

SB 286 INTRODUCED BY GALT, ELLISON, PINSONEAULT, ET AL.
REMOVE UNCONSTITUTIONAL PROVISIONS OF STREAM ACCESS
LAW

2/04	INTRODUCED		
2/04	REFERRED TO NATURAL RESOURCES		
2/05	SPONSORS ADDED		
2/09	SPONSORS ADDED		
2/18	HEARING		
2/20	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/23	2ND READING PASSED AS AMENDED	50	0
2/25	3RD READING PASSED	48	2
	TRANSMITTED TO HOUSE		
3/03	REFERRED TO NATURAL RESOURCES		
3/19	HEARING		
3/27	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/28	2ND READING CONCURRED	51	38
3/30	3RD READING CONCURRED	55	43
	RETURNED TO SENATE WITH AMENDMENTS		
4/02	2ND READING AMENDMENTS NOT CONCURRED	30	19
4/02	FREE CONFERENCE COMMITTEE APPOINTED		
	HOUSE		
4/08	SPEAKER NOT TO APPOINT FREE CONFERENCE COMMITTEE	57	35
	DIED IN PROCESS		

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SENATE BILL NO. *286*
 INTRODUCED BY *Ed Ellison* *Richard Keller* *Colt*
Mr. J. M. ... *Senator ...* *Senator ...*
 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE STREAM
 ACCESS LAW TO REMOVE PROVISIONS DECLARED UNCONSTITUTIONAL;
 AMENDING SECTIONS 23-2-301, 23-2-302, AND 23-2-311, MCA; AND
 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 Section 1. Section 23-2-301, MCA, is amended to read:
 "23-2-301. Definitions. For purposes of this part, the
 following definitions apply:
 (1) "Barrier" means an artificial obstruction located
 in or over a water body, restricting passage on or through
 the water, which totally or effectively obstructs the
 recreational use of the surface water at the time of use. A
 barrier may include but is not limited to a bridge or fence
 or any other manmade obstacle to the natural flow of water.
 (2) "Class I waters" means surface waters, other than
 lakes, that:
 (a) lie within the officially recorded federal
 government survey meander lines thereof;
 (b) flow over lands that have been judicially
 determined to be owned by the state by reason of application
 of the federal navigability test for state streambed

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ownership;
 (c) are or have been capable of supporting the
 following commercial activities: log floating,
 transportation of furs and skins, shipping, commercial
 guiding using multiperson watercraft, public transportation,
 or the transportation of merchandise, as these activities
 have been defined by published judicial opinion as of April
 19, 1985; or
 (d) are or have been capable of supporting commercial
 activity within the meaning of the federal navigability test
 for state streambed ownership.
 (3) "Class II waters" means all surface waters that
 are not class I waters, except lakes.
 (4) "Commission" means the fish and game commission
 provided for in 2-15-3402.
 (5) "Department" means the department of fish,
 wildlife, and parks provided for in 2-15-3401.
 (6) "Diverted away from a natural water body" means a
 diversion of surface water through a manmade water
 conveyance system, including but not limited to:
 (a) an irrigation or drainage canal or ditch;
 (b) an industrial, municipal, or domestic water
 system, excluding the lake, stream, or reservoir from which
 the system obtains water;
 (c) a flood control channel; or



- 1 (d) a hydropower inlet and discharge facility.
- 2 (7) "Lake" means a body of water where the surface
3 water is retained by either natural or artificial means and
4 the natural flow of water is substantially impeded.
- 5 (8) "Occupied dwelling" means a building used for a
6 human dwelling at least once a year.
- 7 (9) "Ordinary high-water mark" means the line that
8 water impresses on land by covering it for sufficient
9 periods to cause physical characteristics that distinguish
10 the area below the line from the area above it.
11 Characteristics of the area below the line include, when
12 appropriate, but are not limited to deprivation of the soil
13 of substantially all terrestrial vegetation and destruction
14 of its agricultural vegetative value. A flood plain
15 adjacent to surface waters is not considered to lie within
16 the surface waters' high-water marks.
- 17 (10) "Recreational use" means with respect to surface
18 waters, unless otherwise prohibited or regulated by law:
19 fishing, hunting, swimming, floating in small craft or other
20 flotation devices, boating in motorized craft ~~unless~~
21 ~~otherwise-prohibited-or-regulated-by-law~~, or craft propelled
22 by oar or paddle, other water-related pleasure activities,
23 and minimal and related unavoidable or incidental uses
24 necessary for the use of the water.
- 25 (11) "Supervisors" means the board of supervisors of a

- 1 soil conservation district, the directors of a grazing
2 district, or the board of county commissioners if a request
3 pursuant to 23-2-311(3)(b) is not within the boundaries of a
4 conservation district or if the request is refused by the
5 board of supervisors of a soil conservation district or the
6 directors of a grazing district.
- 7 (12) "Surface water" means, for the purpose of
8 determining the public's access for recreational use, a
9 natural water body, its bed, and its banks up to the
10 ordinary high-water mark."
- 11 Section 2. Section 23-2-302, MCA, is amended to read:
12 "23-2-302. Recreational use permitted -- limitations
13 -- exceptions. (1) Except as provided in subsections (2)
14 through ~~(5)~~(4), all surface waters that are capable of
15 recreational use may be so used by the public ~~without~~ with
16 regard to the ownership of the land underlying the waters.
- 17 (2) The right of the public to make recreational use
18 of surface waters does not include, without permission or
19 contractual arrangement with the landowner:
- 20 (a) the operation of all-terrain vehicles or other
21 motorized vehicles not primarily designed for operation upon
22 the water;
- 23 (b) the recreational use of surface waters in a stock
24 pond or other private impoundment fed by an intermittently
25 flowing natural watercourse;

1 (c) the recreational use of waters while diverted away
2 from a natural water body for beneficial use pursuant to
3 Title 85, chapter 2, part 2 or 3, except for impoundments or
4 diverted waters to which the owner has provided public
5 access;

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

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

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

15 ~~(g)(d) use of a streambed as a right-of-way for any~~
16 ~~purpose when water is not flowing therein;~~

17 ~~(3) The right of the public to make recreational use~~
18 ~~of class II waters does not include, without permission of~~
19 ~~the landowner:~~

20 ~~(a) big game hunting;~~

21 ~~(b) overnight camping;~~

22 ~~(c) the placement or creation of any seasonal object;~~

23 or

24 ~~(d)(e) other activities which are not primarily~~
25 ~~water-related pleasure activities as defined in~~

1 23-2-301(10); or

2 (f) any activities that involve more than minimal use
3 of the underlying and adjoining privately owned land.

