POTENTIAL DRAFT LEGISLATION FOR STREAM ACCESS AT BRIDGES
07/30/08

Title will need to be specific as to the intent and clear that all sections of the bill must be passed to meet the agreement of all parties that drafted the bill. If any section is removed, the other sections are void.

Section 1. Section 7-14-2134, MCA, is amended to read:

"**7-14-2134. Removal of highway encroachment.** (1) Except as provided in subsection (4) and clarified in new section 2, if any highway is encroached upon by a fence, building, or other obstruction, the road supervisor or county surveyor of the district shall give notice, orally or in writing, requiring the encroachment to be removed from the highway.

(2) If the encroachment obstructs and prevents the use of the highway for vehicles, the road supervisor or county surveyor shall immediately remove the encroachment.

(3) The board of county commissioners may at any time order the road supervisor or county surveyor to immediately remove any encroachment.

(4) <u>This section does not apply to fencing in a county road right-of-way that is attached to or abuts a county road bridge edge, guardrail, or abutment if the fencing and bridge appurtenances are not on the roadway, as defined in 61-1-101 (60). Any fencing described in this subsection must comply with [New Section 2].</u>

<u>NEW SECTION 1.</u> (to be codified in Chapter 23) **Section 2. Stream access sites.**

(1) A member of the public may gain access to streams and rivers by using a public bridge, its right-of-way, and its abutments.

(2) A member of the public may gain access to streams and rivers by use of a county road right-of-way.

(3) A member of the public is required to stay within the road and bridge easement to gain access to streams and rivers. Absent definition in an easement or deed to the contrary, the width of a bridge right-of-way easement is the same as the right-of-way easement for the public highway to which it is attached.

(4) Access to stream and rivers from a county road or bridge created by prescription is dependent upon the width and uses of the road during the prescriptive period.

NEW SECTION 2.

(1) Each fence attached to or abutting a county road bridge edge, guardrail or abutment pursuant to 7-14-2134 shall provide for public passage pursuant to this section.

(2) Where disputes occur MTFWP shall negotiate with the landowner on the characteristics of the legal fence for livestock control and for public passage. Examples of an acceptable public passage could include PVC overwire, a stile, a gate, a roller, a walkover or any other method designed for public passage and live stock control.

(3) If MTFWP and the landowner cannot reach agreement within 60days after FWP's initial contact with the landowner, FWP will provide the landowner with options to control livestock and allow for public passage. If the landowner does not choose one of the options within 30 days, FWP will choose an option and then may install that option.

(4) MTFWP in cooperation with interested parties shall be responsible for providing the materials, installation and maintenance of necessary fence passage modifications to provide for public passage.