✓
NIKE CAUVNESS	MSU STATE UNIVERSITY OUTDOOR RECREATION	347 348		✓
Doug Monger	self	747 348		✓
Gary N. Braun	SDJ	347 348		✓
Gene Riordan	Concerned Citizens	347		✓
Emmett Riordan	Butte River Rats	347 348		✓
John Ball	WIFE	347 348		
Jim Ball	self	347 348		✓
Kerry Ball	self	347 348		✓
Kenneth J. Black	self	347 348		✓
Wm. Blumke	→	347 348		✓
Jo Brunner	W.I.F.E	347 348		✓
J. Mary Hamilton	Lang Dodge	347 348		
Carolyn Scott	self	348		✓
Mike Mosoff	self	348		✓
James McDermott	Medicine River Canoe Club	347 348		✓
Gudit Carlson	self	347 348		✓
Wm Holdorf	self	347 348		✓
LEROT COSSIN	SECT	347 348		✓
Doris Perala	self	347 348		✓
Charles M. Rein	self	347 348		✓
Malter H. Carpenter	self	347 348		✓
Bud Pile	self	347 348		✓
Bob Foukal	DATAFILE	347 348		✓
Dan Trees	self	347 348		✓
LARRY APPLEY	self	347 348		✓

COMMITTEE ON

Judiciary

## VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
John Corwin	(Business) Timberline Reclamation	347 348		X
Robt A. Willit	Self	347 348		X
Cheryl L. Willits	Self	347 348		X
Robert R. Graesser	Self	348		X
222-2222 E 222224	SELF	347 348		X
Benjamin C. Goodwin	Self	347 348		✓
John Yost	Self	347 348	X	
Lydia Yost	self	347 348	X	
W. M. Kornegay	Self - Mt. Hood Council	347 348	✓	
Jim Sullivan	Self	347 348		✓
Jerry Manley	SELF	347 348		✓
John Deffen	T. U.	347 348		✓
David Repola m.d.	Self	347 348		✓
Bill Fredrickson	SELF	347 348		✓
Mike McLaughlin	Self	347 348		✓
Everett Johnson	Self	347 348		✓
Ed G. Raday	Mont. Forest Bureau	347 348	X	
Pat Landerwood	"	347 348	X	
Mons Teigen	Mr. Stockgrowers - Connelly	347 348	X	
John Drudahl	Self	347 348	X	
Sylvia Drudahl	Self	347 348	X	
Kit Ryan	Reynlund Lumber Co.	347 348	X	
Steve Antonioli	Self	347 348		X
Pete Antonioli	Self	347 348		X
WF Antonioli	Contact Manager	347 348		✓
John L. Johnson	Mont. Forest Bureau	347 348	X	

COMMITTEE ON

## Jurisdiction

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Everett Wilho	Outfitter	347 348	✓	
Gene Chapel	Montana Farm Bureau & Rancher	347 348	✓	
Dave McClure	Self Rancher	347 348	✓	
ROBERT T BROWN	SELF	347 348		✓
Dolph Bogen	Butte Sportman	347 348		✓
Karen E. Gentry	SELF	347 348		
Eugene Cantay	SELF	347 348		
W.P. Kesseler	Self	347 348		✓
Eugene Mantay, Sr	Self	347 348		✓
Ken Knudson	MT Wildlife Fed	347 348		✓
Colin Pittsburgh	Self	347 348		✗
Tom Bogen	Shyline Sportman	347 348		✗
Bruce Bruce	MT Audubon Council			✗
Craig Madsen	URGE / Business	345 347		✗
JACK ELLIOT	SELF	347 348		✗
Frank Johnson	Streamsicle Anglers	347 348		✗
Rich Ward	Bob Wardson	347 348		✗
CHRIS KRENZER	Self	347-8		✓
Acorn Kephart	Sp/F	347-8		✓
STEVEN D HEDDERLO	SELF	347 348		✓
Gregg Leibig	Mont. Poultry Comm	347 348		✓
Jeff Kell Collier	Kelli Kell Dr. J			
Rodd J Wetman	Montana Stockgrowers Assoc	347 348	✓	
Glacier Knights	Sp/F	347 348		✓
John K. Meek	Sp/F			
30 37.10	Sp/F Tourism Comm.	347		
	Sp/F Commodity Councils	348		

COMMITTEE ON

Judiciary

## VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
John J. Donald	Self-Triangle Ranch	347 348	✓	
William P. Utton	Rocking C Bar Ranch	347 348	✓	
Willie Landauer	Retired Citizen rep 22 one	347 348		X
<del>James Blunk</del>	Self	347 348		X
Pat Roth	Trot Unhurt	347 348		X
Tom Danier	Self	347 348		X
Alvin E. Klemm	Self	347 348		X
Tex Kieze	Self	347 348		✓
Dean R. Hansen	Self	347 348		X
Richard J. Clagett	Self	347 348		X
Keith S. Blaw	T.H. Self	347 348		X
James A. Lisenore	SELF	347 348		X
Dick Bier	Self	347 348		X
Marian Hanson	District # 57	347 348	✓	
Miller Lawrence	Self	347 348		X
Glenda Bradshaw	"	347 348		X
Deanne M. Dernand	"	347 348		X
John W. W.	"	347 348		X
Joseph P. Shiner	"	347 348	✓	
Jaye M. Grande	Montana Cow Belles	347 348	✓	
Mark W. Cooper	Rodeo	347 348	✓	
David C. Zelenan	Ranch	347 348	✓	
George Reich	Rancher	347 348	✓	
Walter Steingruber	" "	347 348	✓	
Larry L. Anderson	Rancher	347 348	✓	
Paul L. Johnson	Rancher	347 348	✓	

## Judiciary DATE

2-16-83

COMMITTEE ON

SB 347 + 348

VISITORS' REGISTER

DATE:

2-16-83

COMMITTEE ON

VISITORS' REGISTER

2-1683

NAME: Gordon Darlington DATE: 2-16-83

ADDRESS: Route I Box 46 Three Forks

PHONE: 285-6719

REPRESENTING WHOM? Agriculture Preservation Assn' Park Legislation  
Assn' & Sweet Grass Preservation Assn'

APPEARING ON WHICH PROPOSAL: SB 347 & 348

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

COMMENTS: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

vA  
2-16

Mr. Chairman and Members of the Committee:

For the record my name is Gordon Darlington, a rancher from Three Forks, and today represent the Agriculture Preservation Ass'n of Gallatin County; Park County Legislative Ass'n; and Sweetgrass County Preservation Ass'n. All three groups are made up of farmers and ranchers, and agri-businesses from the headwaters areas of the Missouri and Yellowstone Rivers. We ask for your support in the passage of Senate Bills 347 and 348.

Since we come from an area that is covered with many rivers and streams it has become very obvious to us as farmers and ranchers that some type of legislation was necessary to protect our places from unlimited use and abuse by the entire general public. We cannot operate our ranches if everyone is allowed unlimited access to every river and stream that flows through them!! We must have some protection of personal property rights in order to be able to continue our present operations!!!

If recreational uses are allowed for prescriptive easements and the smallest of rubber rafts can be used as flotation devices, then nearly every flowing stream will eventually be declared open to the general public. I wonder how nice the back yards of everyone could be kept who live in towns or subdivisions if a public walkway ran right thru the middle of them. Then they should try to lamb and calve there with no way to control the general public use. This is in effect what you are asking us to do with the present set of rules.

Unless the farming and ranching areas of Montana are given some protection from the uses of the entire general public on nearly all rivers and streams then I fear that everyone will loose. Nearly all ranchers are very reasonable people and will try to provide a place for the recreational public to use, but if we are forced to open up pieces of our privately owned land for year round use then many conflicts will arise. Unless this type of legislation is passed to protect us, then many more acres will be closed and land-owner sportsman relationships will sink to a new all time low.

We simply cannot operate our places if some method of public ~~enforcement~~ is not available and every time we try and remove someone from our ranches we face the real probability of ending up in court.

We therefore ask for your support and passage of Senate Bills 347 and 348.

"B"  
2-16-83

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

For the record, I am Lorraine Gillies, rancher, Montana State Farm Bureau Board Member, member of the American Farm Bureau Natural and Environmental Resources Advisory Committee, and chairman of the Montana Farm Bureau Natural and Environmental Resources Committee.

We fully support SB 348. Montana's Agricultural Community, as well as all private land owners must address the problem that has been surfaced by the recent court decisions in the Dearborn and Beaverhead River cases. Those of us who have streams running through our property, which are capable at any time of floating a raft, must be cognizant of the threat to our Constitutional Rights. Montana Farm Bureau Policy supports the individual's right to own and manage private property including streambeds, stream banks and adjacent private lands. The decision of the courts that Montana's river beds up to high water marks on a navigable stream belong to the public, rather than to those who pay the taxes on that land, is a real threat. SB 348 gives needed definition to "navigable stream" as one that was actually used in its ordinary condition as a highway for commerce, trade, and travel in the customary modes, if they were successful activities on or before the date that Montana became a state. This rightfully precludes recreational use as a basic criteria for navigability, and this is a vital exclusion if we are to profitably continue in agricultural operations.

Most landowners have no problem with reasonable recreational use of streams and banks on their property--it is rather isolated cases in which individuals, organizations and sometimes bureaucracies join forces against us that makes us both suspicious and adamant in the protection of our rights. The threat to our property is a real and present danger, and we feel SB 348 is an important vehicle for our protection.

Thank you.

NAME: Franklin GrosfieldDATE: Feb 16, 1983ADDRESS: Box 669 Big Timber Mont 59011PHONE: 932-2033REPRESENTING WHOM? SelfAPPEARING ON WHICH PROPOSAL: SB 348DO YOU: SUPPORT? X AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_COMMENTS: Printed copy attached  
\_\_\_\_\_  
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\_\_\_\_\_  
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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

"C"  
2-16-83

TESTIMONY S.B. 348 - SENATE JUDICIARY COMMITTEE

Franklin Grosfield  
February 16, 1983

IN LIGHT OF THE RECENT COURT DECISIONS ON THE DEARBORN AND BEAVERHEAD RIVERS DECLARING SECTIONS OF THESE STREAMS NAVIGABLE, IT BECAME APPARENT TO MANY OF US IN THE RANCHING COMMUNITY THAT OUR LAWS DEFINING NAVIGABILITY NEEDED SOME CLARIFICATION. S.B. 348 DOES THAT AND I URGE YOU TO GIVE IT A DO PASS RECOMMENDATION.

IF YOU FAIL TO APPROVE THIS BILL, IT SEEMS LOGICAL TO ASSUME THAT RANCHERS WILL CONTINUE TO BE HARRASSED BY STREAM ACCESS SUITS AND THAT MORE STREAM SEGMENTS WILL BE DECLARED NAVIGABLE, AND THAT THE LAND UNDER THOSE STREAMS WILL BE CLAIMED BY THE STATE. THIS RAISES SEVERAL QUESTIONS THAT GREATLY CONCERN THE RANCHING INDUSTRY AND WHICH ARE LIKELY TO BE ANSWERED ONLY AFTER LENGTHY AND COSTLY LITIGATION.

DO FARMERS AND RANCHERS HAVE TO PAY TAXES ON LAND OVER WHICH THEY HAVE NO CONTROL?  
HOW CAN THE STATE CLAIM OWNERSHIP OF LAND WITHOUT APPROPRIATE COMPENSATION TO THE PERSON WHO HOLDS TITLE TO IT?

WHO PAYS FOR THE SURVEYS ALONG STREAMS THAT WILL BE NEEDED TO ESTABLISH TITLE?  
WHO PAYS FOR FENCING THE BOUNDARY PARALLEL TO THE STREAMS IF FENCES CANNOT CROSS STREAMBEDS?

WILL LIVESTOCK HAVE ACCESS TO WATER?

WHAT HAPPENS TO IRRIGATION STRUCTURES THAT WOULD BE ON LAND CLAIMED BY THE STATE?  
WILL THE STATE OWN THE OIL AND GAS UNDER THE STREAMS?  
WILL IT OWN MINING CLAIMS LOCATED ALONG STREAMS?

