MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

February 9, 1981

The twenty-second meeting of the committee was called to order at 8:00 a.m. in Room 415 of the State Capitol Building, Chairman Pat Goodover presiding.

ROLL CALL: All members were present.

Before hearing bills on the agenda, Chairman Goodover announced that we were to have a speaker address us on House Bill 92. Mr. John Delano introduced Dr. Rolf Weil, President of Roosevelt University in Chicago. Mr. Steve Wood, Burlington Northern tax attorney from St. Paul, preceded Dr. Weil. He said House Bill 92 would allow the Department of Revenue to adjust statutory classification ratios applicable to railroads to bring them in compliance with provisions mandated by the Railroad Revitalization and Regulatory Reform Act of 1976. He said when the bill was initially heard on the House side, the railroads appeared in favor of the bill but took the position that substantial modifications had to be made. With that preface, Dr. Weil spoke to the committee and his testimony is incorporated into these minutes as Attachment #1.

CONSIDERATION OF SENATE BILL 269:

> "AN ACT TO REVISE THE METHODS OF PAYMENT IN EMINENT DOMAIN PROCEEDINGS; PROVIDING FOR PAYMENT OF CURRENT FAIR MARKET VALUE; REQUIRING PRORATION OF TAXES AND WEED CONTROL; AND AMENDING SECTIONS 70-30-301, 70-30-302, AND 70-30-308, MCA."

Sen. Conover said this bill classifies eminent domain and what is meant by words "fair market value." He asked committee members to note that in the bill the words are "current market value." SB 269 is an attempt to clarify Montana's eminent domain law. Explanation of the bill is Attachment #2.

PROPONENTS: Toni Kelly, rancher's wife and member of Northern Plains Resource Council. She felt the taking of land under eminent domain 1) forecloses landowner's options to the use of their land, 2) affects property value, 3) may preclude irrigation on sections closed, and 4) affects visual aesthetics of living on a farm or ranch.

Mons Tiegen, Montana Stockgrowers and Woolgrowers.

Larry Heimbuch, farmer from Glendive, representing Yellowstone Basin Water User's Association.

Jon Rappe, Northern Tier Pipeline, presented exhibits which are attachments 3 to 5.

Chris Ziegler, representing Valleys Preservation Council Group of landowners in the Frenchtown, 6-mile and 9-mile areas east of Missoula.

OPPONENTS: Jim Beck, Department of Highways, commented on amendments in Section 3. Annual payment: it is presumed the money will be paid into court and the court will make payments; exchange of land: reading would indicate they may claim any part of the land; subsection (c), annual payments for easements; and he felt Section 6 could be interpreted as government agency paying taxes on its own right-of-way.

George Bennett, representing Montana-Dakota Utilities, opposing section 3 of the bill, Attachment #6.

J. E. Thares, Mountain Bell, saw many administrative problems in making payment when property changes hands.

Sen. Conover closed by saying the price paid for the use of the land was not enough to satisfy the despair and disruption that companies cause when they put lines across a farmer's land.

Sen. Crippen asked Mr. Bennett if it would be his objection if the law read that the fair market value was applied as of the date of taking and not of the date of the summons--one of the problems Mr. Bennett has is projecting future amounts.

Mr. Bennett said it was not important to his clients as long as the interest they acquire is an easement and they are paying fair market value at that time. His objection is to having to lease at a rental that could escalate. Sen. Crippen thought House Bill 66 would go one step further providing the landowner interest between the time of summons and the time of taking.

The hearing was closed on Senate Bill 269.

CONSIDERATION OF SENATE BILL 279:

> "AN ACT AMENDING SECTION 16-1-411, MCA, TO STANDARDIZE THE TIMING OF IMPOSITION OF THE TABLE WINE TAX ON WINE DISTRIBUTORS; TO IMPOSE A PENALTY AND INTEREST CHARGE FOR FAILURE OF A TABLE WINE DISTRIBUTOR TO FILE A RETURN OR TO PAY TAX ON IMPORTED TABLE WINE; TO PROVIDE A TRANSITION PERIOD; AND PROVIDING AN EFFECTIVE DATE."

Sen. McCallum chaired the meeting while Sen. Goodover presented the above bill. Sen. Goodover said the bill was introduced at the request of local beer and wine wholesalers to standardize the imposition of paying the tax on wine in the same manner they pay it on beer, with the same penalties if they fail to pay or file a return.

The original law allows beer distributors to pay the tax after the beer leaves their warehouse. Imposition of a tax on wine was not addressed to make it standard with beer at the time the wine initiative was passed. Inflation and marketing demands from wineries in Europe have placed the wine distributors in an untenable situation. On imported wines the wholesalers have to order in larger quantities because of winery requirements and transportation costs. On special occasions they have to order

far ahead of time to be sure of having the product on hand in time for demands. Taxes on wine are collected before the product is sold and they feel it is logical that this tax be paid to the Dept. of Revenue the same as beer tax is paid--after it is sold to the retailer.

Senator Goodover urged favorable disposition of Senate Bill 279 with a do pass recommendation.

PROPONENTS: Roger Tippy, Montana Beer and Wine Wholesalers, attachment 7.

Larry Weinberg, DOR, said the Department had originally had a bill which would have imposed the penalty and interest on the tax if not paid. He said the Department approached Sen. Goodover and he suggested seeing if we could work something out with Roger Tippy. The provisions discussed were willingly incorporated by Mr. Tippy, so the Dept. of Revenue no longer has any problem with the bill.

There were no opponents so questions were called for from the committee.

Sen. Towe asked why an effective date of June 1, 1981, was applied. Mr. Tippy said the inventory is taken on June 30, the inventories are at their lowest then, and they felt the law should be in effect before June 30, but he said he was open to other suggestions.

The hearing was closed on Senate Bill 279.

CONSIDERATION OF SENATE BILL 248:

> "AN ACT TO REVISE THE INCOME TAX RATES; PROVIDING TWO SETS OF RATE SCHEDULES, ONE FOR MARRIED INDIVIDUALS WHO FILE JOINTLY AND FOR SINGLE INDIVIDUALS WHO QUALIFY AS A HEAD OF HOUSEHOLD AND THE OTHER SCHEDULE FOR SINGLE INDIVIDUALS; AMENDING SECTION 15-30-103, MCA."

Sen. Elliott said this bill is intended to make a general revision of the method we use to file our state income taxes and relates primarily to married couples who file a joint return. Under our law it is much more advantageous for any family of two members, if they both have income, to file separately. When they file separately, it puts one in a much higher bracket. This bill intends to equalize the tax with the biggest benefit given to non-working spouses who contribute to the working ability of the employed spouse. This bill would simplify filing for married couples as only one column would be needed for data. Also the bill would eliminate need for income and deduction juggling, help the audit process in the DOR, clarify that there is a split schedule taxpayers can use, and cause the child-care deduction to be more meaningful for Montana taxpayers. Sen. Elliott said he would suggest an amendment under the individual schedule by inserting a provision for married persons who file separately allowing persons who are separated or getting a divorce to file at the single schedule rate. He also had a comment on the fiscal note's tremendous dollar figure; he said he came up with a 12.1 million-dollar figure, a big difference from the 24 million in the fiscal note. He said he would work with the DOR to try and reconcile the figures.

Larry Weinberg said this bill would be useful because the present structure presents the department with an administrative nightmare in trying to allocate deductions. In effect, he said DOR has income-screening rule, so this bill would address that problem and from that point of view the Dept. of Revenue could support. The other part of the bill is the cost, and he felt that's a consideration for the legislature, as to whether that amount of revenue should be forsaken.

Sen. Elliott said those in business for themselves have an advantage in that they can assign some kind of income to their wives. He said this is a section of law known by practitioners but that may not be known by small businessmen who fill out their own returns.

Sen. Eck wondered if it would be possible to give a break, but not so much of a break. She also wondered if any calculations had been done on effect for various income groups. Sen. Elliott said what she was suggesting was that rates would have to be changed and he didn't have that in readable form at this time.

Sen. Towe concluded by saying that a 1975 study he had been involved in in 1975 showed that all married persons filing separately would pay a larger tax and the married persons, without a separate income, would have a substantial tax reduction--to 20% in some cases.

DISPOSITION OF HOUSE JOINT RESOLUTION 7:

Senator Norman moved that HJR 7 BE CONCURRED IN. The vote was unanimous in favor of the motion.

DISPOSITION OF SENATE BILL 98:

Sen. McCallum moved that SB 98 be given a DO PASS. The vote was unanimously in favor of the motion.

DISPOSITION OF SENATE BILL 102:

It was suggested that the committee hold this bill because it directly concerns taxes.

It was announced that there would be an executive session on Saturday morning at 8:00 a.m.

CONSIDERATION OF SENATE BILL 134:

Sen. McCallum made a motion that SB 134 be given a do pass. However, after discussion, the committee was concerned about whether there were exceptions beyond 6 months. Sen. McCallum withdrew his motion and it was decided to take it up later because of lack of time.

The meeting was adjourned at 9:55 a.m.

Pat M. Goodover

PAT M. GOODOVER, Chairman

ROLL CALL

TAXATION COMMITTEE

47th LEGISLATIVE SESSION - - 1981 Date 2/09/81

NAME	PRESENT	ABSENT	EXCUSED
Goodover, Pat M., Chairman	✓		
McCallum, George, Vice	✓		
Brown, Bob	✓		
Brown, Steve			
Crippen, Bruce D.	✓		
Eck, Dorothy	✓		
Elliott, Roger H.	✓		
Hager, Tom	✓		
Healy, John E. "Jack"	✓		
Manley, John E.	✓		
Norman, Bill	✓		
Ochsner, J. Donald	✓		
Severson, Elmer D.	✓		
Towe, Thomas E.	✓		

Each day attach to minutes.

DATE Feb. 9, 1981

COMMITTEE ON TAXATION

VISITORS' REGISTER

NAME	REPRESENTING	Senate BILLS#	Check One: Support	Check One: Oppose
GEORGE T. BENNETT	MONT. DAK UTILITIES NORTHERN PLAINS NAT. GAS	269		X
JOSEPH E THARES	MOUNTAIN BELL	269		X
J.R. beck	Dept of H. Hwys	269		X
Roger Tippy	Mt Beer & Wine Wholesalers	279	X	
John Delano	MONT RR Assn	HB92		
Dr. Rolf Weil	PRES - ROOSEVELT UNIV	"		
Steve Woods	BN "	"		
John Severson	BN	"		
Larry Peterson	BN	"		
Dan O'Fallon	Intern		X	
Mona Teigen	Mt. Stockgrowers & Contractors	269	X	
Larry Hinebauch	Power	269	X	
Larry Denberg	D.O.R			X
JIM RAPPE	NORTHERN [illegible] COMMITTEE MISSOULA	269	X	
CHRIS SWEENEY	[illegible]	[illegible]	X	

(Please leave prepared statement with Secretary)

STANDING COMMITTEE REPORT

February 9 19 81

MR. PRESIDENT:

We, your committee on TAXATION

having had under consideration House Joint Resolution ~~xxx~~ Bill No. 7

Respectfully report as follows: That House Joint Resolution ~~xx~~ Bill No. 7

BE CONCURRED IN

~~DO PASS~~

PAT M. GOODOVER, Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

February 9 19 81

MR. ~~CHAIRMAN~~ PRESIDENT:

We, your committee on Taxation

having had under consideration Senate Bill No. 98

Respectfully report as follows: That Senate Bill No. 96

DO PASS Y.C.

Pat M. Goodover Chairman.

STATE PUB. CO.
Helena, Mont.

Testimony of Dr. Rolf A. Weil
Before Senate and House Tax Committees of
the Legislature of the State of Montana
February 9, 1981

1. Introduction.

It is a privilege for me as an economist and as a long-time student and practitioner in the field of public finance to testify before this distinguished group of legislators on a matter of common concern.

In 1976[1] the Congress of the United States passed the Railroad Revitalization and Regulatory Reform Act. Among the purposes of this Act, commonly referred to as the 4 R Act, is the prevention of tax discrimination in the various States against the rail transportation property of common carriers. To attain this objective the legislation provides the opportunity for railroads to sue in the federal courts without first availing themselves of State judicial systems which historically had become a slow and inadequate procedure.

In essence, the 4 R Act provides that the level of assessment as determined by an assessment/sales[2] ratio study of commercial and industrial property may not be significantly lower than the level of assessment of the carrier operating property. Moreover, the Act provides that if a random-sampling sales ratio study cannot be made for commercial and industrial property, equalization will have to take place between the level of all other property subject to property taxation and the level of the centrally assessed railroad property.

(1 Recodified in 1978.

(2 The Act refers to a sales assessment ratio study.

2. The Classified Property Tax and the 4 R Act.

Many States classify property for tax purposes and specify different assessment levels for different classes of property. There is nothing in the 4 R Act to prevent this procedure. However, the level of assessment on railroad operating property may not be higher than the level specified for commercial and industrial property. Moreover, setting an identical level by law, although a necessary condition, is not a sufficient condition to meet the federal requirement. In actuality the "true" level of assessment of commercial and industrial property as measured by a sales ratio study must not be lower than that for the rail property.

To be specific, in the State of Montana the statutory as well as the "actual" level of assessment for property Class 4 must not be lower than that for the railroad classification.

3. Assessment Jurisdiction.

As a practical matter, it is only a State-wide study of commercial-industrial property that produces a large enough sample to make comparisons. Moreover, for railroad property the assessment jurisdiction is the State and it is therefore logical, administratively reasonable, and legally probably necessary to use State-wide data.

Moreover, if a ratio cannot be determined for commercial and industrial property on a State-wide basis, equalization between rail and all other property must be undertaken.

