

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON FISH & GAME**

**Call to Order:** By **CHAIRMAN DOUG WAGNER**, on February 9, 1995, at  
3:00 p.m.

#### **ROLL CALL**

##### **Members Present:**

Rep. Douglas T. Wagner, Chairman (R)  
Rep. William Rehbein, Jr., Vice Chairman (Majority) (R)  
Rep. Emily Swanson, Vice Chairman (Minority) (D)  
Rep. Charles R. Devaney (R)  
Rep. Jim Elliott (D)  
Rep. Daniel C. Fuchs (R)  
Rep. Marian W. Hanson (R)  
Rep. Hal Harper (D)  
Rep. Chase Hibbard (R)  
Rep. Dick Knox (R)  
Rep. Rod Marshall (R)  
Rep. Brad Molnar (R)  
Rep. Robert J. "Bob" Pavlovich (D)  
Rep. Bob Raney (D)  
Rep. Robert R. "Bob" Ream (D)  
Rep. Paul Sliter (R)  
Rep. Bill Tash (R)  
Rep. Jack Wells (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Doug Sternberg, Legislative Council  
Mary Riitano, Committee Secretary

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

##### **Committee Business Summary:**

Hearing:	HB 439, HB 348, HB 349, HB 384
Executive Action:	HB 375 DO PASS AS AMENDED
	HB 339 TABLED
	HB 384 DO PASS
	HB 439 TABLED
	HB 122 DO PASS AS AMENDED
	HB 62 DO PASS AS AMENDED

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HEARING ON HB 439

Opening Statement by Sponsor:

REP. KARL OHS, House District 33, Harrison, stated that line 30 contained the new language, "not enter upon private land for investigatory purposes without the written permission of the landowner or agent of the landowner." This would require game wardens to obtain written permission prior to entering onto private land for investigatory purposes. As a result, communication and relations between FWP and landowners would be improved. It was common courtesy to ask permission before entering onto private property. Provisions of the bill were not intended to impinge on the duties or authority of game wardens. If a warden witnessed a violation, they may still take the appropriate action. He urged the committee to support the bill.

Proponents' Testimony:

Bob Spoklie, Montana Game Breeders Association, stated that some people from his organization had been intimidated when game wardens entered onto their property and began looking around without asking permission. In the past, game wardens were friends of the farmers and ranchers. He believed that there was adequate time for game wardens to become acquainted with people in their area and ask for permission to enter the land. About 65% of the game harvested in Montana was on privately owned land. He asked the committee to pass the bill for property rights and benefits to private landowners.

REP. LARRY GRINDE, House District 94, Lewistown, strongly believes in private property rights. There was no reason that FWP and landowners could not work together. He compared some FWP enforcement situations to regular law enforcement. If they witnessed a violation and it was not life endangering, the game warden should obtain permission to enter the land. He asked the committee to protect private property rights by passing HB 439.

Jake Cummins, Montana Farm Bureau, expressed support for the bill. They were concerned about property rights. HB 439 would protect property rights and property owners. To intrude onto private property without invitation or provocation was an invasion by government. He urged the committee to pass the bill.

Wayne Hirst, citizen, declared support for the bill because it was a "landowner's right to talk to these people [game wardens] before they come on the property."

Candice Torgeson, Montana Cattlemen's Association, spoke in favor of the bill. HB 439 recognized landowners' right to control who entered their property. She asked the committee to pass HB 439.

**Jennifer Hill, Montana Stockgrowers Association**, expressed the organization's support of the bill.

**Mike Murphy, Montana Water Resources Association**, felt HB 439 was an appropriate provision safeguarding private property rights. He expressed their support for the bill.

**Larry Brown, Agricultural Preservation Association**, spoke in favor of HB 439.

**Opponents' Testimony:**

**Pat Graham, Director, Department of Fish, Wildlife and Parks (FWP)**, distributed written testimony opposing HB 439. By law Montanans may enjoy their wildlife through hunting, trapping, and fishing. These activities were highly regulated privileges given to those people who qualify and comply with the rules and regulations. FWP was the agency designated to protect wildlife resources and regulate the lawful use and taking of wildlife. Much of Montana's wildlife was found on privately owned land; approximately 70% of wildlife was harvested on privately owned lands.

The primary duties of Montana game wardens were to preserve and protect the wildlife, monitor game harvesting, collect data, and inspect for proper licenses and permits. The relationship between game warden and landowner has been mutually beneficial. Over the years game wardens have apprehended livestock rustlers, rural burglars, and poachers. They have also come to people's assistance in natural disasters. Game wardens do not enter private property except to regulate harvesting of game animals. Since it was the game warden's duty to enforce wildlife and recreational laws, it was imperative that they be able to inspect game, check licenses, and investigate for unlawful activities. Without this ability, the state's wildlife and recreational resources would be jeopardized. If wardens must have written permission from the landowner, they would not be able to respond to reported or observed violations.

Although FWP encouraged game wardens to meet with private landowners, sometimes it was prevented because of the large number of wardens' other duties. If the bill passed, undercover investigators would have to ask for written permission before conducting investigations. Certain types of illegal activities that dealt with commercialization and extreme resource abuse would go unchecked. HB 439 would impede all officers having the authority to enforce fish and game laws. **EXHIBIT 1**

**REP. JIM ELLIOTT, House District 72, Trout Creek**, stated that he was a property owner. People watched each other's property for violations of fish and game laws. If he was gone from his property and a neighbor reported a violation to a game warden, he fully supported the entry of that game warden onto his property for protection purposes. **REP. ELLIOTT** believed in private

property rights and viewed wardens and other law enforcement officers as protecting his property rights from poaching, illegal entry, or theft. He found it strange that his agricultural colleagues appeared to be more interested in protecting their privacy than in supporting enforcement of laws in the state of Montana.

**Beth Curran-Cummings, Dearborn Ranch Company**, stated that she wanted game wardens to be able to access private and public property, with or without permission, to fulfill their enforcement duties. She had neighbors, as well as other people, who were illegally entering her land and outfitting. Game wardens should be allowed to enforce fish and game laws on both public and private land.

**Jim Richard, Montana Wildlife Federation**, appreciated REP. OHS effort in trying to improve communication and provide respect for private property rights. However, the requirement for written permission would frustrate effective law enforcement. The organization would like to see if there was a better way to foster communication between wardens and landowners.

**Bill Allen, Montana Audubon Legislative Fund**, expressed opposition to HB 439. Their largest concern was the proper management of wildlife. A crucial portion of that management was the enforcement of fish and game laws. Despite the intent of the bill, they viewed it as a serious detriment in enforcing fish and game laws.

**Bill Holdorf, Skyline Sportsmen's Association**, testified in opposition to the bill. HB 439 could "open the door for professional poachers." There could be serious damage to wildlife resources.

**Tony Schoonen, Anaconda Sportsmen's Association**, was raised on a large ranch in southwestern Montana and recalled game wardens entering onto the property. Written permission would stop wardens from performing their duties adequately.

**Leonard Wortman, Jefferson County Commissioner**, urged the committee to "not further tie the hands of the law enforcement community."

**Jerry Keel, landowner**, opposed the bill. He has experienced no problems with game wardens.

**Questions From Committee Members and Responses:**

REP. BILL TASH understood that currently there was a limited budget for law enforcement personnel. He asked **Pat Graham, Department of FWP**, if HB 439 would place further constraints on game wardens. **Mr. Graham** believed that it would. It would use a lot of additional resources obtaining written permission from each landowner. REP. TASH stated that game wardens have

established good rapport in his area. He asked **Mr. Graham** if it was their administrative policy that game wardens make unannounced patrols. **Mr. Graham** said it was their policy to make contact with landowners as often as they were able to. FWP did not encourage unannounced patrols. **REP. TASH** did not understand FWP opposition to the bill. **Mr. Graham** explained if game wardens witnessed violations, they would first have to check to see if they had written permission from the appropriate landowners. In eastern Montana, there was a large turnover of wardens. The wardens were not always familiar with the landowners.

**REP. BRAD MOLNAR** asked **Mr. Graham** if HB 439 removed "reasonable cause." **Mr. Graham** said that it was not clear in the proposed legislation. It could be argued that a game warden would need written permission for even probable cause. **REP. MOLNAR** stated that if HB 439 passed, would "sting" operations not be able to be performed unless written permission was obtained. **Mr. Graham** said that it was unclear. Without probable cause, those operations would not be able to be performed.

**REP. ROD MARSHALL** asked about a game warden who received an anonymous call regarding neighbors who were conducting illegal outfitting operations. He asked **Mr. Graham** if the game warden needed to get permission from the landowner before investigating. **Mr. Graham** said that based on their interpretation, it was not clear if FWP would have probable cause. **REP. MARSHALL** stated that it would be difficult to pursue a case such as this.

**REP. JACK WELLS** asked if there had been cases or would be cases of having to pursue a fish and game violator onto private property. **Mr. Graham** could not give any probabilities of that occurring.

**REP. PAUL SLITER** asked **Beth Curran-Cummings** if it was her understanding that if the bill passed, she would never see a game warden on her property. **Ms. Curran-Cummings** said no. She would give written permission if it was needed. Currently, there was a very good warden in her area. **REP. SLITER** stated that if she gave written permission, the game warden's authority on her property would not change. **Ms. Curran-Cummings** said that there were several small property owners surrounding her property who were accessing her land and shooting game. If the warden witnessed the person on her land, he could apprehend the violator. However, if that person dragged the game back to their private property, she asked how a game warden would have authority to enter that property and apprehend the violator. **REP. SLITER** referred the question to **Mr. Graham**. **Mr. Graham** referred to line 30 of the bill which addressed his question.

**REP. SLITER** asked if pursuit would be considered investigatory purposes. He referred the question to **Bob Lane, Attorney, FWP**. **Mr. Lane** said it was interpreted by FWP that the game wardens would need written permission. This would conflict with a number of principles that allow law enforcement personnel to carry out

their duties. FWP believed that HB 439 would make "hot pursuit" impossible. If a warden observed a crime, he could not enter onto property that he did not have permission to enter. In addition, if he could not identify the suspect, the game warden could not get a search warrant either.

**REP. DAN FUCHS** asked **Mr. Lane** if the word "and" was stricken from page 2, line 1, would hot pursuit be possible. **Mr. Lane** said it would not necessarily work. Subsection (10) dealt with powers exercised by game wardens. Most of that authority would not be available because of the new subsection (9) requiring written permission. **REP. FUCHS** asked if both the word "and" and subsection (10) were stricken, would that allow hot pursuit. **Mr. Lane** said he did not believe that would help either. The pursuit would end once the violator entered onto private property for which FWP did not have written permission to enter.

**REP. MOLNAR** asked **Mr. Graham** if the number of complaints regarding game wardens was substantial. **Mr. Graham** did not have those figures. He referred the question to **Bob Winfield, Enforcement Division, FWP**. **Mr. Winfield** said they received up to four complaints per year regarding landowners not wanting game wardens to be in a particular area. Usually there was a game violation involved. Overall, his department had very few complaints. In most cases game wardens were accepted and welcomed onto private property.

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**REP. MARIAN HANSON** asked **REP. OHS** about the intent of HB 439 and if he knew of problems with game wardens. **REP. OHS** believed there was tension between landowners and game wardens. When the bill was drafted, the intent was to improve relations between FWP and landowners by requiring game wardens to obtain written permission. Removing game wardens' authority was not the intent. This was the reason the remaining provisions in 87-1-506 were left intact. Having probable cause would grant entry onto land.

**REP. BOB PAVLOVICH** asked **REP. OHS** if a phone call would be as acceptable as written permission. **REP. OHS** said it probably would. The reason "written" permission was included was to provide further protection for the department.

**Closing by Sponsor:**

**REP. OHS** said that the idea of probable cause would take care of most of the concerns raised. The intent when drafting the bill was to safeguard the rights of private property owners as well as promote courtesy, common sense, and good relations. He was agreeable to amendments that would provide clarification.

**HEARING ON HB 348**

**Opening Statement by Sponsor:**

**REP. HAL HARPER, House District 52, Helena,** stated that HB 348 was a product of consensus between diverse groups of people trying to come to an agreement on how social impacts could be regulated on Montana's bodies of water. HB 348 contained a Statement of Intent because it allowed the Board of Outfitters and Fish and Game Commission rulemaking authority. They would gain the power to govern public reservoirs, lakes, rivers, and streams; protect and preserve natural resources; preserve a diversity of recreational opportunities; and minimize recreational user conflicts. He believed the issue was critical. There was no question regarding the explosion of use in Montana's public water systems. He carried the bill that enacted the Smith River Management Act. If steps had not been taken to regulate the Smith River, many unique recreational opportunities would have been lost. This management agreement, although strongly opposed by certain groups originally, was now supported by most everyone. **REP. HARPER** emphasized that the rulemaking involved in the bill was to be "negotiated rulemaking." It was the most informal process allowed and mandated that a consensus committee be formed.

**Proponents' Testimony:**

**Robin Cunningham, Executive Director, Fishing Outfitters Association of Montana (FOAM),** presented written testimony. HB 348 was the resolution of Montana's recreational water users to deal with their own problems. People were interested in reducing recreational user conflicts along with preserving a diversity of recreational opportunities. The Fish and Game Commission and the Board of Outfitters must work together to arrive at amenable decisions. **Mr. Cunningham** also presented written testimony on behalf of **Paul Roos, outfitter,** in support of the bill. **EXHIBITS 2 AND 3**

**Jean Johnson, Executive Director, Montana Outfitters and Guides Association (MOGA),** began her employment with MOGA about the time the Smith River Management Act began. Outfitters were very independent and highly opposed to regulation, but they have a love and respect for Montana resources. MOGA commended the people taking the lead on this very difficult project.

**Ric Smith, Montana Council of Trout Unlimited,** handed in written testimony urging adoption of HB 348. It is the foundation to begin addressing the increasingly undesirable social impacts found on many of the state's streams and rivers. He emphasized that HB 348 was a consensus bill. **EXHIBIT 4**

**Diane McDermid, citizen,** offered written testimony. She spoke about the problems experienced on the Smith River and solutions

arrived at through the Smith River Management Act. It was discouraging that Montana must now begin to regulate and manage recreational bodies of water. She believed that the Fish and Game Commission should have broader authority to initiate management plans on any Montana river that needed it. She urged the committee to pass HB 348. **EXHIBIT 5**

**Allan Rollo, citizen**, distributed written testimony urging the passage of HB 348. **EXHIBIT 6**

**Dave Majors, River User Member Group**, handed in written testimony. Many of the popular recreational locations were experiencing increased use. HB 348 was a positive step toward addressing many issues facing water recreationalists. **EXHIBIT 7**

**Bill Allen, Montana Audubon Legislative Fund**, expressed their support for HB 348. It would provide better management.

**Gary Fritz, citizen**, said HB 348 would be good for his guided fishing business; a better quality recreational experience would be offered. It would also help alleviate overcrowding problems. Although HB 348 takes actions that may be unpopular, rules will be made through the negotiated rulemaking process and allow many people to have input.

**Tom Bugni, Skyline Sportsmen's Association**, expressed support for the bill.

**Tony Schoonen, Jr., outfitter**, emphasized that HB 348 helped maintain quality recreational experiences for everyone. Solutions will be "site specific."

**Dan Walker, citizen**, stated that Montana resources were well known. With the increase in interest in Montana's recreational areas, rulemaking authority must be provided to the Fish and Game Commission to preserve the state's resources.

**Tony Schoonen, Anaconda Sportsmen's Association**, expressed support for the bill.

**Jim Richard, Montana Wildlife Federation**, testified in favor of the bill.

**Pat Graham, Director, Department of Fish, Wildlife and Parks**, distributed written testimony. There was a dramatic increase in the number of people competing for sites to fish, boat, jet ski, and swim. Unfortunately, the increased use of a limited resource has resulted in social conflicts. These frustrations were directed to FWP due to the belief that they had the authority to control activities. However, Fish and Game Commission actions were limited to concerns relating to public health, safety, and welfare. As crowding increases, the quality of recreational opportunities will be altered. Many residents will be pushed from their traditional sites of use. Eventually, opportunities



that were unique to Montana will be replaced by circumstances that were commonplace in other states. This would adversely affect tourism. FWP fully supported HB 348, which would give the commission the necessary rulemaking authority to address these important issues. **EXHIBIT 8**

**Opponents' Testimony:**

**Larry Brown, Agricultural Preservation Association and Montana Cattlegrowers' Association**, stated that the language appeared to give additional rulemaking authority. He asked the committee to consider the nature of that authority. The consensus referred to within the bill did not include "everyone." Nobody had approached his organization soliciting input. HB 348 would provide an opportunity for the department to develop more user fees and to limit access. He was disturbed by the continued connotations of "preserving diversity" and "protecting" water resources. The bill does not address maintaining water quality, specific sites that the bill would affect, water rights, or the Endangered Species Act.

**Mike Murphy, Montana Water Resources Association**, spoke in opposition to HB 348, however, their opposition was directed at Section 1, lines 20-22. The additional rulemaking being granted over Montana water resources to the Fish and Game Commission was unnecessary. Currently, the commission already has extensive authority. If HB 348 passed, additional limitations and restrictions would be placed on the use of Montana's water resources. Also, access to public resources and private property rights could be negatively affected. Regulations to protect and preserve Montana's natural resources were already provided in numerous state and federal regulations and statutes. He encouraged the committee to amend or table the bill.

**Questions From Committee Members and Responses:**

**REP. DICK KNOX** asked **REP. HARPER** about the possibility of closure of public bodies of water mentioned in the Statement of Intent. **REP. HARPER** stated that the Fish and Game Commission currently had the ability to close public waters to fishing. The purpose of the provision was to allow the Fish and Game Commission to provide restrictions or partially close bodies of water. **REP. KNOX** said he was referring to the full closure of a stream and the rationale behind that. **REP. HARPER** said it was difficult to imagine a situation requiring total closure of public waters other than circumstances that arise as a result of whirling disease. Under current law, it was questionable if the commission had the authority to close public waters for any reasons.

**REP. PAVLOVICH** asked **REP. HARPER** about the fiscal note. **REP. HARPER** said there seemed to be enough money to carry out provisions in HB 348. No fiscal impact to FWP was projected.