I WOULD SUGGEST TO YOU MEMBERS OF THE SENATE JUDICIARY COMMITTEE THAT THIS BILL SHOULD PASS IF FOR NO OTHER REASON THAN IT WOULD GO A LONG WAY IN ELIMINATING THE COSTLY AND LENGTHY LITIGATION THAT IS CERTAINLY GOING TO OCCUR IN ANSWERING THE ABOVE LISTED QUESTIONS. IN ADDITION, UNDER THE PRESENT LAW THE COURTS WILL BE VERY BUSY DECIDING WHICH STREAMS ARE NAVIGABLE AND WHICH ARE NOT, ONE SHORT SEGMENT AT A TIME.

YOU ARE BETTER AWARE THAN I THAT OUR COURTS ARE BADLY OVERLOADED IN MANY DISTRICTS OF THE STATE, AND WOULD UNDOUBTEDLY NEED A LOT MORE DOLLARS FROM SOMEWHERE TO HANDLE AN INFLUX OF CASES ON THE NAVIGABILITY QUESTION.

AND FINALLY, I HOPE THE SPORTSMEN OF MONTANA ARE REALLY HEARING OUR CONCERNS ON THIS MATTER BECAUSE IF THEY ARE, IT IS MY OPINION THAT THEY WILL NOT OPPOSE THIS BILL BECAUSE IT WILL NOT BE IN THEIR OWN BEST INTERESTS TO DO SO.

THIS IS SO BECAUSE IF THIS BILL FAILS, LANDOWNERS WILL CONTINUE TO BE SUED IN THE COURTS BY CERTAIN SPORTSMEN GROUPS. THIS WILL CAUSE A KIND OF CIVIL WAR BETWEEN LANDOWNERS AND SPORTSMEN THAT WILL LAST SEVERAL YEARS AFTER THE LAST COURT CASE IS DECIDED. I DON'T LIKE BEING SUED. I PARTICULARLY DON'T LIKE BEING SUED IF THE OBJECT IS TO DEPRIVE ME OF SOME OF MY PROPERTY RIGHTS. AND, HUMAN NATURE BEING WHAT IT IS, I'M GOING TO BE PRETTY ORNERY AND HARD TO GET ALONG WITH BEFORE, DURING AND LONG AFTER THIS SUING BUSINESS IS GOING ON.

10/2/83

# WIFE Women Involved in Farm Economics



NAME JO BRUNNER

BILL NO. SB 348

ADDRESS 263 5th St. HELENA

DATE February 16, 1983

REPRESENT WOMEN INVOLVED IN FARM ECONOMICS

SUPPORT X

OPPOSE

ABANDON

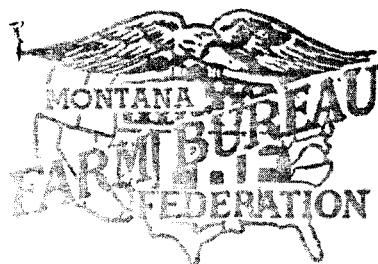
## STATEMENT:

Mr. Chairman, members of the committee, my name is Jo Brunner and I represent the members of the Women Involved in Farm Economics organization.

We offer our support of SB 348. We are sure that there will be many different opinions of this situation stated here today. We have members who live on streams and rivers and are involved on a first hand basis in this issue. It is our contention that while occasionally access to waters may have been denied due to other reasons, the predominant reason was the cost and the great nuisance to the land owner. Our members have paid taxes and kept up that land adjoining those waters, sometimes for generation, and incidentally, those waters were rarely if ever used for anything more than recreational use, other than our operational use. It has been our responsibility over the years to repair flood and high water damage to the stream beds. Many of our operations depend immediately upon the access <sup>to</sup> and use of those waters.

We urgently request a do pass for SB348.

Thank you.



"E" 2-16-83

## MONTANA FARM BUREAU FEDERATION

502 SOUTH 19th

Dial 587-3153

BOZEMAN, MONTANA 59715

BILL NUMBER SB 348

DATE 2-16-83

SUPPORT

yes

OPPOSE

AMMEND

NAME Gene Chapel - Montana Farm Bureau

COMMENTS:

This is a good piece of legislation as it will help define property rights.

Private property is something that the individual maintains and pays taxes on. Now the state wants to acquire without just compensation.

Three branches of government. Judicial branch apparently will not recognize private right. Probably because legislature has not defined the term navigable stream. Let's do it now.

BEST burden for the state to take over property that has never been defined or surveyed, especially something that is constantly changing boundaries.

Livestock management would become virtually impossible.

Recreationalists not economically feasible.

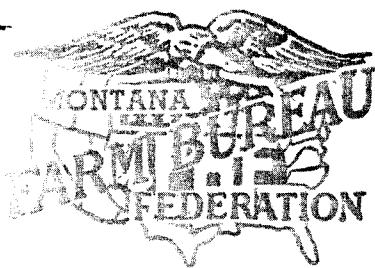
Many property owners may become the losers. By forcing access.

This legislation does not mean that reasonable

recreation will be taking place. We all know that a statesman will go on if this legislation is passed. It will only protect property rights.

Property owners have paid taxes on this land and also any minerals that may be under the surface.

Give us legislation that we can protect the property that we have paid for - maintained - and shared with others.



# MONTANA FARM BUREAU FEDERATION

502 SOUTH 19th

Dial 587-3153

BOZEMAN, MONTANA 59715

"E" 2-16-83

BILL NUMBER. SB 347

DATE 2-16-83

SUPPORT YES OPPOSE \_\_\_\_\_

AMMEND \_\_\_\_\_

NAME Gene Choper - MONTANA Farm Bureau

COMMENTS:

Without this legislation we feel that it could be a step in the door for infringement on all property rights. It may let in enterprises that are single use minded.

Recreational use should not be a condition for condemnation. Recreational use is single use just as Agriculture.

Each year Ranchers let recreation users of their land or adjoining lands cross their property. Without this legislation we will not be able to let out access to the public ~~for~~ for fear that in 5 years a prescriptive easement will become in effect.

This will open up more access for sportsmen. This legislation is on par with the trespass law that legislature so wisely passed in a session.

"F" 2.16.83

NAME: Dave Kuntien DATE: 2/16/83

ADDRESS: 2920 W. Main St Bozeman, MT 59715

PHONE: (416) 587-4707

REPRESENTING WHOM? F.F.O.A.M (Fishing, Floating, Outfitters Assn  
of Montana)

APPEARING ON WHICH PROPOSAL: SB 347 & 348

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

COMMENTS: Written testimony (10 copies) distributed to Committee

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

"F" 2/16/83

# THE WILD WINGS ORVIS SHOP

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

Senator Jean Turnage, Chairman  
Senate Judiciary Committee  
State Capitol  
Helena, Montana

February 16, 1983

Re: Senate Bill 348

Senator Turnage, Members of the Committee, my name is Dave Kumlien. I own and operate THE WILD WINGS ORVIS SHOP in Bozeman Montana. THE WILD WINGS ORVIS SHOP sells fly fishing equipment, outdoor clothing, wildlife and western art.

I am also an Outfitter in the fishing and floating outfitting business and I am President of F.F.O.A.M., Fishing, Floating, Outfitter's Association of Montana. F.F.O.A.M. is a relatively new outfitter organization representing some 70 outfitters and 150 guides involved in the fishing and floating outfitting business. My personal position regarding Senate Bill 348 coincides with that of F.F.O.A.M.. Therefore, I will not differentiate the two in my testimony.

I am opposed to Senate Bill 348. I have heard a great deal of discussion regarding the intent of the bill. The bill's sponsor, Senator Galt, and several co-sponsors have indicated that their intent is not to restrict floating and fishing on the State's larger rivers like the Madison. The fact of the matter is if Senate Bill 348 is passed in it's present form, it essentially eliminates floaters and fishermen from nearly every river in the State except for possibly the Missouri below Great Falls and the lower Yellowstone below Hysham.

Nearly 80% of the volume of my business in Bozeman is derived from fishing tackle sales to local fisherman and tackle and other sales resulting from clients in my fishing and floating outfitting services. If Senate Bill 348 passes, it would effectively put me out of business. Obviously, that is an intolerable situation!

Tourism is one of the largest industries in the State of Montana. The tourism industry is the largest employer in the State. Visitors come from all over the country and from all over the world to partake of trout fishing and floating the beautiful rivers and streams of Montana. These tourists spend a lot of money. How much? Because of the diversity of expenditures, it is rather difficult to quantify.



WILD WINGS  
Lake City, Minnesota

ORVIS  
MANCHESTER, VERMONT 05254

# THE WILD WINGS ORVIS SHOP

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

2/16/83  
2/16

I think it is safe to say their effect on the State's economy is substantial. The passage of 348 would eliminate this segment of the tourism industry and deal a devastating blow to the State's economy.

The legal decisions handed down on the Beaverhead and Deerborn Rivers have raised issues of concern to both landowners as well as sportsman. These issues need to be addressed in a coherent and rational manner. Senate Bill 348 does not provide such a forum.

As the owner of a business highly reliant on the public's ability to fish and to float Montana's rivers and streams, as an individual fisherman and floater, as President of Fishing, Floating, Outfitter, Association of Montana, and as the Father of an eight month old boy looking forward to a lifetime of enjoyment on Montana's rivers and streams, I urge a DO NOT PASS ON SENATE BILL 348.

Thank you.

Dave Kumlien



WILD WINGS  
Lake City, Minnesota

ORVIS  
MANCHESTER, VERMONT 03254

NAME: LARRY AiUPPY DATE: 2/16/83  
ADDRESS: P.O. BOX 26, LIVINGSTON, MT. 59047  
PHONE: 222-7308  
REPRESENTING WHOM? SELF

APPEARING ON WHICH PROPOSAL: GALT BILLS - S.B.347 - S.B.348

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

COMMENTS: This bills would hurt Montanas economy - Therefore I am against them.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

# AIUPPY

## PHOTOGRAPHS

LAURANCE AIUPPY  
P.O. BOX 26  
LIVINGSTON, MT 59047  
(406) 222-7308

"G'  
2/16/83

February 15, 1983

On Senate Bill 347 and Senate Bill 348, introduced by State Senator Jack Galt

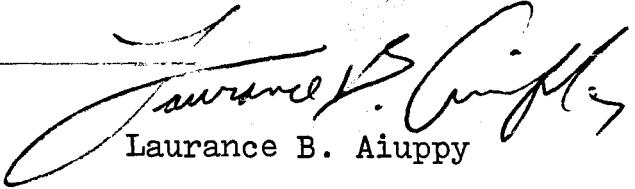
As a Montana citizen who likes to go fishing, and who is dependent on the economic well being of the State of Montana for his livelihood, I am unalterably opposed to both S.B. 347 and S.B. 348. Both bills, if enacted, would do the same thing - remove the right of access of recreational users to the rivers of Montana.

There are many ways to recompense the landowner for problems with trespassers along our rivers, but locking up the rivers of Montana for the private use of large landowners and the wealthy is not the way to do it.

The enactment of either or both of these bills would cripple a major industry in Montana - tourism - and directly or indirectly hurt virtually every man, woman and child of Montana. It would directly financially injure thousands of Montana citizens who own hotels, motels, campgrounds, gift shops, art shops, tackle shops, sporting good stores, grocery stores, bars, restaurants, gas stations, and so on and so on. Enactment of these bills would, as well, badly damage the "quality of life" that is so important in both attracting new industry to the state, and keeping the industry we have got.

S.B. 347 and S.B. 348 are confrontational, polarizing, divisive legislation that would rancorously pit sportsman against landowner in a no-win situation. Both sportsmen and landowners have legitimate needs and justifiable grievances that must be addressed, for which solutions must be found. There must be rational, conciliatory measures taken for statesmanlike compromise between both sides. S.B. 347 and S.B. 348 are certainly none of these things.

S.B. 347 and S.B. 348 solve no problems. They will cause more and worse problems. They are bad bills and should be killed as quickly as possible, so that real solutions can be found for the problems of landowner rights versus recreationist rights.

  
Laurance B. Aiuppy

2/16/83

Montana Outfitter Committee

OUTLINE FOR BUCHANAN REMARKS ON SB 348: OPPOSITION

Major Point: Committee should not overlook the economic impact of legislation that severely restricts the definition of "navigability" and reduces sportsmen floating.

Tourism and outdoor recreation are major industries in Montana. Montana's rivers and scenery accessible only by rivers are attractions to non-Montanans, as well as Montana residents. Businesses that support these recreational activities make sales to non-Montanans and Montanans alike.

