

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON FINANCE & CLAIMS

Call to Order: By Senator Judy Jacobson, Chair, on March 23, 1993, at 8:00 a.m.

ROLL CALL

Members Present:

Sen. Judy Jacobson, Chair (D)
Sen. Eve Franklin, Vice Chair (D)
Sen. Gary Aklestad (R)
Sen. Don Bianchi (D)
Sen. Chris Christiaens (D)
Sen. Gerry Devlin (R)
Sen. Harry Fritz (D)
Sen. Ethel Harding (R)
Sen. Bob Hockett (D)
Sen. Greg Jergeson (D)
Sen. Tom Keating (R)
Sen. J.D. Lynch (D)
Sen. Chuck Swysgood (R)
Sen. Daryl Toews (R)
Sen. Eleanor Vaughn (D)
Sen. Mignon Waterman (D)
Sen. Cecil Weeding (D)

Members Excused: Senator Beck, Senator Forrester, Senator Tveit

Members Absent: None

Staff Present: Terry Cohea, Legislative Fiscal Analyst
Lynn Staley, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 401, HB 646, HB 500
Executive Action: HB 646

HEARING ON HOUSE BILL 401

Opening Statement by Sponsor:

Representative Kadas, House District 55, said HB 401 is a bill to appropriate an additional \$2.6 million to continue the state's

case in the natural resources damage claim. Suit has been filed by the state against the ARCO Corporation for damages over the last 100 years to the upper Clark Fork River Basin. In the 1991 session, \$5 million was appropriated so the state could assess the damage done in the basin and determine the level of biological and economic damages that had accumulated, as well as for legal expenses to bring the suit. Most recently, the state and ARCO went together on an understanding of what the settlement process would be if there is a settlement. He said this could go on through this biennium, depending if there is a settlement. If there isn't a settlement and the case goes to trial, it is very likely more money will have to be appropriated into the next biennium. He thinks the suit is essential, and it is supported by Gov. Racicot, the Attorney General, and all Department heads involved. He said it is the best chance of indemnifying and rebuilding. Rep. Kadas said some amendments were added in the House, and in 1991 a loan was made of \$5 million dollars to the Department of Health to finance the program. Loans can only be for a biennium in length so it needs to be renewed again this year and make another loan for the next two years operating expenses. He said because it is a loan, it does not show up on the fund balance. The House worked out a way of making the loan from the Coal Tax Trust Fund. Using that fund, they borrowed the money to pay off the initial General Fund loan, so there is about a \$7.8 million cost to the Coal Tax Trust Fund. That was set up so the Board of Health and Board of Investments entered into a contract to assure that loan will be paid back to the Trust Fund. One of the priorities of the suit is to pay off the loan. Because we are using the trust fund, the bill requires a 3/4 vote. In the House there were 82 for and approximately 10 against. He said we are charging interest on the loan so we are trying not to damage either the General Fund or the Trust Fund over the long term. The potential pay back is very difficult to say. He concluded it is essential in terms of repairing the drainage and added this would be an effective way to do that.

Proponents' Testimony:

Dick Pederson, Program Manager for the Natural Resource Damage Program, distributed copies of an Executive Summary (Exhibit 1). He said they have completed what the 1991 Legislature instructed them to do. Mr. Pedersen explained the use of the estimated budget on Table 2 of Exhibit 1. He said the funding request is for full litigation, and if it goes to trial it would be a less amount of funding than what they are asking.

Judy Browning from the Governor's Office said the Governor was on the Policy Committee for this action when he was Attorney General, and also serves on the Committee as Governor. She said his message to the committee is that it is very important to keep funding this particular program. The State stands to win from continuing its aggressive negotiations and it would be a shame to lose the investment and the possibility of winning this suit which stands to compensate the state for the loss in natural

resources from the damage that has arisen.

Joe Mazurek, Attorney General, said he serves in an advisory capacity to the policy team. He said he would like to discuss three matters; the issue of out of state counsel, the potential for recovery and the prospect of settlement. There has been concern in the past about out of state counsel hired to assist in the handling of this litigation. Much of it is being handled by the counsel at the Department of Health. A fairly significant expense is for outside legal services. He said that is particularly appropriate in this instance. The issue was addressed by the State Legal Services Review Committee before there was a decision to hire outside counsel. The hourly rate charged by the out of state counsel is reasonable, even by Montana standards, and the person who is hired has a special expertise in this area. He said we are facing the best lawyers in the nation and the state on the other side of this litigation. The second area he wanted to discuss was the potential of recovery. The potential far exceeds the commitment that the state has made at this point. He said that some level of recovery is a virtual certainty and he thinks it would be substantially higher than what they are committing to. Third, it is important that we continue even though they are in a settlement mode. We can't drop our guard at this point in the litigation in anticipation of settlement. We need to press on with our commitment to litigation in order to have a strong hand in the settlement.

Kim Wilson, Attorney from Helena representing the Clark Fork-Pend Oreille Coalition, urged support for HB 401. (Exhibit 2)

Bob Lane, Chief Legal Counsel for the Department of Fish, Wildlife & Parks, said their Director, Pat Graham, is one of the members of the policy committee that oversees the assessment and litigation. Their technical staff has worked closely with the natural resource damage program staff and state experts on all aspects of the assessment dealing with fish and wildlife resources. He urged support of HB 401. (Exhibit 3)

Bob Robinson, Director of the Department of Health, distributed an amendment which was suggested by Sen. Van Valkenburg and concurred in by Rep. Mercer, that provides for legislative oversight in this process. (Exhibit 4) He would recommend the amendment be adopted by the Senate Finance and Claims Committee. The Attorney General made a clarification concerning where it says "will each name". He suggested it read "shall appoint".

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Senator Devlin asked the Attorney General how long settlement

would take.

Attorney General Mazurek said the people that handle the litigation are here and could answer that. He said they are on a court ordered trial schedule and have entered into a formal agreement establishing a time period in which they will formally attempt to negotiate a settlement. If it is not accomplished within that time frame, the trial schedule continues.

Rob Collins, Senior Counselor for the Natural Resource Damage Program, said since ARCO asked for the stay to be lifted, the case has moved very fast. They are going to make sure the case is settled before the next legislative session, or that they are on a fast track for litigation.

Senator Devlin asked if they would be close to a settlement before the next legislative session.

Mr. Collins said they insisted on that in the settlement negotiations. He said it would be approximately a year and 3 months period.

Senator Devlin asked how long ARCO has to dispute the actual costs from the assessment.

Mr. Collins said settlement would be done by taking each resource, --fisheries, running water and wildlife--, and they would submit their position on each injury to ARCO, and then ARCO will submit their position. It is scheduled to be completed by September 1994.

Senator Swysgood asked Rep. Kadas if the \$4.9 million of the \$7.8 million from the Coal Trust is to repay the loan from the General Fund plus the interest, plus the \$2.6 million that is necessary for continuation. He asked if there was any impact to the other entities that are receiving interest off the trust to carry on their programs.

Rep. Kadas said 85% of the trust earnings go to the General Fund and 15% go to the School Equalization Account. At the most, 8% of the \$7.8 million each year.

Senator Swysgood asked if that would be around \$560,000.

Rep. Kadas said that sounds reasonable. He said \$560,000 would be lost to the General Fund for this biennium. Because we get the money back, we will regain that interest in the long term. Since the Trust gets repaid and it is the principal in the Trust that generates the General Fund revenue, we will be short that amount this biennium. If we get it settled in this biennium, that money will be back in the revenue stream in the next biennium.

Senator Jacobson asked Rep. Kadas if he had seen the amendment

that was offered.

Rep. Kadas said yes and he thinks it is a good amendment. He thinks it is important to avoid future conflicts between the Legislature and the Executive.

Senator Jacobson said regarding the amendment Bob Robinson proposed, it was unclear who was going to staff it and where the money would come from.

Bob Robinson said the briefings would be done by the Natural Resource Damage Program staff and that they also brief the Steering Committee fairly regularly. They would also provide a briefing for the Legislative Committee. He said the expenses for the Legislators would be paid from the Natural Resource Damage Program.

Senator Jacobson said that would have to be clear in the amendment.

Senator Weeding asked Rep. Kadas if he was talking about a total of \$10 million or an additional \$10 million.

Rep. Kadas said in the last biennium they appropriated \$4.9 million. That \$4.9 million cost the General Fund \$230,000. \$4.9 million and \$230,000 will be taken from the Coal Tax Trust and put in the General Fund. We need another \$2.6 million to continue the case. \$5.2 million plus \$2.6 million is \$7.8 million.

