SENATE FISH AND GAME
EXHIBIT NO. 1
DATE 3/8/05
BILL NO. HB 208

House Bill 208
March 8, 2005
Presented by Jeff Hagener
Senate Fish & Game Committee

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, as amended in the House. HB 208 is a "good neighbor" bill. Its sole purpose is to streamline the process in correcting property boundary problems with adjacent landowners and to remove government red tape in a largely ministerial FWP Commission approval process for granting and acquiring road and other right of way easements. The proposed changes are twofold:

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 found to be 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 loosing 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.

Second, HB 208, as amended, will clarify existing requirements for grants or acquisition of right of way easements for utilities, roads, drainage facilities, ditches for water conveyance, and pipelines. The bill provides 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.

FWP supports the amendments placed on the bill in the House which clarify that easements will be acquired from willing sellers and include a weed management plan. Reporting to the FWP Commission is appropriate since that body provides oversight of FWP land acquisitions and disposals.

In summary, HB 208, as amended, will allow FWP to work more effectively with adjacent landowners to resolve minor property boundary problems and will expedite granting utility company easements, state and local road project and other right of way requests. Public review through the MEPA process and historic review by the State Historic Preservation Office would still be required.