

MINUTES OF THE MEETING
NATURAL RESOURCES COMMITTEE
MONTANA STATE SENATE

February 18, 1987

The meeting of the Senate Natural Resources Committee was called to order by Chairman Thomas Keating on February 18, 1987, at 1:00 p.m. in Room 325 of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF SENATE BILL 262: Sen. Gage, Senate District 5, introduced SB 262 as being drafted as a result of the passage of SB 390 in 1985. During the interim, there had been a problem in the promulgation of rules with the Department of Revenue. There was not a determination made of how unitized and pool areas affected an oil and gas lease when the lease is both in and out of a unitized area. Sen. Galt said that SB 262 would resolve that problem with proper language being placed into the statutes.

PROPONENTS: Jerome Anderson, Shell Western, said he supported SB 390 in 1985. and he supported SB 262 in 1987 because the ambiguity would be "cleaned up."

Janelle Fallan, Director of the Montana Petroleum Association, stated that SB 262 is not a major piece of legislation. The association supported SB 262 for the reasons that Sen. Gage outlined. She said she believed the only way to resolve the misunderstanding with the Department of Revenue would be by passing SB 262. She indicated that Tom Tompkins, the association's attorney from Billings, helped draft the bill; and he was present to answer any questions. Ms. Fallan said she also would be willing to answer any questions the Committee might have.

Mike Zimmerman, Montana Power Company, supported SB 262.

OPPONENTS: There were no opponents present.

QUESTIONS (AND/OR DISCUSSION) BY THE COMMITTEE: Sen. Walker asked Sen. Gage if one county would have positive fiscal impact, while another county would have negative fiscal impact. Sen Gage responded that counties that have an effective rate less than 7% would gain revenue. Sen. Gage explained that only two wells and one operator in Toole County would be affected with a negative fiscal impact by SB 262, but it would not be a significant amount of money.

Sen. Keating asked if SB 262 would lessen the difficulties for the Department of Revenue in ruling on what is new and what is old production; and Sen. Gage replied, "yes." Furthermore, Sen. Gage said SB 262 would be an encouragement to operators to drill on outside leases.

CLOSING: Sen. Gage indicated he had closed.

CONSIDERATION OF SENATE BILL 286: Sen. Galt, District 16, introduced SB 286 as an act to revise the Stream Access Law by removing provisions declared unconstitutional. Sen. Galt mentioned that the bill drafters are very careful to take language directly from the Supreme Court Decision.

PROPONENTS: Phil Strobe, Attorney for Sweet Grass County Landowners, explained to the committee the difference between case law and statutory law, and he said until something is in the statutes, Supreme Court will not tell its opinion.

Mr. Strobe related that the State of Montana had joined a suit for summary judgement on whether the 1985 law met constitutional requirements. The District Judge declared that the law (HB 265 from 1985) had not exceeded the constitutional guidelines. That decision was appealed to the U.S. Supreme Court; and five justices out of seven said that HB 265 was in excess of constitution authority; that is, it invaded constitutional rights and privileges that landowners could enjoy.

Mr. Strobe listed three "packets" of concern with the Stream Access Law.

1. In light of the Galt Decision, surface water is to be used with regard to the underlying ownership of beds and banks.
2. Three grants of authority to recreations are struck out of the law.
 - a. right of the public to hunt by long-bow or shotgun.
 - b. overnight camping providing a person is 500 yards from a dwelling.
 - c. right to create structures providing there are 500 yards from a dwelling.
3. SB 286 sets up compensation for portage routes and they become the burden of the state rather than the burden of the landowner.

Mr. Strobe said the decision made in the Galt Case was a reasonable one, and it would allow the recreationists the right to use the water provided the water is of sufficient quantity to allow the use. Recreational use must be consistent with the water use, and use of the underlying lands must have minimal impact. Mr. Strobe stated that SB 286 would clean up the statute, and he urged the committee to pass SB 286.

PROPOSERS: Mr. Jim Bottomly, a rancher from Belgrade and a representative for the Agricultural Preservation Association of Gallatin County, supported SB 286 because it tracks the Supreme Court Decision made in the Galt vs. State of Montana. In addition to declaring the unconstitutional provisions in SB 265 of 1985, Mr. Bottomly said the Supreme Court was very specific about allowable uses. Therefore, he asked that the committee pass SB 286. (Exhibit 1)

Mons Tiegen represented Montana Stockgrowers Association who helped bring about HB 265 in 1985. Since the clarification by the Galt Decision, Mr. Tiegen said that SB 286 would provide a more definitive set of guidelines to follow in use and protection of streams by landowners and sportsmen alike. (Exhibit 2)

Bob Gilbert, Woolgrowers Association, testified in support of SB 286.

Robert Holding, Montana Association of Realtors, stated that SB 286 would give credence to the Galt Decision and preserve the right for people to own and use property in the proper manner.

Mike Micone, Executive Director of the Western Environmental Trade Association, supported SB 286. Mr. Micone stated that the 1985 legislation dealt with the rights of the streams users and the 1987 legislation (SB 286) dealt with the rights of the landowners. Mr. Micone said that the Supreme Court more clearly defined recreational uses of the streams of Montana and he asked that the committee consider a DO PASS.

John Tiegen, Jr., Association of Conservation Districts, said that to force property owners to relinquish rights to the recreating public is unjust. Mr. Tiegen said he felt that the Supreme Court recently righted this wrong, and SB 286 would amend the law to conform with the decision of the Supreme Court. (Exhibit 3)

Lorents Grosfield represented himself, a landowner, and he shared with the committee his experiences with recreationists. He said there seemed to be a lack of diligence on the part of the Department of Fish, Wildlife, and Parks, and perhaps that is the reason landowners are reluctant to report problems with recreationists. Mr. Grosfield said that the breadth and scope of HB 265 went beyond what most reasonable people concluded was necessary to address specific problems. SB 286 codifies the Galt decision in a forthright and responsible manner, and Mr. Grosfield urged support of SB 286. (Exhibit 4)

Tack Van Cleve represented the Dude Ranchers Association, and he testified in support of SB 286. (Exhibit 5)

Ken Hanson, President of the Sweet Grass County Farm Bureau, testified in behalf of SB 286. He listed thirteen policies in support of SB 286 that were adopted by the voting delegates to the 67th Convention of the Montana Farm Bureau. (Exhibit 6)

Chuck Rein, president of the Sweet Grass County Preservation Association, testified on behalf of the association's members. Mr. Rein stated that landowners whose property had been open to the public over the years resented the passage of a law that mandated to them how and by whom their property could be used. Since the passage of HB 265, Mr. Rein stated that landowner-sportsmen relations have suffered; and with the passage of SB 286, good relationships may be re-established. (Exhibit 7)

Virge Holliday, Park County Legislative Association, reported that the Shields River runs full length through his ranch property; and for the first time in more than 30 years and subsequent to the passage of HB 265, the Shields River was "fished out." Mr. Holliday urged passage of SB 286 so that some of the problems caused by HB 265 could be solved. (Exhibit 8)

John Willard, Northern Lewis and Clark County ranch owner and operator, strongly supported SB 286. He said its passage would do a great deal to strengthen the position of owners of banks of streams and to clarify the extent to which recreational uses can be carried out on private property without ownership consent. (Exhibit 9)

Because of the time limit, the following people submitted written statements; but they were unable to testify at the hearing.

Margery Rossetter, Fishtail (Exhibit 10)
Mrs. Arch Allen, Livingston (Exhibit 11)
George Rossetter (Exhibit 12)
R.E. Saunders, White Sulphur Springs (Exhibit 13)
Linda S. Larson, Alder with attachment (Exhibit 14)
Mary Saunders, Ennis (Exhibit 15)
William Maloney, Alder (Exhibit 16)
Rose Maloney, Alder (Exhibit 17)
Bill Larson, Alder (Exhibit 18)

OPPONENTS: Jim Flynn, Department of Fish, Wildlife and Parks, opposed SB 286 because he said the bill purports to codify the Supreme Court decision, but it actually goes beyond the decision and would conflict with all three Supreme Court cases. Mr. Flynn stated that the proposed changes would be unconstitutional infringements on the rights of recreating public. Mr. Flynn said passage of SB 286 would invite potential for unnecessary litigation and prolong a difficult subject. (Exhibit 19)

Scott Ross, Stream Access Coalition, also testified that SB 286 goes far beyond the extent of the title and it is a misinterpretation of the Galt decision. Mr. Ross asked the committee to submit an adverse report on SB 286.

Stan Bradshaw testified on behalf of more than 1,000 members of Montana State Council of Trout Unlimited. SB 286 was opposed by Trout Unlimited for the following reasons:

1. Title does not include function of the body of the bill.
2. SB 286 changes inimical to the holding in all three Supreme Court cases which had been decided on stream access within the last three years. Mr. Bradshaw submitted detailed testimony to the committee.

Mr. Bradshaw said that it is not necessary to amend the statute to conform it with the court's decision. The court had defined the extent of the public right and nothing more needed to be done by the legislature; therefore, Mr. Bradshaw recommended that SB 286 be killed. (Exhibit 20)

Jeanne Klobnak concurred with the speakers who testified prior to her in opposition of SB 286. (1) She stated that compensation to the landowner for a portage route is not in the Galt decision. The only time compensation would need to be paid is when the land in effect is being taken, and the land is not being taken by the state. (2) In order to hunt ducks, a person has to be near the water, and the language that had been deleted on line 19, page 3, of SB 286 would alleviate water fowl hunting as well as big game hunting. Ms. Klobnak said SB 286 goes far beyond the intent that was written in the title of the act. SB 286 declares unconstitutional sections which the Supreme Court did not contemplate as being unconstitutional and which the court did not list as being unconstitutional in the decision. Ms. Klobnak stated that SB 286 was misleading, and she urged the committee in their wisdom to vote DO NOT PASS.