Senator Weeding asked if there was a \$10 million figure.

Rep. Kadas said no, there is a possibility if the case goes to trial they would have to come in for another appropriation, but he wouldn't expect that to be as large as this one.

Senator Christiaens asked Mr. Collins about the discovery being completed by May 1. Mr. Collins said in May they will submit the first assessment reports to ARCO.

Senator Aklestad questioned Rep. Kadas if the potential for winning this case was so great, was there any thought of hiring a law firm on a contingent basis so state monies weren't tied up.

Mr. Pederson said they did not negotiate with the attorney to pay them on a contingent basis.

Attorney General Mazurek said under the statute, attorney fees are provided for and required to be paid by the other side, and questioned why would we give away 1/3 to 40% of recovery when we can get the actual cost on a reasonable hourly basis repaid by the other side if we win. He thinks that was considered by the legal services review committee.

Senator Aklestad asked if they were negotiating right now.

Mr. Pederson said they are not negotiating right now. The memorandum of understanding has just been signed, and they will start the negotiation process.

Senator Aklestad asked if the company has offered a settlement at this time.

Mr. Pederson said no.

Senator Aklestad asked what the amount of settlement would be.

Mr. Pederson said the Natural Resource Damage assessment process they are doing right now is to determine the value of the resource and that process has not been completed, but will be completed by the end of the biennium.

Senator Aklestad asked if there was a ball park figure. Mr. Pederson said originally we filed for \$50 million in 1983. Since then the complaint has been modified because we feel damages are greater than that.

Senator Aklestad asked where the remainder of the winning go after the pay back has been made in interest and principal to the Coal Trust.

Mr. Pederson said the law is clear that you can recover the cost of the complete Natural Resources Damage assessment, which is the money we are getting right now, and the damages to the resource. The law is very clear what you can use those damages for, and it is to restore, replace or acquire like resources that are defined as being injured.

Senator Aklestad said superfund monies are involved in the Clark Fork area which are dealing with damages. He asked if these dollars would be added to the superfund for cleanup and how will that infringe on the superfunds.

Mr. Pederson said there is a lot of confusion between superfund and Natural Resource damages. The superfund process that is going on now is being done by ARCO, but is under federal law. The objective is to protect public health and the environment.

Senator Aklestad asked if superfund would do that. Mr. Pederson said not in all cases. We have to determine what activities superfund is going to complete and what the residual damages to the resources are. The other part of natural resource damage is to recover the lost use value of the resource.

Senator Aklestad said there is 8% interest established as far as the Coal Trust Fund and asked if there a set amount of interest being assessed to this loan, and what is that amount.

Rep. Kadas said the interest applied to the loan from the Trust Fund is the long term interest rate. It moves depending on what we are returning on our long term investments. It is an average established by the Board of Investments.

Senator Bianchi said assuming there is a settlement, would the settlement have to come back through the appropriation process.

Mr. Pederson said he would think so. It would be in the best interest of the state to establish a process by which the money would be spent to restore or replace like resources. The best way to do that would be to have some legislation to spend money for the projects that are proposed.

Senator Jacobson said the amendment speaks to that also. The committee being set up would start to look at considering plans for using the recovered money.

Senator Keating asked if this was being done in District Court. Mr. Pederson said in Federal District Court. Senator Keating asked if it was possible this could go to the U. S. Supreme Court. Mr. Pederson said yes.

Senator Keating said each biennium more money is put in, and he understands that ARCO, by their memorandum, have admitted that they will have to pay something and they probably have agreed that they will pay the legal fees and he would hope it includes the interest being lost on that money. He asked if money would be appropriated in the next biennium to continue this case into the Supreme Court.

Mr. Pederson said it is his hope the case is settled by September 1994. He said we are in a very strong position in this case to recover substantial damages. In the event settlement doesn't occur, they are prepared to litigate. If that happens, they will be back in the next biennium to ask for money for trial and it will be half or less than half of what is asked for now.

Mr. Peterson distributed copies of a Memorandum of Understanding to the committee. (Exhibit 5)

Senator Keating said he would caution the state regarding choosing to go to court unnecessarily on the idea that the settlement could be increased.

Closing by Sponsor:

Rep. Kadas closed by emphasizing the importance of the bill. He does support the amendments, and said Senator Beck is willing to carry the bill in the Senate.

Opening Statement by Sponsor:

Representative Mary Lou Peterson, District 1, Eureka, said HB 646 is a subcommittee requested bill that would increase the cost of the Annotated Codes from 20% to 25% to the general public and sets a 5% increase to state and local governments. In full appropriations the amendment for non-profit groups was also added. She said there is a fiscal note that says it may raise about \$50,000.

Proponents' Testimony:

None.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Devlin asked the sponsor how the money is tracked when it is brought back in for the sales; is it earmarked or does it go to the General Fund.

Rep. Peterson said it is earmarked into a special revenue account.

Senator Devlin asked if it was appropriated to the Legislative Council. Rep. Peterson said yes.

Senator Swysgood asked if this fee increase would offset General Fund reduction. Rep. Peterson said no.

Senator Swysgood asked if fiscal conditions weren't as they are, would those increases for computers, etc. have been funded out of General Fund monies for the Legislative Council.

Rep. Peterson said it would seem to her the committee made reductions in all of the departments, but then the need for networking came about.

Mr. Haubein, LFA, said Terry Cohea had indicated that action to put in the \$50,000 had already been done in HB 2. From his understanding it was considered a funding switch when that amendment was made, so it is now offsetting General Fund.

Senator Harding said the bill says the 5% maximum markup is not considered to be a considerable fiscal impact. She asked what local government is paying today.

Mr. Haubein said the cost is over \$200 a set on the Codes. Five percent would be about \$10.

Senator Keating asked if there was a suggestion that the amount be rounded off to the nearest dollar.

Rep. Peterson said when their work is finished and the Codes go to press, they will know the price.

Senator Lynch said the Council will set the dollar amount and they always round it off.

Closing by Sponsor:

Rep. Peterson closed on HB 646.

HEARING ON HOUSE BILL 500

Opening Statement by Sponsor:

Senator Jacobson, Senate District 36, said she is presenting HB 500 for Rep. Mercer. The bill is trying to deal with some of the problems in the supplemental appropriations. She said the supplemental requests have risen dramatically over the past several years. Rep. Mercer is trying to say that if someone is going to transfer money from the second year to the first year in anticipation of coming in for a supplemental, they would have to propose a plan to the Governor to show how they were going to reduce appropriations to deal with the transfer rather than coming in for a supplemental. This will not reduce all supplementals, but it would cause departments to plan ahead for reductions if they are seeing some increase. This bill exempts fire suppression and the OPI state funding and guaranteed tax base, transportation, etc.

Proponents' Testimony:

Joe Mazurek, Department of Justice, said they support the bill, although they have some concern in their operations. He said there are actually four areas the Department of Justice has no control over General Fund costs that go through its budget, which have resulted in supplementals in the past. The two areas they would propose amendments to are the special litigation costs and the costs of housing prisoners arrested by the Montana Highway Patrol. (Exhibits 6, 7 and 8) He stated several examples of litigation that may be brought and the Department of Justice would defend the state. He said historically, what the Legislature has done, is set aside \$400-500 thousand in the appropriations bill itself. The other area is the cost of housing prisoners by the Highway Patrol. He said they were concerned because of action taken by the Legislature. It used to be that the Legislature limited the costs the counties could charge to \$20 a day. That has now been amended and the cost is

now "reasonable costs". The Justice Department has no ability to control those costs. He concluded the Department of Justice has not been in for supplementals for operations, only for the uncontrolled costs.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Senator Lynch said he sees a problem with the prisoner matter. He said it seems to him if they are doing the city a favor, the chief responsibility is highway safety. They are not a state police force. They are simply helping out when they pick up a fugitive.

Mr. Mazurek said there are many problems such as the amount of interstate highway being covered, routine stops, DUI arrests, and the fact that there are more people on the highways. There have been a number of shooting incidents involving highway patrol officers. In routine stops they run across situations that involve out of state fugitives. A greater factor in this is the state used to limit the amount we paid and now this "reasonable costs" which essentially lets the local government charge whatever the traffic will bear. It requires an agreement but is really a one-sided negotiation as we don't have any authority to tell a local government what they can charge to house someone in their jail.

Senator Lynch asked where the fine would go if the highway patrol picks someone up first in Silver Bow County on a DUI, and they bring them in, and the prisoner has to be fed until he comes to trial.

