

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
February 20, 1981

The meeting of the House Judiciary Committee was called to order at 8:00 a.m. in Room 437 of the Capitol by Chairman Kerry Keyser. All members were present. Jim Lear, Legislative Council, was present.

HOUSE BILL 803 REP. BRAND, chief sponsor stated this bill's purpose is to change the definition of "peace officer" to include persons who are responsible for the care or custody of a prisoner. This will change the law when an inmate hits a prison guard it will be considered a felony instead of a misdemeanor. There seems to be no end to the violence inflicted upon the prison guards from inmates.

THOMAS SCHNIDER, MPEA, supports the bill. An attack on a prison guard was changed from felony to misdemeanor charge a few years ago. This will change it back. EXHIBIT 1 was given.

MIKE MORRIS, Montana State Prison, supported the bill. The situation is getting out of hand. Every time a man is sentenced he can appeal it many times. This situation is troublesome throughout the United States. It is very important to pass this bill. Inmates are allowed to get away with anything. There is a turnover rate of 60% every year at the prison because of the conditions. The backing is needed from the state.

SERGEANT RORNMOUS, Montana State Prison, stated today most prisoners are serving 100 years under no parole or furlough. The crime situation has changed. Several years ago 75% of the crimes of prisoners were money or nonviolent crimes and 25% were violent crimes. Today that situation is reversed. This situation happens at an alarming rate. Recently one guard was shot with a homemade dart. The prisoner received 6 months which was suspended. A prison guard is no different than a peace officer. They are working with known felons. The same basic training is received and federal and state laws have to be observed by the guard.

There were no opponents.

In closing the sponsor felt this is a serious problem. There are more heart attacks and mental problems of these guards all the time.

REP. TEAGUE asked if there was a possibility this could go the opposite way. It was possible it could happen. If a prison guard hits a prisoner he could be suspended. A guard is not likely to cause trouble when he is outnumbered 620 to 1.

FRANK WELCH told the committee the guards are governed by state laws. If they overstep those boundaries they are subject to rules. They might end up being an inmate themselves if they are not careful.

REP. KEYSER stated the bill should define that the types of arrest should be in the prison area only. The sponsor agreed.

REP. CONN asked if there would be a change in pay scale. The answer was no. It was noted this bill would affect the jailors throughout the state and should be amended.

HOUSE BILL 799 REP. KEEDY, sponsor, stated this bill is to generally revise the law with respect to eminent domain. This bill will help preserve the family farming operations. Rapid industry and the development of natural resources deteriorates the land. The problem is the public use for which eminent domain may be imposed are set forth on page 1, line 22. Landowners whose land is condemned still pay taxes on the land, and therefore, lose sections of the property that are valuable. This bill is not intended as an assault against economic development, but they should not proceed at the expense of the landowner. The family farm will continue as the backbone of the state long after the natural resources are gone. We have an obligation to future generations. The land has become a rural effect waiting to become an urban effect.

DAN KEMMIS supported this bill. In Montana a private company can acquire eminent domain by filling out a form and mailing it. They have the power of the state, which is to take land. The state has loaned that power to certain entities. Any time it is done it should be done in such a way the citizens have the right. This bill will redirect that balance in a moderate way.

MILES KEOGH, Rancher, felt the present law was not fair. There is no recourse available. KEOGH stated he should not have the right to take over a neighboring ranch because he does not feel the land is used to its best capacity. Therefore, companies should not take over the landowner's land. KEOGH gave EXHIBIT 2.

JAN RAPPE, Northern Tier Information Committee, supports this bill. EXHIBIT 3 was his written testimony.

SHERILL HENDERSON of Sidney stated there are two pipelines across his property. They tried to get the company to move the pipelines but the company refused. Problems have resulted.

CATHY J. DONOHOE supports the bill. EXHIBIT 4.

DAVID ADKISSON supports the bill. EXHIBIT 5.

CHRIS SIEGLER, Valleys Preservation Council, supports the bill. EXHIBIT 6.

ANN SCOTT, Montana Farmers Union, stated the eminent domain laws are archaic and the law should be changed.

ROBERT WILSON, Rancher, supports the bill. EXHIBIT 6a.

DEAN HARMON, Rancher, supports the bill. EXHIBIT 7.

RUTH NYQUIST, Ranchwife, supports this bill. EXHIBIT 8.

DENNIS NATHIE supports the bill. The little guy will have to pay taxes on the property even though it is used by the company.

STEVE DOHERTY, NPRC, agrees with the landowners. The state should deal with property rights.

DALE SAILER owns property for the purpose to subdivide. He has been recently informed a company will claim eminent domain on part of the property which will defeat the subdivision of the property. SAILER was shocked at the evidence on eminent domain in Okalahoma. He does not want Montana to end up in that shape.

LEE ROMO supports the bill.

LARRY TVEIT, supports the bill and annual rental. The one payment is an undue process.

HANNEKE IPBSCH supports the bill. EXHIBIT 9.

EXHIBITS 10, 11, and 12 were given in support of the bill.

There were no further proponents.

BILL HAND, Montana Mining Association, stated he does not like page 3, lines 1-18 or lines 24-25. Mining organizations cannot transport mine tailings large distances; therefore, he is opposed to the bill.

MIKE ZIMMERMAN, Montana Power, was opposed to the bill. He objects to section 1 of the bill which land can be condemned for reservoirs. Policies of state and federal law indicates any use you can make should be encouraged. Section 4 has factors before eminent domain can be exercised. It would require years obtaining a permit. In the long run it will cost more money. Subsection 4 states public service commission does not have the authority to authorize this. This does not add anything to the law. Requiring the company who condemns the land to administer weed control is not appropriate. As part of the settlement the landowner should do this.

GEORGE BENNETT, Mountain Bell and Montana-Dakota Utilities, stated without eminent domain communication services would not have grown. His concern was sections 4 and 5 of the bill. It would require all

permits be obtained before a project can be started. BENNETT stated there is a bill in the senate allowing pipelines in the Major Facility Siting Act. Mountain Bell uses eminent domain rarely. Annual rental will cause problems. Utility companies will be forced to keep track of the changing of landownership. BENNETT urges do not pass.

JIM BECK, Department of Highways, was opposed to the bill. EXHIBIT 13.

JAMES D. MOCKLER, Montana Coal Council, was opposed to the bill. If the public's interest and best use is the principle of eminent domain, companies should be able to use the land like the federal government does. MOCKLER was opposed to the permit section of the bill. Many permits will not be issued until the process has been started or completed.

KARLA GRAY, Atlantic Richfield Company, was opposed to the bill.

DON ALLEN, Montana Petroleum Association, was opposed to the bill. ALLEN stated on most land where this has happened the crops regrow. ALLEN hopes the committee will not support the bill on the illusion it will prevent activity as in Oklahoma. Current laws prevent that from ever happening again. To say this bill will effect that is not true.

BILL STERNHAGEN, Northwest Mining Association, urged the committee do not pass.

PAT WILSON, Montco, was in opposition to the bill. Obtaining of permits should run concurrent. Her company will spend 24 months waiting for a permit, 365 days for a water permit, 185 days for an air quality permit. There is a big time lag involved. Construction cannot be started until the permits are received. When the company is asked to come into the state, they are willing to go through the processes; but they should be able to do it concurrently. The land is being used at the highest investment. Who can really decide what is the best use of the land. Coal companies will have one concern and the agriculture communities will have another. What this bill really does is place another roadblock in the way.

STEVE ELLIOT, Werco Resources, Inc., stated his company does not enjoy using the power of eminent domain. He has talked to homeowners concerning the taking of their land and they are not happy about it. Montana is going to mine its coal. It has also been said the state will not be the boiler room for the processing of the coal. It must be shipped out of the state. That leaves the railroad to do the shipping. In some cases you never come up with the money that would satisfy the landowner; that is the

reason for eminent domain. The landowner wants six cents more than the company has.

There were no further opponents.

In closing, REP. KEEDY stated the bill really comes down to the landowner versus the industries. If the landowners did have adequate control the proponents would not have been here to testify. The opponents do not want to have to wait for the permits. REP. KEEDY was more sympathetic with the needs of the landowner than the industries. This bill does not stop eminent domain but offers an alternative system.

REP. SHELDEN asked what percentage of power goes out of state. ZIMMERMAN replied it depends on high and low demand. The company owns 28% of the generation.