4. Recommendations for Possible Changes in State of Montana Assessment Procedures.

In order to accomplish the dual objectives of complying with the 4 R Act and to minimize costly litigation, I would recommend that the legislature and the Montana Department of Revenue take the following steps legislatively and/or administratively:

a. Establish a separate property class for operating railroad property and set its level of assessment at the same level as the level provided for in the present Class 4.

b. Conduct annual assessment/sales ratio studies and determine the actual level of assessment for commercial and industrial property as well as for all property.

c. Equalize the valuation between centrally assessed railroad property and the State-wide ratio for commercial and industrial property. For example, if the statutory assessment on railroad property were set at 10% and if commercial and industrial property is on the basis of a ratio study found to be at 8%, a multiplier of .8 should be applied to the Montana rail valuations.

d. In calculating assessment to sales ratios, sales for the latest available 12 months period should be used and the market values should be compared with the preceding January 1 assessment data.

e. If for statistical purposes[1] an inadequate number of commercial-industrial sales are available, railroad property should be equalized with all other property using generally accepted statistical procedures.

(1 It must be possible to determine the commercial-industrial assessment level within a narrow enough confidence interval to be meaningful.

5. Conclusion.

It is my judgement that the taxing bodies in Montana would be best served under a system of railroad assessment that produces both equity and certainty. Equity means the elimination of discriminatory taxation and certainty implies the timely collection of taxes without the delays inherent in litigation. The more precise the legislation in regard to the matters discussed in this statement the greater is the likelihood of a smoothly functioning property tax system.

I thank you for considering my recommendations and the underlying reasoning.

CURRICULUM VITAE
OF
ROLF ALFRED WEIL

PERSONAL DATA

Born:	October 29, 1921 in Germany
	Naturalized U. S. citizen since 1944
Married:	November 3, 1945 to Leni Metzger Weil
Children:	Susan Linda
	Ronald Alan
Residence:	3015 Simpson, Evanston, Illinois 60201

EDUCATION

Graduated Hyde Park High School, Chicago, 1939
B. A. in Economics, University of Chicago, 1942
M. A. in Economics, University of Chicago, 1945
Ph. D. in Economics, University of Chicago, 1950

HONORARY DEGREES

D. Hebrew Letters, College of Jewish Studies, 1967
L.H.D., Loyola University, 1970

EXPERIENCE

1. Research Assistant, Cowles Commission for Research in Economics, 1942-44
2. Research Analyst, Illinois Department of Revenue, 1944-46
3. Lecturer, Indiana University Adult Education Division, 1945-46
4. Faculty Member, Roosevelt University, 1946-
5. Tax Consultant to Gulf, Mobile & Ohio Railroad, J. L. Jacobs and Company, and other clients - currently
6. Acting President, Roosevelt University, 1965-66
7. President, Roosevelt University, 1966-

RESEARCH EXPERIENCE AND PUBLICATIONS

1. "Methods of Price Control," Cowles Commission Seminar Paper, 1944
2. Contributed to Price Control in Wartime by G. Katona, published by Cowles Commission, 1944
3. Research on assessment ratios and special property tax problems, Illinois Department of Revenue, 1945-46

4. Federal Grants in Aid to Achieve State-Local Cooperation in Counter-cyclical Fiscal Policy, Ph.D. Thesis, U. of Chicago, 1950. On microfilm.
5. "State-Local Finance and Business Cycle Policy," Illinois Business Review, October, 1950.
6. "Property Tax Equalization in Illinois," National Tax Journal, June, 1953.
7. "Apportioning Costs of Higher Education," Current Issues in Higher Education, Recorder's Report by Rolf A. Weil, 1956.
8. "Morton on Housing Taxation," by Rolf A. Weil. Book review in Journal of Political Economy, Summer, 1956.
9. "Business Schools Adjusting Focus," Business and Society, Spring, 1962.
10. "Property Tax Equalization," 1968 Proceedings of National Tax Association.
11. "Youth Attitudes - 1970" in Vital Speeches of the Day, (November 1, 1970).
12. "Philanthropy and the Challenges of the '70s," in Fund Raising Management, (September-October, 1971).
13. "World Problems - Educational Relevance" in Vital Speeches of the Day, (February 1, 1974).

COMMUNITY AFFILIATIONS AND ACTIVITIES

President of Selfhelp Home for the Aged, Inc., Chicago.
Member of Executive Committee of the Federation of Independent Illinois Colleges and Universities, Nonpublic Advisory Committee to the Illinois Board of Higher Education.

MEMBERSHIPS

Member of the American Economic Association, the Investment Analysts of Chicago, the American Association of University Professors, and the Committee on Federal Revenues and Expenditures of the Chicago Association of Commerce and Industry.

Member of the Board of Directors of the Edward A. Filene Good Will Fund.

Member of Rotary Club of Chicago, Cliff Dwellers Club, University Club of Chicago, and the Mid-America Club.

BEFORE THE

SENATE TAXATION COMMITTEE

REGARDING

S.B. 269

TESTIMONY

PRESENTED BY

JAN RAPPE

FOR THE

NORTHERN TIER INFORMATION COMMITTEE

BOX 8166

MISSOULA, MONTANA 59807

FEBRUARY 9, 1981

Mr. Chairman, Committee Members:

The Northern Tier Information Committee (the Committee) is a western Montana coalition of landowners concerned about the proposed Northern Tier pipeline. The Committee was organized in the spring of 1979 to study the project. Our goals have been two fold: To determine the positive and negative impacts of the proposed pipeline on the State of Montana and the nation as a whole; and second, if the pipeline is built to assist our fellow citizens in protecting their interests. The latter mandate brings us to Helena to offer comments on SB 269 whose purpose is to ammend sections of the Montana Codes dealing with eminent domain.

With regards to the construction and operation of the proposed Northern Tier pipeline it must be understood that the major impacted party will be the private landowner. Of 631 miles of right-of-way through Montana only about 140 miles will cross public lands (approximately 110 miles federal and 32 miles state). The remaining 480 plus miles - 3/4 of the entire route - will cross private land.[1] In Montana private land can be condemned by the Northern Tier Pipeline Company (NTPC). This power of eminent domain is automatically granted to any company which submits a letter to the Montana Public Service Commission claiming it is a common carrier pipeline. There is no public review. The statute states:

> "Every person, firm, corporation, limited partnership, joint stock association or association of any kind mentioned in this chapter is hereby granted the right and power of eminent domain in the exercise of which he, it, or they may enter upon and condemn the land, rights-of-way, easements, and property of any person or corporation necessary for the construction, maintainence, authorization of his, its, or their common carrier pipeline. The manner and method of such condemnation and the assessment and payment of damages therefor shall be the same as is provided by law in the case of railroads." Section 69-13-104 MCA 1978

Coupled with the fact that the second largest pipeline project in world history has been exempted from the Major Facility Siting Act, and that federal and state authority is very limited on private land it becomes apparent that the private landowner stands virtually defenseless before large pipeline companies such as the Northern Tier Pipeline Company. We have never considered this equitable.

To better understand how the present eminent domain laws allow pipeline companies to dictate terms and conditions it would be useful to compare what the NTPC is proposing for easements on private land and what the federal government is allowing on federal land. Conditions on state lands can not be compared because they have not been formalized.

On private land the NTPC has stated that it "will acquire a permanent right-of-way easement, 75 feet wide" and "will acquire a minimum of 15 additional feet" (emphasis added) for construction.[2] Compensation for land taken and for other damages will be made in lump sum payments.[3] Despite assurances to the contrary the NTPC is demanding a right-of-way easement on perpetuity.[4] A proposed easement agreement which was included in an information booklet for Minnesota landowners is attached as Exhibit "A".

In comparison, on federal land the NTPC has been granted a right-of-way of only 50 feet plus the width of the pipe. The duration of the right-of-way grant is good for only 30 years. Compensation for the use of the easement is in the form of annual rents which are adjustable: To be specific:

> "The rental for each year shall be subject to adjustments from time-to-time to reflect current fair market value."
> Right-of-way Grant #M-36936 4/21/80 Page 2

Other federal conditions which private landowners cannot presently impose include reimbursements for monitoring the construction, operation and maintenance of the pipeline; bonding to insure rent and damage payments; the right to perform; the right to revise or ammend the grant agreement to prevent damage the environment, the pipeline or public health and safety due to unforseen conditions; the ability to stop the construction or operation of the pipeline if there is a threat to life, property or the environment; etc.[6] The federal right-of-way grant is attached as Exhibit "B".

But what of other states and pipeline rights-of-way? Our research has shown that when granting the power of eminent domain many states assume much more responsibility then presently practiced by the State of Montana. For example, the Iowa State Commerce Commission first holds hearings to determine the justification for a project before granting eminent domain to common carrier pipelines. The Commission has the option of regulating

pipeline construction, operation and maintenance. The company must hold hearings in each county where property rights will be affected at least 30 days before applying for a permit from the Commission. Each affected landowner must recieve notification by certified mail. Before granting a permit the Commission must consider - amoung other things - the inconvenience and undue injury which would likely result to property owners. If construction permits are granted any county board of supervisors can request independent construction inspection within the county. These inspectors can require immediate corection of improper construction procedures.[7]

Many other states such as North Dakota, South Dakota, Maryland, Kansas, Wisconsin, and Colorado have also formulated laws which insure that affected property owners are treated fairly and that pipelines are properly constructed. An analysis of public service commissions and responsibility has been attached as Exhibit "C".

As can be seen the federal government as well as many other states have adopted measures to protect life and property. These minimum conditions should also be the rights of every private landowner in Montana. For these reasons we strongly endorse SB- 296 which provides for annual payments for the right-of-way easements and also requires that the condemner of the land control noxious weeds until the land has been successfully resorted. This is an excellent beginning.

However, we urge the Senate Taxation Committee to consider strengthening the bill further by at least including conditions which are standard to all federal rights-of-way grants. There is no reason why private landowners in Montana should not have as much control over their lands as the federal government exercises on public lands. There should be no double standard.

In summary, if the state of Montana continues to allow confiscation of private property by corporations through the use of eminent domain; and if the state assumes very limited authority over what happens on private land since large diameter pipelines have been exempted from the Major Facility Siting Act - then the State must give the private landowner the tools to take on that responsibility themselves. It is not appropriate that private companies who are accountable only to the corporation have

unchecked powers over private land. Reforming the present eminent domain laws, such as SB 269, allows the private landowner to exercise some control over his or her destiny.

Thank you for your consideration.

REFERENCES

1. Bureau of Land Management 8/15/79
   Final Environmental Statement
   Crude Oil Transportation Systems
   Table 1.2-4 Page 1-11

2. Northern Tier Pipeline Company 1979
   Landowner Information Brochure
   Pages 3-4

3. Ibid

4. Northern Tier Pipeline Company 2/80
   YOU AND THE PIPELINE - Information for
   Minnesota Landowners about the Northern
   Tier Pipeline Project.
   Right-of-Way and Easement Agreement. Exhibit V-A

5. Department of the Interior 4/21/80
   Right-Of-Way Grant # M-36936
   Pages 1,2

6. Ibid Pages 2,3,5,9

7. Iowa State Commerce Commission 8/5/80
   Correspondence and Regulation of Carriers,
   Chapter 479, Code of Iowa 1979.

Senate Bill 269 is an attempt to improve and clarify Montana's present eminent domain laws. Presently, Montana law is vague as to just what exactly constitutes the value of the land condemned. By inserting the words "current fair market value," which is first done on Page 2, line 7, and by adding the definition on Page 6, line 9, the law is made more specific and the courts are given a more solid criteria on which to base their judgement.

This language concurs with what the United States Supreme Court has said on the matter of just compensation for land taken. In the case "United States vs. Chondler-Dunbar Co. (1913)" the court said, "The owner must be compensated for what is taken from him but that is done when he is paid its fair market value for all available uses and purposes." In a later case, "United States vs. Reynolds (1970)," the Supreme Court said, "The owner is to be put in the same position monetarily as he would have occupied if his property had not been taken." In enforcing the constitutional mandate, the Court at an early date adopted the concept of market value; the owner is entitled to the fair market value of the property at the time of taking." The property owner, it must be remembered, is not voluntarily selling this land. Government has decided that this land is needed for public use. The least that can be done for the property holder is to grant him a fair price for his land. The language changes that are being proposed in this bill are both consistent with the laws of the land and the

Supreme Court decisions as well as a positive step toward providing the land owner with a fair price. The language of the definition of current market value was taken from Pennsylvania's eminent domain law. The law still does not speak to the owner's loss of future profits, the possible devaluation of adjacent land, or the upset caused by a possible move. It does, however, give the owner a fair price for his land, and this is the least that should be expected from a fair eminent domain proceeding.

The next issue that is addressed in this bill is the providing of alternate methods of compensation once the land has been condemned.

The first option provided is the installment contract method, whereby payments will be made to the defendant on an annual basis. This could provide for positive tax breaks.

The second method is a land exchange, whereby land of equal or greater value is swapped for the land to be condemned. It might very well be more beneficial to both parties that a land swap be made instead of a straight cash deal.

Thie third option is that of an easement, which amounts to a long term rental agreement with payments to be made on an annual basis. Should there be a chance that the public use of the land shall no longer be needed, then the title to the land will still be in the hands of the original owner, and the leasee shall have no further obligations. The land ownership would thus stay in the hands of the private citizens.

The huge lump sum payment would also not have to be made.

Whether these options will be used a great deal in future proceedings is open to speculation. Nonetheless, these alternative plans will be available and may, in some cases, work out to the advantages of all parties involved.

New Section 5, beginning on Page 6, line 9, addresses the issue of weed control on condemned property that has been taken over by the plaintiff. Often times, the land being condemned is either agricultural land or adjoining agricultural land but is not used for agricultural purposes. Weeds can be a problem and should be controlled so that they are not a nuisance to surrounding land. This section makes it the responsibility of the plaintiff, upon taking posession of the land to control the weeds until the natural grasses take over the land and weeds are no longer a problem.

The last section, new Section 6, is self-explanatory. It simply prevents taxes from being assessed on the condemned land twice and makes the plaintiff responsible for all taxes assessed on the land after the date of posession.

This bill, in its' entirety, brings our present eminent domain law up-to-date, and incorporates some new ideas and responsibilities into the law that should improve the system and make it fairer to both the private property owners and the public.