(Let others make specific points)

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

NAME: Robert L. Foukal DATE: 2/16/83  
*1  
2-16-83*

ADDRESS: 2020 A-1 St. Louis

PHONE: 587-7314

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: SB- 348

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

COMMENTS: I have prepared no testimony

\_\_\_\_\_  
\_\_\_\_\_  
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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

"I"  
2-16-83

TESTIMONY OF ROBERT J. FOUKAL ON S.B. 348 BEFORE THE SENATE  
JUDICIARY COMMITTEE  
WEDNESDAY, FEBRUARY 16, 1983

MR. CHAIRMAN AND FELLOW COMMITTEE MEMBERS:

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

EIGHT YEARS AGO AT FIFTY YEARS OF AGE I CHOSE TO MOVE TO MONTANA FROM DETROIT MICHIGAN TO START A NEW LIFESTYLE AND BUSINESS CAREER AFTER HAVING SPENT TWENTY FIVE YEARS WITH ONE OF THE FORTUNE 500 CORPORATIONS. THERE WERE TWO PRIMARY REASONS FOR CHOOSING MONTANA AS THE LOCATION FOR MY "SECOND LIFE".

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

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

IT IS FOR BOTH OF THESE REASONS THAT I AM HERE THIS MORNING TO URGE YOU NOT TO PASS S.B. 348.

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

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

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2.16.83

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

IT IS A UNIQUE PRIVILEGE TO LIVE, WORK HARD, AND PLAY HARD IN MONTANA. PLEASE LET US ALL WORK A LITTLE HARDER TO OVERCOME THE TEMPTATION OF TRYING TO RESOLVE IN OUR LEGISLATURE OR IN OUR COURTS A HERITAGE THAT CAN ONLY BE PERPETUATED BY MUTUAL APPRECIATION OF OUR RESPECTIVE NEEDS.

HERBERT HOOVER SAID, "FISHING IS FUN AND GOOD FOR THE SOUL OF MAN", BUT RALPH EMERSON SAID IT BEST WHEN HE WROTE, "NATURE IS LOVED BY WHAT IS BEST IN US".

I URGE YOU TO CONSIDER THESE THOUGHTS AND CONCERN AS THEY RELATE TO THE PROPOSED LEGISLATION BEING CONSIDERED HERE THIS MORNING.

THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU.

ROBERT J. FOUKAL  
2020 A-1 South Rouse  
Bozeman, MT 59715

"J" 2/16/83

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

February 16, 1983

Senate Bill 348 is introduced as a reaction to the two recent court decisions on the Beaverhead and Dearborn Rivers. Although it is reactive to those two rivers, its implications are such that its effects will be felt across all the waters of Montana and amongst all the people.

At the outset we understand that Supreme Court appeals of the Beaverhead and Dearborn cases are still a possibility. That being the case, it would seem a proper course to allow that legal process to completely unfold before lawmaking action is taken. The results of the Supreme Court action, should it occur, would provide a final product with which to debate.

With respect to SB 348, it so narrowly describes "commerce" that it precludes public access to all but a handful of rivers in Montana. By excluding the floating of logs from the definition of commerce, it ignores what was at statehood an accepted use of Montana streams. On a number of streams, log floating was likely the only commercial use.

In addition, by confining the time of commerce to November 8, 1889 the bill weakens the viability of another commercial activity on most Montana rivers which was the fur trade. Under the proposed definition, streams such as the Madison, the Big Hole, and the Jefferson, among many others, would no longer be considered navigable for the purposes of public travel on those streams.

The definition adds an element of almost undefinable subjectivity when it requires that the commerce, trade and travel have to have been "successful activities". Many of the early commercial ventures may not have been totally successful in terms of the amount of money made; but in terms of opening up and developing new areas of the state, they may well have been successful.

Further, whether an activity was financially successful or not depends less upon the navigability of a river than it does upon the ability of the person pursuing the venture. Financial success does little to determine a river's susceptibility to navigation. Therefore we question that the term "successful activity" is appropriate in a bill defining navigation.

Senate Bill 338 appears to neglect the clear intent of our fore-fathers prior to statehood. At the signing of the treaty with the Blackfoot Indians at the mouth of the Judith River on October 17, 1855, various articles of agreement were made by and between commissioners for the President and the Blackfoot Nation, Flathead Nation and Nez Perce Tribes.

5  
2-16-83

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

February 16, 1983

Senate Bill 347, by precluding recreational use as one method of gaining a prescriptive easement, attempts to relegate recreational use of Montana lands and waters to a secondary status. By so doing, it ignores the enormous economic values of recreational activity in Montana.

Senate Bill 347 overturns the long recognition in the law of recreation as a legitimate and legal use for purposes of prescriptive easement. Although the Montana Supreme Court has indicated that occasional use of a roadway by hunters and fishermen may not be sufficient to create a prescriptive easement, there is considerable recognition that use of a roadway or other avenue for recreational purposes may lend credence to a claim for prescriptive easement. Accordingly, this bill seeks to turn around that long history of recognition.

Senate Bill 347 is a response to the recent court decisions regarding navigability on two Montana streams. Yet SB 347 goes far beyond those two cases and basically eliminates the consideration of recreation in relationship to a prescriptive easement.

The Department feels that SB 347 is an over-reaction to recent events and that the measure should not pass.

K  
2/16/83NAME: Tim Sullivan DATE: Feb 16, '83ADDRESS: 1051 W. Mercury, ButtePHONE: 782-9516REPRESENTING WHOM? SelfAPPEARING ON WHICH PROPOSAL: 347 + 348DO YOU: SUPPORT?        AMEND?        OPPOSE? XCOMMENTS: See prepared statement

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Tim Sullivan  
2/16/83

"K  
2-16-83

I'm a recent immigrant to Montana — from Colorado where my family has lived since statehood. Moving here in many ways is like a trip through a time tunnel to a fresh, unspoiled Colorado. My intent at this hearing is to relate some of the sad experiences of Colorado with the hope that wise choices will be made by you gentlemen for the people of Montana.

When I returned to Colorado from the Army in 1968 bumper stickers urging "Don't California Colorado" were in vogue. Four years later, before all (the bumper stickers) had peeled off, nitrous oxide levels in Denver rivaled those in Los Angeles. The citizens of Denver ~~had~~ in effect the municipal equivalent of the famous post ~~cigarette~~ cigarette. Today my nieces and nephews in Denver aren't sure of their cultural directions because the ~~snow~~ obscures their view west to the mountains.

Colorado abandoned its famous clean

"K"  
2/16/83

air very rapidly. Usurpation of the public's rights to the water took place in a longer time frame.

Article 16 Section 5 of Colorado's Constitution states that the water of every natural stream is the property of the public and is dedicated to the use of the public. It took over 100 years before that noble concept had been so altered by successive self-interest assaults that the Colorado Supreme Court could rule that anyone floating across private land without permission of the landowner is guilty of third degree criminal trespass. Colorado's Supreme Court in their wisdom have managed to combine the most repressive elements of both the riparian and appropriation doctrines to the detriment of vast majority of citizens of the state.

In Colorado today a person must secure permission from every single river bottom along the course of his float (below) he can cast off. The absent landowner, the fellow

"K"  
2-16-83

who's already been interrupted sixteen times today and just sat down to supper, increasingly - the corporate landowner with headquarters in Houston or Calgary - fail to obtain permission from every single one of them or you can't legally float in Colorado.

Maybe just that kind of scenario appeals to you or to some of your friends. Certainly large landed interests stand to turn a quick buck at the expense of every Montanan from now on if Mr. Galt's bills are enacted. Before taking that drastic step I ask you to reckon who your constituents really are and what the long term consequences would be ~~of turning~~ ~~of turning~~ ~~of turning~~ of turning Montana into another state where the water belongs to the monied and the established).

There is a proven, perpetual, economic value associated with Montana's rivers. It's a value that needn't accrue only to the landowner

"K"  
2-16-83

and his realtor, Tourism will be discussed at length here today.

As an amenity to attract the kinds of non-polluting industries so in demand now, the rivers of Montana have no peers; and lets face it - it's not the weather or the opera that's going to bring them here. We all live in the world now - you may not be able to grow trout better anywhere in the world than in the Beaverhead River - and the fishermen of the world are willing to pay for trips to Montana to find trout.

Any prudent deliberative group must hear the economic side of the navigability argument as it pertains to the larger rivers - the Beaverhead, Madison - Big Hole; or at least you gentlemen will by the time this hearing is complete. I'd like to make a special plea for the small streams where a fellow can poke along and jump a whitetail or a Heron.

We've been slow to recognize the

"K"  
2-16-83

values of solitude and discovery but  
in Montana at least there should be  
room left for that legacy of Lewis and  
Clark. What this  
legislature should do is enact a  
definition of navigability  
codifying the ~~concept~~ that the  
flowing waters of the state  
belong to the people of ~~the~~ Montana,  
at the very least I urge you  
to send Mr. Batt's bills to  
Colorado or further down where they  
belong.

uL  
2-16-83NAME: Robert E. LeFever DATE: 2-16-83ADDRESS: 1118 W. Galena Butte, MtPHONE: 782-3322

DAVE Dunnigan - Bob Henderson - Gene LeFever - Butte

REPRESENTING WHOM? Self & Frank Johnson Sport ShopAPPEARING ON WHICH PROPOSAL: SB 347 & 348DO YOU: SUPPORT?        AMEND?        OPPOSE? XCOMMENTS: prepared statement with committee  
secretary

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

*Fran Johnson's* **SPORT  
SHOP**

2-16-83

1957 HARRISON AVENUE • PHONE 782-3322 • BUTTE, MONTANA

February 16, 1983

Gentlemen:

Eighteen years ago this spring our sporting goods business opened in Butte. We were one of the first, if not the first, store in the state to begin selling Avon inflatable river rafts. Since that time, through ups and downs, our business has grown. We now handle 5 different makes of rubber rafts and 3 different makes of MacKenzie river boats and jon boats. In addition to the boats, we sell a variety of river running accessories including oars and paddles, oaring frames, oar locks, waterproof bags, strapping, pumps, patch kits, life preservers, fiberglassing and other marine hardware. All in all, counting everything that it takes to put a river floater on the water, this merchandise accounts for 20% of our business. If SB348 becomes law it will essentially make floating a river a trespass violation. How many boats do you think I will sell? How many oars? How many accessories? But that is not the half of it, gentlemen. An additional 27% of my business is wrapped up in fishing tackle.

In our area with the Clark Fork, the Big Hole, the Beaverhead, the Jefferson, the Madison and the upper Missouri, a sizeable portion of my fishing tackle trade consists of those who fish rivers. It is conceivable, and not too far fetched, that in addition to the 20% loss in volume due to a lack of boat sales, I could also lose up to an additional 27% in tackle sales.

In our country, recreation is a \$300 billion industry. It is one of Montana's major industries. SB347 and 348, if passed, will deliver a severe

*Fran Johnson's*

**SPORT  
SHOP**

"2"  
2-16-83

1957 HARRISON AVENUE • PHONE 782-3322 • BUTTE, MONTANA

economic blow, not only to my business and hundreds like it, but to the State of Montana as a whole. The tourist industry will suffer as will the various satellite businesses associated with recreation and tourism. Without belaboring the point, gentlemen, I hope you fully consider the economic consequences to SB347 and 348 and kill these measures before they become law.

Robert E. LeFever BSMH  
Robert E. LeFever

Francis C. Johnson  
Francis C. Johnson

Dave Dunmire  
Dave Dunmire

"M" 2-16-83

NAME: Joel Shouse DATE: 2/16/83ADDRESS: Box 337 BozemanPHONE: 586-~~4~~1211REPRESENTING WHOM? SelfAPPEARING ON WHICH PROPOSAL: SB 397 & 348DO YOU: SUPPORT?        AMEND?        OPPOSE? XCOMMENTS: Will submit written statement

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



# JOEL A. SHOUSE P.E. RESOURCE CONSULTANT

Resource: Planning  
Engineering  
Management  
Environmental  
Analysis

"M" 2/16/83

February 15, 1983

Senator Jean Turnage, Chairman  
Senate Judiciary Committee  
Capitol Station  
Helena, Montana 59620

Dear Senator Turnage:

I wish to express my opposition to SB 347 & 348. I feel that these bills are extreme measures and as such are both unacceptable and unnecessary. Passage and enforcement of these bills to the letter of the law could deprive recreational users of all access rights to Montana's streams and rivers. The consequences of this action would be measured in terms of hundreds of millions of dollars of impact on Montana's economy.

