



## **Bridge Access Passes**

“Access is not for sale in Big Sky Country,” said Representative Kendall Van Dyk in Montana House floor deliberations on HB-190, the Bridge Access clarification Bill. Across the aisle bi-partisan voting 01/27/2009 resulted in the measure being transmitted to the Montana Senate on a 97-3 vote.

Rep. Van Dyk, the chair of the House Fish, Wildlife and Parks Committee is the bill sponsor in the House and Senator Jim Shockley is the sponsor in the Senate. The measure is a compromise between private landowners and recreational users whereby fences may be constructed and attached to bridges with modifications allowing public passage. Montana Fish, Wildlife and Parks will have primary oversight of the public passage mechanisms and also pay for the modifications but are required to work with landowners to facilitate the modifications. Furthermore, HB190 provides protection from liability for landowners in the event someone is injured while access waterways through or over the fencing, an exemption that is provided under the Montana recreation statute

Much of the debate over public use and access to Montana streams and rivers in recent years has focused on public access at county bridges and their adjoining public rights-of-way or public easements. Public access through easement rights-of-way was upheld in a 2000, Montana Attorney General opinion which stated: “The public may gain access to streams and rivers by using a public bridge, its 60ft. right-of-way, and its abutments” and the “Use of a county road right-of-way to gain access to streams and rivers is consistent with and reasonably incidental to the public’s right to travel on county roads.” More recently, a ruling was handed down by District Judge Loren Tucker on two bridges and their right-of-way easements on the Ruby River. The precedent setting ruling was in response to a law suit filed by the Public Lands and Water Access Association (PLWA). Judge Tucker ruled that county road rights-of-ways are 60 feet wide easements running parallel to a roadway “unless otherwise ordered by the board of county commissioners” and they are available for legal public activities including access to a waterway.

The first attempt at codifying the Attorney General opinion was introduced in the 2005 Montana legislative session as House Bill 560. Following the 2005 legislative session Montana Wildlife Federation and Montana Chapter of TU collectively laid out a new, good-faith approach to resolve the related issues in Senate Bill 78. Both bills died on party lines.

Within months after the failure of SB78 in 2007, MWF leaders and affiliates again deliberated on an approach. At nearly the same time, at the urging of Governor Schweitzer, Montana FWP with former department director Jeff Hagener facilitating, asked MWF if it would come to the table with TU, FWP, PLWA, the Montana Assoc. of Counties and the two organizations that opposed SB78 and HB560, the Montana Stockgrowers Association and the Farm Bureau to explore the possibility of collaborative legislation.

MWF, unwavering in its support of a legislative measure to resolve the related issues and strongly believing in the right of the public to access waterways from the intersection of two public thorough-fares, the easement and the waterway, joined with other groups to see if it could collectively craft a hand-shake bill.

Regardless of some groups questioning or opposing the need for a legislative clarity measure, thinking the status-quo under the Attorney General opinion and the Tucker ruling uphold public access through rights-of-way, MWF stayed its course.

MWF and others then reached out to the Montana Farmers Union, the Cattlemen’s Association, and the Northern Plains Resource Council. They too believed that collaborative legislation was the way to go and agreed to support legislation.

The bill crafted by the collaborative working group was submitted to the Montana Legislature. Rep. Van Dyk and collaborative partners urged across the aisle support for the measure. Van Dyk Rep. said that, “Years and years of ideological differences and partisanship drove an enormous wedge in this issue and that he believes HB190 seeks to remedy these differences.

Rep. Ken Peterson, however, crafted a competing bill that put county governments in a leadership, oversight roll. He introduced the bill and it was heard by the Committee not long after HB 190. The Committee voted down the Peterson bill and moved HB190 forward to the full House. During House Floor deliberations, Peterson offered his bill as amendments to HB190. Again, his approach was voted down by a 76 to 24 margin but Peterson then voted in favor of HB 190.

MWF believes this homegrown, Montana solution will resolve and clarify most of the issues and legalities of public access at bridges and rights-of-way, the authorities of local and state agencies, and improve relationships between stream and river users and private landowners.

HB190 is a win-win Montana solution crafted from a collaborative – non-partisan - effort and MWF is hopeful that across the aisle support will result in its passage. Public access is not a partisan issue and MWF extends it deepest thanks to Rep. Kendall Van Dyk, Sen. Jim Shockley and voting House members that have supported HB 190.

HB 190 will come before the Senate Fish and Game Committee in the near future and MWF will continue to update its membership on deliberations.