

EXHIBIT 9
DATE 3-8-11
HB 309

Testimony of Jim Posewitz, Helena, Montana
In Opposition to: HB309

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE PROHIBITION ON RECREATIONAL USE OF WATER DIVERTED FROM A NATURAL WATER BODY BY A CONSTRUCTED WATER CONVEYANCE SYSTEM; CLARIFYING THE DESCRIPTION OF A CONSTRUCTED WATER CONVEYANCE SYSTEM; REMOVING PROVISIONS OF STREAM ACCESS LAWS THAT HAVE BEEN DECLARED INVALID; AMENDING SECTIONS 23-2-301, 23-2-302, AND 23-2-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Dear Senator,

March 8, 2011

This is Montana and lots of rivers run through it. HB 309 is a blatant attempt to 'define' hundreds of miles of stream channels as irrigation ditches and deny public access to a natural resource Montanans nurtured with exceptional skill for a half century.

Exactly fifty years ago fish biologists indentified three perils that threatened our rich heritage of rivers and streams. The perils were stream channelization, water pollution, and stream dewatering. Within two years the Montana legislature passed the first stream preservation act in the nation designed to prevent meandering steam channels from becoming bulldozed flumes. The legislation was signed into law by a republican governor (Tim Babcock) a conservative with a philosophy that had room for conservation.

Cleaning up the water and protecting the amount of water in streams followed. The challenges came in all sizes. In the 1970s, multi national corporations laid claim to the Yellowstone River in response to a potential coal energy bonanza. The claims would have depleted the longest free flowing river in the lower forty-eight states. The legislature responded by placing a moratorium on industrial water permits and re-writing Montana water law with in-stream flow protection. The intellectual and political leadership came from a Glendive area legislator (Mr. Willy Day) whose livelihood included irrigated agriculture.

Stream conservation challenges have been met all across Montana from fish passage up the Tongue River to proposals to dam the Yaak. They even included convincing British Columbia not to mine and drill their piece of the Flathead River. In the process we became a place of legend. Our waters had magic in their names: the Big Blackfoot, Big Spring Creek, the Big Hole, Madison, Missouri, and the list goes on. We labeled them "Blue Ribbon Streams," how appropriate for the *Last Best Place*.

Through it all, the Montana courts, and then the legislature, defined the terms of our access to these waters, they were open to the people. There was to be no privatization of this public resource now nurtured and defended by those who found both pleasure and opportunity on these waters. Commercial fishing outfitters and individual

anglers stood shoulder to shoulder in defense of this common resources and it has worked remarkably well for the last quarter century.

The one exception to this success story occurred when an investment banker and a rock star decided they needed to cut the public out. The fight was over access to a slough on the Bitterroot River where the locals had been tossing worms and flies at fish for generations. The people prevailed in preserving public access through litigation. The Montana Supreme Court ruled the slough was indeed a natural water body and not an irrigation ditch as those accustomed to privilege had asserted. Those seeking exclusive privilege to water and fish then brought this bitter fruit from the Bitterroot to the 2011 Montana legislative session. The attempt to legislate restrictions on public access to Montana streams became House Bill 309 and it pretends to have to do with irrigation. It is really all about public access and there is the potential for a dark and damaging outcome. Montana's stream fishing resource is arguably the best of its kind on earth, it lays golden eggs, and the surest way to kill this goose is to begin denying our people access and that is exactly what HB 309 is all about. Thank you for reading this and please vote NO on HB 309.

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