My firm is presently retained by Blue Ribbons of the Big Sky Country Areawide Planning Organization to direct the Madison River Thermal Study which is funded by a Renewable Resources Development Fund grant authorized by the last session of the Legislature. A part of the study involves an analysis of the economic implications of the thermal problem on the recreational use of the river. I have taken the values identified in this study and projected them for the entire Madison River from Yellowstone Park to Three Forks. The results are as follows:

#### Direct & Indirect Economic Value Of Recreational Use On The Madison River for 1982

Direct Value (43,300 resident & 63,300 out-of-state user days)	\$ 1,603,500
Indirect Value (63,600 out-of-state user days)	13,788,480
Total Direct & Indirect Economic Value	\$15,391,980

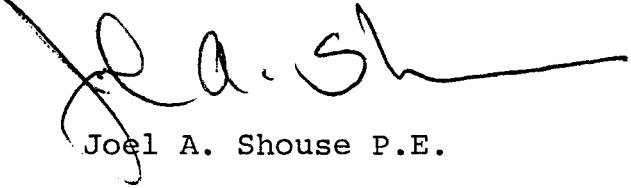
I am sure that if this analysis were projected to all of Montana's rivers and streams the resulting total recreational value would be measured in terms of several hundred million dollars annually.

1-16-83  
J. A. Shouse

Senator Jean Turnage  
February 15, 1983  
Page 2

Montana sportsmen and landowners have demonstrated in the past that problems can be resolved through mutual cooperation. SB 347 & 348 are both unreasonable and unnecessary and I urge the Judiciary Committee to reject these bills.

Sincerely,

  
Joel A. Shouse P.E.

JAS/as

cc: Senator Paul Boylan  
Senator Dorothy Eck  
Senator Frank Hazelbaker  
Senator Leo Lane  
Representative Robert Ellerd  
Representative John Vincent  
Representative Norm Wallin  
Representative Ken Nordtvedt  
Representative Walt Sales  
Representative Kerry Keyser

"N" 2/16/83

NAME: Kevin L. KrumviedaDATE: 2-16-83ADDRESS: RT. 1 E., Box 1061, Cascade, Mont. 59421PHONE: 468-2475REPRESENTING WHOM? Missouri River FlyfishersAPPEARING ON WHICH PROPOSAL: SB 347 & 348DO YOU: SUPPORT? \_\_\_\_\_ AMEND? \_\_\_\_\_ OPPOSE? 

COMMENTS: The Missouri River Flyfishers, in  
our two-year existence, have and  
would like to promote positive landowner/fisher  
relationships. We ~~do~~ feel Senate Bill  
347 & 348 do nothing to support a positive  
landowner/fisher relationship. ~~For instance,~~  
represented by the ~~two~~ two to three  
national bill espousing cooperation and  
farmer/fisher needs to be considered.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Arabs Feb 11 "D" 83  
7-16-83

# Farmers dispute river use claims

HELENA (AP) — Montana farm groups, disputing statements by the Montana Wildlife Federation, Thursday blamed a "few recreationists" for creating a confrontation over the issue of river access.

The MWF issued a statement earlier this week that said legislation introduced by Sen. Jack Galt, R-Martinsdale, "invited confrontation, pitting land-owners against recreationists with no hope for either side being satisfied."

Galt introduced a bill that would change the definition of a navigable stream to include only those that were navigable when Montana became a state in 1889, and were used then for commerce, trade and travel. His second proposal would prohibit a person from obtaining the right to use another person's property simply because it has been used for recreational purposes for five consecutive years.

Mack Quinn, president of the Montana Farm Bureau Federation, Torrey Johnson, president of the Montana Stockgrowers Association and John Paugh, president of the Montana Woolgrowers Association, said they support Galt's efforts.

While some wildlife and sportsmen's groups claim the bills bring on a land-owner-recreationist confrontation, Montana

farmers and ranchers feel the confrontation was caused by the suits brought against two Montana ranchers by the Montana Coalition for Stream Access," leaders of the three groups said in a prepared statement.

The farm leaders noted the suits resulted in judges declaring that portions of the Beaverhead and Dearborn rivers are navigable and open to public use up to the high water marks.

Quinn, Johnson and Paugh said Montana farmers and ranchers seek rational ways to solve these issues, but this is extremely difficult when court cases are pending in which property owners all over the state feel they are having their lands confiscated.

They said the mere term "navigable" or "non-navigable" does not mean no floating to recreationists.

For years, they said, rivers were floated with mutual cooperation between landowners and recreationists. "It was only when a few recreationists decided that they did not have to treat these streams and rivers as private property which flowed through a land-owners place that the trouble began."

The Senate Fish and Game Committee will hear Galt's bills next Wednesday.

Frady Feb 11 '83  
J. N. S.

# Farmers dispute river use claims

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For years, they said, rivers were floated with mutual cooperation between landowners and recreationists. "It was only when a few recreationists decided that they did not have to treat these streams and rivers as private property which flowed through a landowners place that the trouble began."

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Friday Feb 11 '83  
7/16/83

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3/16/83

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"P" 83  
2-16-83

### New Section

Section 1. (2) In no case shall a prescriptive easement be considered established under this code where the entry was made by an individual acting individually or as a member of the general public, where the evidence establishes the entry was for a recreational use only upon the real estate or upon waters flowing across such real estate, regardless of whether the entry was adverse permitted or merely occurred without objection and with knowledge of the landowner. A prescriptive easement cannot be established by an entry for recreational purposes.

2920R

-0-  
2-16-83NAME: But Gross DATE: 2-16-83ADDRESS: 2527 Louria St Butte MT 59701PHONE: 723-8955REPRESENTING WHOM? The ~~State~~ <sup>and the people</sup> of the State of MontanaAPPEARING ON WHICH PROPOSAL: for 347 & 348DO YOU: SUPPORT? ~~for~~ AMEND? \_\_\_\_\_ OPPOSE? 347COMMENTS: I believe in the old theory that has served us well over many years and what has been referred to as the law of the Land a stream is to be considered <sup>Navigable</sup> ~~if~~ when it will float a log 6 inches in diameter and that it shall be open for public use up to high water mark.Therefore I ask that Senate Bill 347 and 348 be defeated. Sincerely But Gross  
2527 Louria St Butte MT 59701

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

February 15, 1983

2-16-83

TO THE MEMBERS OF THE MONTANA STATE SENATE:

Dear Senators:

I believe in the old theory that has served us well over many years and what has been referred to as the Law of the Land. A stream is to be considered navigable when it will float a log 6 inches in diameter and that it shall be open for public use up to the high water mark.

Therefore, I ask that Senate Bill #347 and #348 be defeated.

Sincerely,

Norman E LeFever  
1019 Silver Bow St  
Butte Mt 59701

Butte  
Montana  
59701

Butte Mt 59701

February 15, 1983

2/16/83

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Bob Henderson  
2302 Pine St  
Butte, Mt.

Feb 14  
2503 Elm St  
Butte, Mt.

Sincerely,

Bert Grosso  
2507 Land St  
Butte Mt 59801

"R"  
2-16-83

TESTIMONY IN SUPPORT OF SB 347

Mr. Chairman, Members of the Committee:

For the record, I am Lorraine Gillies, rancher, Montana State Farm Bureau Board Member, member of the American Farm Bureau Natural and Environmental Resources Advisory Committee, and chairman of the Montana Farm Bureau Natural and Environmental Resources Committee.

We urge the support of SB 347. This bill will provide the necessary protection in cases where individuals and organizations seek to establish prescriptive easement across private property in the interest of recreational activities. This bill will alleviate a long-standing concern of private property owners that, by allowing access to streams, etc., as a gesture of good will toward recreationists, we may in fact be cutting our own throats. A clear-cut understanding of what is being established by use will further better landowner-recreationist relations.

Thank you.

"5"  
2-16-83

# WIFE Women Involved in Farm Economics



NAME JO BRUNNER

FILE NO. SB 347

ADDRESS 563 3rd St. Jefferson

DATE February 16

MEMBER OF WOMEN INVOLVED IN FARM ECONOMICS

SUPPORT X

OPPOSE

ABSTAIN

NAME:

Mr. Chairman, members of the committee, my name is Jo Brunner and I represent the members of the Women Involved in Farm Economics organization here today.

Mr. Chairman, our members wish to support Senate Bill 347. We believe it is not to our best interests to have to allow persons on our property simply because they have been there several times in the past.

Because of the misuse of hunting and fishing privileges on our lands we have had to post more and more land. Policing, and that is a harsh word to use, but does fit the extremes we often must use----takes a great deal of our time. Most of us do not post our lands for just plain orneriness----we have good reasons to do so. And while we realize that the majority of people fishing and hunting are responsible people, some are not. Those are the ones we feel we need to keep out---and have they hunted and fished there in the past, without asking, or feeling they required permission, we do not feel the obligation to let them continue.

One of our members was confronted by people they had allowed to cut Christmas trees on their property for several years, with the declaration that they would no longer have to ask permission to get their trees any longer---~~xxxxxxxxxxxxxx~~--we realize that this is an extreme example, but that is the trend.

Please do ~~not~~ pass SB 347.

(This sheet to be used by those testifying on a bill.) ✓ 112-83

NAME: Teddy Thompson DATE: 2-16-83  
ADDRESS: Big Timbers, Mt. 59011 Box 976  
PHONE: 932-2551

REPRESENTING WHOM? SeLF

APPEARING ON WHICH PROPOSAL SB 348 + 347

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

COMMENTS : \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

1  
2/16/83

To: Senator Jean Turnage, Chairman of the Senate Judiciary Committee and members

I am writing you a letter to ask you to support S.B. 347 and S. B. 348. I am Teddy Thompson, Sweet Grass County Rancher.

My reason for concern stems from the fact we have lived and ranched in an area, where two rivers are part of our boundaries, since 1920. We have never denied access to people who wished to use these lands for recreation along these rivers. The two rivers are Boulder River and Yellowstone River about two miles Northeast of Big Timber. The distance involved would be three miles of river frontage.

The recent Court rulings on the Beaverhead and Dearborn rivers would indicate taxpaying land owners along rivers do not have any protection against prescriptive easement and trespass by recreational users. There are many more ramifications connected with these ruling such as irrigation structures, fencing of pastures etc in addition to assess by sportsmen.

A do pass recommendation by members of your committee for SB 347 and SB 348 would certainly help us, as ranchers, to continue our past policies of access for people who have enjoyed them for the past sixty some years.

Thank you for your consideration.

*Teddy Thompson*

2-16-83

NAME: Esther Rund DATE: 2-16-83ADDRESS: Colonial Inn

PHONE: \_\_\_\_\_

REPRESENTING WHOM? Montana Cattlemen's AssnAPPEARING ON WHICH PROPOSAL: SB 347 + SB 348DO YOU: SUPPORT? X AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_COMMENTS: Farmers & ranchers during this economic crisis as well as other individuals can neither afford the time nor the money to appeal in court and such could then arise without laws such as these

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Dan McNamee DATE: 2/16/83

DATE: 2/16/83

ADDRESS: Michigan Ave - Great Falls

PHONE: 866-3320

REPRESENTING WHOM? Mrs. W. C. Powers

APPEARING ON WHICH PROPOSAL: S.D. 348

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

COMMENTS: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Montana  
CowBelles

"V"  
2/16/83

The following resolution was passed without a dissenting vote at a meeting of the Montana CowBelles' Board of Directors on February 10, 1983 in Helena.

STREAM ACCESS

Whereas the privilege of landowners to regulate access to their private property has been a fundamental right, and

Whereas the purpose of fencing private property is for control of livestock and is a necessity in a responsible livestock breeding program, and

Whereas two recent court decisions on the Beaverhead and Dearborn Rivers have established them as navigable streams;

Therefore be it resolved that the Montana CowBelles support legislation for the purpose of defining navigability;

Be it further resolved that the Montana CowBelles go on record in support of an amendment sought by Senator Galt to strengthen the landowners' rights with respect to adverse possession in that a recreational easement could not be established through adverse possession.