Montana is now facing a unique situation in which high

voltage power lines will be stretched across the state to transfer energy from coal-rich eastern Montana to the growing Pacific Northwest. A great deal of land will have to be condemned and a lot of Montanans forced to sell their land. We owe it to these people make sure that the law is fair to them and that they are granted compensation. I urge you to pass this bill onto the floor of the Senate with a "Do Pass" recommendation.

EXHIBIT V-A

RIGHT-OF-WAY AND EASEMENT AGREEMENT

THE STATE OF MINNESOTA
COUNTY OF _____ KNOW ALL MEN BY THESE PRESENTS

That the undersigned, _____

_____

_____

hereinafter referred to as Grantor (whether one or more), for and in consideration of Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the further consideration of _____

_____ Dollars ($_____) to be paid by Grantee should same become payable as hereinafter provided, does hereby grant, bargain, sell and convey unto NORTHERN TIER PIPELINE COMPANY, a Delaware corporation, its successors and assigns, herein referred to as Grantee, an indefeasible, perpetual, exclusive easement for a pipeline right-of-way to survey, construct, maintain, inspect, patrol (including air patrol), identify, operate, protect, repair, alter, replace, change the size of (prior to construction), relocate, and remove a buried pipeline and appurtenances (including valves, markers, corrosion control equipment), for the transportation of oil, and the products or derivatives thereof, upon and along a route to be agreed upon by Grantor and Grantee, said right-of-way being _____ feet in width and extending _____ feet on the _____ side of the center line of the pipeline and extending _____ feet on the _____ side of the center line of the pipeline installed hereunder, together with the right to use a strip of land _____ feet in width adjacent to the said right-of-way upon the side thereof selected by Grantee and running the length thereof, as temporary work space during construction of said pipeline, on, over, under, across and through the following described lands of which Grantor warrants they are the owners in fee simple, situated in _____ County, State of Minnesota, to wit:

Grantor agrees to execute and deliver to Grantee without additional compensation any additional documents needed to correct the legal description of the easement area to conform to the right-of-way actually occupied by the pipeline.

Grantee shall make payment to Grantor of the further consideration of _____

_____ Dollars ($_____) hereinabove referred to before commencing

work for laying the pipeline on the above-described land of Grantor. If such further consideration is not paid within _____ from the date hereof, Grantee will release this easement, and upon such release neither party hereto shall have any further rights, obligations or liabilities hereunder.

TO HAVE AND TO HOLD unto said Grantee, its successors and assigns, together with the right of unimpaired access to said pipeline and the right of ingress and egress on, over and through Grantor's above described land for any and all purposes necessary and incident to the exercise by said Grantee of the rights granted hereunder, with the further right to maintain said right-of-way herein granted clear of undergrowth and underbrush. The said right of ingress and egress shall be along the most reasonable and direct route to the point of such construction, inspection, repair, replacement, maintenance or removal, and shall include the right to use existing and established roads and trails and, upon Grantor's permission, the right to use Grantor's other lands adjacent to the easement strip.

Grantor, however, reserves the right to cultivate and use the ground within the parcel of land and property covered by this instrument, provided that such use shall not, in the opinion of Grantee, interfere with or obstruct Grantee in its exercise of the rights and privileges herein granted, or create any actual or potential hazard to the pipeline and related facilities ultimately installed therein. Grantor specifically covenants and agrees not to construct buildings or structures on that portion of their lands and property covered by this instrument, and this agreement on their part shall be considered as a covenant running with the land and binding upon the Grantor, their heirs, executors, administrators, successors and assigns.

In addition to the above consideration, Grantee agrees to repair or to pay for any actual damage which may be done to growing crops, timber, fences, buildings, underground drain tile or other structures directly caused by Grantee exercising any rights herein granted. Said damages, if not mutually agreed upon, shall be ascertained and determined by arbitration, in accordance with the rules of the American Arbitration Association, by three (3) disinterested persons: one to be appointed by Grantor, one to be appointed by Grantee and the third to be appointed by the two so first appointed as aforesaid; the award of such three (3) persons shall be final and conclusive.

THE PIPELINE CONSTRUCTED HEREUNDER BY GRANTEE ACROSS ANY PORTION OF THE ABOVE-DESCRIBED LAND WHICH IS UNDER CULTIVATION SHALL, AT THE TIME OF THE CONSTRUCTION THEREOF, BE BURIED TO SUCH DEPTH AS WILL NOT INTERFERE WITH GRANTOR'S

EXHIBIT V-A (Continued)

USE OF SAID LAND FOR NORMAL CULTIVATION REQUIRED FOR THE PLANTING AND TENDING OF CROPS.

WAIVER OF DEPTH OF COVER REQUIREMENT

GRANTEE IS REQUIRED BY MINNESOTA LAW (MINN. STAT. 116I.06) TO BURY THE PIPELINE TO A MINIMUM DEPTH OF 4-1/2 FEET UNLESS THE REQUIREMENT IS WAIVED BY GRANTOR. GRANTOR IS AWARE OF THE REQUIREMENT, AND KNOWS THAT THEY CAN INSIST THAT GRANTEE MEET THE REQUIREMENT. GRANTOR ALSO KNOWS THAT IF THEY SIGN THE WAIVER BELOW THIS PARAGRAPH, GRANTEE WILL NOT BE REQUIRED BY LAW TO BURY THE PIPELINE TO A MINIMUM DEPTH OF 4-1/2 FEET, BUT THAT UNDER THE PRECEDING PARAGRAPH OF THIS DOCUMENT GRANTEE WILL BE REQUIRED TO BURY THE PIPELINE SO AS NOT TO INTERFERE WITH GRANTOR'S USE OF THEIR LAND FOR NORMAL CULTIVATION REQUIRED FOR THE PLANTING AND TENDING OF CROPS. BY SIGNING THIS DOCUMENT IN THE SPACE BELOW THIS PARAGRAPH, GRANTOR WAIVES THE REQUIREMENT UNDER MINNESOTA LAW (MINN. STAT. 116I.06) THAT GRANTEE BURY THE PIPELINE TO A MINIMUM DEPTH OF 4-1/2 FEET. IF GRANTOR DOES NOT WANT TO WAIVE THE REQUIREMENT, THEY SHOULD NOT SIGN THIS DOCUMENT IN THE SPACE BELOW THIS PARAGRAPH. GRANTOR ACKNOWLEDGES THAT THEY HAVE READ THE WAIVER AND UNDERSTAND IT.

_____

_____

_____

The rights herein granted are divisible and assignable in whole or in part.

Special provisions and/or restrictions to be added to this agreement, if any, are attached on Exhibit _____.

This instrument contains the entire agreement of the parties; there are no other or different agreements or understandings between the Grantor and the Grantee or its agents; and that the Grantor, in executing and delivering this instrument, has not relied upon any promises, inducements, or representations of the Grantee or its agents or employees, except such as are set forth herein.

The terms, covenants and provisions of this Right-of-Way and Easement Agreement shall extend to and be binding upon the heirs, executors, administrators, personal representatives, successors, and assigns of the parties hereto.

EXHIBIT V-A (Continued)

IN WITNESS WHEREOF, the Grantor herein has caused this instrument to be duly executed this _____ day of _____, 19_____.

_____

_____

_____

EXHIBIT V-A (Continued)

ACKNOWLEDGEMENT

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 19_____, by _____ _____.

_____
Notary Public

UNITED STATES
DEPARTMENT OF THE INTERIOR
STATE OFFICE
222 North 32nd Street
Billings, Montana 59107

RIGHT-OF-WAY GRANT

Serial Number: M-36936

Pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. Sec. 185, and the regulations in Part 2880, Title 43, Code of Federal Regulations, and subject to valid existing rights, the United States of America (United States or Grantor), hereby grants to Northern Tier Pipeline Company, Suite 509, Midland National Bank Building, Billings, Montana 59101, a Delaware Corporation (GRANTEE), a RIGHT-OF-WAY across FEDERAL LANDS for the construction, operation, maintenance, and termination of a PIPELINE (that is the pipe and its related facilities). The location of the RIGHT-OF-WAY is depicted on the maps referred to as Exhibit B hereof.

In consideration of the representations in the application of GRANTEE filed April 15, 1977, and subsequent amendments thereto as have been or may be approved by the AUTHORIZED OFFICER, and the mutual promises and covenants hereinafter set out, the United States and GRANTEE agree as follows:

NATURE OF GRANT

By this instrument GRANTEE receives a nonpossessory, nonexclusive right to use certain FEDERAL LANDS, as depicted on the maps in Exhibit B, for the limited purpose of construction, operation, maintenance, and termination of the PIPELINE specified in this Grant.

There is hereby reserved to the SECRETARY, or his lawful delegate, the right to grant additional rights-of-way or permits for compatible uses on, over, under, or adjacent to the land involved in this Grant.

WIDTH OF RIGHT-OF-WAY

The width of the RIGHT-OF-WAY hereby granted is 50 feet plus the ground occupied by the PIPELINE unless otherwise authorized as provided in Sec. 28(d) of the Mineral Leasing Act.

DURATION OF GRANT

A. The Grant hereby made, subject to renewal provisions of applicable statutes and regulations, shall terminate thirty (30) years from the effective date hereof, at noon, Montana time, unless prior thereto it is relinquished, abandoned, or otherwise terminated pursuant to the provisions of this Grant or of any applicable Federal statute or regulation.

B. Notwithstanding the expiration of this Grant or its earlier relinquishment, abandonment, or other termination, the provisions of this Grant, to the extent applicable, shall continue in effect and shall be binding on GRANTEE, its successors or assigns, until they have fully performed their respective obligations and liabilities accruing before or on account of the expiration, or prior termination, of the Grant.

RENTAL

GRANTEE shall pay to the United States an annual rental, payable in advance. Until a specific location has been established for the RIGHT-OF-WAY, the amount of said payment shall be $79,150.00. This is the estimated fair market rental value for one year. Upon establishment of the actual location of the RIGHT-OF-WAY, an appraisal of the fair market rental value will be made and GRANTEE will be billed for additional rental or credited in the amount of the overpayment, whichever is appropriate. The rental for each year shall be subject to adjustment from time-to-time to reflect current fair market rental value.

EXHIBITS: INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The following documents are, by this reference, incorporated into and made a part of this Grant as fully and effectually as if the Exhibits were set forth herein in their entirety:

A. Stipulations for the Grant of RIGHT-OF-WAY for the PIPELINE, attached hereto as Exhibit A, and referred to in this Grant as the "Stipulations."

B. Alignment maps and site location drawings identifying the route of the PIPELINE, attached hereto as Exhibit B.

COST REIMBURSEMENT

A. GRANTEE shall reimburse the United States for all costs incurred in connection with administering this Grant, including costs incurred in monitoring the construction, operation, maintenance, and termination of the PIPELINE and costs incurred by the Secretary in complying with Section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. Sec. 1536), Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. Sec. 470f) and the regulations of the Advisory Council on Historic Preservation (36 C.F.R., Part 800).

LIABILITY

GRANTEE shall be liable for damage or injury to the United States and third parties to the extent provided by Section 28(x) of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. Sec. 185(x); 43 CFR Sec. 2883.1-4. GRANTEE shall be held to a standard of strict liability for damage or injury to the United States resulting from the following activities occurring in the RIGHT-OF-WAY in connection with construction, operation, maintenance or termination of the PIPELINE: welding and open fires; pumping or carriage of OIL through the PIPELINE; and carriage, storage, or use of hazardous, highly flammable, or explosive substances. The maximum

limitation for such strict liability damages shall not exceed one million dollars ($1,000,000) for any one event, and any liability in excess of such amount shall be determined by the ordinary rules of negligence of the jurisdiction in which the damage or injury occurred.

INDEMNIFICATION

In addition to the obligations imposed on GRANTEE by the provisions of 43 CFR Sec. 2883.1-4(e), GRANTEE agrees to indemnify the United States for any and all costs or obligations incurred by the United States in performing any obligations of GRANTEE under this RIGHT-OF-WAY Grant which the United States has reserved the right to perform.

BONDING

A. Immediately upon issuance of this Grant, GRANTEE shall furnish the United States a surety bond, of such type and on such terms and conditions as are acceptable to the AUTHORIZED OFFICER, in the principal amount of one hundred and fifty thousand dollars ($150,000.00). Said bond shall be maintained in force and effect in the full principal amount at all times during construction, operation, maintenance, and termination of the PIPELINE and until released in writing by the AUTHORIZED OFFICER.

B. Said bond shall be security for payment of all sums owing to the United States at any time by reason of this Grant or application therefor, including but not limited to timely payment of rent to the United States and reimbursement of costs heretofore or hereafter incurred by the United States pursuant to Section 28 of the Mineral Leasing Act, 30 U.S.C. Sec. 185. The bond shall also be security for payment to the United States of any expenses or monetary damages of the United States, arising from: GRANTEE's activities pursuant to this Grant or in connection with construction, operation, maintenance or termination of the pipeline project which is in part the subject of this Grant, any breach by GRANTEE of any term or condition of this Grant, including any term or condition of this Grant that imposes an obligation upon GRANTEE to pay, reimburse, hold harmless, or indemnify the United States.

C. These bonding requirements are in addition to, and are not intended to affect, all other requirements of law, nor are they intended to limit in any way GRANTEE's liability under any provision of law.

RIGHT OF UNITED STATES TO PERFORM

If, after thirty (30) days or, in an emergency such shorter period as shall not be unreasonable, following the making of a demand therefor by the AUTHORIZED OFFICER, GRANTEE (or its agents, employees, contractors or subcontractors) shall fail or refuse to perform any of the actions required by the provisions of Stipulation A.2.E, the United States shall have the right, but not the obligation, to perform any or all of such actions at the sole expense of GRANTEE.

LIENS

A. GRANTEE shall, with reasonable diligence, discharge any lien against FEDERAL LANDS that results from any failure or refusal on its part to pay or satisfy any judgment or obligation that arises out of or is connected in any way with the construction, operation, maintenance or termination of all or any part of the PIPELINE.