Mr. Mazurek said they are allocated like other fines. 50% goes back to the state.

Senator Christiaens said it seems we should be able to agree to a fixed price statewide. He said right now local governments are not paying the county jail when the police department makes an arrest. He said some counties feel the state has the money.

Mr. Mazurek said if the city police arrest someone within the boundaries of the city limits and take them to the county jail, the county jail cannot charge the city for that cost. He thinks the greater problem is the change in the legislation. The law was changed in 1989 which allowed the setting of these "reasonable fees" as opposed to a fixed dollar rate. He said they are at the mercy of the local government. He admitted costs are going up, but what they are saying is that they don't know what the costs are going to be; they simply have to pay whatever they are charged. They are asking that in the budget process the committee understand the position in which the Department of

Justice has been placed. If supplementals arise, they feel they should be able to come back and say local governments have raised their prices, they have to pay those costs, and they should not have to lay off highway patrol officers to pay for arresting prisoners.

Senator Swysgood asked if the Department goes to the counties to ask what they will be charging.

Jan Dee May, Justice Department, said the LFA and the Budget Office allows them to put in a base that is equal to what they have spent in the base year.

Senator Swysgood asked when they put together this biennium's budget, were considerations given to the change from what it was before.

Ms. May said their budget was \$235,000 and that was based on the previous base year. She said they are projected to spend \$660,000 this year. She said Yellowstone County charges would be a 37% increase and they are one of the biggest costs.

Senator Waterman said she was amazed no one from SRS was here since SRS and DFS are the big supplementals. SRS has seen Medicaid costs going up, and those have been supplementals in the area of \$20 million. Foster care supplementals have been \$5-6 million. She said the bill says to reduce all non-mandated expenditures.

Senator Jacobson said there is a clause that says "to the greatest extent possible". The positive of this is that it discourages SRS, Family Services, and particularly Legislators, from underestimating the costs. SRS has said their new estimates are \$7.3 million above what has been put into HB 2. The House Appropriations Committee has said they won't put that in because they don't know how to put it into 99/99. This bill would discourage that. SRS will have to come in with a game plan to start reducing their costs. She said there is enough of a safeguard that would still allow them to come in for a supplemental if we get into difficult situations. This is going to be reviewed by the Governor's office, the Budget Office, and the Fiscal Analyst.

Senator Waterman asked for an explanation of the non-mandated expenditures on page 4, line 6.

Senator Jacobson said right now a total program cannot be wiped out. We expect these people to try to live within their expenditures and try to reduce to the greatest extent possible before coming in for a supplemental. What we are saying is we want to see their plan. Then we will be able to anticipate to a much greater extent what the request for a supplemental is going to be.

Senator Waterman asked who will make the decisions on the plan to reduce them.

Senator Jacobson said the department will take the plan to the Executive through OBPP. It will then come to the Finance Committee. It is similar to the way the budget amendment is dealt with. We will know ahead of time what kind of money they are going to have to move from year 2 to year 1; how they plan to reduce expenditures to deal with that in year 2 and what they are planning to request for a supplemental. It will not reduce all supplementals, but it will give the interim committee, the Budget Office and the Finance Committee a better handle what is coming.

Senator Waterman thinks this bill says the Legislative Finance Committee, if they choose, may decide to eliminate all optional Medicaid benefits, such as hearing aids, eye glasses.

Senator Jacobson said the Legislative Finance Committee is simply looking at a plan. She thinks the bill would discourage the kinds of underestimation that have been seen in the past.

Senator Aklestad said the Legislative Finance Committee does not have that authority. Also, the Legislative Finance Committee goes through supplementals now and looks at them and decides if they are acceptable, and that is all the authority they have. This bill would give the Legislative Finance Committee, the department and the Governor's office working together to see how they can handle the supplement. He thinks it is reasonable to let the Finance Committee look at it.

Senator Weeding asked Senator Jacobson if the Governor's office and the department are being given authority to eliminate any non-mandated program.

Mr. Haubein, LFA, said if the program is identified in state or federal law, the Executive Branch could not come in, but they could look at other expenses or services that are not required by law. It would force them to go back and look at the operation and decide if there are costs that could be cut without cutting required programs.

Senator Jacobson said she does not think that any legislative branch agency has the ability to say they will not do general assistance because it is on the books. It does force them to come in with a plan. It is direction to the agency.

Senator Keating asked if the Governor has authority at the present time for adjusting the budgets.

Senator Jacobson said he has 5% reductions.

Senator Waterman asked if the effective date would be October 1.

Senator Jacobson said if there is no effective date in the bill,

it would be October 1.

Senator Waterman said it is her opinion that it should be effective in the 1996-97 biennium.

Closing by Sponsor:

Senator Jacobson closed saying this was Rep. Mercer's bill, and his idea and that he had discussed it with her. She said she realized there is a certain amount of fear associated with asking people to make cuts in the interim, but she thinks it is reasonable to ask department heads to manage their departments in a reasonable manner to reduce supplementals as much as possible.

EXECUTIVE ACTION ON HOUSE BILL 646

Motion: Senator Devlin moved HB 646 BE CONCURRED IN.

Discussion: Senator Swysgood spoke against the motion saying it is a classic example of transferring a funding switch from General Fund to a fee. The public will pay the fee and the agencies don't really have to take a reduction which he thinks is wrong.

Senator Aklestad said we have a situation where we will be able to expand government to the state at the expense of local government. He said the fiscal note shows this is a cost plus. There is no incentive to keep the cost down. They are passed on to the local government.

Senator Fritz said we need to dispel any notion that the Legislative Council is making a lot of money by passing costs to the public. This is a very modest attempt to recoup a few of the funds which are applied for the overall purposes of the agency. He supports the motion.

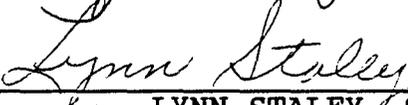
Vote: The Motion CARRIED with Senators Harding, Swysgood, Toews, Keating, Aklestad and Hockett voting no.

ADJOURNMENT

Adjournment: The meeting adjourned at 9:45 a.m.



SENATOR JUDY JACOBSON, Chair



LYNN STALEY, Secretary

JJ/lS

ROLL CALL

SENATE COMMITTEE FINANCE AND CLAIMS

DATE 3/23/93

NAME	PRESENT	ABSENT	EXCUSED
SENATOR JACOBSON	✓		
SENATOR FRANKLIN	✓		
SENATOR AKLESTAD	✓		
SENATOR BECK			
SENATOR BIANCHI	✓		
SENATOR CHRISTIAENS	✓		
SENATOR DEVLIN	✓		
SENATOR FORRESTER			
SENATOR FRITZ	✓		
SENATOR HARDING	✓		
SENATOR HOCKETT	✓		
SENATOR JERGESON	✓		
SENATOR KEATING	✓		
SENATOR LYNCH	✓		
SENATOR TOEWS	✓		
SENATOR SWYSGOOD	✓		
SENATOR TVEIT			
SENATOR VAUGHN	✓		
SENATOR WATERMAN	✓		
SENATOR WEEDING	✓		

FC8

Attach to each day's minutes

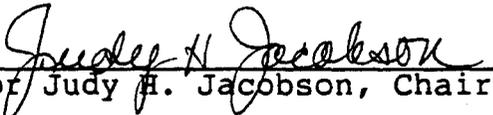
SENATE STANDING COMMITTEE REPORT

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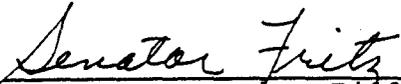
MR. PRESIDENT:

We, your committee on Finance and Claims having had under consideration House Bill No. 646 (first reading copy -- blue), respectfully report that House Bill No. 646 be concurred in.

Signed:


Senator Judy H. Jacobson, Chair

 Amd. Coord.
W Sec. of Senate


Senator Carrying Bill

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SENATE FINANCE AND CLAIMS

EXHIBIT NO. 1

DATE 3/13/93

BILL NO. HB 401

EXECUTIVE SUMMARY

NATURAL RESOURCE DAMAGE PROGRAM

FY 94-95 BIENNIUM

Dick Pedersen
Program Manager

FY 94-95

NATURAL RESOURCE DAMAGE PROGRAM

EXECUTIVE SUMMARY

The State of Montana will complete a Natural Resource Damage Assessment for the Clark Fork River Basin as directed by the 1991 legislature. In addition, the State has advanced the lawsuit State of Montana v. Atlantic Richfield Company, CV-83-317, and is in a very strong position to recover substantial damages. The requested biennial appropriation will keep the State's position strong and result in full recovery of damages and assessment costs.