*Joyce M. Grande*

Joyce M. Grande  
President



...the voice of women in the cattle industry

W  
FEB 16 83  
2

FEBRUARY 16, 1983

SUPPORT - S-348

MR. CHAIRMAN AND COMMITTEE MEMBERS - JUDICIARY

I AM IN SUPPORT OF S-348

1. BECAUSE OF THE DECISION HANDED DOWN BY JUDGE BENNET WE NEED A BETTER DEFINITION OF A NAVIGABLE STREAM.
2. DUE TO THE HARRASMENT AND PRESSURE ON PRIVATE LANDOWNERS BY OUTSIDE INTEREST GROUPS SUCH AS THE COALITION FOR STREAM ACCESS, WILDLIFE FEDERATION, SIERRA CLUB AND FRIENDS OF THE EARTH, WHO QUIETLY OR IN THIS CASE OPENLY ARE TRYING TO TAKE AWAY THE CONSTITUTIONAL RIGHTS OF PRIVATE LANDOWNERING CITIZENS.
3. THE FISH, WILDLIFE AND PARKS DEPARTMENT SHOULD TRY HARDER TO HAVE BETTER RELATIONS WITH LANDOWNERS INSTEAD OF JOINING WITH RADICAL GROUPS IN ACQUIRING LAND,, IN MY OPINION BY DEVIOUS MEANS..
4. IF WE DON'T AMEND THE DEFINITION OF NAVIGABLE STREAM, I BELIEVE WE WILL SEE SOME OF THE WORST RELATIONS BETWEEN PRIVATE LAND OWNERS AND OUR CITY FRIENDS THIS STATE HAS SEEN.
5. THERE WILL PROBABLY BE THE ARGUMENT THAT IT WILL CLOSE ALL THE STREAMS TO BOATSMEN. I DON'T THINK THAT WILL BE THE CASE. IT WILL SERVE TO HELP THE LANDOWNER IN PROTECTING THE PRIVATE LAND ADJACENT TO THE STREAMS AND PROTECT THE STREAMBED IN MOST CASES WHERE THE OWNER HAS PAID TAXES SINCE THE LAND WAS RECORDED.

W  
2/16/83

6.. THIS BILL MY SOUND HARSH AT FIRST BUT IN THE LONG RUN WILL HELP  
ESTABLISH BETTER RURAL URBAN RELATIONS.

THANK YOU,

WINDSOR WILSON

MCLEOD, MONTANA

2-16-83

NAME: Bill Fett DATE: 2-16-83ADDRESS: 2213 8<sup>th</sup> Ave So. Great Falls, MTPHONE: 453-3325REPRESENTING WHOM? Self.APPEARING ON WHICH PROPOSAL: SB 347 & 348DO YOU: SUPPORT?        AMEND?        OPPOSE? XCOMMENTS: The question of navigability must be addressed.  
Landowners need protection from the unethical sportsmen,  
& the average sportsmen need a place to enjoy  
their sport. Some compromise is needed. S.B.  
347 & 348 are ~~is~~ one sided and leave no room  
for the people who enjoy Mt waterways. Going  
back to beginning of statehood is a step backward.Bill Fett

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

2-16-83  
2

MONTANA WILDLIFE FEDERATION

Testimony on SB 348

February 16, 1983

Mr. Chairman, members of the Senate Judiciary Committee: My name is Ken Knudson, here today representing the Montana Wildlife Federation.

Successful legislation addresses valid concerns in a way that brings opposing interests closer together. Legislation is usually unsuccessful, and certainly not in the best interest of the people, if it elevates the potential for conflict between interests.

Any attempt to nullify the legal right to navigate on nearly all of Montana's rivers will be unsuccessful, if only because it would clearly invite conflicts and controversy. Successful legislation, on the other hand, would seek accord by suggesting valid solutions to concerns involving property rights, access and river management.

SB 348 clearly represents an unsuccessful approach. Not only would it invite conflict, but it would also be extremely restrictive and regressive to the interests of a significant portion of Montana's population. To restrict the definition of navigable streams, as is being suggested in this proposed legislation, would jeopardize the rights of Montanans from every cross section of age, employment and political affiliation.

An opposite approach to SB 348 would be to establish a fund, provided by a user fee on floaters, whereby access sites could be leased, fences compatible with floating could be constructed, river maps which clearly show ownership and hazards could be published, and litter clean-up campaigns could be conducted.

Mr. Chairman, the Montana Wildlife Federation has been advocating such an approach for some time.

For your information, I have attached to my testimony copies of editorials from some of Montana's largest daily newspapers that reinforce the Montana Wildlife

Federation's position on the stream navigation issue. I won't read the editorials in their entirety, but I would like to briefly read some excerpts:

The BILLINGS GAZETTE, January 20, 1983: "The Montana Wildlife Federation's proposal to levy a floater's fee...is a good one...answering the needs of both groups affected by it and funded by the people who benefit from it."

The GREAT FALLS TRIBUNE, January 10, 1983: "There are two ways for the Legislature to approach the question of recreational floating on Montana rivers and streams.

"One is the confrontational technique. It involves pitting farmers and ranchers against recreationists, and painting the entire issue as a confiscation of private property and an attempt to interfere with normal agricultural operations.

"That approach builds fences and creates dissension. It won't be an effective vehicle for solving disputes.

"The other is the cooperative technique, typified by the Montana Wildlife Federation's approach. This group has admitted to landowners' valid concerns about having people float through their property, and then it has offered some solutions."

The BOZEMAN CHRONICLE, January 5, 1983 (Referring to the floater's fee concept): "This is the type of creative and useful solution the Legislature should approve soon before the situation gets out of hand. Other legislation challenging floater's rights to use the rivers would only fuel the fire."

During the past couple of months, I have had the opportunity to discuss the question of navigability and stream access with numerous organizations and individuals. Certainly, some of the most enlightening comments have come from people who have been landowners and/or recreationists for over 30 years. They spoke of earlier days, when cooperation and mutual respect for each other's interests and concerns were more common place; and I personally remember that spirit of respect from early days spent on my grandfather's farm in western Montana.

~4  
2-16-83

Now there are many reasons for the deterioration over the past several years of landowner/recreationist relationships - a deteriorating economy, more people, loss of more open spaces and, most unfortunately, polarization of points of view through loss of communication and understanding about honest differences of opinion concerning resource issues. Fortunately, this latter problem, unlike the first three that I mentioned, is more controllable and reversible.

Probably one of the most difficult things for any of us to do though, is to sit down and try to work with someone who we think disagrees with our point of view. However, once we all realize that we mutually have more to gain than to lose, we can make progress.

One thing is certain, economic influences and more people will continually and increasingly apply more pressure to the private and public resources of our state, but we're lucky in Montana, because of our sparse population, rural lifestyles and past spirit of cooperation, to still have time to begin working together on such critical issues as public access and property rights. To wait any longer, or even worse, to pass legislation that will divide people further, would only decrease the chances for finding mutual accord. For precisely those reasons, the Montana Wildlife Federation requests that this committee recommend a "do not pass" for SB 348, and instead consider the kind of legislation that the Montana Wildlife Federation has been suggesting.

We at the Montana Wildlife Federation realize that landowners do have some valid concerns about trespass and private property rights. We only hope that this legislature will pass a bill that will help open up communications rather than break them down further.

# In favor of cooperation

There are two ways for the Legislature to approach the question of recreational floating on Montana rivers and streams.

2-16-83  
7-16-83

One is the confrontational technique. It involves pitting farmers and ranchers against recreationists, and painting the entire issue as a confiscation of private property and an attempt to interfere with normal agricultural operations.

That approach builds fences and creates dissension. It won't be an effective vehicle for solving disputes.

The other is the cooperative technique, typified by the Montana Wildlife Federation's approach. This group has admitted to landowners' valid concerns about having people float through their property, and then it has offered some solutions.

Most important, the federation has proposed a floaters' fee. Money from a \$2 or \$3 yearly fee (higher for commercial operations), and perhaps from other revenue sources such as taxes on equipment, would be used to ease landowners' concerns.

For instance, according to the Wildlife Federation, use of the money could help pay for seasonal "river riders," for assuring there are public access points to streams; for posting signs, publishing maps, cleaning up

litter, and assisting landowners to build any needed fences.

The danger, of course, is setting up too much stream regulation. But as more people become interested in floating, some form of management is needed to protect the land, the landowner and the recreationist.

Montana is not without examples of cooperation over river access questions. Interests of landowners and recreationists have been protected on both the Smith and Blackfoot rivers in recent years.

Neither is the state without examples of recreation-oriented, user fees. Witness the fees snowmobilers must pay. Sportsmen pay excise taxes on hunting and fishing equipment to help support wildlife management activities.

The recent court rulings to open stretches of the Dearborn and Beaverhead rivers to floaters guarantee that accompanying questions — particularly on high water levels and property taxation — will face legislators.

Their best bet is to take a cue from the Wildlife Federation: to look at user fees and the possibility for river recreation agreements; and throughout the process, to stress cooperation.

## Floater's fee proposal strikes a compromise

BILLINGS  
GAZETTE  
JANUARY 20  
1983

The Montana Wildlife Federation's proposal to levy a floaters' fee of \$2 to \$3 for each boat, raft or canoe plying the state's navigable rivers is a good one.

Particularly so in light of two recent District Court decisions ruling the Beaverhead and Dearborn rivers open to floaters from high-water mark to high-water mark.

The decision delighted sportsmen but piqued the ire of farmers and ranchers around the state.

The floaters fee is a good compromise between the two interests.

Sportsmen give a little and get a little.

Floating down one of the state's larger rivers to stalk the wily trout or just to relax, is one of the state's few, relatively unregulated, untaxed and undeveloped sports.

would change that, but not too much.

The fee is certainly minimal, and the money raised would promote the sport by the acquisition of access, camping and stopping sites.

These sites would be appropriately marked on maps published under provisions of the proposal.

The farmers and ranchers would be given assistance in constructing fences and other structures compatible with floating.

Additionally, the measure promises to explore the question of property tax assessment between high water marks and calls for hiring river riders to ensure that floaters do not trespass on or litter private lands, or destroy property on those lands.

It's a good proposal, answering the needs of both groups affected by it and funded by the

# Montana could end floaters over rivers

By STEVE WOODRUFF  
of the Missoulian

"We've got to do something to improve the situation," Ream said in a telephone interview from Helena.

The bill proposed in the state House of Representatives Wednesday aims to bring peace to the battle between landowners and the public over use of rivers running through private property.

The measure would free landowners from paying taxes on land within the high-water marks of navigable rivers. In addition, it would charge a \$4 annual license fee for rubber rafts, canoes and other boats used for river floating.

Re-p. Bob Ream, D-Missoula, who is sponsoring the bill, said the measure is aimed at ending conflicts between the public and landowners.

"high-water marks," within which the public has a right to float, according to the court rulings.

The bill uses the same definition of high-water marks as the state's existing Natural Streambed and Land Preservation Act. High-water marks are the lines "which the water impresses on the soil by covering it for sufficient periods of time to deprive the soil of its vegetation and destroy its value for agricultural purposes."

Private property within the high water marks would be free from property taxes, under the provisions of the bill.

Ream said it's only fair that if the area between the high-water marks is considered public domain, landowners shouldn't be taxed on its value.

"Some of the landowners have been arguing that they shouldn't have to pay taxes on that land," he said. "This would provide them some tax relief."

The amount of tax revenue that would be lost if the bill were approved is unknown.

In addition, the bill would require river floaters to license their craft.

Knudson said his organization hopes to work with agricultural groups in an effort to attract support for the bill.

The issue surfaced late last year after two state district court judges ruled that the public has a right to float down sections of the Beaverhead and Dearborn rivers. Landowners along those rivers had attempted to restrict river travel.

Part of Ream's bill aims at defining

ing for proper river management activities that will improve the relationships between landowners and river recreationists.

Projects eligible for funding right in- clude: financing construction of cross-stream fences that won't obstruct river passage; publishing maps detailing access sites and areas to avoid; and paying for maintenance and clean-up projects along rivers.

Money from decal sales also could be used to lease access sites and campgrounds along rivers.

Knudson said floaters who object to the license fee should consider what they will get for their money.

"For the price of a 12-pack of beer they'll get better relations with landowners, access sites and maps," Knudson said.

## BOZEMAN DAILY CHRONICLE JANUARY 5, 1983

After two recent court cases involving public access to navigable streams through private land, an outcry has been heard from agriculture groups that no one is paying attention to the landowner's problems.

The agriculture groups are now threatening to close private farm and ranch land to hunters, in retaliation for the court decisions favor of floaters.