REP. HUENNEKENS asked WILSON about the highest and best use of the land. WILSON replied everyone has a different opinion of land use. What generally happens is it goes to court a number of times trying to get projects started.

REP. DAILY asked if the Atlantic Richfield Company supports section 5 of the bill. GRAY replied the company takes no position.

REP. DAILY asked when farm land is condemned does the landowner receive the fair market value. It was answered that consideration of future yields from the land are taken into account. There is usually a dispute between how much money and how long of a term. Currently Northern Border Pipeline pays 30 bushels for the first year, 20 bushels for the second year and 10 bushels for the third year. It is a moot question to ask how long it would take to renew the property.

EXECUTIVE SESSION

The House Judiciary Committee went into executive session at 10:30 a.m.

HOUSE BILL 678 This bill was approved by the committee at an earlier session. An amendment was needed to eliminate "first class" since second class city judges are elected also. REP. EUDAILY moved the amendment. The amendment pass unanimously. House Bill 678 passed as amended.

HOUSE BILL 689 REP. SEIFERT moved do pass. The motion carried unanimously.

HOUSE BILL 690 REP. KEEDY moved do pass. The motion carried unanimously.

HOUSE BILL 698 REP. MCLANE moved do pass.

REP. HANNAH moved to insert "civil" on page 4, line 25 following "constitutes" and to strike through line 2 on page 5 following "contempt". The motion passed unanimously.

REP. MCLANE moved do pass as amended. The motion carried unanimously.

HOUSE BILL 703 REP. EUDAILY moved do pass.

REP. HANNAH was against the motion. Children are in the middle of divorces. Problems will increase concerning remarriages. REP. CURTISS Agreed.

REP. HUENNEKENS stated if there had to be a divorce he would want the opportunity to continue to see and have contact with his children. REP. HANNAH agreed with that but was not comfortable with the bill.

REP. SEIFERT thought this would create more problems than it would solve. Joint custody will add to the problems.

REP. CONN thought it was a good bill since children and parents need each other when divorce occurs.

REP. MATSKO stated with joint custody a parent can take the child away from the other parent. Police officers cannot do anything since they both have custody. This bill could result in those types of problems.

REP. SHELDEN stated this bill gives the courts and the people involved a way to go.

REP. BENNETT made a motion to insert "with the consent of both parties" after "may" on line 16, page 3. The amendment resulted in a roll call vote. Those voting yes were: KEYSER, SEIFERT, BENNETT, CURTISS, IVERSON, ANDERSON, DAILY, HUENNEKENS, and TEAGUE. Those voting no were: CONN, EUDAILY, HANNAH, MATSKO, MCLANE, ABRAMS, SHELDEN and BROWN. The amendment passed 9 to 8.

REP. EUDAILY moved do pass as amended. The motion carried with SEIFERT, MCLANE, CURTISS and HANNAH voting no.

HOUSE BILL 644 REP. BROWN moved do pass.

REP. BROWN moved following "ACTIVITY" strike "UPON APPROVAL BY THE ELECTORS OF A COUNTY" in the title and on line 8. Also, on page 4, line 18 through line 8 on page 5 strike sections 4 through 6 in their entirety and renumber the subsequent section. The motion passed with CURTISS, CONN, HANNAH and MCLANE voting no.

REP. BROWN moved do pass as amended. The no votes were: CURTISS, CONN, MCLANE, MATSKO, HANNAH, ANDERSON and EUDAILY. The bill passed.

REP. BROWN moved to table the bill. The motion passed unanimously.

HOUSE BILL 538 REP. HUENNEKENS moved do pass.

REP. HUENNEKENS moved the amendments do pass. EXHIBIT 14.

LARRY WEINBERG, from the Department of Revenue, explained the amendments to the committee.

The amendments passed unanimously.

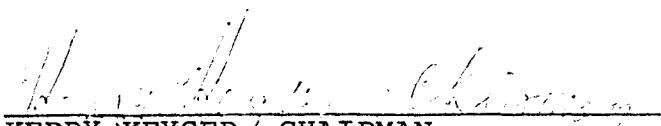
REP. HUENNEKENS moved do pass as amended. The motion passed 13 to 5. Those voting no were: MCLANE, CURTISS, SEIFERT, BENNETT, and HANNAH. REP. EUDAILY was absent during the vote.

HOUSE BILL 711 REP. HUENNEKENS moved do pass. The motion passed unanimously.

HOUSE BILL 729 REP. DAILY moved do pass.

A roll call vote resulted. Those voting yes were: CONN, EUDAILY, DAILY, ABRAMS, HUENNEKENS, SHELDEN, KEEDY, and TEAGUE. Those voting no were: KEYSER, SEIFERT, BENNETT, CURTISS, HANNAH, IVERSON, MATSKO, and MCLANE. The result was a tie vote. The committee chairman stated the bill would be held until all members were present to reconsider action.

The meeting adjourned at 11:50 a.m.


KERRY KEYSER, CHAIRMAN

mr

ASSAULT ON PRISON PERSONNEL

During the 46th Legislature (1979) an Act to revise the law relating to crimes was introduced as H.B. 6 and subsequently passed and signed.

Adoption of the new codes meant elimination of a law specific to any type of an assault on prison personnel. Prior to the implementation of the new codes, any type of minor physical or verbal assault on prison personnel constituted a felony and enabled prison authorities to add "time" to an inmate's incarceration if he was found guilty of the assault. The new codes apply the same criteria for determining the seriousness of an assault offense as is used for the general population. Simple assault is basically a misdemeanor punishable by a \$500 fine and/or six months. Causing bodily injury is only assault and a misdemeanor. One must cause serious bodily injury for the offense to be punishable as aggravated assault, which would carry a 2 to 20 year sentence.

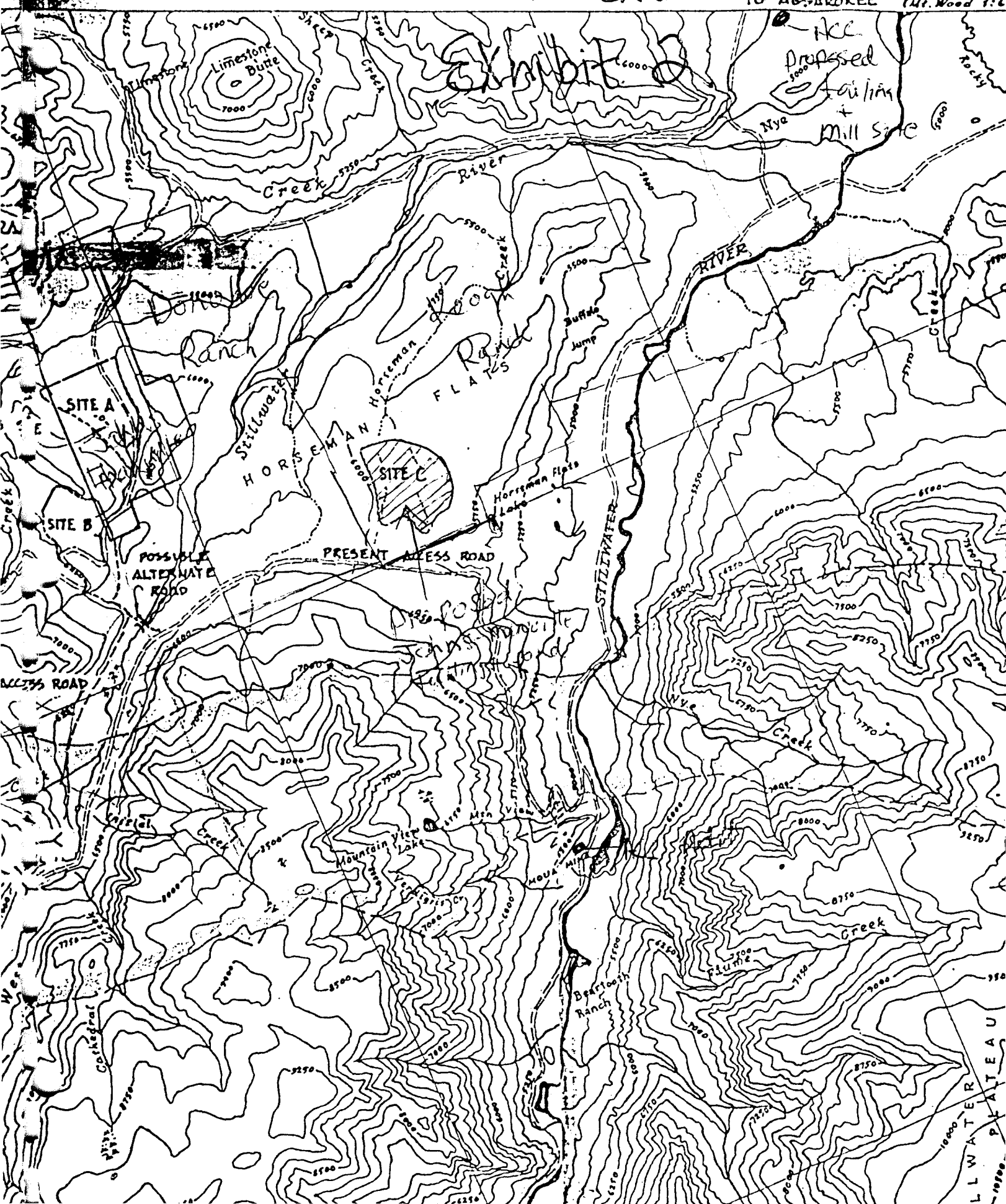
When one of the guards at MSP was recently assaulted, the administration took the case to the county attorney who concluded that since no serious bodily injury was inflicted it wasn't worth prosecuting. I believe the civil liberties of inmates gained is at the expense of control oriented security.

