

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Rep. Dick Knox, Chairman, on January 25, 1995,
at 3:00 PM.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Bill Tash, Vice Chairman (Majority) (R)
Rep. Bob Raney, Vice Chairman (Minority) (D)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. David Ewer (D)
Rep. Daniel C. Fuchs (R)
Rep. Hal Harper (D)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Paul Sliter (R)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)
Rep. Douglas T. Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Michael Kakuk, Environmental Quality Council
Alyce Rice, Committee Secretary

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

Committee Business Summary:

Hearing: HB 263, HB 274
Executive Action: HB 137 Do Pass as Amended
HB 162 Do Pass as Amended

Tape 1, Side A

HEARING ON HB 263Opening Statement by Sponsor:

REP. AUBYN CURTISS, House District 81, Fortine, said she was pleased to sponsor HB 263 on behalf of Montana Public Schools and eight other institutions that were granted land by the U. S. Congress upon Montana's statehood in 1889. Numerous attempts have been made over the years to divert proceeds from trust lands and many special interest groups have tried to infuse their own expectations into the management of these lands. REP. CURTISS referred to the 1976 Opinion of the Montana Attorney General and quoted in part "The case involved an Act of the Legislature to designate portions of trust land as natural areas, in other words, parks or wilderness areas. The Attorney General ruled the state would commit a breach of trust under the Enabling Act and the state Constitution unless it compensated the school trust in money for the full appraised value of the lost assets. The Montana Supreme Court has long held that school lands as well as their proceeds and income constituted a trust. Thus, the Enabling Act must be strictly construed and its grants and property devoted exclusively for the stated purposes." REP. CURTISS also referred to the case of the Department of State Lands v. Pettibone from which she quoted excerpts of Montana Supreme Court decisions and the citation on the Eighth Circuit Court Decision. EXHIBIT 1

Proponents' Testimony:

John Hebnes, Seeley Lake Elementary School, supported HB 263.

Candace Torgerson, Montana Cattlewomen's Association, said HB 263 will provide a better focus for the management of state lands.

Jennifer Hill, Montana Stockgrowers Association and Montana Wool Growers Association, supported HB 263.

Ed Regan, Forester, Brand S Lumber Co., Member, Townsend School Board. Written testimony. EXHIBIT 2

Cary Hegreberg, Montana Wood Products Association. Written testimony. EXHIBIT 3

Loren Frazier, School Administrators of Montana, supported HB 263.

Jim Foster, Montana Rural Education Association, supported HB 263.

Opponents' Testimony:

Steve Kelly, Friends of the Wild Swan, said there are alternatives to timber harvesting that have never been explored. One alternative would be mushroom production on state lands.

More mushrooms can be grown per acre than trees. Trees are being grown on sites that are not suitable.

Informational Testimony: None

Tape 1, Side B

Questions From Committee Members and Responses:

REP. JON ELLINGSON said he couldn't find guidance in the Enabling Act for managing state lands and asked REP. CURTISS if there was anything. REP. CURTISS said it could be found on page 23 of the Enabling Act.

REP. HAL HARPER said the Enabling Act notes show that some of the school trust funds have been used to repair, renovate and reconstruct old buildings and to install a roll call machine in the chambers of the House of Representatives. REP. HARPER asked REP. CURTISS if it was her intent that some of the school trust money would be used in these ways. REP. CURTISS referred to page 22, section 17, paragraph 4, of the Enabling Act, that set aside 150,000 acres of state lands for public buildings at the Capitol of the state.

REP. HARPER asked Bud Clinch, Commissioner, Department of State Lands, if there was a list of the current amount of revenue in each of the state land trust funds. Mr. Clinch said he could provide a complete accounting of the exact acreage and revenue streams over whatever period of history REP. HARPER would like to know about. REP. HARPER asked Mr. Clinch if he was correct in his assumption that if the legislature wanted to renovate the Capitol Building it could order that logging be done in the tracts that are hooked to the Capitol Building. Mr. Clinch told REP. HARPER that he was very perceptive and said he could provide him with a map that identifies the specific sections that were dedicated to each of the trusts.

Tape 2, Side A

Closing by Sponsor:

REP. CURTISS said she loved the outdoors and enjoys the multiple uses of state lands. By passing HB 263 those other uses will not be precluded.

HEARING ON HB 274

Opening Statement by Sponsor:

REP. DOUG WAGNER, House District 83, Hungry Horse. Written testimony. EXHIBIT 4

Proponents' Testimony:

Cary Hegreberg, Montana Wood Products Association, said the Department of State Lands currently has no viable way of capturing the potential timber revenue from many sections of trust land which are in effect landlocked by private ownership. The bill states that in cases where private landowners are willing to grant access for a limited timeframe the department staff can efficiently negotiate a limited timber sale without going through the full regulatory process. It still requires that full fair market value be secured for the timber that is sold even though competitive bid will not be held. The Federal Bureau of Land Management currently uses a similar system for negotiating timber sales on sections that it administers and are landlocked by private ownership.

