EXHIBIT 3
DATE 3-8-11
HB 309

Testimony on HB309
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I am a member of the Fishing Outfitters Association of Montana, a business association counting some 720 outfitter and guide members whose small businesses contribute 25 million annually to Montana's recreation service economy.

I consider Rep. Welborn a respected legislator; however, in this case, he may be a good man with a bad bill. Accordingly, I oppose HB309 for three reasons:

1) If HB309 becomes law, the alternate legal opinions about what is a ditch expressed in testimony today typify the wrangling that will employ lawyers for years without satisfying either landowners or recreationists. The definitions of our Stream Access Law have worked for almost three decades. In spite of local dissatisfaction with a recent court decision affecting a small waterway on the Bitterroot river, **the current Stream Access Law is sufficient and needs no corrective amendments.**

2) HB309's passage will change my business operation and those of my fellow outfitters. When faced with indecisive and opposing legal arguments about whether ditches include side-channels, braids, and sections of rivers I use daily, I will have to assume these stream sections are ditches. I cannot afford to wait while courts dictate the future of my business.

Now, the current SAL mandates that recreational use of certain surface waters is only available with the permission of landowners, and HB309 redefines ditches to add new stream sections to those waters requiring landowner permission.

Following law created by HB309, I will contact about thirty-five landowners seeking permission to continue to use stream sections newly-defined as 'ditches'. But, as a licensed outfitter, my requirement to follow the law doesn't stop there.

Outfitter statutes at 37-47-304(2)(h) mandate that we may only provide services on **land** with the **written** permission of landowners. If HB309 is passed into law, I expect this outfitter statute will need to be amended to allow "services on land **or water** with the written permission of landowners."

So, following legal precedent, I will have to make sure I have **written** permission signed by these landowners to continue to **float** on water that was once a stream and is now a 'ditch.'

Written permission is not new to our industry, but written permission to use **surface waters** rather than **land to access these waters** is a fundamental change we will need to absorb to continue 'business as usual.'

In order to operate according to law, I hope landowners are prepared to consider my request for written permission to float certain waters - and those requests of up to three hundred of my fellow outfitters around Montana - as a consequence of HB309. I ask committee members to consider this burden when debating passage of this bill.

3) The bill's title includes 'REMOVING PROVISIONS OF STREAM ACCESS LAWS THAT HAVE BEEN DECLARED INVALID."

I suggest the bill's handling of these 'invalid' provisions is like treating a broken arm with amputation.

Yes, the 1986 Montana Supreme Court's Galt Decision declared specific provisions of the Stream Access Law unconstitutional. However, the majority opinion also suggested corrective solutions to one section by implying that camping may be allowed when it is **necessary** for the recreational use of a river, and another by noting that **temporary** rather than permanent duck blinds and boat moorages may be allowed.

Why strike as unconstitutional whole sections of the SAL when reasonable remedies are available? Why be absolute when compromise may well work? I'm afraid this attitude typifies HB309 and warrants its rejection.

Given the alternate opinions on key legal questions inherent in the bill, the burdensome consequences to our industry and landowners posed by the requirement for permission to use surface waters, and the over-reaching legislative remedy for invalid sections of law, I ask the committee to consider the legal and real world consequences of this bill, then vote **"Do not pass"** in executive action on HB309.