Other "language specific" which was eliminated may cause more serious problems. Two examples would be "participation in riots", and, "introduction of contraband". These remain to be tested.

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Exhibit 2

TO ABSAROOKEE (Mt. Wood 1:6



BEFORE THE HOUSE JUDICIARY COMMITTEE
REGARDING HB 799

TESTIMONY PRESENTED BY JAN RAPPE
FOR THE
NORTHERN TIER INFORMATION COMMITTEE
BOX 8166
MISSOULA MONTANA

FEBRUARY 20, 1981

Mr. Chairman, Committee members:

The Northern Tier Information Committee (the Committee) is a western Montana coalition of landowners concerned about the proposed Northern Tier pipeline. The Committee was organized in the spring of 1979 to study the project. Our goals have been two fold: To determine the positive and negative impacts of the proposed pipeline on the State of Montana and the nation as a whole; and second, if the pipeline is built to assist our fellow citizens in protecting their interests. The latter mandate brings us to Helena for the second time to offer comments on HB 799 which is designed to ammend sections of the Montana Codes dealing with eminent domain. It is our intention to review the implications of present eminent domain law as it pertains to pipelines since this is where our interests have primarily been.

THE GRANTING OF EMINENT DOMAIN

The power of eminent domain is the right assumed by the state to confiscate property for the "public good". Over the years the state has granted this power of eminent domain to private corporations and individuals in Montana. The state justifies this delegation of power under the assumption that when a private entity condemns land it does so to further the "public good". In reality confiscation of property by private entities will always be to further the "private good" or profit. It is curious how intent and reality are not always the same.

The power of eminent domain is awesome and should never be used without adequate safeguards to control abuse. This is not the case in Montana for many reasons. The most obvious is the ease by which eminent domain is granted to private corporations. For example any company or individual which submits a letter to the Montana Public Service Commission claiming it is a common carrier pipeline is automatically granted the power of eminent domain. There is no review to determine the need or justification, no matter how preposterous a proposal may be. The statute reads:

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

Section 69-13-104 MCA 1978

EMINENT DOMAIN, THE NORTHERN TIER PIPELINE AND PRIVATE LANDOWNERS

With regards to the construction and operation of the proposed Northern Tier pipeline it must be understood that the major impacted party will be the private landowner. As presently planned, of 631 miles of right-of-way through Montana, only 107 miles will cross public lands (75 miles federal and 32 miles state). The remaining 524 miles - more than 3/4 of the entire route - will cross private land.¹ In Montana private land can be condemned by the Northern Tier Pipeline Company (NTPC) since it claims it is a common carrier pipeline. As has been discussed there is no review of this automatic granting.

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

RIGHT-OF-WAY CONDITIONS ON PRIVATE LAND

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

On private land the NTPC has stated that it "will acquire a permanent right-of-way easement, 75 feet wide" and "will acquire a minimum of 15 additional feet" (emphasis added) for construction.² Compensation for land taken and for other damages will be made in lump sum payments.³ Despite assurances to the contrary

the NTPC is demanding a right-of-way easement in perpetuity.⁴ The NTPC's proposed easement agreement which was included in an information booklet for Minnesota landowners is attached as Exhibit "A".

RIGHT-OF-WAY CONDITIONS ON FEDERAL LAND

In comparison, on federal land the NTPC has been granted a right-of-way of only 50 feet plus the width of the pipe. The duration of the right-of-way grant is good for only 30 years. Compensation for the use of the easement is in the form of annual rents which are adjustable.⁵ To be specific:

"The rental for each year shall be subject to adjustments from time-to time to reflect current fair market value."

Right-of-Way Grant #M-36936 4/21/80

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

THE GRANTING OF EMINENT DOMAIN IN OTHER STATES

Research has shown that when granting the power of eminent domain many states assume much more responsibility then presently practiced by the State of Montana. For example, the Iowa State Commerce Commission first holds hearings to determine the justification for a project before granting eminent domain to common carrier pipelines. The commission has the option of regulating pipeline construction, operation and maintenance. The company must hold hearings in each county where property rights will be affected at least 30 days before applying for a permit from the Commission. Each affected landowner must receive notification by certified mail. Before granting a permit the Commission must consider - among other things - the inconvenience and undue injury which would likely result to property owners. If construction permits are granted any county board of supervisors can request independent construction inspection within the county. These inspectors

can require immediate correction of improper construction procedures.⁷

Many other states such as North Dakota, South Dakota, Maryland, Kansas, Wisconsin and Colorado have also formulated laws which insure that affected property owners are treated fairly and that pipelines are properly constructed.

EMINENT DOMAIN AND HB 799

As has been shown the present archaic eminent domain laws in Montana do not provide adequate safeguards against abuse. The rights and property of private landowners will continue to be violated. This is intolerable. The law must be changed. For these reasons we strongly endorse HB 799 since it provides for annual payments for right-of-way easements, it mandates that condemnation cannot take place until all government permits have been granted, and most important it requires that the PSC make an affirmative determination that the granting of eminent domain serves the public necessity. This is an excellent beginning.

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

In summary, if the State of Montana continues to allow confiscation of private property by private corporations through the use of eminent domain; and if the state assumes very little authority over what happens on private land since large diameter pipelines have been exempted from the Major Facility Siting Act - then the State must give the the private landowner the tools to take on that responsibility themselves. It is not appropriate that private companies who are accountable to no one have unchecked powers over private land. Reforming the present eminent domain laws, such as HB 799 would allow the private landowner to exercise some control over his or her destiny.

Thank you

REFERENCES

1. Bureau of Land Management 8/15/79
Final Environmental Statement
Crude Oil Transportation Systems
Table 1.2-4 Page 1-11
2. Northern Tier Pipeline Company 1979
Landowner Information Brochure
Pages 3-4
3. Ibid
4. Northern Tier Pipeline Company 2/80
YOU AND THE PIPELINE - Information for
Minnesota Landowners about the Northern
Tier Pipeline Project.
Right-of-Way and Easement Agreement. Exhibit V-A
5. Department of the Interior 4/21/80
Right-Of-Way Grant # M-36936
Pages 1,2
6. Ibid Pages 2,3,5,9
7. Iowa State Commerce Commission 8/5/80
Correspondence and Regulation of Carriers,
Chapter 479, Code of Iowa 1979.

EXHIBIT "B"

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

RIGHT-OF-WAY GRANT

Serial Number: M-36936

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

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

NATURE OF GRANT

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

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

WIDTH OF RIGHT-OF-WAY

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

DURATION OF GRANT

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

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

RENTAL

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

EXHIBITS: INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

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

- A. Stipulations for the Grant of RIGHT-OF-WAY for the PIPELINE, attached hereto as Exhibit A, and referred to in this Grant as the "Stipulations."
- B. Alignment maps and site location drawings identifying the route of the PIPELINE, attached hereto as Exhibit B.