Ed Regan, Forester, Montana's Forest Products Industry. Written testimony. **EXHIBIT 5**

Daron Duncan, Forester, R Y Timber, Townsend, said one of the greatest obstacles the department has in trying to set up timber sales is access to state lands that are landlocked by private landowners. It is obvious that the timber industry is looking more towards private timber sales instead of Forest Service timber sales to supply the mills. The result will be more private timber sales on private ranch land. The price of timber has reached the point where some ranchers who were not interested in selling timber have discovered the value of their timber lands. Once the landowner has agreed to allow a logging operation to enter his property he doesn't have a problem with allowing the DSL selling some of its lumber at the same time. If HB 274 passes it will generate income for the trust lands.

Tape 2, Side B

Keith Olson, Montana Logging Association, said HB 274 is about management options. State forest lands to which access is blocked are condemned to few management options. Trust is the key to gaining access but these are not times when private landowners have an excess of trust or faith in regulatory agencies or timber harvesters. There are two programs that are addressing that issue. One is the forest stewardship workshop for private timber land owners in Montana and the other is an accredited logging professional program for timber harvesters. These programs are forging a trusting relationship between landowners and loggers. Such relationships will provide opportunities for timber harvesters and persuade landowners that access to state lands can result in responsible harvesting on state-owned lands. **Mr. Olson** urged the committee to support HB 274.

Loren Frazier, School Administrators of Montana, said if the committee felt that HB 274 is going to help increase the revenue that schools receive he urged the committee to give it a Do Pass.

Opponents' Testimony:

Janet Ellis, Montana Audubon Legislative Fund, opposed HB 274 because it exempts all the sales as well as emergencies due to fire, insect, fungus, parasite, or blowdown from the Montana Environmental Policy Act (MEPA).

Steve Kelly, Friends of the Wild Swan. Written testimony.
EXHIBIT 6

Stan Frazier, Montana Wildlife Federation, said there wasn't any testimony from the proponents of the bill that MEPA is a problem. Since there isn't any evidence that it has been a problem, that section of the bill should be stricken.

Informational Testimony: None

Tape 3, Side A

Questions From Committee Members and Responses:

REP. ROBERT STORY asked **Mr. Regan** how long it takes to prepare for a timber sale on private land. **Mr. Regan** said it takes approximately two years for a medium-sized sale.

REP. EMILY SWANSON asked **John North, Attorney, DSL**, what "limited access opportunity" meant. **Mr. North** said it means that there is a limited amount of time to get the timber off a tract of land or that there is some other limitation such as access being limited to a certain person.

REP. HAL HARPER asked **Bud Clinch, Commissioner, DSL**, if the landowner that controls the access can choose the buyer without using the bid process. **Mr. Clinch** said in areas where logging occurs on private land, relationships develop between the logging contractor and a landowner. There are situations where a private landowner is comfortable with a particular operator who has purchased the timber and is logging his ground. In some instances that landowner may tell DSL that it has been pressing him for access across his land and he has resisted in the past, but because he has confidence that a particular individual is a prudent and credible operator and has carried out operations on his land in a sensible way, he will allow the state access for the next 30 days to do the harvest they have wanted to do on their adjacent land. A landowner in control of access to state lands can stipulate a certain contractor has to do the timber harvesting but the department is obligated to negotiate the sale with the contractor at the full market value.

REP. BOB RANEY asked **Mr. Clinch** if it takes two years to set up a timber sale and there happens to be a state-owned section in the middle of it that the department finds out about a few days before the sale, why wouldn't the department have time to

capitalize on it without having to have some sort of emergency condition. **Mr. Clinch** said the department will continue to carry out its timber sale program under its current guidelines to the greatest extent possible. The majority of timber sale salvage opportunities that exist will be captured through the existing program with the existing timeframes. The department's interpretation of the bill is that it has limited options for specific cases due to time constraints such as the time of notification from the landowner relative to access.

Mr. Regan clarified that the two years it takes to lay out a timber sale includes hunting season closures, spring break-up of roads and other factors that might be involved.

Tape 3, Side B

REP. AUBYN CURTISS asked **Gary Williams**, DSL, what the timeframe is in which bug-killed timber must be harvested before it loses its marketable value. **Mr. Williams** said if bug-killed timber can be harvested quickly it will lose very little value.

REP. TASH asked **REP. WAGNER** if he and others involved in the legislation would be amenable to changing "limited access opportunity" on line 22 of the bill to "timely opportunity."
REP. WAGNER said they would consider it.

Closing by Sponsor:

REP. WAGNER said HB 274 is about limited access to state school trust land and not about any private company's land. **REP. WAGNER** thanked the committee for a good hearing and urged the committee members to give HB 274 a Do Pass vote.

