

From: [Huber, Lyn](#)
To: [Huber, Lyn](#);
Subject: RE: Recreational Access & Use Issues With Solutions So That All Win
Date: Friday, June 12, 2009 9:59:23 AM

-----Original Message-----

From: Richard Strauss [mailto:rstrouts@gmail.com]
Sent: Thursday, June 11, 2009 2:35 PM
To: Velarde, Ron
Cc: Spezze, Tom; Prenzlów, Dan; Yamashita, Steve
Subject: Recreational Access & Use Issues With Solutions So That All Win

Hi Ron, Dan, Tom and Steve

Here's the same material in electronic form as the hard copy of "Recreational Access & Use of Streambeds" I passed out at last Saturday's June 6, 2009 statewide SAG meeting (See the "Access Use Solutions attachment below). I'd like to talk with you as well as SAG and others in DOW about legislative, program and funding procedure for realization of these ideas. I have met with Representative Kathleen Curry on April 30, 2009 about the same issues for about 1/2 hour and she expressed interest. She referred me to present these ideas to DOW so that's how I wound up coming to the SAG meeting. Are there other related meetings I should attend? Wildlife Commission?

In particular, Montana Wildlife Federation, Montana Trout Unlimited, PLWA in Montana (Public Land Water Access), Cattleman's Assoc., Montana Farm Bureau and etc from both public and private interests' groups *fully* supported #3 Bridge Access/Livestock Control and its Montana HB 190 was enacted into law on April 13, 2009 after votes of 96-3 and 48-2. See "2010 Colorado Bridge.doc" below for an adoption modelling the new Montana law. See the links for #3 below.

Here's Footbridge Criteria and examples for Issue #2:

FOOTBRIDGE CRITERIA:

Strategically Identify and Prioritize Footbridge Access Locations, by Watershed, to:

- 1 Provide Access over difficult or unwadeable waters from Public Land/Shoreline to Public Shoreline/Land
- 2 Make River Crossings Safer and Possible
- 3 Increase Recreationist Distribution to Both Sides / Reduce Crowding On One Side or Sections of River
- 4 Apply Maximum Environmental Sensitivity and Minimum/No Significant Impact
- 5 Provide Value Based/Cost Effective Footbridge Construction
- 6 Use Nonlimiting Permit/Fee System, Grants, Legislated State Funding (GOCO, Habitat Stamp, etc.), etc.
- 7 Design/Engineer for Low Maintenance
- 8 Enable Remote Location Construction/Placement Capabilities
- 9 Meet Public Lead Agency Standards
- 10 Maximize Already Owned Public Land/Shoreline Instead of Private Land/Shoreline Purchase or Lease Costs
- 11 Involve No Private/Public Access Disputes
- 12 Elevate to Accommodate Boating Passage and/or Flood Stage Levels

A footbridge location example in Colorado is the Pumphouse Day Area across the Colorado River that would provide several miles of new, far side shoreline up into Gore Canyon.

Footbridge examples:

<http://youtube.com/watch?v=ajVPPZBLdFo>

(materials cost/100' +/- length, estimated at \$1000 +/-, or approximately \$10/linear foot, as per visit to Home Depot. The bridge's builder replied to me that the 42' span cost around \$300 and it could be built in 2 days by a couple people.)

<http://youtube.com/watch?v=w16e4317z-A>

<http://youtube.com/watch?v=HP9hTXeAdow>

<http://www.bridgemeister.com/pic.php?pid=1578>

<http://www.sahale.com/>

<http://www.bridgemeister.com/pic.php?pid=1869>

<http://www.bridgingthegapafrika.org/gallery.html> (See video at bottom of page)

SUPPORTING LINKS

Refer the following supporting links to the numbered issues and solutions listed in the attachment "Access Use Solutions" below .
Additional supporting links available.

1) A- CO CRS33-41-101 Recreational Use Statute - Limited Liability - <http://www.avlt.org/docs/ColoradoRecreationalUseStatute.pdf>

CRS 18.4.504.5 Definition of Premises "Banks AND Beds" (in reference to Criminal Trespass/Colorado AG 1983 Opinion)

Brief "Underpinnings of Right to Float" article-
<http://www.abanet.org/enviro/committees/waterresources/newsletter/aug02/potter.shtml>

People v. Emmert, 198 Colo. 137, 597 P.2d 1025 (1979) Criminal Trespass

Colorado Attorney General 1983 Opinion - <http://www.nationalrivers.org/states/co-law-ago1983.htm> Premises/Criminal Trespass

Portage - http://world.std.com/~reichert/jr_useba.htm

B- <http://fishandgame.idaho.gov/fish/rules/access.pdf>

<http://fwpp.mt.gov/fwppaperapps/hunting/accessguide.pdf>

C- http://www.wildlife.state.nh.us/Inside_FandG/public_water_advisory_bd.htm New Hampshire Access Advisory Board

D, E, F, G and A- See FULL "Legal Underpinnings of the Right to Float Through Private Property in Colorado: A Reply to John Hill", 5 U. Denv. Water L. Rev. 457-499 (2002) Lexis/Nexis, Westlaw (42 pages - found in Nexis Lexis or Westlaw) , a Denver U Law Review article written by Lorie Potter, defense attorney in the Cannibal v Gateview case on the Lake Fork of the Gunnison back around 2001 or so

H- <http://www.utcourts.gov/opinions/supopin/Conatser071808.pdf> -
Conatser v Johnson Utah Supreme Court Unanimous Ruling "Recreational

Use of Private Streambeds" . Specifically, see Finding at pp 30 .

2) Colorado SB 235 / Wildlife Habitat Stamp

3) A- <http://data.opi.mt.gov/bills/2009/billpdf/HB0190.pdf> Montana HB 190
Bridge Access, drafted by Legislative Services

[http://www.newwest.net/city/article/
stream_access_bill_passes_montana_legislature_moves_to_governor/C396/
L396/](http://www.newwest.net/city/article/stream_access_bill_passes_montana_legislature_moves_to_governor/C396/L396/)

B- CO CRS 18-9-107 Obstructing highway or other passageway

4) [http://wildlife.state.co.us/NR/rdonlyres/62F5D24F-79DF-4DAC-8EFE-
D7B5A845525D/0/LateCroplandWIA08.pdf](http://wildlife.state.co.us/NR/rdonlyres/62F5D24F-79DF-4DAC-8EFE-D7B5A845525D/0/LateCroplandWIA08.pdf)

Will you reply with your comments and referrals to progress these proposals
to cooperative meetings, program expansion and/or legislation?

Thanks,

Richard Strauss
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Below are the Recreational Access/Use issues with solutions so that All Win, both public and private interests. Additional supporting information is available. Will you please reply with your interest and reference in advancing these issues and solutions for the benefit of all Coloradans?

Thank you for your efforts,

Richard Strauss
Arvada, Colorado
303-456-0619



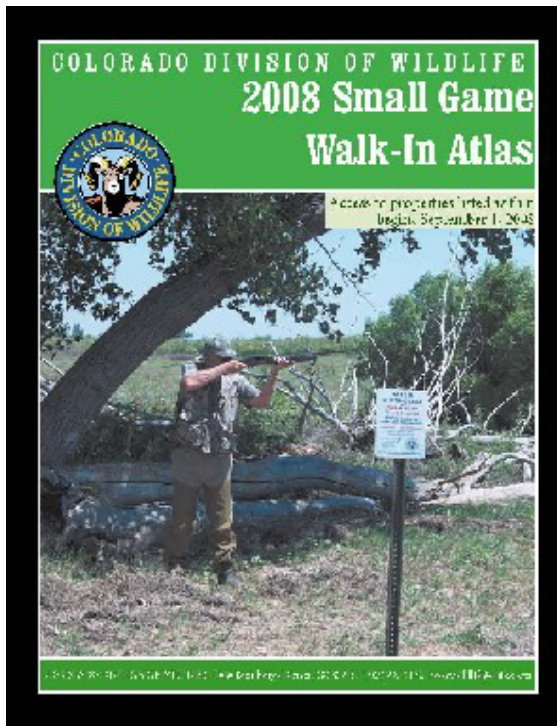
1) Clarify RECREATIONAL USE of PUBLIC WATERS Over PRIVATE BEDS. --> SOLUTIONS: A) Use the Statutory Basis as an underpinning to clarify existing or create new law such as Premises, Emmert, AG Opinion, Trespass, Portage, etc. B) Create a Colorado Access and Use Guide so that all Coloradans learn and understand the recreational livestock control, property management, access and use issues. C) Establish informal or formal Access and Use Advisory or Policy Making Forum, Board or Commission so that all Coloradans learn and understand the access and use issues . D) Use the Colorado Constitution and the Public Trust in the State's Waters as an underpinning to clarify existing or create new law. E) Use Navigability as an underpinning to clarify existing or create new law. F) Use the Equal Footing Doctrine and Public Trust in the State's Stream Beds as an underpinning to clarify existing or create new law. G) Use other Sources of Authority as an underpinning to clarify existing or create new law such as Adverse Possession and State Navigability. H) Use the 2008 Utah Supreme Court Conatser v Johnson unanimous ruling to clarify existing or create new law.



2) Clarify RECREATIONAL PUBLIC ACCESS to/from PUBLIC BEDS --> SOLUTIONS: A) Establish a Colorado Footbridge Access program. B) Revise the Wildlife Habitat Stamp program funding to include access improvements.



3) Clarify RECREATIONAL PUBLIC ACCESS to/from PRIVATE BEDS, LIVESTOCK CONTROL and PROPERTY MANAGEMENT --> SOLUTIONS: A) Adopt and model the Montana Bridge Access Law April, 2009 B) Modify or maintain existing Obstruction of Highways and Criminal Obstruction laws.



4) Clarify RECREATIONAL PRIVATE ACCESS to/from PRIVATE BEDS. --> SOLUTION: Expand existing CDOW Walk In Access program to include fishing.

2010 Colorado Legislature

**HOUSE (OR SENATE) BILL NO. XXX
INTRODUCED BY**

AN ACT RELATING TO ACCESS TO STATE WATERS FROM COUNTY ROADS AND BRIDGES; PROVIDING THAT A FENCE ATTACHED TO OR ABUTTING A COUNTY ROAD BRIDGE IS NOT CONSIDERED AN ENCROACHMENT UNDER CERTAIN CIRCUMSTANCES; PROVIDING FOR PUBLIC ACCESS TO SURFACE WATERS FOR RECREATIONAL USE FROM A COUNTY ROAD RIGHT-OF-WAY AND FROM A COUNTY BRIDGE, ITS RIGHT-OF-WAY, AND ITS ABUTMENTS; PROVIDING FOR PUBLIC PASSAGE TO SURFACE WATERS THROUGH COUNTY ROAD AND BRIDGE RIGHTS-OF-WAY WHILE MAINTAINING LIVESTOCK CONTROL OR PROPERTY MANAGEMENT; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO NEGOTIATE WITH AFFECTED LANDOWNERS TO PROVIDE METHODS TO ENSURE PUBLIC PASSAGE TO SURFACE WATERS FOR RECREATIONAL PURPOSES WHILE MAINTAINING LIVESTOCK CONTROL OR PROPERTY MANAGEMENT; PROVIDING FOR PAYMENT OF THE COSTS OF ANY FENCE MODIFICATION NECESSARY TO PROVIDE FOR PUBLIC PASSAGE; AMENDING SECTION X-XX-XXXX, CRS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Legislature finds that significant controversy has existed related to public access to streams and rivers from county road and bridge rights-of-way; and

WHEREAS, the Legislature finds that 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 and that the public may gain access to streams and rivers by using the bridge, its right-of-way, and its abutments; and

WHEREAS, a legislative solution is preferable to controversy; and

WHEREAS, any proposed legislation needs to provide:

(1) that a fence in a county road right-of-way abutting a bridge should not be considered an encroachment;

(2) that the public may access streams and rivers from a county road or bridge right-of-way, but that the public must stay in the right-of-way to gain access;