COST REIMBURSEMENT

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

LIABILITY

GRANTEE shall be liable for damage or injury to the United States and third parties to the extent provided by Section 29(x) of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. Sec. 185(x); 43 CFR Sec. 2883.1-4. GRANTEE shall be held to a standard of strict liability for damage or injury to the United States resulting from the following activities occurring in the RIGHT-OF-WAY in connection with construction, operation, maintenance or termination of the PIPELINE: welding and open fires; pumping or carriage of OIL through the PIPELINE; and carriage, storage, or use of hazardous, highly flammable, or explosive substances. The maximum

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

INDEMNIFICATION

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

BONDING

- A. Immediately upon issuance of this Grant, GRANTEE shall furnish the United States a surety bond, of such type and on such terms and conditions as are acceptable to the AUTHORIZED OFFICER, in the principal amount of one hundred and fifty thousand dollars (\$150,000.00). Said bond shall be maintained in force and effect in the full principal amount at all times during construction, operation, maintenance, and termination of the PIPELINE and until released in writing by the AUTHORIZED OFFICER.
- B. Said bond shall be security for payment of all sums owing to the United States at any time by reason of this Grant or application therefor, including but not limited to timely payment of rent to the United States and reimbursement of costs heretofore or hereafter incurred by the United States pursuant to Section 28 of the Mineral Leasing Act, 30 U.S.C. Sec. 185. The bond shall also be security for payment to the United States of any expenses or monetary damages of the United States, arising from: GRANTEE's activities pursuant to this Grant or in connection with construction, operation, maintenance or termination of the pipeline project which is in part the subject of this Grant, any breach by GRANTEE of any term or condition of this Grant, including any term or condition of this Grant that imposes an obligation upon GRANTEE to pay, reimburse, hold harmless, or indemnify the United States.
- C. These bonding requirements are in addition to, and are not intended to affect, all other requirements of law, nor are they intended to limit in any way GRANTEE's liability under any provision of law.

RIGHT OF UNITED STATES TO PERFORM

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


LIENS

- A. GRANTEE shall, with reasonable diligence, discharge any lien against FEDERAL LANDS that results from any failure or refusal on its part to pay or satisfy any judgment or obligation that arises out of or is connected in any way with the construction, operation, maintenance or termination of all or any part of the PIPELINE.
- B. The foregoing provision shall not be construed to constitute the consent of the United States to the creation of any lien against FEDERAL LANDS or to be in derogation of any prohibition or limitation with respect to such liens that may now or hereafter exist.

RELEASE OF RIGHT-OF-WAY

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

RIGHTS OF THIRD PARTIES

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

EQUAL OPPORTUNITY

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

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

COVENANTS INDEPENDENT

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

PARTIAL INVALIDITY

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

WAIVER NOT CONTINUING

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

UNFORESEEN CONDITIONS

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

SECTION HEADINGS

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

AUTHORITY TO RECEIVE GRANT

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

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

COMPLIANCE

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

EFFECTIVE DATE

This Grant shall be effective upon its execution.

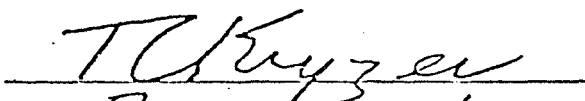
IN WITNESS WHEREOF,
the parties hereto have duly executed this agreement.

UNITED STATES OF AMERICA


Secretary of the Interior

4-21-80
Date

NORTHERN TIER PIPELINE COMPANY


President

4-21-80
Date

Certified to be a true
copy of the original

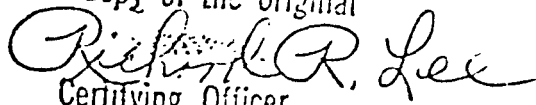

Certifying Officer

EXHIBIT A

STIPULATIONS

A. GENERAL

A-1. DEFINITIONS

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

- A. "DEPARTMENT" means the Department of the Interior.
- B. "SECRETARY" means the Secretary of the Interior.
- C. "AUTHORIZED OFFICER" means the State Director, Montana, Bureau of Land Management, or a person delegated to exercise his authority with respect to this Grant.
- D. "GRANTEE" means Northern Tier Pipeline Company, a Delaware corporation, its successors or assigns.
- E. "FEDERAL LANDS" means all lands owned by the United States, except lands in the National Park System, lands held in trust for an Indian or Indian tribe, and lands on the Outer Continental Shelf.
- F. "PIPELINE" means the line of pipe and RELATED FACILITIES on FEDERAL LANDS used for transportation of OIL.
- G. "RELATED FACILITIES" means those structures, devices, improvements, and sites; the substantially continuous use of which is necessary for the operation or maintenance of the PIPELINE, which are located on FEDERAL LANDS and which are authorized under Section 28 of the Mineral Leasing Act and defined in 43 C.F.R. Sec. 2880.0-5(k).
- H. "OIL" means crude oil, liquid hydrocarbons, synthetic liquid fuels, or any refined product produced therefrom.
- I. "RIGHT-OF-WAY" means the FEDERAL LANDS authorized to be occupied pursuant to this Grant.
- J. "NOTICE TO PROCEED" means an authorization to initiate PIPELINE construction issued pursuant to Stipulation A-4.
- K. "LOGIC DIAGRAM NETWORK" is a system that is used to sequence events that occur at given periods of time during construction to complete a portion of the PIPELINE within a certain length of time.

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

what is
meant by
"mode"?

A-2. RESPONSIBILITIES

- A. Except where the approval of the AUTHORIZED OFFICER is required before GRANTEE may commence a particular operation, neither the United States nor any of its agents or employees agrees, or is in any way obligated, to examine or review any plan, design, specification, or other document which may be filed with the AUTHORIZED OFFICER by GRANTEE pursuant to these Stipulations.
- B. The absence of any comment by the AUTHORIZED OFFICER or any other employee of the United States with respect to any plan, design, specification, or other document which may be filed by GRANTEE with the AUTHORIZED OFFICER shall not be deemed to represent in any way whatever any assent to, approval of, or concurrence in such plan, design, specification, or other document, or of any action proposed therein.
- C. With regard to the construction, operation, maintenance, and termination of the PIPELINE: (1) GRANTEE shall ensure full compliance with the terms and conditions of this Grant, including these Stipulations, by its agents, employees and contractors (including subcontractors at any level), and the employees of each of them. (2) Unless clearly inapplicable, the requirements and prohibitions imposed upon GRANTEE by said Stipulations are also imposed upon GRANTEE's agents, employees, contractors, subcontractors, and the employees of each of them. (3) Failure or refusal of GRANTEE's agents, employees, contractors, subcontractors, or their employees to comply with said Stipulations shall be deemed to be the failure or refusal of GRANTEE. (4) Where appropriate, GRANTEE shall require its agents, contractors and subcontractors to include said Stipulations in all contracts and subcontracts which are entered into by any of them, together with a provision that the other contracting party, together with its agents, employees, contractors, and subcontractors, and the employees of each of them, shall likewise be bound to comply with said Stipulations.

- D. Prior to beginning construction, GRANTEE shall designate an employee who shall be empowered on behalf of GRANTEE to communicate with, and to receive and comply with, all communications and orders of the AUTHORIZED OFFICER. GRANTEE shall also designate field representatives who shall be authorized, and at all times be available, to communicate and cooperate with field representatives of the AUTHORIZED OFFICER. GRANTEE shall keep the AUTHORIZED OFFICER informed of any change of GRANTEE's representatives during the construction, operation, maintenance, and termination of the PIPELINE.
- E. (1) GRANTEE shall abate any condition existing with respect to the construction, operation, maintenance, or termination of the PIPELINE that causes or threatens to cause serious and irreparable harm or damage to any person, structure, property, land, fish and wildlife and their habitats, or other resource.
- (2) Any structure, property, land, fish and wildlife habitat or other similar resource harmed or damaged by GRANTEE in connection with the construction, operation, maintenance or termination of the PIPELINE shall be reconstructed, repaired, and rehabilitated by GRANTEE to the written satisfaction of and within the time specified by the AUTHORIZED OFFICER.
- damage repaired* →

A-3. ORDERS OF THE AUTHORIZED OFFICER

- A. The AUTHORIZED OFFICER may call upon GRANTEE at any time to furnish any or all data related to construction, operation, maintenance, and termination activities undertaken in connection with the PIPELINE.
- modification* → B. The AUTHORIZED OFFICER may require GRANTEE to make modification of the PIPELINE, without liability or expense to the United States, as he deems necessary to protect or maintain stability of foundation and other earth materials, protect or maintain integrity of the PIPELINE, control or prevent significant damage to the environment (including, but not limited to, fish and wildlife populations or their habitats), or remove hazards to public health and safety.
- top work* C. The AUTHORIZED OFFICER at any time may issue a written decision suspending any activity of GRANTEE in connection with the PIPELINE, including the transportation of OIL, which in the judgment of the AUTHORIZED OFFICER immediately threatens serious or irreparable harm to life (including wildlife and aquatic life), property, or the environment. GRANTEE shall not resume such suspended activities until given permission to do so by the AUTHORIZED OFFICER. If such permission is given orally, it shall be confirmed in writing as soon thereafter as possible.