4 ~~(4)(3)~~ The right of the public to make recreational
5 use of surface waters does not grant any easement or right
6 to the public to enter onto or cross private property in
7 order to use such waters for recreational purposes.

8 ~~(5)(4)~~ The commission shall adopt rules, pursuant to
9 87-1-303, in the interest of public health, public safety,
10 or the protection of public and private property, governing
11 recreational use of class I and class II waters. These rules
12 must include the following:

13 (a) the establishment of procedures by which any
14 person may request an order from the commission:

15 (i) limiting, restricting, or prohibiting the type,
16 incidence, or extent of recreational use of a surface water;
17 or

18 (ii) altering limitations, restrictions, or
19 prohibitions on recreational use of a surface water imposed
20 by the commission;

21 (b) provisions requiring the issuance of written
22 findings and a decision whenever a request is made pursuant
23 to the rules adopted under subsection ~~(5)(a)~~ (4)(a); and

24 (c) a procedure for the identification of streams
25 within class II waters which are not capable of recreational

1 use or are capable of limited recreational use, and a
2 procedure to restrict the recreational use to the actual
3 capacity of the water.

4 ~~f6}~~(5) The provisions of this section do not affect
5 any rights of the public with respect to state-owned lands
6 that are school trust lands or any rights of lessees of such
7 lands."

8 Section 3. Section 23-2-311, MCA, is amended to read:

9 "23-2-311. Right to portage -- establishment of
10 portage route. (1) A member of the public making
11 recreational use of surface waters may, ~~above--the--ordinary~~
12 ~~high-water--mark~~ as provided herein, portage around barriers
13 in the least intrusive manner possible, avoiding damage to
14 the landowner's ~~land property~~ and violation of his rights.

15 (2) A landowner may create barriers across streams for
16 purposes of land or water management or to establish ~~land~~
17 ~~property~~ ownership as otherwise provided by law. If a
18 landowner erects a structure which does not interfere with
19 the public's use of the surface waters, ~~the public~~ a portage
20 route may not go be established above the ordinary
21 high-water mark to portage around the structure.

22 (3) (a) A portage route around or over a barrier may
23 ~~be--established--to--avoid--damage--to--the--landowner's--land--and~~
24 ~~violation--of--his--rights,--as--well--as--to~~ must provide a
25 reasonable and safe route for the recreational user of the

1 surface waters.

2 (b) A portage route may be established when either a
3 landowner or ~~a--member--of--the--recreating--public~~ the
4 department submits a request to the supervisors that such a
5 route be established.

6 (c) Within 45 days of the receipt of a request, the
7 supervisors shall, in consultation with the landowner and a
8 representative of the department, examine and investigate
9 the barrier and the adjoining land to determine a reasonable
10 and safe portage route and the compensation to be paid to
11 the landowner.

12 (d) Within 45 days of the examination of the site, the
13 supervisors shall make a written finding of the most
14 appropriate portage route.

15 (e) ~~The cost--of--establishing~~ compensation to the
16 landowner for the portage route around artificial barriers
17 must be borne by the ~~involved--landowner,--except--for--the~~
18 ~~construction--of--notification--signs--of--such--route,--which--is~~
19 ~~the--responsibility--of--the~~ department. ~~The--cost--of~~
20 ~~establishing--a--portage--route--around--artificial--barriers--not~~
21 ~~owned--by--the--landowner--on--whose--land--the--portage--route--will~~
22 ~~be--placed--must--be--borne--by--the--department.~~

23 (f) Once the route is established, the department has
24 the exclusive responsibility thereafter to construct the
25 portage route and to maintain the portage route at

1 reasonable times agreeable to the landowner. The department
2 shall post notices on the stream of the existence of the
3 portage route and the public's obligation to use it as the
4 exclusive means around a barrier.

5 ~~{g}--if either the landowner or recreationist disagrees~~
6 ~~with the route described in subsection (3)(e), he may~~
7 ~~petition the district court to name a three-member~~
8 ~~arbitration panel. The panel must consist of an affected~~
9 ~~landowner, a member of an affected recreational group, and a~~
10 ~~member selected by the two other members of the arbitration~~
11 ~~panel. The arbitration panel may accept, reject, or modify~~
12 ~~the supervisors' finding under subsection (3)(d).~~

13 ~~{h}--The determination of the arbitration panel is~~
14 ~~binding upon the landowner and upon all parties that use the~~
15 ~~water for which the portage is provided. Costs of the~~
16 ~~arbitration panel, computed as for jurors' fees under~~
17 ~~3-15-201, shall be borne by the contesting party or parties,~~
18 ~~all other parties shall bear their own costs.~~

19 ~~{i}{g} The determination decision of the arbitration~~
20 ~~panel supervisors may be appealed within 30 days to the~~
21 ~~district court for trial de novo. If not appealed within 30~~
22 ~~days, the decision is final.~~

23 ~~{j}{h} Once a portage route is established, the public~~
24 ~~shall use the portage route as the exclusive means to~~
25 ~~portage around or over the barrier.~~

1 ~~{4}--Nothing contained in this part addresses the issue~~
2 ~~of natural barriers or portage around said barriers, and~~
3 ~~nothing contained in this part makes such portage lawful or~~
4 ~~unlawful."~~

5 NEW SECTION. Section 4. Extension of authority. Any
6 existing authority of the fish and game commission to make
7 rules on the subject of the provisions of this act is
8 extended to the provisions of this act.

