

House Bill 208
January 25, 2005
Presented by Jeff Hagener
Montana Fish, Wildlife & Parks Committee

EXHIBIT 19
DATE 1-25-05
HB 208

Mr. Chairman and committee members, for the record I am Jeff Hagener, Director of Montana Fish, Wildlife & Parks (FWP).

FWP asks your support for HB 208, which will streamline the process by which FWP works with adjacent landowners to complete minor property boundary adjustments and correct encroachment problems, and, grants and acquires right of way easements. The proposed changes are two fold:

First, HB 208 will allow FWP to sell tracts of land directly to an adjacent landowner if a department owned tract is less than 10 acres in size or less than \$20,000 in value and the sale is considered necessary and advisable. Under present law, land disposals by FWP to any party other than a government agency must be undertaken either through a public bid sale process or by implementation of a land exchange. Oftentimes, the public bid and land exchange processes are expensive and impractical for solving minor boundary adjustment problems.

In several instances FWP or FWP's neighbors have discovered a home or other structure had been constructed partially on FWP property. In another instance a septic drain field was located partially within a Fishing Access Site. At the Stuart Mill Bay Fishing Access Site near Georgetown Lake, several neighbors have located water wells and other yard improvements on land owned by FWP. These mistakes occurred long before the department owned the land and were obviously not intentional. To move the building improvements would be very expensive for the private owners and in some instances impossible with current building regulations. It also makes the private property difficult to sell until the encroachment problems are solved. If these small pieces of land are offered for sale to the highest bidder as the existing statute requires, the neighbor risks losing the property to another bidder in order to correct a boundary problem. For this reason, FWP is reluctant to actively correct these problems due to the risk to its neighbors when the boundary problem was obviously an honest mistake.

This law change would also be beneficial when improved survey technology reveals that property lines are not consistent with existing fence lines or where a portion of FWP land is severed by a road or river and this non-contiguous tract would be more practical for the neighbor to own than the agency. With this change to the statute, the department could more easily manage small land disposals with less expense and risk to neighbors.

Second, HB 208 will clarify existing requirements for grants or acquisition of right of way easement and provide that the Director of FWP has authority to approve the grant of right of way easements both to and from the agency. This bill will also clarify that grants of right of way are not subject to public bidding provisions.

Currently, the FWP Commission is required to approve any such land interest proposal. Grants of right of way are typically associated with necessary utility projects or state and local road

construction. Unless a significant environmental impact is noted during the MEPA and public review process, the Department recommends approval and the FWP Commission approves the proposal. The FWP Commission, comprised of five unsalaried appointees, typically meets monthly to review a wide variety of department issues. Each meeting usually lasts at least one full day. The current process takes about 3-4 months to complete, which we believe is an unreasonable length of time to ask a neighbor, utility company, or county to wait for a FWP grant of a necessary right of way easement that has already gone through a MEPA process with full public review.

In summary, moving the approval authority for right of way grants and acquisitions to the Director would eliminate a largely ministerial approval process from the FWP Commission and would expedite granting utility company easements, state and local road project requests. Public review through the MEPA process and historic review by the State Historic Preservation Office would still be required.