- Approved*
- D. (1) GRANTEE shall be entitled to an expedited appeal to the SECRETARY from any temporary suspension order, or order denying resumption of suspended activities (except any refusal to issue a NOTICE TO PROCEED or the issuance of a NOTICE TO PROCEED that may not be substantially in accord with the application therefor), issued by the AUTHORIZED OFFICER and that suspends, or denies resumption of, the following: (a) operation of the entire PIPELINE; (b) transportation of OIL through the PIPELINE; or (c) activities of an entire construction spread.
- (2) The SECRETARY shall render a decision so as to dispose of the expedited appeal within the shortest possible time and in all events within seven (7) days of the date of filing of the documents required to perfect an appeal. If the SECRETARY does not render a decision within such time, the appeal may be deemed by GRANTEE to have been denied by the SECRETARY, and such denial shall constitute the final administrative decision of the DEPARTMENT.
- E. Any decisions or approvals of the AUTHORIZED OFFICER which are required by these Stipulations to be in writing may in emergencies be issued orally, with subsequent confirmation in writing as soon thereafter as possible.

A-4. NOTICES TO PROCEED

- Written authorization to proceed.*
- A. GRANTEE shall not initiate any construction of the PIPELINE on FEDERAL LANDS pursuant to this Grant without the prior written authorization of the AUTHORIZED OFFICER. Such authorization shall be given solely by means of a written NOTICE TO PROCEED issued by the AUTHORIZED OFFICER. Any NOTICE TO PROCEED shall authorize construction only as therein expressly stated.
- NTP when in compliance →*
- B. The AUTHORIZED OFFICER shall issue a NOTICE TO PROCEED, subject to such terms and conditions as he deems necessary, when in his judgment the design, construction, use, and operation proposals are in conformity with the terms and conditions of these Stipulations.
- C. The AUTHORIZED OFFICER may revoke in whole or in part any NOTICE TO PROCEED which has been issued when in his judgment unforeseen conditions later arising or new data so require.
- D. Each application for a NOTICE TO PROCEED shall be supported by:

- (1) A FINAL DESIGN or plan. Upon request of the AUTHORIZED OFFICER, GRANTEE will provide computations and other data supporting the design.
- (2) All applicable reports and results of environmental studies conducted by GRANTEE.
- (3) All data necessary to demonstrate compliance with the terms and conditions of these Stipulations with respect to that particular construction spread.
- (4) A detailed LOGIC DIAGRAM NETWORK for each construction spread, including GRANTEE's work schedule, permits required by State, Federal, and local agencies and their interrelationships, design and review periods, data collection activities and construction activities.

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

- E. At least 15 days prior to beginning construction, GRANTEE shall arrange a preconstruction conference with the AUTHORIZED OFFICER's designee, his compliance inspectors, and project coordinators.
- F. GRANTEE will file a certificate of construction in accordance with 43 C.F.R. Sec. 2883.4.

A-5. COMMON CARRIER

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

A-6. CERTIFICATION OF NONSEGREGATED FACILITIES

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

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

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

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

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

- A. The United States reserves and shall have: (a) a continuing right of access across the RIGHT-OF-WAY to all FEDERAL LANDS (including the subsurface and air space); (b) a continuing right of physical entry to any part of the PIPELINE for inspection, monitoring, or for any other purpose or reason consistent with any right or obligation of the United States under any statute or regulation; and (c) the right to make, issue or grant rights-of-way, temporary use permits, easements, leases, licenses, contracts, patents, permits and other authorizations for compatible uses on, under, above, or adjacent to FEDERAL LANDS subject to the RIGHT-OF-WAY.
- B. At construction sites during construction, and thereafter with respect to above-ground fenced facilities only, the rights of access and entry reserved to the United States shall be limited to (1) the AUTHORIZED OFFICER, (2) representatives of the AUTHORIZED OFFICER, (3) representatives of Federal agencies on official business, (4) contractors and subcontractors of the United States, and such other persons as may be designated from time-to-time in writing by the AUTHORIZED OFFICER.
- C. GRANTEE may request that any individual who purports to act on behalf of the United States, pursuant to Subsection B of this section, furnish it with written authorization from the AUTHORIZED OFFICER before taking final action in that regard.

A-8. PROCEDURES RELATED TO REIMBURSEMENT OF EXPENSES

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

A-9. PUBLIC AND PRIVATE IMPROVEMENTS

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

A-10. SURVEY MONUMENTS

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

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

A-11. FIRE PREVENTION AND SUPPRESSION

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

A-12. SURVEILLANCE AND MAINTENANCE

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

- (1) provide for public health and safety;
- (2) control or prevent damage to natural resources;
- (3) control or prevent erosion;
- (4) maintain PIPELINE integrity;
- (5) control or prevent damage to public and private property.

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

A-13. HEALTH AND SAFETY

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

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

A-14. APPLICABILITY OF STIPULATIONS

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

A-15. COMPLIANCE WITH FEDERAL AND STATE LAW

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

A-16. COAST GUARD FACILITIES

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

A-17. PUGET SOUND REFINERIES

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

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

A-18. DUNGENESS SPIT

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

B. ENVIRONMENTAL

B-1. POLLUTION CONTROL

- A. GRANTEE shall construct, operate, maintain and terminate the PIPELINE in a manner that will avoid or minimize degradation of air, land, and water quality. GRANTEE shall comply with applicable air and water quality standards and statutes and regulations relating to pollution control or prevention.
- B. GRANTEE shall comply with applicable water quality standards of the States of Washington, Idaho, Montana, North Dakota, and Minnesota as approved by the Environmental Protection Agency.
- C. Watering and grading or other mitigating measures will be undertaken to control dust on access roads, as determined by the AUTHORIZED OFFICER.

B-2. PESTICIDES, HERBICIDES, AND OTHER CHEMICALS

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

B-3. SANITATION AND WASTE DISPOSAL

- A. "Waste" means all discarded matter, including but not limited to human waste, trash, garbage, refuse, barrels and drums, petroleum products, ashes, and equipment.
- B. All waste generated in construction, operation, maintenance, and termination of the PIPELINE shall be removed or otherwise disposed of in a manner acceptable to the AUTHORIZED OFFICER.

B-4. EROSION CONTROL AND RESTORATION

- A. GRANTEE shall perform all PIPELINE construction, operation, maintenance and termination activities so as to minimize disturbance to vegetation.
- B. GRANTEE's design of the PIPELINE shall provide for the construction of control facilities that will avoid or minimize erosion.
- C. GRANTEE shall construct erosion control facilities to avoid or minimize induced and accelerated erosion and to lessen the possibility of forming new drainage channels resulting from

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

- D. GRANTEE shall restore all disturbed areas on FEDERAL LANDS to the satisfaction of the AUTHORIZED OFFICER. Restoration practices, as determined by the needs for specific sites, may include but shall not be limited to seeding, planting, mulching, and the placement of mat binders, soil binders, rock or gravel blankets, or structures.
- E. In construction, operation and maintenance of the PIPELINE, GRANTEE shall:
 - (1) Leave all cut-and-fill slopes in a stable condition with sufficient and appropriate vegetation cover to minimize erosion.
 - (2) Dispose of all materials from access roads, haul ramps, berms, dikes, and other earthen structures as approved in writing by the AUTHORIZED OFFICER.
 - (3) Dispose of all vegetation, overburden, and other materials removed during clearing operations in a manner approved in writing by the AUTHORIZED OFFICER.
 - (4) Immediately remove all equipment and supplies from the site upon completion of restoration.

