

EXHIBIT 2
DATE 1-24-05
HB 269

House Bill 269
January 24, 2005
Presented by M. Jeff Hagener
House Transportation Committee

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

It is common sense that public access to public water be retained and not given up. Replacing lost access with equivalent access does this while allowing state and local governments needed flexibility in the management of their public lands.

The present statutes provide protection for access to lands. Because there is an easement for the flowing waters of streams and rivers over the land and an easement for public use of these waters and the bed and banks and because these easements are an interest in land held on behalf of the public, the statute, in theory, already covers access to streams and rivers. This is consistent with the intent of the present statute. However, it would be best to make this requirement explicit.

This bill, whether an amendment or clarification, will protect already established access. It will not create or require new access. It will help avoid controversy and will provide a stable foundation for planning replacement access.

For example, there has been controversy in the recent past when a new county bridge is built. The Attorney General (48 Op.Att'y Gen. No. 13) has said there is access from county right-of-ways. Even when there was access from an old bridge right-of-way, there have been situations where no access was provided at the new bridge right-of-way. This immediately pits recreationists against landowners. Litigation has underscored the potential for controversy.

On the other hand, if the statute clearly requires replacement access, then the emphasis for local and state government, for recreationists and for adjacent landowners, is how to best provide the replacement access. The amendment will provide a foundation for planning safe and appropriate access. The impacts on adjacent landowners can be considered and mitigated.

Recent experience has shown that considerable pressure can be brought to construct a new bridge without access. If equivalent access is required, then the pressure will be to cooperate.

There is a similar requirement for the management of state school trust lands. If land with public water, on the land or adjacent to the land, is sold or exchanged, land with equivalent riparian values must be obtained. Mont. Code Ann. 77-2-203(3).

This bill does the right thing. It requires that public access must be maintained. In doing so it will help reduce controversy and uncertainty. FWP supports HB 269.