History:

The State of Montana filed a natural resource damage lawsuit in December of 1983 against the Atlantic Richfield Company (ARCO) to recover for damages from injuries to natural resources in the Clark Fork River Basin. On August 17, 1990, despite the State's opposition, a stay of the lawsuit was lifted. The parties in the lawsuit were ordered to proceed with discovery and other aspects of the case.

The 1991 legislature authorized a state special revenue biennial appropriation of \$4,908,049 to complete a natural resource damage assessment (NRDA), and to advance the State's lawsuit. The biennial appropriation resulted in the creation of the Natural Resource Damage Program (NRDP), the hiring of consultants to complete the NRDA and provide expert testimony, and the retention of outside legal counsel to manage the litigation and guide assessment activities.

Natural Resource Damage Assessment:

The Clark Fork NRDA is nearly complete. A NRDA is a complex and comprehensive process which determines the resources that have been injured, the severity and extent of injuries, and the dollar value (damages) of the injuries. The NRDA includes the work of approximately 25 leading experts in various professional disciplines, including fish and wildlife biologists and toxicologists, geologists, hydrogeologists, statisticians, soils scientists, economists, chemists, and quality assurance/quality control specialists. Another approximately 50 professionals provide support to these experts and the NRDP.

The court schedule currently requires that the State identify its experts, and the facts and opinions to which they will attest, by June 15, 1993. The NRDP will complete its report of injury assessment in the current biennium, and that assessment will support our experts opinions. The report will identify the resources which have been injured and the extent and severity of the injuries. Draft reports have been completed for the various resources (fisheries; surface water; sediments; air; soils, vegetation and wildlife; and groundwater). These reports have depended on both existing data and numerous studies conducted by the NRDP, or its consultants, to address NRDA issues or data needs. These studies include laboratory fish toxicology experiments; fish population surveys; wildlife and habitat modeling; and collection and analysis of surface water, groundwater samples, soil, and

EXHIBIT 1
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vegetation samples.

Various economic methodologies are being used to calculate the damages for injured resources. Appropriate alternatives for restoration of injured resources, and their estimated costs, are currently being evaluated. Additional studies and economic surveys to determine the recreational value, non-use (existence and bequest) values, and market values of the injured resources, are in progress and will be completed in the current biennium.

State of Montana v. Atlantic Richfield Co:

A trial date has not yet been set in the lawsuit filed by the state against ARCO, but with the final pre-trial order scheduled to be submitted in July of 1995, the trial will follow approximately three months later and will last several months if all issues are left for trial. In the interim, the litigation team, including the leading experts, will be required to spend a good deal of time on trial preparation. The litigation also involves a comprehensive discovery process which will require that a good deal of attorney and expert witness time be spent on depositions and document production.

The State's objective in this litigation is to recover, as expeditiously and economically as possible, substantial monetary damages for injuries to natural resources in the Clark Fork River Basin. Monetary damages, by law, must be used to restore, replace or acquire like resources. The goal of the recovery of monetary damages is to restore the resources as nearly as possible to the condition they would have been in had the hazardous substances not been released. In the event that it is not feasible to restore some of the resources, the state will then replace or purchase like resources for the basin. In addition, natural resource damage assessment costs, including some legal costs, are recoverable by law and will be used to repay the funds loaned to the program by the legislature.

The parties are also currently undertaking a review of issues that may be addressed and resolved prior to trial. The State and ARCO hope to enter a memorandum of understanding regarding a settlement process by which they may resolve some, or all, of those issues prior to trial.

FY 94-95 Biennial Budget Required:

The attached table summarizes the FY 94-95 NRDP budget needs. The requested \$2,619,076 is broken into three general categories:

- 1) **Program:** the program cost relates to the nine FTEs and associated costs.
- 2) **Contracting Services:** the contract services costs provide the state with expert witnesses along with their support staff, as well as outside legal counsel and other litigation and restoration planning support. The NRDP policy committee has appointed Kevin Ward of Harding and Ogborn as lead counsel representing the State of Montana. Mr. Ward and his law firm, Harding and Ogborn, have special expertise and experience in superfund and natural resource damage litigation matters. Even though the state of Montana's case is unique in its complexity, Mr. Ward's expertise provides the state with an advantageous position, as he directs the case on issues of

ability and affirmative defenses. His office provides the equivalent of two attorneys to add to the state's three attorneys for the full complement necessary to proceed with the litigation.

37 Legal Fees & Court Costs: these costs are primarily for obtaining deposition and hearing transcripts through the two year period.

Activities associated with this lawsuit are difficult to clearly define on a fiscal year basis. Therefore, it is necessary to seek a biennial appropriation.

TABLE 2
NATURAL RESOURCE DAMAGE PROGRAM
ESTIMATED BUDGET
FY94-F95

EXHIBIT # 1
DATE 3-13-93
I HB-401

1. Program

a) Salaries, benefits, indirect (est.)	\$ 730,000
b) Supplies, copying	44,818
c) Communications (mail & telephone)	22,702
d) Travel	
In-state	21,494
Out-of-state	40,500
Non-employee	10,000
e) Equipment and rent	21,052
f) Other	8,610

Subtotal \$ 899,176

2. Contract Services:

a) Outside legal	
2 equivalent attorneys (7200 hrs)	\$ 823,500
associated costs	72,000
b) Expert witnesses	
24 expert witnesses time	306,000
associated costs	48,000
c) Expert support staff	
50 support staff time	100,000
associated costs	50,000
d) Exhibit preparation	50,000
e) Temporary services	20,000
f) Document management	20,000
g) Restoration planning	100,000

Subtotal \$1,589,500

3. Legal fees and Court costs

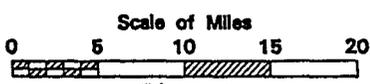
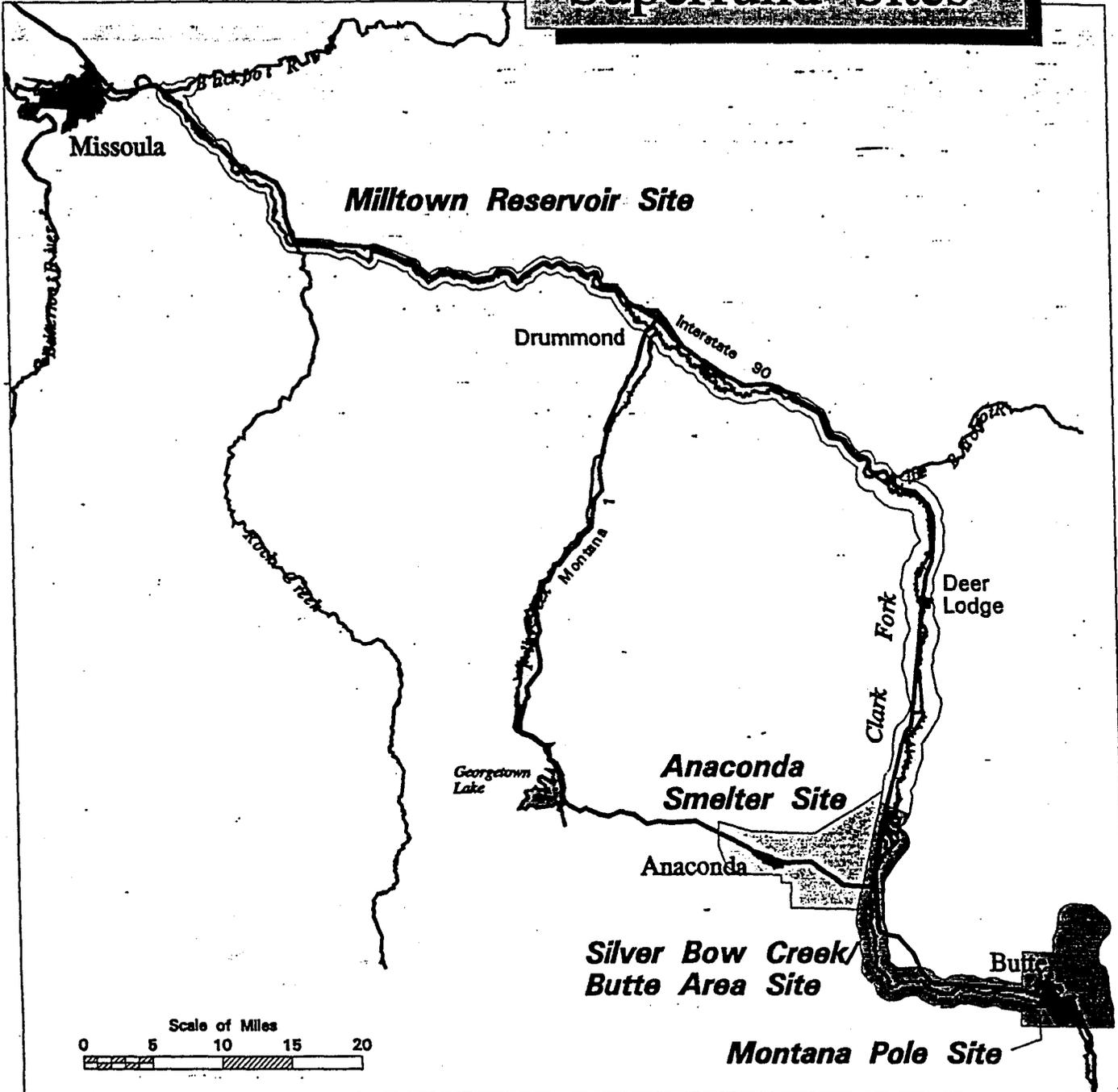
a) Arco 218 days x 150 p/d x \$2/p	\$ 65,400
Exhibits	5,000
b) State 95 days x 150 p/d x \$3/p	42,750
Exhibits	2,250
c) Court transcripts	5,000
d) Special Master	10,000

