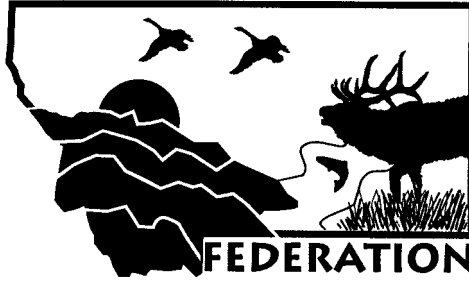


MONTANA WILDLIFE



BRIDGE ACCESS: STATUS QUO, CONTINUING CONFLICT OR RESOLVE?

The Montana Stream Access Law, passed in 1985, generally granting members of the public access to rivers and streams for recreation purposes between the ordinary high-water marks is among the strongest such laws in the nation. People from across the country have enjoyed the freedom to access this precious public resource and it has become an accepted law of the land. This landmark law developed as a home grown solution by sportsmen, sportswomen and landowners has withstood numerous legal challenges in both state and federal courts. Bozeman attorney Jim Goetz, who has represented river recreationists and sportsmen in most of the legal challenges, said, “recreational use of Montana’s rivers and streams is of vital importance both to the people of Montana and to our economy.”

While the stream access law has worked well, growing conflicts over where the public may legally access a waterway without infringing upon private property rights has become increasingly contentious.

In 2000, the Montana Attorney General issued an opinion after receiving a request by Montana Fish, Wildlife and Parks, urged by MWF that clarity was needed. That AG opinion, regardless of some points of view, is current law until a new statute is approved or a court rules otherwise. It clearly established the right of the public to access our streams and rivers from public bridges and the rights-of-way of the roads approaching bridges. In spite of that, all too often the public still finds fences (with threatening signs) across the public rights-of-way with no practical or safe means of access to the stream.

Members of the public have never intentionally sought to reduce, diminish or take away any private property rights from private landowners and yet in some areas of Montana public access to streams remains an issue, in particular, at public bridges.

An extensive 2006 survey of landowners, agencies, and river recreationists resulting in a report on the Stream Access Law and the Attorney General opinion released by the Public Policy Research Institute of the University of Montana concluded that, “The vast majority of people—recreationists and landowners alike—say the current Stream Access Law works very well, both providing access and protecting private property rights.” “Conflicts are uncommon and tend to occur in a few isolated hot spots”. The report went on to say, “Many of the landowners we talked with said that they can live with and even support the Stream Access Law because provisions are built in that protect private property rights.”

The report did identify one issue in need of “fine tuning” - the codification of the Attorney General bridge access opinion; including a clarification of fencing in public rights-of-way to bridges and the roles and responsibilities of state and local agencies in providing, funding and maintaining access.

The report states that, “Everyone we talked with agreed that a bridge crossing a stream is an intersection of two public rights-of-way. Many landowners and recreationists alike said that the Attorney General’s opinion should be codified in statute to clarify this very point.” And that there are “... advantages of allowing legal fencing up to bridge abutments.” For landowners, such fencing is generally easier to install and less expensive to maintain than fencing across the stream channel because it isn’t subject to seasonal runoff and debris jams. For recreationists, fencing to bridges means fewer fences across the stream, which is safer...”

Another section of the report addressed fencing and some type of public passage accommodation, “Many landowners also acknowledge the advantages of such accommodations – as long as the fence will contain livestock, pass thru’s and other measures (stiles, gates, rollers or PVC tubing over the top strand of barbed wire...) allow public access with less wear and tear on fence wires and posts.”

The first attempt at codifying the Attorney General opinion was introduced in the 2005 Montana legislative session as House Bill 560. This bill recognized the public’s right to access streams at public road bridges while also recognizing the need to control

livestock and the authority of county commissions to control traffic and maintain public safety. The bill was tabled in the House Fish, Wildlife and Parks Committee -- on a party line vote.

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, Senate Bill 78.

MWF and TU dedicated countless hours exchanging ideas with Montana Fish, Wildlife and Parks, landowners that had worked with the organizations, legislators, outdoor recreationists, various appointed citizen councils (Private Lands/Public Wildlife and FWP regional Citizen Advisory Councils) and Montana Association of Counties (MACo) in crafting the bill that was carried by Billings area Senator, Lane Larson.

MWF, TU and others truly believed the homegrown measure would clarify most of the issues and legalities of public access at bridges. It would have defined the authority of county commissions as well as state agencies, and improved relationships between stream and river users and private landowners.

Senate Bill 78, according to the Missoulian was, "...praiseworthy legislation that uses common-sense compromise to salve some of the friction created where the one right tends to rub against the other. Let's be clear here: This bill promotes existing rights but doesn't expand anyone's rights. It doesn't allow anyone to enter private property without permission. It doesn't create any new liability for anyone. It will reduce damage and the need for irksome repairs on fences. And it will reduce landowner-sportsman conflicts. SB78 affirms and fosters respect for the legitimate rights existing on both sides of the fence, and it deserves passage into law."