Tape 4, Side A

EXECUTIVE ACTION ON HB 137

Motion: **REP. ROBERT STORY** MOVED HB 137 DO PASS.

Discussion: **REP. CLIFF TREXLER** presented and explained his amendments to HB 137.

Motion/Vote: **REP. TREXLER** MOVED THE AMENDMENTS TO HB 137. Voice vote was taken. Motion carried unanimously.

Discussion: **REP. STORY** presented and explained his amendments to HB 137.

Motion/Vote: **REP. STORY** MOVED THE AMENDMENTS TO HB 137. Voice vote was taken. Motion carried unanimously.

Vote: **REP. DANIEL FUCHS** MOVED HB 137 DO PASS AS AMENDED. Voice vote was taken. Motion carried 12 to 6.

EXECUTIVE ACTION ON HB 162

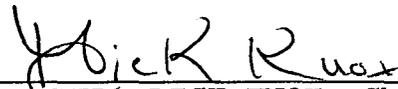
Motion: REP. LILA TAYLOR MOVED HB 162 DO PASS

Motion/Vote: REP. HAL HARPER MOVED AMENDMENTS TO HB 162. Voice vote was taken. Motion carried unanimously.

Motion: REP. HARPER MOVED HB 162 DO PASS AS AMENDED. Motion carried unanimously.

ADJOURNMENT

Adjournment: 5:45 PM



REP. DICK KNOX, Chairman



ALYCE RICE, Secretary

DK/ar

HOUSE OF REPRESENTATIVES

Natural Resources

ROLL CALL

DATE 1-25-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Dick Knox, Chairman	✓		
Rep. Bill Tash, Vice Chairman, Majority	✓		
Rep. Bob Raney, Vice Chairman, Minority	✓		
Rep. Aubyn Curtiss	✓		
Rep. Jon Ellingson	✓		
Rep. David Ewer	✓		
Rep. Daniel Fuchs	✓		
Rep. Hal Harper	✓		
Rep. Karl Ohs	✓		
Rep. Scott Orr	✓		
Rep. Paul Sliter	✓		
Rep. Robert Story	✓		
Rep. Jay Stovall	✓		
Rep. Emily Swanson	✓		
Rep. Lila Taylor	✓		
Rep. Cliff Trexler	✓		
Rep. Carley Tuss	✓		
Rep. Doug Wagner	✓		



HOUSE STANDING COMMITTEE REPORT

January 26, 1995

Page 1 of 2

Mr. Speaker: We, the committee on Natural Resources report that House Bill 162 (first reading copy -- white) do pass as amended.

Signed: _____

Dick Knox
Dick Knox, Chair

And, that such amendments read:

1. Title, lines 6 and 7.

Following: "PERMIT;" on line 6

Strike: "ADDING" through "PERMIT;" on line 7

Following: "82-4-221," on line 7

Insert: "AND"

Strike: "AND 82-4-227,"

2. Page 4, line 9.

Following: "trenching,"

Strike: "drilling,"

3. Page 8, line 9.

Following: "82-4-228"

Strike: " and "

Following: "and"

Insert: "and"

4. Page 8, lines 10 and 11.

Following: "deposit" on line 10

Strike: "that" through "coal" on line 11

Following: "(7)." on line 11

Insert: "In addition, prospecting that is conducted to determine the location, quality, or quantity of a natural mineral deposit and that does not substantially disturb the natural land surface is not subject to subsections (1) through (7)."

D.S.
Committee Vote:

Yes 18, No 0.

220849SC.Hbk

January 26, 1995
Page 2 of 2

5. Page 8, line 19 through page 12, line 11.
Strike: section 4 in its entirety

-END-

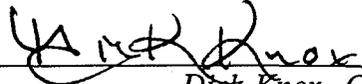


HOUSE STANDING COMMITTEE REPORT

January 26, 1995

Page 1 of 2

Mr. Speaker: We, the committee on Natural Resources report that House Bill 137 (first reading copy -- white) do pass as amended.

Signed: 
Dick Knox, Chair

And, that such amendments read:

1. Title, lines 5 through 7.
Following: "LAWS;" on line 5
Strike: "REQUIRING" through "TRANSFERS;" on line 7
2. Title, line 9.
Following: "OF"
Insert: "TEMPORARY"
3. Title, line 10.
Following: "SECTIONS"
Strike: "'7-4-2613,"
4. Title, line 11
Following: line 10
Strike: "85-2-122,"
Following: "85-2-232,"
Insert: "AND"
Following: "85-2-319,"
Strike: "85-2-424" through "85-2-426,"
Strike: "REPEALING" through "MCA;"
5. Title, line 12.
Following: "PROVIDING"
Insert: "AN IMMEDIATE"
Strike: "DATES"
Insert: "DATE"