B. The foregoing provision shall not be construed to constitute the consent of the United States to the creation of any lien against FEDERAL LANDS or to be in derogation of any prohibition or limitation with respect to such liens that may now or hereafter exist.

RELEASE OF RIGHT-OF-WAY

In connection with relinquishment before the expiration of this Grant of any right or interest in the RIGHT-OF-WAY, GRANTEE shall execute promptly and deliver to the AUTHORIZED OFFICER a valid instrument of release, acceptable to the AUTHORIZED OFFICER. Each release shall be accompanied by such resolutions and certifications as the AUTHORIZED OFFICER may require as to the authority of GRANTEE, or of any officer or agent acting on its behalf, to execute, acknowledge or deliver the release.

RIGHTS OF THIRD PARTIES

Nothing in this Grant shall be construed to affect any right or course of action that otherwise would be available to GRANTEE against any person. The United States and GRANTEE do not intend to create any rights under this Grant that may be enforced by third parties for their own benefit or for the benefit of others.

EQUAL OPPORTUNITY

GRANTEE agrees not to exclude, on the grounds of race, creed, color, national origin, religion, age or sex, any person from participating in employment or procurement activity connected with this Grant. To ensure against such exclusion, GRANTEE further agrees to develop and submit for approval to the AUTHORIZED OFFICER an affirmative action plan which includes specific goals and timetables with respect to minority and female participation in all phases of employment and procurement activity connected with this Grant. GRANTEE and each of its contractors and subcontractors shall take affirmative action to utilize business enterprises owned and controlled by minorities or women in its procurement practices connected with this Grant. Affirmative action shall be taken by GRANTEE to assure all minorities or women applicants full consideration of all employment opportunities connected with this Grant. GRANTEE also agrees to post in conspicuous places on its premises which are available to contractors, subcontractors, employees, and other interested individuals, notices which set forth equal opportunity terms; and to notify interested individuals such as bidders, contractors, purchasers and labor unions or representatives of workers with whom it has collective bargaining agreements, of GRANTEE's equal opportunity obligations. GRANTEE and each of

its contractors and subcontractors shall furnish all information and reports required by the AUTHORIZED OFFICER under the terms of this clause and shall permit access to its facilities, books, records, and accounts by the AUTHORIZED OFFICER or his representative for purposes of ascertaining compliance. In the event of GRANTEE's and each of its contractor's and subcontractor's noncompliance with these equal opportunity terms, compliance may be effected through all procedures authorized by law.

COVENANTS INDEPENDENT

Each and every covenant contained in this Grant is, and shall be deemed to be, separate and independent of, and not dependent on, any other covenant contained in this Grant.

PARTIAL INVALIDITY

If any part of this Grant is held invalid or unenforceable, the remainder of this Grant shall not be affected and shall be valid and enforced to the fullest extent permitted by law.

WAIVER NOT CONTINUING

The waiver by any party hereto of any breach of any provision of this Grant by any other party hereto, whether such waiver be expressed or implied, shall not be construed to be a continuing waiver or a waiver of, or consent to, any subsequent or prior breach on the part of such other party, of the same or any other provisions of this Grant.

UNFORESEEN CONDITIONS

Unforeseen conditions arising during design, construction, operation, maintenance or termination of the PIPELINE may make it necessary to revise or amend this Grant, including the Exhibits hereto, to prevent damage to the environment, impairment of the physical integrity of the PIPELINE, or hazards to public health and safety. In that event, GRANTEE and the AUTHORIZED OFFICER shall agree as to what revisions or amendments shall be made.

SECTION HEADINGS

The section headings in this Grant are for convenience only, and do not purport to, and shall not be deemed to, define, limit or extend the scope or intent of the section to which they pertain.

AUTHORITY TO RECEIVE GRANT

GRANTEE represents and warrants to the United States that: (1) it is duly authorized and empowered under the applicable laws of the State of its incorporation and by its charter and by-laws to perform pursuant to this Grant in accordance with the provisions hereof; (2) its board of directors or duly authorized executive committee, has duly approved, and has duly authorized, the execution, delivery, and performance by it of this Grant; (3) all corporate and shareholder action that may be necessary

or incidental to the approval of this Grant and the due execution, delivery and performance hereof by GRANTEE has been taken; and (4) that all of the foregoing approvals, authorizations and actions are in full force and effect at the time of the execution and delivery of this Grant.

COMPLIANCE

Failure of GRANTEE to comply with any provisions of Section 28 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. Sec. 185, or of this Grant shall constitute ground for suspension or termination of this Grant.

EFFECTIVE DATE

This Grant shall be effective upon its execution.

IN WITNESS WHEREOF,
the parties hereto have duly executed this agreement.

UNITED STATES OF AMERICA

Cecil D. Andrus
Secretary of the Interior

4-21-80
Date

NORTHERN TIER PIPELINE COMPANY

T C Kuyzen
President

4-21-80
Date

Certified to be a true copy of the original
Richard R. Lee
Certifying Officer

EXHIBIT A

STIPULATIONS

A. GENERAL

A-1. DEFINITIONS

As used in these Stipulations and elsewhere in this Grant, the following terms have the following meanings:

A. "DEPARTMENT" means the Department of the Interior.

B. "SECRETARY" means the Secretary of the Interior.

C. "AUTHORIZED OFFICER" means the State Director, Montana, Bureau of Land Management, or a person delegated to exercise his authority with respect to this Grant.

D. "GRANTEE" means Northern Tier Pipeline Company, a Delaware corporation, its successors or assigns.

E. "FEDERAL LANDS" means all lands owned by the United States, except lands in the National Park System, lands held in trust for an Indian or Indian tribe, and lands on the Outer Continental Shelf.

F. "PIPELINE" means the line of pipe and RELATED FACILITIES on FEDERAL LANDS used for transportation of OIL.

G. "RELATED FACILITIES" means those structures, devices, improvements, and sites, the substantially continuous use of which is necessary for the operation or maintenance of the PIPELINE, which are located on FEDERAL LANDS and which are authorized under Section 28 of the Mineral Leasing Act and defined in 43 C.F.R. Sec. 2880.0-5(k).

H. "OIL" means crude oil, liquid hydrocarbons, synthetic liquid fuels, or any refined product produced therefrom.

I. "RIGHT-OF-WAY" means the FEDERAL LANDS authorized to be occupied pursuant to this Grant.

J. "NOTICE TO PROCEED" means an authorization to initiate PIPELINE construction issued pursuant to Stipulation A-4.

K. "LOGIC DIAGRAM NETWORK" is a system that is used to sequence events that occur at given periods of time during construction to complete a portion of the PIPELINE within a certain length of time.

L. "FINAL DESIGN" comprises completed design documents for the PIPELINE. It shall include contract plans and specifications, proposed construction modes, operational requirements necessary to justify designs, schedules, design analyses (including sample calculations for each particular design feature), all functional and engineering criteria, summary of tests conducted and their results, and other considerations pertinent to design and project life expectancy.

A-2. RESPONSIBILITIES

A. Except where the approval of the AUTHORIZED OFFICER is required before GRANTEE may commence a particular operation, neither the United States nor any of its agents or employees agrees, or is in any way obligated, to examine or review any plan, design, specification, or other document which may be filed with the AUTHORIZED OFFICER by GRANTEE pursuant to these Stipulations.

B. The absence of any comment by the AUTHORIZED OFFICER or any other employee of the United States with respect to any plan, design, specification, or other document which may be filed by GRANTEE with the AUTHORIZED OFFICER shall not be deemed to represent in any way whatever any assent to, approval of, or concurrence in such plan, design, specification, or other document, or of any action proposed therein.

C. With regard to the construction, operation, maintenance, and termination of the PIPELINE: (1) GRANTEE shall ensure full compliance with the terms and conditions of this Grant, including these Stipulations, by its agents, employees and contractors (including subcontractors at any level), and the employees of each of them. (2) Unless clearly inapplicable, the requirements and prohibitions imposed upon GRANTEE by said Stipulations are also imposed upon GRANTEE's agents, employees, contractors, subcontractors, and the employees of each of them. (3) Failure or refusal of GRANTEE's agents, employees, contractors, subcontractors, or their employees to comply with said Stipulations shall be deemed to be the failure or refusal of GRANTEE. (4) Where appropriate, GRANTEE shall require its agents, contractors and subcontractors to include said Stipulations in all contracts and subcontracts which are entered into by any of them, together with a provision that the other contracting party, together with its agents, employees, contractors, and subcontractors, and the employees of each of them, shall likewise be bound to comply with said Stipulations.

D. Prior to beginning construction, GRANTEE shall designate an employee who shall be empowered on behalf of GRANTEE to communicate with, and to receive and comply with, all communications and orders of the AUTHORIZED OFFICER. GRANTEE shall also designate field representatives who shall be authorized, and at all times be available, to communicate and cooperate with field representatives of the AUTHORIZED OFFICER. GRANTEE shall keep the AUTHORIZED OFFICER informed of any change of GRANTEE's representatives during the construction, operation, maintenance, and termination of the PIPELINE.

E. (1) GRANTEE shall abate any condition existing with respect to the construction, operation, maintenance, or termination of the PIPELINE that causes or threatens to cause serious and irreparable harm or damage to any person, structure, property, land, fish and wildlife and their habitats, or other resource.

(2) Any structure, property, land, fish and wildlife habitat or other similar resource harmed or damaged by GRANTEE in connection with the construction, operation, maintenance or termination of the PIPELINE shall be reconstructed, repaired, and rehabilitated by GRANTEE to the written satisfaction of and within the time specified by the AUTHORIZED OFFICER.

A-3. ORDERS OF THE AUTHORIZED OFFICER

A. The AUTHORIZED OFFICER may call upon GRANTEE at any time to furnish any or all data related to construction, operation, maintenance, and termination activities undertaken in connection with the PIPELINE.

B. The AUTHORIZED OFFICER may require GRANTEE to make modification of the PIPELINE, without liability or expense to the United States, as he deems necessary to protect or maintain stability of foundation and other earth materials, protect or maintain integrity of the PIPELINE, control or prevent significant damage to the environment (including, but not limited to, fish and wildlife populations or their habitats), or remove hazards to public health and safety.

C. The AUTHORIZED OFFICER at any time may issue a written decision suspending any activity of GRANTEE in connection with the PIPELINE, including the transportation of OIL, which in the judgment of the AUTHORIZED OFFICER immediately threatens serious or irreparable harm to life (including wildlife and aquatic life), property, or the environment. GRANTEE shall not resume such suspended activities until given permission to do so by the AUTHORIZED OFFICER. If such permission is given orally, it shall be confirmed in writing as soon thereafter as possible.

D. (1) GRANTEE shall be entitled to an expedited appeal to the SECRETARY from any temporary suspension order, or order denying resumption of suspended activities (except any refusal to issue a NOTICE TO PROCEED or the issuance of a NOTICE TO PROCEED that may not be substantially in accord with the application therefor), issued by the AUTHORIZED OFFICER and that suspends, or denies resumption of, the following: (a) operation of the entire PIPELINE; (b) transportation of OIL through the PIPELINE; or (c) activities of an entire construction spread.

(2) The SECRETARY shall render a decision so as to dispose of the expedited appeal within the shortest possible time and in all events within seven (7) days of the date of filing of the documents required to perfect an appeal. If the SECRETARY does not render a decision within such time, the appeal may be deemed by GRANTEE to have been denied by the SECRETARY, and such denial shall constitute the final administrative decision of the DEPARTMENT.

E. Any decisions or approvals of the AUTHORIZED OFFICER which are required by these Stipulations to be in writing may in emergencies be issued orally, with subsequent confirmation in writing as soon thereafter as possible.

A-4. NOTICES TO PROCEED

A. GRANTEE shall not initiate any construction of the PIPELINE on FEDERAL LANDS pursuant to this Grant without the prior written authorization of the AUTHORIZED OFFICER. Such authorization shall be given solely by means of a written NOTICE TO PROCEED issued by the AUTHORIZED OFFICER. Any NOTICE TO PROCEED shall authorize construction only as therein expressly stated.

B. The AUTHORIZED OFFICER shall issue a NOTICE TO PROCEED, subject to such terms and conditions as he deems necessary, when in his judgment the design, construction, use, and operation proposals are in conformity with the terms and conditions of these Stipulations.

C. The AUTHORIZED OFFICER may revoke in whole or in part any NOTICE TO PROCEED which has been issued when in his judgment unforeseen conditions later arising or new data so require.

D. Each application for a NOTICE TO PROCEED shall be supported by:

(1) A FINAL DESIGN or plan. Upon request of the AUTHORIZED OFFICER, GRANTEE will provide computations and other data supporting the design.

(2) All applicable reports and results of environmental studies conducted by GRANTEE.

(3) All data necessary to demonstrate compliance with the terms and conditions of these Stipulations with respect to that particular construction spread.

(4) A detailed LOGIC DIAGRAM NETWORK for each construction spread, including GRANTEE's work schedule, permits required by State, Federal, and local agencies and their interrelationships, design and review periods, data collection activities and construction activities.

The LOGIC DIAGRAM NETWORK shall be updated, as required, to reflect the current status of the project.

E. At least 15 days prior to beginning construction, GRANTEE shall arrange a preconstruction conference with the AUTHORIZED OFFICER's designee, his compliance inspectors, and project coordinators.

F. GRANTEE will file a certificate of construction in accordance with 43 C.F.R. Sec. 2883.4.

A-5. COMMON CARRIER

GRANTEE shall construct, operate, and maintain the PIPELINE as a common carrier pursuant to Section 28(r) of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. Sec. 185(r).

A-6. CERTIFICATION OF NONSEGREGATED FACILITIES

By accepting this Grant, GRANTEE shall not maintain or provide any segregated facilities. As used in this certification, the term "segregated facilities" means, but is not limited to, any waiting room, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, national origin, religion, color, or sex.