B-5. EXCAVATED MATERIAL

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

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

- A. All activities of GRANTEE in connection with the PIPELINE that may create new lakes, drain or fill existing lakes, significantly divert natural drainages and surface runoff, permanently alter stream or ground water hydrology, wetlands, or significant areas of streambeds, are prohibited except as provided in NOTICES TO PROCEED.
- B. GRANTEE shall not develop wells or utilize surface water sources on FEDERAL LANDS for the construction, operation, maintenance, or termination of the PIPELINE without the prior written approval of the AUTHORIZED OFFICER.
- C. GRANTEE shall reconstruct water diversion or containment levees and ditches disturbed by construction of the PIPELINE to the satisfaction of the AUTHORIZED OFFICER following construction and prior to operation.

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

- A. GRANTEE shall implement a program for the identification, evaluation, and protection of historic and cultural properties on both FEDERAL LANDS and nonfederal lands that might be affected by the system (as that term is defined at 43 C.F.R. Sec. 2280.0-5(j)). This program shall be developed by GRANTEE in consultation with the AUTHORIZED OFFICER. The program shall be consistent, as applicable, with BLM Manual provisions and instruction memoranda; the "Proposed Guidelines for Recovery of Scientific, Prehistoric, Historic, and Archeological Data: Methods, Standards, and Reporting Requirements" (including appendices thereto), 42 Fed. Reg. 5374-5383, January 28, 1977; the "Guidelines for Level of Documentation to Accompany Requests for Determinations of Eligibility for Inclusion in the National Register," 42 Fed. Reg. 47666-47669, September 21, 1977, and the regulations of the Advisory Council on Historic Preservation (36 C.F.R. Part 800). The program shall include provisions for dealing with all properties in or eligible for inclusion in the National Register which might be affected by construction, operation, maintenance, and termination of the PIPELINE, and with previously unidentified historic and cultural properties discovered during construction, operation, maintenance, and termination of the PIPELINE consistent with Section B-8 below. The program shall be submitted to the AUTHORIZED OFFICER for approval and shall be used as the basis for compliance with Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. Sec. 470f. GRANTEE shall provide periodic reports on the status of implementation of the program at the AUTHORIZED OFFICER's request. If the AUTHORIZED OFFICER determines that actions taken by GRANTEE to implement the program are inconsistent with the program, he may require such actions to be stopped pending modification to make them consistent.
- B. Any NOTICE TO PROCEED may contain such conditions as the AUTHORIZED OFFICER determines to be proper in order to avoid, mitigate, or minimize any adverse effects that the authorized activity might have on historic and cultural properties, consistent with provisions of Stipulation B-7, A.
- C. GRANTEE shall advise the AUTHORIZED OFFICER of actions to be taken on nonfederal lands pursuant to the program developed under Stipulation B-7, A. If the AUTHORIZED OFFICER determines that such actions of GRANTEE are inconsistent with this program, he may require such actions to be stopped pending modification to make them consistent with the program.
- D. GRANTEE shall not proceed with any ground-disturbing activities on nonfederal lands until the AUTHORIZED OFFICER has been notified and has had an opportunity to specify conditions under which such activities shall be conducted in order to avoid, mitigate, or minimize any adverse effects on historic and cultural properties, consistent with the provisions of Stipulation B-7, A.

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

- A. GRANTEE shall employ one or more project archeologists, who shall be available either to inspect or consult with GRANTEE, at all times during ground-clearing, digging, grading, and excavating activities on both FEDERAL LANDS and nonfederal lands. The archeologist(s) shall be of professional level as defined in 42 Fed. Reg. 5382, Appendix C (January 28, 1977) and shall be approved by the AUTHORIZED OFFICER.
- B. If GRANTEE encounters any resource that may be of prehistoric, historic, or cultural significance during the course of project construction activities that was not identified during work conducted under Stipulation B-7, GRANTEE shall stop such activity that might disturb the resource and contact a project archeologist.
- C. When contacted concerning such a discovery, a project archeologist shall either inspect the resource or obtain from persons at the location a description of the resource, and shall either instruct the workers on measures to be taken in order to avoid, mitigate, or minimize adverse impacts or preserve data (including relics and specimens) or shall authorize resumption of work without instructions. Instructions shall be consistent with the program developed pursuant to Stipulation B-7, A. Work may resume in the immediate area of the discovery as soon as a project archeologist has been contacted and has had an opportunity to inspect or consult with the workers and to give instructions concerning ways to avoid, mitigate, or minimize impacts, or recovered data.
- D. If the project archeologist believes that the discovery is highly significant, he shall, prior to giving any instructions or authorizing any resumption of work under the preceding paragraph, notify the AUTHORIZED OFFICER of the discovery and the instructions or authorizations he plans to give. Upon such notification, the AUTHORIZED OFFICER may, if he agrees that the discovery might be highly significant, require that work remain suspended until he can inspect the discovery. The AUTHORIZED OFFICER may keep work suspended for up to 48 hours after being contacted. If the AUTHORIZED OFFICER has not made an onsite inspection or given instructions for treatment of the resource by the end of this 48-hour period, the project archeologist may proceed with his planned instructions or authorizations.
- E. GRANTEE's archeologist shall keep a written record of all contacts and actions taken according to paragraph B, C, and D, of this Stipulation.

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

B-9. ENDANGERED AND THREATENED SPECIES

- A. This Grant is conditioned on compliance with Section 7 of the Endangered Species Act of 1973, as amended, 16 U.S.C. Sec. 1536, on both FEDERAL LANDS and nonfederal lands.
- B. NOTICE TO PROCEED shall not be issued for FEDERAL LANDS until the AUTHORIZED OFFICER has determined that such authorization will not violate said provision of law. Any NOTICE TO PROCEED may contain such conditions as the AUTHORIZED OFFICER determines to be necessary to avoid the likelihood of jeopardy to the continued existence of any threatened or endangered species or any species proposed to be so listed, or to avoid the likelihood of destruction or adverse modification of habitat of any such species which are designated or proposed to be designated as critical.
- C. With regard to nonfederal lands, in areas specified pursuant to the provisions of the next paragraph, GRANTEE shall not engage in any activity which could be reasonably foreseen to have the potential for affecting any endangered or threatened species or their habitat, until GRANTEE has obtained written notification from the AUTHORIZED OFFICER that such activity is not likely to jeopardize the continued existence of any such species and is not likely to result in the destruction or adverse modification of critical habitat of any such species. Such notification may specify such conditions as the AUTHORIZED OFFICER determines necessary to avoid the likelihood of jeopardy to the continued existence of such species or the likelihood of destruction or adverse modification of critical habitat.
- D. The AUTHORIZED OFFICER shall specify for GRANTEE the geographic areas where it is thought such species or critical habitat might be encountered, and where written clearance is therefore required under the preceding paragraph, and shall explain why the area is sensitive. These specified areas and explanations may be revised whenever the AUTHORIZED OFFICER determines it to be necessary.

B-10. FISH AND WILDLIFE PROTECTION

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

- B. GRANTEE shall screen pump intakes where water is withdrawn on FEDERAL LANDS so as to minimize entrapment of fish. Removal of water, timing, screen size and water withdrawal sites shall be subject to approval by the AUTHORIZED OFFICER.
- C. GRANTEE shall design and construct the PIPELINE so as to assure free passage and movement of big game animals. The AUTHORIZED OFFICER may require skip-trenching in sensitive migration routes or areas determined by him to be critical for timely big game movement.
- D. GRANTEE's activities in connection with the PIPELINE in key fish and wildlife areas may be restricted by the AUTHORIZED OFFICER during periods of fish and wildlife breeding, nesting, spawning, lambing, or calving activity, and during major migration of fish and wildlife. The AUTHORIZED OFFICER shall advise GRANTEE of the restrictive action in advance of a NOTICE TO PROCEED.

B-11. CLEARING

Print to construct and prior to final design.

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

B-12. OFF RIGHT-OF-WAY TRAFFIC

review.

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

B-13. AESTHETICS

- A. GRANTEE shall consider aesthetic values in planning, construction, and operation of the PIPELINE. The AUTHORIZED OFFICER may impose reasonable requirements as he deems necessary to protect aesthetic values.
- B. In order to minimize visual impacts, GRANTEE shall submit a landscaping plan, including a color scheme for exposed portions of the PIPELINE, to the AUTHORIZED OFFICER for approval.