9 NEW SECTION. Section 5. Effective date. This act is
10 effective on passage and approval.

-End-

APPROVED BY COMM. ON
NATURAL RESOURCES

1 SENATE BILL NO. 286
2 INTRODUCED BY GALT, ELLISON, PINSONEAULT, KELLER, COBB,
3 HOFMAN, SEVERSON, HIRSCH, HAMMOND, BOYLAN, KEATING, SWIFT
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE STREAM
6 ACCESS LAW TO REMOVE PROVISIONS DECLARED UNCONSTITUTIONAL;
7 TO REQUIRE RECREATIONAL USE TO BE EXERCISED WITH REGARD TO
8 LAND OWNERSHIP; TO REQUIRE LANDOWNER PERMISSION FOR
9 RECREATIONAL USE INVOLVING MORE THAN MINIMAL USE OF LAND; TO
10 REVISE PROVISIONS CONCERNING PORTAGE ROUTES; AMENDING
11 SECTIONS 23-2-301, 23-2-302, AND 23-2-311, MCA; AND
12 PROVIDING AN IMMEDIATE EFFECTIVE DATE."
13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
15 Section 1. Section 23-2-301, MCA, is amended to read:
16 "23-2-301. Definitions. For purposes of this part, the
17 following definitions apply:
18 (1) "Barrier" means an artificial obstruction located
19 in or over a water body, restricting passage on or through
20 the water, which totally or effectively obstructs the
21 recreational use of the surface water at the time of use. A
22 barrier may include but is not limited to a bridge or fence
23 or any other manmade obstacle to the natural flow of water.
24 (2) "Class I waters" means surface waters, other than
25 lakes, that:

1 (a) lie within the officially recorded federal
2 government survey meander lines thereof;
3 (b) flow over lands that have been judicially
4 determined to be owned by the state by reason of application
5 of the federal navigability test for state streambed
6 ownership;
7 (c) are or have been capable of supporting the
8 following commercial activities: log floating,
9 transportation of furs and skins, shipping, commercial
10 guiding using multiperson watercraft, public transportation,
11 or the transportation of merchandise, as these activities
12 have been defined by published judicial opinion as of April
13 19, 1985; or
14 (d) are or have been capable of supporting commercial
15 activity within the meaning of the federal navigability test
16 for state streambed ownership.
17 (3) "Class II waters" means all surface waters that
18 are not class I waters, except lakes.
19 (4) "Commission" means the fish and game commission
20 provided for in 2-15-3402.
21 (5) "Department" means the department of fish,
22 wildlife, and parks provided for in 2-15-3401.
23 (6) "Diverted away from a natural water body" means a
24 diversion of surface water through a manmade water
25 conveyance system, including but not limited to:

- 1 (a) an irrigation or drainage canal or ditch;
- 2 (b) an industrial, municipal, or domestic water
3 system, excluding the lake, stream, or reservoir from which
4 the system obtains water;
- 5 (c) a flood control channel; or
- 6 (d) a hydropower inlet and discharge facility.
- 7 (7) "Lake" means a body of water where the surface
8 water is retained by either natural or artificial means and
9 the natural flow of water is substantially impeded.
- 10 (8) "Occupied dwelling" means a building used for a
11 human dwelling at least once a year.
- 12 (9) "Ordinary high-water mark" means the line that
13 water impresses on land by covering it for sufficient
14 periods to cause physical characteristics that distinguish
15 the area below the line from the area above it.
16 Characteristics of the area below the line include, when
17 appropriate, but are not limited to deprivation of the soil
18 of substantially all terrestrial vegetation and destruction
19 of its agricultural vegetative value. A flood plain
20 adjacent to surface waters is not considered to lie within
21 the surface waters' high-water marks.
- 22 (10) "Recreational use" means with respect to surface
23 waters, unless otherwise prohibited or regulated by law:
24 fishing, hunting, swimming, floating in small craft or other
25 flotation devices, boating in motorized craft unless

1 ~~otherwise prohibited or regulated by law~~, or craft propelled
2 by oar or paddle, other water-related pleasure activities,
3 and minimal and related unavoidable or incidental uses
4 necessary for the use of the water.

5 (11) "Supervisors" means the board of supervisors of a
6 soil conservation district, the directors of a grazing
7 district, or the board of county commissioners if a request
8 pursuant to 23-2-311(3)(b) is not within the boundaries of a
9 conservation district or if the request is refused by the
10 board of supervisors of a soil conservation district or the
11 directors of a grazing district.

12 (12) "Surface water" means, for the purpose of
13 determining the public's access for recreational use, a
14 natural water body, its bed, and its banks up to the
15 ordinary high-water mark."

16 Section 2. Section 23-2-302, MCA, is amended to read:

17 "23-2-302. Recreational use permitted -- limitations
18 -- exceptions. (1) Except as provided in subsections (2)
19 through ~~(5)~~(4), all surface waters that are capable of
20 recreational use may be so used by the public without with
21 regard to the ownership of the land underlying the waters.

22 (2) The right of the public to make recreational use
23 of surface waters does not include, without permission or
24 contractual arrangement with the landowner:

25 (a) the operation of all-terrain vehicles or other

1 motorized vehicles not primarily designed for operation upon
2 the water;

3 (b) the recreational use of surface waters in a stock
4 pond or other private impoundment fed by an intermittently
5 flowing natural watercourse;

6 (c) the recreational use of waters while diverted away
7 from a natural water body for beneficial use pursuant to
8 Title 85, chapter 2, part 2 or 3, except for impoundments or
9 diverted waters to which the owner has provided public
10 access;

11 ~~{d}--big-game-hunting-except-by--long--bow--or--shotgun~~
12 ~~when-specifically-authorized-by-the-commission;~~

13 ~~{e}--overnight--camping--within--sight--of--any--occupied~~
14 ~~dwelling--or--within--500--yards--of--any--occupied--dwelling,~~
15 ~~whichever-is-less;~~

16 ~~{f}--the--placement--or--creation--of--any--permanent--duck~~
17 ~~blind,--boat--moorage,--or--any--seasonal--or--other--objects--within~~
18 ~~sight--of--or--within--500--yards--of--an--occupied--dwelling,~~
19 ~~whichever-is-less,--or~~

20 ~~{g}{d}~~ use of a streambed as a right-of-way for any
21 purpose when water is not flowing therein;

22 ~~{3}--The-right-of-the-public-to-make--recreational--use~~
23 ~~of--class--II-waters--does--not--include,--without--permission--of~~
24 ~~the-landowner;~~

25 ~~{a}--big-game-hunting;~~

1 ~~{b}--overnight-camping;~~

2 ~~{c}--the-placement-or-creation-of-any-seasonal-object;~~
3 or

4 ~~{d}{e}~~ other activities which are not primarily
5 water-related pleasure activities as defined in
6 23-2-301(10); or

7 ~~{f}~~ any activities that involve more than minimal use
8 of the underlying and adjoining privately owned land.