Subtotal \$ 130,400

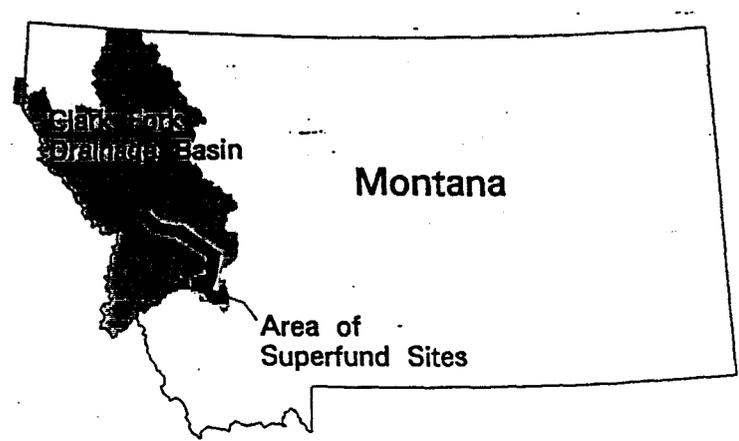
TOTAL

\$2,619,076

Clark Fork Basin Superfund Sites



-  Town
-  Highway
-  Stream
- Superfund Sites**
- 
- 





SENATE FINANCE AND CLAIMS

EXHIBIT NO. 2

DATE 3/23/93

BILL NO. HB 401

Clark Fork - Pend Oreille Coalition

P.O. Box 7593 • Missoula MT 59807 • (406) 542-0539
P.O. Box 1096 • Sandpoint ID 83864 • (208) 263-0347

February, 1993

Why the Legislature Should Continue to Fully Fund the Clark Fork Natural Resource Damage Claim, House Bill 401

Background

The State of Montana filed suit against the Atlantic Richfield Company (ARCO) in 1983 to recover damages for severe injuries to the natural resources in the Clark Fork River Basin caused by more than a century of mining and smelting in the Butte and Anaconda area. The lawsuit was filed under the authority of federal Superfund hazardous waste clean-up law. The lawsuit is separate from the ongoing U. S. Environmental Protection Agency's clean-up process. The suit seeks compensation for damages to resources such as water, land, fish and wildlife, and air.

The suit was originally "stayed" until the Superfund process could complete remedial investigations and feasibility studies of the largest Superfund site in the U.S. However, ARCO petitioned the court in October 1989 to lift the stay. Over the objections of the State, the court lifted the stay and put the case on a "fast-track" scheduling order requiring all discovery in the case to be completed by May, 1993. In 1991, the Governor and the state Health Department asked for and received \$4.9 million from the Legislature to prepare for trial. The biennial appropriation resulted in the creation of the Natural Resource Damage Program whose function is to ensure completion of the Clark Fork Natural Resource Damage Assessment (NRDA) and advancement of the State's suit.

As a trustee for the people of Montana, the State's goal is to recover monetary damages to natural resources in the Clark Fork River Basin. Monetary damages may only be used to restore, replace or purchase similar resources that have been lost.

(over)

The state has made credible progress in its suit against ARCO. To continue to press for the interests of the people of Montana, and to keep the State in the strongest possible litigation position, the State is asking for \$2.6 million for the FY 94-95 in HB 401. Because of the progress the State has made - and the consequences of discontinuing the funding now - full funding of the NRDA program should be one of the Legislature's top priorities in 1993.

Reasons for Continued Funding

- This is the largest legal proceeding the state has ever initiated. The stakes are very high. The eventual settlement or award could be hundreds of millions of dollars - for an investment of just a fraction of that.

- All of that money by law must be spent to improve or replace damaged natural resources in the Clark Fork Basin. The project would provide good jobs for Montanans, and every dollar spent on restoration will ripple through the state's economy multiplying the benefit of the lawsuit several time over.

- The restoration of the river's trout fishery, local groundwater resources and damaged agricultural lands will provide lasting economic and environmental benefits for future generation of Montanans.

- ARCO will be held responsible under the "strict liability" provisions of federal Superfund law. The question is not whether ARCO will pay for damages, but rather how much it will pay. The Legislature needs to fully fund the damage claim to put the state in the best bargaining position for settlement of the case.

- All expenses incurred by the State will be reimbursed by ARCO, including appropriations for the general fund to prepare for the case.

- The successful handling of the case will prepare the State for upcoming damage assessments and claims at other hazardous waste sites throughout the state.

The Legislature has no better opportunity than HB 401 to invest in Montana's future. The Clark Fork - Pend Oreille Coalition urges the Legislature to pass HB 401 and fully fund the Natural Resources Damage Program.

HB 401
March 23, 1993

**Testimony presented by Bob Lane, Dept. of Fish, Wildlife & Parks
before the Senate Finance and Claims Committee**

As you are well aware, the 1991 legislature appropriated funds to allow the State of Montana to conduct a natural resource damage assessment in the Upper Clark Fork River Basin and to support litigation of our natural resource damage claim against Atlantic Richfield Company.

The director of the Department of Fish, Wildlife & Parks, is a member of the policy committee that oversees the assessment and litigation. Our technical staff has worked closely with the natural resource damage program staff and state experts on all aspects of the damage assessment that deals with fish and wildlife resources. The professionals preparing our case are among the best in the country.

We believe we have built a strong scientific and technical basis to support the state's claim for damages to natural resources in the Clark Fork River Basin.

However, as with any litigation, unless the State of Montana is prepared to see the process through to completion, we will inevitably fail to protect Montana's legitimate claims. We therefore urge your support of this bill, fully expecting the returns to be many times our initial investment.

SENATE FINANCE AND CLAIMS

EXHIBIT NO. 4

DATE 3/23/93

BILL NO. HB 401

Amend HB 401
page 3 following line 19
insert

New Section - Section 4. Legislative Oversight.

The speaker of the house and president of the senate will each name two members of their respective bodies, one from each party, to meet quarterly for briefings on the progress of litigation and/or negotiations. The committee should also consider plans for appropriate utilization of any money received by the state as a result of the Montana-Atlantic Richfield litigation.

Renumber subsequent sections.

from Dick Pedersen

March 9, 1993

SENATE FINANCE AND CLAIMS

EXHIBIT NO. 5

MEMORANDUM OF UNDERSTANDING

DATE 3/23/93

UB 40

This memorandum of understanding ("MOU") is ~~between~~ ^{between} the State of Montana (the "State") and Atlantic Richfield Company, a Delaware corporation ("ARCO"). The State and ARCO are hereinafter collectively referred to as "the parties." This MOU shall become effective as of the last date of its execution by the authorized representatives of the parties.

The parties, in order to pursue a negotiated settlement of litigation pending in the United State District Court, District of Montana, known as State of Montana v. Atlantic Richfield Company, Civil Action No. 83-CV-317-HLN-PGH ("the litigation"), have executed this MOU, which addresses the nature and scope of settlement negotiations in this case.

The parties agree that, by entering into this MOU, neither party is making any admission of fact or law. This MOU shall not be admissible as evidence as proof of liability or nonliability or the validity or invalidity of any claim or defense in the above-referenced or other litigation. This MOU shall not prejudice the position of either party in the above-referenced or any other litigation, nor shall it be used for any purpose other than the attempted settlement of the litigation.

