



BRIDGE ACCESS: IT'S TIME HAS COME

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Montanans are generally a patient folk. Montana sportsmen and sportswomen hone and practice their patience in the field. But this trait has been drained to near empty by the protracted battle over the public's right to access Montana streams from road right-of-ways at bridge crossings. As the dust settled on the 2009 Legislative Session, this patience and perhaps more importantly, persistence, paid off with the passage of House Bill 190. The Bill simply clarified the rights of stream access at county roads and bridges and the rights of landowners to fence to a bridge. Many other attempts had failed in prior years, but like a salmon fly, sometimes legislation, just won't emerge and surface until the conditions are right.

We all came close to chiseling these rights into law in 2007, only to see that effort end in a series of well-timed assaults on the very simple idea that when two public right-of-ways cross over each other, there's room for the public to move from the road to the stream. The major players in past efforts to clarify the rights of landowners and recreationists vowed to make 2009 different – and it was.

Why was the 2009 Session Different?

There were some major changes in the political landscape in 2009. Governor Brian Schweitzer is a fierce advocate of public access. The new Attorney General Steve Bullock had helped draft the Attorney General opinion in 2000 that declared that the public did have rights to access streams at these junctions. And there was broad public support for a bi-partisan solution. There was a solid base supporting change.

Maybe a reference to some not so ancient history can give us insight into what made up this solid base for change which finally emerged during this legislative session. It was Montana Wildlife Federation, its affiliates, and supporters which prompted the Montana Fish, Wildlife and Parks Department to seek an Attorney General's opinion in 2000 in order to address questions on the public's right to access streams from bridges. That Opinion focused the issues and formed the core of the legislation. Also, the labors of Montanans who brought lawsuits on access to rivers over the last decade provided the legal force for legislative change.

House Bill 190's chief sponsor, Rep. Kendall Van Dyk (D-Billings) agrees and says that the basis for change was laid during the stream access battles that began in the 1985 legislative session and legal cases won by access advocates over the years. Van Dyk, the Montana Fish, Wildlife and Parks Department, Montana Wildlife Federation and Trout Unlimited spearheaded efforts to bring everybody with a stake in the issue to a table in the interim between the 2007 and 2009 sessions. It was not an easy, nor at times a pretty process, but it turned out to be invaluable and highly productive.

Montana Wildlife Federation's Craig Sharpe believes that a key element, instrumental in the Bill's passage, was the good work done by this collaborative working group during the interim between legislative sessions. It brought together farm and ranch groups

such as the Montana Farmer's Union and Montana Cattlemen's Association, along with the Montana Wildlife Federation and Montana Trout Unlimited. Sharpe also believes the charge for change was fueled by recent Montana Court rulings on access resulting from the bold lawsuits filed by one of its affiliates, Public Lands and Water Access Association. Finally, add to the mix, the public, real people, who showed up in droves, to support the Bill at every hearing in the Legislature, created an irresistible force for needed change.

Mark Aagenes, Trout Unlimited's lobbyist on the issue, says that reasonable sportsmen and landowners had to respect each other and the process, not cater to the extremes, try and solve most of the real problems, and to not get bogged down in hypothetical problems. The important point for everyone to remember is that at the vast, overwhelming number of road/bridge/stream intersections – there has been and there is not – a problem. We Montanans, whether a bug eyed floater or a steely eyed rancher, can usually tell the difference between a fence built to keep livestock in and one built to keep people out. So, the legislation was drafted, recognizing the rights of all parties, to deal with a seemingly intractable problem caused by a narrow, but powerful, band of isolated individuals, a minority for sure.

Folks had to negotiate in good faith, get comfortable in being outside their comfort zone and keep their word during the push and pull of a legislative session. Most everyone agrees that some Montana farm and ranch organizations stood tall during these times. The Montana Association of Counties also worked hard to make the Bill a useful tool for local governments. On the other hand, most advocates also say that there were some advocates and organizations who, well, let's just say, they didn't stand tall. The opponents of clarifying the law knew that they were headed upstream against a strong current. They knew that the public's tolerance for legalistic shenanigans was almost non-existent, that both waders and cowboy boots, town and country, and Democrats and Republicans, were tired of the opponents' shrill gimmickry and sky is falling rhetoric. It was time to get things done, the conditions were right, and like the salmon fly, the Bill needed to emerge to the surface.

House Bill 190's first legislative appearance was in the House Fish and Game Committee. It enjoyed broad, public and bi-partisan support and sailed out of the Committee on a 16 to 2 vote to advance to the House floor.

On the House floor it faced the first deep, swirling pools of controversy. There was no doubt of its eventual passage, but would its strength and vitality be clipped by amendments? The vote denying diluting amendments was strong and the full Montana House passed it by the remarkable vote of 97 to 3. Next stop were the tricky rapids and boat eating hydraulics found in the Montana Senate.

Again, the "not standing tall people" tried to work their magic. If they couldn't outright kill the Bill, there were alternatives which might de-rail the Bill's momentum. They tried to muddy the Bill's clear lines, insert garbled language which would poison its intent and tried the ultimate weapon in their arsenal: stall, delay and confuse.

Once in the Senate and out of the Senate Fish and Game Committee, Van Dyk handed the laboring oar over to Senators Jim Schockley (R-Victor) and Jeff Essman (R-Billings). They steered the Bill out of Committee onto the Senate floor, accepted a couple clarifying amendments and stoutly resisted efforts to scuttle the Bill. It flew out of the Senate on a 48 to 2 vote, stopped by the Montana House again for concurrence in the Senate amendments and fully emerged on Governor Brian Schweitzer's desk.

The Governor happily signed the bill into law on the banks of the Yellowstone River on April 13.

We won. But, just who is we?

Sportsmen and sportswomen for sure. But most farmers and ranchers recreate too, and they also won, in that their right to fence to a bridge and their non-liability for those crossing a fence was made clear. The public's right to access the wondrous streams of Montana is now black letter law – thanks to the decades long determination of sporting advocates, responsible organizations, dedicated public servants and the strength of an idea whose time had come and would not be denied.

It's fully emerged now, so head for the waters and exercise your rights!