9 ~~{4}{3}~~ The right of the public to make recreational
10 use of surface waters does not grant any easement or right
11 to the public to enter onto or cross private property in
12 order to use such waters for recreational purposes.

13 ~~{5}{4}~~ The commission shall adopt rules, pursuant to
14 87-1-303, in the interest of public health, public safety,
15 or the protection of public and private property, governing
16 recreational use of class I and class II waters. These rules
17 must include the following:

18 (a) the establishment of procedures by which any
19 person may request an order from the commission:

20 (i) limiting, restricting, or prohibiting the type,
21 incidence, or extent of recreational use of a surface water;
22 or

23 (ii) altering limitations, restrictions, or
24 prohibitions on recreational use of a surface water imposed
25 by the commission;

1 (b) provisions requiring the issuance of written
2 findings and a decision whenever a request is made pursuant
3 to the rules adopted under subsection ~~(5)(a)~~ (4)(a); and

4 (c) a procedure for the identification of streams
5 within class II waters which are not capable of recreational
6 use or are capable of limited recreational use, and a
7 procedure to restrict the recreational use to the actual
8 capacity of the water.

9 ~~(6)(5)~~ The provisions of this section do not affect
10 any rights of the public with respect to state-owned lands
11 that are school trust lands or any rights of lessees of such
12 lands."

13 Section 3. Section 23-2-311, MCA, is amended to read:

14 "23-2-311. Right to portage -- establishment of
15 portage route. (1) A member of the public making
16 recreational use of surface waters may, ~~above--the--ordinary~~
17 high-water--mark as provided herein, portage around barriers
18 in the least intrusive manner possible, avoiding damage to
19 the landowner's land property and violation of his rights.

20 (2) A landowner may create barriers across streams for
21 purposes of land or water management or to establish land
22 property ownership as otherwise provided by law. If a
23 landowner erects a structure which does not interfere with
24 the public's use of the surface waters, ~~the public a portage~~
25 route may not go be established above the ordinary

1 high-water mark to portage around the structure.

2 (3) (a) A portage route around or over a barrier may
3 ~~be--established--to--avoid--damage--to--the--landowner's--land--and~~
4 ~~violation--of--his--rights,--as--well--as--to~~ must provide a
5 reasonable and safe route for the recreational user of the
6 surface waters.

7 (b) A portage route may be established when either a
8 landowner or ~~a--member--of--the--recreating--public~~ the
9 department submits a request to the supervisors that such a
10 route be established.

11 (c) Within 45 days of the receipt of a request, the
12 supervisors shall, in consultation with the landowner and a
13 representative of the department, examine and investigate
14 the barrier and the adjoining land to determine a reasonable
15 and safe portage route and the compensation to be paid to
16 the landowner.

17 (d) Within 45 days of the examination of the site, the
18 supervisors shall make a written finding of the most
19 appropriate portage route.

20 (e) ~~The cost--of--establishing~~ compensation to the
21 landowner for the portage route around artificial barriers
22 must be borne by the ~~involved--landowner,--except--for--the~~
23 ~~construction--of--notification--signs--of--such--route,--which--is~~
24 ~~the--responsibility--of--the~~ department. ~~The--cost--of~~
25 ~~establishing--a--portage--route--around--artificial--barriers--not~~

1 owned-by-the-landowner-on-whose-land-the-portage-route--will
2 be-placed-must-be-borne-by-the-department;

3 (f) Once the route is established, the department has
4 the exclusive responsibility thereafter to construct the
5 portage route and to maintain the portage route at
6 reasonable times agreeable to the landowner. The department
7 shall post notices on the stream of the existence of the
8 portage route and the public's obligation to use it as the
9 exclusive means around a barrier.

10 ~~{g}--if-either-the-landowner-or-recreationist-disagrees~~
11 ~~with--the--route--described--in--subsection--{3}{e}7--he-may~~
12 ~~petition--the--district--court--to--name--a--three-member~~
13 ~~arbitration--panel7--The--panel--must-consist-of-an-affected~~
14 ~~landowner7-a-member-of-an-affected-recreational-group7-and-a~~
15 ~~member-selected-by-the-two-other-members-of-the--arbitration~~
16 ~~panel7--The--arbitration-panel-may-accept7-reject7-or-modify~~
17 ~~the-supervisors'-finding-under-subsection-{3}{d}7~~

18 ~~{h}--The-determination--of--the--arbitration--panel--is~~
19 ~~binding-upon-the-landowner-and-upon-all-parties-that-use-the~~
20 ~~water--for--which--the--portage--is--provided7--Costs-of-the~~
21 ~~arbitration--panel7--computed--as--for--jurors'-fees--under~~
22 ~~3-15-2017-shall-be-borne-by-the-contesting-party-or-parties7~~
23 ~~all-other-parties-shall-bear-their-own-costs.~~

24 ~~{i}{g}~~ The determination decision of the arbitration
25 panel supervisors may be appealed within 30 days to the

1 district court for trial de novo. If not appealed within 30
2 days, the decision is final.

3 ~~{j}{h}~~ Once a portage route is established, the public
4 shall use the portage route as the exclusive means to
5 portage around or over the barrier.

6 ~~{4}--Nothing-contained-in-this-part-addresses-the-issue~~
7 ~~of--natural--barriers--or--portage-around-said-barriers7-and~~
8 ~~nothing-contained-in-this-part-makes-such-portage-lawful--or~~
9 ~~unlawful."~~

10 NEW SECTION. Section 4. Extension of authority. Any
11 existing authority of the fish and game commission to make
12 rules on the subject of the provisions of this act is
13 extended to the provisions of this act.

14 NEW SECTION. Section 5. Effective date. This act is
15 effective on passage and approval.

-End-

1 SENATE BILL NO. 286

2 INTRODUCED BY GALT, ELLISON, PINSONEAULT, KELLER,
3 COBB, HOFMAN, SEVERSON, HIRSCH, HAMMOND, BOYLAN,
4 KEATING, SWIFT, SPAETH
5

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE STREAM
7 ACCESS LAW TO REMOVE PROVISIONS DECLARED UNCONSTITUTIONAL;
8 ~~TO REQUIRE RECREATIONAL USE TO BE EXERCISED WITH REGARD TO~~
9 ~~LAND OWNERSHIP; TO REQUIRE LANDOWNER PERMISSION FOR~~
10 ~~RECREATIONAL USE INVOLVING MORE THAN MINIMAL USE OF LAND; TO~~
11 REVISE PROVISIONS CONCERNING PORTAGE ROUTES; AMENDING
12 SECTIONS 23-2-301, 23-2-302, AND 23-2-311, MCA; AND
13 PROVIDING AN IMMEDIATE EFFECTIVE DATE."
14

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

16 (Refer to Second Reading Bill)

17 Strike everything after the enacting clause and insert:

18 Section 1. Section 23-2-302, MCA, is amended to read:

19 "23-2-302. Recreational use permitted -- limitations
20 -- exceptions. (1) Except as provided in subsections (2)
21 through (5), all surface waters that are capable of
22 recreational use may be so used by the public without regard
23 to the ownership of the land underlying the waters.

24 (2) The right of the public to make recreational use
25 of surface waters does not include, without permission or

1 contractual arrangement with the landowner:

2 (a) the operation of all-terrain vehicles or other
3 motorized vehicles not primarily designed for operation upon
4 the water;

5 (b) the recreational use of surface waters in a stock
6 pond or other private impoundment fed by an intermittently
7 flowing natural watercourse;

8 (c) the recreational use of waters while diverted away
9 from a natural water body for beneficial use pursuant to
10 Title 85, chapter 2, part 2 or 3, except for impoundments or
11 diverted waters to which the owner has provided public
12 access;

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

15 ~~(e)--overnight--camping--within--sight--of--any--occupied~~
16 ~~dwelling--or--within--500--yards--of--any--occupied--dwelling,~~
17 ~~whichever--is--less;~~

18 ~~(f)(e)~~ the placement or creation of any permanent duck
19 blind, boat moorage, or ~~any--seasonal--or--other--objects--within~~
20 ~~sight--of--or--within--500--yards--of--an--occupied--dwelling,~~
21 ~~whichever--is--less~~ other permanent object; or

22 ~~(g)(f)~~ use of a streambed as a right-of-way for any
23 purpose when water is not flowing therein.

24 (3) The right of the public to make recreational use
25 of class II waters does not include, without permission of

1 the landowner:

2 (a) big game hunting;

3 (b) overnight camping;

4 (c) the placement or creation of any seasonal object;

5 or

6 (d) other activities which are not primarily
7 water-related pleasure activities as defined in
8 23-2-301(10).

9 (4) The right of the public to make recreational use
10 of surface waters does not grant any easement or right to
11 the public to enter onto or cross private property in order
12 to use such waters for recreational purposes.

13 (5) The commission shall adopt rules pursuant to
14 87-1-303, in the interest of public health, public safety,
15 or the protection of public and private property, governing
16 recreational use of class I and class II waters. These rules
17 must include the following:

18 (a) the establishment of procedures by which any
19 person may request an order from the commission:

20 (i) limiting, restricting, or prohibiting the type,
21 incidence, or extent of recreational use of a surface water;
22 or

23 (ii) altering limitations, restrictions, or
24 prohibitions on recreational use of a surface water imposed
25 by the commission;

1 (b) provisions requiring the issuance of written
2 findings and a decision whenever a request is made pursuant
3 to the rules adopted under subsection (5)(a); and

4 (c) a procedure for the identification of streams
5 within class II waters which are not capable of recreational
6 use or are capable of limited recreational use, and a
7 procedure to restrict the recreational use to the actual
8 capacity of the water.

9 (6) The provisions of this section do not affect any
10 rights of the public with respect to state-owned lands that
11 are school trust lands or any rights of lessees of such
12 lands."

13 Section 2. Section 23-2-311, MCA, is amended to read:

14 "23-2-311. Right to portage -- establishment of
15 portage route. (1) A member of the public making
16 recreational use of surface waters may, above the ordinary
17 high-water mark, portage around barriers in the least
18 intrusive manner possible, avoiding damage to the
19 landowner's land and violation of his rights.

20 (2) A landowner may create barriers across streams for
21 purposes of land or water management or to establish land
22 ownership as otherwise provided by law. If a landowner
23 erects a structure which does not interfere with the
24 public's use of the surface waters, the public may not go
25 above the ordinary high-water mark to portage around the

1 structure.

2 (3) (a) A portage route around or over a barrier may
3 be established to avoid damage to the landowner's land and
4 violation of his rights, as well as to provide a reasonable
5 and safe route for the recreational user of the surface
6 waters.

7 (b) A portage route may be established when either a
8 landowner or a member of the recreating public submits a
9 request to the supervisors that such a route be established.

10 (c) Within 45 days of the receipt of a request, the
11 supervisors shall, in consultation with the landowner and a
12 representative of the department, examine and investigate
13 the barrier and the adjoining land to determine a reasonable
14 and safe portage route.

15 (d) Within 45 days of the examination of the site, the
16 supervisors shall make a written finding of the most
17 appropriate portage route.

18 (e) The cost of establishing the portage route around
19 artificial barriers must be borne by the involved-landowner;
20 ~~except--for--the--construction-of-notification-signs-of-such~~
21 ~~route,--which-is-the-responsibility-of--the~~ department. The
22 cost of establishing a portage route around artificial
23 barriers not owned by the landowner on whose land the
24 portage route will be placed must be borne by the
25 department.

1 (f) Once the route is established, the department has
2 the exclusive responsibility thereafter to construct and to
3 maintain the portage route at reasonable times agreeable to
4 the landowner. The department shall post notices on the
5 stream of the existence of the portage route and the
6 public's obligation to use it as the exclusive means around
7 a barrier.

8 (g) If either the landowner or recreationist disagrees
9 with the route described in subsection (3)(e), he may
10 petition the district court to name a three-member
11 arbitration panel. The panel must consist of an affected
12 landowner, a member of an affected recreational group, and a
13 member selected by the two other members of the arbitration
14 panel. The arbitration panel may accept, reject, or modify
15 the supervisors' finding under subsection (3)(d).

16 (h) The determination of the arbitration panel is
17 binding upon the landowner and upon all parties that use the
18 water for which the portage is provided. Costs of the
19 arbitration panel, computed as for jurors' fees under
20 3-15-201, shall be borne by the contesting party or parties;
21 all other parties shall bear their own costs.

22 (i) The determination of the arbitration panel may be
23 appealed within 30 days to the district court.

24 (j) Once a portage route is established, the public
25 shall use the portage route as the exclusive means to

1 portage around or over the barrier.

2 (4) Nothing contained in this part addresses the issue
3 of natural barriers or portage around said barriers, and
4 nothing contained in this part makes such portage lawful or
5 unlawful."

6 NEW SECTION. Section 3. Extension of authority. Any
7 existing authority of the fish and game commission to make
8 rules on the subject of the provisions of this act is
9 extended to the provisions of this act.

10 NEW SECTION. Section 4. Effective date. This act is
11 effective on passage and approval.

-End-

1 SENATE BILL NO. 286

2 INTRODUCED BY GALT, ELLISON, PINSONEAULT, KELLER,
3 COBB, HOFMAN, SEVERSON, HIRSCH, HAMMOND, BOYLAN,
4 KEATING, SWIFT, SPAETH

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE STREAM
7 ACCESS LAW TO REMOVE PROVISIONS DECLARED UNCONSTITUTIONAL;
8 ~~TO REQUIRE RECREATIONAL USE TO BE EXERCISED WITH REGARD TO~~
9 ~~LAND OWNERSHIP, TO REQUIRE LANDOWNER PERMISSION FOR~~
10 ~~RECREATIONAL USE INVOLVING MORE THAN MINIMAL USE OF LAND; TO~~
11 REVISE CLARIFY PROVISIONS CONCERNING PORTAGE ROUTES;
12 AMENDING SECTIONS ~~23-2-301~~, 23-2-301, 23-2-302, AND
13 23-2-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 (Refer to Second Reading Bill)

17 Strike everything after the enacting clause and insert:

18 SECTION 1. SECTION 23-2-301, MCA, IS AMENDED TO READ:

19 "23-2-301. Definitions. For purposes of this part, the
20 following definitions apply:

21 (1) "Barrier" means an artificial obstruction located
22 in or over a water body, restricting passage on or through
23 the water, which totally or effectively obstructs the
24 recreational use of the surface water at the time of use. A
25 barrier may include but is not limited to a bridge or fence

1 or any other manmade obstacle to the natural flow of water.

2 (2) "Class I waters" means surface waters, other than
3 lakes, that:

4 (a) lie within the officially recorded federal
5 government survey meander lines thereof;

6 (b) flow over lands that have been judicially
7 determined to be owned by the state by reason of application
8 of the federal navigability test for state streambed
9 ownership;

10 (c) are or have been capable of supporting the
11 following commercial activities: log floating,
12 transportation of furs and skins, shipping, commercial
13 guiding using multiperson watercraft, public transportation,
14 or the transportation of merchandise, as these activities
15 have been defined by published judicial opinion as of April
16 19, 1985; or

17 (d) are or have been capable of supporting commercial
18 activity within the meaning of the federal navigability test
19 for state streambed ownership.

20 (3) "Class II waters" means all surface waters that
21 are not class I waters, except lakes.

22 (4) "Commission" means the fish and game commission
23 provided for in 2-15-3402.

24 (5) "Department" means the department of fish,
25 wildlife, and parks provided for in 2-15-3401.

1 (6) "Diverted away from a natural water body" means a
2 diversion of surface water through a manmade water
3 conveyance system, including but not limited to:

4 (a) an irrigation or drainage canal or ditch;

5 (b) an industrial, municipal, or domestic water
6 system, excluding the lake, stream, or reservoir from which
7 the system obtains water;

8 (c) a flood control channel; or

9 (d) a hydropower inlet and discharge facility.

10 (7) "Lake" means a body of water where the surface
11 water is retained by either natural or artificial means and
12 the natural flow of water is substantially impeded.

13 (8) "Occupied dwelling" means a building used for a
14 human dwelling at least once a year.

15 (9) "Ordinary high-water mark" means the line that
16 water impresses on land by covering it for sufficient
17 periods to cause physical characteristics that distinguish
18 the area below the line from the area above it.
19 Characteristics of the area below the line include, when
20 appropriate, but are not limited to deprivation of the soil
21 of substantially all terrestrial vegetation and destruction
22 of its agricultural vegetative value. A flood plain
23 adjacent to surface waters is not considered to lie within
24 the surface waters' high-water marks.

25 (10) "Recreational use" means with respect to surface

1 waters, unless otherwise prohibited or regulated by law:
2 fishing, hunting waterfowl, swimming, floating in small
3 craft or other flotation devices, boating in motorized craft
4 ~~unless otherwise prohibited or regulated by law,~~ or craft
5 propelled by oar or paddle, other water-related pleasure
6 activities, and related unavoidable or incidental uses.

7 (11) "Supervisors" means the board of supervisors of a
8 soil conservation district, the directors of a grazing
9 district, or the board of county commissioners if a request
10 pursuant to 23-2-311(3)(b) is not within the boundaries of a
11 conservation district or if the request is refused by the
12 board of supervisors of a soil conservation district or the
13 directors of a grazing district.

14 (12) "Surface water" means, for the purpose of
15 determining the public's access for recreational use, a
16 natural water body, its bed, and its banks up to the
17 ordinary high-water mark."

18 Section 2. Section 23-2-302, MCA, is amended to read:

19 "23-2-302. Recreational use permitted -- limitations
20 -- exceptions. (1) Except as provided in subsections (2)
21 through (5), all surface waters that are capable of
22 recreational use may be so used by the public without regard
23 to the ownership of the land underlying the waters. HOWEVER,
24 ANY USE OF THE BED AND BANKS MUST BE OF MINIMAL IMPACT AND
25 NECESSARY FOR UTILIZATION OF THE WATER ITSELF.