RECITALS

WHEREAS, the parties to this MOU seek to resolve without further litigation all issues in the litigation;

WHEREAS, the parties are entering into the negotiations in good faith and agree to consider and discuss all issues which either party deems necessary or appropriate to a final settlement; and

WHEREAS, the parties intend to negotiate in good faith through their expressly designated representatives and do not intend to undermine negotiations through other means or methods.

NOW, THEREFORE, based upon the above premises and the mutual covenants and considerations set forth below, the parties agree as follows:

I
Settlement Process and Schedule

The settlement process shall take the four-phase approach, described below. The parties will use their best efforts to adhere to the schedule set forth in Attachment A, hereto. This four-phase approach and schedule may be modified upon written agreement of the parties.

Phase I - Agreeing to the Settlement Process

During Phase I the parties discussed and formulated a process to engage in substantive settlement negotiations. The agreements of the parties as a result of those discussions are contained in this MOU. This MOU will be submitted to the Court in the litigation in conjunction with a joint petition of the parties for a stay of the litigation. Phase II of the settlement process shall proceed upon the Court's approval of such joint petition.

Phase II - Injury Determination and Quantification.

During Phase II, the parties will discuss the technical, scientific and other issues pertaining to injury determination and injury quantification for natural resources in the Clark Fork River Basin. The discussions will proceed on the basis of natural resource units. The natural resource units were chosen because they logically lend themselves to segregated discussions. The natural resource units will be:

1. Groundwater resources including those in the Butte, Rocker, Anaconda, Opportunity, Warm Springs and Milltown regions;
2. Aquatic resources, including surface water, sediments, macroinvertebrates, and fish;
3. Terrestrial resources, both riparian and upland, including air, soil, vegetation, and wildlife.

The substantive discussions on a particular natural resource unit will proceed according to the Settlement Process Schedule provided in Attachment "A" as follows:

First, the State will submit to ARCO in writing in any appropriate format, the following information:

- A. The basis for the State's trusteeship of the resources and the precise geographical location and extent of the same;
- B. The State's definition of baseline with respect to the relevant natural resources;
- C. The difference between baseline and the current condition of the relevant natural resources;
- D. The quantification of the claimed injuries exceeding baseline;
- E. The facts upon which the State relies to prove Anaconda/ARCO's responsibility for the injury, i.e., causation; and

#5
FE 3-23-93
HB-401

F. The identification of the consultants and/or experts who support the claim of injury together with their opinions and the grounds and basis for their opinions with all supporting data.

Second, ARCO will submit to the State in writing, in any appropriate format, the following information:

- A. ARCO's response to the State's assertion of trusteeship for the relevant natural resources;
- B. ARCO's definition of baseline with respect to the relevant natural resources under consideration;
- C. ARCO's opinion of the current condition of the relevant natural resources;
- D. The quantification of any injuries exceeding baseline;
- E. Any facts upon which ARCO relies to deny responsibility for a portion of or all of the injury;
- F. The identification of the consultants and/or experts who support ARCO's position concerning the nature and extent of injury together with their opinions and the grounds and basis for their opinions with all supporting data.

Third, the parties will meet to discuss any differences of opinion with regard to any of the foregoing issues. At such meetings, both parties will have present and available for discussion their respective consultants and/or experts. It is anticipated that in some instances a party will be unable to fully respond at such meetings to an issue raised by the other party due to a lack of preparation time. In such event, such party may respond at the next scheduled meeting.

The parties agree that Phase II should conclude within the time provided in Attachment "A". Prior to or at the conclusion of Phase II, the parties shall reduce to writing any and all agreements reached on the issues discussed and the basis for the agreements. The writing may be in the form of non-binding tentative agreements or in the form of binding final agreements. At that time the parties shall also attempt to summarize in writing any significant points of disagreement regarding the issues raised in Phase II.

Phase III - Damages Determination.

During Phase III, the parties will discuss the technical, scientific, economic, and other issues pertaining to the damages determination for the injured natural resources. The discussions will proceed in the following order on the basis of the following:

1. Damages to all relevant natural resources based upon restoration costs.
2. Damages to all relevant natural resources based upon all other appropriate damage calculation methodologies.

The substantive discussions on a particular natural resource unit will proceed as follows:

First, the State will submit to ARCO in writing, in any appropriate format, the following information:

- A. Its best estimate of the remedial action(s) that will probably be selected by the U.S. EPA or the Montana Superfund Program;
- B. Its determination of natural resource damages; and
- C. The identification of the consultants and/or experts who support the State's position concerning the determination of damages together with opinions and the grounds and basis for their opinions with all supporting data.

Second, within thirty (30) days of receipt of the above information, ARCO will submit to the State in writing, in any appropriate format, the following information:

- A. ARCO's best estimate of the remedial action(s) that will probably be selected by the U.S. EPA or the Montana Superfund Program;
- B. ARCO's determination and allocation of natural resources damages, if any, and any factual and/or legal basis upon which ARCO denies its responsibility;
- C. The identification of the consultants and/or experts who support ARCO's position concerning the determination of damages together with opinions and the grounds and basis for their opinions with all supporting data.

Third, within fifteen (15) days of receipt by the State of each ARCO submittal, the parties will meet to discuss any differences of opinion with regard to any of the foregoing issues. At such meetings, both parties will have present and available for discussion their respective consultants and/or experts.

The parties agree that they will use their best efforts to conclude Phase III within the time provided in Attachment "A". Prior to or at the conclusion of Phase III, the parties shall reduce to writing any and all agreements reached on the issues discussed and the basis for the agreements. The writing may be in the form of non-binding tentative agreements or in the form of binding final agreements. At that time the parties shall also attempt to summarize in writing any significant points of disagreement regarding the issues raised in Phase III.

Phase IV - Final Settlement Negotiations

During Phase IV, the parties will discuss and attempt to resolve the outstanding issues necessary for a final settlement. If not previously resolved, these will include: (1) The amount of any natural resource damages and assessment costs to be paid to the State by ARCO; and (2) the contents and details of the final settlement agreement and consent decree.

By the conclusion of Phase IV, the parties should have agreed to a settlement agreement and consent decree resolving all issues that will be made available for public review and comment and submitted for court approval. The parties will submit to each other written statements of their positions as necessary during the Phase IV discussions. Phase IV should conclude no later than September 1st 1994.

ZORR

II
Public Review

During the settlement process, appropriate public review shall be provided as follows:

1. Following the complete execution of this MOU, the MOU shall be submitted to the Court and released to the public. Any subsequent modifications of this MOU shall also be submitted to the Court and released to the public.
2. During Phase II and Phase III of the settlement process, the State at its discretion may make available for public review copies of any information that it has submitted to ARCO, provided that such information does not contain information submitted by ARCO to the State in the settlement process. Ten (10) days prior to any submission of such information, the State shall deliver to ARCO a general written description of such information which is sufficient to assure ARCO that such information will not contain any confidential information submitted by ARCO to the State in the settlement process.

3. During Phase II and Phase III of the settlement process, the State, following the express written agreement of ARCO, may make available for public review any information that ARCO has submitted to the State.

4. During Phase II and Phase III of the settlement process, the State shall make available for public review and comment any final agreements reduced to writing by the parties.

5. The State negotiators at their discretion, may meet with the general public or with individual members of the public regarding the status of the settlement process, provided that the State does not discuss at such meetings information submitted by ARCO to the State in the settlement process. ARCO may have a representative present at the meetings which are open to the general public.

6. Following the complete execution of any final settlement agreement(s) and consent decree(s) that will be submitted for court approval, the State shall make such agreement(s) and decree(s) available for public review and comment for a period of 45 days. The State may hold a public meeting to receive comments during the comment period. The parties agree that any such consent decree(s) shall not be approved as an order of the court until the comment period expires and all comments received have been duly considered by the parties and jointly submitted to the court together with responses and/or mutually agreed amendments to the consent decree(s).

III Stay of Litigation

Upon complete execution of this MOU, the parties shall file the MOU with a joint petition to the Court to stay the lawsuit in its entirety, including all discovery and motions practice, except as hereinafter provided. It is agreed that the parties will use their best efforts (provided that such efforts are reciprocal as between the parties) to respond to all Rule 34 F. R. Civ. P. requests for production of documents which were served prior to December 17, 1992. It is agreed that should any disputes over this document production arise, no motions to compel shall be filed during the pendency of this stay and each party shall reserve its right to file any such motion after the stay is lifted.