**REP. CHASE HIBBARD** referred to page 2, lines 20-24. He asked **REP. HARPER** to respond to concerns over the Endangered Species Act, Clean Water Act, limitations and restrictions leading to violations of private property rights, and reduced access. **REP. HARPER** said once it evolved into a public forum, all people would have the right to be involved and to provide input. He referred to line 13. The commission already could adopt and enforce rules governing the recreational uses of public waters. HB. 348 was a logical extension of that authority. He stated that the opponents were concerned about the language used and possible hidden meanings. **REP. HARPER** expressed a sincere interest in working with agricultural and landowner interests.

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His intent was to protect and preserve the natural resources and the diversity of recreational opportunities utilizing the people who use the areas. He suggested adding language to take care of concerns regarding water rights. **REP. HIBBARD** asked if he intended to work out a compromise. **REP. HARPER** said yes.

**REP. TASH** referred to page 1, line 14, of the Statement of Intent. He asked **REP. HARPER** about commercial uses of water. **REP. HARPER** said the way "commercial use" was used in the Statement of Intent, it was intended to apply to guides and outfitters. Both recreational and commercial use appear in the bill because every aspect was being included. **REP. TASH** referred to page 3, line 21, "protect and preserve natural resources." He asked if this statement pertained to only recreational use. **REP. HARPER** said yes.

**REP. CHARLES DEVANEY** asked **Mr. Graham** about other bodies of water having user conflicts. **Mr. Graham** said there were user conflicts at Rock Creek, the Big Horn River, the Big Hole River, and the Madison River. Currently, fishing regulations were being used to address those conflicts.

**CHAIRMAN DOUG WAGNER** referred to page 1, line 19, "Rules may include but are not limited to..." This left rulemaking authority very broad. He asked **REP. HARPER** for comments. **REP. HARPER** said that type of statement was common throughout Montana laws. The problem with providing a specific list was that important categories could be excluded. That language has not been interpreted to grant authority to any department to make unnecessary rules.

**CHAIRMAN WAGNER** expressed concern regarding consensus groups and who participated in them. He asked how it would be possible to get all affected people involved in the negotiated rulemaking process. **REP. HARPER** said that concern was addressed specifically in Title 2 of the MCA. The negotiated rulemaking process was consensus-based. If there was a group or person adamantly opposed to an idea, through the consensus process they would be required to work it out. **CHAIRMAN WAGNER** asked about

the need for HB 348 and if the commission currently had the authority. **REP. HARPER** said he did not believe that they had the authority. The department currently has the authority to govern the uses of land and water when it was in agreement with federal agencies. However, rules regarding social conflicts did not exist. Rules had been made regarding the Smith River because of specific legislation. One of the main benefits of HB 348 would be to remove pressure from private landowners whose property is near bodies of water.

**CHAIRMAN WAGNER** referred to line 8 which said, "rules for use of land and water." Provisions were also provided to adopt rules in the interest of public health, safety, protection of hunting, swimming, trapping, and boating. He asked if this was current law. **REP. HARPER** said it was current law. **CHAIRMAN WAGNER** did not understand what would be gained through adopting rules under HB 348. He asked if the commission did not already have the rulemaking authority. **REP. HARPER** said no. If they did have that authority, a bill regarding the Smith River would not have been needed.

**Closing by Sponsor:**

**REP. HARPER** wished that there was no need for the bill. However, decisions must be made about Montana's water resources, recreational activities, and private property protection that will affect them in the future. These were serious issues. Over the past few years the use of public bodies of water has exploded. In some states user conflicts have resulted in violence. HB 348 prepared Montana's bodies of water for future recreational use.

[The committee took a 10-minute break and the tape recorder was turned off.]

**HEARING ON HB 349**

**Opening Statement by Sponsors:**

**REP. BOB RANEY**, House District 26, Livingston, said the purpose of the bill was to significantly change the policy in the fisheries division of the Department of FWP. Approximately one-half of the revenues received by the fisheries divisions would be dedicated to the enhancement of rivers and streams in Montana for the express purpose of producing more wild trout. He handed out a paper that described the reasons for HB 349. He also handed out a letter from **Bob Auger, Manager, Fisheries and Riparian Resources**, in support of HB 349. Pictures of a river restoration project were handed out for the committee to inspect. The commercial industry supported the bill. He handed out a letter from **Dave Kumlien, owner of the Orvis Fishing Shop**, supporting HB 349. The bill covered a diverse group of interests. He distributed a copy of an article from the Billings Gazette in

regard to a project being completed on the South Tongue River. **REP. RANEY's** intent was to take state money and obtain other money to improve Montana fishing. **EXHIBITS 9, 10, 11, AND 12**

**REP. LORENTS GROSFIELD, Senate District 13, Big Timber,** agreed to cosign the bill because he believed more emphasis should be place on fisheries improvements. It should help fisheries and landowner/sportsmen relations and department/landowner relations.

**REP. RANEY** said HB 349 appeared simple but was actually very encompassing and involved major changes. The department may not agree on some issues; however, he believed the department would agree with increased river restoration efforts. Leasing water for in-stream flow would provide additional funds. The department would make the final decision. No micro-managing was being proposed. The goal was to maximize, with the available money, regeneration of the fishing streams and rivers in Montana. The majority of money would end up in landowners' possession for projects. It would result in more fish because of better habitat and spawning areas. **REP. RANEY** handed out a copy of a gray bill of HB 349 which was written by **SEN. GROSFIELD** to address agricultural interests. He pointed out that a diverse group of legislators had endorsed the bill. **EXHIBIT 13**

**Proponents' Testimony:**

**REP. LARRY GRINDE, House District 94, Lewistown,** stated that HB 349 would greatly improve Montana fisheries. He commented that he was not representing personal interests. There was a problem obtaining cohesiveness between FWP and landowners. Access issues affected a lot of private property, resulting in many closures. This was the reason he was testifying. Landowners wanted to work with FWP and have plentiful wildlife resources. HB 349 would enhance Montana streams with more fish and aid in the spirit of cooperation. He urged the committee to pass HB 349.

**Ric Smith, Montana Council Trout Unlimited,** submitted written testimony strongly urging the committee to adopt the Future Fisheries Act. Wild trout were a crucial part of Montana's economy. Proposals ensuring Montana's fishery management was protected and enhanced were good business for the state. The Future Fisheries Act designated money for spawning habitat, watershed restoration, reduction of polluted runoff, streamside habitat enhancement, in-stream habitat improvements, and voluntary agreements between fishermen and landowners for water leasing to improve stream flows. **EXHIBIT 14**

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**Jim Braley, Joe Brooks Chapter Trout Unlimited,** spoke in favor of the bill. He stated that FWP was the steward of Montana's fishing resources. They need to give more attention to the propagation of wild fish and natural habitat. He read a letter

handed out by REP. RANEY from Bob Auger, Auger Enterprises. He also handed out a letter from Rod Walinchus, President, Joe Brooks Chapter of Trout Unlimited in support of the bill.  
**EXHIBIT 15**

**Wayne Hirst, citizen,** supported the bill. The largest threat to Montana's water resources was people and not the logging or mining industries. HB 349 was not as radical as the department may think. He suggested giving the program an opportunity to work. Although it was a major change, he believed it would be favored by the majority of the public.

**Bill Leary, Canyon Ferry Recreational Association,** handed out copies of pictures that were located in the Capitol. All of the pictures contained some body of water located in Montana. Montana has always had "good, clean, fishable water." He spoke on behalf of the members of the organization. The federal government owned the dam on Canyon Ferry Lake and some of the land surrounding the lake. However, it was a legal determination that the water in any of Montana's lakes and rivers belonged to the people of the state. Canyon Ferry was stocked annually by FWP with about 1 million fish and was perhaps one of the most heavily fished lakes in the state. In 1993, the organization testified in support of HB 665 that would take \$1 million of Dingell-Johnson Funds and apply it to river restoration. HB 349 provided much more than money. One of its goals was to return some of Montana's rivers to blue ribbon streams again. People come from all over the country to fish in Montana. He urged passage of the bill and suggested that there be an oversight committee to monitor FWP's developments. **EXHIBIT 16**

**George Ochenski, Trout Unlimited** spoke in favor of the bill.

**Opponents' Testimony:**

**Mike Murphy, Executive Director, Montana Water Resources Association,** expressed concerns about HB 349. They were concerned about nebulous concepts within the bill and whether or not objectives could be achieved. The fiscal note indicated a \$5 million expenditure. He expressed concern over the source of the money and whether other programs would be cut or reduced as a result. Other major concerns were negative impacts on private property and water rights.

**Larry Brown, Agricultural Preservation Society,** said that HB 349 contained good ideas. He expressed concern over water quality and fisheries enhancement programs. The definition of a "wild fish" needed to be clarified. Another concern dealt with the Future Fisheries Program and was found in Section 1 of the bill. FWP would need to complete an inventory of the suitable, critical, and occupied habitats, which would require many biologists to accomplish the work. **Mr. Brown** expressed concern over several words and definitions in the bill. On page 2, line 10, there was language regarding the enhancement of streams and

streambanks, instream flows, water leasing, and purchases. This language raised concerns regarding water rights. He suggested that the word "full" on page 2, line 13 be changed to "adequate." He was concerned about the amount of money to be expended on the program. **Mr. Brown's** final comments reflected a major concern about the negative impact of HB 349 on water rights.

**Fred Easy, citizen**, presented a witness statement in opposition to HB 349. He opposed the "targeting" of money for only cold water fisheries when so many of Montana's lakes were in need of enhancement efforts. **EXHIBIT 17**

**Pat Graham, Director, FWP**, distributed a copy of written testimony. Attached to it were several sheets regarding hatcheries and funding. Copies of River Restoration Program Projects and Fish Habitat Protection & Restoration Activities were distributed to committee members. FWP had some difficulty deciding on a position on HB 349. Montana and FWP have been strong supporters of wild trout and its habitat for years. Good habitat was the foundation for a successful fishery. Not just spawning habitat, but rearing habitats, water quality, water temperature, and habitat for the food that fish eat needed to be considered. Many of those fisheries can only be sustained through the artificial propagation of fish. **Mr. Graham** stated that HB 349 proposed to reallocate a significant portion of the fisheries budget to a specific set of activities aimed at enhancing spawning and other key habitats in coldwater streams. The bill would affect 50% of the nearly \$10 million in fisheries related revenue. He suggested that the River Restoration Program be expanded more slowly and include public input. FWP did not believe HB 349 represented the correct approach to addressing the needs of Montana's fisheries and anglers. **EXHIBIT 18, 18A, 19, AND 20**

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**Art Whitney, Montana Chapter of American Fisheries Society**, expressed opposition to the bill and presented written testimony. The bill's concept of restoring Montana's rivers and streams was admirable. However, it was being accomplished by making massive reductions in other important programs. They believed that rapidly accelerating this aspect of fisheries management program would reduce, rather than improve, the diversity of fishing opportunities. **EXHIBIT 21**

#### Questions From Committee Members and Responses:

**REP. DEVANEY** asked **Mr. Graham** to comment about the proposed funding for the fisheries program. **Mr. Graham** explained that about \$4.5 million would be redirected from current operations to the proposed fisheries program. He stated it was difficult to specify amounts and the programs that would be affected.

**REP. KNOX** asked **REP. RANEY** about the opposition by the agricultural community regarding the possible infringement on private property rights. **REP. RANEY** said that they probably did not have a chance to see the gray bill on HB 349 with the proposed amendments by **SEN. GROSFIELD**. The changes addressed agricultural concerns.

**CHAIRMAN WAGNER** asked if **REP. RANEY** knew how many miles of rivers needed restoration. **REP. RANEY** did not know. Many bodies of water in the state could use restoration. **CHAIRMAN WAGNER** said "mother nature" regulated rivers. For that reason, he expressed concern about placing money and time into restoration efforts. If the bill was aimed at cold water fisheries, he asked where the money would be going. **REP. RANEY** said the Stillwater and Whitefish rivers were examples of rivers that needed restoration.

**CHAIRMAN WAGNER** asked **Mr. Graham** if he knew how many miles of rivers could be restored with the appropriated funds. **Mr. Graham** said he did not know the number of miles. He commented that one river, such as the Clark Fork River, could drain the entire fund. If people leased their water to FWP, it could cost the department thousands of dollars.

**REP. HIBBARD** asked **REP. RANEY** about the source of the money that was shown on the fiscal note. **REP. RANEY** said it was not the intent to micro-manage the department. The language in the bill was well written. The final decisions regarding the sources of the funds would occur in the Appropriations Committee. **REP. HIBBARD** referred to HB 122, which gave people who were affected by any proposed department development the opportunity to have input. He asked if HB 349 proposed a similar type of process. **REP. RANEY** said yes. On page 3 of the gray bill, Section 3 stated that, "The department shall through a public hearing process and with the approval of the commission, prioritize its efforts regarding enhancement."

**REP. MARSHALL** asked how the necessary leases would be obtained for the spawning areas referred to on page 1, lines 29-30 and how many there would be. **REP. RANEY** explained that the gray bill did not contain that language. The amendments removed a portion of the original language. FWP would be allowed to make decisions regarding spawning locations. **REP. MARSHALL** asked about the number of leases that would be needed. **REP. RANEY** said that it was unknown. The intent was to establish a long-term plan for wild trout habitat.

**Closing by Sponsor:**

**REP. RANEY** respected the frustration of FWP of having to change to a radically new program; however, he believed that there was an ample amount of money to make the transition. There may be some short-term losses regarding reductions in current programs. HB 349 focused on long-term plans. After reviewing audits of FWP accounts that would help fund the program, there appeared to be

an excess of \$4 million. This money could be used to change FWP present operations to more futuristic operations. It was not his intent to micromanage the department. FWP and the commission would be allowed to make the decisions. **REP. RANEY** believed this was a good way to reorganize the department. HB 349 enhanced the value of private property as more wild fish were produced.

#### HEARING ON HB 384

##### Opening Statement by Sponsor:

**REP. BOB REAM, House District 69, Missoula,** said that historically not much attention has been paid to black bears and their management. HB 384 was the result of the completion of an Environmental Impact Statement. The word "brown" was stricken to reduce confusion. The black bear species had various color phases, including brown, blonde, and red. Expired dates in the current law were stricken. The combination big game sportsmen license was reorganized. HB 384 would give a person the option of obtaining the license with or without the black bear tag included. There would be a \$10 reduction if the black bear tag was excluded. New language in Section 4 mandated that the whole bear must be used when harvested; only portions of the bear cannot be taken.

##### Proponents' Testimony:

**Pat Graham, Director, FWP,** distributed written testimony. As a result of a recent EIS, Montana's black bear management program was revised in 1994. HB 384 was proposed by the department to implement three of the elements of the revised program. **EXHIBIT 22**

**Jean Johnson, Executive Director, Montana Outfitters and Guides Association,** expressed support for the bill. She expressed concern over mandating the consumption of the entire bear after it was harvested, because of public perception.

*{Tape: 3; Side: B; Approx. Counter: 000; Comments: Tape was turned over toward the end of Ms. Johnson's testimony.}*

##### Opponents' Testimony:

None.

##### Questions From Committee Members and Responses:

**REP. ELLIOTT** referred to Section 1, lines 22-26, and asked **REP. REAM** if the cost of a black bear tag would increase. **REP. REAM** said no. In that section, the dates were being removed because they were unnecessary. The prices remained intact.



**REP. KNOX** asked **Mr. Graham** if a bear hunter could give away portions of the bear rather than use it all himself. **Mr. Graham** said yes. FWP did not want to see the bear carcass left in the woods.

**CHAIRMAN WAGNER** asked **Mr. Graham** why the word "grizzly" was stricken and how the meat would be utilized if a person could hunt them. He also asked about the inclusion of mountain lions. **Mr. Graham** said that regulations regarding mountain lions were being upgraded and would be made the same as the proposed changes to bear regulations. "Grizzly" was stricken because it was illegal to hunt grizzly bears.

**CHAIRMAN WAGNER** pointed out that in the section regarding fees, grizzly was left in. **Mr. Graham** commented the language regarding fees was left intact in the event a grizzly bear hunt was reinstated. If it was ever legal to harvest grizzly bears, the same rationale regarding the meat would apply. The meat could be used entirely by the hunter or donated to a charity organization. **CHAIRMAN WAGNER** understood that grizzly bear meat was inedible. **REP. HARPER** responded saying that he had eaten grizzly bear meat when he was a child, and it tasted fine. **CHAIRMAN WAGNER** asked **REP. HARPER** if "grizzly" should be included in the section regarding use of the meat. **REP. HARPER** did not believe it would make any difference.

**CHAIRMAN WAGNER** asked the reason it was being mandated to use the entire bear, whether it was due to the EIS or to public perception. **Mr. Graham** said it was due to public perception. FWP wanted to maintain bear hunting opportunities and public support for it. The new language discouraged illegal trapping and hunting bears solely for trophy purposes. The meat could even be used as dog food, just as long as the carcass was not left in the woods.

**CHAIRMAN WAGNER** asked how requiring the utilization of the meat would affect illegal harvesting. **Mr. Graham** said most people harvest the animal with the idea of utilizing the whole animal. This would provide an additional deterrent to those people harvesting a bear for only a part of it. Currently when people left the carcass of the bear in the woods, it was not against the law.

**Closing by Sponsor:**

**REP. REAM** said he has known people who had eaten grizzly bears, and it was not that different from black bear meat. The bill mandated that the bear carcass not be wasted; however, it even could be used for dog food. It did not mean the hunter had to consume the meat himself. He emphasized that in the past, most black bear hunting was opportunistic. A black bear tag was part of a combination license. Most people do not buy that license to specifically hunt a black bear. He urged passage of the bill.

EXECUTIVE ACTION ON HB 375

Motion: REP. HARPER MOVED THAT HB 375 AND AMENDMENTS DO PASS.

Discussion:

REP. HARPER said the amendments would exclude the eastern Montana fishing district from the bill.

REP. BILL REHBEIN asked REP. HARPER why he could not exclude just walleyes from that region. REP. HARPER said the purpose of the bill was to prohibit the transport of live fish. There have been problems with people transplanting walleyes.

REP. WELLS asked REP. HARPER about the highway that divides the eastern district. REP. HARPER said that a person cannot go west of that highway with live fish or it would be illegal.

REP. SLITER said much of the Yellowstone River was in the eastern district. He asked if he felt comfortable with the amendment which would exclude this area. REP. HARPER said if fish diseases developed in the eastern district, transport of live fish would be stopped. The amendment regarding the eastern district was proposed as a courtesy to walleye fishermen and to provide pressure on the Fish and Game Commission to construct cleaning stations.

CHAIRMAN WAGNER asked REP. HARPER about the locations of the proposed cleaning stations. REP. HARPER said that Holter Lake, Lake Francis, and Tizer Lake were suggested.

CHAIRMAN WAGNER asked about FWP's opinion regarding the issue. Mr. Graham said currently there was a cleaning station at Holter Lake. He expressed a desire to examine the possibility of constructing a cleaning station at Lake Francis.

Vote: REP. HARPER AMENDMENTS. Motion carried unanimously.

Motion/Vote: REP. HARPER MOVED THAT HB 375 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 339

Motion: REP. MOLNAR MOVED THAT HB 339 BE RECONSIDERED FROM PREVIOUS ACTION IN WHICH THE BILL WAS TABLED.

Discussion:

REP. MOLNAR distributed a written statement formally requesting that the committee reconsider action on HB 339. Much of the proposed language would be deleted. The remaining language would make it state policy to manage wildlife and land on a district basis rather than on a regional basis. EXHIBIT 23

REP. ELLIOTT asked if REP. MOLNAR's intent was to move the proposed amendments if the committee agreed to reconsider the bill. REP. MOLNAR said yes. REP. ELLIOTT asked if he had a copy of a gray bill. REP. MOLNAR indicated that he did not. REP. ELLIOTT said that he was uncomfortable taking action on a bill "with no form." REP. MOLNAR commented that he had seen it done in other committees.

REP. EMILY SWANSON asked if the department had the option of making special permits available on a district basis. REP. MOLNAR said those decisions were made by the commission. REP. SWANSON asked if the commission currently had the option of making special permits available on a district basis. REP. MOLNAR said that they did have that option. They have been petitioned several times but have never chosen to do so.

Vote: RECONSIDER HB 339. Motion carried 16 to 2 with REPS. ELLIOTT and REAM voting no.

Motion: REP. MOLNAR MOVED THAT HB 339 DO PASS.

Discussion:

REP. MOLNAR proposed an amendment that would remove lines 24-26 from page 1. He proposed another amendment to remove lines 27-30 on page 2. The only part remaining would be Section 3, line 4, regarding special permits and district divisions.

Motion: REP. MOLNAR MOVED HIS PROPOSED AMENDMENTS.

Discussion:

CHAIRMAN WAGNER asked Mr. Sternberg to clarify the bill after the proposed amendments. Doug Sternberg, Legislative Council, stated as a point of clarification, the title would also have to be revised. The proposed new language in Sections 1 and 3 would be removed and those sections would return to the present statutory language. Section 2 would remain as it was originally proposed and a change in the title would reflect that.

CHAIRMAN WAGNER asked about support for the bill from outfitters and FWP. REP. MOLNAR said stockgrowers and outfitters did not indicate any problems. He was unsure about the department's position on the proposed amendments.

REP. REHBEIN asked REP. MOLNAR for clarification regarding the language to remain in the bill. REP. MOLNAR said that Section 2, subsection (3), contained the new language that would remain in the bill and establish state policy.

REP. HIBBARD asked Mr. Graham to explain the implications regarding the change from regions to districts.

*{Tape: 4; Side: A; Approx. Counter: 000; Comments: Tape was turned over at the beginning of REP. HIBBARD's question.}*

**Mr. Graham** understood that HB 339 would apply to all special permits. The issuance of sheep tags were of primary concern under the bill. If those tags were issued by district rather than region, there were implications for nonresident hunters and their success rate. Nonresident sheep hunters may not even be able to apply in some of the districts. The focus of their testimony at the hearing dealt with not exceeding 10% of nonresidents per district.

**CHAIRMAN WAGNER** believed that one of the questions that was asked at the hearing regarded a change in manpower needed by FWP. **Mr. Graham** said he did not believe there would be a change. The other point that he made in his testimony at the hearing was relative to private land and how much remained opened to public access.

**REP. REAM** commented that mountain goats, to be properly managed, should be managed by drainage basis. In those districts where there were only three or four permits, the 10% limitation would effectively exclude nonresidents from applying. There may be similar situations with moose and sheep. **CHAIRMAN WAGNER** remarked that the 10% limitation would be removed by the proposed amendments. He asked **REP. MOLNAR** if his statement was correct. **REP. MOLNAR** said yes. Originally he wanted to make the law clarify that 10% was the total amount as opposed to the current method. Currently, nonresidents were limited to 10% until residents stopped applying for the permits. If the language remained in the bill, there would have been some districts that nonresidents would not have been able to apply in. However, if a district only had one tag, a nonresident could not apply anyway.

**REP. SWANSON** asked **REP. MOLNAR** to explain his intent with HB 339. **REP. MOLNAR** said his intent was to have the state manage the wildlife in Region 7 and other areas so that residents of those areas would not be severely impacted by large game populations. Complaints have not been heard from those areas that were managed by district. He believed the state should control wildlife in manageable areas for the benefit of the wildlife, outfitters, and resident hunters. He said that currently in Region 7, about 12,000 people look for a place to hunt during the season.

**Vote:** DO PASS AS AMENDED. Motion failed 9 to 9 on a roll call vote with REPS. REHBEIN, SWANSON, ELLIOTT, HANSON, HIBBARD, MARSHALL, PAVLOVICH, REAM, and SLITER voting no.

**Motion/Vote:** **REP. FUCHS** MOVED THAT HB 339 BE TABLED. Motion carried 17 to 1 with **REP. MOLNAR** voting no.

EXECUTIVE ACTION ON HB 384

Motion/Vote: REP. REAM MOVED THAT HB 384 DO PASS. Motion carried 17 to 3 with REPS. WAGNER, FUCHS, and KNOX voting no.

EXECUTIVE ACTION ON HB 439

Motion: REP. HANSON MOVED THAT HB 439 DO PASS.

Discussion:

Mr. Sternberg explained that the sponsor of the bill, REP. KARL OHS, had proposed amendments. The word "written" would be stricken from the title and from page 1, line 30. On page 2, line 1, language would be added saying, "Nothing in this section may be construed to impair or impede the ability of a game warden to enter private property upon probable cause."

REP. REHBEIN said he disagreed with the amendment striking the word "written." Having written permission protected the landowner and game warden. Game wardens have approximately 10 months between hunting seasons that they could visit with landowners and obtain written permission.

REP. ELLIOTT pointed out that in REP. REHBEIN's district obtaining written permission might work. There were about 6,500 landowners in areas of his district. He asked Bob Lane, Attorney, FWP, if the amendment would impede law enforcement by game wardens. Mr. Lane said yes. REP. ELLIOTT asked about the definition of probable cause. Mr. Lane referred that question to Beate Galda, Enforcement Division, FWP. Ms. Galda explained that probable cause was more than just a suspicion of a violation. It was determined by each law enforcement officer.

REP. ELLIOTT said when an undercover operation was being completed, probable cause had not yet entered into the investigation. The officer was looking for probable cause. Ms. Galda stated that it depended on the reason the undercover operation was being conducted. In many cases, probable cause was trying to be established. REP. ELLIOTT asked if undercover investigations were used to uncover poaching operations and illegal game farming practices. Ms. Galda said yes.

Motion: REP. REHBEIN MOVED THE ADOPTION OF PROPOSED AMENDMENTS.

Discussion:

REP. REAM agreed with REP. REHBEIN's earlier comments. If a warden did not have written permission and there was a disagreement, it would be one person's word against another person's word. There was no document to refer to if a court case arose.

**Substitute Motion:** REP. HIBBARD MADE A SUBSTITUTE MOTION THAT THE WORD "WRITTEN" REMAIN IN THE BILL AND TO ADD THE PROPOSED LANGUAGE ON PAGE 2, LINE 1.

**Discussion:**

REP. KNOX supported the amendments.

REP. FUCH'S asked REP. HIBBARD to repeat the substitute amendment. REP. HIBBARD referred the question to Mr. Sternberg. Mr. Sternberg said the suggested language was that "Nothing in this section may be construed to impair or impede the ability of game wardens to enter private property upon probable cause." This language would be added at the end of line 1 on page 2. The word "written" would remain in the title and in the bill.

**Vote:** SUBSTITUTE MOTION. Motion carried 17 to 1 with REP. WELLS voting no.

**Motion:** REP. SLITER MOVED THAT HB 439 DO PASS AS AMENDED.

**Discussion:**

REP. WELLS remarked that he could not support the bill. He was not against private property rights; however, private landowners did not own the wild game. The game animals belonged to the residents of the entire state. Game wardens were in charge of protecting them. Private landowners deserved compensation for feeding those animals; however, when game violations occur, game wardens should have the authority to arrest the violator. The game warden that testified during the hearing indicated that some complaints regarding wardens on private property involved those landowners violating the law.

*{Tape: 4; Side: B; Approx. Counter: 000; Comments: Tape was turned over toward the end of REP. WELLS comments.}*

It would be an "enforcement nightmare if game wardens' hands were tied." If a landowner experienced a problem with a game warden, that person should go to the game warden's supervisor. He fully opposed the bill because he looked to game wardens for protection.

REP. HIBBARD spoke against the bill. He was not convinced that the bill solved any problems or fostered good relations between game wardens and landowners. There would be an increase in the opportunity for mischief.

REP. REAM opposed the bill. The bill addressed an issue that was not actually a problem. The committee should not remove enforcement tools from the department. There were about 100 game farms around the state. In completing inspections of game farms, some of those landowners had reasons for not wanting game wardens

to enter their property. He commented that there was also growth in the international trade of wildlife.

**REP. KNOX** held a positive position on HB 439. He saw it as an opportunity for FWP to improve and foster good relationships between wardens and landowners.

**REP. FUCHS** favored the bill. It represented taking personal responsibility.

**REP. HARPER** spoke against the bill. He believed the bill would turn Montana into a "poachers' heaven." HB 439 would also subject the department, state, and game wardens to costly lawsuits. Problems should be handled on an individual basis.

**REP. MARSHALL** said he had been a game warden. If game wardens' entry onto private property was impeded, there would be chaos. He was against the bill.

**REP. MOLNAR** said, "Suppose this bill were in the Judiciary Committee and it dealt with the Montana Board of Crime Control, which had undercover operations for drug busts." He asked the committee to think about the implications if drug enforcement agents had to obtain written permission prior to entering private property. He asked **REPS. KNOX** and **FUCHS** how they would vote on a bill for this scenario. **REP. KNOX** replied that the gravity of the crime was greater. In that case, he would vote for the bill. **REP. MOLNAR** said "crime was crime" and an "undercover agent was an undercover agent." He asked **REP. KNOX** what the difference was. **REP. KNOX** said that the nature of the proposed crime was the difference. **REP. MOLNAR** asked if a \$5,000 drug deal was of greater gravity than a \$20,000 poaching ring. **REP. KNOX** said in his mind, drug crimes were much worse.

**REP. ELLIOTT** said he had never had problems with game wardens entering his ranch. He welcomed them onto his land.

**CHAIRMAN WAGNER** said he did not have a large piece of private land nor had he had any conflicts in that department. However, he had seen problems with wardens in the past and problems with probable cause in the past. He did not think the bill was unreasonable.

*[The tape recorder was accidentally unplugged; 15 seconds were lost during CHAIRMAN WAGNER's comments.]*

**Vote:** DO PASS AS AMENDED. Motion failed 10 to 8 on a roll call with **REPS. WAGNER, REHBEIN, DEVANEY, FUCHS, HANSON, KNOX, SLITER,** and **TASH** voting yes.

**Motion/Vote:** **REP. HANSON** MOVED THAT HB 439 BE TABLED. Motion carried unanimously.

*[The committee took a five minute break and tape was turned off.]*

EXECUTIVE ACTION ON HB 122

**Motion:** REP. RANEY MOVED THAT HB 122 AND AMENDMENTS DO PASS.

**Discussion:**

REP. RANEY handed out a copy of proposed amendments and a copy of a gray bill. He discussed the amendments. The word "entity" and "entities" were stricken from the bill. If the citizens strongly object to the development, the department would have the option of working with the citizens to arrive at a compromise solution or allow the commission to decide after each side got an opportunity to present their opinion. People should have the right to appeal decisions regarding further park development.  
EXHIBITS 24 AND 25

REP. HIBBARD understood that if the public objected, FWP had an opportunity to meet with them and discuss solutions. If that did not work, the case could be brought before the commission, and they could decide. REP. RANEY said he was correct.

REP. HIBBARD asked REP. RANEY if the public could currently appeal to the commission regarding department decisions. REP. RANEY did not believe so. REP. HIBBARD asked the same question to Mr. Graham. Mr. Graham said that proposals have appeared before the commission. The commission has the authority to make those decisions if they choose to do so. There was not a formal appeal process established. REP. HIBBARD asked for clarification. Mr. Graham said that they have delegated authority; it has not been formalized. They have the authority to hear proposals regarding lands. The commission has the authority to make those decisions or delegate it to the department.

REP. DEVANEY asked Mr. Graham how often the commission met and how soon these types of issues could be placed on their agenda. Mr. Graham said the commission met 8 to 12 times per year. It would depend on when the objection was made, as to when it would be heard by the commission. The meetings occur about 30 to 60 days apart.

CHAIRMAN WAGNER asked Mr. Graham what would stop the department from continuing with the development until a commission hearing.

*{Tape: 5; Side: A; Approx. Counter: 000; Comments: Lost 5 seconds.}*

Mr. Graham suspected that they would not want to enter into contract bids or initiate the project for fear of another Daily Lake situation. They would not start another project until they resolved the conflicts. CHAIRMAN WAGNER asked what would happen if strong concern was expressed after bids were obtained. Mr. Graham understood that it would be too late. If there were unexpected problems, however, adjustments would be made. If the



problem was significant enough, it would cause additional cost, but they would redo the bids.

**CHAIRMAN WAGNER** said the commission could delegate the authority back to the department. He asked how that would work if somebody took a concern to the commission. **Mr. Graham** said that the department could enter into leases without commission review if they were under a certain dollar amount and acreage. In this instance, the authority was delegated to the department. Rather than taking each lease to the commission, the commission delegated that authority. Some situations regarding parks may work similar to this.

**CHAIRMAN WAGNER** asked what the amendments did that the current law presently did not do. **Mr. Graham** said the appeal process would be formalized for the projects. The committee was not giving the commission authority that they do not already have. They have the authority through policy or rule to implement a type of appeal process.

**REP. RANEY** said his main purpose in the bill was to give citizens authority over the parks because it currently did not exist.

**Vote:** AMENDMENTS DO PASS. Motion carried unanimously.

**Motion/Vote:** REP. RANEY MOVED THAT HB 122 DO PASS AS AMENDED. Motion carried 14 to 4 with REPS. FUCHS, DEVANEY, HIBBARD, and MOLNAR voting no.

#### EXECUTIVE ACTION ON HB 62

**Motion:** REP. HANSON MOVED THAT HB 62 BE RECONSIDERED FROM PREVIOUS TABLED ACTION.

#### Discussion:

**REP. HANSON** distributed a copy of a letter from Russ Greenwood, the person who was the main proponent of the bill. EXHIBIT 26

**Vote:** Motion carried 12 to 6 with REPS. WAGNER, REHBEIN, MOLNAR, FUCHS, SLITER, and DEVANEY.

**Motion:** REP. HARPER MOVED THAT HB 62 BE AMENDED.

#### Discussion:

**REP. HARPER's** proposed amendment would strike the language, "except black powder rifles" from the entire bill.

**REP. RANEY** asked **REP. HANSON** if only shotguns and bow and arrows would be able to be used during spring turkey season. **REP. HANSON** said yes.

REP. WELLS asked where stipulations were located about the usage of handguns in turkey season. REP. HARPER referred to the section that said, "Rifles may not be used to hunt or shoot upland birds unless the rifle is permitted by the department." For this reason, he did not see a reason to add handguns. REP. WELLS said he believed that handguns were allowed. REP. HARPER disagreed.

CHAIRMAN WAGNER asked REP. WELLS if he wanted to include handguns in the amendment. REP. WELLS said it was not critical. He just wanted to clarify that issue.

CHAIRMAN WAGNER asked Mr. Graham if handguns were allowed in the spring turkey season. Mr. Graham said no. Mr. Sternberg stated that there appeared to be no statutory prohibition against the use of handguns hunting any species. The bill only prohibited the use of rifles. It was possible that the commission had adopted rules regarding the use of handguns and hunting.

Vote: REP. HARPER'S AMENDMENT. Motion carried 15 to 3 with REPS. WAGNER, REHBEIN, and FUCHS voting no.

Motion: REP. HANSON MOVED THAT HB 62 DO PASS AS AMENDED.

Discussion:

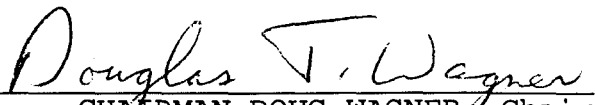
REP. HANSON stated that the commission had not acted on this issue even though they had the authority to do so. It was a matter of safety in the spring turkey season.

REP. WELLS mentioned he had safety concerns. Although some risk was involved, the use of high-powered rifles was unsafe during this particular season.

Vote: DO PASS AS AMENDED. Motion carried 12 to 6 with REPS. WAGNER, REHBEIN, FUCHS, HIBBARD, MOLNAR, and SLITER voting no.

ADJOURNMENT

Adjournment: 8:30 p.m.

  
CHAIRMAN DOUG WAGNER, Chair

  
MARY RIITANO, Secretary

DW/mr

# HOUSE OF REPRESENTATIVES

## Fish and Game

ROLL CALL

DATE Feb 9, 1995

NAME	PRESENT	ABSENT	EXCUSED
Rep. Doug Wagner, Chairman	✓		
Rep. Bill Rehbein, Vice Chairman, Majority	✓		
Rep. Emily Swanson, Vice Chairman, Minority	✓		
Rep. Charles Devaney	✓		
Rep. Jim Elliott	✓		
Rep. Daniel Fuchs	✓		
Rep. Marian Hanson	✓		
Rep. Hal Harper	✓		
Rep. Chase Hibbard	✓		
Rep. Dick Knox	✓		
Rep. Rod Marshall	✓		
Rep. Brad Molnar	✓		
Rep. Bob Pavlovich	✓		
Rep. Bob Raney	✓		
Rep. Bob Ream	✓		
Rep. Paul Sliter	✓		
Rep. Bill Tash	✓		
Rep. Jack Wells	✓		



## HOUSE STANDING COMMITTEE REPORT

February 10, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Fish and Game report that **House Bill 375** (first reading copy -- white) **do pass as amended.**

Signed: Douglas T. Wagner  
Doug Wagner, Chair

**And, that such amendments read:**

1. Page 1, line 30.

Strike: "or"

2. Page 2, line 2.

Following: "commission"

Insert: "; or (c) within and along the boundaries of the eastern Montana fishing district, as established by the 1994-95 commission regulations"

3. Page 2, line 23.

Strike: "or"

4. Page 2, line 25.

Following: "commission"

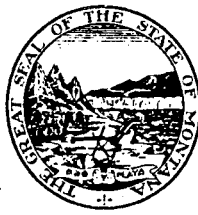
Insert: "; or (c) within and along the boundaries of the eastern Montana fishing district, as established by the 1994-95 commission regulations"

-END-

*Handwritten mark*

Committee Vote:  
Yes 18, No 0.

351333SC.Hbk



## HOUSE STANDING COMMITTEE REPORT

February 10, 1995

Page 1 of 1

Mr. Speaker: We, the committee on **Fish and Game** report that **House Bill 384** (first reading copy -- white) **do pass**.

Signed: Douglas T. Wagner  
Doug Wagner, Chair

*DB*

Committee Vote:  
Yes 15, No 3.

351335SC.Hbk



## HOUSE STANDING COMMITTEE REPORT

February 10, 1995

Page 1 of 2

Mr. Speaker: We, the committee on Fish and Game report that House Bill 122 (first reading copy -- white) do pass as amended.

Signed: Douglas T. Wagner  
Doug Wagner, Chair

### And, that such amendments read:

1. Page 2, line 8.  
Strike: "or entity"
2. Page 2, line 11.  
Following: "persons"  
Strike: "and entities"  
Insert: "residing in the state of Montana and"
3. Page 2, line 19.  
Strike: "AND ENTITIES"  
Insert: "residing in the state of Montana and"
4. Page 2, lines 21 and 22.  
Strike: "SHALL" on line 21  
Insert: "may"  
Following: "WITH THE" on line 21  
Strike: "INTERESTED" on line 21 through "SITE" on line 22  
Insert: "interested citizens"
5. Page 2, lines 22 and 23.  
Following: "DEVELOPMENT" on line 22  
Strike: remainder of line 22 through "SHALL" on line 23  
Insert: "and"
6. Page 2, lines 24 and 25.  
Following: "COMMENT" on line 24

Committee Vote:  
Yes 14, No 4.

351335SC.Hbk

Strike: remainder of line 24 through "PROPOSAL" on line 25

Insert: "in the manner outlined in this subsection (3) or the department may seek approval from the fish, wildlife, and parks commission to proceed with the improvement or development. The decision of the commission must be made after receiving comment from the department and the public at a regular or special commission meeting"

-END-



## HOUSE STANDING COMMITTEE REPORT

February 10, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Fish and Game report that **House Bill 62** (first reading copy -- white) do pass as amended.

Signed: Douglas T. Wagner  
Doug Wagner, Chair

And, that such amendments read:

1. Title, lines 5 and 6.

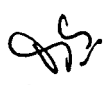
Following: "RIFLES" on line 5

Strike: remainder of line 5 through "RIFLES," on line 6

2. Page 1, line 14.

Strike: ", except black powder rifles,"

-END-

  
Committee Vote:

Yes 12 No 6.

351336SC.Hbk



# HOUSE OF REPRESENTATIVES

## ROLL CALL VOTE

### Fish and Game Committee

DATE FEB 9, 1995 BILL NO. 339 NUMBER 1

MOTION: DO PASS AS AMENDED

NAME	AYE	NO
Rep. Doug Wagner, Chairman	✓	
Rep. Bill Rehbein, Vice Chairman, Majority		✓
Rep. Emily Swanson, Vice Chairman, Minority		✓
Rep. Charles Devaney	✓	
Rep. Jim Elliott		✓
Rep. Daniel Fuchs	✓	
Rep. Marian Hanson		✓
Rep. Hal Harper	✓	
Rep. Chase Hibbard		✓
Rep. Dick Knox	✓	
Rep. Rod Marshall		✓
Rep. Brad Molnar	✓	
Rep. Bob Pavlovich		✓
Rep. Bob Raney	✓	
Rep. Bob Ream		✓
Rep. Paul Sliter		✓
Rep. Bill Tash	✓	
Rep. Jack Wells	✓	

9.7

# HOUSE OF REPRESENTATIVES

## ROLL CALL VOTE

### Fish and Game Committee

DATE FEB 9, 1995 BILL NO. 439 NUMBER 2

MOTION: DO PASS AS AMENDED

NAME	AYE	NO
Rep. Doug Wagner, Chairman	✓	
Rep. Bill Rehbein, Vice Chairman, Majority	✓	
Rep. Emily Swanson, Vice Chairman, Minority		✓
Rep. Charles Devaney	✓	
Rep. Jim Elliott		✓
Rep. Daniel Fuchs	✓	
Rep. Marian Hanson	✓	
Rep. Hal Harper		✓
Rep. Chase Hibbard		✓
Rep. Dick Knox	✓	
Rep. Rod Marshall		✓
Rep. Brad Molnar		✓
Rep. Bob Pavlovich		✓
Rep. Bob Raney		✓
Rep. Bob Ream		✓
Rep. Paul Sliter	✓	
Rep. Bill Tash	✓	
Rep. Jack Wells		✓

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date

2/8/95

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

H.B. 62 - Hansen

Reconsider yea

Representative

Tosh

voting

(aye or no)

Aye

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date

2-9-95

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

Bill No. HB62

and the Bill

on the Amendments

Representative

Samuel Fuchs

voting

(aye or no)

No

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date 2-9-75

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

Bill No. HB 122 On Amendments  
and the Bill

Representative Samuel Fuchs voting NO (aye or no)

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date

2/9/95

Mr. Chairman Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

Bill No.

HB 439

Vote amend. if any with Chair

Representative

Bill Tol

voting

(aye or no)

Aye



HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date

2/9/95

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

AB Bill No. 339

Vote amend. if any with chair

Representative

Bill Isch

voting

(aye or no)

Aye

HB 122

yes amendments  
yes bill

HB 62 yes

Vote w Reem  
on all issues

  
2-9-94



HB 439-ONE -- No-on-Bill-

HB 348 HARPER - OK - YES - -  
HOLD NO-ON-ANY-AMENDMENTS-UNLESS  
THEY ARE OK'D BY HARPER

HB 375 HARPER - YES - AND YES ON  
need AMENDMENTS THAT ARE OK'D BY HARPER

HB 391-DEBRUYKEN - NO -

HB 349 LAINY - GREY BILL YES.  
HOLD WITH AMENDMENTS YES

need NO-ON HB-339 HULMAN TO RECONSIDER NO

HB-62-MARION HANSON - TURNING SHEET  
TO RECONSIDER TO PUT ON 2<sup>ND</sup> RD - YES.

2/9/95

Chlorine

YOU HAVE MY  
VOTE

2/5/95

AB-122 ~~Ho~~

With Knee Chair

Tash

✓ HB 339 no.

✓ HB 384 yes

(HB 349 no Hold)

(HB 348 yes  
yes on amend. if ok by Harper Hold)

HB 439 no as amended!

HB 122 yes on amend. With you on bill.

HB 62 yes to reconsider yes on bill.

Ream has my proxy.

2/9/95

Twily, Shannon

THB439.HO

House Bill No. 439  
February 9, 1995  
Testimony presented by Pat Graham  
Montana Fish, Wildlife & Parks  
before the House Fish and Game Committee

Our wildlife belong to all Montanans. It has been the state's policy to conserve and maintain wildlife resources for the use and enjoyment of present and future generations. By law Montanans may enjoy their wildlife through hunting, trapping, and fishing. These activities are highly regulated privileges given to those persons who qualify and who comply with the applicable rules and regulations. Montana Fish, Wildlife, & Parks is the agency designated to protect the wildlife resources and regulate the lawful use and taking of wildlife.

Regulated activities include seasons open to hunting, trapping, or fishing; bag and possession limits; and manner, place, means and hours of taking wildlife. Much of Montana's wildlife is found on privately owned lands, and we estimate that over 70 percent of the wildlife harvested is taken from private lands. Hunting, trapping, and fishing take place in "open fields," whether publicly or privately owned. The Department's enforcement of wild game hunting, trapping, and fishing regulations would largely become a futile effort without the opportunity to conduct unannounced patrols.

The primary duties of Montana game wardens are to preserve and protect the wildlife of the State of Montana, monitor the lawful and ethical harvest of the state's wildlife resources, inspect for proper licenses and permits, collect data for management and season setting, protect private property from unauthorized use by sportspersons and from game damage, and ensure stability of our wild populations for future generations of Montanans to enjoy.

The relationship of the game warden and the landowner has traditionally been mutually beneficial. Wardens have always been the first line of communication for landowners, responding to trespass, game damage, and complaints of illegal activities including spotlighting and poaching. The Legislature maintained the special bond between landowners and game wardens by giving wardens the authority to enforce laws on criminal trespass, hunting without permission, driving off established trails, littering, and other laws where the warden has a duty to assist landowners with resource and landowner related concerns.

Wardens for the most part are stationed in small rural communities throughout the state and traditionally work with landowners. Over the years wardens have apprehended livestock rustlers, rural burglars, and other threats to landowners. Wardens not only appreciate the role that landowners play in the production and

protection of wildlife, but come to these people's assistance when natural disasters such as floods and fires threaten their livelihood.

Wardens as a rule do not enter private property except to regulate the taking of wildlife, and in most cases this regulation does not involve the landowner. Today's game wardens are extremely busy. They seldom have time to do random patrolling. If a particular ranch does not have significant history of hunting occurring there, or the warden has no complaints from the landowner, adjacent landowners, or sportspersons about illegal hunting activity, wardens usually do not go on the property. A significant number of landowners see the warden's presence on their private land as a positive asset and the two groups are normally allies.

Since the game wardens' duty is to enforce wildlife and recreational use laws, rules, and regulations, it is imperative they be able to inspect game, check licenses, and investigate for unlawful activities concerning the taking of Montana's wildlife on both public and private lands. Without this ability, the state's wild resources will be put in jeopardy, and could conceivably become available primarily to those individuals able to pay for hunting in an area that could be guaranteed free from the laws, rules, and regulations all the rest of us have to obey.

There are many reasons why this bill would be detrimental to wildlife, sportspersons, licensed outfitters and landowners. If wardens must have written permission from the private landowner or his agent to enter upon their lands, they would not be able to respond to reported or observed violations, no matter what the nature of the violation without prior written permission. A need for a game warden may occur when the landowner is away or unavailable to give permission. We have no way to determine who is an agent of the landowner for purposes of giving permission. Where a warden observes a violation, or a violation is reported on the land, the warden will not be able to deal with the situation. The landowner, the public, and the state will lose; the only winner is the violator who learns that all he or she has to do to avoid the laws of the state is to hunt, trap, or fish on certain private lands.

Although the Department encourages game wardens to meet with private landowners, the number of other duties the wardens have prevent their visiting each private landowner in the state. A system requiring written permission would not only hurt those landowners whom wardens were not able to contact, but would create a large record keeping burden on the Department. Long time local wardens would generally know the landowners in their district, know which ones had provided written permission, and know their property boundaries. New wardens or wardens sent to help in a district when the local warden is ill, on vacation, or attending other business would have to have some method of quickly determining which

property may be entered. In the case of a night call from a neighboring landowner or passerby on spotlighting, it would be virtually impossible to make such determinations quickly enough to catch the violator. Making it more difficult for wardens to enter private lands will remove a major deterrent to potential violators, increasing the chances unlawful activities will occur on private lands, not only with respect to game, but livestock and other private property concerns.

The bill is unclear on the effect of failure to have written permission on the service of court-issued search warrants, arrests made for probable cause, citations issued on the property, and the ability of the landowner to withdraw or condition written permission. The bill could become a primary defense for individuals caught in violation of the law. Suppose a landowner had given written permission to a warden to be on his lands but withdrew it when he was asked to do so by an outfitter leasing his land. Before the warden has notice of the termination of permission, he observes a violation on the landowner's property, catches the violator and cites him. The landowner may be pleased, but when the violator takes the case to court, the defense argues that the warden did not have a current written authorization to enter upon the private land. The case may be dismissed and the violator would be unaccountable for his or her unlawful activities. Neither justice nor the landowner is served; only the violator benefits.

If the bill is passed, undercover investigators would have to, by law, ask for written permission to enter upon private lands to conduct their investigations. This would make their efforts to investigate serious wildlife crimes that occur on private lands totally ineffective. The types of illegal activities that deal with commercialization and extreme resource abuse, would go unchecked. When an undercover officer books a hunt with an illegal outfitter about whom complaints have been made, the officer seldom knows exactly where the outfitter will take them. This bill would ultimately result in only agents of the U.S. Fish and Wildlife Service being able to access private lands without permission to investigate illegal wildlife activities within their jurisdiction. This will remove responsibility for enforcement from the state.

The enactment of the written permission requirement would effect other law enforcement personnel too. By statute other peace officers of the state, county or municipality are ex-officio wardens with the ability to enforce Fish and Game laws in the Commission of their duties. They would also be restricted to written permission. Deputies acting as ex officio officers enforcing fish and game laws would need to determine whether the Department had written permission or they would need to obtain their own. A deputy would have to have permission from the landowner to handle a trespass complaint if it were related to hunting, fishing or trapping.

Special licenses under the jurisdiction of the Department that require inspection of facilities, procedures, operations or record keeping, would also be affected. If Wardens have to have written permission to exercise the statutory right to inspect any facilities or records of these licensees, an individual violating the law or running an illegal business dealing in wildlife, would be able to prevent an inspection. Facilities operated in violation of the law could seriously impact Montana's wildlife resources.

The Department conducted an informal survey of wardens' right to patrol on private property throughout the United States. Twenty-six states responded. Twenty-three of these states have statutory law or case law upholding a game warden's right to reasonable open field patrolling on private property relative to fish and game regulated activities. The authority and case law is based on open fields or plain view doctrine and the fact that wild animals are not privately owned and hunting and fishing are a highly regulated sport -- a privilege not a right. Only one state, Connecticut, had no support for the right of game wardens to be on private property. The other two had limited patrol rights. None of the statutes or case law gives a warden the right to enter buildings used as a residence or nearby outbuildings without a search warrant or probable cause. Under Montana law, a warden may only search a dwelling or other nearby buildings with a search warrant - the same as other peace officers.

EXHIBIT 2  
DATE FEB 9, 1995  
HB 348

Testimony for HB 348  
House Fish and Game Committee  
2/9/95  
Robin Cunningham

I am the Executive Director for the Fishing Outfitters Association of Montana, and was head of the Legislative Policy Committee for the River Conflict Workshop that developed the framework for this bill. Since the beginning of the Workshop, I have also been appointed to the Montana Board of Outfitters.

Right off, I want to emphasize that the idea driving HB 348 is the will of Montana's recreational water users to deal with their own problems. The workshop that led us here included a variety of user groups - canoe clubs, kayakers, whitewater rafters, jet-boaters, jet-skiers, fishing clubs, fishing outfitters, University Recreation departments, and just plain folks (like Rep. Wagner and his friends) - all of whom agree on one thing - some of the waters we use are getting crowded, while others have multiple, possibly incompatible uses going on in the same place - in short, crowding and conflict. We want to do something before difficulties get worse where we see them, and we want to do something before the problems spread to areas where we don't see them. At the same time, all groups realize that some sort of regulatory authority is needed to channel our efforts to do the most good.

However, we don't want to lose our momentum, our sense of shared purpose, or our timing. That's why we want to use the negotiated rule-making process mentioned in the Statement of Intent. The way we see it, we can work to define the areas that need help, bring together people to develop specific solutions for the identified problems, then carry those solutions to the established regulatory agencies - the Fish, Wildlife, and Parks Commission and, when necessary, the Montana Board of Outfitters - to help turn our solutions into rules and apply them to the areas that need help.

I'd like to take a short tour of the bill, just so you can see how these two agencies fit into the scheme I've just outlined.

First, you can see we are focussing on recreational user conflict, but also mention natural resources and diversity of recreational opportunities. Why?

Well, we don't want to see crowding of, say, anglers causing damage to redds, the fish spawning areas common to most of our rivers - and we don't want to see waterfowl or wildlife nesting areas disturbed by inappropriate recreational use - and we don't want riparian habitat eroded or destroyed by overuse.



What about diversity? We would like to encourage all recreational uses, including whatever uses become popular in the future, but, at the same time, we want to emphasize that some uses are not compatible with each other in the same place, and some uses are inappropriate in certain areas. We don't think opportunities have to be lost, but we do want responsible use to be the guiding principle.

That's why we've put in a few examples of what rules might evolve from this process, including a sort of "zoning" that limits activities in time or place or both, restrictions on types of activities, and possible balanced restrictions on all user groups.

This last area is when both agencies would work together. If the groups decided that, as a last resort, allocation of users or launches, for argument's sake, was the only possible way to deal with crowding in certain stretches, the FWP Commission would determine how many people could use the stretch, then regulate the public, while the Board of Outfitters, using a negotiated ruling, would divvy up the commercial portion among the affected outfitters while emphasizing the quality and diversity of service providers.

That's about it . . . If I do nothing else, I want to leave you with one thought - this bill represents what our groups consider the best way to deal with problems we all recognize. When we combine the people and negotiations necessary to identify areas of concern - the what and the where - with the regulatory ability of the agencies mentioned - the how and the when, we have something that can work. All we are asking is the chance to do it. If you are here to help bring the people back into government, your approval of HB 348 this is one sure way to do it.

February 9, 1995

House Fish and Game Committee

EXHIBIT 3  
DATE FEB 9, 1995  
HB 348

Mr. Chairman, Members of the Committee:

Re: HB 348

I have been fishing the public waters of Montana as a private citizen for over forty-five years and have been a fly fishing outfitter and/or guide on the same for twenty-eight years. I have guided on most of the waters of southwestern and western Montana which have high quality wild trout fisheries. Paul Roos Outfitters has a number of guides and we are probably out there seeing what is happening on our public waters as much as anyone.

I have witnessed numerous attempts in past legislative sessions to deal with river crowding and conflict, some of which I have participated in. They didn't make it, and even though I was involved in some of those attempts, they deserved their fate.

HB 348 is different. It is different because of how it came about and because of who was involved. It came from an extremely inclusive and diverse group of river users. Thankfully, it is even supported by the Fishing Outfitters of Montana many of whom have suffered heartburn over the possibility of more control over the way they earn their living. I too, hate to see more regulation. But the alternative is worse.

Statistics show that some local Montana folks are reducing their use on their home waters due to crowding and/or conflict. Outfitters too, are finding it increasingly difficult to provide the type of experience to their clients for which Montana is famous.

This bill allows Montana citizens to greatly effect management decisions which they care so much about. While HB 348 may not be perfect, it is well written, broadly supported, and timely.

Please support HB 348.

Thank you.





Testimony of the Montana Council of Trout Unlimited  
regarding

HB 348, a bill to allow the Fish, Wildlife and Parks  
Commission and the Montana Board of Outfitters to adopt  
rules to minimize social conflicts on Montana's public waters

submitted by  
Ric Smith, Chairman, Montana Council of Trout Unlimited  
to the  
House Fish and Game Committee

Montana Legislature  
9 February 1995

The Montana Council of Trout Unlimited urges the Montana Legislature to adopt HB 348 because it is the foundation for Montanans beginning to address the increasingly undesirable social impacts found on many of the state's streams and rivers. Social impacts that concern Trout Unlimited members are crowding on popular rivers, such as the Bighorn or at times, the Big Hole, and the increasingly rancorous disputes that are occurring between motorized and nonmotorized recreationists on many of our rivers and lakes. We simply have to get a handle on the problems, and the fairest, most objective way to do it is to vest authority in the Fish, Wildlife and Parks Commission to set regulations on social impacts with the full involvement of the public.

HB 348 deserves support because:

1. It does not tell the commission how to regulate social impacts, but rather gives it the authority to do so.
2. It mandates public involvement in any rule change that regulates social impacts.
3. It ensures both noncommercial and commercial users of Montana's public waters get a say in resolving disputes over recreational impacts.
4. It promotes resolution of disputes over social impacts through the use of consensus.

Perhaps the most compelling reason to pass this bill is that it is the product of 7 months of discussion among different types of recreational users, both private and commercial. This bill resulted from a consensus of many Montanans with differing views on recreation. So if getting people of differing opinions to hash out their differences at the table instead of in the hostile atmosphere of the courts is to be a goal for Montana -- and TU believes it should be a paramount objective -- we have to reward those who get involved in building consensus. Passage of HB 348 would do just that.

February 9, 1995

EXHIBIT 5  
DATE FEB 9, 1995  
HB 348

House Fish and Game Committee  
The Capitol  
Helena, Montana

Chairman Wagner and Members of the Committee:

I'm Dianne McDermand from Great Falls. I'm a canoeist who has been paddling Montana rivers for over 20 years. I've also been a member of the Smith River Ad Hoc Committee since its inception 11 years ago. At that time, the Smith River was experiencing a steadily increasing level of use and there were few legitimate camping areas. Because of this, floaters began encroaching on private lands. Growing complaints from landowners about trespass and littering prompted the formation of our committee. Eventually, the use level reached a point where there was even social conflict among the floaters.

The committee used a collaborative approach to formulate a management plan to alleviate these problems. Committee members consisted of ordinary floaters like myself, commercial outfitters, riparian landowners, summer cabin lot owners, plus agency personnel from the Department of Fish, Wildlife and Parks and the Forest Service. Most of the members of the committee were from Great Falls but we encouraged participation from Helena residents because these two communities provide the highest number of users. Also, there was input from the White Sulphur Springs area. At the meetings we always had at least one, but sometimes as many as three people from each user group.

Since we were plowing new ground it took us a while to find our way. After several years of concerted effort and compromise, we did devise a plan. We were aided in this process by various experts such as fisheries biologists and a land use planner. We also relied on data from extensive surveys of Smith River users. During certain stages of development, well advertised, public meetings in several communities provided broader participation. Of course, all committee meetings were open.

Our advisory group crafted what we believed was a viable management plan, but current statute did not allow the FWP Commission enough latitude to implement the complete plan--a critical part being the authority to limit the actual number of users.

Consequently, in 1989 we brought a proposed Smith River Management Act to the legislature. I came here to testify for that bill with a heavy heart and a lack of enthusiasm, not because I didn't believe in what we were advocating--it was GOOD and NEEDED legislation--but it marked the end of an era in Montana. It designated the Smith as the first river in our state where use would be restricted--floaters no longer would have the freedom to put a boat on this river whenever they pleased. Many states before us have had to enact similar laws to manage their most popular rivers but I was extremely reluctant to admit that the time had come for this to occur in Montana. I swallowed hard and, for the protection of the river itself, asked the legislature to pass that bill.

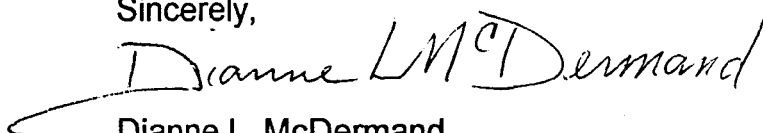
With the Commission being given authority to manage the river, we made tremendous strides in enhancing the recreational experience of floaters AND improving the relationship between those users and the adjacent landowners. In the ensuing years, complaints from users and landowners alike have turned to compliments for what the Department has achieved. It could not have been done without the enabling legislation.

I come before you today with a request very similar to the one in 1989. Our rivers continue to grow in popularity and to suffer increased pressure. There are several rivers that need regulation as desperately as the Smith did. Our philosophy is that we should not keep returning to the legislature to request individual river management acts. Therefore, this legislation would give the FWP Commission the broader authority to initiate a management plan on any Montana river when and where needed. Many of our rivers currently need no regulation and may not for a very long time, yet others desperately need attention and are past due for a management plan. This legislation would provide for a process that has proved to be successful on the Smith River.

I am saddened in recognizing that Montana too needs managed rivers but I assure you that this is GOOD legislation. It is based on a successful model and it is urgently NEEDED.

Please pass HB 348.

Sincerely,

A handwritten signature in black ink that reads "Dianne L. McDermand". The signature is written in a cursive style with a large, sweeping initial "D".

Dianne L. McDermand  
3805 4th Ave. South  
Great Falls, MT 59405  
Ph. 761-0303

EXHIBIT 6  
DATE FEB 9, 1995  
HB 348

February 8, 1995

House Fish and Game Committee  
State Capitol  
Helena, Montana

Chairman Wagner and Members of the committee,

I am Alan Rollo, from Great Falls, requesting your support today for House Bill 348.

On February 18, 1994, I was one of several individuals from around the state that sat down to discuss a serious issue that has been escalating in Montana for many years - conflict between users on our waters. Over the past year we enlarged the group, held state wide meetings, listened to other local groups and brainstormed our options. This past year has been alot of work for many people but we managed to agree on the path to take. We the public, came to a consensus on a path that will give an opportunity for community involvement while encouraging a resolution of local problems by local people.

We have not taken the task lightly to agree on a reasonable bill. The bill before you is just that - a cry by the public for help on resolving this contentious issue. This bill gives everyone a process to work on local problems and then put rules into place that will insure people comply with those local desires.

So please pass HB 348 so the people of the state can put into place rules that will defuse this issue before something serious happens.

Thank you.

Sincerely,



Alan Rollo  
808 52nd Street South  
Great Falls, Montana 59405

EXHIBIT 7  
DATE FEB 9, 1995  
HB 348

3289 Wood Duck Lane  
Stevensville, MT 59870-6696  
February 9, 1995

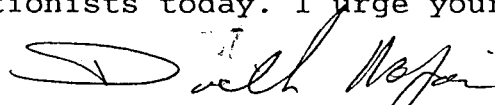
HB 348

As the number of people in Montana increases, so does the use of our rivers, lakes, and reservoirs. Many of our more popular recreational locations are now experiencing the effects of this increased utilization. We need to look to the future and be able to provide a wide array of recreational opportunities for all Montanans.

I am currently serving as a member of the River Use Group, which has met several times over the past months to look at ways in which to address many of the issues identified in the statement of intent for HB 348. Our group represented a broad spectrum of water recreational interests, including motorized and non-motorized, commercial and non-commercial users. We utilized a consensus approach as we looked at the many issues facing the recreational uses of our water resources.

Our group felt that a need existed for the Fish, Wildlife, and Parks Commission to address the 'social' aspects relating to the recreational use of our streams and lakes. We felt that through the rule making process, the FWP Commission could establish local working groups, comprised of individuals who represent a balance of interests involved in water recreation.

I feel that HB 348 is a positive step in addressing the many issues facing all water recreationists today. I urge your support of HB 348.



DAVID L. MAJORS  
River Use Group Member

THB348.HP

House Bill No. 348  
February 9, 1995  
Testimony presented by Pat Graham  
Montana Fish, Wildlife & Parks  
before the House Fish and Game Committee

We hear frequent reference to the notion that "Montana has been discovered." One consequence of this discovery is the dramatic change occurring on Montana's rivers and streams where a steadily increasing number of residents and nonresidents are competing for sites to fish, boat, jet ski, swim and generally enjoy the great outdoors. Commercial operations have also increased to meet the demand from nonresidents who are vacationing in Montana. Unfortunately increase use on a limited resource base often results in social conflicts. Sometimes users also impact streams and lands adjacent to them.

Montana residents, in particular, express a frustration that their traditional interests are being pushed aside by the ever increasing number of river recreationists. Some individuals place the blame on the outfitting industry, while others point their finger at their neighbor who enjoys a jet ski rather than a canoe, or a raft rather than a kayak. Often, these frustrations are directed to FWP due to the belief that we have authority to control these activities. However, contrary to these beliefs, the FWP Commission actions are limited to concerns relating to public health, safety and welfare.

There have been attempts by some to correct parts of this issue through the legislative process. There have been proposals to limit certain activities of outfitters or to restrict certain recreational activities. Legislation was introduced in the 1993 legislature to authorize the FWP Commission to conduct an inventory of the recreational uses on Montana rivers and to regulate recreational activity where it was necessary to protect recreational opportunity and to protect natural resources. The bill did not pass out of committee, but the Department was urged to develop more information on the subject.

In 1994, FWP invited representatives of outdoor recreation groups and all interested persons to participate in a series of workshops and meetings on this issue. These sessions were well attended. All user groups were given an opportunity to identify issues, to search for common ground and to suggest possible strategies for resolving these issues. The lack of authority to deal with social conflict was identified as one of the five major issues of concern.

From these working groups an issues management committee was formed. HB 348 is the result of that committee's efforts. While HB 348 is not an FWP proposal, we do recognize a serious need for



the state to address social conflicts. As crowding increases, the quality of recreational opportunities are altered. Many residents are pushed from their traditional sites of use. Eventually, those opportunities that are unique to Montana will be replaced by opportunities that are commonplace in other states. This will affect tourism.

We expect FWP would play a role in providing information and data to the Commission regarding recreation use levels, conflicts and impacts on Montana waters. We also plan to continue to provide a forum for the various water based recreational users to meet, discuss issues and develop strategies for addressing the problems.

We believe that public input will be the trigger for the initiation of Commission action to problems with full public involvement. FWP supports HB 348 which gives the Commission the means to address these issues.

# Future Fisheries Act

## *Changing Policy for a Better Montana*

### *What Does HB 349 Do?*

- Reduces spending and maintenance on expensive building projects
- Shifts funding priorities to land and resource stewardship -- a good neighbor policy to help landowners maintain and enhance rivers and streams
- Sets achievable goals for DFWP by prioritizing department actions while allowing maximum flexibility for management options. Requires the department to:
  - Respect water rights
  - Respect property rights of the owners of streambeds and property adjacent to streambeds and streambanks
  - Work with landowners to enhance condition of streams and streambanks via restoration, stabilization, revegetation or other cooperative efforts using the funds dedicated to this program.
  - Obtain public input and report to Legislature on expenditures, progress and long-term plan

### *How Is It Funded?*

HB 349 requires no new funds, merely a shift in existing expenditures to implement the program.

- 50% of fishing license fees
- 50% of federal sportfish restoration funds
- 50% of river restoration funds
- 50% of any other funds allocated to the department for the conservation of fish that are not statutorily mandated for other purposes.

### *What Are The Benefits?*

- Better landowner/sportsman relations
- Helps family agricultural operations
- Better overall water quality
- Stronger, more genetically diverse & disease-free fisheries
- Natural reproduction makes good fiscal and biological sense

### *Conclusion?*

- This is a wise, long-term investment that makes sense -- Montanans helping Montanans to produce healthier, stronger fisheries for everyone.

# AUGER ENTERPRISES INC.

P. O. Box 114 • Livingston, Montana 59047 • 406-222-2802

EXHIBIT 10  
DATE FEB 9, 1995  
HB 349

February 2, 1995

State Representative Bob Raney  
Capital Station  
Helena, MT 59620

To whom it may concern:

I am a private, independent Fisheries and Riparian Resource Manager. I rehabilitate and manage wild, private fisheries that have suffered from degradation. I have been working on a fishery called DePuy's Spring Creek which is part of the Armstrong's Spring Creek system, south of Livingston, Montana, in Paradise Valley. This has been an on-going project since March, 1985, in cooperation with the Montana Department of Fish Wildlife and Parks. (see AN INVENTORY OF THE SPRING CREEKS IN MONTANA) by Janet Decker-Hess, Montana Dept. of Fish Wildlife and Parks, Page 107.

Regarding the value of wild fish, wild fish habitat and spawning, as apposed to hatchery raised fish:

1. Economic value: For example, there are 3 Creeks in Paradise Valley south of Livingston Montana, Armstrong's, DePuy's, and Nelson's. Between the three creeks over 5,000 fisherman per year come to fish these waters alone. They spend approximately \$2,500.00 and \$3,000.00 per fisherman per trip. (Fisherman Demographics survey 1994 by Chatsworth Enterprises for the Riverkeeper Magazine.) These fisherman pay \$50.00 per day per person to catch and release wild trout. They come from all over the world.

If you were to add the hundreds of thousands of fisherman that come to fish other Montana waters with wild trout populations in Montana, ie. Yellowstone River, Madison River, Gallatin River, Bighorn River, Missouri River, etc. (not to mention hundreds of smaller streams), we are talking millions of dollars coming into the State's economy.

These fisherman are coming from areas that have extensive fish hatchery stalking programs, and yet they come to Montana and spend thousands of dollars to catch WILD fish.

State Representative Bob Raney  
February 2, 1995  
Page Two

2. Ecological value: To begin with lets work backwards. We are just recently faced with a potential ecological and economic disaster with the introduction of Salmonid Whirling Disease ( see Salmonid Whirling Disease United States Department of the Interior Fish and Wildlife Service Leaflet #17 Washington, D. C., 1992). This disease is primarily spread from hatchery-raised fish and introduced into wild populations. In my opinion the last thing we need is to increase the stocking of hatchery fish in the state of Montana.

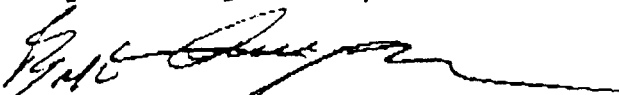
In the 1970s hatchery fish were introduced into the Armstrong's DePuy Spring Creek. This dramatically degraded the wild fish population, and the hatchery fish were in poor condition, ie, their fins were worn off, they had poor coloration, and they were poor fighters (lethargic). The overall fishing experience was less than desirable.

I highly support House Bill #349. I believe it is long over due and would be an ecologically and economically wise use and distribution of funds.

Regarding a fisheries biologist on the Yellowstone River system district, there has never been a more important time in history for the presence of a full-time biologist, and in my opinion we should have two biologists for the area. We have the potential threat of Whirling Disease and an historic increase in development and population growth. It is imperative to protect and enhance our natural wild fisheries more now then ever.

I am a long-time member of Trout Unlimited and have been on the board of directors in the Joe Brooks Chapter of Trout Unlimited for a total of six year. I feel that the Joe Brooks Chapter of Trout Unlimited is strongly in favor of House Bill #349.

Respectfully Yours,



Robert Auger  
Fisheries and Riparian  
Resource Management  
P.O. Box 1427  
Livingston, MT 59047  
Ph. 406-222-2802  
FAX 406-222-9514



DAVID L. KUMLIEN, Proprietor

1716 WEST MAIN STREET • BOZEMAN, MONTANA 59715  
(406) 587-4707 • FAX (406) 586-0724

February 9, 1995

To: Representative Bob Raney  
Re: HB 349EXHIBIT 11  
DATE FEB 9, 1995  
HB 349

Dear Bob,

Thank you for taking the time to call me and talk to me about HB 349. After my discussion with you and having had the opportunity to look over the updated version of HB 349, I have a much better understanding of the bill and the interests and intentions of the sponsors.

I had hoped to be able to attend today's hearing, but due to business obligations, I am unable to travel to Helena. I respectfully request that you include the following written testimony in the hearing record, and if you desire, you may read any portion of the following testimony.

"I have been fly fishing outfitter and fly shop owner in Bozeman for 17 years. My shop and guide service have grown over the years to become one of the larger operations in southwest Montana. I employ 15 people in my operation during the peak of the fishing season. I was the founder and first president of FOAM, the fishing outfitters association in Montana, and I have been deeply involved in issues relating to my business and sport of fly fishing.

After careful consideration, I would like to express my unconditional support for HB 349. Montana offers the finest stream and lake fishing for trout found anywhere in the world, and the guidelines set forth in HB 349 will insure that this fine trout fishing will continue for future generations.

Over the years, the Montana Department of Fish, Wildlife, and Parks has done an exemplary job in the managing our wild trout fisheries. My analysis of this bill indicates that there is nothing here that will preclude the F,W,P from continuing their fine tradition of wild trout fisheries management."

Sincerely,

Dave Kumlien  
Montana Troutfitters Orvis Shop

MEMBER

MFFA  
MONTANA FLY FISHING ASSOCIATION  
1980-1995

# Project to help South Tongue

For those of us who enjoy fishing in the Big Horn Mountains, things are only going to get better.

A joint habitat improvement project is slated for the South Tongue in an area known as Shuts Flats, about 1 1/2 miles upstream from its crossing of U.S. Highway 14.

Harold Golden, Big Horn National Forest wildlife biologist, states that the project is an effort between the Forest Service, Wyoming Game & Fish, Wyoming Department of Transportation and Little Bighorn Chapter of Trout Unlimited.

"The South Tongue is a wide, shallow stream with little protective cover. We have two objectives with the project: stabilize the banks and improve the fish habitat," Golden said.

"The present grazing lessee on Shuts Flats works very hard to keep the cattle off the river. The lessee has helped the area to start healing.

"It's evident that there are more grasses growing and fewer forbs like dandelions and wild strawberry. Grasses hold the soil much better — if a portion of grassy bank sloughs off into the river, it will stay together and help heal the bank," Golden explained. "If a

## WYOMING OUTDOORS



**Bob Krumm**

Columnist

portion of bank that is dominated by dandelions falls in, the portion will disintegrate."

Golden said the Game & Fish is doing the majority of the work since the fisheries crew has the expertise in habitat renovation. "In order to decrease the width of the stream and increase the depth of the pools, the fisheries crew intends to use several site specific improvements. These include cabling trees along the banks, placing rock rip rap, boulder placement and root wads.

"Root wads are uprooted trees (preferably spruce), that are placed into the stream with the roots facing upstream. This provides lots of cover and facilitates deepening of the stream.

"The Wyoming Department of Transportation will furnish the rip rap rock and boulders," Golden said.

"Before we can start the project, we need to upgrade the road to Shuts Flats so that it can be used by heavy equipment. That will be the extent of the project in 1995, although the Game & Fish crew wants to stockpile the rock and boulders so that they can get a jump on things in 1996," Golden said.

"The Little Bighorn Chapter of Trout Unlimited is applying for a grant to help fund the project. The members will also lend their muscle to help complete the project."

"Currently the stream is managed as wild trout fishery. There are a surprising number of trout in the stream," Golden said.

According to Bud Stewart, Wyoming Game & Fish fisheries biologist, the 1992 samples showed that there were 3,608 trout per mile, of those 2,616 were over six inches. There were 554 brook trout, 1,120 brown, and 1,934 rainbow.

"With the habitat improvement on the South Tongue, we'll get bigger trout. The reproduction is excellent in the stream — better habitat will mean better fish," Stewart said.

HB0349.01

House Bill No. 349

Introduced By

---

A Bill for an Act entitled: "An Act creating the future fisheries improvement program; providing for the protection and enhancement of Montana fisheries by requiring enhancement of spawning streams and other habitats for the natural reproduction of fish and growth of populations of wild fish; directing a portion of state and federal fisheries money to fund the future fisheries improvement program; directing the department of fish, wildlife, and parks to establish and administer the program; requiring the department to submit regular program progress reports to the fish, wildlife, and parks commission and to submit a progress report and the anticipated budget and related projections to the legislature; and providing an effective date."

WHEREAS, the rivers and streams of Montana hold one of the state's most important and economically valuable resources--wild fish; and

WHEREAS, the loss of spawning areas and other crucial habitats is one of the greatest threats to the natural reproduction and propagation of the fish resource; and

WHEREAS, the state is presently in a position to address the key issue of these aquatic habitats in order to promote the

future viability of Montana's wild fisheries before the continued loss of spawning areas and other habitats diminishes or destroys the resource; and

WHEREAS, it is a fiscally sound state policy to develop natural spawning areas and other habitats in anticipation of being able to reduce future funding that would otherwise be necessary to cover the ever-increasing costs of the fish hatchery program; and

WHEREAS, a wild fisheries enhancement program will immensely benefit landowner/sportsperson relations.

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. Section 1. Future fisheries improvement program -- funding priority -- reports required. (1) In order to enhance future fisheries through natural reproduction, the department shall establish a statewide program that ~~ensures that~~ promotes functioning spawning tributaries ~~are available for each 10 river miles and each 10 stream miles~~ for the rivers and streams of Montana's cold water fisheries.

(2) The following amounts must be expended by the department to enhance future fisheries, as directed by subsection (1), until the ~~required number of~~ legislature determines that sufficient functioning spawning streams or other identified key habitats are established and enhanced for the rivers and streams of Montana's cold water fisheries:

(a) not less than 50% of the amount in the state special revenue fund in 87-1-601 composed of fishing license fees;

(b) not less than 50% of federal funds allocated to the



state for the conservation of fish;

(c) not less than 50% of the funds in the river restoration account; and

(d) not less than 50% of any other funds allocated to the department for the conservation of fish, which funds are not statutorily mandated for other purposes.

(3) The department shall by January 1, 1996, through a public hearing process and with the approval of the commission, prioritize its efforts regarding the long-term enhancement of streams and streambanks, instream flows, water leasing and, lease or purchase, fish hatcheries of stored water, and other programs that deal with wild fish and aquatic habitats to ensure that the future fisheries improvement program established in this section receives full funding and prioritized department administration. In prioritizing its efforts and implementing the future fisheries improvement program, the department shall respect all existing water rights and the property rights of the owners of streambeds and property adjacent to streambeds and streambanks.

(4) (a) The department shall report to the commission on the progress of the future fisheries improvement program every 6 months and post a copy of the report on the state electronic bulletin board to ensure public access to the report.

(b) The department shall also present a detailed report to each regular session of the legislature on the progress of the future fisheries improvement program. The legislative report must include the department's program activities and expenses since the last report and the project schedule and budget schedule for the ensuing 10 years' implementation of the future fisheries improvement program.

NEW SECTION. Section 2. Codification instruction.

[Section 1] is intended to be codified as an integral part of Title 87, chapter 1, part 2, and the provisions of Title 87, chapter 1, part 2, apply to [section 1].

NEW SECTION. Section 3. Effective date. [This act] is effective July 1, 1995.

-END-



EXHIBIT 14  
DATE FEB 9, 1995  
HB 349

COMMENTS OF THE MONTANA COUNCIL OF TROUT UNLIMITED

BEFORE THE HOUSE FISH AND GAME COMMITTEE,  
MONTANA LEGISLATURE

regarding

HB 349, THE FUTURE FISHERIES IMPROVEMENT ACT

comments submitted by

Ric Smith, chairman,  
Montana Council of Trout Unlimited  
February 9, 1995

The Montana Council of Trout Unlimited strongly urges the Legislature to adopt the Future Fisheries Act because it helps ensure Montana's most valued sport fisheries -- those that include stream-dwelling wild and native trout and other salmonids -- receive adequate management to ensure their perpetuation for future generations.

In 1987, DFWP estimated that Montana's sport fishery generates at least \$200 million annually to the state's economy. It is generally agreed that the fishery is worth considerably more than in 1995. It is also widely recognized that much of that economic activity, as well as Montana's reputation as the nation's premiere trout fishing state, is generated by our wild and native trout fisheries. For example, the Madison River's wild rainbow and brown trout fishery generates some \$33 million annually for southwest Montana, the effect of which is apparent in the robust trout-related economies seen in West Yellowstone, Ennis and Bozeman. Nearly 65 percent of license dollars received by DFWP come from out-of-state. The fishing portion of this comes primarily from anglers who come to fish the state's world renowned wild trout fisheries such as the Madison, Big Hole, Yellowstone, Missouri and Big Blackfoot Rivers. Many, if not most of Montana's anglers also fish for wild trout. Therefore, it makes abundant sense that a considerable portion of fishing license dollars should go to perpetuating this sustainable resource.

Wild trout are a crucial leg of Montana's economy as well as our way of life. Proposals that ensure Montana's fishery management is prioritized to protect and enhance the value of wild and native trout is good business for the state. The Future Fishery Act does just that because it puts money into spawning habitat, watershed restoration, reduction of polluted runoff, streamside habitat enhancement, in-stream habitat improvements and voluntary agreements between anglers and landowners for water leasing that improve stream flows.

The Future Fishery Act will help accomplish the following goals:

1. It puts more general license dollars on the ground to enhance wild and native trout production.
2. It places a greater emphasis on having Mother Nature produce our fish; and it de-emphasizes -- but not completely -- Montana's increasing dependence on producing fish in hatcheries. TU believes strongly that when given the chance, nature can often do a better job of producing fish than government can.
3. It helps build bridges between private landowners and sportsmen by putting dollars into projects that help landowners and anglers. Trout Unlimited has a long history of working together with ranchers, farmers and other landowners on mutually beneficial projects.
4. It will help Montana be more proactive in providing necessary habitat -- without hurting private property owners -- for disappearing native fish that could be listed as endangered species, such as bull and cutthroat trout, and Arctic grayling.
5. Finally, it helps ensure that more license dollars get to on-the-ground projects, which in the long run may be the most cost effective way to spend license dollars and produce the kind of fishing many residents and visitors to Montana treasure.

The Future Fishery Act:

- Does not close down Montana's hatchery system. It re-directs some hatchery dollars to projects that promote natural fish production. It does, however, mean DFWP may end up operating fewer coldwater hatcheries. Montana TU recognizes that hatchery production does have an important role in Montana's fishery picture, primarily in delivering fish to popular lake and reservoirs that cannot naturally produce trout. It is our position, though, that too much of our license dollars and matching federal funds go into hatcheries with little public analysis of need or comparisons against alternative investments in natural fish production.
- Does not mean DFWP will have to lay off dozens of people. It does mean that the department may have to reassign some of its current staff to different tasks. It's possible a few jobs may be eliminated.
- Does not mean DFWP will have to terminate important fishery functions it now carries on. For example, 310 permit evaluations, which are done by field biologists, can certainly be done under the Future Fishery Program because they are related to natural habitat protection.

Basically, the Future Fisheries Act will help get more money to the ground so that biologists and other specialists will have more opportunities to work directly with the resource and all landowners -- private and public -- to get our stream fisheries up to snuff. Currently, many important streams, such as the Blackfoot, Clark Fork, Bitterroot, Sun, Jefferson and upper Rock Creek, do not produce up to their biological capacity because of habitat problems. In

addition, other streams with good fisheries such as the Big Hole and Ruby Rivers are constantly stressed because of chronic habitat problems that can be reduced with increased cooperation and funding aimed at working with landowners.

If streams produce more fish, it may reduce some of the need to stock lakes.

DFWP administrators are critical of HB 349 because they believe it disrupts the status quo too much. We don't believe it's that big a disruption. Nonetheless, they should look at this bill positively because the status quo is not preventing serious problems to Montana's fisheries. For example:

- Most of Montana's native cold-water sportfish are candidates for the endangered species listing, including bull trout, westslope and Yellowstone cutthroat trout, redband trout and arctic grayling. Kootenai White Sturgeon are already on the federal list. In addition, a number of native warm water species are reportedly in trouble, including pallid sturgeon (a listed species) and paddlefish. Habitat degradation is one of key reasons these fish are disappearing.
- Whirling disease has been discovered in trout populations in two of Montana's best trout fisheries, the Madison and Ruby. And though its cause is not habitat related, it poses a major threat to all wild fisheries in the state, especially those that have low population numbers because of insufficient habitat.
- In six years, DFWP has consummated only 3 in-stream flow leases with private landowners -- even though anglers have been pressing the state to find permanent, cooperative solutions to chronic flow problems in crucial fisheries such as the Big Hole River.

DFWP often cites lack of money when TU and others ask the department to improve habitat for disappearing native species or for enhancing in-stream flows. The Future Fisheries Act responds to the money problem.

Montana TU does not believe HB 349 as written is the ultimate solve-all for enhancing and protecting our wild trout fisheries. But it's a major step forward. TU recognizes there may be other workable alternatives for getting money on the ground for fishery enhancement, such as re-directing funding targeted for major capital investment projects like the enhancement of the Bluewater hatchery, which the department believes is worthy of a \$2.5 million dollar investment of general license dollars for the next biennium. For comparison, DFWP's planned budget for the River Restoration program -- which enhances natural fish production -- is only \$270,000.

The Future Fishery Act deserves support because it is sound policy, sound for relationships with landowners and it's a fiscally sound way to spend existing money for Montana's most highly valued fisheries.

February 8, 1995

House Fish and Game Committee  
State of Montana  
Capitol Station  
Helena, Montana 59620

EXHIBIT 15  
DATE FEB 9, 1995  
HB 349



JOE BROOKS CHAPTER

P. O. Box 1378  
Livingston, MT 59047

Dear Committee Members:

The Joe Brooks Chapter of Trout Unlimited has a strong interest in the protection, preservation and enhancement of naturally propagating cold water fisheries. Our state is currently blessed with arguably the finest naturally propagating trout fishery in this country, if not the world. The importance of maintaining and improving this fishery is of major concern environmentally and economically to our chapter and the citizens of Montana.

Stewardship of such an important resource requires a substantial effort to implement programs that ensure a natural cold water fisheries for the future, as well as funding to support these programs. Our chapter places high priority on programs that: promote the improvement and establishment of spawning areas; provides water for the successful completion of spawning activities, including the ability of trout fry to return to major drainage rivers from tributaries; and those that protect, preserve and/or enhance riparian zones.

It is our opinion that there is room for improvement in the way we are currently managing this resource and the degree of importance funding for these activities have received in the past. **HB 349 appears to refocus priorities and funding towards the propagation and maintenance of wild trout and their habitat. The goals and objectives of our chapter regarding cold water fisheries and naturally propagated trout populations would be assisted by the implementation of HB 349.**

We are pleased that this bill will assist the Department of Fish, Wildlife and Parks in providing the necessary funding required to continue their important role as stewards of Montana's cold water fisheries. We look forward to the passage of HB 349 and providing assistance to FWP in this important endeavor.

Sincerely,

Joe Brooks Chapter Trout Unlimited

Rod Walinchus, President

cc: Mr. Bob Raney



FEDERATION OF FLY FISHERS

Conserving - Restoring - Educating Through Fly Fishing

EXHIBIT 16  
DATE FEB 9, 1995  
HB 349

Law Library

The paintings in the Law Library were painted by Ralph E. DeCamp in 1911-12 and 1927. The paintings are oil on canvas and are 42" x 60". They depict various landscapes in the state and are valued at \$12,000 each by the art conservator.



Figure 13: North side: "Lake McDermott", Glacier Lake in Glacier Park. 1927.

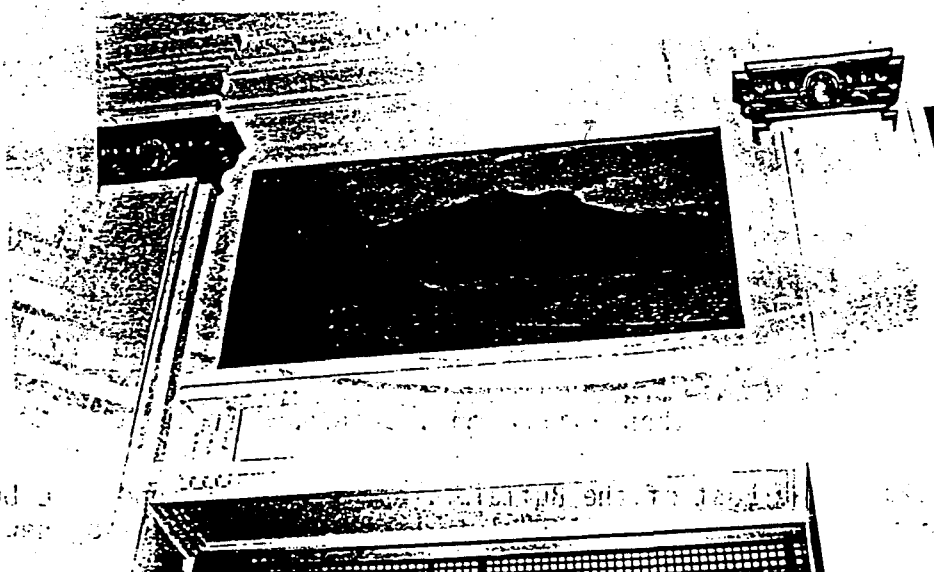


Figure 14: First on west side: "Last Chance Gulch". Now Main Street of Helena. \$30,000 worth of gold extracted. 1912.

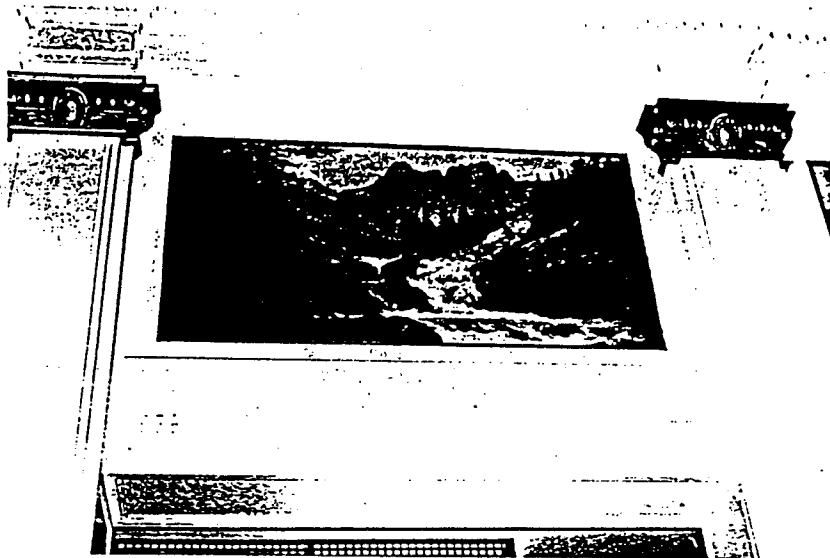


Figure 15: Second on west side: "East Rosebud River in Carbon County". Pilot and Index Peaks in rear. 1927.

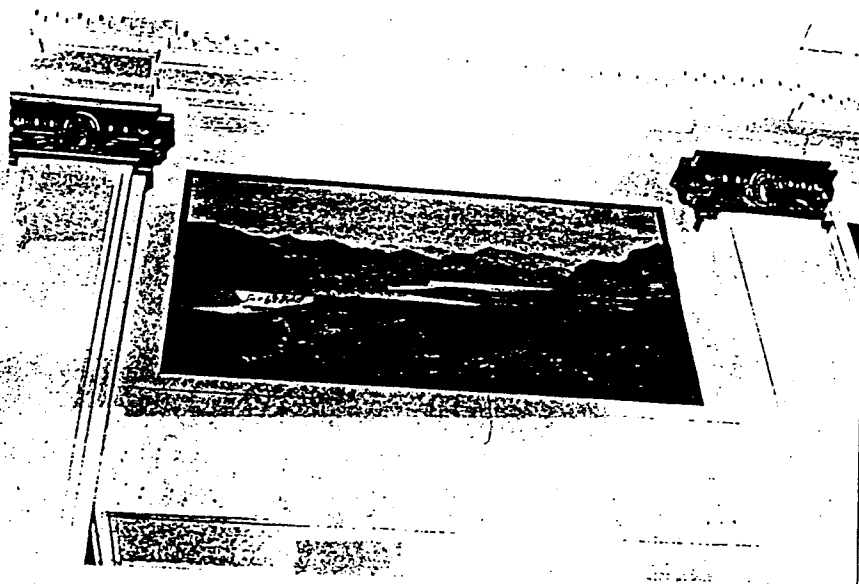


Figure 16: Third on west side: "Holtz Dam" on Missouri River, forty miles north of Helena. 1927.



EXHIBIT 16  
DATE 2-9-95  
HB 349



Figure 17: Fourth on west side: "Indian Country", near St. Ignatius on Flathead Reservation. 1912.



Figure 18: South side: "The Gates of the Mountains", Missouri River leaving canyon. 1912.

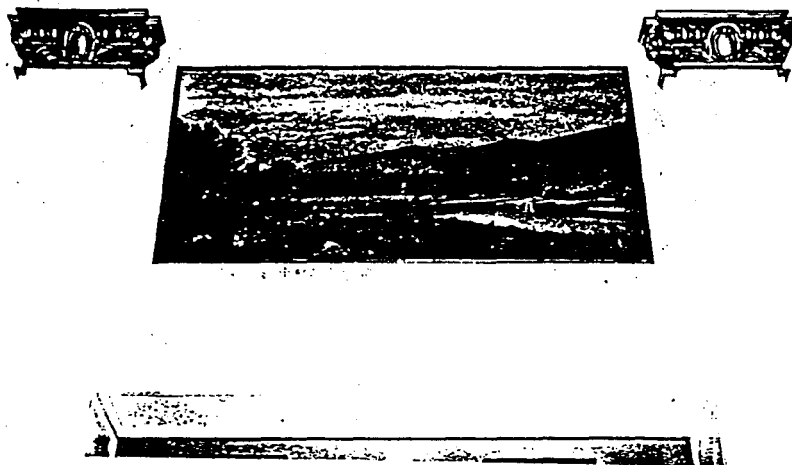


Figure 19: First on east side: "The Bitter Root", twelve miles north of Hamilton. 1912.



Figure 20: Second on east side: "Flathead Lake", from west side. 1912.

EXHIBIT 16

DATE 2-9-95

HB 349

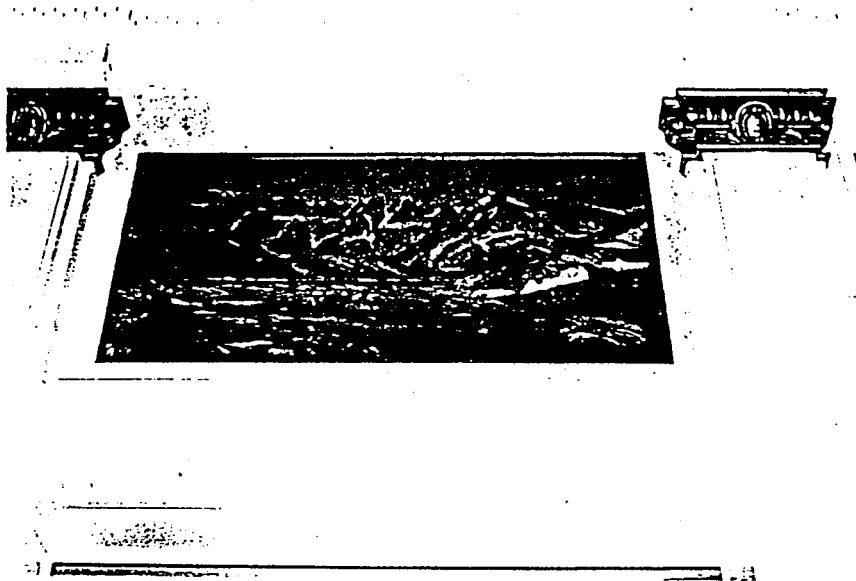


Figure 21: Third on east side: "Above Timber Line", at northeast corner of Yellowstone Park. 1927.

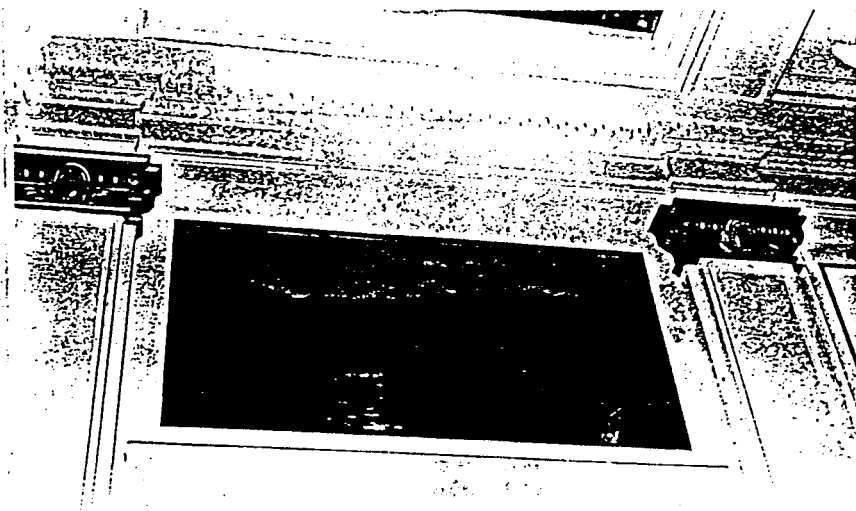


Figure 22: Fourth on east side: "West Gallatin", at mouth of canyon, Missoula, 1927. (original draw made "West Gallatin") (photo negative 000392)

Figure 22: Fourth on east side: "West Gallatin", at mouth of canyon

HB 349

EXHIBIT 17  
DATE FEB 9, 1995  
HB 349

HOUSE OF REPRESENTATIVES

FISH & GAME

COMMITTEE

WITNESS STATEMENT

PLEASE PRINT

NAME Fred EASY BUDGET \_\_\_\_\_

ADDRESS 1735 Jerome Place Helena DATE 9 Feb 95

WHOM DO YOU REPRESENT? Myself & multi species anglers

SUPPORT \_\_\_\_\_ OPPOSE ✓ HB 349 AMEND ✓

COMMENTS: I oppose the targeting of money for a cold water fishery only. Fairness requires that priority be targeted for native wild fish which include cold, cool and warm water fish. I could support this bill if its amended to focus priority on wild native species,

I can't support 50% of funding to be diverted to this priority as many of our lakes and reservoirs would have serious cuts in enhancement efforts. I could support this bill if it is amended to earmark 10-15 percent of funds for improvement of native fish species.

House Bill No. 349  
February 9, 1995  
Testimony presented by Pat Graham  
Montana Fish, Wildlife & Parks  
before the House Fish and Game Committee

I had some difficulty in developing a position on this legislation in one respect.

The State of Montana and the Department of Fish, Wildlife & Parks have been strong supporters of wild trout and trout habitat for years. The Montana legislature passed the nations first stream protection act in 1963. A decade later a water reservation law was enacted which provided one means to maintain some instream flow.

Montana took a leadership role in reestablishing wild trout fisheries. In the mid-1970s a bold move was made to stop a nearly century long practice of stocking trout in the Madison River. Few believed that we would be successful. It is no secret today that it worked. It worked there, and in the Yellowstone, Big Hole and other rivers. It is still working today.

The foundation for a wild trout fishery or any fishery is habitat. Not just spawning habitat, but rearing habitat, water quality, water temperature, and habitat for the food fish eat. Competition between fish species also plays a role. And as we were so rudely reminded in December--diseases like whirling disease can also be an important factor.

In addition to maintaining habitat by working with conservation districts on 310 permits, reviewing timber sales, or affecting reservoir operations; we face many other challenges. Illegal fish introductions, conflicts between user groups, regulation of harvest and the need to provide and maintain access to these fisheries are important issues.

As important as coldwater streams are to Montana's fisheries, only half of the angling use occurs on these waters. Lakes and reservoirs provide the other half of the recreational use--both for cold and warmwater fisheries. There are well over 1,000 lakes and reservoirs in Montana. Many of those fisheries can only be sustained through the artificial propagation of fish. We stock up to 600 lakes and reservoirs annually with over 8 million coldwater and between 20-40 million warmwater fish, most of which are tiny walleye fry.

The preamble of intent states that the cost of the hatchery program is ever increasing. Over the past four years the costs have actually declined despite inflation and increases in fish food. Our hatchery program runs on half the money of any neighboring state. You should be proud of your state hatchery system.

So why am I telling you all of this? The bill before you proposes to reallocate a significant portion of our fisheries budget to a

fairly specific set of activities aimed at enhancing spawning and other key habitats in coldwater streams.

This bill will affect 50 percent of the nearly \$10 million in fisheries related revenue. To understand what you are being asked to do, I would like to explain how the money is currently being spent. I will discuss what we are currently doing to enhance habitat. Then I will present some scenarios to give you an idea of the types of tradeoffs that will have to be made. In conclusion I will suggest that must be a better way to achieve a goal of enhancing stream habitat than is being proposed.

I must say, I find it ironic having already spent four hours before our Appropriations-Finance and Claims Joint Subcommittee and another four hours before the Long Range Planning Committee on fisheries related budget issues that I must cover the same ground in only a few minutes before this committee today.

Currently we spend the revenue generated from the Wallop-Bureau and fishing license revenue as presented in Attachment 2. This includes habitat protection, fish hatchery production, fishing access development and acquisition, law enforcement, aquatic education, stream restoration, survey and inventory and more. I would add that the revenue generated by fishing license is not specifically allocated back to that program. Only a small portion is actually earmarked. You should also note if all the monies were earmarked, the current fisheries program including capital projects would be \$2 million smaller than requested for FY96.

I would like to digress for a moment and review some of the habitat enhancement work we are currently doing. Two reports have been distributed for your review. The blue report covers the River Restoration Program--fishing license money that has been statutorily earmarked for this work. The other report covers habitat enhancement work being done beyond the River Restoration Program. I think you will be impressed.

The River Restoration Program has 52 approved projects in the last four years. We authorized \$624,000 worth of projects and leveraged \$1.3 million in cost share. This has allowed us to have a significant program without sacrificing other program areas.

Next I would like to present some potential scenarios so you can reflect on the trade-offs to what is proposed in this legislation. I might add that the bill proposed a six month period to get public involvement in setting enhancement priorities. I am no rocket scientist, but I think we will have far greater interest in public hearings in your communities deciding where to cut back on current programs. Let me explain. (See attachments.)

The public may not get too excited about the effects of this bill until long after you are all safely back home from this legislative session. By not specifying what will not get done avoids the conflicts that will arise later.

Let us now turn our attention to the potential benefits and need to put nearly \$5 million in resources toward coldwater, spawning and habitat enhancement. We estimate we currently have about \$540,000 which could be attributed to this activity. Thus the bill would earmark nearly \$5 million for this activity, almost 10 times larger than the current program.

The primary factors influencing spawning and rearing habitat in tributary streams are dewatering and grazing in riparian zones according to our biologists. This varies depending of course on the part of the state you are in.

Instream flows and grazing are contentions and sensitive issues in Montana--I am sure I do not need to tell you that. Additional money may help address some problem areas. In the large majority of instances though, projects are on private land and they only come about after positive, cooperative relationships have been developed with landowners. This takes time, patience, an open mind, a willingness to listen and understand, and eventually money.

The current water leasing law is cumbersome and many landowners are reluctant to participate because of their dependence on water for their agricultural operation or concern over water rights. I am not sure how money will resolve these concerns.

I will assume for the moment that you all agree with the sponsor's desire to enhance coldwater trout fisheries in streams. How would you go about getting that done? Possibly you would identify some goal on a particular river such as "1,000 catchable wild trout per mile of river" or "enough wild trout to support 100 days of fishing per mile per year." Those are the type of goals we adopt in our management plans after extensive public involvement.

A goal of that nature does not presume a solution or method to achieving the goal. Maybe spawning habitat is not limiting. Maybe it is water temperature or competition with other fish or whirling disease.

Then you might ask--What will it take to meet this goal? What steps should be taken and how much do they cost? Only then can you know how much of what you will need when.

Finally you might ask, what are the trade-offs? Is it worth reducing the quality of the lake and reservoir fishing, which might have the unintended side effect of driving reservoir anglers to rivers and accelerating crowding problems? Is it worth reducing law enforcement or youth education? Maybe it is and maybe it is not.

What if the Legislature were to direct Representative Rehbein to put half the money he earns from his crop production back into sprinkler irrigation systems, because you know crops need water? Do you know enough about his operation to make that decision? Yet that is what you are being asked to do to the state's fisheries program.

I empathize with you. You carry weight on your shoulders today. Maybe there is a way to reduce that weight.

Maybe we can expand the River Restoration Program more slowly so it does not completely disrupt other important programs and give us a chance to evaluate how to make the program more effective. I believe HB 5 is a more appropriate vehicle to do that.

Maybe we can find a way to involve the public in helping make decisions about whether we reduce their reservoir angling or restore more streams. Heck, we could even let them vote on it.

I do not stand in opposition to this bill because of its overall intent. I simply do not believe this represents the correct approach to addressing the needs of Montana's fisheries and anglers.

Attachments



Size of hatchery systems of neighboring states  
2/8/95

<u>State</u>	<u># Employees</u>	<u># Hatcheries</u>	<u>Budget</u>	<u>Fish Stocked</u>
Idaho	75	20	7.6 M.	38 M.
Utah	40	10	2.8 M.	12 M.
Wyoming	45	11	2.8 M.	4+ M.
Colorado	107	17	5.1 M.	59 M.*
Washington	383	97	25.0 M.	300 M.
Montana	29	9	1.5 M.	43 M.*

\* High % of walleye fry in these numbers, 30 million plus.

hatchery\syssize.leg

# HB 349 Reallocation of Funds

Attachment 2

Total available = \$9,960,000



## 50% FOR CURRENT PROGRAMS \$4,980,000

### CURRENT PROGRAM

#### Fish Management/Habitat Protection \$3,919,000

Monitor fish populations and harvest levels, set regulations, review SPA, 310, 404 permits, native species management, river conflict management, provide access, develop management plans, combat whirling disease. Provide information.

#### Hatchery Operations

**Cold Water Hatcheries (7)** \$1,033,000  
**Warm Water Hatchery** 253,000  
Raise and distribute cold and warm water fish to over 550 bodies of water statewide, providing 1.2 million angler days of use. Monitor disease.

#### Law Enforcement \$1,619,000

Enforcing fishing and boating safety regulations, managing overcrowding and conflicts on rivers, and enforcing trespass laws on private lands.

#### Operations and Maintenance of

#### Fishing Access Sites \$748,000

Provides minimum maintenance at over 300 fishing access sites statewide. Efforts include latrine pumping, garbage disposal, road maintenance, fencing and weed control.

#### Education/Information \$486,000

Funds aquatic youth education programs, water safety, informational efforts in seven regions, and the Montana Outdoors Magazine.

#### Capital (amount annualized) \$2,480,500

Matching funds for the Tongue River Dam  
Construct a warm water fish pond  
Major maintenance/site protection on FASs  
Fish Health Lab  
South Sandstone Dam repair  
Statewide fish hatchery maintenance  
Bluewater Hatchery renovation

#### Fixed Cost \$1,114,000

Payment for support services provided by general funded agencies, legislative audit fees, insurance, office space, engineering and land management for fishing access sites, accounting and license sales.

## 50% EARMARKING \$4,980,000

Earmarked for providing functioning spawning tributaries for each 10 miles of river and streams that support a cold water fishery

#### Cold Water Stream Enhancement River Restoration, Sykes Act, etc.

\$ 540,000

Total program w/o current enhancement	\$11,652,500
Amount of funds available under HB349	<u>4,980,000</u>
Programs difference	\$ 6,672,500

Fish Program Reduction

Attachment 3

Option A

Reduction

Fish Management/Habitat Protection

\$1,704,500

- Eliminate most population monitoring used.  
for regulation evaluation and disease monitoring.
- Eliminate angler harvest surveys and creel census.
- Eliminate management plan process.
- No further efforts to deal with river  
recreation conflict management.
- Limit access program.
- Eliminate management activities on native  
species and endangered species.

Hatchery Operations

\$ 400,000

- Reduce hatchery production by 40%.
- Stock at reduced levels or eliminate 40%  
of stocking program.
- Evaluate closing several hatcheries.
- Significantly reduce warmwater stocking  
programs. Rely primarily on fry  
plants. Limited fingerling plants.

Capital

\$2,480,500

Capital Program would be eliminated in  
its entirety.

Eliminate:

Matching funds for the Tongue River Dam  
Construct a warm water fish pond  
Major maintenance/site protection on FASS  
Fish Health Lab  
South Sandstone Dam repair  
Statewide fish hatchery maintenance  
Bluewater Hatchery renovation

---

\$4,585,000 Redirect

## Fish Program Reduction

Attachment 4

### Option B

#### Reduction

#### Fish Management/Habitat Protection

\$1,885,000

- Eliminate most population monitoring used for regulation evaluation and disease monitoring.
- Eliminate angler harvest surveys and creel census.
- Eliminate management plan process.
- No further efforts to deal with river recreation conflict management.
- Limit access program.
- Eliminate management activities on native species and endangered species.

#### Hatchery Operations

\$ 500,000

- Reduce hatchery production by 40%
- Stock all waters at reduced levels or eliminate one half of stocking program or stock only major reservoirs.
- Evaluate closing several hatcheries.
- Significantly reduce warmwater stocking programs. Rely on fry plants rather than fingerlings.

#### Law Enforcement

\$ 700,000

Reduce the equivalent of 14 FTE of law enforcement effort currently directed toward fishery related enforcement activities.

#### O&M FAS

\$ 300,000

Would reduce O&M at FAS by slightly less than 50% or eliminate all O&M at 120 sites.

#### Education/Information

\$ 200,000

This would result in 50% reduction in all fishery related information and education programs or the elimination of youth education and a portion of the regional information programs.

#### Capital

\$1,000,000

Reduction in Capital Program would result in:

- Elimination of FAS protection program and warmwater fish pond and fish health lab or
- Elimination of Bluewater hatchery renovation and eventual closure of the facility.

---

\$4,585,000 Redirect

EXHIBIT 19  
DATE FEB 9, 1995  
HB 349

**SUMMARY OF  
RIVER RESTORATION PROGRAM PROJECTS  
MONTANA FISH, WILDLIFE & PARKS  
1990 - 1994**

**Fisheries Division  
1420 East 6th Avenue  
Helena, MT 59620**

**Prepared by:**

**ALCON Ecological Consulting  
713 Tower  
Helena, MT 59607**

**November 1994**

The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

EXHIBIT 20  
DATE FEB 9, 1995  
HB 349

**FISH HABITAT PROTECTION AND RESTORATION  
ACTIVITIES IN ADDITION TO THE RIVER  
RESTORATION PROGRAM**

Montana Fish, Wildlife & Parks  
1420 E 6th Avenue  
Helena, MT 59620

**Prepared by:**  
Habitat Protection Bureau  
Fishery Division

**December 1994**

The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

TESTIMONY ON HB 349 FOR THE MONTANA CHAPTER OF THE AMERICAN FISHERIES SOCIETY

before the house fish and game committee, February 9, 1995

EXHIBIT 21  
DATE FEB 9, 1995  
HB 349

Mr. Chairman and members of the committee, my name is Art Whitney and I am representing the Montana Chapter of the American Fisheries Society. The American Fisheries Society is an international organization of fisheries and aquatic professionals that promotes the wise use and management of fisheries and aquatic habitat. It is the oldest professional conservation society in the United States and our Montana Chapter has about 150 active members.

The Montana Chapter cannot support HB 349. The bill's concept of restoring Montana's rivers and streams is admirable. However doing this by making massive reductions in the other important programs that also make the fishing in Montana what it is today, is just not a good idea.

Montana has been a leader in its efforts to maintain and restore the integrity of streams and the fisheries they produce. Preservation of streams, stocking of lakes, ponds and reservoirs that do not sustain themselves through natural reproduction are all vital activities that produce the excellent fisheries which Montana has to offer. Removing or reducing the funding for these programs will hurt Montana's ability to continue to provide the numerous and variable sport fisheries currently offered to its own citizens as well as those from throughout the country.

The existing River Restoration Program, and other habitat improvement programs are already showing improved fish production in streams. More needs to be done and more will be done. However we believe that rapidly accelerating this one phase of the Department's fisheries management program, by drastically reducing all its other phases, will serve to reduce, rather than improve, the diversity of fishing opportunity, and likely also the total amount of fishing opportunity Montana now offers. We recommend the committee not approve HB 349.

EXHIBIT 22  
DATE FEB 9, 1995  
HB 384

THB384.HP

House Bill No. 384  
February 9, 1995  
Testimony presented by Pat Graham  
Montana Fish, Wildlife & Parks  
before the House Fish and Game Committee

In many states, black bear hunting has come under increased scrutiny. Limiting bear hunting was done in two states through the public ballot initiative process in the past two years. In Montana, we wanted to provide a sound fundamental basis for our black bear management. This was done by preparing a programmatic EIS. As a result, Montana's black bear management program was revised in 1994 by the Montana Fish, Wildlife & Parks Commission. The Department received input on the draft EIS from 115 individuals or groups. This legislation is proposed by the Department to implement three of the elements of the revised program that require legislative action:

Sections One and Two of this bill simple clean up current law.

Section Three proposes to limit possession of black bear licenses to individuals who are interested in hunting black bear by creating an additional resident combination sports license which does not include a black bear license. This change was made to the nonresident combination license in 1992.

Currently all resident "sportsman license" holders receive a black bear license, although a substantial number of them do not go bear hunting. In 1993, a total of 17,629 resident sportsman licenses were sold. Only 2,624 of these license holders hunted in the spring black bear season, and only 2,564 hunted in the fall. Providing an optional license at a lower cost without the black bear license will allow those who do not wish to hunt black bear the convenience of a sportsman's license without being forced to buy a bear license. It will also result in improved accuracy of black bear harvest information. The change also addresses another concern. Currently some people who possess a sportsman's license may decide to fill the tag only if the opportunity presents itself. Without adequate preparation, mistaken identity of grizzly bears or sows with cubs is more likely to occur. The bear license was removed from the nonresident combination licenses in 1992. Unfortunately, doing so for residents is expected to result in a \$140,000 reduction in general license revenue to the Department at a time when expenditures on bear management are increasing. However, we believe the benefits of this proposal to the management program and Montana hunters outweighs the revenue loss to the Department.

Section Four amends the waste of fish and game statute. It is intended to discourage the waste of useable black bear meat; discourage the killing of black bears solely for the purpose of



obtaining trophy body parts; and minimize illegal trafficking in bear body parts by requiring the meat to be utilized, unless found to be infected with trichinosis.

The change will also discourage the abandonment, disposal of, or handling of bear hides, heads or other body parts in a manner that renders them unusable as required by FWP Commission regulation for determining sex, age, or reproductive status.

A change requiring mandatory use of meat was supported by a majority of the public for several reasons: the need to improve public perception of bear hunting, discourage opportunistic harvest and opposition to the waste of game meat.

Use of black bear meat is currently practiced by 74 percent of resident and 57 percent of nonresident black bear hunters. Mandatory use of bear meat would not be required if the meat was found to be infected with *Trichinella*. The Department will continue to provide a testing service for hunters to test bear meat for trichinella to reduce the risk of exposure to trichinosis from improperly prepared bear meat.



*The Big Sky Country*

EXHIBIT 23  
DATE FEB 9, 1995  
HB 339

## MONTANA HOUSE OF REPRESENTATIVES

EXHIBIT \_\_\_\_\_  
DATE \_\_\_\_\_  
HB \_\_\_\_\_

### MEMBERS OF THE FISH & GAME COMMITTEE:

I shall make a motion to raise my bill from the table. If successful I shall amend the bill to only focus on the need to manage our resources on a district basis.

This shall set the policy that management shall be done on the largest manageable land base for the benefit of wildlife population and the people that must live with the population and the ramification of management policies.

Brad Molnar  
Representative HD #22

Amendments to House Bill No. 122  
Second Reading Copy

Requested by Rep. Raney  
For the Committee on Fish & Game

Prepared by Doug Sternberg  
February 8, 1995

1. Page 2, line 8.  
Strike: "or entity"

2. Page 2, line 11.  
Following: "persons"  
Strike: "and entities"  
Insert: "residing in the state of Montana"

3. Page 2, line 19.  
Strike: "AND ENTITIES"  
Insert: "residing in the state of Montana and"

4. Page 2, lines 21 and 22.  
Strike: "SHALL" on line 21  
Insert: "may"  
Following: "WITH THE" on line 21  
Strike: "INTERESTED" on line 21 through "SITE" on line 22  
Insert: "interested citizens"

5. Page 2, lines 22 and 23.  
Following: "DEVELOPMENT" on line 22  
Strike: remainder of line 22 through "SHALL" on line 23  
Insert: "and"

6. Page 2, lines 24 and 25.  
Following: "COMMENT" on line 24  
Strike: remainder of line 24 through "PROPOSAL" on line 25  
Insert: "in the manner outlined in this subsection (3) or the  
department may seek approval from the fish, wildlife, and  
parks commission to proceed with the improvement or  
development. The decision of the commission must be made  
after receiving comment from the department and the public  
at a regular or special commission meeting"

THIS IS NOT AN OFFICIAL BILL!!

EXHIBIT 25  
DATE FEB 9, 1995  
HB 122

HB0122.02

House Bill No. 122

Introduced By Raney, Rehbein, Simon, Harper, Wagner, Gage, Stang,  
Zook, Schwinden, Devlin, Ryan, Cobb

A Bill for an Act entitled: "An Act providing that if the majority of the persons and entities submitting written or oral comment to the department of fish, wildlife, and parks is opposed to the department's proposed improvement or development of a state park or fishing access site, the department may not proceed with the improvement or development ~~and may not make the same or a substantially similar proposal during the 24 month period following the close of the period for submittal of comments~~ UNTIL CERTAIN CONDITIONS ARE MET; PROVIDING AN EXCEPTION FOR MAINTENANCE, WEED CONTROL, AND NECESSARY SANITARY AND SAFETY MEASURES; requiring the department to report to the public the potential impacts on existing uses and users; and amending section 23-1-110, MCA."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-1-110, MCA, is amended to read:

"23-1-110. Improvement or development of state park or fishing access site -- required public involvement -- rules. (1)  
The fish, wildlife, and parks commission shall adopt rules

establishing a policy ~~whereby~~ in which any proposed improvement or development of a state park or fishing access site that significantly changes park or fishing access site features or use patterns is subject to notice of proposed modifications, both statewide and locally, and to an opportunity for a public meeting and public comment on the advisability and acceptability of the proposal.

(2) The department shall prepare a public report regarding any project that is subject to the provisions of subsection (1). The report must include conclusions relating to the following aspects of the proposal:

(a) the desires of the public as expressed to the department;

(b) the capacity of the park or fishing access site for development;

(c) environmental impacts associated with the improvement or development;

(d) the long-range maintenance of the improvements;

(e) the protection of natural, cultural, and historical park or fishing access site features;

(f) potential impacts on tourism; and

(g) site-specific modifications as they relate to the park or fishing access site system as a whole; and

(h) potential impacts on existing uses and users.

(3) (A) The department shall record each written or oral comment regarding the proposed improvement or development of a state park or fishing access site submitted by a person or entity RESIDING IN THE STATE OF MONTANA, whether submitted at a public meeting or otherwise. The record must include a list of those

opposing and a list of those supporting the improvement or  
development. If

EXHIBIT 25  
DATE 2-9-95

(B) WHEN the majority of the persons and entities residing HB122  
in the state of Montana submitting written or oral comment to the  
department is opposed to the proposed improvement or development,  
the department may not proceed with the improvement or  
development and may not make the same or a substantially similar  
proposal during the 24 month period following the close of the  
period for submittal of comments UNTIL THE PROVISIONS OF  
SUBSECTION (3)(C) ARE MET. MAINTENANCE, WEED CONTROL, AND  
NECESSARY SANITARY AND SAFETY MEASURES ARE EXEMPT FROM THE PUBLIC  
APPROVAL REQUIREMENTS OF THIS SUBSECTION (3).

(C) IF THE DEPARTMENT WISHES TO PURSUE THE IMPROVEMENT OR  
DEVELOPMENT OF A STATE PARK OR FISHING ACCESS SITE WHEN THE  
MAJORITY OF PERSONS AND ENTITIES residing in the state of Montana  
SUBMITTING WRITTEN OR ORAL COMMENT TO THE DEPARTMENT IS OPPOSED  
TO THE PROPOSED IMPROVEMENT OR DEVELOPMENT, THE DEPARTMENT SHALL  
MAY WORK WITH THE INTERESTED USERS OF THE STATE PARK OR FISHING  
ACCESS SITE interested citizens TO REDESIGN THE IMPROVEMENT OR  
DEVELOPMENT. THE DEPARTMENT SHALL and SUBMIT THE REDESIGNED  
IMPROVEMENT OR DEVELOPMENT FOR PUBLIC COMMENT AND MAY NOT PROCEED  
UNTIL A MAJORITY OF PERSONS OR ENTITIES COMMENTING ON THE  
PROPOSED IMPROVEMENT OR DEVELOPMENT SUPPORTS THE PROPOSAL in the  
manner outlined in this subsection (3) or the department may seek  
approval from the fish, wildlife, and parks commission to proceed  
with the improvement or development. The decision of the  
commission must be made after receiving comment from the  
department and the public at a regular or special commission  
meeting."

EXHIBIT 26  
DATE FEB 9, 1995  
HB 62

Dear Representative Hanson,

I would like to thank you for your interest and concerns regarding the safety aspect of hunting with rifles during the spring turkey season. I have been talking with some of our neighbors about this and have been told of one person having her house shot at and watching hunters shoot from the county road at gobblers. Its to bad that some hunters do not take into consideration the end result of the shot they fired. We are very lucky that we have not had a very serious injury or worse yet a death caused by these few inconsiderate individuals. I have talked with Mr. Stan Meyer chairman of the fish and game commission and he is also concerned with the safety aspect of using rifles. He can not say what his commission would do as far as eliminating rifles so I am going to ask you to try and revive HB 62 because if the fish and game commission does not act on this then it will be two years before I could bring this back to your committee. If the bill would pass, then it would be another year before the law took effect and three years is a long time to have hunters using rifles in the spring turkey season. My nine year old grandson calls turkeys very well but on weekends I will not take him out on the Custer National Forest dressed in full camo because of the rifle hunters.

I talked with a rifle hunter last year after he shot an old bird my grandson and I had "played" with for two seasons. When I made a comment about him using a rifle to kill the bird he said "well you have to cheat once in awhile". Even he felt he cheated when he used a rifle. If I see a hunter using a rifle I'll move clear out of the area. I don't know if this letter will change anything or not but thank you for taking the time to read it. You will be receiving a letter from Wilma Melville also. She is the one that had her house shot at. Please keep in touch.

Sincerely,

Russ Greenwood

cc: Representative Douglas Wagner  
Representative William Rehbein

HOUSE OF REPRESENTATIVES  
VISITORS REGISTER

FISH & GAME COMMITTEE DATE FEB 9, 1995  
BILL NO. 439 SPONSOR(S) Ohs, Grinde, Knox, Rehbein, Slater, Grimes, Story, Ellis

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Bill Allen	MT. Audubon		X
Pat Graham	FWP		X
Gerry Keogh			X
BETH Curran-Cummings	Dearborn Rauch Co		X
ROBIN CUNNINGHAM	SELF		X
<del>Tom B</del>			
Larry Brown	Ag Pres. Assoc.	Amend X	
Bob Spoklie	Montana Game Breeders Assoc.	X	
Jake Cummings	MT. Fish Bureau	X	
Stan Fraser	Self		X
Candace Tapperson	Mont. Cattlemen Assn	X	
Maureen Cleary-Schwinded	WIFE	X	
Jim Richard	MWF		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

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CS-14



HOUSE OF REPRESENTATIVES  
VISITORS REGISTER

FISH & GAME COMMITTEE DATE \_\_\_\_\_

BILL NO. 439 SPONSOR(S) \_\_\_\_\_

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Tony Schooner	Anacosta Sportsman		X
Leonard Wortman	Jefferson County		X
BILL HOLDORF	SKYLINES PORTSMEN		✓
MIKE MURPHY	MWRA	✓	
Bob Winfield	FWP		✓

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HOUSE OF REPRESENTATIVES  
VISITORS REGISTER

FISH & GAME

COMMITTEE

DATE FEB. 9, 1995

BILL NO. 348

SPONSOR(S) Harper, Menahan, Bishop, Simon, Hibbard, Grady,  
Swanson, Raney, Bohlinger

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
ROBIN CUNNINGHAM	FISHING OUTFITTERS ASSOCIATION OF MONTANA	X	
Bill Allen	MT. Audubon	X	
Pat Graham	FWP	X	
Chas Parker	self	X	
Dae Majors	Self	X	
Tony A. Schonen	self	X	
Daniel R. Walker	SELF	X	
Alan Rollo	self	X	
COLLEEN A GRAHAM	DOC / Bd of Outfitters	Info Only	
Dianne McDermund	self	X	
Gary Fritz	self	X	
Stan Frasier	Self	X	
Alan W. Johnson	MT Outfitters & Guides	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS  
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

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HOUSE OF REPRESENTATIVES  
VISITORS REGISTER

FISH & GAME

COMMITTEE

DATE

BILL NO. 348

SPONSOR(S)

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PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Larry Brown	Ag. Pres. Assoc		X
Ree Smith	TH	X	
Susan Beck	Self		
CANDACE TORGERSON	Mountain Cattlemen's Assoc		X
Jim Richard	Mt. Wildlife Fed	X	
GEORGE OCHENSKI	TROUT UNLIMITED	X	
Tony Schooner	Arizona Sportsmen	X	
BILL HOLDORF	SKYLINE SPORTSMEN	✓	
MIKE MURPHY	Mt. WATER RES. ASSN.		✓
Both Wheatley	MWF	✓	

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HOUSE OF REPRESENTATIVES  
VISITORS REGISTER

FISH & GAME

COMMITTEE

DATE FEB 9, 1995

BILL NO. 349

SPONSOR(S) (Raney) Grosfield, Cobb, Simon, Beck, Ryan, Peck, Molnar,

Richs, Henry, Runner, Larson, Kadas, Harper, Grimes, Bohlinger, Ream, Smith, Stang, Pavlovich, Doherty, Harr  
Wilson, Weldon, Renbein, Anderson, Ewer, Cocchiarella, PLEASE PRINT  
Gland, Mercer, Holland, Nelson

NAME AND ADDRESS	REPRESENTING	Support	Oppose
ROBIN CUNNINGHAM	FISHING OUTITTERS ASSOCIATION OF MONTANA	X	
James Braley 124 South I LIVINGSTON	JOE BROOKS CHAPTER OF TROUT Unlimited	X	
Pat Gruber	FWP		✓
Dick Johnson			✓
Bill Leary	Canoe Ferry, Redfish N.	X	
Larry Brown	Ag. Pres. Assoc.		✓
Tom Aubri	Tom's Guide Service	<del>X</del>	✓
Janet Ellis	MT Audubon		✓
Art Whitney	Mt. Chapter American Fishermen Society		✓
Wayne Hirst	Self	X	
GEORGE CICHENSKI	TROUT UNLIMITED	X	
Peggy Trenk	WETA	X	
Joan Johnson	MT Outfitters & Guides	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS  
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

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HOUSE OF REPRESENTATIVES  
VISITORS REGISTER

FISH & GAME

COMMITTEE

DATE

BILL NO. 349

SPONSOR(S)

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Jim R. Schaefer	MT. W. Schaefer, Fed	<del>X</del>	X
Jim Braley Livingston	Auger Enterprises	X	
Tony Schooner	Amazons Sports		X
BILL HOLDORF	SKYLINE SPORTSMEN		✓
Fred EASY	Self		X
Ric Smith	TU	X	
Fred Easy	Self		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

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HOUSE OF REPRESENTATIVES  
VISITORS REGISTER

FISH & GAME

COMMITTEE

DATE FEB. 9, 1995

BILL NO. 384

SPONSOR(S) Ream, Crismore

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PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Bill Allen	MT Audubon	X	
Daf Graham	FWP	X	
Tom Bubri	SKYLINE SPORTS	X	
Stan Frazier	SELF	X	
Larry Brown	SELF		X
Jean Johnson	MT Deer & Guides	X	
Tony Schooner	Myse / S	X	
BILL HOLDORF	SKYLINESPORTSMEN	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

wp:visbcom.man

CS-14