A ranching legislator is also considering legislation involving the legal definition of navigable streams. The user fee could begin to answer some of the landowner's complaints. But in considering the fee, the Legislature should balance the threats of agriculture with the rights of floaters.

## Floater fee • is creative solution

And, apparently, there is a similar situation with landowners. Most have adjusted to floaters and are willing to co-exist with them. There have been no reported instances of clashes on the Yellowstone, Missouri or other rivers — just the Dearborn and Beaverhead. Testimony in court cases involving those rivers showed that actual problems between ranchers and floaters were few. Basically, the ranchers just didn't want the public floating through their land. Some complaints, such as trespassing and littering, are occasionally justified.

The user fee could solve some problems. Maps and signs would direct floaters to camping and picnic spots of private land. Some camping sites could

On most streams, floaters have a right to be there. Navigable streams are legally open to public use to the high water mark. Many navigable streams also have Department of Fish, Wildlife and Parks fishing accesses where it is legal to put in or take out a boat.

Some streams that are often floated pass through state, National Forest or BLM land, much of which is open for camping.

Granted, these rights are often abused, but most floaters will abide by the law and respect private property if they are aware of their responsibilities. Once again, it's a case of a few scofflaws ruining the reputation of floaters in general.

It may cost you \$3 to float a raft down the Madison next summer if a proposal to charge floaters a fee is approved by the Legislature. The proposal by the Montana Wildlife Federation would institute a user fee for floaters on rivers. The money will help the state to deal with conflicts over use of rivers.

# Montana Audubon Council

2/16/83  
2

Louise Bruce

TESTIMONY IN OPPOSITION TO SB 348, February 16, 1983.

Mr. Chairman and members of the committee,

I am here today on behalf of the Montana Audubon Council.

Audubon has a statewide constituency of 2400 people - people who appreciate the opportunities Montana streams provide for not only their recreational pursuits, but also for their inherent historical, ecological, and cultural attributes.

Audubon feels that the limit proposed by SB 348 upon the navigable waters of this state greatly inhibits the enjoyment of an important, and valuable resource.

Due to the tremendous diversity of streams present in Montana, river recreation is a rapidly growing leisure time activity. Within the boundaries of the state, opportunities exist in a wide variety of settings: from challenging whitewater to calm, slow-moving currents. Because of the variety of experiences available to the recreationist, river recreation can hardly be classified as a passing fad.

As Montana grows, the number of river recreationists will grow. This expansion will undoubtedly lead to an inevitable increase in recreationist - landowner conflicts. Audubon feels that SB 348 proposes no solution for this source of friction, and fails to acknowledge river recreation as a significant activity worthy of a place on Montana waters.

In addition to the detrimental effects SB 348 would have upon recreational pursuits, Audubon believes that it is important to recognize another positive attribute of Montana streams that this bill would adversely affect - the accessibility of a significant part of Montana's cultural and natural history. Streams in Montana played a major role in the first exploration of this state and were often the only lifeline of early peoples. SB 348 would result in the loss of accessibility to valuable and important areas which are most easily accessible by watercraft.

The need, then for navigability on Montana streams indeed exists, and the demand will only rise - not fall - a situation that can not be remedied by legislation which merely places a severe limit on the number of navigable streams; this can only serve to heighten problems.

Audubon opposes SB 348.

Thank you.

*Louise Bruce*  
Montana Audubon Council

NAME: John Corcoran DATE: 3/16/83  
ADDRESS: 503 N. Black #4, Bozeman, MT.  
PHONE: 587-4830

REPRESENTING WHOM? Timberline Reclamations, Inc.

APPEARING ON WHICH PROPOSAL: SB 347 & 348

DO YOU: SUPPORT?        AMEND?        OPPOSE? X

COMMENTS: There must be a compromise struck which protects the landowner, yet allows use of our natural resources by the non-landowning public. These bills are not compromises. I urge these bills not be passed into law.

These bills do not contribute to our economic base or help Montana keep jobs. Businesses which are supported in any form by the recreationists dollar - recreationists who use the rivers and streams of Montana - will be seriously damaged by these thoughtless bills.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Schwinden quotes from Mont. Business & Industrial Location Guide  
Mont. Dept of Commerce

~AA~  
7-16-83

Gentlemen:

If these bills pass, the results will do drastic injury to the present and future economic base of this state. As well, the protection of Montana's streams will be questioned, especially if the Ecological Services Division, MDFWP, is eliminated or weakened through restructuring.

Our Montana economy must be kept from being debilitated by legislation which restricts monies spent by resident and non-resident recreationists. Guide services, dude ranches, tackle and sporting shops, eating establishments, grocery and retail outlets of all kinds, hotels and motels, travel agencies, and so many more periphery tourist-related businesses dependent upon recreationists will be severely damaged by these thoughtless and careless bills which by their very nature eliminate availability of water resources used by sportsmen.

I question whether the sponsors and co-sponsors alike have considered the businessman and his need for the recreationist's dollar. Constituents of these ~~same~~ sponsors should critically analyze the methods these men have taken to solve a problem. Potentially, they are causing more grief than cure.

*has quote*  
Governor Schwinden <sup>has</sup> stated "economic development is high priority" of (his) administration. He has stated "Montana state government is committed to the conscientious expansion of our economic base. If Montanans are to have jobs, we must design and foster a healthy economic climate for business while preserving our unique values for future generations."

AA  
2-16-83

Page 2

These bills do not contribute to our economic base or help Montanans have jobs.

Regarding protection for Montana streams and rivers, if it were not for sportsmen who use the rivers and streams - so many violations and so much wanton destruction of the state's waterways would go unnoticed. Many of the same sportsmen who would be eliminated by these bills from the state's waterways are the ones who guard the resource as respectfully as the land-owners whose lands border streams and rivers.

There must be a compromise struck which protects the land owner, yet allows use of our natural resources. These bills are not compromises. I urge these bills not be passed into law.

*John R. Corum  
Lumberline Reclamations, Inc.*



# Timberline Reclamations, Inc.

~AP 83  
2/16/83

February 15, 1983

Senator Paul Boylan  
Representative Bob Ellerd  
Representative Norm Wallin  
Capitol Station  
Helena, MT 59620

Gentlemen:

Speaking candidly, we believe your co-sponsorship of Senate Bills 347 and 348 shows poor judgment and little concern for the majority of the constituents you represent. In our view, with your concern for protecting landowners' rights you have not considered the economic affects these bills will have on local businesses dependent upon recreational uses of streams and rivers. As well, your bills are selfish schemes to address problems of a comparatively small group of landowners which ignore needs of the general public who have the right as Montana citizens to use our common resources.

There is no doubt that the problems of landowners rights must be addressed. We do not believe a man's land and rights of ownership he has worked hard to protect should be taken away. However, we also do not believe natural resources such as major streams and rivers should be locked up and kept from the public.

Included here should be the consideration by you of the economic needs of our state and its entire citizenry. Closing rivers, which represents loss of recreationalists' dollars, translates to lost jobs. Constituents are not very forgiving when they lose their jobs and, in this case, especially if they are fishermen.

Our firm is in daily contact with sportsmen's groups and private landowners. Both are concerned with protection of water ownership rights and safeguarding the fishery habitat. These bills do not bring these two groups together in compromise. Instead, these bills and your participation only widens the gap of cooperation and understanding.

We recommend as a business interest, constituents, and sportsmen, that you work for compromise and not support these bills.

Sincerely,

  
John R. Corwin

General Administrator

JRC/mkm

- 127 West Main • Bozeman, Montana 59715 • (406) 587-9004
- 10609 Northeast Ninth • Bellevue, Washington 98004 • (206) 454-6530



JOHN R. CORWIN  
General Administrator

# Timberline Reclamations, Inc.

Fishery Consultants & Aquatic Services

127 West Main • Bozeman, Mt. 59715 • (406) 587-9004  
10609 N.E. Ninth • Bellevue, Wa. 98004 • (206) 454-6530

"BB"  
2/16 '83

NAME: DAVID M MASON DATE: 2/16/83

ADDRESS: 1334 W Platinum Battle

PHONE: 782-5578 Business 782-8354

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: Bill No. 347 & 348

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

COMMENTS: \_\_\_\_\_

Prepared Statement w/ Committee

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

~BB~  
2-16-83  
MY NAME IS DAVID MASON 1324 W. PLATINUM BUTTE, MT.

I AM SPEAKING AGAINST SENATE BILLS 347 AND 348.

AGAIN WE HAVE COME TO SEE IF ELECTED OFFICIALS WILL ACCEPT THE CHALLENGE OF NOT TAKING AWAY THE RIGHTS OF THE PEOPLE IN OUR STATE. I HOPE THAT THIS COMMITTEE CAN SEE THE DISASTEROUS EFFECT THIS WILL HAVE ON ALL PERSONS IN THE STATE OF MONTANA.

MANY SOCIAL AND ECONOMIC PROBLEMS WILL BE CREATED BY THESE TWO BILLS. MANY OF OUR COMMUNITIES ARE ALREADY IN THE MIDDLE OF VERY DIFFICULT TIMES AND I SINCERELY HOPE THIS COMMITTEE WILL TAKE A POSITIVE STAND TO "KILL" BILLS 347 AND 348.

IF THESE BILLS ARE PASSED YOU WOULD BE GIVING A SELECT FEW THE CONTROL OF THE RIVER SYSTEMS IN MONTANA. WE HAVE ALREADY SEEN RESTRICTIONS ON ONE RIVER THAT HAS GIVEN A FEW BUSINESS INTERESTS SIMILAR CONTROL OF THE UPPER MADISON RIVER THROUGH A MORITORIUM -- NOT EVEN A LAW. THIS HAS ALLOWED THESE SELECT FEW TO SELL BUSINESSES WITH LICENSES AT ENORMOUS PROFITS WHICH WAS NOT THE INTENT OF THE MORITORIUM.

WHAT BILLS 347 AND 348 COULD DO IS TURN OUR RIVERS SYSTEM INTO PRIVATE CLUBS FOR THE ELITE AND OUT OF STATEERS. THE IDEA OF PRIVATE CLUBS IS VERY EXTREME TO SOME, BUT LET US LOOK THEN AT THE REDUCED MONIES IN OUR COMMUNITIES BECAUSE OF LESS TOURISM, LESS TACKLE SHOP SALES, LESS STATE LICENSES SALES AND LESS BUSINESS FOR MOTELS, RESTAURANTS, GAS STATIONS, STORES AND OUTFITTERS DUE TO A SELECT FEW ABLE TO FLOAT OUR PUBLIC WATERS.

TO ME THE COMMERCE IS MUCH LESS IMPORTANT THEN THE SOCIAL EFFECT BILLS 347 AND 348 WILL HAVE ON THE PEOPLE WHO LIVE IN MONTANA.

IF FAMILIES WHO ENJOY FLOATING ARE DENIED THIS RIGHT WE WILL ONCE AGAIN HAVE SEEN GOVERNMENT GIVE TO A FEW AND LEGISLATE AGAINST THE MANY. ITS AMAZING TO ME HOW MANY LAWS TAKING AWAY FAMILY ACTIVITIES HAVE BEEN INTRODUCED THIS YEAR BY LEGISLATORS WHO ARE FAMILY ORIENTED. HERE WE ARE

IN THE STATE WITH THE MOST NOTORIOUS RIVERS IN THE WESTERN UNITED  
STATES FOR FLOATING AND WE ARE WILLING TO CONSIDER BILLS THAT WOULD  
TAKE AWAY RIGHTS WHICH ALREADY EXIST FOR ALL THE CITIZENS OF MONTANA  
AND GIVE THEM TO A SELECT FEW.

THE RIVER RESOURCES OF MONTANA HAVE ALWAYS BEEN ONE OF OUR  
GREATEST ASSETS. DON'T LET THESE RIVERS BE EXPLOITED BY A FEW  
WHO IN THE END WILL HAVE THE SAME ATTITUDE AS ARCO AND ANACONDA COMPANY  
TOWARDS OUR GREAT STATE AND HER PEOPLE.

THANK YOU FOR YOUR TIME AND CONSIDERATION IN THIS MATTER.