GRANTEE further agrees not to permit employees to perform their services where segregated facilities are maintained. GRANTEE shall also require a certification from contractors and subcontractors which prohibits them (contractors and subcontractors under the GRANTEE) from maintaining segregated facilities. The contractors and subcontractors shall also be prohibited from performing their services at any location where segregated facilities are maintained.

The certification shall be given to GRANTEE by the contractors and the subcontractors. GRANTEE will in turn give the certification to the AUTHORIZED OFFICER. The certification shall be submitted to the AUTHORIZED OFFICER on a quarterly, semiannual or annual basis, depending upon the regular reporting time conditions of the individual contracts.

GRANTEE agrees that a breach of this certification by the contractors, subcontractors or GRANTEE is a violation of the equal opportunity clause of this Grant, Cf. 41 C.F.R. 60-1.8(b).

A-7. RESERVATION OF CERTAIN RIGHTS TO THE UNITED STATES

A. The United States reserves and shall have: (a) a continuing right of access across the RIGHT-OF-WAY to all FEDERAL LANDS (including the subsurface and air space); (b) a continuing right of physical entry to any part of the PIPELINE for inspection, monitoring, or for any other purpose or reason consistent with any right or obligation of the United States under any statute or regulation; and (c) the right to make, issue or grant rights-of-way, temporary use permits, easements, leases, licenses, contracts, patents, permits and other authorizations for compatible uses on, under, above, or adjacent to FEDERAL LANDS subject to the RIGHT-OF-WAY.

B. At construction sites during construction, and thereafter with respect to above-ground fenced facilities only, the rights of access and entry reserved to the United States shall be limited to (1) the AUTHORIZED OFFICER, (2) representatives of the AUTHORIZED OFFICER, (3) representatives of Federal agencies on official business, (4) contractors and subcontractors of the United States, and such other persons as may be designated from time-to-time in writing by the AUTHORIZED OFFICER.

C. GRANTEE may request that any individual who purports to act on behalf of the United States, pursuant to Subsection B of this section, furnish it with written authorization from the AUTHORIZED OFFICER before taking final action in that regard.

A-8. PROCEDURES RELATED TO REIMBURSEMENT OF EXPENSES

A. If GRANTEE disputes any item of a statement that shall be rendered for prepayment of estimated expenses, as to either the need for or cost of the work to be done, GRANTEE shall promptly notify the AUTHORIZED OFFICER. The AUTHORIZED OFFICER shall meet with GRANTEE promptly in an effort to resolve the dispute. If they are unable to resolve the dispute, GRANTEE shall not withhold payment of the disputed amount, but shall pay it under protest, subject to later appeal after audit.

B. Whether or not, pursuant to paragraph A-8.A, GRANTEE disputes an item or pays an amount under protest, GRANTEE shall have the right to conduct, at its own expense, reasonable audits by auditors or accountants, designated by GRANTEE, of the books, records, and documents of the DEPARTMENT and of its independent consultants and/or contractors relating to the items on any particular statement that shall be submitted, at the places where such books, records, and documents are usually maintained, and at reasonable times; provided, however, that written notice of a desire to conduct such an audit must be given the AUTHORIZED OFFICER by not later than the seventy-fifth (75th) day after the close of the quarter for which the books, records, and documents are sought to be audited; and provided further, that any such audits shall be completed within ninety (90) days after filing of said notice. After completion of an audit, the AUTHORIZED OFFICER shall meet with GRANTEE with respect to any items still in dispute and shall thereafter rule on the matter and make appropriate adjustment of GRANTEE's account. To the extent the dispute is not resolved, GRANTEE may appeal to the SECRETARY pursuant to 43 C.F.R., Part 4, Subpart E.

A-9. PUBLIC AND PRIVATE IMPROVEMENTS

GRANTEE shall provide reasonable protection to existing public or private improvements on FEDERAL LANDS which may be adversely affected by its activities during construction, operation, maintenance, and termination of the PIPELINE. GRANTEE shall not permanently obstruct any road or trail without the prior approval of the AUTHORIZED OFFICER. Damage to property of the United States caused by GRANTEE shall be promptly repaired by GRANTEE to a condition which is satisfactory to the AUTHORIZED OFFICER.

A-10. SURVEY MONUMENTS

GRANTEE shall mark and protect all survey monuments, corners or accessories encountered during construction, operation, maintenance and termination of the PIPELINE. If any of these monuments or accessories are identified as subject to being disturbed,

or if any are destroyed or disturbed, GRANTEE shall immediately notify the AUTHORIZED OFFICER in order that a determination may be made by the proper agency as to the requirements for replacement or remonumentation. Any such replacement or remonumentation will be at the sole expense of GRANTEE.

A-11. FIRE PREVENTION AND SUPPRESSION

GRANTEE shall promptly notify the AUTHORIZED OFFICER of any fires on, or which may threaten any portion of, the PIPELINE or the RIGHT-OF-WAY and shall take all measures necessary or appropriate for the prevention and suppression of fires in accordance with applicable law. GRANTEE shall comply with the instructions and directions of the AUTHORIZED OFFICER concerning the use, prevention and suppression of fires on FEDERAL LANDS. Use of open fires in connection with construction of the PIPELINE is prohibited unless authorized in writing by the AUTHORIZED OFFICER.

A-12. SURVEILLANCE AND MAINTENANCE

A. During the construction, operation, maintenance and termination phases of the PIPELINE, GRANTEE shall conduct a surveillance and maintenance program. At a minimum, with respect to GRANTEE's activities, this program shall be designed to:

(1) provide for public health and safety;

(2) control or prevent damage to natural resources;

(3) control or prevent erosion;

(4) maintain PIPELINE integrity;

(5) control or prevent damage to public and private property.

B. GRANTEE shall maintain complete and up-to-date records on construction, operation, maintenance, and termination activities performed in connection with the PIPELINE. Such records shall include surveillance data, leak and failure records, necessary operational data, modification records, and such other data as may be required by 49 C.F.R., Part 195, and other applicable Federal statutes and regulations.

A-13. HEALTH AND SAFETY

A. GRANTEE shall take all measures necessary to protect the health and safety of all persons affected by its activities performed in connection with the construction, operation, maintenance, and termination of the PIPELINE. GRANTEE shall immediately notify the AUTHORIZED OFFICER of all serious accidents which occur in connection with such activities.

B. GRANTEE shall perform all PIPELINE operations in a safe and workmanlike manner so as to ensure the safety and integrity of the PIPELINE, and shall at all times employ and maintain personnel and equipment sufficient for that purpose. GRANTEE shall immediately notify the AUTHORIZED OFFICER of any condition, problem, malfunction, or other occurrence which in any way threatens the integrity of the PIPELINE.

A-14. APPLICABILITY OF STIPULATIONS

Nothing in this Grant, including these Stipulations, shall be construed as applying to activities of GRANTEE that have no relation to the PIPELINE.

A-15. COMPLIANCE WITH FEDERAL AND STATE LAW

To the extent practicable, GRANTEE shall comply with and be bound by State and Federal statutes and regulations applicable to construction, operation or maintenance of the pipeline system that are in force on the effective date of this Grant or that are thereafter promulgated during the term of this Grant.

A-16. COAST GUARD FACILITIES

GRANTEE shall take all practicable measures to reasonably mitigate the impacts of its activities on the personnel, operations and facilities of the United States Coast Guard at Ediz Hook, Clallam County, Washington. Mitigation measures shall be prescribed by the AUTHORIZED OFFICER after consultation with GRANTEE and the Coast Guard and shall be imposed as stipulations in NOTICES TO PROCEED or other authorizations applicable to Ediz Hook. Mitigation measures may include, but shall not be limited to: modification of existing facilities; relocation of existing facilities, or construction of new facilities; noise, light, and emission control measures; construction and maintenance of an adequate permanent access road along Ediz Hook from Port Angeles to the Coast Guard station; traffic controls; and port rules. Such mitigation measures shall be taken at the sole expense of GRANTEE.

A-17. PUGET SOUND REFINERIES

A. GRANTEE agrees to make its west-to-east pipeline physically available to the four Puget Sound refineries: Shell Oil Company, Texaco, ARCO and Mobil. Physical availability means construction of a connecting pipeline from the west-to-east pipeline to said refineries or to other pipelines that connect with said refineries. GRANTEE further agrees that the connecting pipeline shall be in place and fully capable of accepting tendered OIL for transportation to said refineries, on or before the time of commencement of PIPELINE operation, except where such capability is impossible for causes not within GRANTEE's control.

B. After receiving necessary authorizations from the State of Washington for GRANTEE's west-to-east pipeline facilities (currently being considered by the Energy Facility Site Evaluation Council, Application No. 76-2), GRANTEE shall apply for such permits, rights-of-way, licenses and other authorizations as may be necessary for construction of said connecting pipeline. GRANTEE may apply for such authorizations and construct said connecting pipeline by itself or jointly with other parties, or may arrange for the connecting pipeline to be constructed by a third party which will make transportation service available to said refineries.

A-18. DUNGENESS SPIT

GRANTEE shall assure, through appropriate technical documentation included in the final design, to be approved by the AUTHORIZED OFFICER, that the integrity of Dungeness Spit and the Dungeness Spit National Wildlife Refuge will be maintained.

B. ENVIRONMENTAL

B-1. POLLUTION CONTROL

A. GRANTEE shall construct, operate, maintain and terminate the PIPELINE in a manner that will avoid or minimize degradation of air, land, and water quality. GRANTEE shall comply with applicable air and water quality standards and statutes and regulations relating to pollution control or prevention.

B. GRANTEE shall comply with applicable water quality standards of the States of Washington, Idaho, Montana, North Dakota, and Minnesota as approved by the Environmental Protection Agency.

C. Watering and grading or other mitigating measures will be undertaken to control dust on access roads, as determined by the AUTHORIZED OFFICER.

B-2. PESTICIDES, HERBICIDES, AND OTHER CHEMICALS

Where possible, GRANTEE shall use nonpersistent and immobile types of pesticides, herbicides and other chemicals. Only those pesticides and herbicides currently registered by the Environmental Protection Agency pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.) shall be applied. Applications of pesticides and herbicides shall be in accordance with label directions approved by the Environmental Protection Agency. Each chemical to be used and its application constraint shall be approved in writing by the AUTHORIZED OFFICER prior to use.

B-3. SANITATION AND WASTE DISPOSAL

A. "Waste" means all discarded matter, including but not limited to human waste, trash, garbage, refuse, barrels and drums, petroleum products, ashes, and equipment.

B. All waste generated in construction, operation, maintenance, and termination of the PIPELINE shall be removed or otherwise disposed of in a manner acceptable to the AUTHORIZED OFFICER.

B-4. EROSION CONTROL AND RESTORATION

A. GRANTEE shall perform all PIPELINE construction, operation, maintenance and termination activities so as to minimize disturbance to vegetation.

B. GRANTEE's design of the PIPELINE shall provide for the construction of control facilities that will avoid or minimize erosion.

C. GRANTEE shall construct erosion control facilities to avoid or minimize induced and accelerated erosion and to lessen the possibility of forming new drainage channels resulting from

PIPELINE activities. Such control facilities, where required, may include but shall not be limited to berms, dikes, and stilling basins as may be appropriate and approved by the AUTHORIZED OFFICER.

D. GRANTEE shall restore all disturbed areas on FEDERAL LANDS to the satisfaction of the AUTHORIZED OFFICER. Restoration practices, as determined by the needs for specific sites, may include but shall not be limited to seeding, planting, mulching, and the placement of mat binders, soil binders, rock or gravel blankets, or structures.

E. In construction, operation and maintenance of the PIPELINE, GRANTEE shall:

(1) Leave all cut-and-fill slopes in a stable condition with sufficient and appropriate vegetation cover to minimize erosion.

(2) Dispose of all materials from access roads, haul ramps, berms, dikes, and other earthen structures as approved in writing by the AUTHORIZED OFFICER.

(3) Dispose of all vegetation, overburden, and other materials removed during clearing operations in a manner approved in writing by the AUTHORIZED OFFICER.

(4) Immediately remove all equipment and supplies from the site upon completion of restoration.

B-5. EXCAVATED MATERIAL

GRANTEE shall stockpile surface materials taken from disturbed areas and utilize them during restoration when required in writing by the AUTHORIZED OFFICER. GRANTEE shall dispose of excavated material in excess of that required to backfill around any structure, including the pipe, in a manner approved in writing by the AUTHORIZED OFFICER. Where appropriate, approval will be given in NOTICES TO PROCEED.

B-6. DISTURBANCE OR USE OF STREAMS AND WATER BODIES

A. All activities of GRANTEE in connection with the PIPELINE that may create new lakes, drain or fill existing lakes, significantly divert natural drainages and surface runoff, permanently alter stream or ground water hydrology, wetlands, or significant areas of streambeds, are prohibited except as provided in NOTICES TO PROCEED.

B. GRANTEE shall not develop wells or utilize surface water sources on FEDERAL LANDS for the construction, operation, maintenance, or termination of the PIPELINE without the prior written approval of the AUTHORIZED OFFICER.

C. GRANTEE shall reconstruct water diversion or containment levees and ditches disturbed by construction of the PIPELINE to the satisfaction of the AUTHORIZED OFFICER following construction and prior to operation.

B-7. IDENTIFICATION AND PROTECTION OF HISTORIC AND CULTURAL RESOURCES

A. GRANTEE shall implement a program for the identification, evaluation, and protection of historic and cultural properties on both FEDERAL LANDS and nonfederal lands that might be affected by the system (as that term is defined at 43 C.F.R. Sec. 2880.0-5(j)). This program shall be developed by GRANTEE in consultation with the AUTHORIZED OFFICER. The program shall be consistent, as applicable, with BLM Manual provisions and instruction memoranda; the "Proposed Guidelines for Recovery of Scientific, Prehistoric, Historic, and Archeological Data: Methods, Standards, and Reporting Requirements" (including appendices thereto), 42 Fed. Reg. 5374-5383, January 28, 1977; the "Guidelines for Level of Documentation to Accompany Requests for Determinations of Eligibility for Inclusion in the National Register," 42 Fed. Reg. 47666-47669, September 21, 1977, and the regulations of the Advisory Council on Historic Preservation (36 C.F.R. Part 800). The program shall include provisions for dealing with all properties in or eligible for inclusion in the National Register which might be affected by construction, operation, maintenance, and termination of the PIPELINE, and with previously unidentified historic and cultural properties discovered during construction, operation, maintenance, and termination of the PIPELINE consistent with Section B-8 below. The program shall be submitted to the AUTHORIZED OFFICER for approval and shall be used as the basis for compliance with Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. Sec. 470f. GRANTEE shall provide periodic reports on the status of implementation of the program at the AUTHORIZED OFFICER's request. If the AUTHORIZED OFFICER determines that actions taken by GRANTEE to implement the program are inconsistent with the program, he may require such actions to be stopped pending modification to make them consistent.

B. Any NOTICE TO PROCEED may contain such conditions as the AUTHORIZED OFFICER determines to be proper in order to avoid, mitigate, or minimize any adverse effects that the authorized activity might have on historic and cultural properties, consistent with provisions of Stipulation B-7, A.

C. GRANTEE shall advise the AUTHORIZED OFFICER of actions to be taken on nonfederal lands pursuant to the program developed under Stipulation B-7, A. If the AUTHORIZED OFFICER determines that such actions of GRANTEE are inconsistent with this program, he may require such actions to be stopped pending modification to make them consistent with the program.

D. GRANTEE shall not proceed with any ground-disturbing activities on nonfederal lands until the AUTHORIZED OFFICER has been notified and has had an opportunity to specify conditions under which such activities shall be conducted in order to avoid, mitigate, or minimize any adverse effects on historic and cultural properties, consistent with the provisions of Stipulation B-7, A.

B-8. PRESERVATION OF SCIENTIFIC, HISTORIC, OR ARCHEOLOGICAL RESOURCES ENCOUNTERED IN THE COURSE OF EXCAVATING, ETC.

A. GRANTEE shall employ one or more project archeologists, who shall be available either to inspect or consult with GRANTEE, at all times during ground-clearing, digging, grading, and excavating activities on both FEDERAL LANDS and nonfederal lands. The archeologist(s) shall be of professional level as defined in 42 Fed. Reg. 5382, Appendix C (January 28, 1977) and shall be approved by the AUTHORIZED OFFICER.

B. If GRANTEE encounters any resource that may be of prehistoric, historic, or cultural significance during the course of project construction activities that was not identified during work conducted under Stipulation B-7, GRANTEE shall stop such activity that might disturb the resource and contact a project archeologist.

C. When contacted concerning such a discovery, a project archeologist shall either inspect the resource or obtain from persons at the location a description of the resource, and shall either instruct the workers on measures to be taken in order to avoid, mitigate, or minimize adverse impacts or preserve data (including relics and specimens) or shall authorize resumption of work without instructions. Instructions shall be consistent with the program developed pursuant to Stipulation B-7, A. Work may resume in the immediate area of the discovery as soon as a project archeologist has been contacted and has had an opportunity to inspect or consult with the workers and to give instructions concerning ways to avoid, mitigate, or minimize impacts, or recovered data.

D. If the project archeologist believes that the discovery is highly significant, he shall, prior to giving any instructions or authorizing any resumption of work under the preceding paragraph, notify the AUTHORIZED OFFICER of the discovery and the instructions or authorizations he plans to give. Upon such notification, the AUTHORIZED OFFICER may, if he agrees that the discovery might be highly significant, require that work remain suspended until he can inspect the discovery. The AUTHORIZED OFFICER may keep work suspended for up to 48 hours after being contacted. If the AUTHORIZED OFFICER has not made an onsite inspection or given instructions for treatment of the resource by the end of this 48-hour period, the project archeologist may proceed with his planned instructions or authorizations.

E. GRANTEE's archeologist shall keep a written record of all contacts and actions taken according to paragraph B, C, and D, of this Stipulation.

F. GRANTEE hereby waives any right to compensation for damages resulting from delays in construction or other activities or temporary loss of the use of private or other nonfederal lands under section 4(d) of the Archeological and Historic Preservation Act of 1974, 88 Stat. 175, 16 U.S.C. Sec. 469a-2(d).

B-9. ENDANGERED AND THREATENED SPECIES

A. This Grant is conditioned on compliance with Section 7 of the Endangered Species Act of 1973, as amended, 16 U.S.C. Sec. 1536, on both FEDERAL LANDS and nonfederal lands.

B. NOTICE TO PROCEED shall not be issued for FEDERAL LANDS until the AUTHORIZED OFFICER has determined that such authorization will not violate said provision of law. Any NOTICE TO PROCEED may contain such conditions as the AUTHORIZED OFFICER determines to be necessary to avoid the likelihood of jeopardy to the continued existence of any threatened or endangered species or any species proposed to be so listed, or to avoid the likelihood of destruction or adverse modification of habitat of any such species which are designated or proposed to be designated as critical.

C. With regard to nonfederal lands, in areas specified pursuant to the provisions of the next paragraph, GRANTEE shall not engage in any activity which could be reasonably foreseen to have the potential for affecting any endangered or threatened species or their habitat, until GRANTEE has obtained written notification from the AUTHORIZED OFFICER that such activity is not likely to jeopardize the continued existence of any such species and is not likely to result in the destruction or adverse modification of critical habitat of any such species. Such notification may specify such conditions as the AUTHORIZED OFFICER determines necessary to avoid the likelihood of jeopardy to the continued existence of such species or the likelihood of destruction or adverse modification of critical habitat.

D. The AUTHORIZED OFFICER shall specify for GRANTEE the geographic areas where it is thought such species or critical habitat might be encountered, and where written clearance is therefore required under the preceding paragraph, and shall explain why the area is sensitive. These specified areas and explanations may be revised whenever the AUTHORIZED OFFICER determines it to be necessary.

B-10. FISH AND WILDLIFE PROTECTION

A. GRANTEE shall design, construct, operate, maintain, and terminate the PIPELINE so as to assure free passage and movement of fish. The AUTHORIZED OFFICER may, after review of proposed designs and construction plans, approve temporary blockages because of instream construction activities.

B. GRANTEE shall screen pump intakes where water is withdrawn on FEDERAL LANDS so as to minimize entrapment of fish. Removal of water, timing, screen size and water withdrawal sites shall be subject to approval by the AUTHORIZED OFFICER.

C. GRANTEE shall design and construct the PIPELINE so as to assure free passage and movement of big game animals. The AUTHORIZED OFFICER may require skip-trenching in sensitive migration routes or areas determined by him to be critical for timely big game movement.

D. GRANTEE's activities in connection with the PIPELINE in key fish and wildlife areas may be restricted by the AUTHORIZED OFFICER during periods of fish and wildlife breeding, nesting, spawning, lambing, or calving activity, and during major migration of fish and wildlife. The AUTHORIZED OFFICER shall advise GRANTEE of the restrictive action in advance of a NOTICE TO PROCEED.

B-11. CLEARING

GRANTEE shall identify approved clearing boundaries on the ground for each construction segment on FEDERAL LANDS prior to beginning clearing operations. All vegetative material outside clearing boundaries are reserved from cutting and removal except as designated by the AUTHORIZED OFFICER.

B-12. OFF RIGHT-OF-WAY TRAFFIC

GRANTEE shall not operate mobile ground equipment on FEDERAL LANDS off the RIGHT-OF-WAY, access roads, State highways, or authorized areas, unless approved in writing by the AUTHORIZED OFFICER or when necessary in emergencies to prevent harm to any person or property.

B-13. AESTHETICS

A. GRANTEE shall consider aesthetic values in planning, construction, and operation of the PIPELINE. The AUTHORIZED OFFICER may impose reasonable requirements as he deems necessary to protect aesthetic values.

B. In order to minimize visual impacts, GRANTEE shall submit a landscaping plan, including a color scheme for exposed portions of the PIPELINE, to the AUTHORIZED OFFICER for approval.

B-14. USE OF EXPLOSIVES

GRANTEE shall submit a plan for overall use and storage of explosives, including but not limited to blasting techniques, to the AUTHORIZED OFFICER for approval.

B-15. REPORTING OF OIL AND HAZARDOUS MATERIALS DISCHARGES

A. In accordance with applicable law, GRANTEE shall give notice of any spill, leakage, or discharge of OIL or other hazardous substances in connection with the construction, operation, maintenance or termination of the PIPELINE to: (1) the AUTHORIZED OFFICER and (2) such other Federal and State officials as are required by law to be given such notice. Any oral notice to the AUTHORIZED OFFICER shall be confirmed in writing as soon as possible. Reports to the AUTHORIZED OFFICER shall be made as follows:

(1) Spillage of any amount of oil, pesticides or other hazardous materials into waters or wetlands shall be reported to the AUTHORIZED OFFICER immediately.

(2) Spillage of less than ten (10) barrels during one incident, not involving waters or wetlands, shall be cumulatively reported every thirty (30) days.

(3) Spillage of ten (10) barrels to one hundred (100) barrels during one incident, not involving waters or wetlands, shall be reported within twenty-four (24) hours.

(4) Spillage of over one hundred (100) barrels during one incident, not involving waters or wetlands, shall be reported immediately. (Immediately shall be interpreted to mean within four (4) hours of discovery by GRANTEE.)

B. GRANTEE shall install and employ a commercially proven "state of the art" leak detection system for the detection of OIL leaks along the PIPELINE. A plan for such system shall be submitted to the AUTHORIZED OFFICER for his approval at least one hundred and eighty (180) days prior to filling the PIPELINE with OIL.

B-16. CONTINGENCY PLANS

A. GRANTEE shall submit a PIPELINE contingency plan to the AUTHORIZED OFFICER. The plan shall conform to the requirements of 49 C.F.R., Part 195, and shall outline the steps to be taken in the event of a failure, leak or explosion in the PIPELINE. The plan shall be approved in writing by the AUTHORIZED OFFICER and GRANTEE shall demonstrate its capability and readiness to execute the plan prior to filling the PIPELINE with OIL.

B. GRANTEE shall, as appropriate, update the plan and methods of implementation thereof, which shall be submitted to the AUTHORIZED OFFICER for his written approval.

C. TECHNICAL

C-1. PIPELINE STANDARDS

GRANTEE shall comply with Department of Transportation Regulations, 49 C.F.R., Part 195, "Transportation of Liquids by Pipeline".

C-2. SPECIAL STANDARDS

A. GRANTEE agrees that the design of the PIPELINE shall provide for remotely controlled main line block valves at each pump station. Block and check valves, in addition to those required in 49 C.F.R., Section 195.260, may be required at stream crossings determined by the AUTHORIZED OFFICER to be sensitive with respect to anadromous fish habitats or potable water supplies.

B. GRANTEE shall inspect the PIPELINE girth welds in accordance with 49 C.F.R., Part 195, using radiographic or other nondestructive inspection techniques to assure compliance with defect acceptability standards.

C. GRANTEE shall provide for inspection of PIPELINE construction in accordance with 49 C.F.R., Part 195, Subpart D.

D. GRANTEE shall test the PIPELINE hydrostatically in accordance with 49 C.F.R., Part 195, Subpart E, and shall make available to the AUTHORIZED OFFICER a copy of the hydrostatic test plan at least thirty (30) days prior to conducting such tests.

E. GRANTEE shall provide detailed plans for corrosion control that meet the requirements of 49 C.F.R., Part 195, and shall implement them in accordance with that Part.

C-3. STANDARDS FOR ACCESS ROADS

A. GRANTEE shall submit a horizontal alignment plan and profile of each proposed permanent access road and a horizontal alignment plan for each temporary access road for approval by the AUTHORIZED OFFICER. The permanent plan shall also include road widths, curve data, drainage facilities, and design.

B. Permanent access roads on FEDERAL LANDS shall conform to the standards of BLM Manual 9113, latest edition, or FSM 7700, whichever is appropriate.

C. GRANTEE shall utilize existing roads in all areas on FEDERAL LANDS unless otherwise approved by the AUTHORIZED OFFICER. GRANTEE shall maintain such roads totally or on a prorata basis as determined by the AUTHORIZED OFFICER.

C-4. FAULT DISPLACEMENT

A. GRANTEE's route design and construction plan on FEDERAL LANDS shall specify that the line of pipe will cross active seismic faults at angles that are between seventy (70) degrees and ninety (90) degrees, when and where possible, subject to the approval of the AUTHORIZED OFFICER.

B. GRANTEE shall design the PIPELINE to withstand, without rupture, the maximum probable expected earthquake that may occur during the lifetime of the project, based upon consideration of regional tectonics within the existing geological framework.

C-5. SLOPE STABILITY

Where practicable in locating the PIPELINE, GRANTEE shall avoid areas subject to mudflows, landslides, mudslides, avalanches, rock falls, and other types of mass movements. Where such avoidance is not practicable, the PIPELINE design shall provide measures to prevent the occurrence of, or protect the PIPELINE against the effects of, mass movements.

C-6. STREAM AND FLOODPLAIN CROSSINGS AND EROSION

A. For each region through which the PIPELINE passes, the PIPELINE shall be designed to withstand or accommodate the effects (including runoff, stream and floodplain erosion, meander cutoffs, and lateral migration) of those meteorologic, hydrologic (including surface and subsurface), and hydraulic conditions considered reasonably possible for the region. The following standards shall apply to such PIPELINE design. For stream crossings and portions of the PIPELINE within the floodplain:

(1) The depth of channel scour shall be established by appropriate field investigations and theoretical calculations using those combinations of water velocity and depth during a 100-year flood occurrence. The cover over the pipe will be equal to the computed scour, based on a 100-year flood occurrence, plus four (4) feet unless solid rock is encountered in the streambed, in which case the cover may be reduced to eighteen (18) inches.