In addition, either party at any time may request, in writing, that the other party make available to it, for review and/or copying, documents not previously requested or produced in the litigation which are reasonably required in the negotiation process. Such requests shall be limited in nature and reasonably precise in their description of the documents requested; such requests shall not be burdensome or overbroad. Furthermore, the parties reserve their right to withhold any such documents which, under applicable law, are irrelevant or qualify as attorney-client or litigation work product materials. It is agreed that should any disputes over document production under this paragraph

EXHIBIT #5
DATE 3-23-93
#B-401

arise, such disputes shall not affect the Settlement Process Schedule and no motions to compel may be filed during the pendency of this stay; and each party shall reserve its right to file any appropriate discovery requests or motions to compel production of such documents after the stay is lifted.

The parties in their joint petition shall request that the court vacate all deadlines, with the exception of the April 28, 1995, deadline by which the case should be reasonably settled. The parties agree that the stay of the lawsuit should remain in effect as long as the parties are engaged in the settlement process pursuant to this MOU. If this MOU should terminate prior to a final settlement and Court approval of a final consent decree, all litigation shall continue as before, all pending motions shall be recalendared, and all Court deadlines shall be reimposed, except all such deadlines shall be extended as set forth in Attachment B, hereto.

The parties may jointly request the Court to designate a mediator or special master, with expertise in natural resource damage actions, for assistance in resolving disputes over legal or other issues upon which the parties cannot agree. Such involvement by the Court's designee shall not result in any final or binding decision on any such issue, but rather shall be in the form of mediation assistance to help the parties reach mutual agreement on such disputed issues. The costs for any such mediator or special master shall be shared equally between ARCO and the State.

IV
Confidentiality

To encourage full and frank discussions, the parties further agree to jointly petition the Court to order that the substance of all settlement negotiations are confidential and that all documents and information related thereto, except the parties' joint petition, the Court's Order and the matters described in Section II above, shall not be released to anyone outside of the attorneys, consultants and administrative personnel involved in this action or the negotiations and their principals.

V
Modification

This MOU may be modified by agreement of the parties. All modifications shall be in writing and signed by authorized representatives of the parties. All modifications shall be submitted to and filed with the Court.

VI
Termination

At any time either party may terminate this MOU and the settlement process upon thirty (30) days' written notice to the other party. The stay of litigation shall be lifted thirty (30) days after receipt by the non-terminating party of the notice of termination; and the date upon which the stay is lifted shall be the "MOU Termination Date".

VII

Non-Waiver of Claims, Defenses and Privilege

Neither party waives any privilege, legal argument, defenses or claims which could otherwise be asserted with respect to any claims made or information or data communicated or acquired by virtue of these settlement discussions or related proceedings. Statements made in the negotiating process shall not constitute a waiver of any claims or defenses nor serve any party as a substitute for the need to develop evidence to be used in any litigation now pending or which may subsequently be filed for or against the parties. Neither party will oppose discovery, including the depositions of witnesses, relating to the natural resource damage action on the grounds that the discussions as contemplated herein serve as a substitute for discovery or that discovery shall be repetitive of information obtained during the negotiations. These negotiations shall be conducted pursuant to Rule 408, Federal Rules of Evidence, which shall be binding upon all participants in the settlement discussions. These negotiations do not protect from discovery any information otherwise discoverable merely because it is presented in these or subsequent negotiations.

STATE OF MONTANA

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EXHIBIT #5
DATE 3-23-93
3 HB-401

Dated:
March 16, 1993

By 
Attorneys for the State

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Dated:
3/15, 1993

By 
Attorneys for ARCO

March 9, 1993

ATTACHMENT A

Settlement Process Schedule

The parties will attempt to achieve agreement on the issues included within Phases II, III and IV according to the following schedule; however, the following dates may be changed or additional meetings may be scheduled as appropriate during the settlement process:

Phase II

May 3, 1993	State submittal ¹ to ARCO regarding groundwater resources injuries
June 2, 1993	State submittal to ARCO regarding aquatic resources injuries
July 1, 1993	ARCO submittal to State regarding groundwater resources injuries
July 30, 1993	ARCO submittal to State regarding aquatic resources injuries
Aug 17-20, 1993	Meetings ² between the State and ARCO regarding groundwater resources injuries
Sept 7-10, 1993	Meetings between the State and ARCO regarding aquatic resources injuries
Sept 20, 1993	State submittal to ARCO regarding terrestrial resources injuries
October 20, 1993	ARCO submittal to State regarding terrestrial resources
Nov 8-10, 1993	Meetings between the State and ARCO regarding terrestrial resources injuries

Phase III

December 8, 1993	State submittal to ARCO regarding damages based on restoration costs
------------------	--

¹All submittals shall be delivered on or before the date indicated.

²All meetings throughout the process shall be held in Montana unless otherwise agreed between the parties.

March 9, 1993

EXHIBIT #5

DATE 3-23-93

HB-401

4 20 JBC
January 14, 1993

ARCO submittal to State regarding damages based on restoration costs

Feb 1-4, 1994

Meetings between the State and ARCO regarding damages based on restoration costs

March 1, 1994

State submittal to ARCO regarding all other claimed damages

March 31, 1994

ARCO submittal to State regarding all other damages

April 18-21, 1994

Meeting(s) between the State and ARCO regarding all other claimed damages

Phase IV³

May 1, 1994

Phase IV begins

September 15, 1994

Phase IV ends

³A specific schedule for Phase IV negotiations will be agreed upon by the parties at the beginning of Phase IV.

ATTACHMENT B

Litigation Schedule

Should the MOU terminate prior to settlement being reached, the litigation deadlines shall be reimposed as follows:

MOU Termination Date Plus 90 Days

Plaintiff to identify the expert witnesses it intends to call at trial and the substance of facts and opinions to which the experts are expected to testify.

MOU Termination Date Plus 240 Days

Defendant to identify the expert witnesses it intends to call at trial and the substance of facts and opinions to which the experts are expected to testify.

MOU Termination Date Plus 420 Days

All discovery concerning expert witnesses who may be called at trial to be completed.

MOU Termination Date Plus 510 Days

All discovery to be completed.

MOU Termination Date Plus 630 Days

All motions not identified in paragraphs 2, 3 and 4 of the Court's Order of August 17, 1990, including Motions in Limine and Motions for Summary Judgment, to be filed.

MOU Termination Date Plus 720 Days

An attorneys conference to be conducted this week to complete the Final Pretrial Order.

MOU Termination Date Plus 795 Days

Final Pretrial Order to be filed.

SENATE FINANCE AND CLAIMS

EXHIBIT NO. 6
 DATE 3/23/93
 BILL NO. 1995-ALB500

HB 0002/02

Fiscal 1994

	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1	45,000					45,000	45,000					45,000
2												
3	927,417	318,000				1,245,417	938,228	330,000				1,268,228
4												
5	144,945					144,945	151,720					151,720
6												
7	962,796	270,000				1,232,796	951,090	270,000				1,221,090
8												
9	52,839					52,839	52,839					52,839
10												
11	438,936	572,183	34,943	24,781		1,070,843	440,825	569,837	35,140	24,848		1,070,650
12												
13												
14	12,125,979	16,466,873	880,043	592,614		30,065,509	10,886,663	17,573,548	873,467	599,379		29,933,057

15 The legislature recognizes that costs associated with litigation in which the legal services division must provide representation to the state of Montana may exceed the appropriation provided in item 1c. In that event, the department will need to request a supplemental appropriation from the 1995 legislature to adequately represent the state.

16 * If Senate Bill No. 382 is not passed and approved providing local impact funds for the eastern coal counties task force, the state special revenue appropriation in item 6 must be reduced by \$345,266 in fiscal 1994 and by \$348,295 in fiscal 1995 and a general fund appropriation must be established in the same amount as the state special revenue appropriation is decreased.

17 The department is authorized to request a budget amendment for the rural statewide intelligence network if federal grant funds become available during the 1995 biennium.

18 The department is directed to prepare a plan to privatize all state driver's license examination stations and to present this plan to the legislative audit committee by July 1, 1994.