B-14. USE OF EXPLOSIVES

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

B-15. REPORTING OF OIL AND HAZARDOUS MATERIALS DISCHARGES

- A. In accordance with applicable law, GRANTEE shall give notice of any spill, leakage, or discharge of OIL or other hazardous substances in connection with the construction, operation, maintenance or termination of the PIPELINE to: (1) the AUTHORIZED OFFICER and (2) such other Federal and State officials as are required by law to be given such notice. Any oral notice to the AUTHORIZED OFFICER shall be confirmed in writing as soon as possible. Reports to the AUTHORIZED OFFICER shall be made as follows:
- (1) Spillage of any amount of oil, pesticides or other hazardous materials into waters or wetlands shall be reported to the AUTHORIZED OFFICER immediately.
 - (2) Spillage of less than ten (10) barrels during one incident, not involving waters or wetlands, shall be cumulatively reported every thirty (30) days.
 - (3) Spillage of ten (10) barrels to one hundred (100) barrels during one incident, not involving waters or wetlands, shall be reported within twenty-four (24) hours.
 - (4) Spillage of over one hundred (100) barrels during one incident, not involving waters or wetlands, shall be reported immediately. (Immediately shall be interpreted to mean within four (4) hours of discovery by GRANTEE.)
- B. GRANTEE shall install and employ a commercially proven "state of the art" leak detection system for the detection of OIL leaks along the PIPELINE. A plan for such system shall be submitted to the AUTHORIZED OFFICER for his approval at least one hundred and eighty (180) days prior to filling the PIPELINE with OIL.

B-16. CONTINGENCY PLANS

- under 180 days*
- A. GRANTEE shall submit a PIPELINE contingency plan to the AUTHORIZED OFFICER. The plan shall conform to the requirements of 49 C.F.R., Part 195, and shall outline the steps to be taken in the event of a failure, leak or explosion in the PIPELINE. The plan shall be approved in writing by the AUTHORIZED OFFICER and GRANTEE shall demonstrate its capability and readiness to execute the plan prior to filling the PIPELINE with OIL.
- B. GRANTEE shall, as appropriate, update the plan and methods of implementation thereof, which shall be submitted to the AUTHORIZED OFFICER for his written approval.

C. TECHNICAL

C-1. PIPELINE STANDARDS

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

C-2. SPECIAL STANDARDS

- A. GRANTEE agrees that the design of the PIPELINE shall provide for remotely controlled main line block valves at each pump station. Block and check valves, in addition to those required in 49 C.F.R., Section 195.260, may be required at stream crossings determined by the AUTHORIZED OFFICER to be sensitive with respect to anadromous fish habitats or potable water supplies.
- ✓ B. GRANTEE shall inspect the PIPELINE girth welds in accordance with 49 C.F.R., Part 195, using radiographic or other nondestructive inspection techniques to assure compliance with defect acceptability standards.
- C. GRANTEE shall provide for inspection of PIPELINE construction in accordance with 49 C.F.R., Part 195, Subpart D.
- D. GRANTEE shall test the PIPELINE hydrostatically in accordance with 49 C.F.R., Part 195, Subpart E, and shall make available to the AUTHORIZED OFFICER a copy of the hydrostatic test plan at least thirty (30) days prior to conducting such tests.
- E. GRANTEE shall provide detailed plans for corrosion control that meet the requirements of 49 C.F.R., Part 195, and shall implement them in accordance with that Part.

C-3. STANDARDS FOR ACCESS ROADS

- A. GRANTEE shall submit a horizontal alignment plan and profile of each proposed permanent access road and a horizontal alignment plan for each temporary access road for approval by the AUTHORIZED OFFICER. The permanent plan shall also include road widths, curve data, drainage facilities, and design.
- B. Permanent access roads on FEDERAL LANDS shall conform to the standards of BLM Manual 9113, latest edition, or FSM 7700, whichever is appropriate.
- C. GRANTEE shall utilize existing roads in all areas on FEDERAL LANDS unless otherwise approved by the AUTHORIZED OFFICER. GRANTEE shall maintain such roads totally or on a prorata basis as determined by the AUTHORIZED OFFICER.

C-4. FAULT DISPLACEMENT

- A. GRANTEE's route design and construction plan on FEDERAL LANDS shall specify that the line of pipe will cross active seismic faults at angles that are between seventy (70) degrees and ninety (90) degrees, when and where possible, subject to the approval of the AUTHORIZED OFFICER.
- B. GRANTEE shall design the PIPELINE to withstand, without rupture, the maximum probable expected earthquake that may occur during the lifetime of the project, based upon consideration of regional tectonics within the existing geological framework.

C-5. SLOPE STABILITY

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

C-6. STREAM AND FLOODPLAIN CROSSINGS AND EROSION

- A. For each region through which the PIPELINE passes, the PIPELINE shall be designed to withstand or accommodate the effects (including runoff, stream and floodplain erosion, meander cutoffs, and lateral migration) of those meteorologic, hydrologic (including surface and subsurface), and hydraulic conditions considered reasonably possible for the region. The following standards shall apply to such PIPELINE design. For stream crossings and portions of the PIPELINE within the floodplain:
 - (1) The depth of channel scour shall be established by appropriate field investigations and theoretical calculations using those combinations of water velocity and depth during a 100-year flood occurrence. The cover over the pipe will be equal to the computed scour, based on a 100-year flood occurrence, plus four (4) feet unless solid rock is encountered in the streambed, in which case the cover may be reduced to eighteen (18) inches.
 - (2) For overhead crossings, comparable analysis shall be made to ensure that support structures are adequately protected from the effects of scour, channel migration, and undercutting.

- (3) In wetlands and floodplains, appropriate construction procedures shall be used wherever there is potential channelization along the pipe.
 - (4) The pipe trench excavation shall stop an adequate distance from the water crossing to leave a protective plug (unexcavated material) at each bank. These plugs shall be left in place until the streambed excavation is complete and the pipe laying operation is begun. The plugs shall be backfilled with stable material as soon as the pipe is laid.
- B. GRANTEE shall make temporary access to the RIGHT-OF-WAY over stream banks by cutting the banks rather than by using fill ramps, unless otherwise approved in writing by the AUTHORIZED OFFICER. Where ramps are approved, GRANTEE shall remove them upon termination of seasonal or final use. Ramp materials shall be disposed of in a manner approved in writing by the AUTHORIZED OFFICER.

C-7. CULVERTS AND BRIDGES

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

C-8. CONSTRUCTION AND OPERATION

- A. GRANTEE shall confine bedrock excavation and excavated material within the RIGHT-OF-WAY or authorized areas.
- B. GRANTEE shall dispose of rocks displaced during excavation in a manner acceptable to the AUTHORIZED OFFICER.
- C. Unless otherwise authorized, GRANTEE shall keep all construction activity within RIGHT-OF-WAY limits except for movement of equipment into and out of areas along authorized roadways.
- D. GRANTEE shall remove and dispose of, at sites approved by the AUTHORIZED OFFICER, all construction remnants including but not limited to wood, metal scraps, containers, concrete cleanouts, gravel and sand piles, pieces of equipment, spilled OIL and other pollutants.
- E. GRANTEE shall blade only those portions of the RIGHT-OF-WAY or other authorized areas required for project construction.
- F. GRANTEE shall spread any visible spoil to contour after the PIPELINE is covered, in order to reduce visual impact and to allow for natural revegetation, and shall do so to the satisfaction of the AUTHORIZED OFFICER.

- G. Unless otherwise specified by the AUTHORIZED OFFICER, the top 4 to 6 inches of soil from all areas which will be excavated for the PIPELINE shall be windrowed or GRANTEE may use excavation methods for the PIPELINE which will enable such topsoil material to be placed in a separate stockpile. This topsoil will be redistributed evenly over the disturbed area after backfilling is complete.
- H. During construction operations, GRANTEE shall provide adequate warning devices (such as signs, flares, warning lights, or flagmen) at frequently used road intersections or crossings to warn the public and construction workers of potential traffic hazards. The AUTHORIZED OFFICER shall determine the adequacy of such warning devices. Skiptrenching may be required by the AUTHORIZED OFFICER at designated sites to allow passage by vehicles and/or livestock and wildlife.
- I. Fences or access roads crossed by the PIPELINE shall have gates or cattle guards meeting BLM standards where required by the AUTHORIZED OFFICER.

