EXHIBIT 1
DATE 1-13-09
HB 190

House Bill 190
January 13, 2009
Presented by Bob Lane
House Fish, Wildlife & Parks Committee

Mr. Chairman, members of the Committee, I am Bob Lane, Chief Legal Counsel of Montana Department of Fish, Wildlife & Parks (FWP). FWP supports HB 190 as introduced.

This bill accomplishes three equally important goals. It allows landowners to fence to bridge abutments to contain livestock. It recognizes the public's right of access to streams and rivers from road right-of-ways. And, it provides clear directions and authority to county commissioners who are responsible for county roads.

Without this bill, the county commissioners in each county would need to decide whether or not fences across right-of-ways to bridge abutments are allowed and under what conditions. A county's decision would be subject to controversy and potential litigation. HB 190 establishes a uniform approach that each county can rely on.

For landowners, the bill guarantees that they will be able to fence to bridge abutments to protect and control their livestock. A landowner will not have to construct or pay for public passage through their fence. FWP will do that. Each landowner will be able to help decide the type of public passage that best protects their interests.

For recreationists, the bill removes any potential controversy over their ability to access a stream and removes the potential for a fence to be a barrier because there is a clear procedure for establishing a gate, PVC overwire, stile, etc.

If this seems simple, straight-forward, practical, and fair, it's because it is.

HB 190 does not expand the public's rights under stream access nor does it constitute any "taking" of private property. HB 190 merely seeks to codify an Attorney General's opinion that states that a public road crossing a public waterway is the intersection of two publics rights-of-way. Recently, a state district court has ruled that the public does have the right to access streams from county road right-of-ways and that the landowner can fence to bridge abutments if the fences are allowed by the county.

In the past session, many lawmakers were uncomfortable with a much more complicated bill because they were concerned about problems created by differing interpretations of the language used. This simple and straight-forward bill solves those concerns.

HB 190 reflects months of collaborative effort and constructive dialog among many interests. This bill represents the best change for all parties -- landowners, recreationists and counties -- to gain a mutually beneficial outcome.

FWP urges your support of HB 190 as introduced.