1/18

HB-133 - Hse. Local Gov't. Hrg.

EXHIBIT 15
DATE 1-18-05
HB 133

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Attorney

BZ - MCA

- support HB-133, because it is an answer to a long standing Q.
- it provides a sol., near genius in its simplicity to a thorny issue (some think more of a "barbed" issue)
- This legs. recognizes and ~~precisely~~ helps defines the rights of landowners along rivers + streams
- + the rts. of those who wish to access those rivers + streams
- It fills in a gap left by 48AG Op. No 13 rendered 5/26/2000, recognizing the recreating public's rt. to access streams @ bridge abutments in Cnty. rd. rt. of way.

First - Purpose is to keep stock in not to keep people out - "fence" should have the ord. def. already in code - not allow Barracade No T-pass signs or electric fence

Bridges on Cnty. Rds. are gen., phys. more narrow than the Cnty. Rd. + borrow pit
- @ each corner of bridge, fence generally angles to LO's fence along Cnty. Rd. Rt. of way leaving an hour-glass design
- however Cnty. Rd. ROW conts. straight across river leaving a triangle btwn. the bridge, LO's fence + Ord. high water mark, where rts. aren't defined
- I refer to it as "Devil's triangle" because it has so bedeviled my local gov't for @ least 10 yrs.
- even to point that MC + me personally are being sued by Access activists

- the theory is that CA has a non-discretional duty to prosecute, criminally, any person who erects encroachment in Cnty Rd. ROW
- vis-a-vis, the fence f/ LO's prop. to bridge abutment

- the flaw w/ this theory is that prosecutor, necessarily, always has prosecutorial discretion - bedrock tenet of CJS
  - perhaps, more important than knowing when to prosecute, is knowing when not to prosecute
- often times, the determining factor is the ability to obtain a conviction in front of a jury

Here, the effect of the activist lawsuit is to compel re to prosecute, at least in ML, livestock producers for engaging in an historical livestock practice that keeps stock f/ wandering onto Hwy.
- I'm good, but not that good
- No ML jury would convict on those facts
- PLAAI lawsuit is merely a reflection of their own ignorance re. how CJS works

AG op. left gap re. rts in triangle

The Courts are not proper forum to solve this prob. - legs. is we have opp. to resolve "devil's triangle" w/ HB-133
- many of you have rivers + streams in your ~~constituency~~ locale
  " " " livestock producers ~~not everyone happy~~
Have opp. to solve long-standing problem - accomodate rts. + benefits of most people
- ~~encourage adaption of HB-133~~

- some will say old + infirm will have difficulty climbing over or crawling under fence
- have photos I will leave that show many of these ~~ex~~ supposed access pts. by topography aren't conducive to access for the young + healthy let alone old + infirm
- DFWP has already installed ~~[illegible]~~ access sites
- ~~that is~~ they are suff.
- answer for old + infirm is more access sites, not making every corner of every bridge an access site
- topography + bridge design will simply not accommodate such access
  - neither does the law
  - nor should it

HB-133 makes this clear - + together w/ fishing access sites, accommodates all interests
- LOs/livestock producer can cont. w/ hist. livestock + safe practice
- Cats. + DOT won't have to sell out 10s of $1000s to make every corner of every bridge an access site
- + recreationists can climb over or under the fence as lay of land allows, or go to already est. site

HB-133 is a winning prop. + encourage ~~adoption~~ support

Email w/ ML - re. supp.

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From : Lambert, Marty <MLambert@co.gallatin.mt.us>

Sent : Monday, January 17, 2005 10:31 AM

To : "'Robert R. Zenker'" <bzmadco@hotmail.com>

Subject : HB 133

Inbox

Dear members of the House Local Government Committee: I support HB 133. This Bill should help prevent future argument and litigation over this particular fencing/stream access issue.

Please vote in favor of HB 133.

Marty Lambert, Gallatin County Attorney.
President, Montana County Attorney's Association.

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Montana State Legislature

Exhibit No. _____15_____

This exhibit also contains 14 colored photographs that cannot be scanned (the color scans black).

The exhibit is on file at the Historical Society

and may be viewed there.

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