2/16/83

"CC"  
2/16/83

February 16, 1983

Committee Members  
Judiciary Committee  
Montana State Senate  
Helena, Montana 59620

Dear Committee Members:

As a native Montanan, born and raised on a ranch in northwestern Montana, I respectfully ask that the Committee Members oppose Senate Bill No. 347, an Act Providing that Prescriptive Easement Cannot Be Acquired By Recreational Use, and Senate Bill No. 348, An Act To Amend The Definition Of "Navigable Stream."

I have floated and fished Montana Rivers since I was twelve years old, a period of more than fifty years, and I would very much like my children and grand-children to have the same opportunity to enjoy these rivers that I have had.

Contrary to published newspaper reports that the passage of these Senate bills would not affect the floating by reasonable recreationists, the fact is that they would very effectively put Montana's rivers off limits to the average sports person. Or, at best, it would permit access to the rivers at the whim of an adjacent land-owner, or possibly for a fee that might be prohibitive.

It would effectively put commercial rafting outfitters and guides out of business, adding to Montana's already high unemployment.

It would cause a heavy loss to the State, and to the business community in the area of lost tourism.

I have no wish to trespass on any persons land, and I do not leave any litter behind. My only wish is to have the right to enjoy using the rivers, and the sand and gravel bars up to the edge of vegetation at the normal high water mark, which I consider to be the property of the State.

I am in favor of cooperation between land owners and recreationists, rather than confrontation, and would support any reasonable legislation to further such cooperation. I cannot support such an ill-advised pair of Bills such as Senate Bills No. 347 and No. 348.

Respectfully,

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

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

NAME: Dale Andish DD  
DATE: 2-16-83 2-16-83

ADDRESS: 2510 2nd Ave S Great Falls MT

PHONE: 453 3073

REPRESENTING WHOM? Stif

APPEARING ON WHICH PROPOSAL: SB 247 & 348

DO YOU: SUPPORT?        AMEND?        OPPOSE? ✓

COMMENTS: These bills are  
Supply a task work by  
a new majority (one owner)  
the hour's, the working  
to procure only one  
who does <sup>not</sup> own a truck,  
from a fishing or plowing  
a farm.

Fish is fish + these bills  
are supply not fair.

W. A. Andish

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

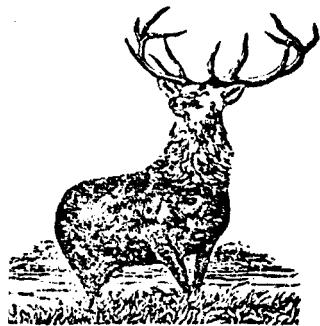
GOALS LOGIC IS Kool's if  
what if I buy one house  
across by street and close

one street, so can we cut  
the road lots at south. "

EE  
2.14.83NAME: CHRIS KRONBERG DATE: 16 FEB 1993ADDRESS: 570 5.2<sup>nd</sup> W. MissoulaPHONE: 549-5727REPRESENTING WHOM? SELFAPPEARING ON WHICH PROPOSAL: SB 398 - 347DO YOU: SUPPORT?        AMEND?        OPPOSE? ✓

COMMENTS: THIS BILL MAKES FISHING IN MONTANA A  
PRIVATE PROPERTY RIGHT, INVITING FEE FISHING SITUATIONS.  
THOSE MONTANANS CAN NOT AFFORD THIS, NOR THE MILLIONS  
OF DOLLARS TO BUY THEIR OWN TROUT STREAM. THESE  
BILLS ARE EXTREME, POLARIZING RIVER-LAND OWNERS  
AGAINST LANDOWNERS. REJECT THESE BILLS, AND DEVELOP  
REASONABLE, INCLUSIVE SOLUTIONS TO THE PROBLEM OF ACCESS.  
ARE STREAMS NOT NOW PRESENTLY OPEN OR NAVIGABLE  
OR NOT, AS ACCESS ACROSS PRIVATE LAND IS NOT MADE  
POSSIBLE BY THE RECENT COURT DECISIONS. ONLY ~~THE~~ PUBLIC  
ACCESS POINTS LEAD FLOATING/FISHING ACCESS. THANKS

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



# **SKYLINE SPORTSMEN'S ASSOCIATION, INC.**

P. O. BOX 173

BUTTE, MONTANA 59701

February 15, 1983

Members of the Judiciary Committee  
Capitol Building  
Helena, Montana 59601

Dear Sirs:

The members of the Skyline Sportsmen of Butte would like to go on record as being totally opposed to Senate Bills #347 and #348 which are being introduced by Senator Jack Galt.

The status quo of enjoying Montana streams for fishing, hunting, trapping and other forms of outdoor recreation must be maintained. Why should literally thousands of people, both in and out-of-state, be punished for two short-sighted landowner's greed for monetary gains or personal vengeance?

Montana waters have always been a public resource and should be maintained as such. To do otherwise, would render the state's third largest industry a terrible financial blow. For example; in the small town of Ennis, Montana, the income from the Madison river and the spin-off returns for that area and the rest of the state totals over \$16,000,000. Why deny this entire community a chance to make a living because of the greed of a few people?

A reverse philosophy would be for all sportsmen to declare our public lands off limits to stock grazing and emphasize wildlife and recreational uses as the primary use. The taxpayers have allowed the rape of our public lands to go on for too long. If we are denied reasonable use of Montana waters; then, in turn, we should fight unreasonable use of our public lands.

Your consideration to kill both bills would be greatly appreciated.

Respectfully,

  
Tony Schoonen, President

NAME: LEROY CORBIN DATE: Feb 16 '83  
ADDRESS: 1208 W Silver Butte  
PHONE: 782-0650

REPRESENTING WHOM? SECF

APPEARING ON WHICH PROPOSAL: 347 \$348

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

COMMENTS: attached sheet -

In the "State of Mont. Dept. Fish, Wildlife & Parks"  
pg 110 Part 1 Development of Outdoor Recreational  
Resources

Please Read 23-2-101

This basically says it all.

"meandering" - very little defined in this state

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

"GG"  
2/16/83

Feb. 16, 1983

Judiciary Committee  
Re: S.B. 325  
Room 325  
Position -Opposed

Mr. Chairman And Committe Members

My name is LeRoy Corbin, 1208 W. Silver, Butte, Mt., and I am Testifying against S.B. 348. My family and I have been river floating for the past four years and are strongly opposed to the closing of the rivers that can be recreationally floated as recently defined by the courts. The water belongs to the people of this state and should be there for their use, not just the use of the farmer or rancher for irrigation or stock watering.

Most of the land next to the rivers is private property and should be treated as such by all citizens. I have always treated this land with respect but I am also aware that there are people that do not. Why punish the concerned floaters for the wrongs of a few? Put a stiff penalty on those ~~that~~ violate the rights of the property owner but do not punish the floaters ~~that~~ appreciate the rivers and respect the rights of the private land owner.

Thank you,

  
LeRoy Corbin

NAME: Ross MacPherson

DATE: 2-16-83

ADDRESS: 6399 Craigh Rd - Bozeman 59715

PHONE: 587 7931

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: S 347 + 348

DO YOU: SUPPORT? \_\_\_\_\_

AMEND? \_\_\_\_\_

OPPOSE?

COMMENTS: - Urge that S347 and S348 not pass. ~~Montana~~  
Navigable rivers are such an important and vital part of Montana.  
Historically the rivers provided the way for early exploration  
and settlement.

Today, the rivers provide so much for Montana. The freedom  
to use the rivers is a vital part of the state's tourism  
industry and the rivers provide millions of hours of recreation  
to our state's people.

Please don't take away access to and use of our state's  
rivers.

Ross MacPherson

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

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

NAME: Kevin M. Wagner DATE: 2-16-83

ADDRESS: 1038 S. 3rd W Missoula

PHONE: 721-1217

REPRESENTING WHOM? myself

APPEARING ON WHICH PROPOSAL: SB 347 + SB 348

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

COMMENTS: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Kevin Wagner, Missoula

I am a fisherman and weekend floater of Western Montana rivers. I am sure that there is no other state that offers our diverse smorgasbord of scenery, wildlife and clear water and I intend to continue my delight in its pleasures.

Recent court decisions have affirmed that floating is <sup>on navigable streams</sup> ~~presently def~~ indeed my right and not solely a granted privilege. Yet the rancher as taxpayer, property owner and steward of the land through which I pass also has rights which need and deserve protection.

Senate Bills 347 and 348 although intended to do this will result only in driving a wedge between recreationists and landowners promoting bitter relations and possible violent conflicts. Any legislation that seeks to exclude such a traditional group of users as floaters is undemocratic and extremely divisive. An alternative bill which takes the onus of liability off the property owner, protects his rights and preserves those of the recreationist will best serve us all.

TESTIMONY ON SENATE BILL 347, Wednesday, February 16, 1983

PRESENTED BY ED KLEIN, 712 - 27th. St. N., Great Falls, MT 59401, phone 454-1792  
TO THE MONTANA SENATE FISH AND GAME COMMITTEE

My name is Ed Klein, an engineer employed in Great Falls. I am here today to strongly oppose Senate Bill 347.

If there is no public access across private property to public lands, private land owners have effectively kept the public from using public lands.

I feel there should be some type of access for the public to all public lands, compatible with the right of private land owners not to have their property damaged.

I urge you to vote against this bill.

EDWARD E KLEIN

TESTIMONY ON SENATE BILL 348, Wednesday, February 16, 1983

PRESENTED BY ED KLEIN, 712 - 27th. St. N., Great Falls, MT 59401, phone 454-1792  
TO THE MONTANA SENATE FISH AND GAME COMMITTEE

Senator Ed Smith, Chairman

My name is Ed Klein, an engineer employed in Great Falls. One of the great joys of my life is floating the waters of Montana. I am here today to strongly oppose Senate Bill 348.

People in the state of Montana have a right to use our water. Farmers have a right to use the water for agriculture. Montana Power has the right to use the water to generate electricity. Cities have the right to use the water for people to drink. Industry has the right to use the water for processing. Fishermen should have the right to fish. Boaters and floaters should have the right to float.

My personal belief is that we have a right to use the waters of Montana, but we also have an obligation to respect the property owners' land, and that boaters, floaters and fishermen should not trespass and damage property. A very small percentage do cause damage; the rest of us should not suffer for their misdeeds.

In addition, tourism is one of the major economic factors in our state. I am convinced that many people will see a law forbidding use of so-called "private" rivers as a deterrent to tourism.

I urge you to vote against this bill.

EDWARD E KLEIN

2/16/83

I have Canoed, Kayaked and fly fished over 17 Montana rivers. In all of my experiences on Montana rivers I have yet to have a confrontation over my use of any of these rivers.

I feel that Montana's rivers should be for the public use and not one man should have control over a state river. At the same time I believe in the right to own and use your own private property that you pay taxes on. I ~~also~~ feel that ranchers and farmers should not be taxed for river and creek bottoms that run through their property.

With a few exceptions river recreationists have been able to work out solutions to their use of Montana's rivers. The Blackfoot River and Smith River are two good examples of floaters and landowners putting their heads together to come with solutions to their use problems. The success of this type of cooperation would be

②

more productive than changing laws so there one sided for the landowner or one sided for the recreationalist. Let's come up with a compromise that satisfies both parties. These two Senate bills 347 and 348 are not the answer.

Thank you.

Robert A. Wilts  
2916 2nd Ave. N.  
Great Falls, MT.

Vote "No" on 347 + 348 Senate Bills

Benjamin C. Goodwin  
3211 - 5th Ave. South,  
Great Falls, MT 59405

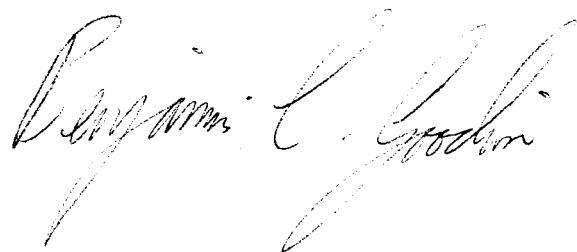
February 15, 1983

Senate Judiciary Committee  
State of Montana

Re: S. B. 347, 348. Opposition  
thereto.

As a river floating enthusiast I oppose Senate  
Bills 347 and 348 on the following grounds:

1. The water in a stream is public property. This water originates outside the boundaries of landowners' property and passes on therefrom. The landowners' rights to this water are limited.
2. Navigability should be defined by ability to navigate, not by some artificial standard imposed by law.
3. Recreation is a legitimate and beneficial use of stream water....beneficial to the landowners themselves in that it attracts money to the state without increasing the permanent population.
4. Agricultural and recreational uses are not mutually exclusive. They can, with due consideration, be carried on without detriment or annoyance to either type of user.



The courts in Montana in two separate cases within the last year have held that:

1. Two relatively small streams in Montana are "navigable"
2. That the term includes recreation vessels of all kinds
3. That the State of Montana owns the streambed to the low-water mark
4. That access must be permitted to the high-water mark

Following are some of the problems these decisions create for the landowner with a stream through his property that could at some time of the year support the floating of an innertube or larger recreational vessel.

1. Access must be unrestricted. This would in effect disallow adjoining landowners to fence across a stream and may have the effect of forcing them to fence the stream in order to control livestock.

2. Access must be granted to the high-water mark. So for streams with heavy spring runoff the landowner could not stop travel by any means so long as they remained below the high-water mark. This would be including wheeled vehicles as well as water or foot travel.

3. The state would own the land to the low-water mark including the minerals. This creates a number of problems. For example:

- a) Land leased for mineral development would have to exclude for the state that portion.
- b) Right-of-way for roads, utilities, pipelines, etc., do not include one granted from the state and therefore would all be in violation of trespass.
- c) The landowner would not be reimbursed for taxes paid on the streambed and the streambed would have to be surveyed in order to ascertain those taxes.

4. No consideration is given for change of stream course. As a consequence, the state has an ever changing title to land and minerals.

5. The landowner will receive no compensation. No compensation will be given for property taken nor for the costs associated with the loss of the property.

Mr. Chairman & members of the committee,

I am a fly-fisherman, fishing guide, a person whom enjoys floatation and a rancher. I support SB 347 in hopes that it will preserve my rights as a land-owner. The right of private ownership of land is really the bottom line when we speak of the need for this bill that is being introduced.

Granted, this bill may seem a bit extreme but when you consider what the stream bed coalition is pushing for, which is open access to any section of a stream they choose, then I'll support SB 347 to the end.

I was under the impression that all these people wanted was to be able to float and fish some of the main rivers. After speaking to several individuals who support the stream bed coalition I find that they are planning on gaining access to several small streams that aren't even large enough to float an inner tube, therefore, my conclusions are that they will force access to any section of stream or area that they choose.

I believe the recreation people have a right to float the larger streams in the state but do they really have the right to step on anyone they choose in pushing their wishes through to the

final end - open access to all private property?  
I hope, even though the urban recreation  
population far out numbers the rural land owner,  
and the land owners' unified voices are not as  
loud as the recreationists, that the legislature  
will not allow them to trample our rights into  
the dirt with regard only for themselves and  
their leisure time pursuits.

Thank you,

Sincerely,

Steve Aller  
Boulder River Ranch  
McCleod, MT.  
59052

P.S. I also strongly support SB 347  
and would urge its passage.

February 11, 1983

Dear

I am deeply concerned about two forthcoming senate bills: namely, SB 347 and 348. Both of these bills should be defeated. First I would like to introduce myself. I was born on a cattle ranch in southern Idaho 63 years ago last June. In the spring of 1977 I retired as full professor with Emeritus status from MSU at Bozeman after a successful teaching career of 35 years. I know and respect the rights of farmers and ranchers whose heritage I share. However, the issues in these bills would deprive many citizens of private and commercial use of most of Montana's rivers. Unless individual permission was sought out from the rancher whose land surrounds the river, fishing and floating privileges would be denied. Presently I can go freely and fish these rivers.

Article IX, sec.3, sub-sec. 3 of the Constitution of Montana states: "All the surface, underground, flood and atmosphere water within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law."

Ranchers don't exclusively own the water that flows through rivers of Montana. They simply are entitled to use it as are the rest of us. Neither should they be in control of persons privileged to fish or float them.

Recently arguments were made by a rancher, Mike Curran, over on the Dearborn that he had to pay taxes on the river and river bed so, therefore, he should control who travels over it. I could use the same arguments on my city property.

I am required by law to build, maintain and shovel the snow off my sidewalks yet I do not control who walks over them. Also I am taxed on one half of the alley which is a roadway over which people are privileged to drive. Unfortunately, I occasionally have to pick up the beer cans and refuse left by a few thoughtless people. Do you think I would be justified in seeking legislation to either ban alley traffic to all the good neighbors who use it or make each prospective alley driver ask my permission to pass through? Of course not.

In the opinion of myself and others, the Flying D on the Madison and Gallatin and the Curran ranch on the Dearborn have developed the reputation of harassing decent, respectable sportsmen, threatening them with their rifles swinging and their usual epithets. SB 347 and 348 play into the hands of these people so they can dictate our privileges, especially for men like myself who simply want a few hours of good fishing without begging, harassment or having to drive miles with hat in hand to seek permission to fish from some land baron or corporate ranch like the two I have mentioned.

Floating and guiding commercially, in Montana, have been practiced on our rivers well over 20 years and have helped develop the recreational industry and establish the definition of navigability as recognized by the recent court cases on the Beaverhead and the Dearborn. Certainly navigability should not be established on conditions of 1889 as suggested in SB. 348!

Respectfully yours,

*Willis V. Anderson*  
Willis Vandiver  
1020 W. Story  
Bozeman, Mont.

*This is to not be copy*

*now copied out or written 2/13/83*

205 Graf  
Bozeman, MT 59715  
February 15, 1983

Senator Jean Turnage  
Montana State Capitol  
Helena, Montana 59601

Dear Senator Turnage,

I would like to register my opposition to SB 347 and SB 348. We have in Montana the finest free flowing rivers and streams within the Continental United States. People come the world over to enjoy and use these precious resources.

I recognize that these bills represent a battle between adjoining land owners' rights and the public's rights, and they are a direct backlash to the recent court decision on the Beaverhead and Dearborn Rivers trying to protect the property rights of the adjacent land owner.

At some point of volume a stream transgresses from an item subject to personal property rights into the public domain. To define that point in 1889 terms is a complete disservice to the public in today's world.

If commercial use is to be the test it should be commercial use prior to 1980 or 1970, not 1889. The old "log" definition does not even recognize that almost every stream in Montana was used commercially in the 1830's for Beaver trapping.

You in the legislature are faced with many difficult decisions, I know. However, the decision you make on this issue may well be one of the most important you make, and I hope that you will fairly weigh the rights of the public in your deliberations. Senate bill 347 and SB 348 are a complete abrogation of the public rights in favor of the adjoining land owners.

Certainly, if the definition ultimately accepted determines that lands now taxed as private property are public domain they must be removed from the tax rolls. I do not advocate classifying additional streams as public domain, but I certainly think the ones currently being used commercially and privately for floating should remain available for these uses.

Thank you for your consideration.

Sincerely,

Frank J. Lyons

FEBRUARY 15, 1983

MONTANA LEGISLATIVE COMMITTEE  
ON SENATE BILLS 347 AND 348  
STATE CAPITOL  
HELENA, MT

DEAR SIRS:

I WOULD LIKE TO TAKE THIS OPPORTUNITY TO VOICE MY WHOLEHEARTED  
OPPOSITION TO SENATE BILLS 347 AND 348.

THESE BILLS WOULD BRING AN END TO THE FANTASTIC FAMILY SPORT  
OF FLOATING MONTANA'S BEAUTIFUL AND SCENIC RIVERS.

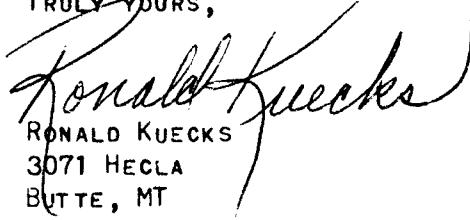
I HOLD FEW THINGS DEARER THAN THE PRIVILEGE OF SHARING THESE  
MAGNIFICENT WATERWAYS WITH MY WIFE AND TWO CHILDREN. MY CHILDREN  
HAVE GROWN-UP TO THE THRILL OF FLOATING, FISHING AND SAVORING THE  
ENVIRONMENT OF THE BIG HOLE, BEAVERHEAD, MADISON, JEFFERSON, MISSOURI,  
BITTERROOT, FLATHEAD AND THE GALLATIN RIVERS. I KNOW OF NOTHING ELSE  
THAT TEACHES THE APPRECIATION OF THE NATURAL BEAUTY OF OUR STATE AS  
FLOATING HER RIVERS.

THE PROPOSAL OF SENATE BILLS 347 AND 348 OF DEFINING "NAVIGABLE"  
ONLY THOSE STEAMS THAT BOAT TRAFFIC IN 1889 IS SO PREPOSTEROUS  
AND ONE-SIDED IT IS EASY TO SEE ITS TRUE INTENT:

"TO GIVE CONTROL OF MONTANA'S WATERWAYS TO A VERY  
SMALL SPECIAL INTEREST GROUP AT THE TOTAL DISREGARD  
FOR THE MONTANA PUBLIC SPORTSMAN."

WELL GENTLEMEN, BEING ONE OF THOSE MONTANA PUBLIC SPORTSMAN, I  
CANNOT LET THIS TREMENDOUS INJUSTICE HAPPEN, FOR THE BENEFIT OF MY  
GRANDCHILDREN AND GREAT-GRANDCHILDREN, THESE BILLS MUST BE DEFEATED.  
SURELY, IF THERE ARE CONFLICTS BETWEEN LANDOWNER AND BOATER, THERE  
MUST BE SOLUTIONS TO THESE CONFLICTS THAT ARE FAIRER, MORE MODERATE  
AND CERTAINLY MORE SENSIBLE THAT SENATE BILLS 347 AND 348.

TRULY YOURS,

  
RONALD KUECKS  
3071 HECLA  
BUTTE, MT

RK/JK

## Opinion and comment

### Mothball the best if these bills pass

River floaters who enjoy drifting down the Madison and Big Hole rivers might as well mothball their boats if a couple of bills in the state Senate become law.

The same goes for people who float the Smith, upper Yellowstone, Bitterroot, Blackfoot and upper Bighorn Rivers.

That's the opinion of opponents of Senate Bills 347 and 348. The bills would define as "navigable" only those streams that had boat traffic when Montana became a state in 1889, and prohibit people from gaining recreational use of private property on grounds the property had been used for recreational purposes for five consecutive years. The bills were introduced by Jack Galt, a Republican who ranches near Martinsdale.

Only the Missouri River below Fort Benton, the lower Yellowstone and (maybe) the lower Bighorn would remain open to floaters under the bills, the critics say.

Of course, ranchers along the other rivers could give permission to float through their property, but if just a few said "no," it could effectively put the whole river off limits.

A hearing on the bill is set for 10 a.m. Wednesday in Room 325 of the State Capitol Building.

If you like river floating, it wouldn't hurt to attend.

Either that, or ask your legislators to seek a more moderate answer to

Medicine River Canoe Club  
Great Falls, MT  
February 13, 1983

Senate Judiciary Committee  
Senate  
Helena, MT

Gentlemen:

The members of the Medicine River Canoe Club  
staunchly oppose Senate Bills 347 and 348.

One of the greatest things that Montana has to  
offer its current and prospective residents is  
enjoyment of the outdoors. If these bills become  
law, we can foresee that our rivers will either  
be closed to fishing and floating or operated on  
a fee basis by the controlling landowners. Pass-  
age of these bills could do more to discourage  
tourism and the attraction of clean businesses  
and industries than any other measure we can  
imagine.

Historically, rivers have been and should con-  
tinue to be a public heritage. Defeat of these  
bills will help to ensure this heritage for future  
generations.

Respectfully yours,  
Medicine River Canoe Club

*James W. McDermand*

James W. McDermand, President  
3805 4th Ave. S.  
Great Falls, MT 59405

3805 4th Ave. S.  
Great Falls, MT  
February 13, 1983

Senate Judiciary Committee  
Capitol Station  
Helena, MT 59620

Gentlemen:

I am firmly opposed to Senate Bills 347 and 348 because they would, in effect, give complete control of our waterways to the riparian land-owners.

I am willing to work side-by-side with the land-owners to assure that their property along the rivers is not damaged or vandalized and that the rivers themselves are not despoiled, but this legislation is not the way to accomplish this.

I plan to support some of the proposed legislation that would extract a fee from floaters in order to establish better relationships with the landowners and to help ameliorate any problems that exist.

There are many others that feel the same as I do but have not taken the time to express their views.

Sincerely,

  
Dianne L. McDemand