Steve Gilbert, Helena, said he was an ardent sportsman; and he viewed SB 286 as a direct threat to his quality of life in Montana. Mr. Gilbert stated that he felt that an acceptable compromise on use of waters had been reached and ruled on by the Supreme Court. The proposed changes in SB 286 would be a threat to outdoors enjoyment in Montana. Mr. Gilbert concluded his testimony by saying that the privilege to use the river systems of Montana in a traditional manner reflects one of the differences between Montana and most other states, and it is one of the many reasons he resides in Montana. (Exhibit 21)

James W. McDermand, Medicine River Canoe Club, testified against SB 286. Mr. McDermand stated that the few and relatively minor incidents that have occurred since the Stream Access Law was enacted are supportive of the fact it is a good, workable law. Mr. McDermand said that the authors of SB 286 under the guise of complying with the Supreme Court ruling have used this opportunity to alter the intent and change the concept of the current law. One of the major alterations is taking the phrase on page 3, line 21, ". . . unless otherwise prohibited or regulated by law..." (which currently now refers only to motor boating) and shifting it so that it would refer to all water related activities. It would give the legislature the power to give, take away, or alter any such activity, and this proposed amendment is clearly contrary to the intent of all previous court rulings. Mr. McDermand also testified that SB 286 would strike hunting from the definition of recreational use; whereas, the Supreme Court intended that only big game hunting be excluded. He made one last comment: "The time that has been spent in discussing portage routes today probably exceeds the amount of time of portaging by all recreationists in all of last summer's floating." Mr. McDermand strongly urged defeat of SB286. (Exhibit 22)

Richard Parks, owner and operator of Park's Fly Shop in Livingston, and President of the Fishing and Floating Outfitters Association of Montana opposed SB 286 and he claimed that no legislative action whatsoever is required to bring the Stream Access Law into conformity with the Supreme Court's decision. Mr. Parks requested a DO NOT PASS. (Exhibit 23)

Jim Belsee, Bozeman, proclaimed that stream access had been settled by HB 265 and three times in U.S. Supreme Court. He stated that that should be sufficient.

Other opponents submitted written testimony, but they were unable to speak because of time constraints.

Terry Albrecht, Fort Shaw (Exhibit 24)
Walt Carpenter, Great Falls (Exhibit 25)
Ted Fallat, Great Falls (Exhibit 26)
Alan Rollo, Great Falls (Exhibit 27)
William E. Hagman, Basin (Exhibit 28)
Robert W. Jarrett*(Exhibit 29) *McLeod, MT*
Chris and Cindy Jauret*(Exhibit 30) *Great Falls
Tony Schoonen (Exhibit 31)

QUESTIONS (AND/OR DISCUSSION) BY THE COMMITTEE: Sen. Halligan addressed Mr. Strobe and mentioned taking the word "without" on page 4, line 15, and changing to "with" along with the other changes were all changes that were not reflected in the title. Mr. Strobe said the reason SB 286 had 21 changes in it was that the decision included the "holding" that there would be "minimal impact." In order to put minimal impact in the statute, it was necessary to make the 21 changes. Sen. Halligan said that it seems there had been a tremendous leap in logic.

Sen. Lynch asked if Mr. Strobe felt that the changes proposed to the Stream Access Law were minimal in SB 286. Mr. Strobe reiterated that the changes were consistent with the Supreme Court decision for "minimal impact."

Sen. Hofman said he was wondering if a duck hunter uses some private property, when he goes bird hunting; and when the ducks are shot do they always fall in the water. Sen. Hofman explained that these problems had not been addressed in the testimony from the proponents.

Sen. Keating asked Ms. Klobnak if her objection was to the exclusion of duck blinds, and she answered that she objected to the deletion of "all" hunting in SB 286 as that determination had never been made in the Supreme Court Decision.

CLOSING: Sen. Galt closed by assuring the committee that SB 286 was drafted to comply with the Supreme Court's decision, and the changes should be made in the statute. Sen. Galt indicated that SB 286 contained simple technical amendments to the stream access law.

Sen. Keating invited the proponents to stand, and approximately 50 people stood. When the opponents were asked to stand, there seemed to be about 50 people standing also.

EXECUTIVE SESSION:

DISPOSITION OF SENATE BILL 262: Sen. Walker moved that SB 262 DO PASS. Motion CARRIED by unanimous vote.

DISPOSITION OF SENATE BILL 159: Sen. Lynch moved that SB 159, which would redefine the term "surface water" for the purpose of determining recreation access to State waters, DO NOT PASS.

Sen. Hofman had missed the initial hearing of SB 159 and asked for a brief explanation. With the committee's permission, Sen. Keating explained his interpretation of SB 159.

Sen. Keating said that SB 159 would change the definition of surface water so that it would not include "bed and banks" insofar as it deals with Class II waters. The present law reads that "Surface water means, for the purpose of determining the public's access for recreational use, a natural water body, its bed, and its banks up to the ordinary high water mark."

Sen. Keating explained that SB 159 would define surface water as "the surface of a natural body of water and, if such body of water has been adjudicated to be navigable by federal standards, the bed and banks of such body of water up to the ordinary high-water mark."

Sen. Keating stated that SB 159 would distinguish between Class I waters and Class II waters.

After further discussion by the committee, Sen. Keating commented that the committee had heard testimony about what the Supreme Court "meant." Sen. Keating stated that the court is not supposed to write the law. Legislature makes the law. The courts determines the constitutionality of the law. The courts determined that both private property of the beds and banks are protected under the constitution and public trust on the use of water is constitutional. Therefore, there are conflicting constitutional values. Sen. Keating interpreted the court's saying that lawmakers have to make careful decisions on the balance of the use of water as opposed to the taking of private property.

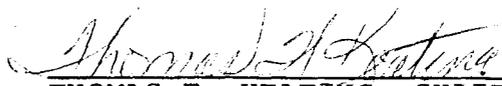
Sen. Yellowtail agreed about the two opposing considerations, but he said he believed the Supreme Court had found the "middle ground" in three cases. That middle ground is the use of the bed and banks of the ordinary high water mark and the ownership of the bed and banks is not being questioned. Sen. Yellowtail stated that it is not prudent to make law that will automatically be litigated.

Sen. Lynch then concluded that defeating SB 159 would save the Senate many hours of debate.

Sen. Walker said that there is a delicate balance at present in the law.

Sen. Tveit made a substitute motion that SB 159 DO PASS. A Roll Call Vote was taken with six members voting "yes" and six members voting "no." SB 159 was then held in committee with a TIE VOTE.

There being no more business before the committee, Sen. Keating adjourned the meeting at 2:48 p.m.


THOMAS F. KEATING, CHAIRMAN

ROLL CALL

NATURAL RESOURCES

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb 18

NAME	PRESENT	ABSENT	EXCUSED
Sen. Tom Keating, Chairman	X		
Sen. Cecil Weeding, Vice Chairman	X		
Sen. John Anderson	X		
Sen. Mike Halligan	X		
Sen. Delwyn Gage	X		
Sen. Lawrence Stimatz	X		
Sen. Larry Tveit	X		
Sen. "J.D." Lynch	X		
Sen. Sam Hofman	X		
Sen. William Yellowtail	X		
Sen. Elmer Severson	X		
Sen. Mike Walker	X		

Each day attach to minutes.

DATE Feb 18, 1987 (page 1)

COMMITTEE ON Natural Resources

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Ted Lucas	Self	286	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MARILYN GROSFELD	Self	286	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Franklin Grosfeld	GFB	286	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Allyne Rosseter	Mont. Landowners Assoc.	286	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Marge Rosseter	Bozworth Ecological Council	286	<input checked="" type="checkbox"/>	<input type="checkbox"/>
L. Michnevich	Self	286	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Joshua	Self	286	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Mons. Terpening	MTS Property Owners	286	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Michael Kent	Self	286	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Kenn. Arch. Allen	Self - FA Ranch	286	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Vernon Ken. Sandlin	Park Co. Reg. Ass'n	286	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dave Horne	PCLA	286	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Virge Holliday	Self	286	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Fiona Anderson	Park County by Assoc.	286	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Chick Miller	Ill	286	<input checked="" type="checkbox"/>	<input type="checkbox"/>
John Terpening Jr	MACD	280	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ross Maloney	Alder	286	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Bill Maloney	IL	286	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BOB HELDING	MT. ASSOC OF REALTORS	286	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Linda Purson	Buckboard Guest Ranch	286	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Carol H Saunders	White Sulphur Springs	286	<input checked="" type="checkbox"/>	<input type="checkbox"/>
R. J. Saunders	White Sulphur Springs	286	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Bill Larson	alder, Mont.	286	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ed Tache	Self	286	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Ed Tache	Self	286	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Geobot League	League Geologica	286	<input checked="" type="checkbox"/>	<input type="checkbox"/>

COMMITTEE ON Natural Resources

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
JAMES KEWIT	Floating & Fishing Outfitters Assn. of Montana	286		✓
James J. Bottomly	Agri. Pro's Assoc	286	✓	
Mike Mason	WETA	286	✓	
Gene B. Mulick	Self	286	✓	
ACK VAN CLEVE	DUDE RANCHERS ASSOC	286	✓	
J.P. Bender	W.VM			✓
Chris & Jauert	Medicine River Canoe Club	286		✓
Cindy Jauert	" " " "	286		✓
Robert Adams	Medicine River Canoe Club	286		✓
Doraine McDermand	" " " "	286		✓
Ted Fallat	Great Falls Chapter Walleyes Unlimited of MT.	286		✓
JERRY Albrecht	WILDLANDS + RESOURCES ASS.	286		✓
Jim McDermand	Medicine River Canoe Club	286		✓
LeRoy Schelby	Wild Land Resource	286		✓
Alan Roloff	Sportsman	286		✓
Walt Carpenter	Sportsman	286		✓
Scott Ross	Coalition for Steam ^{Acres}	286		✓
Stan Bradshaw	Trout Unlimited	286		✓
Steve Gilbert	Self	286		✓
John ...	Outfitter	286		✓
Dale Lydicard	RETIRED - RANCHER	286	✓	
Neal Lydicard	"	286	✓	
John ...	MLA	286	✓	
Chuck Klein	SGCPA	286	✓	
Sinnat Hansen	Sweet Grass Co. Farm Bureau	286	✓	
Richard Parks	FFOAM	286		✓

DATE February 18, 1987

COMMITTEE ON Natural Resources (page 3)

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
G.B. Coledge	Coledge Inc.	286 286	—	
Jim Belsey	Self	286		X
Man Wright	"	286		✓
Glen Bladshaw	Self	286		✓
JERRY PALLEY	MONTANA COASTAL STREAM ACCESS	286		X
Bob Lydell	Montana Landowners Assn	286	X	
Neve Lydell	" " "	"	X	
Bill Nye	BPA	286	X	
Don Alley	Kalispell Trout Unlimited	286		X
Bob Gilchrist	MT Wool Growers	286	X	
Jim Jernigan	Self	286		X
Jim Olson	Self - Belgrade	286		X
Allyce Wilkerson	Self - Mont. Water Res	286	X	
Ed Schmitt	Farmer - Rancher	286	X	
Walter Jernigan	Farmer	286	X	
Doug McCalland	Trout Unlimited	286		X
Lee Stronach	Self	286		X
R.A. Ellis	Self	286		X
Emmett Walsh	Rancher	286	X	
Hans Dickson	Self & P.M. Lewisville	286	X	
Bill Helder	Skylis Sportsman Butte	286		X
Tony Schorn	MTVU F. Skyles	286		✓
William T. Steph	Sportsman Butte	286		✓
Don Warren	Sportsman of Butte	286		X
Rita Lewis	APHA	286	X	

EXHIBIT NO. 1DATE 2-18-87BILL NO. SB 286

Statement of
JAMES J. BOTTOMLY
for himself and the
AGRICULTURAL PRESERVATION ASSOCIATION
in support of SB 286

My name is Jim Bottomly. I am a rancher from Belgrade, Montana. I am also a lawyer. I am appearing on behalf of myself and for the Agricultural Preservation Association of Gallatin County.

We support Senator Galt's Bill, Senate Bill 286.

Senate Bill 286 tracks the Supreme Court Decision in the Galt vs. State of Montana. This decision declared those land use provisions of the old HB 265 unconstitutional. These were big game hunting, overnight camping, the placement of permanent duck blinds, boat moorages, or any other seasonal or other objects on the beds and banks of streams.

The Court held that landowners had no responsibility to pay for portage routes.

This bill eliminates these provisions.

The Court went on to reaffirm the constitutional principles protecting property interests from confiscation. It stated that while the landowners, through whose property a water course flows, have their fee impressed with a dominant estate in favor of the public -- this easement must be narrowly confined so that impact to beds and banks owned by private individuals is minimal, and only such use of the beds and banks as is necessary to utilization of the water itself is permissible. Any such use must be with regard to the private property rights.

The Court then concluded as follows:

"Only that use which is necessary for the public to enjoy its ownership of the water resource will be recognized as within the easements scope."

The Supreme Court decision refined the Curran and Hildreth decisions and limited their application. It narrowed the rights of the public to use privately owned property and held that HB 265 was overly broad in giving the public right to recreational use which is not necessary for the public's enjoyment of its water ownership.

Senator Galt's Senate Bill 286 conforms the Statute to this decision.

We urge the Committee to support SB 286.

James J. Bottomly

EXHIBIT NO. 2DATE 2-18-87BILL NO. SB 286

WITNESS STATEMENT

NAME Mons L. Teigen Senate BILL NO. 286ADDRESS Helena DATE 2/18/87WHOM DO YOU REPRESENT? Montana Stockgrowers AssociationSUPPORT XX OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Since the Supreme Court handed down the Galt decision recently, it is now timely for the changes to be noted in the statute.

We believe the changes are fully in line with the order of the court. In its decision the court laid heavy stress on the word, "minimal" in discussing the use of the bed and banks of streams. Judge Morrison, speaking for the Court said:

"This easement must be narrowly confined so that impact to beds and banks owned by individuals is minimal. Only that use which is necessary for the public to enjoy its ownership of the water resource will be recognized as within the easement's scope."

The Montana Stockgrowers Association was one of the organizations that helped bring about HB 265 in the last session. Since the clarification by the Galt decision followed by this legislation land owners and sportsmen alike will have a more definitive set of guidelines to follow in the use and protection of one of our State's most precious resources - its streams.

We ask that SB 286 be given a DO PASS recommendation.



Montana Association Of Conservation Districts

1 South Montana
Helena, Montana 59601
Ph. 406-443-5711

SB 286

Senate Natural Resources Committee
February 18, 1987

SENATE NATURAL RESOURCES
EXHIBIT NO. 3
DATE 2-18-87
BILL NO. SB 286

Mr. Chairman, Members of the Committee:

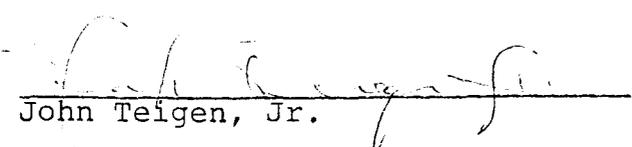
For the record my name is John Teigen, Jr., I am a rancher from Carter County presently serving as President of the Montana Association of Conservation Districts.

Our Association was very distressed with the recreational groups interpretation of the Curran and Hildreth court decisions. We were told that unless we went along with their interpretation we would suffer even greater losses at the hands of the recreationist. I guess the result of all this was HB 265. This legislation was not all bad, but went way beyond reason on addressing the problems initiated by the Curran and Hildreth cases. To force property owners to relinquish rights to the recreating public that had little or no relation to recreational use of water was very unjust.

The Supreme Court recently righted this wrong and our Association feels that SB 286 amends the law to conform with the decision of the Supreme Court.

I urge your support of SB 286. Thank you.

Respectfully,


John Teigen, Jr.
President, MACD

TESTIMONY on SB 286
before the Senate Natural Resources Committee, February 18, 1987,
by Lorents Grosfield,

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

In the summer immediately following the passage of HB 265, we had several related trespass incidents on our ranch out of Big Timber. Most of these I dealt with myself and found them to be honest misunderstandings regarding the newly-gained rights of various recreational users. For example, at least two different parties that I recall thought the new law gave them rights to use any streams in Montana and that this of course included access to these streams--- they then drove off the county road, several hundred yards across my pasture down to the stream, where they proceeded to picnic and fish. Frankly, most of the people involved were very courteous and understanding, once I explained what this new law really stated.

However, in one instance, I didn't handle the problem myself, because it involved individuals who were belligerent and unco-operative. In fact, I found that I had a hard time getting the problem handled. The situation involved fishermen who parked their car on the county road and walked through the well-posted main entry-way to our ranch. This entry was posted both with orange paint and a specific sign detailing the need for permission. These fishermen proceeded down the driveway a couple hundred yards to the creek where they proceeded to fish. In a short time they were fishing on the edge of my father's lawn, which goes right up to the creek. I might mention that his house is the only house along the stream for about three miles in either direction--- it's not as if it were hard not to fish from someone's lawn as might be true along some urban stretches of some streams. And when approached, these people were very belligerent and unco-operative.

Well, after getting their names and license numbers, etc., I proceeded to call the game warden. He wasn't home. So I called the sheriff. He told me to call the game warden. So I waited a little while and tried again. This time he was there. He told me to call the sheriff. After I explained that I had already done that, he proceeded to give me four reasons why he couldn't help me:

1. He was, at the time, off-duty, and because of some recent court decision in Texas or somewhere (I believe it was called the Garcia decision), he was restricted to a forty-hour week and could no longer take "comp-time", because of the potential overtime consequences.

2. His understanding of the trespass law was that, posting or not, a trespasser had to be verbally asked to leave and then refuse to leave before there was a violation--- and he didn't think the new trespass law had changed this. Besides, the trespass law didn't appear in the fish and game codes, and

therefore he didn't think he had the authority to pursue trespass complaints.

3. Because of a lack of co-operation with the Sweet Grass County Attorney on other fish and game violations he and his superiors in Billings had decided not to pursue any violations unless a landowner formally signed a complaint.

4. Because the Department feared that a stream access conflict might get to be long and expensive and because courts had in the past assigned costs to the Department, the DFWP was reluctant to pursue stream access conflicts because of budgetary constraints.

As a result of his lack of co-operation and obvious reluctance to be of any assistance, I proceeded with the complaint through the Sheriff's office. The offenders were arrested, charged, and subsequently fined.

There are two reasons I tell this little story. First, the lack of diligence on the part of DFWP personnel may be a large part of the reason that there are so few reported conflicts. Obviously, game wardens have huge territories to cover, and are hard-pressed to give timely assistance in any case--- many landowners can attest to that. Now maybe the game warden in Sweet Grass County is the only one in the state, of Montana with the reluctant attitude I described above, but I doubt it.

The second reason I tell this story is that my case is not one of the cases that is so frequently reported as being only a few ("ten", at last count) conflicts in the state since the stream access law was passed. This case was prosecuted and a fine was levied, yet it is not being reported by the Department. And again, I find it hard to believe that my case is the only one not reported. In other words, I don't think things are as rosy as they're being painted.

Though parts of HB 265 are good, the extreme breadth and scope go way beyond what most reasonable people concluded was necessary to address the specific problems in those two decisions. To force property owners to play host to relatively unregulated public use of their property on a grand state-wide scale was an overkill that was both unnecessary and unjust. No one is arguing the public's right to use the waters or to use, in a relatively unrestricted manner (except as otherwise covered by law or regulation), the larger streams of our state, those gems many of which are nationally famous.