1 (2) The right of the public to make recreational use
2 of surface waters does not include, without permission or
3 contractual arrangement with the landowner:

4 (a) the operation of all-terrain vehicles or other
5 motorized vehicles not primarily designed for operation upon
6 the water;

7 (b) the recreational use of surface waters in a stock
8 pond or other private impoundment fed by an intermittently
9 flowing natural watercourse;

10 (c) the recreational use of waters while diverted away
11 from a natural water body for beneficial use pursuant to
12 Title 85, chapter 2, part 2 or 3, except for impoundments or
13 diverted waters to which the owner has provided public
14 access;

15 (d) ~~big-game hunting except by long-bow or shotgun~~
16 ~~when specifically authorized by the commission, EXCEPT~~
17 ~~WATERFOWL HUNTING. THIS SUBSECTION (D) DOES NOT REQUIRE~~
18 ~~PERMISSION OF THE LANDOWNER UNLESS PERMISSION IS OTHERWISE~~
19 ~~REQUIRED BY 45-6-201 AND 45-6-203 OR BY 87-3-304.~~

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

23 ~~(f)(e) the placement or creation of any permanent OR~~
24 ~~SEASONAL duck blind, boat moorage, or any seasonal or other~~
25 ~~objects within sight of or within 500 yards of an occupied~~

1 ~~dwelling, whichever is less other permanent object; or~~
2 ~~(g)(f) use of a streambed as a right-of-way for any~~
3 ~~purpose when water is not flowing therein;~~

4 ~~(G) CAMPFIRES, EXCEPT PORTABLE STOVES, UNLESS MANDATED~~
5 ~~BY AN EMERGENCY;~~

6 ~~(H) OVERNIGHT CAMPING, UNLESS IT IS NECESSARY FOR~~
7 ~~UTILIZATION OF THE WATER ITSELF AND UNLESS IT DOES NOT OCCUR~~
8 ~~WITHIN SIGHT OR 500 YARDS OF AN OCCUPIED DWELLING; OR~~

9 ~~(I) OTHER ACTIVITIES WHICH ARE NOT PRIMARILY~~
10 ~~WATER-RELATED PLEASURE ACTIVITIES AS PROVIDED FOR IN~~
11 ~~23-2-301(10).~~

12 (3) The right of the public to make recreational use
13 of class II waters does not include, OVERNIGHT CAMPING
14 without permission of the landowner:

15 ~~(a) big-game hunting;~~

16 ~~(b) overnight camping;~~

17 ~~(c) the placement or creation of any seasonal object;~~

18 or

19 ~~(d) other activities which are not primarily~~
20 ~~water-related pleasure activities as defined in~~
21 ~~23-2-301(10).~~

22 (4) The right of the public to make recreational use
23 of surface waters does not grant any easement or right to
24 the public to enter onto or cross private property in order
25 to use such waters for recreational purposes.

1 (5) The commission shall adopt rules pursuant to
 2 87-1-303, in the interest of public health, public safety,
 3 or the protection of public and private property, governing
 4 recreational use of class I and class II waters. These rules
 5 must include the following:

6 (a) the establishment of procedures by which any
 7 person may request an order from the commission:

8 (i) limiting, restricting, or prohibiting the type,
 9 incidence, or extent of recreational use of a surface water;
 10 or

11 (ii) altering limitations, restrictions, or
 12 prohibitions on recreational use of a surface water imposed
 13 by the commission;

14 (b) provisions requiring the issuance of written
 15 findings and a decision whenever a request is made pursuant
 16 to the rules adopted under subsection (5)(a); and

17 (c) a procedure for the identification of streams
 18 within class II waters which are not capable of recreational
 19 use or are capable of limited recreational use, and a
 20 procedure to restrict the recreational use to the actual
 21 capacity of the water.

22 (6) The provisions of this section do not affect any
 23 rights of the public with respect to state-owned lands that
 24 are school trust lands or any rights of lessees of such
 25 lands."

1 Section 3. Section 23-2-311, MCA, is amended to read:
 2 "23-2-311. Right to portage -- establishment of
 3 portage route. (1) A member of the public making
 4 recreational use of surface waters may, above the ordinary
 5 high-water mark, portage around barriers in the least
 6 intrusive manner possible, avoiding damage to the
 7 landowner's land and violation of his rights.

8 (2) A landowner may create barriers across streams for
 9 purposes of land or water management or to establish land
 10 ownership as otherwise provided by law. If a landowner
 11 erects a structure which does not interfere with the
 12 public's use of the surface waters, the public may not go
 13 above the ordinary high-water mark to portage around the
 14 structure.

15 (3) (a) A portage route around or over a barrier may
 16 be established to avoid damage to the landowner's land and
 17 violation of his rights, as well as to provide a reasonable
 18 and safe route for the recreational user of the surface
 19 waters.

20 (b) A portage route may be established when either a
 21 landowner or a member of the recreating public submits a
 22 request to the supervisors that such a route be established.

23 (c) Within 45 days of the receipt of a request, the
 24 supervisors shall, in consultation with the landowner and a
 25 representative of the department, examine and investigate

1 the barrier and the adjoining land to determine a reasonable
2 and safe portage route.

3 (d) Within 45 days of the examination of the site, the
4 supervisors shall make a written finding of the most
5 appropriate portage route.

6 (e) The cost of establishing the portage route around
7 artificial barriers, WHETHER OR NOT THE LANDOWNER OWNS THE
8 BARRIER, must be borne by the involved landowner, ~~except for~~
9 ~~the construction of notification signs of such route, which~~
10 ~~is the responsibility of the~~ department. ~~The cost of~~
11 ~~establishing a portage route around artificial barriers not~~
12 ~~owned by the landowner on whose land the portage route will~~
13 ~~be placed must be borne by the department.~~

14 (f) Once the route is established, the department has
15 the exclusive responsibility thereafter to construct and to
16 maintain the portage route at reasonable times agreeable to
17 the landowner. The department shall post notices on the
18 stream of the existence of the portage route and the
19 public's obligation to use it as the exclusive means around
20 a barrier.

21 (g) If either the landowner or recreationist disagrees
22 with the route described in subsection (3)(e)(D), he may
23 petition the district court to name a three-member
24 arbitration panel. The panel must consist of an affected
25 landowner, a member of an affected recreational group, and a

1 member selected by the two other members of the arbitration
2 panel. The arbitration panel may accept, reject, or modify
3 the supervisors' finding under subsection (3)(d).

4 (h) The determination of the arbitration panel is
5 binding upon the landowner and upon all parties that use the
6 water for which the portage is provided. Costs of the
7 arbitration panel, computed as for jurors' fees under
8 3-15-201, shall be borne by the contesting party or parties;
9 all other parties shall bear their own costs.

10 (i) The determination of the arbitration panel may be
11 appealed within 30 days to the district court.

12 (j) Once a portage route is established, the public
13 shall use the portage route as the exclusive means to
14 portage around or over the barrier.

15 (4) Nothing contained in this part addresses the issue
16 of natural barriers or portage around said barriers, and
17 nothing contained in this part makes such portage lawful or
18 unlawful."

19 NEW SECTION. Section 4. Extension of authority. Any
20 existing authority of the fish and game commission to make
21 rules on the subject of the provisions of this act is
22 extended to the provisions of this act.

23 NEW SECTION. Section 5. Effective date. This act is
24 effective on passage and approval.

-End-

HOUSE

STANDING COMMITTEE REPORT

MARCH 27, 19 87

PAGE TWO
MARCH 27, 19 87

Mr. Speaker: We, the committee on JUDICIARY
report SENATE BILL NO. 286

- do pass
- do not pass
- be concurred in
- be not concurred in
- as amended
- statement of intent attached

E. Ellison
Chairman

AMENDMENTS TO SB 286, PROPOSED BY SUBCOMMITTEE OF HOUSE JUDICIARY COMMITTEE.

1. Title, line 11.
Strike: "REVISE"
Insert: "CLARIFY"

2. Title, line 12.
Following: "23-2-301,"
Insert: "23-2-301,"
Following: "23-2-302,"
Insert: ",,"

3. Page 1, line 18.
Following: line 17
Insert: "Section 1. Section 23-2-301, MCA, is amended to read:
"23-2-301. Definitions. For purposes of this part, the following definitions apply:

(1) "Barrier" means an artificial obstruction located in or over a water body, restricting passage on or through the water, which totally or effectively obstructs the recreational use of the surface water at the time of use. A barrier may include but is not limited to a bridge or fence or any other manmade obstacle to the natural flow of water.

(2) "Class I waters" means surface waters, other than lakes, that:

(a) lie within the officially recorded federal government survey meander lines thereof;

(b) flow over lands that have been judicially determined to be owned by the state by reason of application of the federal navigability test for state streambed ownership;

(c) are or have been capable of supporting the following commercial activities: log floating, transportation of furs and skins, shipping, commercial guiding using multiperson watercraft, public transportation, or the transportation of merchandise, as these activities have been defined by published judicial opinion as of April 19, 1985; or

(d) are or have been capable of supporting commercial activity within the meaning of the federal navigability test for state streambed ownership.

(3) "Class II waters" means all surface waters that are not class I waters, except lakes.

(4) "Commission" means the fish and game commission provided for in 2-15-3402.

(5) "Department" means the department of fish, wildlife, and parks provided for in 2-15-3401.

(6) "Diverted away from a natural water body" means a diversion of surface water through a manmade water conveyance system, including but not limited to:

(a) an irrigation or drainage canal or ditch;
(b) an industrial, municipal, or domestic water system, excluding the lake, stream, or reservoir from which the system obtains water;

(c) a flood control channel; or
(d) a hydropower inlet and discharge facility.

(7) "Lake" means a body of water where the surface water is retained by either natural or artificial means and the natural flow of water is substantially impeded.

(8) "Occupied dwelling" means a building used for a human dwelling at least once a year.

(9) "Ordinary high-water mark" means the line that water impresses on land by covering it for sufficient periods to cause physical characteristics that distinguish the area below the line from the area above it. Characteristics of the area below the line include, when appropriate, but are not limited to deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural vegetative value. A flood plain adjacent to surface waters is not considered to lie within the surface waters' high-water marks.

(10) "Recreational use" means with respect to surface waters, unless otherwise prohibited or regulated by law: fishing, hunting waterfowl, swimming, floating in small craft or other flotation devices, boating in motorized craft unless otherwise prohibited or regulated by law, or craft propelled by oar or paddle, other water-related pleasure activities, and related unavoidable or incidental uses.

(11) "Supervisors" means the board of supervisors of a soil conservation district, the directors of a grazing district, or the board of county commissioners if a request pursuant to 23-2-311(3)(b) is not within the boundaries of a conservation district or if the request is refused by the board of supervisors of a soil conservation district or the directors of a grazing district.

(12) "Surface water" means, for the purpose of determining the public's access for recreational use, a natural water body, its bed, and its banks up to the ordinary high-water mark."

Renumber: subsequent sections

4. Page 1, line 23.

Following: "waters."

Insert: "However, any use of the bed and banks must be of minimal impact and necessary for utilization of the water itself."

5. Page 2, line 13.

Strike: "big game"

6. Page 2, line 14.

Following: "emission"

Strike: ";

Insert: ", except waterfowl hunting. This subsection (d) does not require permission of the landowner unless permission is otherwise required by 45-6-201 and 45-6-203 or by 87-3-304."

7. Page 2, line 18.

Following: "permanent"

Insert: "or seasonal"

8. Page 2, line 21.

Strike: "permanent"

Strike: "or"

9. Page 2, line 23.

Following: "therein"

Strike: "."

Insert: ";

(g) campfires, except portable stoves, unless mandated by an emergency;

(h) overnight camping, unless it is necessary for utilization of the water itself and unless it does not occur within sight or 500 yards of an occupied dwelling; or

(i) other activities which are not primarily water-related pleasure activities as provided for in 23-2-301(10)."

10. Page 2, line 25.

Following: "include"

Strike: ","

Insert: "overnight camping"

11. Page 3, lines 1 through 8.

Following: "landowner" on line 1

Strike: ":" on line 1 through "23-2-301(10)" on line 8

12. Page 5, line 19.

Following: "barriers"

Insert: ", whether or not the landowner owns the barrier,"

13. Page 5, lines 21 through 25.

Strike: "The" on line 21 through end of line 25

14. Page 6, line 9.

Strike: "(e)"

Insert: "(d)"