(3) that the legislation neither create any right nor extinguish any right related to county roads established by prescriptive use that exist at the time of passage;

(4) a process to define the physical characteristics of a fence used for public access in county road and bridge rights-of-way; and

(5) an approach with broad scope rather than an attempt to resolve a myriad of possible contingencies; and

WHEREAS, each of these provisions is integral to the others and that if any section of the proposed legislation containing the agreed-upon principles was removed, the entire legislation should be void.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF Colorado:

Section 1. Section X-XX-XXXX, C.R.S., is amended to read:

"X-XX-XXXX. Removal of highway encroachment. (1) If Except as provided in subsection (4) and as clarified in [sections 2 and 3], if any highway is encroached upon by fence, building, or otherwise, the road supervisor or county surveyor of the district must 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 must shall immediately remove the same encroachment.

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

(4) This section does not apply to a fence for livestock control or property management that is in a county road right-of-way and that is attached to or abuts a county road bridge edge, guardrail, or abutment if the fence and bridge appurtenances are not on the roadway, as defined in XX-X-XXX. Any fence described in this subsection must comply with [section 3]."

Section 2. Access to surface waters by public bridge or county road right-of-way. (1) A person may gain access to surface waters for recreational use by using:

(a) a public bridge, its right-of-way, and its abutments; and

(b) a county road right-of-way.

(2) When accessing surface waters pursuant to subsection (1), a person shall stay within the road or bridge right-of-way. Absent definition in an easement or deed to the contrary, the width of a bridge right-of-way is the same width as the right-of-way of the road to which the bridge is attached.

(3) The provisions in [sections 1 and 3] and this section related to public access to surface waters for recreational use neither create nor extinguish any right related to county roads established by prescriptive use that exist on [the effective date of this act].

(4) For purposes of determining liability, a person accessing surface waters for recreational use pursuant to this section is owed no duty by a landowner or an agent or tenant of that landowner other than for an act or omission that constitutes

willful or wanton misconduct.

Section 3. Fencing for livestock control and public passage -- negotiation -- costs. (1) At county road bridges for which public access is authorized pursuant to [section 2], each fence attached to or abutting a county road bridge edge, guardrail, or abutment for livestock control or for property management pursuant to X-XX-XXXX(X) must provide for public passage to surface waters for recreational use pursuant to this section.

(2) (a) If a dispute arises regarding public passage pursuant to subsection (1), the department, pursuant to the department's policy in XX-X-XXX to work with private land managers to resolve and reduce user conflicts, shall negotiate with the affected landowner regarding the characteristics of an access feature of a legal fence for public passage and livestock control or property management. Examples of an access feature of a legal fence that provides public passage and livestock control or property management may include:

- (i) a stile;
- (ii) a gate;
- (iii) a roller;
- (iv) a walkover;
- (v) a wooden rail fence that provides for passage; or
- (vi) any other method designed for public passage and livestock control or property management.

(b) One access feature, as described in subsection (2)(a), on each side of the stream is sufficient. When practicable, one access feature must be located on the downstream bridge edge, guardrail, or abutment. The department may waive these provisions when one access feature is sufficient.

(c) If the landowner and the department cannot reach agreement within 60 days after the department's initial contact with the landowner for negotiation, the department shall provide the landowner with options for methods to provide public passage while controlling livestock or managing property. If the landowner does not choose one of the method options within 30 days after the options are offered, the department shall choose and then may install one of the method options.

(3) The department, in cooperation with other interested parties, shall provide the materials, installation, and maintenance of any fence modifications necessary to provide public passage as required by this section.

Section 4. Codification instruction. [Sections 2 and 3] are intended to be codified as an integral part of Title XX, chapter X, part X, and the provisions of Title XX, chapter X, part X, apply to [sections 2 and 3].

Section 5. Nonseverability. It is the intent of the legislature that each part of [this act] is essentially dependent upon every other part, and if one part is held

unconstitutional or invalid, all other parts are invalid.

Section 6. Effective date. [This act] is effective on passage and approval.
- END -

Prepare by Colorado Legislative Services

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