SB 286 codifies the Galt decision in a forthright and responsible manner. It echoes the attitude inherent throughout the majority opinion that the protection of property rights are indeed the historical fact, constitutionally protected. Restoration of this status quo through the passage of SB 286 will go a long way toward defusing present-day landowner-sportsman polarity in Montana. I URGE YOUR SUPPORT OF SB 286. THANK YOU.

SENATE NATURAL RESOURCES

EXHIBIT NO. 5 (revised)

DATE 2-18-87

BILL NO. SB286

Testimony of Tack Van Cleve on S. B. 286

The Dude Ranchers' Association, an important part of, and in fact, the precursor to Montana's increasingly crucial tourist industry, supports S. B. 286.

Our industry depends partly upon a degree of exclusivity in the use of our private lands.

Our concerns are related to 1) economics, 2) landowners' rights, 3) the time and costs involved in reporting and pursuing trespass violations.

We feel that the trespass law must be specific enough to discourage violations of the law.

Tack Van Cleve

2-term past president and
several-term director of the
Dude Ranchers' Association,
landowner, and cattle rancher.

SWEET GRASS COUNTY FARM BUREAU

DATE 2-18-87To: The members of the Senate Natural Resources Committee BILL NO. SB286

My name is Ken Hanson. I am the President of the Sweet Grass County Farm Bureau and I am testifying on their behalf in support of S.B. 286. I have listed thirteen policies in support of our position on this Bill. These policies were adopted by the voting delegates to the 67th Convention of the Montana Farm Bureau.

1. We support legislation curbing activities of government agencies who favor public stream bank access on private lands.

2. We recommend the present water line or high water mark, whichever is lower, be the limit of use for recreational purposes without landowner permission.

3. We are opposed to the use by state government agencies of legal theories in a manner that seeks to limit or take away private property rights, i.e. the "Public Trust Doctrine" or the "theory of exaction."

4. We recommend that any land use legislation provide that the individual landowners be included in the final decision on the use and disposition of their property.

5. We recommend that property owners be justly compensated for any reduction in the value of their property due to involuntary zoning or the granting by the legislature or courts of general public easements on or across private lands.

6. We are opposed to any further court use of the public trust doctrine or "Theory of Exaction" in Montana.

7. Private ownership and operation of the major portion of the state's land resources is in the best interest of the public. Any judicial, legislative or other governmental action forcing access on or across private land to public land or surface waters is contrary to this concept and we oppose it.

8. We support the property owners rights to control ~~all~~ outdoor SB286 recreational use on private land.

9. We support legislation that clearly protects private property rights along all streams and rivers in Montana.

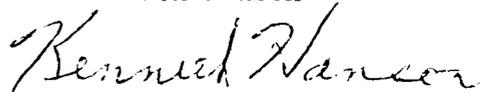
10. We oppose any governmental action that infringes on an individual's right to own and manage private property, including stream beds, stream banks, and adjacent private lands. Any erosion of that right weakens all other rights guaranteed to individuals by the constitution.

11. We urge stronger trespass legislation which will insure that private property will be free from public use except with permission of the owner. This would include all privately held land including that under stream beds, ponds, sloughs and other surface waters.

12. We recommend that no overnight or creation of any permanent duck blind, boat moorage, seasonal objects or any other object be allowed on private land without landowner permission.

13. We recommend that fire arms or bow hunting of any kind not be allowed without landowner permission, in regards to hunting within stream beds.

Ken Hanson



President of Sweet Grass County
Farm Bureau



**Sweet Grass County
Preservation Association**

SENATE NATURAL RESOURCES

EXHIBIT NO. 7

DATE 2-18-87

BILL NO. SB286

To the members of the Senate Natural Resources Committee.

My name is Chuck Rein. I am a rancher from Melville. I currently serve as president of the Sweet Grass County Preservation Association and will testify on behalf of our members.

One comment we so consistently hear from a representative of the Dept. of Fish, Wildlife, and Parks is that H.B. 265 is working well in providing access for sportsmen and is preempting few complaints from the affected landowners. I submit to you that sportsmen enjoyed the use of as much private property and public water capable of recreational use before the passage of 265 as after. Plus those who cared enough to "ask first to hunt and fish on private land" enjoyed a rapport with landowners that has not been the same since. Those of us whose property has been open to the public over the years (the Rein property has been open for 94) resent the passage of a law mandating to us how and by whom our property can be used. We are seeing much private land that was open to hunting before 265 now closed completely, or open to fee hunting only. I disagree with the statement that 265 is working well. Landowner-sportsmen relations have suffered, and judging from all the orange paint I see around the country, access to sportsmen is being further limited instead of enhanced.

The small number of complaints received from landowners stems from a mistrust of the D.F.W.P. First the Dept. passes out bumper stickers that say "Ask first to hunt and fish on private land". Then they actively support legislation and

SENATE NATURAL RESOURCES
EXHIBIT NO. (p2)
DATE 2-18-87
BILL NO. SB286

litigation to force access to private land. Why should I complain to an agency whose basic philosophy seems to be adverse to one who owns private land? I am better off to deal with any problem one on one with the sportsmen, than to ask for involvement by a third party who has been an adversary on this issue.

S.B. 286 sets into law what the Supreme Court has just recently stated. I firmly believe that the passage of S.B. 286 would be a good first step in re-establishing genuine good feelings between landowners and those sportsmen who really care about the resource and the role that private landowners play in preserving that resource. As the Supreme Court ruled in favor of the appellants in Galt vs. the State of Montana (acting by and through the Dept. of Fish, Wildlife, and Parks) I urge you to support the proponents of S.B. 286. Thank you.

My name is George Holliday. I live near Wilson in Park County and I'm a member of the Park County Legislative Assn.

The Shields River runs full length through our ranch and for the first time in the more than 30 years we've been there and since HB265 the Shields River was picked clean - I mean no fish. This is gross degradation of a resource besides other problems of trespass.

I support SB286 and ask that it be passed to solve some of the problems caused by HB265.

Thank you.

NAME: John Willard DATE: 2/17/87

ADDRESS: 3119 Country Club Circle, Billings, MT 59102

PHONE: (406) 259-1966

SENATE NATURAL RESOURCES

REPRESENTING WHOM? self

EXHIBIT NO. 9

DATE 2-18-87

APPEARING ON WHICH PROPOSAL: SB 286

BILL NO. SB 287

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: Have filed written statement.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE NATURAL RESOURCES

EXHIBIT NO. 9(p.2)

DATE 2-18-87

BILL NO. SB287

February 18, 1987

STATEMENT BY JOHN WILLARD, NORTHERN LEWIS AND CLARK COUNTY RANCH OWNER AND OPERATOR, ON SENATE BILL NO. 286.

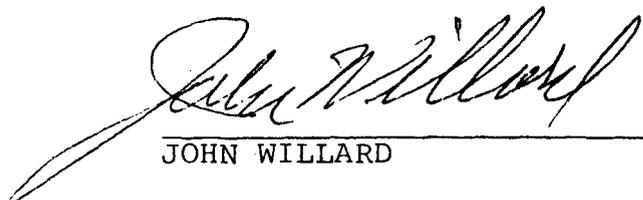
Senate Bill 286 is a measure designed to clarify the meaning of sections 23-2-302 and 23-2-311 as they pertain to certain uses of lands bordering Class II streams as defined in the Montana stream access law. Generally, but not totally, these uses are: big game hunting on such lands, use of lands for overnight camping, erection and use of duck blinds and other seasonal objects for recreational purposes, all without the knowledge and permission of landowners.

Also, it would relieve a landowner of any responsibility for providing, at his expense, a route or portage around a barrier erected in a stream, such as a fence necessary for controlling livestock.

These are matters addressed in a majority opinion by the Montana Supreme Court in a lawsuit brought by Senator Jack E. Galt and others against the state of Montana, the defendant acting through the Montana Department of Fish, Wildlife and Parks. Enactment of this bill will place into statutory law the above, a needed declaration of Montana's public policy on these important land use items. The bill is dedicated to definition of uses of the streambeds at various water levels and to adjacent lands.

Strongly at issue is whether the stream access legislation operates to take private property for public recreation without providing just compensation. Its passage will not entirely decide that issue, but it will do a great deal to strengthen the position of owners of banks of streams and to clarify the extent to which recreational uses can be carried out on private property without ownership consent.

I strongly urge passage of SB 286 in the interest of harmony between landowners and recreationalists through better understanding of the rights and privileges enjoyed by both in the use of publicly owned waters.



JOHN WILLARD

To Natural Resources Committee
my name is Margery Rosseter
Fishtail, Montana

Please vote in favor of SB 286.

This time around
Ron Waterman will not be representing
13 Ag groups in favor of HB 265. This
has all changed.

This time around
Sen. Haffey will not be saying
"Forget the technicalities of HB 265
and give the Ag groups what they
want - so we can go on to the
next bill" and they did.

This time around
your decision can be less political
and free from mistakes based on
Montana Statutes. (Section 70-16-201 MCA)
"owner of land bounded by water
owns to the middle of the stream"

The landowner pays taxes on small stream
to the middle of the stream. The landowner
legally owns the beds and banks on small
streams. We could and should ^{"Re-Sup"} all
to pay such taxes!

SENATE NATURAL RESOURCES

EXHIBIT NO. 10 (p.2)

DATE 2-18-87

BILL NO. SB 281

Some referring to the last
Session say the Montana Supreme Court said
all waters in Montana including beds and
banks belong to the public.

Some say not so!

If the Supreme Court did say this
they are making legislation. The Supreme
Court can not make legislation thus
the concept is worthless and illegal.

Concerning the decision on recreational
use Sheehy said "What was done was the
Legislatures business and not ours."

The Stockgrowers, woodgrowers and
other Ag groups have reversed their
decision on Stream Access. They are
no longer naive, complacent and uninformed
and are enthusiastically favoring SB 286
and SB 15-9 striving for legality as are
we who fought so desperately
against the unconstitutionality of HB 265.

Please leave Politics out
and correct the unjust violations
by voting in favor of SB 286.