Senate Bill 78 allowed for livestock control with fencing (legally identified within current statute) running up to bridges and some manner of public access to streams under the watchful eye and authority of the rights-of-way trustee, local county commissions, with FWP assistance as needed. The bill provided for financial reimbursement from sportsmen and sportswomen for materials used to erect, repair, or replace the portion of the fence which allowed public passage to a waterway including gates, stiles, PVC sleeves or other methods designed to allow safe public passage. Furthermore, SB 78 protected a county commission and the landowner building the fence from liability issues due to personal injury or property damage. Lastly, the legislation would have provided universal clarity for landowners and river recreationists by codifying or putting into law the Attorney General opinion.

Montana newspaper polls indicated that 90 to 97 percent of the public were in favor of the good faith, compromise measure.

The bill was overwhelmingly passed in the Montana Senate, but failed, like HB560 in the House Fish, Wildlife and Parks Committee after opponents attempted to re-craft the bill into a statute unfriendly to waterway public access. Representative JP Pomnichowski (D), believing in the merits of the original bill and in public access at public bridges and their rights-of-way, attempted to "blast" SB78 onto the House floor so that it could be considered by the entire assembly instead of just the committee. This attempt failed on party lines – the bill was dead.

Within months after the failure of SB78, MWF leaders and affiliates again deliberated on a new approach. To gauge membership and affiliate club interest, MWF publicly considered a citizens ballot initiative. There was strong support for resolving the issues and upholding the AG opinion, and substantial support for running a ballot measure. At nearly the same time, Montana FWP, at the urging of Governor Schweitzer, asked MWF if it would come to the table with TU, FWP, 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.

In September 2007, MWF was at the table. Hopeful, MWF encouraged honest collaboration with no hidden agenda's on a bill that would uphold the AG opinion and define opportunities for public passage to streams and rivers at public bridges while creating options or conditions for fencing to bridges to control livestock.

At the second winter meeting, it appeared that there might be agreement on the basics of a simple, practical and succinct bill that would concede to both interests – waterway recreationists and landowners. There remained some differences on specific language and the connectivity of allowing fencing conditional on public passage but the livestock interests agreed to continue "a unified effort" to work together.

In the months that followed, however, the FWP Commission considered and adopted hunting regulations that were not agreeable to the livestock interests and they chose to delay further dialog about bridge access. Surprisingly and contrary to previous discussions, a leader representing one of the livestock groups questioned the details and opinion of the AG.

A short time later a frustrated Billings area sportsperson brought forth three ballot initiatives targeting the loss of public hunting access due to leasing, a new lottery program to support expanding public hunting opportunities with willing landowners, and a Constitutional initiative that reinforced the public interest in wild fish and wild game and made corporate and commercial interest subservient to that of the public. None of the three initiatives broached issues relating to waterway access, they had nothing to do with bridge access.

What Next? What Now?

Attempting to further collaboration and bring the group back together to consider new language for the few problem areas within the bill, MWF, FWP and TU reached out to the livestock interests to determine if they were going to come back to the table. The

response was loud and clear – their members and leadership were nervous about the impacts of the Commission decisions and the ballot measures – their leadership decided to pull back from bridge access legislation negotiations unless the three initiatives were withdrawn!

Now the question is – what next? Is collaborative legislation the way to go? Is legislative clarification on what is legal, upholding the AG opinion, a uniform standard in statute that will improve relations between landowners and river enthusiasts even possible? Will the issues need to be determined by a court of law? Will the unresolved Ruby River legal battle over rights of public access to the river involving the Public Lands and Water Access Association, Madison County Commissioners and a landowner resolve some of the issues and set a precedent for all fencing to bridges and public access to streams?

MWF is committed to resolving the issues and is expanding our efforts by talking to other livestock, private landowner interests. MWF encourages Montana sportsmen and sportswomen to discuss stream and bridge access with candidates, regardless of party affiliation.

MWF and river recreationists do not want to do battle with landowners or county governments over the related issues and are truly looking for opportunities to resolve the issues just as we have attempted to do in HB-560 and SB-78. However, attempts by a few to privatize our streams and diminish public opportunities, public rights and public access at the intersection of two public rights-of-way should not be indulged.

Access to our rivers and streams is a right of all citizens, not just a privileged few. While maintaining this right will take collaborative efforts to resolve issues, it also takes the strength of the fishing, hunting and outdoor recreation public to stand up united against efforts that privatize our public resources. If you would like to help support MWF efforts contact us at: (800)-517-7256, mwf@mtwf.org or go to our web-site, www.montanawildlife.org.