Committee Vote:
Yes 12, No 6

220908SC.Hbk

6. Page 1, line 16 through page 4, line 12
Strike: sections 1 through 4 in their entirety
Renumber: subsequent sections

7. Page 6, lines 19 and 20.
Following: first "for" on line 19
Strike: "water" through "activities" on line 20
Insert: "temporary uses of water not to exceed 1 year, with a
maximum appropriation not to exceed 10 acre-feet per year,"

8. Page 6, lines 21 and 22.
Following: "for" on line 21
Strike: "public" through "activities" on line 22
Insert: "temporary uses of water"

9. Page 6, line 24.
Strike: section 7 in its entirety
Renumber: subsequent sections

10. Page 6, line 26.
Following: second "Section"
Strike: "6"
Insert: "2"

11. Page 6, line 29 through page 7, line 1.
Following: "**Effective**" on page 6, line 29
Strike: "**dates**" through "**are**"
Insert: "date. [This act] is"
Strike: subsection (2) on page 7, line 1 in its entirety

-END-

proceed to form another constitution or to amend the rejected constitution, and shall submit such new constitution or amended constitution to the people of the proposed state for ratification or rejection, at such time as said convention may determine; and all the provisions of this act, so far as applicable, shall apply to such convention so reassembled and to the constitution which may be formed, its ratification or rejection, and to the admission of the proposed state.

§ 8. That the constitutional convention which may assemble in South Dakota shall provide by ordinance for resubmitting the Sioux Falls constitution of eighteen hundred and eighty-five, after having amended the same as provided in section five of this act, to the people of South Dakota for ratification or rejection at an election to be held therein on the first Tuesday in October, eighteen hundred and eighty-nine; but if said constitutional convention is authorized and required to form a new constitution for South Dakota it shall provide for submitting the same in like manner to the people of South Dakota for ratification or rejection at an election to be held in said proposed state on the said first Tuesday in October. And the constitutional conventions which may assemble in North Dakota, Montana and Washington, shall provide in like manner for submitting the constitutions formed by them to the people of said proposed states, respectively, for ratification or rejection at elections to be held in said proposed states on the said first Tuesday in October. At the elections provided for in this section the qualified voters of said proposed states shall vote directly for or against the proposed constitutions, and for or against any articles or propositions separately submitted. The returns of said elections shall be made to the secretary of each of said territories, who, with the governor and chief justice thereof, or any two of them, shall canvass the same; and if a majority of the legal votes cast shall be for the constitution the governor shall certify the result to the president of the United States, together with a statement of the votes cast thereon and upon separate articles or propositions, and a copy of said constitution, articles, propositions, and ordinances. And if the constitutions and governments of said proposed states are republican in form, and if all the provisions of this act have been complied with in the formation thereof, it shall be the duty of the president of the United States to issue his proclamation announcing the result of the election in each, and thereupon the proposed states which have adopted constitutions and formed state governments as herein provided shall be deemed admitted by congress into the Union under and by virtue of this act on an equal footing with the original states from and after the date of said proclamation.

§ 9. That until the next general census, or until otherwise provided by law, said states shall be entitled to one representative in the house of representatives of the United States, except South Dakota, which shall be entitled to two, and the representatives to the fifty-first congress, together with the governors and other officers provided for in said constitutions, may be elected on the same day of the election for the ratification or rejection of the constitutions; and until said state officers are elected and qualified under the provisions of each constitution and the states, respectively, are admitted into the Union, the territorial officers shall continue to discharge the duties of their respective offices in each of said territories.

§ 10. That upon the admission of each of said states into the Union sections numbered sixteen and thirty-six in every township of said proposed states, and where such section, or any parts thereof, have been sold or

otherwise disposed of by or under the authority of any act of congress, other lands equivalent thereto, in legal subdivisions of not less than one quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said states for the support of common schools, such indemnity lands to be selected within said states in such manner as the legislature may provide, with the approval of the secretary of the interior; Provided, That the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this act, nor shall any lands embraced in Indian, military or other reservations of any character be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands be restored to and become a part of the public domain.

Cross-References

Management of school lands, Art. X, sec. 4, Mont. Const.
Disposition of income from lease of school lands, Art. X, sec. 5, Mont. Const.
School districts -- property, Title 20, ch. 6, part 6.

Case Notes

Operation and Effect: This is a general granting clause and shows clearly the interest of the Congress in the common schools of the newly admitted state. *Texas Pacific Coal & Oil Co. v. St.*, 125 M 258, 234 P2d 452 (1951).

§ 11. That all lands granted by this act shall be disposed of only at public sale after advertising--tillable lands capable of producing agricultural crops for not less than ten dollars (\$10.00) per acre, and lands principally valuable for grazing purposes for not less than five dollars (\$5.00) per acre. Any of the said lands may be exchanged for other lands, public or private, of equal value and as near as may be of equal area, but if any of the said lands are exchanged with the United States such exchange shall be limited to surveyed, non-mineral, unreserved public lands of the United States within the state.

Except as otherwise provided herein, the said lands may be leased under such regulations as the legislature may prescribe. Leases for the production of minerals, including leases for exploration for oil, gas, and other hydrocarbons and the extraction thereof, shall be for such term of years and on such conditions as may be from time to time provided by the legislatures of the respective states; leases for grazing and agricultural purposes shall be for a term not longer than ten years; and leases for development of hydroelectric power shall be for a term not longer than fifty years.

The state may also, upon such terms as it may prescribe grant such easements or rights in any of the lands granted by this act, as may be acquired in privately owned lands through proceedings in eminent domain; provided, however, that none of such lands, nor any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

With the exception of the lands granted for public buildings, the proceeds from the sale and other permanent disposition of any of the said lands and from every part thereof, shall constitute permanent funds for the support and maintenance of the public schools and the various state institutions for which the lands have been granted. Rentals on leased land, proceeds from the sale of timber and other crops, interest on deferred payments on land sold, interest on funds arising from these lands, and all other actual income, shall be

The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

EXHIBIT 2
DATE 1-25-95
HB 263

HB 263

NATURAL RESOURCES COMMITTEE

MR. CHAIRMAN, FOR THE RECORD, MY NAME IS ED REGAN AND I RESIDE IN TOWNSEND. I AM A PROFESSIONAL FORESTER WITH BRAND-S LUMBER COMPANY, AND I AM ALSO A MEMBER OF THE TOWNSEND SCHOOL BOARD. I SUPPORT HB-263 IN BOTH CAPACITIES.

THERE ARE LITERALLY MILLIONS OF ACRES OF FEDERAL LAND IN MONTANA THAT ARE MANAGED UNDER MULTIPLE USE MANDATES, FOR THE BENEFIT OF THE GENERAL PUBLIC. IN RECENT YEARS, MULTIPLE USE HAS BEEN INTERPRETED TO MEAN ALMOST EVERYTHING BUT TIMBER MANAGEMENT. WE HAVE NATIONAL PARKS, WILDERNESS AREAS, NATIONAL WILDLIFE PRESERVES, AND SPECIAL MANAGEMENT AREAS LIKE THE ELKHORNS RIGHT OUTSIDE HELENA. NEARLY ALL RESOURCE DEVELOPMENT IS OFF LIMITS IN THOSE MILLIONS OF ACRES.

IN FACT, DESPITE ALL THE CLAIMS OF RAMPANT LOGGING ON OUR NATIONAL FOREST, LESS THAN 50% OF THAT ACREAGE IS DESIGNATED SUITABLE FOR TIMBER HARVEST, AND MUCH OF THAT IS ROADLESS LAND WHICH HAS NEVER BEEN LOGGED

THE SCATTERED SECTIONS OF STATE TRUST LANDS WERE ALSO DESIGNATED TO HAVE A PRIMARY USE. THAT IS TO GENERATE REVENUE FOR PUBLIC SCHOOLS. IF WE CAN HAVE MILLIONS OF ACRES WITHDRAWN FROM RESOURCE DEVELOPMENT, IS IT REALLY SO WRONG TO SET ASIDE TRUST LANDS FOR MANAGEMENT ACTIVITIES THAT GENERATE REVENUE AND JOBS? AS A FORESTER I DON'T THINK SO. AS A SCHOOL BOARD MEMBER WITH KIDS IN SCHOOL, I DON'T THINK SO.

THAT IS WHY I AM ASKING YOU TO SUPPORT HB-263 TO CLARIFY THE ROLE OF OUR STATE TRUST LANDS. THANK YOU.

ED REGAN



EXHIBIT 3
DATE 1-25-95
HB 263

HB 263

Testimony of Cary Hegreberg, Montana Wood Prod. Assoc.

Mr. Chairman, members of the committee, for the record, my name is Cary Hegreberg, executive vice president of Montana Wood Products Association.

The members of our association support this bill because it provides much-needed clarification on the management of state trust lands. In recent years, the state Board of Land Commissioners, and the Department of State Lands have been besieged by a myriad of demands from various interest groups, ours included. It seems everyone has a different vision of what these lands should deliver.

The current statute invites controversy. It encourages polarization of viewpoints by using such nebulous language as, "other worthy objects helpful to the well-being of this state." Further, as Representative Curtiss conclusively pointed out, the current statute--if interpreted in the manner preferred by opponents to this bill--is clearly unconstitutional and violates the intent of the Enabling Act.

In fact, as you listen to the opponents of this bill, I encourage you to refer back to the case law citations Rep. Curtiss provided. When an opponent says that state trust lands should provide recreational opportunity which is hindered by timber harvesting or cattle grazing, refer to the case law and ask that individual if he/she is willing to compensate the trust with full, fair market value. Some opponents to this bill will probably balk if you ask them if recreational access should be sold at competitive bid like timber is.

The truth is, the things opponents to this bill say they want--wildlife habitat, quality fisheries, recreational experiences--are not mutually exclusive with resource development. The best hunting in Montana is on private lands which are managed primarily for resource production.

The members I represent are not faceless corporations. Many are third generation Montanans who employ dozens of neighbors in a family owned sawmill, not unlike a family farm. They have watched our federal lands, under a multiple use mandate, literally become off limits to anything not politically correct to environmental advocates.

Last week when I testified before this committee on behalf of a U.S. Forest Service Museum in Missoula, I had to choke back the urge to inquire if the first artifact on display would be a timber sale contract.

We're asking you, as the ultimate trustee of these lands, to stay focused on the objective so they don't meet the same fate as our federal lands. Last week, an Idaho District Court issued an injunction against all timber sales, grazing activities, and mining in the Payette, Boise, Nez Perce, Salmon, Sawtooth, and Challis National Forests. The court was interpreting federal statutes applicable to national forest management.

Just to convey the gravity of the situation, I'd like to quote excerpts from the letter written to forest supervisors, explaining the decision:

"In order to respond to the District Court of Idaho injunction, you should immediately commence the following actions to comply with the Court's order: 1) Suspend all timber sales. Contracting officers should suspend all timber sale operations. they should permit no activities which would involve felling, yarding, loading, road construction, or hauling within affected watersheds. 2) Suspend all livestock grazing; 3) Suspend all roadbuilding; 4) Suspend all mining activities. You will notify all permittees, contractors, and operators, through certified letter, of the Court's injunction and Forest Service suspension of activities in accordance with the injunction. By January 25, 1995, (that's today folks) report to me of the specific steps taken to carry out the suspension of the identified activities."j

Signed, David Jolly, Region 1 Forester, Dale Bosworth, Region 4 Forester.

Members of the committee, what is to prevent that type of injunction on state lands? Especially with vague statutes? The organization which has sued DSL over several timber sales is also petitioning to list the bull trout under the endangered species act. A representative of that group testified last week against HB 201. Yesterday, we learned that same group has filed a lawsuit against the Flathead National Forest similar to the one which just shut down six national forests in Idaho.

All we're asking is that you not let our state trust lands fall prey to the same legal maneuvering as federal lands have succumbed to. We urge a do pass recommendation on HB 263.

EXHIBIT 4
DATE 1-25-95
HB 274

HB 274

Introductory Comments of Rep. Wagner

Mr. Chairman, members of the committee, for the record, my name is Doug Wagner, House District 83. I am introducing this bill to assist the Department of State Lands in managing its numerous tracts of landlocked trust lands for optimum revenue to beneficiaries of those lands.

Particularly in Central Montana, the state owns many tracts of land which are totally surrounded by private lands, and are typically leased to ranchers for livestock grazing. Many of these tracts also have significant stands of timber. You will recall Rep. Ellis referring to tracts of trust land within his ranching operation.

In some cases, this timber was not considered merchantable, or at least not highly desirable, so the Department didn't worry about it. However, with today's high timber prices, those isolated stands have become a valuable commodity. This bill is designed to provide some flexibility for the Department to manage those landlocked sections which require easement across private lands.

The bill allows a private timber company to negotiate a timber sale with the state when the company is already operating on the adjacent private land. In many cases, the private landowner is willing to give the company access as long as crews are operating on his private land anyway. He has a contract which includes provisions for damages, accountability and so on. He may not be willing to grant access at some future date to a company he has never dealt with.

Current regulations require a full environmental review with public comment, and then a competitive bid for the timber. The timeframe for the analysis often precludes access being granted, and the landowner may only be willing to grant access to the operator currently on his own property. Thus, the Department is hamstrung in its ability to manage the section.

I think it should also be pointed out that quite often, the value of standing timber on these sections is significantly higher than the grazing value, which is the classified use of the land. Record high timber values can mean that harvesting a very small acreage can result in more revenue to the trust than 10 years of grazing fees on the entire tract.

Constitutionally, we are obligated to secure the full measure of value from these lands. This bill gives the Department the necessary tools to adequately manage these lands. Mr. Chairman, I urge a do pass recommendation, and reserve the right to close.

EXHIBIT 5
DATE 1-25-95
HB 274

HB 274

NATURAL RESOURCES COMMITTEE

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, GOOD AFTERNOON. I RISE BEFORE YOU TODAY IN SUPPORT OF HB-274.

MY NAME IS ED REGAN. I AM A PROFESSIONAL FORESTER WHO HAS BEEN EMPLOYED WITH MONTANA'S FOREST PRODUCTS INDUSTRY GOING ON 17 YEARS. IN ADDITION TO MY REGULAR EMPLOYMENT, I AM CURRENTLY SERVING AS TRUSTEE FOR THE TOWNSEND SCHOOL DISTRICT.

IN MY OPINION THIS BILL NOT ONLY GIVES THE DEPARTMENT OF STATE LANDS FLEXIBILITY NEEDED TO HARVEST TIMBER ON LAND LOCKED SECTIONS, IT WILL ALSO BRING IN MORE MONEY FOR THE SCHOOL TRUST. SERVING AS A SCHOOL TRUSTEE HAS OPENED MY EYES TO THE FACT THAT OUR SCHOOLS ARE FACING DECLINING SUPPORT FROM BOTH STATE AND FEDERAL SOURCES. HARVESTING TIMBER FROM TRUST LANDS SEEMS TO BE A REASONABLE SOLUTION TO HELP OFFSET THIS DECLINING REVENUE. ADDITIONALLY, THESE RESOURCES ARE NEEDED TO KEEP LOCAL MILLS RUNNING AND MONTANANS WORKING.

THROUGHOUT MY CAREER I HAVE WORKED WITH HUNDREDS OF PRIVATE LANDOWNERS AND MANY OF THE PEOPLE FROM THE DSL. BASED ON MY PERSONAL EXPERIENCE, I WISH TO RELATE A COUPLE OF EXAMPLES WHERE HAVING A LAW SUCH AS HB-274 MIGHT HAVE FACILITATED THE SALE OF MORE TIMBER AND YIELDED ADDITIONAL DOLLARS FOR THE TRUST.

My first example occurred in 1991 on Section 36, T7N R24E, Musselshell County. Our company had the timber contract on the Hougardy ranch, which surrounded this school section. The landowner agreed to

give Brand-S free access to the State timber. We negotiated a small green slip sale with the DSL for the purchase of 70 mbf of sawlogs. Had the department not been constrained by the 100 mbf statutory limit, they could have harvested another 300 mbf from this section. Based on today's market that additional volume would have brought in anywhere from \$30,000 to \$60,000. Grant it, timber prices at that time were much lower, nevertheless these types of situations will continue to confront us in the future.

A similar problem occurred in 1986 on school section 36, T6N R23E, located in Golden Valley county. DSL was contacted by Spring Creek Forest Products, of Judith Gap, wherein the company expressed an interest in purchasing the timber on that section. At the time Spring Creek was under contract with Verrn Ballard for the harvest rights on his lands. Mr. Ballard agreed to allow the company free access to remove the timber from the school section. Ballard surrounded the section on three sides. Subsequently, DSL cruised and prepared what looked like a very good sale. Because the volume designated for harvest exceeded the 100 mbf limit, DSL was required to advertise on the open market. Mr. Ballard was concerned about opening his lands to operators whom he did not know or would not have any contractual control over. The sale was delayed while DSL tried to prove a public access across one of Mr. Ballard's neighbors. Failing to secure open access, DSL was forced to negotiate with Ballard. During this time Spring Creek finished logging the Ballard property and had moved out of the area. The school timber was finally sold and logged. I visited with Mr. Ballard the other night and asked him if he had any problems resulting from that sale. He did say that "the parties who logged it were always leaving the gates open and after the fall roundup he was short eight cow/calf pairs of which only six pair were ever recovered." In the final analysis, both Ballard and I agree that this sort of problem could have been prevented had the timber been sold to Spring Creek. Our rationale stemmed from the fact that Spring Creek had a contractual relationship with Ballard which made the company directly accountable to him for any problems resulting from the timber harvest.

OVER THE LAST 10 YEARS I'VE ENCOUNTERED SIMILAR PROBLEMS IN PARK, CHOUTEAU, AND GOLDEN VALLEY COUNTIES. IN ALL CASES DSL HAS DONE ITS JOB PROFESSIONALLY AND BY THE BOOK. HOWEVER, HAD THE DEPARTMENT BEEN ALLOWED MORE FLEXIBILITY UNDER THE LAW, I'M CONFIDENT THAT THEY COULD HAVE SOLD ADDITIONAL TIMBER AT FAIR MARKET PRICES AND IN AN ENVIRONMENTALLY SOUND MANNER.

EXHIBIT 5
DATE 1-25-95
HB 274

FOR THESE REASONS AND THE LIKELYHOOD OF SIMILIAR SITUTATIONS IN
YEARS TO COME, I STRONGLY SUPPORT HB-274 AND I URGE YOUR SUPPORT OF
THE MEASURE. THANK YOU FOR THE OPPORTUNITY TO COMMENT.

ED REGAN
129 N. CHERRY
TOWNSEND, MONTANA 59644

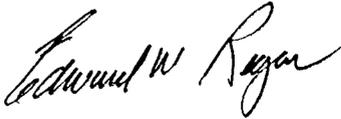


EXHIBIT 6
DATE 1-25-95
HB 274

Friends of the Wild Swan
P.O. Box 5103
Swan Lake, Montana 59911

Montana House Representative Dick Knox, Chairman
House Natural Resources Committee
State Capitol
Helena, Montana

January 25, 1995

Dear Chairman Knox:

On behalf of Friends of the Wild Swan, a non-profit conservation group based in Swan Lake, please accept the following comments on House Bill 274. On its face, H.B. 274 is a bill that caters to large corporate landholders, not the school children of Montana. We oppose H.B. 274.

These are **our** state forests. Squandering our children's natural forest inheritance for short-term corporate profit makes no sense. H.B. 274 establishes bad public policy that sets a dangerous anti-environmental precedent in this legislative body.

H.B. 274 is a thinly-veiled attempt to give huge corporate lumber and pulp producers public resources at less than fair market value, at less than the cost of production — at taxpayer expense.

Section 3(a) refers to "cases of emergency due to fire, insect, fungus, parasite, or blowdown or in cases when the department is required to act immediately to take advantage of a limited access opportunity..." "Emergency" must be clearly defined to eliminate abusive discretion, especially if a 50 million board feet annual cut mandate is inacted (See H.R. 201) prior to a completed state-wide forest inventory and study.

Section 3(b) gives non-competitive, negotiated prices and exclusive rights to corporate landowners. This section is a welfare clause for Montana's richest corporations. Do not be cowed by their political power. There are more appropriate alternatives to consider when access problems are identified as the limiting factor to sound timber management.

Section 3(c) is a full exemption from the environmental analysis and disclosure requirements of the Montana Environmental Policy Act (MEPA). This section also violates the statutory requirements of the Enabling Act and Montana's Constitution. This is a return to the days of clearcut and environmental ruin of the 1960's. Lost is the scientific and economic knowledge of the past 20 years. Lost is any shred of credibility in Department of State Lands' (DSL) ongoing effort to produce a state-wide forest plan

and Environmental Impact Statement (EIS). And of course, corporate welfare produces net annual losses to the School Trust. This is literally a corporate give-away. Why is this committee attacking the laws that protect Montana's environment?

Commercially-sustainable yields of wood fiber should be based on site suitability standards utilizing the following criteria:

- minimum annual cubic feet per acre yield standards
- long-term economic benefit/cost analysis that includes non-cash value costs
- threshold standards for native fish and wildlife habitat
- soil and nutrient capability
- water quality standards
- minimum old-growth habitat retention standard
- regeneration capability

H.B. 274 violates the public trust. The Republican Party's approach, in this committee, to environmental laws and protection of Montana's fish and wildlife habitat is out of touch with the public's desires. You were not elected suck-up to corporate interests, or to destroy bull trout or elk habitat. That's exactly what you're about if you mandate this kind of irresponsible, unsustainable logging that raped Montana's corporate forests. They ruined their forests, now they want ours. Do not give in to corporate power and avarice.

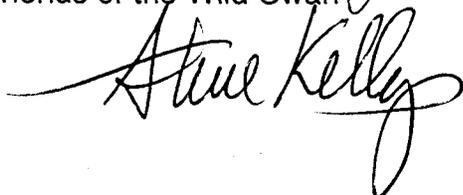
H.B. 274, and H.B. 201(Passed House Natural Resources Committee 12-6), its corporate companion, represent bills that cannot produce the kind of "balance" Chairman Knox promised the public before this legislative session convened. H.B. 274 is fiscally unsound and environmentally destructive. It will seriously damage the public's trust in the Legislature and DSL. You are creating a huge credibility problem.

Thank you for the opportunity to testify in opposition to H.B.274.

Sincerely,



Steve Kelly
Friends of the Wild Swan



HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. HB 274
 DATE 1-25-95 SPONSOR(S) Rep. Wagner

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Steve Kelly	Friends of the Wild Swan	274	X	
Ed REGAN	TOWNSEND- self	274		X
Steve Craig	Carter, self	274		X
Cary Hegreberg	MT Wood Prod. Assoc.	274		X
Don Allen	MWOP	274		✓
Juni Foster	MREA + SAM	274		X
Loran Frazier	Stan			X
DARON DWAN	R-Y Timber	274		X
Stan Frazier	MWF		X	
Janet Ellis	MT Audubon	274	X	
HEITH OLSON	MT. LOGGING ASSN			✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. HB 263
 DATE 1-25-95 SPONSOR(S) Rep. Curtis

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Ed REGAN	TOWNSEND - self			X
John Hobbes	Sealey Lake Elen			X
Cary Hegreberg	MT wood Prod. Assoc.			X
Don Allen	MWPA			✓
Steve Kelly	Friends of the Wild Swan		X	
Loran FRAZIER	S Am			X
KEITH OLSON	MT. LOGGING ACSN			✓
Casden Torgerson	MT. Cattlemen Assn			X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.