SENATE NATURAL RESOURCES

EXHIBIT NO. 10 (p.3)

DATE 2-18-87

BILL NO. SB286

P.S. Trout
Unlimited and
Guides before
HB 265 had no
problems of access
by asking permission first.
ask them!



FA RANCH

BOX 868 • LIVINGSTON, MONTANA 59047

SENATE NATURAL RESOURCES

EXHIBIT NO. 11 (p.1)

DATE 2-18-87

BILL NO. SB286

Feb. 18, 1987

Mr. Chairman, Members of the Committee -

I am Mrs. Arch Allen of Livingston.

Ever since HB888 - Marks & Ream Stream Access Bill, I have attended all of the hearings on the subject including HB265.

I have watched the landowner - sportsman relationship steadily worsen. It has gone from one of mutual respect and consideration to one of animosity - a selfish, greedy taking by The Public to a defensive position to protect privacy and Property Rights by the landowner.

HB 888's hang up was the definition of navigability and use. It opened all streams to the public that were capable of floating a kayak or inflatable craft at any given time of the year.

HB 265 was a run away. The Montana Supreme Court said in it's Jan. 15, 1987 decision that it was "over broad". It also was burdensome in its language.

You have a hearing on SB 286 today to codify into Law those provisions which the Supreme Court of the State of Montana found unconstitutional. It also cleans up and simplifies a lot of the language. It brings in the wording "minimal use" of the streambeds and the banks where they are privately owned. The Supreme Court repeated "minimal use" and "minimal impact" on pages 5, 6, and 7 of it's decision.

In the Day V. Armstrong case in Wyoming which Curran decision was based on, this meant floating, fishing, or swimming with "minimal use" of the beds and banks where they were privately owned. It did not include wading or walking up them.

On page 7 & 8 of the Jan. 15 '87 decision, The Supreme Court also said, "The real property interests of private landowners are important as are the public's property interest in water. Both are constitutionally protected. These competing interests, when in conflict, must be reconciled to the extent possible."

I trust you gentlemen will see the wisdom in doing just that.

We have made many friendships with fisherman that came to our door asking permission to fish on our property. We have never charged for fishing on our property and provide access to those that we find to be responsible guests.

However we do feel we have the right to ask anyone to



FA RANCH

BOX 868 • LIVINGSTON, MONTANA 59047

SB 286 Allen - continued

SENATE NATURAL RESOURCES

EXHIBIT NO. 11 (p.2)

DATE 2-18-87

BILL NO. SB286

leave our property who is abusing this trust.

That, Gentlemen, is my great concern here.

Please give SB 286 a "Do Pass" out of this committee.
It will be a big step in clearing up this mess.

Thank you.

Reg Allen

NAME: Leon Proctor DATE: 2-18-87

ADDRESS: HL55 Box 465 Fishtail

PHONE: 328-6918

SENATE NATURAL RESOURCES
EXHIBIT NO. 12
DATE 2-18-87
BILL NO. SB286

REPRESENTING WHOM? Mont Landowners Assn.

APPEARING ON WHICH PROPOSAL: 268

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

DATE 2-18-87BILL NO. SB 286

TO: SENATE NATURAL RESOURCES COMMITTEE

MY NAME IS GEORGE ROSSETTER FROM FISHTAIL MT.

AS I TESTIFIED RECENTLY, I HAVE FLOATED AND FISHED THE STILLWATER RIVER, AND OTHER RIVERS, FOR A VERY LONG TIME. I NUMBER AMONG MY FRIENDS AND AQUAINTANCES SEVERAL RIVER GUIDES AND OUTFITTERS. FOR MANY YEARS WE HAVE ALL FLOATED AND FISHED UNDER THE MONTANA STATUTE 70-16-201 MCA. JUSTICE MORRISON GAVE THIS STATUTE PROMINENCE IN HIS RENDERING OF THE RECENT SUPREME COURT DECISION. AMONG OTHER THINGS, THIS LAW STATES THE FOLLOWING: " THE OWNER OF THE LAND, WHEN IT BORDERS UPON A NAVIGABLE LAKE OR STREAM, TAKES TO THE EDGE OF THE LAKE OR STREAM AT LOW WATER MARK; WHEN IT BORDERS UPON ANY OTHER WATER, THE OWNER TAKES TO THE MIDDLE OF THE LAKE OR STREAM."

MAINLY, THE OUTFITTERS USE THOSE WATERS WHICH ARE FLOATABLE. THE ADJOINING PRIVATE LAND OWNERS, BY AND LARGE, HAVE NOT INTERFERED WITH THEIR USE NOR WISHED TO DO SO. IT WILL BE NOTED THAT THE CURRAN CASE PERTAINED TO NAVIGABLE WATERS ONLY. I DO NOT UNDERSTAND THE ALARM AMONGST SOME OF THE RIVER GUIDES OVER THE SUPREME COURTS RECOGNITION OF THIS OLD STATUTE. TO MY KNOWLEDGE LAND OWNERS WISH THE OUTFITTERS NO HARM-JUST A RECOGNITION OF THE LAW AS IT HAS STOOD FOR YEARS AND UNDER WHICH THE OUTFITTERS HAVE PROSPERED AND PLIED THEIR TRADE SUCCESSFULLY.

IT IS MY OPINION THAT UNDER S.B. 286 THE WATER USERS WILL CONTINUE THEIR ENJOYMENT OF THE WATERS, UNHINDERED, AS THEY HAVE IN THE PAST.



GEORGE ROSSETTER

FEB 18 1987

Willow Creek Ranch
BOX 421
WHITE SULPHUR SPRINGS, MONTANA 59645

SENATE NATURAL RESOURCES

EXHIBIT NO. _____

DATE 2-18-87

BILL NO. SB 286

February 18, 1987

Senator Tom Keating, Chairman
Senate Natural Resources Committee
State Capitol
Helena, Montana

Dear Senator Keating:

As it now stands, there are sections of 23-2-301, 23-2-302, and 23-1-311, MCA, which have been found to be unconstitutional by the Supreme Court. Senate Bill 286 addresses this problem and amends the sections of the code mentioned above to conform to the Supreme Court ruling.

I strongly recommend that this bill be enacted as written; not only will it clarify the law, but also should eliminate misunderstandings created by HB 265 passed by the previous legislature. I believe it will help defuse the adversary atmosphere between recreationists and land owners.

Respectfully submitted,


R. E. Saunders

NAME: Linda S. Larson DATE: 2/18/86

ADDRESS: P.O. Box 136 Alder, Mt. SENATE NATURAL RESOURCES

PHONE: 842-5384 EXHIBIT NO. 14 with att. DATE 2-18-87

REPRESENTING WHOM? Upper Ruby land owners BILL NO. SB286

APPEARING ON WHICH PROPOSAL: S.B. 286

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: I support SB286. After receiving the attached letter from the MADISON ABSTRACT + TITLE Co. I feel something has to be done to protect private property rights. I urge you to support SB286.

Linda S. Larson

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Madison Abstract & Title Co.

ABSTRACTS

TITLE INSURANCE

P. O. Box 54
PHONE 406-843-5431
VIRGINIA CITY, MONTANA 59755

February 17, 1987

AGENT FOR:

Title Insurance Company of Minnesota
AND

First Montana Title Company

SENATE NATURAL RESOURCES
EXHIBIT NO. 14 *Attachment*
DATE 2-18-87
BILL NO. SB286

Linda S. Larson
PO BOX 136
Alder, MT 59710

Dear Linda;

I am writing in response to your telephone inquiry of this morning, regarding the exception of the rights to property lying within the ordinary high water lines of the Ruby River from a title insurance policy.

The rights of eminent domain by the government is a standard exclusion on all title insurance policies and appears on the current policy cover as item 2 under "Exclusions from Coverage". Since the passage of HB 265, our insurance underwriters recommend that we specifically mention as an exception on schedule B, any property that may be affected by that law and therefor subject to eminent domain claims.

This exception is shown for the benefit and information of the owner/purchaser, so that they are made aware of the possible rights of the state of Montana and the public in general to that part of the property lying within the ordinary high water lines of the Ruby River.

I hope this clears the matter up for you, if I can be of further assistance, please call.

Sincerely,



Leslie Gilman, president

MONTANA LANDOWNERS ASSOCIATION, INC.

MADISON CHAPTER
BOX 612
ENNIS, MONTANA
59729

February 18, 1987

Senate Natural Resources Committee
Capitol Station
Helena, Montana 59620

Re; SB 286

Gentlemen;

SENATE NATURAL RESOURCES

EXHIBIT NO. 15

DATE 2-18-87

BILL NO. SB 286

On behalf of the 147 members of the MADISON CHAPTER, MONTANA LANDOWNERS ASSN., INC. I want to express the unanimous support of the Senator Galt bill being debated today, Feb. 18, 1987. We feel that this bill is necessary for the implementation of the Supreme Court Decision of Jan. 15, 1987. Since the Supreme Court has seen fit to recognize the rights of landowners and make the changes in HB 265 that they did, it is of utmost importance that this bill be passed, as written, by your committee and sent on to the Senate.

Thank you,

Mary Saunders
Mary Saunders, Secretary
MONTANA LANDOWNERS ASSN, INC.
MADISON CHAPTER
Box 612
Ennis, Montana 59729

NAME: William Maloney DATE: 2/18/86

ADDRESS: P.O. Box 139 Alder, Mt. 59710

PHONE: 842-5356

REPRESENTING WHOM? Upper Ruby land-owners

APPEARING ON WHICH PROPOSAL: SB 286

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: I support SB 286. I feel
HB 265 is violating our property
rights. Ownership of land means
control of lands.

William Maloney

SENATE NATURAL RESOURCES
EXHIBIT NO. 16
DATE 2-18-87
BILL NO. SB 286

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Rose Maloney DATE: 2/18/86

ADDRESS: P.O. Box 139 Alder, Mt. 59710

PHONE: 842-5356

REPRESENTING WHOM? Upper Ruby Land owners

APPEARING ON WHICH PROPOSAL: SB 286

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: I support SB 286. I feel private property rights have been violated with the passage of HB 265. Please support SB 286.

Rose Maloney

SENATE NATURAL RESOURCES

EXHIBIT NO. 17

DATE 2-18-87

BILL NO. SB286

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Bill Larson - Outfitter DATE: Feb 18, 1987

ADDRESS: Box 136 Alder, Mont.

PHONE: 842 - 5384

REPRESENTING WHOM? Self and Buckboard Guest Ranch

APPEARING ON WHICH PROPOSAL: SB 286

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: I support SB 286 to codify the
Supreme Court's decision on HB. 265 and restore
the private property rights which were lost.

Bill Larson

SENATE NATURAL RESOURCES

EXHIBIT NO. 18

DATE 2-18-87

BILL NO. SB 286

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SB 286
February 18, 1987

Testimony presented by Jim Flynn, Dept. of Fish, Wildlife & Parks

SB 286 purports to codify the recent Supreme Court decisions regarding stream access. The bill goes beyond a codification of that decision and more important, is not necessary.

Amendments offered in this bill would change provisions upheld by the Supreme Court in the most recent court decision and propose changes which conflict with all three Supreme Court decisions on the subject.

Such proposed changes serve to renew debates resolved not only in the Supreme Court chambers, but in the deliberations of this body in the last session.

The proposed amendments significantly change the law now in effect, and introduce changes that are in themselves clearly unconstitutional infringements on the rights of the recreating public as recognized by the Supreme Court.

The legislature, in its normal practice, attaches a severability clause to those laws which could undergo a court test. This practice is to assure that the part of the law which meets the court test is still in place and does not require further legislative action to implement the court's action.

The most recent court decision on this subject found "the unconstitutional portions of the statute to be subject to severance and therefore, leave the balance of the statute intact." The court found the balance of the stream access statutes to be constitutional and the wisdom of the severability clause has proven itself.

The enactment of the stream access law last session and the affirmation of its major elements in the recent Supreme Court ruling were made after careful consideration of the rights of both landowners and the recreating public. To amend the stream access statutes now, and in this manner, will invite the potential for unnecessary litigation and prolong a difficult subject.

We would urge that SB 286 not be approved.

S.B. 286
TESTIMONY OF STAN BRADSHAW
MONTANA STATE COUNCIL OF TROUT UNLIMITED
FEBRUARY 18,, 1987

Mr. Chairman, members of the committee, my name is Stan Bradshaw. I am testifying on behalf of the more than one thousand members of of Trout Unlimited statewide.

S.B. 286 is the second bill to be introduced this session on the issue of stream access. It is entitled "AN ACT TO REVISE THE STREAM ACCESS LAW TO REMOVE PROVISIONS DECLARED UNCONSTITUTIONAL". If it did simply what is expressed in the title, we would not be here in opposition to it. Unfortunately, it goes way beyond the function described in its title. It makes changes not only not embodied in the case of Galt v. Department of Fish, Wildlife, and Parks, but also changes inimical to the holdings in all three Supreme Court cases which have been decided on this issue in the last three years.

First, it is important to look at precisely what the court did in the Galt case in order to understand the problems with S.B. 286. On page 8 of the case Justice Morrison, who wrote the opinion for the majority, concisely and unambiguously described what was unconstitutional in the act:

"Accordingly, we find section 23-2-302(2)(d), (e), and (f) MCA, to be unconstitutional. Further, we find section 23-2-311(3)(e) to be unconstitutional insofar as it requires the landowner to bear the cost of constructing a portage route around artificial barriers. The balance of the statutory scheme accords with the Montana Constitution and the opinions of this court. We find the unconstitutional portions of the statute to be subject to severance and therefore, leave the balance of the statute intact." [emphasis added] Galt at p. 8.

Thus, only subsections 23-2-302(2)(d), (e), and (f) and section 23-2-311(3)(e) have been declared unconstitutional.

Subsections 23-2-302(d), (e), and (f) say:

"The right of the public to make recreational use of surface waters does not include, without permission of the landowner:...

(d) big game hunting except by long bow or shotgun when specifically authorized by the commission;

(e) overnight camping within sight of any occupied dwelling or within 500 yards of any occupied dwelling, whichever is less;

(f) the placement or creation of any permanent duck blind, boat moorage, or any seasonal or other objects within sight of or within 500 yards of an occupied dwelling, whichever is less;..."

Section 23-2-311(3)(e) says, in pertinent part:

"The cost of establishing the portage route around artificial barriers must be borne by the involved landowner, except for the construction of notification signs of such route, which is the responsibility of the department."

Notwithstanding the court's clear direction regarding the statute, S.B. 286 would, among other things, outlaw all hunting, decree that the legislature has the right to limit the public's right to make recreational use of the water, bring the issue of landownership back into the question of the public's right to use the surface waters of the state, and require compensation for landowners when a recreationist must portage around an artificial barrier. All of these things violate the supreme court pronouncements on these issues and none of them involve amending the subsections described by the court as unconstitutional.

The first amendments to the act are found on page 3, lines 18 through 24. Among these amendments is the deletion of hunting as a recognized recreational use. The court only found the allowance of big game hunting to be unconstitutional. This amendment would prohibit waterfowl hunting without permission not only on small streams but also on large rivers commonly regarded as navigable.

In addition, the amendments on page 3, line 18, adding the

language "unless otherwise prohibited or regulated by law" would give the legislature the authority to prohibit any of the recreational uses described there. The described recreational uses, including fishing, swimming, and floating in craft are activities at the heart of the public's right of use of the surface waters of the state. The public's right of use right of use has been found to be a constitutional one that cannot be diminished by statute. This amendment attempts to allow the legislature to do exactly that.

The next amendment is found at page 4, line 15. It is short, but its impact would be huge. It would delete the word "without" and insert the word "with", so the sentence would read, in part, "all surface waters that are capable of recreational use may be so used by the public with regard to the ownership of the land underlying the waters." While it is not clear exactly the proponents of S.B. 286 hope to accomplish by this language, the clear implication is that the ownership of the streambed would be determinative of the public's right to use the waters. The existing language came right from the Curran case and should not be changed. This amendment violates both the letter and the spirit of the Supreme Court holding.

Finally, on pages 7 through 10, the bill attempts to completely do away with the public right to portage around artificial barriers unless the landowner has been compensated. Currently, the act at 23-2-311(1) says "A member of the public making recreational use of surface waters may, above the ordinary high water mark, portage around barriers in the least intrusive

manner possible, avoiding damage to the landowner's land and violation of his rights." S.B. 286 would change this section to require that a member of the public could portage only when a portage route had been established and that a landowner has to be compensated for the establishment of a portage route. This would nullify the Supreme Court's recognition of the public's right to portage around barriers. It is important to remember that the court in Galt did not repudiate the public's right to portage - it only said that when a portage route is established pursuant to the administrative proceeding described in subsection (3) of this section, the landowner cannot be made to pay for the construction of that route. It did not say that the landowner could insist upon compensation or exclude the public.

On page 9, the bill deletes the arbitration provisions found there. The court in the Galt case did nothing to invalidate these provisions. It is just another instance in which this bill has gone way beyond the holding of the court in its attempt to "fix" the statute.

Finally, on page 10, the bill deletes the legislative disclaimer of any position on the issue of natural barriers. This provision was put in the statute because some legislators in the 1985 session were concerned that the court had not specified whether its ruling included only artificial barriers even though those cases involved artificial barriers. This provision, in effect, deferred that decision to a court if it should ever come up. So far, it has not. Nonetheless, if this provision is deleted, S.B. 286 would completely prohibit portage without compensation.

It is instructive to compare the number subsections changed

by S.B. 286 with the number of subsections declared unconstitutional by the Supreme Court in the Galt case. The Supreme Court declared four subsections unconstitutional; S.B. 286 proposes to amend twenty-one subsections. (See Attachment One) It is not necessary to change any more than the four subsections declared unconstitutional by the court. In fact, the court's corrections are so precise that it is not necessary for the legislature to do anything with the statute.

In conclusion, S.B. 286 would go far beyond the bounds of simply conforming the statute to the court decision in the Galt case. Instead, it would make sweeping revisions to the public right of access far beyond the contemplation of the court in any of its decisions on stream access. It is not necessary to amend the statute to conform it with the court's decision. The court has defined the extent of the public right, and nothing more needs to be done by the legislature. Therefore, S.B. 286 should be killed.

TABLE OF CHANGES REQUIRED BY THE GALT CASE
AND THOSE CHANGES PROPOSED BY S.B. 286

The following compares the subsections found unconstitutional by the Galt case and the subsections proposed to be substantively changed by S.B. 286.

Subsections found unconstitutional by Galt:

23-2-302(2)(d)
23-2-302(2)(e)
23-2-302(2)(f)
23-2-311(3)(e)

Total: four Subsections

Subsections proposed to be amended by S.B. 286:

23-2-301(10)	23-2-311(3)(a)
23-2-302(1)	23-2-311(3)(b)
23-2-302(2)(d)	23-2-311(3)(c)
23-2-302(2)(e)	23-2-311(3)(e)
23-2-302(2)(f)	23-2-311(3)(f)
23-2-302(3)(a)	23-2-311(3)(g)
23-2-302(3)(b)	23-2-311(3)(h)
23-2-302(3)(c)	23-2-311(3)(i)
23-2-302(3)(f) - new subsection	23-2-311(3)(j)
23-2-311(1)	23-2-311(4)
23-2-311(2)	

Total: Twenty-one subsections

SENATE NATURAL RESOURCES

EXHIBIT NO. 21

DATE 2-18-87

BILL NO. SB286

Mr. Chairman/Members of the committee:

My name is Steven M. Gilbert and I live in Helena and represent myself.
Thank you for the opportunity to testify against S. B. 286.

This is the second bill of this session attempting to gut the Supreme Court ruling on stream access (Galt Vs. MDFWP) which concisely and unambiguously described the constitutionality of the act and which clearly and beyond a shadow of doubt described to me what my rights are as a recreationist. I am amazed that the proponents find that there is still room for interpretation in this ruling. It is an affront to my sensibilities as a Montana citizen and taxpayer to once again waste your time and mine to thrash this horse declared dead long since by the Supreme Court.

Montana is probably as well known for the recreational opportunities available here as it is as for its wide-open spaces, farms and ranches. I was attracted to Montana 20 years ago by the mountains, streams and rivers and by the game and fish which live in these places. I was impressed by the relationship between most landowners and recreationists; a relationship which continues to give me access to some incredible property and hunting and fishing opportunities. I view S.B.286 as a direct threat to my quality of life in Montana.

I am an avid duck hunter whose primary interests focus on the waterfowl of the Missouri River from Holter Dam to Cascade, and have been fortunate to have access to the river at many locations. My dogs and I have lurked in the willows and tall grass of many islands, gravel bars, and backwaters in pursuit of ducks and geese. I feel that my use of riverbottoms and banks to the high water mark has given me an opportunity to experience waterfowl hunting in a very traditional and enjoyable manner for which hunters in most states must pay large sums of money. I feel that an acceptable compromise on use of these waters has been reached and ruled on by the Supreme Court, and that the proposed changes represent a threat to outdoors enjoyment in Montana. The privilege to use the river systems of Montana in a traditional manner reflects one of the differences between our state and most other states, and is one of the many reasons we live here.

Thank you for this opportunity to testify against S.B. 286.

SENATE NATURAL RESOURCES

EXHIBIT NO. _____

DATE _____

BILL NO. _____

Medicine River Canoe Club

Great Falls, Montana

FEBRUARY 18, 1987

SENATE NATURAL RESOURCES

EXHIBIT NO. 22 (1)

DATE 2-18-87

BILL NO. S 8286

SENATE NATURAL RESOURCES COMMITTEE

State Capitol
Helena, Montana

Chairman Keating and Members of the Committee:

My name is Jim McDermand and I am the spokesman for the Medicine River Canoe Club in Great Falls. We participated with recreational, agricultural, and legislative groups over the past several years in the development of the current Stream Access law. The few and relatively minor incidents that have occurred since its passage are supportive of the fact that it is a good, workable law.

In 1986, this law was challenged before the Montana Supreme Court. In its ruling (Galt vs. the State of Montana) the Court addressed only four portions of this statute as being unconstitutional and, therefore, subject to severance.

The title of Senate Bill 286 "An act to revise the Stream Access Law to remove the provisions declared unconstitutional", would lead you to believe that the proposed bill addresses only these issues. If that were true, I wouldn't be standing here before you at this time.

A better and more realistic title to SB 286 would be the "Great Smoke Screen Act". Its authors, under the guise of complying with the Supreme Court ruling, have seized this opportunity to alter the intent and change the concept of the current law.

One of these major alterations is taking the phrase on page 3, line 21 "unless otherwise prohibited or regulated by law" (which currently now refers only to motor boating) and shifting it so that it would refer to all water related activities. It would give the legislature the power to give, take away, or alter any such activity. This change alone, if enacted, would perpetuate the biennial involvement of the legislature. This proposed amendment is clearly contrary to the intent of all previous court rulings, the Supreme Court has stated that "the capability of use of the waters for recreational purposes determines whether the waters can be so used".

Senate Bill 286 also strikes hunting from the definition of recreational use, the result indicates disallowing all forms of hunting, whereas the Supreme Court intended that only big game hunting be excluded.

SENATE NATURAL RESOURCES
EXHIBIT NO. 22 (2)
DATE 2-18-87
BILL NO. SB 286

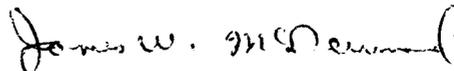
The court held that, regardless of whether a riparian landowner or recreationist requested a portage route, the department was to bear the cost of its establishment. SB 286 so extensively alters the portage section of the current law that we defer to our more knowledgeable colleagues to explain the full impact of this change. There is also no just basis for the abolition of the portage arbitration panel or the exclusion of the recreating public's input.

Once again, these changes only lend credence to my earlier reference to this bill as the "Great Smoke Screen Act".

Senate Bill 286 was obviously not written with the spirit of compromise in which the current Stream Access Law was conceived. Because this bill so blatantly exceeds the bounds of the recent Supreme Court ruling, we strongly urge its defeat. Let the language of the court itself dictate subsequent action in that "the unconstitutional portions be subject to severance and, therefore, leave the balance of the statute intact".

Thank you.

Respectfully,



JAMES W. McDERMAND, Spokesman
Medicine River Canoe Club
3805 4 Ave. South
Great Falls, Montana 59405



Fishing & Floating Outfitters
Association of Montana
P.O. Box 1372
Livingston, Montana 59047

SENATE NATURAL RESOURCES

EXHIBIT NO. 23

DATE 2-18-87

BILL NO. SB286

Natural Resources Comm.
Sen. Keating, Chm.
Testimony on SB-286

Mr. Chairman, members of the Committee; for the record my name is Richard Parks. I own the Parks' Fly Shop in Gardiner and am President of the Fishing and Floating Outfitters Association of Montana, a professional association of 227 members on whose behalf I appear today. Our segment of the outfitting industry brings in at least \$15 million dollars annually to Montana and we think that deserves better consideration than to be constantly defending our right to use the public waterways of this state.

SB-286 claims to be a minor housekeeping bill to bring the statutes into conformity with the recent decision of the Supreme Court in the case of "Golt vs. DFWP". It is no such thing. The court confined its rulings to four features of the law, specifically cutting from it three recreational uses that the court found inappropriate and declaring that an adjacent landowner could not be compelled to pay for the construction of a portage route around a barrier. What do we find in SB-286? We find an effort to amend many sections of the law in such a way as to reassert claims presented to the court in the Golt case - **AND REJECTED**. We also find an effort to take the court's rejection of the cost allocation for a portage route and turn it into a fiscal relief package for those landowners with streamside property. It is clear to me that had the Supreme Court intended to require that the Department of Fish, Wildlife and Parks pay endlessly for portage routes; the need for which could be created at will by the landowner, regardless of the actual costs of establishing such a route - they could have so ordered. **They did not do so.**

The question arises - is any part of this bill made necessary by the action of the Supreme Court? The answer is to be found in the language of the decision - **"The balance of the statutory scheme accords with the Montana Constitution and the opinions of this court. We find the unconstitutional portions of the statute to be subject to severance and therefore leave the balance of the statute intact."**

The opinion of the court is clear. No legislative action whatsoever is required to bring the statute into conformity with it. We therefore request a **DO NOT PASS** vote on SB-286.

Wildlands & Resources Assoc.
Terry L. Albrecht Pres:
137 OLD FT. SHAW RD.
FT. SHAW, MT. 59443

S.B. # 286

2-18-87

SENATE NATURAL RESOURCES

EXHIBIT NO. 24

DATE 2-18-87

BILL NO. SB286

Gentlemen:

OUR group would like to go on record
as being opposed to S.B. # 286.

CONSIDERABLE EFFORT BY ALL CONCERNED
RESULTED IN A COMPROMISE BILL DURING THE
LAST SESSION THAT ADDRESSED THE STREAM
ACCESS ISSUE. IT HAS BASICALLY WITHSTOOD
THE TEST OF THE SUPREME COURT AND TIME
HAS BROUGHT FORTH FEW CONFLICTS INVOLVING
THE MAIN ISSUE. WE FEEL THEIR ARE MORE
PRESSING CONCERNS FOR THIS SESSION AND THE
EXISTING LAW SHOULD & WILL SURVIVE THE
TEST OF TIME.

Terry L. Albrecht

SENATE NATURAL RESOURCES COMMITTEE
State Capitol
Helena, Montana

February 17, 1987

SENATE NATURAL RESOURCES

EXHIBIT NO. 25

DATE 2-18-87

BILL NO. SB286

CHAIRMAN KEATING and MEMBERS OF THE COMMITTEE

My name is Walt Carpenter, and although I now live in Great Falls, I come from a pioneer farming family that came to Montana before the turn of the century, and homesteaded in northwestern Lincoln County. I later ranched in that area myself.

I am addressing this communication to the Committee as a citizen who would be vitally effected by changes in the stream access law as proposed by Senate Bill 286. I am opposed to S.B. 286. The stream access bill, H.B. 265, enacted into law by the 1985 Legislature, with input by a majority of the landowner organizations, and by the various recreational groups, was a compromise bill, and as fair to all concerned as was possible.

The fine tuning by the Supreme Court decision of 1986 favored landowners by eliminating several provisions of H.B. 265 that were declared to be unconstitutional. This should have made the stream access bill palatable to all concerned, particularly the landowners.

The changes set forth in S.B. 286, while stated to remove from the stream access law those provisions declared unconstitutional by the Supreme Court ruling, actually go far beyond the scope of that decision. These proposed changes also are directly contrary to the two earlier Supreme Court decisions in the Curran and Hildreth cases.

In the 1986 Supreme Court decision it was held that the public has the right of use up to the high water mark, but only such use as is necessary to the utilization of the water itself, furthermore that any use of the bed and the banks must be of minimal impact. The Court did not hold that the bed and banks could not be so used by the public. For all practical purposes S.B. 286 would take away that right.

The Court stated that after finding several portions of the stream access law unconstitutional, that such portions be subject to severance and therefore, the balance of the statute be left intact. S.B. 286 is in direct contradiction this Court ruling.

Passage of S.B. 286 would only lead to further confrontations and litigation. As I firmly believe that most Montana citizens are getting very tired of the stream access matter being dragged on and on, I respectfully urge the Committee to kill this controversial bill and hopefully put this matter to rest for the foreseeable future. No further action by the Legislature should be necessary.

Sincerely yours,

Walt Carpenter
Walt Carpenter

77
18 Feb 87

The board of Directors of
the Great Falls Chapter of
Walleyes Unlimited of Montana recently
voted to go on record
against any changes to the
present Stream Access Law
as enacted by House Bill 265
of last session; as modified by ^{the} exception
found to be unconstitutional by the
recent State Supreme Court Decision.

Ted Fallat
Chairman, Great Falls
Chapter of Walleyes
Unlimited of Montana

SENATE NATURAL RESOURCES

EXHIBIT NO. 26

DATE 2-18-87

B'1' SB281/2

NAME William E. Hagman BILL NO. SB 286
ADDRESS Box 123, Basin, MT 57631 DATE 2-18-87
WHOM DO YOU REPRESENT Private Trapper & Registered Nurse, RNBSN
SUPPORT _____ OPPOSE AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: As a baccalaureate level registered nurse concerned with public health and as a trapper affiliated with The National Trapper's Association and The Wildlife Legislative Fund of America I oppose passage of SB 286 sponsored by Galt & others.

From the public health standpoint I oppose the bill for the following reasons:

1. The prestigious World Health Organization names zoonoses as one of the world (and the American) three major health problems.
 - a) Zoonoses are animal diseases transmissible to man
 - b) The WHO lists 150 major zoonoses
 - c) beaver in Montana are reported carriers of Giardia, tularemia, and possibly North American Blastomycosis dermatididis, all major health problems to humans.
 - d) The cost of control + lost time, immunization, treatment etc runs into multiple billions of dollars per year to mankind.
2. Wildlife management by trapping & hunting is effective in controlling wildlife overpopulation & permitting healthy populations to thrive.

As a trapper I submit the following:

1. HB 265 allows reasonable trapping access
2. Montana trappers contribute millions of dollars to our ailing state economy.
3. to pass SB 286 would restrict trapper rights of access to public waters

SENATE NATURAL RESOURCES

EXHIBIT NO. 28

DATE 2-18-87

BILL NO. SB286

COMMENTS TO S.B. 286

I, Alan Rollo, of Great Falls, Montana, would like to express my concern over S.B. 286. There seems to be some misinterpretation with this bill. The bill was introduced under the contention that it is only removing or changing those items that were declared unconstitutional by the Supreme Court, but this is not true. This bill is a major rewrite of the stream access law and severely restricts my rights as a citizen, taxpayer, and a recreationist. I grew up on a farm and I am a staunch supporter of the ranchers rights, but this has gone too far.

This bill has removed or changed several provisions that the Supreme Court has ruled every time to be the public's constitutional right. The latest Supreme Court ruling clearly defined the areas that would be stricken from the law. Justice Morrison's comments were also explicit on what areas are protected by the public trust doctrine of the Montana Constitution. Such contradictions between the Supreme Court ruling and S.B. 286 are as follows:

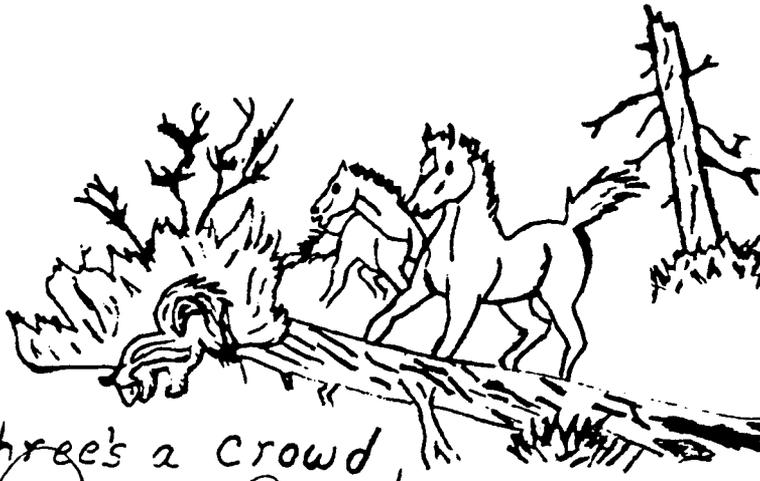
1. Big game hunting should be eliminated, not all hunting.
2. The public has a right to a portage route in the least intrusive manner possible, the suggested change is questionable at best at what is intended by this new bill.
3. The public has a right to use up to the high water mark, with use of the beds and banks, with minimal impact, not to be regulated or prohibited by law.
4. The streambed ownership by a private party is irrelevant, so it can be used by the public without regard to the ownership of the land underlying the waters.

I do not understand why this bill, with changes that are contrary to the Supreme Court ruling, has been introduced. It is apparent that this bill is not intended to conform with the court's ruling. To insure that the court's decision is upheld I would sincerely appreciate your vote to kill S.B. 286.

Thankyou,



Alan W. Rollo



The Hawley Mountain Guest Ranch

Three's a crowd
Dear Senator;

Feb 17/87

SENATE NATURAL RESOURCES

EXHIBIT NO. 29

DATE 2-18-87

BILL NO. SB 286

As a Montana guest rancher I am very much in support of and depend on tourism in this state.

We have had a problem in this area since the passage of HB 265. These problems arise because many of our guest were paying for the privilege to fish private river frontage in our state.

With the passage of HB 265 they no longer may obtain these privileges and will no longer desire to spend their vacation dollars here.

Another problem with this bill is that we no longer have any control to protect the fishery in these private streambeds; such as catch and release programs in key spawning areas. Therefore we are losing the quality of sport fishing on our private land.

For these reasons we support the passage of SB 286 as introduced.

Sincerely
Robert W. Jarrett

TO: SENATE COMMITTEE HEARING ON SB 286
FROM: MR.&MRS. CHRIS JAUERT
640 34th ave NE
GREAT FALLS, MT. 59404
SUBJECT: STATEMENT OF OPPOSITION TO SB 286

SENATE NATURAL RESOURCES
EXHIBIT NO. 30
DATE 2-18-87
BILL NO. SB286

WE ARE IN STRONG OPPOSITION TO SB 286 BECAUSE THIS BILL CHANGES OR REVERSES THE MEANING OF THE STREAM ACCESS STATUTE WHICH WAS ENDORSED BY MONTANA'S SUPREME COURT. SPECIFICALLY SUBSECTION 23-2-3 (d) HAS BEEN DECLARED UNCONSTITUTIONAL BY SB 286 EVEN THOUGH THE SUPREME COURT FOUND ONLY BIG GAME HUNTING TO BE UNCONSTITUTIONAL. WATERFOWL HUNTING SHOULD THEREFORE BE ALLOWED.

THE AMENDMENT ON PAGE 3 LINE 18 WITH NEW LANGUAGE " UNLESS OTHERWISE PROHIBITED OR REGULATED BY LAW " MEANS THAT ALL RECREATIONAL USES COULD BE PROHIBITED BY LEGISLATIVE ACT. HOWEVER, THE COURT HAS DECLARED THE RIGHT OF THE PUBLIC TO FISH, SWIM AND FLOAT WITH CRAFT ON ALL SURFACE WATERS DEEMED RECREATIONAL BY THE PUBLIC AND WHERE THE STATE OWNS THE STREAM BED TO THE HIGH WATER MARK.

INSERTION OF THE WORD "WITH" ON p.4 line 15 IMPLIES THAT THE PUBLIC CANNOT EXERCISE THEIR RIGHT TO RECREATE ON PUBLIC OWNED STREAM BEDS. IN OTHER WORDS, SB 286 ASSERTS THAT THE STREAMBED IS PERHAPS PRIVATE AND THE PUBLIC CAN USE IT ONLY WITH REGARD TO THE LANDOWNER. THIS IS NOT SO AS THE COURT HAS DECLARED THE RIGHT OF THE PUBLIC AS STATED ABOVE.

SB 286 IS NOT A NECESSARY BILL, IS CONTRIDICTORY TO THE RIGHTS GIVEN BY THE COURT AND THEREFORE SHOULD BE KILLED.

RESPECTIVELY SUBMITTED,

Chris E. Jauert

Cindy L. Jauert

CHRIS E. JAUERT
CINDY L. JAUERT

I am Tony Schoonen, an officer
in the Montana Wildlife Federation
and a concerned sportsman.

I rise in opposition to S.B.
286 primarily because this bill
is an obvious & clever charade
of misinterpretation of the
latest Supreme court ruling on
the stream access law by changing
a few key words which would be
very detrimental to all recreationists
in Montana as well those people
coming to Montana to fish.

Recreational values of our rivers
and streams bring millions of dollars
into Montana - we cannot ~~be~~ afford
to lose these revenues at this
time.

Thank you.

Tony Schoonen

ROLL CALL VOTE

SENATE COMMITTEE NATURAL RESOURCES

Date Feb 18 Senate Bill No. 159 Time 2:45

NAME	YES	NO
Sen. Tom Keating, Chairman	X	
Sen. Cecil Weeding, Vice Chairman		X
Sen. John Anderson	X	
Sen. Mike Halligan		X
Sen. Delwyn Gage	X	
Sen. Lawrence Stimatz		X
Sen. Larry Tveit	X	
Sen. "J.D." Lynch		X
Sen. Sam Hofman	X	
Sen. William Yellowtail		X
Sen. Elmer Severson	X	
Sen. Mike Walker		X

Nadine McCurdy
Secretary

Senator Tom Keating
Chairman

Motion: substitute motion by Sen. Tveit that
SB 159 DO PASS. 6/6 Tie VOTE

STANDING COMMITTEE REPORT

February 18

37

19.....

MR. PRESIDENT

We, your committee on..... NATURAL RESOURCES.....

having had under consideration..... SENATE BILL..... No. 262

First..... reading copy (white)
color

REVISES THE DEFINITION OF NEW PRODUCTION OF OIL AND GAS

Respectfully report as follows: That..... SENATE BILL..... No. 262

DO PASS

XXXXXXXXXX

DO NOT PASS

.....
SENATOR THOMAS F. KEATING, Chairman.