(2) For overhead crossings, comparable analysis shall be made to ensure that support structures are adequately protected from the effects of scour, channel migration, and undercutting.

(3) In wetlands and floodplains, appropriate construction procedures shall be used wherever there is potential channelization along the pipe.

(4) The pipe trench excavation shall stop an adequate distance from the water crossing to leave a protective plug (unexcavated material) at each bank. These plugs shall be left in place until the streambed excavation is complete and the pipe laying operation is begun. The plugs shall be backfilled with stable material as soon as the pipe is laid.

B. GRANTEE shall make temporary access to the RIGHT-OF-WAY over stream banks by cutting the banks rather than by using fill ramps, unless otherwise approved in writing by the AUTHORIZED OFFICER. Where ramps are approved, GRANTEE shall remove them upon termination of seasonal or final use. Ramp materials shall be disposed of in a manner approved in writing by the AUTHORIZED OFFICER.

C-7. CULVERTS AND BRIDGES

Culverts and bridges necessary for maintenance of the PIPELINE shall be designed to accommodate a 50-year flood in accordance with criteria established by the American Association of State Highway Officials and the Federal Highway Administration.

C-8. CONSTRUCTION AND OPERATION

A. GRANTEE shall confine bedrock excavation and excavated material within the RIGHT-OF-WAY or authorized areas.

B. GRANTEE shall dispose of rocks displaced during excavation in a manner acceptable to the AUTHORIZED OFFICER.

C. Unless otherwise authorized, GRANTEE shall keep all construction activity within RIGHT-OF-WAY limits except for movement of equipment into and out of areas along authorized roadways.

D. GRANTEE shall remove and dispose of, at sites approved by the AUTHORIZED OFFICER, all construction remnants including but not limited to wood, metal scraps, containers, concrete cleanouts, gravel and sand piles, pieces of equipment, spilled OIL and other pollutants.

E. GRANTEE shall blade only those portions of the RIGHT-OF-WAY or other authorized areas required for project construction.

F. GRANTEE shall spread any visible spoil to contour after the PIPELINE is covered, in order to reduce visual impact and to allow for natural revegetation, and shall do so to the satisfaction of the AUTHORIZED OFFICER.

G. Unless otherwise specified by the AUTHORIZED OFFICER, the top 4 to 6 inches of soil from all areas which will be excavated for the PIPELINE shall be windrowed or GRANTEE may use excavation methods for the PIPELINE which will enable such topsoil material to be placed in a separate stockpile. This topsoil will be redistributed evenly over the disturbed area after backfilling is complete.

H. During construction operations, GRANTEE shall provide adequate warning devices (such as signs, flares, warning lights, or flagmen) at frequently used road intersections or crossings to warn the public and construction workers of potential traffic hazards. The AUTHORIZED OFFICER shall determine the adequacy of such warning devices. Skiptrenching may be required by the AUTHORIZED OFFICER at designated sites to allow passage by vehicles and/or livestock and wildlife.

I. Fences or access roads crossed by the PIPELINE shall have gates or cattle guards meeting BLM standards where required by the AUTHORIZED OFFICER.

EXHIBIT B
NORTHERN TIER PIPELINE

THE RIGHT-OF-WAY IS DEPICTED ON THE FOLLOWING MAPS:

MAP NUMBER	
(WA-31-1A-D)	Coast Guard
(WA-31-5C-D)	Naval Reservation
(WA-31-6C-D)	Naval Reservation
(WA-31-7C-D)	Naval Reservation
(WA-31-8C-D)	Naval Reservation
(WA-31-39-D)	Snoqualmie NF
(WA-31-40-D)	Snoqualmie NF
(WA-31-41-D)	Wenatchee NF
(WA-31-42-D)	Wenatchee NF
(WA-31-43-D)	Wenatchee NF
(WA-31-44-D)	Wenatchee NF
(WA-31-45-D)	Wenatchee NF
(WA-31-46-D)	Wenatchee NF
(WA-31-47-D)	Wenatchee NF
(WA-31-57-D)	Bureau of Reclamation
(WA-31-60-D)	Bureau of Reclamation
(WA-31-61-D)	Bureau of Reclamation
(WA-31-62-D)	Bureau of Reclamation
(WA-31-63-D)	Bureau of Reclamation
(ID-31-6-D)	BLM, Coeur D'Alene NF
(ID-31-7-D)	Corridor only
(ID-31-8-D)	Corridor only
(ID-31-10-D)	Coeur D'Alene NF
(ID-31-11-D)	Coeur D'Alene NF
(ID-31-12-D)	Coeur D'Alene NF
(ID-31-13-D)	Corridor only
(ID-31-14-D and MT-31-1-D)	Coeur D'Alene and Lolo NF
(MT-31-2-D)	Lolo NF
(MT-31-3-D)	Lolo NF
(MT-31-4-D)	Lolo NF
(MT-31-6-D)	Lolo NF
(MT-31-7-D)	Corridor only
(MT-31-8-D)	Corridor only
(MT-31-9-D)	Corridor only
(MT-31-10-D)	Lolo NF
(MT-31-11-D)	Lolo NF
(MT-31-12-D)	Lolo NF
(MT-31-13-D)	Lolo NF
(MT-31-14-D)	Lolo NF
(MT-31-15-D)	Lolo NF
(MT-31-16-D)	Lolo NF
(MT-31-17-D)	Lolo NF
(MT-31-19-D)	Lolo NF
(MT-31-24-D)	Lolo NF

NUMBER	
(MT-31-27W-D)	BLM
(MT-31-28W-D)	BLM
(MT-31-29W-D)	BLM
(MT-31-30W-D)	BLM
(MT-31-36-D)	Corridor only
(MT-31-39-D)	Corridor only
(MT-31-40-D)	Helena NF
(MT-31-41-D)	Helena NF
(MT-31-42-D)	Helena NF
(MT-31-49-D)	BLM
(MT-31-50-D)	BLM
(MT-31-53-D)	BLM
(MT-31-54-D)	Helena NF
(MT-31-55-D)	Helena NF
(MT-31-56-D)	Corridor only
(MT-31-58-D)	Corridor only
(MT-31-59-D)	Corridor only
(MT-31-61-D)	Corridor only
(MT-31-73-D)	Corridor only
(MT-31-74-D)	Corridor only
(MT-31-76-D)	Corridor only
(MT-31-79-D)	BLM
(MT-31-80-D)	Corridor only
(MT-31-81-D)	BLM
(MT-31-82-D)	BLM
(MT-31-83-D)	BLM
(MT-31-86-D)	BLM
(MT-31-87-D)	Corridor only
(MT-31-88-D)	Corridor only
(MT-31-89-D)	BLM
(MT-31-90-D)	BLM
(MT-31-91-D)	BLM
(MT-31-92-D)	BLM
(MT-31-93-D)	BLM
(MT-31-94-D)	BLM
(MT-31-95-D)	BLM
(MT-31-96-D)	BLM
(MT-31-97-D)	BLM
(MT-31-98-D)	BLM
(MT-31-99-D)	BLM
(MT-31-100-D)	BLM
(MT-31-105-D)	Corridor only
(MT-31-110-D)	Corridor only
(MT-31-113-D)	Corridor only
(ND-31-29-D)	F & WS Refuge
(ND-31-55N-D)	F & WS Refuge

NORTHERN TIER PIPELINE

AND

MONTANA PSC RESPONSIBILITY

David B. Adkisson

December 17, 1980

Montanans now find themselves struggling with the problems that come from energy development. The people of Montana seem willing to assume their fair share in the United States' effort to become energy independent, however, they do not want the state to become a "national sacrifice area" for unnecessary projects. For example, government studies on the proposed Northern Tier Pipeline, which would run through Montana, have not found a clear and basic need for the project. Yet, despite such findings both by state and federal agencies, Northern Tier received backing by the President.

Given this symbolic federal approval of Northern Tier, frustrated landowners, whom the siting of the pipeline would affect, have turned to state government for help to protect their interests. However, they have found little security here, either. Normally, a project the size of Northern Tier would go through state review under the Montana Major Facilities Siting Act. This law looks at public need, environmental problems and siting: under it a board of appointed citizens makes a decision either against or for the project (with stipulations). They do this after detailed environmental, social and economic analysis and public hearings. However, the legislature, in making this law, exempted pipelines from the requirements of the act.

This problem compounds another problem. Northern Tier Pipeline Company was legally granted the state's power of condemnation of private property, eminent domain. This happened because a little-known law exists which gives, without discretion, eminent domain status to any common carrier. A company must simply write the Public Service Commission (PSC) to inform it of the company's intention to serve as a common carrier - this automatically gives the company eminent domain. These two situations seemingly give Northern Tier a free rein in Montana.

Although, the Northern Tier project escapes review by state agencies, a citizen's group in Western Montana, the Northern Tier Information Committee feels a lack of strong state involvement will abuse other laws. Their logic runs like this. The Montana Constitution guarantees citizens the right to a clean and healthful environment. Another law, the Montana Environmental Policy Act (MEPA) fulfills, in part, the Constitution's mandate to protect the "environmental life support system", MEPA requires the state to do this by assessing the environmental consequences of anything the state does that may have a potential major effect on the environment. MEPA links the actions of state agencies to the Constitution. Furthermore, the Committee feels the granting of eminent domain status to a private corporation to construct and operate a pipeline the size of Northern Tier amounts to a major state action. Therefore, they say the granting of eminent domain itself should be the subject of environmental review. Logically, the failure of the PSC to require an environmental review, upon granting eminent domain, violates MEPA and the rights of the citizens of Montana.

Although state law describing the PSC's role in regulating pipelines does not explicitly call for environmental review, I feel other parts of the law allows the PSC to do so. In Chapter 13, it says, "The commission shall have the power...to prescribe and enforce rules for the government and control of such common carriers in respect to their pipelines and facilities. It shall be its duty to exercise such power upon petition by any person showing a substantial interest in the subject." Later, it states, "...all orders of the commission as to any matter within its jurisdiction shall be accepted as prima facie evidence of their validity." Furthermore, "The recital herein of particular powers on the part of said commissioners shall not be construed to limit the general

powers conferred by this chapter."[1] I say this infers that the PSC has broad powers designed to respond to the legitimate concerns of the citizens of Montana. For example, if state help in selecting a centerline siting would better protect a landowner, then the PSC could require this.

Public Service Commissions in a number of other states must address such questions as need and environmental compatibility before giving permission or granting eminent domain status to private corporations: for PSC's to do this is not unusual. I want to discuss some of the things these PSC's look at, but first I feel a short history of the Northern Tier Proposal will show why such reviews should take place.

The Trans-Alaska Pipeline was built to the port of Valdez, Alaska rather than overland to tie into the crude oil distribution systems in Alberta, Canada. A surplus of Alaskan North Slope oil was expected to occur on the west coast of the United States because, in the mid-70's west coast refineries could only process so much of the less desirable "sour" Alaskan crude. This coupled with the announcement by Canada of its plans to slowly curtail oil exports to the United States led to proposals by four companies to construct some type of west to east crude transport system - Northern Tier was one of these. It intends to deliver at full through-put 933,000 barrels of oil per day from Port Angeles, Washington to Clearbrook, Minnesota.

Much controversy arose over the amount of surplus the Alaskan field would produce, as well as the amount of short-fall that would result in the northern tier of states because of Canadian shut-off of exports. This conflict lay not only between both private and federal agencies but between different parts of the federal government itself. However, the Department of Interior, in making its

report to President Carter, said that the supply of crude oil coming out of the North Slope would fall off sharply after 1985. They also said that the short-fall in the northern tier states would amount to about 140,000 barrels a day by 2000. Of this amount, Minnesota would need 100,000 barrels and Montana 40,000. They foresaw no short-falls in Washington, Idaho, or North Dakota.[2] Therefore, the projected deficit falls many times short of the amount Northern Tier expects to deliver.

These findings point to one thing: the need for a west to east pipeline does not exist. Other facts support this conclusion. A report issued by Senator Henry Jackson in October 1979 found that West Coast refineries had changed to use more Alaskan oil. In fact, they could not obtain all they wanted.[3] Furthermore, the current construction of a pipeline from near St. Louis through Iowa to Minnesota will meet the crude deficit expected in that state.[4] Lastly, the deficit expected in Montana can easily be met by continuing an exchange program now in effect with Canada. (The Hydrocarbon Transit Treaty allows Canada to obtain oil for its eastern provinces via the United States while the western United States benefit from Alberta oil.)[5] Also, simply reallocating some Montana crude to remain in the state would make up part of the short-fall. (Doing this would not affect states that now receive this crude as they have other sources.)[6]

When people look at Northern Tier in this light, they soon wonder why they should have to put up with the inconvenience and possible bad effects of such a project. People will sacrifice some freedom to help the country in its energy problems for a proven need - doing so for unneeded projects remains another question. To insure the best interests of Montanans, the Northern Tier

Information Committee has encouraged the state's Department of Natural Resources and Conservation (DNRC) to sign a contract with the pipeline company which would create an office designed to act as a liason between all parties - the state, the federal government, the pipeline company and citizens. Such an office would provide advice to anyone wanting to find out about pipeline construction and use, and the likely problems. Moreover, the office would contact each landowner affected by the project to fully explain the construction of a large sized crude oil pipeline. The agency would also explain to landowners the way eminent domain proceedings occur and what could legally happen. Then, if a landowner should want any help, the state would help settle his problems. This office would also make sure the pipeline got built right. Qualified inspectors hired by the office would have stop work power to make sure contractors did their job well. For example, if during construction the contractor ignores a landowner's concerns, the state inspector could see the job was done right. Given the way the Trans-Alaskan Pipeline was built, these safeguards must become requirements.

Although, the state and Northern Tier Company signed an agreement in July 1979 setting up an Interagency Pipeline Task Force, it falls short of these basic requirements. Northern Tier does not want a well-informed number of landowners in their path. This means money, but it also means quality control and protecting the rights of Montana citizens due to the building of an unneeded project. The DNRC suggested many methods to protect landowners rights and the environment in their Draft Environmental Impact Statement on Northern Tier. But because the pipeline was exempted from the Major Facilities Siting Act, these safeguards will remain only suggestions. Since, DNRC feels it has no legal right to require quality control promises from Northern Tier, each landowner

must draw up a just and protective easement agreement with the pipeline company on his own - this he does under the threat of eminent domain. This seems a bit like holding out a small piece of meat to a hungry lion in hopes that he won't eat you and not knowing if your hand might go along with the meat.

Now more than ever, the citizens of Montana need the Public Service Commission's help in protecting their property rights. Indeed, PSC's in other states play such a role - and much earlier in the planning process. Public Service Commissions often grant eminent domain status, but after reviews of the proposed project.

For example, in Iowa, the State Commerce Commission grants eminent domain status to common carrier pipelines, but first it holds a set of hearings to decide whether a permit for the project is justified. Their commission can regulate all pipeline construction, operation and maintenance. This includes inspection during all phases. Thirty days before filing a petition for the project with the Commission, the pipeline company must hold meetings in each county where property or rights will be affected. Also, the company must send each affected landowner a notice of the meeting by certified mail. (Such a method could serve to let people in Montana know how they will be affected.) Furthermore, the company cannot purchase any easements prior to these meetings. After these meetings the company asks the Commission for a project permit. In granting the permit, the Commission first looks at the same questions covered in the Montana Major Facilities Siting Act - this also includes a report of the inconveniences and undue injury which will likely result to property owners.

Later the Iowa commission holds a hearing about the petition to decide whether the proposed services will promote public convenience and necessity. Landowners

can object at this time, the Commission must consider these objections in making a decision. Then, if the project receives a construction permit each county board of supervisors may, by a majority vote, request for a qualified person to inspect construction within that county. His pay comes from an inspection fee of 50 cents per mile within the state for each inch in diameter of the pipe. The company must pay a similar fee to cover inspection throughout the lifetime of the pipe. An inspector can require any faults repaired immediately by the contractor at his expense. The Iowa commission also oversees river and stream crossings. (In Montana local Soil Conservation District boards manage permits for stream crossings. A defacto pipeline route has resulted simply by filling in the dots on a map which represent the crossings that Northern Tier has received permits for. Carefully planned projects that address critical problems do not occur like this. Furthermore, the soil district boards, by-and-large, did not press Northern Tier for careful quality control in issuing permits.) These type of problems could hopefully be avoided under methods similar to Iowa's. Iowa's rules do not hamper energy projects - the earlier mentioned pipeline from Illinois to Minnesota attests to this. These rules do help to make sure such projects are built well.[7]

The North Dakota Public Service Commission also grants eminent domain to private companies - if they give a "certificate of site compatibility" and a route permit first. The state makes it a policy to route any transmission facility in a way that preserves the environment and uses resources well. They ask any applicant to submit a ten year plan that discusses the company's efforts to protect the environment, its work with land use planning agencies, and the projected demand. (These guidelines resemble the Montana Major Facilities Siting Act.) Applicants for a certificate of compatibility must show a need for their

project. The Commission can either refuse or grant it - with terms, conditions, or modifications.

As in Iowa, a hearing must be held in every county crossed by any part of the pipeline. The company must notify landowners of the hearing 20 days in advance. Furthermore, the Commission while deciding on the certificate of compatibility must consider other routes proposed during the hearings. It must weigh, among other things, the proposed handling of adverse impacts, the orderly siting of the pipeline, its reliability and the wise use of resources. Economic reasons alone do not justify approval of siting in areas that deserve avoidance because of a fragile environment.

After it issues a permit any displeased party can request a hearing with the Commission. Also, if a court determines that a company misrepresented facts to obtain easements with five or more landowners, the Commission can declare the easements void and revoke the permit for that section of the route. It can also revoke permits for failure to comply with permit conditions.[8] These methods help to insure that affected property owners get treated fairly and that the pipeline gets built well - the type of measures the Northern Tier Information Committee has called for.

The list goes on - Maryland, Wyoming, Kansas, Wisconsin, Colorado, and South Dakota public service commissions all decide on projects after looking at the need of the project and public interest. In Maryland, once again, affected landowners must be notified of the public hearing by certified mail 30 days prior to the hearing.[9] They also have a ruling that any disturbed property must be restored within seven days (30 days in bad weather) - an example of the kind of guarantee someone must try to get on their own in drawing up an easement

agreement with Northern Tier. Wisconsin and Maryland both grant eminent domain to common carrier pipelines - after considering alternatives to the project and deciding the project lies in the public interest.[10] The Wyoming PSC and the Colorado Public Utilities Commission both have jurisdiction over pipeline construction, operation, maintenance, and termination.[11] Colorado emphasizes their broad governing powers which include both deciding on location or removal, if need be. The Kansas PSC acts this way also - with no specific written rules, but broad regulatory responsibilities.[12] In South Dakota the company must show a demand for the project and receive a permit from the PUC before beginning any construction. The burden of proof lies on the company to prove their project will not pose a threat to the environment or hamper the orderly development of the region. Also, local review committees assess the demands on housing, manpower, education and other social problems the project could cause. The Commission then makes a decision on granting or denying the permit.[13] These notions are no less important in Montana than South Dakota or any other state.

Thus, because public service commissions are responsible for protecting the rights of citizens (in ways more than just regulating prices) and because they do so in many other states; I call for the Montana Public Service Commission to play an active role in saying where and how the Northern Tier Pipeline is to be built.

SENATE BILL 269

TESTIMONY OF GEORGE T. BENNETT IN OPPOSITION

* * * * *

The following are the notes of George T. Bennett in opposition to Section 3 of Senate Bill 269 which adds to Section 70-30-308 by Subsection "(c)", the requirement that rentals be paid for easements and right-of-way acquired by eminent domain.

1. Easements and right-of-way acquired by eminent domain have always been acquired on the basis of paying "just compensation" which means the fair market value of the interest in the property taken at the time. It is immaterial whether the fair market value is determined at the time of taking or at the time of the filing of the summons or otherwise as along as the easement is paid for and the acquiring entity owns that easement. This has been the procedure under eminent domain statutes from the very beginning and these statutes have been worked out so as to be fair to the land owner and to the condemning party. This bill would reverse that balancing of fairness and put the land owner in a position of requiring an annual rental and a long term lease for an easement or right-of-way.

2. Annual rentals make it very difficult for the acquiring property to qualify for bonding and would otherwise impair the financeability of a system since the cost would be uncertain.

3. If easements are to be subject to a long term lease then what are the terms and does the court in the condemnation proceeding determine the terms or the commissioners or a jury? What about

determining useful life of the facility, future value and future use? All of these issues are left up in the air by the bill. If it is the intent of the bill that the condemnation award be paid in installments, even with interest, then there appears to be no problem. However, if the bill contemplates a land rental over a long period of time then it is objectionable.

4. Are there to be periodic renegotiations of payments for right-of-way so that the terms of the lease and the value of the easement are put in question periodically?

5. The feasibility of any project for putting into place "system" properties such as pipe lines, communication lines, transmission lines, etc. depends on the anticipated initial as well as future costs and if there is uncertainty not only as to the feasibility from an economic point of view then costs necessarily will escalate causing an increase in cost to the end use consumers.

6. The type of system properties vary so that different considerations will apply. For example, communication and pipe lines are generally buried underground and after installed do not affect the surface use of the land. This bill seems to be aimed primarily at high voltage power transmission lines which are above ground and do offer more of an interference with the surface owners' use of the land, yet the bill makes no distinction between the type of use to which the easement will be put.

7. Administrative costs and problems to the condemning party will be increased. The right-of-way departments of these various

entities will have to keep track of changes of ownership for all such easements and, as a practical matter, will have to make periodic title searches. In the case of the death of the owner or the joint or co-owner the condemning party will have to keep track of heirs, probate proceedings, divorce proceedings and other matters which would affect title. The making of periodic payments to uncertain persons will further increase the costs and administrative problems involved.

8. There is also a possibility that the condemning parties, rather than seeking a simple easement will, if this bill passes, condemn a utility corridor in fee simple and the land owner will then be given only an easement on the surface of the land which then belongs to the utility or utilities.

We have no problem in paying condemnation awards in installments even with interest if this is what is contemplated. However, for the reasons above stated it is much easier for the Commissioners, Court or jury in a condemnation proceeding to determine the fair market value and then arrange for payments than it would be for such a body to attempt to work out a long term lease with rental payments between the parties.

GTB/clk/F1

Attachment 1

BEFORE THE TAXATION COMMITTEE
MONTANA SENATE
February 9, 1981

Senate Bill 279) TESTIMONY OF MONTANA
) BEER & WINE WHOLESALERS
) ASSOCIATION IN SUPPORT

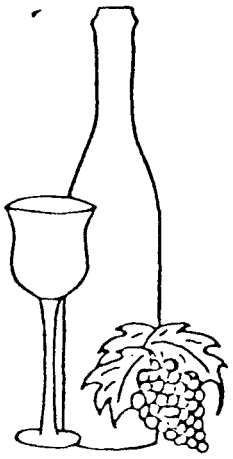
Mr. Chairman and committee members, I am Roger Tippy of Helena, representing the beer and wine wholesalers' association in support of SB 279. Our members include 33 of the 35 licensed wine distributors in Montana, and they urge your favorable consideration of this bill on the grounds of fairness and consistency.

1. Equal treatment with Department of Revenue:
Montana is one of two states where the private sector and the state liquor control agency compete with each other in the wine business. As subsection (3) of MCA section 16-1-411 indicates (p. 2, line 10), the state liquor division does not have to pay the tax on the wine it brings into the state until it sells that wine. Licensed wholesalers would ask to be treated the same as the liquor division in this regard, and the bill would do that by changing the word "receipt" to "sale" on page 1, line 19.

2. Consistent treatment with beer taxation:
Most of the wine distributors -- 30 out of the 35 -- are also in the wholesale beer business. Under MCA section 16-1-406, they pay the state tax on beer as they sell the beer out of their warehouses to the licensed tavern, grocery, and other retailers. The compliance record on payment of this beer tax is very good, and records are kept such that the department has adequate auditing opportunity. This proven record in the beer business demonstrates that a tax on wholesaler's withdrawals (sales) is quite collectible and reliable for the wine business as well.

3. Encourage importation of different wines.
Many of the best-selling, high-volume wines sit on the wholesaler's warehouse floor for only a few weeks. In such cases, the tax will come into the state coffers about as quickly whether it is imposed on wholesaler's receipt or wholesaler's sale of the product. The wine which is apt to sit on the floor for a longer period is the new or different wine, or a product which appeals to a smaller segment of the market. The present tax is a disincentive to distributors' willingness to experiment with new and different wines.

4. Economic fairness in times of high interest rates. As the fiscal note indicates, the state will receive essentially the same amount of tax in the long run, except for taxes which would not be paid on breakage, spoilage, or otherwise unsalable wine. A mid-sized wine wholesaler has estimated that the time value of money it would save each year if the bill is enacted would be approximately $2,700.00 with short-term financing running at 18% interest.



House of Fine Wines

PENNINGTON'S

406 453-7628 P.O. Box 2546 Great Falls, Montana 59403

January 21, 1981

Mr. Roger Tippy
Executive Secretary
Montana Beer & Wine Wholesalers Ass'n
P. O. Box 124
Helena MT 59601

Dear Roger:

As you requested, I am writing to provide you with information relating to the proposed wine tax legislation.

As of the year ended December 31, 1981, our inventories consisted of over 7,600 cs. of tax paid wine. Our investment in state wine taxes relative to that inventory was approximately $15,000. If one assumes that our December 31st stock level is reasonable and a fair approximation of our average stock level and if one assumes an 18% cost of financing one will find that there is a cost of $2736.00 per year in perpetuity relative to financing only our tax in inventory.

A change in the law from paying wine tax on purchases to paying the tax on depletions, (as is the case with beer taxes) would both, free $15,000.00 for investment in our business and relieve us of the burden of $2700.00 per year to finance the states revenue collection effort. A secondary benefit, which we enjoy from paying beer taxes based on depletions, is that we are able to calculate relative market shares of distributors in our trade area. The information so derived is an invaluable sales and planning tool. The burden of compliance is lightened considerably when it provides us with useful information. Compliance becomes a productive effort as opposed to simply filling out another government form.

We at Pennington's whole heartedly support the proposed legislation. Please do not hesitate to contact me if I may be of further assistance. I am willing, if you wish, to provide testimony before the House and Senate committees in this regard.

Thank you for your efforts.

Sincerely,

PENNINGTON'S, INC.

s/ Mike Parker
Secretary/Treasurer

MP/lg

c.c. Jay Fabrega, House of Representatives
Pat Goodover, Senate

Maurice P. Clark Jr.
Certified Public Accountant

536 Northwestern Bank Building
Great Falls, Montana 59401
(406) 761-4555

Practice Limited to Real Estate Consulting

February 5, 1981

Senator Roger Elliott
c/o Montana State Senate
Capitol Station
Helena, Montana 59620

Dear Roger:

Thank you for introducing Senate Bill Number 248. As you are well aware, the fact that Montana does not provide for filing a joint return creates many problems for the taxpayers. While not having a joint return rate, it makes a game out of filing the separate returns for husband and wife. By this I mean it is impossible to determine who should get a deduction for items which are paid out of the joint income of the husband and wife. Therefore, the accountant is saddled with the responsibility of taking the deduction where it will do the most good. It is not only the responsibility but a time-consuming project for the accountant to determine where the deduction will do the most good. In effect, this additional time spent by the accountant is a hidden tax burden on the taxpayer because what we sell is our time.

The provisions provided by your Bill Number 248 are long overdue. You are hereby authorized to make copies of my letter and distribute to the representatives and senators from Cascade County which would be influenced by my remarks.

Best of luck in getting this bill through the Legislature.

Sincerely yours,

Maurice P. Clark, Jr., CPA