EXHIBIT 14
DATE 2.15.05
HB 560

- Bozeman Chronicle - June 2000

Montanans won access to streams

JIM GOETZ
GUEST COLUMNIST

Recently the Mountain States Legal Foundation filed a lawsuit in the Helena Federal District Court challenging Montana's stream access law. The plaintiffs are landowners on the Stillwater River in Stillwater County and on O'Dell Creek and the Ruby River in Madison County. Their complaint alleges that they own the streambed and banks, and that Montana's law, which allows recreationists to use the waters and banks up to the high-water mark, unconstitutionally "takes" their private property.

The Mountain States Legal Foundation, headquartered in Denver, came into being in the era of James Watts' Sagebrush Rebellion. While claiming to be a public interest law firm, it continues to espouse Watts' political philosophy and generally represents the vested interests. I am in possession of a circular from that organization noting that it is "[T]aking the Montana stream access law to federal court to re-establish a private property rights," and seeking to recruit Montana landowners as plaintiffs.

Montanans are strong advocates of private property rights. But we also have a strong populist tradition in hunting and fishing. Our streams have always been open to hunters, fisherman and other recreationists and have never been considered the "property" of the privileged few. I was raised in Ennis and have fond memories from my boyhood of floating the Madison fishing with my father. No riparian landowner at that time ever suggested that these waters were his private property and that the public must stay off.

Unfortunately, this attitude changed over the years, probably because of the influx of wealthy nonresidents who pay big money for prime Montana property. In the early '80s I represented the Montana Coalition for Stream Access, a coalition of sportsmen and recreationists, in two seminal lawsuits on stream access — one concerning the Dearborn River and the other the Beaverhead.

We based our cases on several points, including the fact that, at the time of statehood, the states acquired title to the beds of navigable waters and that such title was held "in trust for the public benefit." We also invoked the public trust doctrine in combination with Article IX, Section 3(3) of the Montana Constitution which provides that the waters in "the state are property of the state for the use of its people."

The Montana Supreme Court ruled in our favor in both cases in 1984. In the Dearborn River case, the Court reasoned:

- If the waters are owned by the state and held in trust for the people by the state, no private party may bar the use of those waters by the people.
- The Constitution and the public trust doctrine do not permit a private party to interfere with the public's right to recreational use of the surface of the state's waters.
- If the waters are susceptible to public recreational use, they may be so used by the public.

The Court further held that the public has a right to use state-owned waters to the point of the high-water mark. This is a marvelously egalitarian concept — "the people" have the right to use their waters, no matter how rich or powerful the riparian landowner is.

Following the stream access cases, the Montana Legislature considered a stream access law. Although the deliberations were contentious, the Montana Stockgrowers Association, which had been strongly opposed to our lawsuits, took a very statesman-like position in working with the recreationists to forge a workable compromise. The Stockgrowers realized that a pragmatic compromise resolution was preferable to no legislation. The law was enacted despite heated fringe opposition.

Since that time the law has proved to be workable. Landowners and recreationists have demonstrated an ability to get along. Although there have been some reports of trespass and confrontation, these have been remarkably rare.

The Mountain States Legal Foundation is a day late and a dollar short. We solved this problem years ago. We do not need this officious intermeddler from Denver, picking at a scab that has been long healed. We will defeat this effort, and we will continue to use Montana's waters, and we will continue to demonstrate that landowners and recreationists can get along.

James H. Goetz is a partner in the Bozeman law firm of Goetz, Gallik, Baldwin & Dolan, P.C. In the 1980s he represented the Montana Coalition for Stream Access in Montana Coalition for Stream Access v. Curran (the Dearborn River case), and Montana Coalition for Stream Access v. Hildreth (the Beaverhead River case). These cases established the public's right to use Montana's waterways.