19 The department is to develop a plan for streamlining operations, improving efficiencies, and better coordination of services for the gambling control

	Fiscal 1994				Fiscal 1995							
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1	45,000					45,000	45,000					45,000
2	10. Data Processing Division (29)											
3	927,417	318,000				1,245,417	938,228	330,000				1,268,228
4	11. Extradition and Transportation of Prisoners (30)											
5	144,945					144,945	151,720					151,720
6	12. Forensic Science Division (32)											
7	962,796	270,000				1,232,796	951,090	270,000				1,221,090
8	a. Firearms and Toolmarks Examiner											
9	52,839					52,839	52,839					52,839
10	13. Personal Services Reduction Efficiencies											
11	438,936	572,183	34,943	24,781		1,070,843	440,825	569,837	35,140	24,848		1,070,650
12	<hr/>											
13	Total											
14	12,125,979	16,466,873	880,043	592,614		30,065,509	10,886,663	17,573,548	873,467	599,379		29,933,057

15 The legislature recognizes that costs associated with litigation in which the legal services division must provide representation to the state of Montana may exceed the appropriation provided in item 1c. In that event, the department will need to request a supplemental appropriation from the 1995 legislature to adequately represent the state.

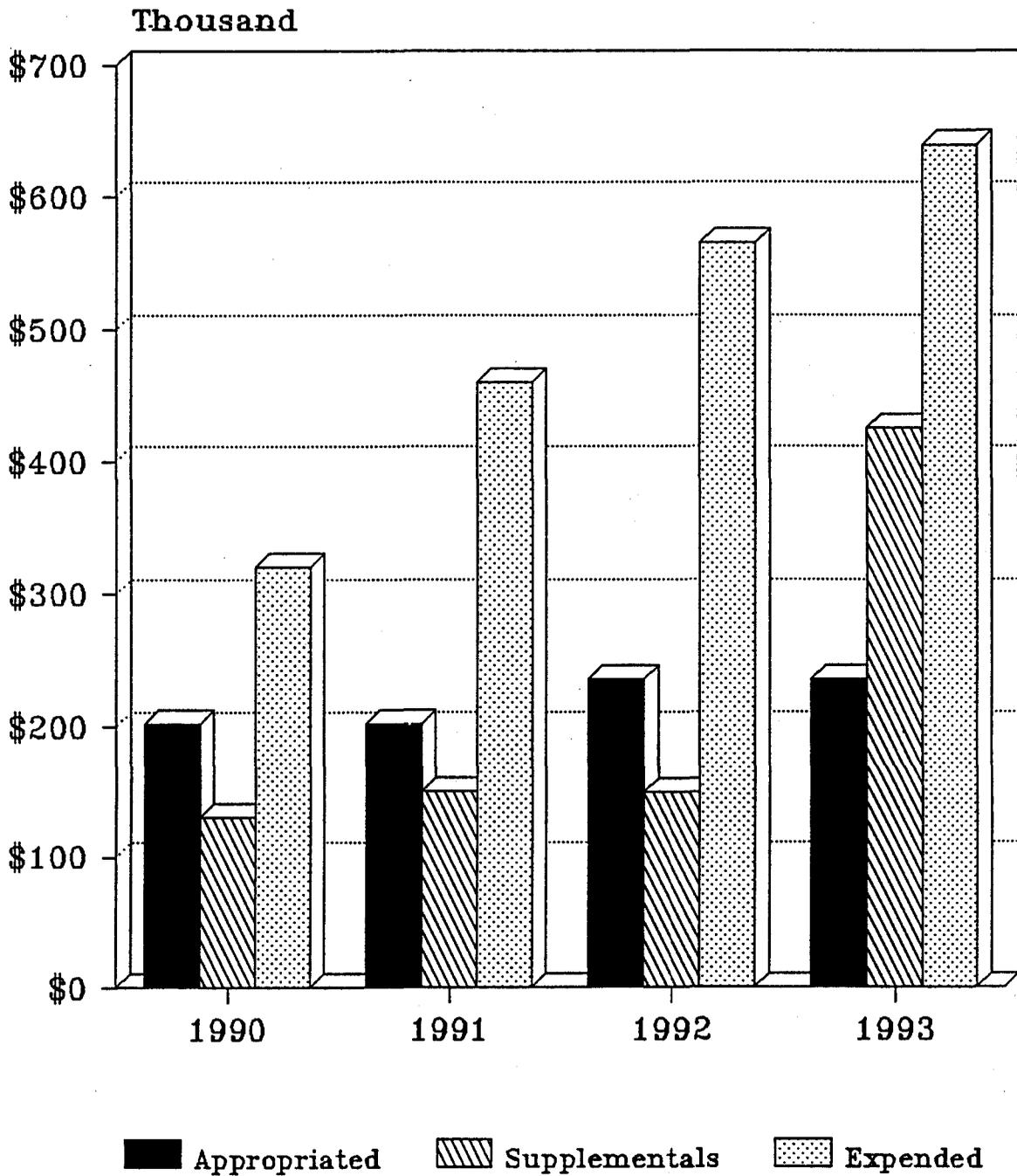
16 ~~17~~ If Senate Bill No. 382 is not passed and approved providing local impact funds for the eastern coal counties task force, the state special revenue appropriation in item 6 must be reduced by \$345,266 in fiscal 1994 and by \$348,295 in fiscal 1995 and a general fund appropriation must be established in the same amount as the state special revenue appropriation is decreased.

18 The department is authorized to request a budget amendment for the rural statewide intelligence network if federal grant funds become available during the 1995 biennium.

19 The department is directed to prepare a plan to privatize all state driver's license examination stations and to present this plan to the legislative audit committee by July 1, 1994.

20 The department is to develop a plan for streamlining operations, improving efficiencies, and better coordination of services for the gambling control

Prisoner Costs



Amendment to House Bill 500
Third Reading Copy (Blue)

SENATE FINANCE AND CLAIMS

EXHIBIT NO. 8

DATE 3/23/93

BILL NO. HB 500

Prepared by Department of Justice

1. Page 2, line 14.

Following: "analyst."

Strike: "If the"

Insert: "(2) The plan for reducing expenditures required by subsection (1) is not required if the proposed supplemental appropriation is:

"(a) due to an unforeseen and unanticipated"

2. Page 2, line 14.

Following: "emergency"

Strike: "is"

3. Page 2, line 15.

Following: "suppression"

Insert: " ; "

4. Page 2, line 15.

Following: "OR"

Strike: "IF THE PROPOSED SUPPLEMENTAL APPROPRIATION IS"

Insert: "(b)"

5. Page 2, line 20.

Following: "BIENNIUM"

Strike: ", the plan for reducing expenditures is not required."

Insert: "; or (c) requested by the attorney general and: (i) is to pay the costs associated with litigation in which the department of justice must provide representation to the state of Montana; or (ii) in accordance with the provisions of 7-32-2242, is to pay costs for which the department of justice is responsible for confinement of an arrested person in a detention center. (3)"

Renumber remaining subsections accordingly.

6. Page 3, line 1.

Following: "biennium."

Strike: "The"

Insert: "Except as provided in subsection (2), the"

7. Page 3, line 18.

Following: "in"

Strike: "subsection"

Insert: "subsections (2) and"

(OVER)

Explanation of Department of Justice Amendment

As proposed by the Department of Justice, a new subsection (2) would be added to section 17-1-301 and would read as follows:

"(2) The plan for reducing expenditures required by subsection (1) is not required if the proposed supplemental appropriation is:

(a) due to an unforeseen and unanticipated emergency for fire suppression; or

(b) requested by the superintendent of public instruction, in accordance with the provisions of 20-9-351, and is to complete the state's funding of guaranteed tax base aid, transportation aid, or equalization aid to elementary and secondary schools for the current biennium; or

(c) requested by the attorney general and: (i) is to pay the costs associated with litigation in which the department of justice must provide representation to the state of Montana; or (ii) in accordance with the provisions of 7-32-2242, is to pay costs for which the department of justice is responsible for confinement of an arrested person in a detention center."

The language that follows would become a new subsection (3) and other subsections of the statute would be renumbered accordingly. Language also is inserted to exempt these proposed supplemental appropriations from the expenditure limits imposed by the bill.

DATE 3/23/93

SENATE COMMITTEE ON Finance And Claims

BILLS BEING HEARD TODAY: HB 401, HB 500, HB 646
KADAS Meier Peterson

Name	Representing	Bill No.	Check One	
			Support	Oppose
DICK PEDERSEN	STATE OF MONTANA	HB 401	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Kim Wilson	Clark Fork Coal. Inc.	"	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jim Jensen	MEIC	HB401	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Stan Bradshaw	MT. TLU	HB401	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rob Collins	DHES	HB401	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Bob Lane	DFWP	HB401	<input checked="" type="checkbox"/>	<input type="checkbox"/>

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY