

EXHIBIT 9  
DATE 1-18-05  
HB 133

House Bill 133  
January 18, 2005  
Presented by Robert N. Lane  
House Local Government Committee

Mr. Chairman and committee members, I am Robert N. Lane, Chief Legal Counsel of Montana Department of Fish, Wildlife & Parks (FWP).

This bill is a tale of two fences. If the fencing specifically permitted by the amendment in this bill is the type of fencing designed to control livestock, then FWP sees no problems with such an intent. In fact, fences running to bridge abutments for livestock control are necessary and practical and have been traditionally used.

The other type of fencing, sometimes now constructed to bridge abutments, is designed to prevent public access to a stream or river from a county road right-of-way. Fences designed, constructed and maintained to prevent public access from public roads to streams and rivers that the public has a right to use should not be allowed. The Attorney General has recognized the right of the public to access streams and rivers from county road right-of-ways. 48 Op. Attry. Gen. No. 13.

FWP recommends that the intent of this bill be clarified to allow fences for livestock control but not allow fences to block public access.

A proposed amendment is attached.

Amendments to House Bill No. 133

Introduced Copy

For the House Committee of Fish, Wildlife & Parks

Prepared by Department of Fish, Wildlife and Parks  
January 17, 2005

1. Page 1, line 21.

Following: "61-1-206"

Insert: "and if the fencing does not block or is not constructed so that the fence blocks public access to a stream or river "