EXHIBIT "A"

YOU AND THE PIPELINE
Information for
Minnesota Landowners
about the
NORTHERN TIER PIPELINE PROJECT

Published in Cooperation with the
Minnesota Environmental Quality Board
by the
Northern Tier Pipeline Company

February 1980

EXHIBIT V-A

RIGHT-OF-WAY AND EASEMENT AGREEMENT

THE STATE OF MINNESOTA
COUNTY OF _____

KNOW ALL MEN BY THESE PRESENTS

That the undersigned, _____

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

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

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

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

_____ Dollars
(\$ _____) hereinabove referred to before commencing

EXHIBIT V-A (Continued)

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

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

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

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

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

EXHIBIT V-A (Continued)

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

WAIVER OF DEPTH OF COVER REQUIREMENT

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

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

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

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

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

EXHIBIT V-A (Continued)

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

EXHIBIT V-A (Continued)

ACKNOWLEDGEMENT

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

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

Notary Public

Exhibit 4

Mr. Chairman and members of the committee:

My name is Cathy George Donohoe. My husband and I ranch at Nye Montana. I appear here today in strong support of House Bill 799.

This bill addresses one of the most basic issues facing our country today, that of property rights.

As young ranchers it is hard to plan for the future especially to commit money to increase the size and productivity of your ranch when you are faced with losing part of that economic unit to ~~exxxxxxxx~~ condemnation.

The problem is made even worse by the fact that you can not choose which land will be taken out of your economic unit.

Agricultural land is irreplaceable we need to protect it. I hope you can support us by passing House Bill 799. Thank you

Our ranch lies very near the Stillwater Complex. We face future condemnation because of the position of it.

Cathy G. Donohoe

Testimony Prepared in Support of HB 799

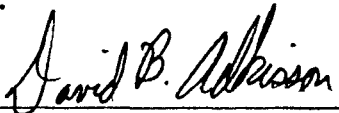
Judiciary Committee

February 19, 1981

My name is David Adkisson. I live in Missoula and I am here to urge this committee to support HB 799, in particular the provision that would have the Public Service Commission take into account the need of a proposed project in granting eminent domain rights. My perspective comes from having followed the status of and need issue surrounding the proposed Northern Tier Pipeline. We are all aware of the role Montana now plays and the ever increasing role this state will play in our country's energy needs. This state will be impacted by energy development. Montanans will sacrifice to some degree in the quality of their lives because of this. I believe people are willing to sacrifice some freedoms to help the country in its energy problems for a proven need - doing so for unneeded projects remains another question. The Northern Tier project was and remains a hotly contested item when it pertains to need among a broad spectrum of interests - business, the federal and state governments, the financial community and private landholders and citizens.

In this state Northern Tier Pipeline was legally exempted from the Major Facilities Siting Act and the associated review procedure. The project also received eminent domain status from the Public Service Commission by simply writing that body to advise it of the company's intent to serve as a common carrier. Even though the state conducted a study of the project for its environmental impact statement, it has had little voice in the basic issues of need, siting, and quality of construction except for short sections of state land along the route.

Last fall I wrote the other Public Service Commissions throughout the country and obtained information on their rules for granting eminent domain status and regulating pipelines. I then wrote a paper to the Montana Public Service Commission urging them to take a stronger role in the Northern Tier matter and become responsible for their action of granting eminent domain. My argument was based on current Montana law and the practices of PSC's in other states. I want to briefly summarize those practices and also submit for the record a copy of that paper. In closing I feel that the type of legislation proposed in HB 799 would do much toward insuring landowner rights and interests and in avoiding the sort of problems that came up with Northern Tier.



David B. Adkisson

NORTHERN TIER PIPELINE
AND
MONTANA PSC RESPONSIBILITY

David B. Adkisson

December 17, 1980

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

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

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

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

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

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

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

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

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

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

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

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

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

Although, the state and Northern Tier Company signed an agreement in July 1980 setting up an Interagency Pipeline Task Force, it falls short of these basic requirements. Northern Tier does not want a well-informed number of landowners in their path. This means money, but it also means quality control and protecting the rights of Montana citizens due to the building of an unneeded project. The DNRC suggested many methods to protect landowners rights and the environment in their Draft Environmental Impact Statement on Northern Tier. But because the pipeline was exempted from the Major Facilities Siting Act, these safeguards will remain only suggestions. Since, DNRC feels it has no legal right to require quality control promises from Northern Tier, each landowner

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

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

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

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

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

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

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

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

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

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

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

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

FOOTNOTES

1. Montana Public Service Commission, Statutes Governing Public Utilities and Carriers, Chapter 13.
2. Department of the Interior, Report to the President: West to East Transportation Systems, October 15, 1979.
3. Henry Jackson, Chairman, Senate Energy and Natural Resources Committee report on the west coast surplus of Alaskan North Slope crude oil, October 15, 1979.
4. Wall Street Journal, "Williams Pipeline and Koch to construct Midwest Oil Carrier", May 13, 1980.
5. Department of Interior from above.
6. Montana Department of Natural Resources and Conservation, Draft Environmental Impact Statement on the Proposed Northern Tier Systems, November 1979.
7. Iowa State Commerce Commission correspondence, August 5, 1980, and statutes governing Regulation of Carriers, Chapter 479, Code of Iowa 1979, (Chapter 250-10)
8. North Dakota Public Service Commission, Energy Conversion and Transmission Facility Siting Act, July 1979.
9. Maryland Public Service Commission, Annotated Code of Maryland, Section 341A, Article 23.
10. Ibid and Wisconsin Public Service Commission correspondence, August 4, 1980, and statutes describing Eminent Domain, Chapter 32.
11. Wyoming Public Service Commission correspondence, July 31, 1980, and Colorado Revised Statutes, Title 40-1-103.
12. Kansas State Corporation Commission correspondence, November 19, 1980, and Kansas Statutes Annotated, Chapter 66.
13. South Dakota Public Utilities Commission correspondence, August 13, 1980, and SDCL Chapter 49-41B (Energy Conversion and Transmission Facilities) and Administrative Rules of South Dakota, Chapter 20:10:22.

Committee Members,

Exhibit 6 Feb 20, 1981

My name is Clark Siggler and I am representing the Valley Pioneers Council, a citizens group representing the Frenchtown, Hixon and 9-Mile areas west of Missoula. I would like to make two points in favor of HB 799.

First, we believe that annual payments to landowners is a just and reasonable method of compensation. A parallel can be drawn to the President's address to Congress on Wednesday when he called for accelerated depreciation on plant equipment. ~~HB 799~~ ^{HB 799} recognizes the increasing value of property relative to its productive capacity. By condoning one-time payments to the landowner you deny him the increased appreciation on his capital ~~purchase~~ ^{investment}. This is an unfair burden and an indefensible double standard.

The second point relates to the PSC having to clearly establish "public necessity" before granting the power of eminent domain. Government's function is to protect and preserve the rights of its citizens. The present law abdicates this responsibility. In effect, it allows the private corporation, or the Federal government in the case of the BPA, to determine the best interests of the state's citizenry. HB 799 reaffirms the responsibility of the state to its citizens and provides them appropriate protection.

I find it ironic that with all the talk of a Sagebrush Rebellion in this legislative session a bill such as this must even be debated in Committee. Montana is being slowly covered or shrouded by the specter of giant powerlines of the Bonneville Power Administration. We are looking at one now, but there is evidence that the BPA is planning 3 to 5 more. To construct these lines they will condemn private land, in effect, claiming more of Montana's land as the territory of the Federal government. Washington is enacting its own Sagebrush Rebellion in reverse.

We strongly recommend that the Committee submit this bill written to the full house with unanimous approval. Thank you

CLARK SIGGLER, Valley Pioneers Council

Robert P. Wilson

Robert P. Wilson
RR1
Bainville, Montana
59212

Mr. Chairman and Honorable Members of the Committee:

My name is Robert P. Wilson, and I own a cattle ranch near Bainville, in Roosevelt County. I became interested in eminent domain law during my negotiations with the Northern Border Pipeline Company. Three days ago, Northern Border chose to condemn a 100 ft. strip of land across $2\frac{1}{2}$ miles of my property. They chose to condemn rather than fence their right-of-way--even though the Soil Conservation Service, the ~~Department of Natural Resources~~, the Department of Natural Resources, and the Pipeline Company themselves admit that proper re-vegetation cannot occur unless livestock are kept off the easement for a minimum of two years. My condemnation is in Federal Court, but most Montana eminent domain procedures apply. My researches into Montana's eminent domain laws left me apalled and angered enough to get on a chartered plane at 4:30^{am} to fly here and speak to you.

Montana's present eminent domain law is an archaic disgrace. It is a throwback to the bad old days when copper was King and Montana was not so much a state as a colony of several very large and very predatory corporations. Currently, eminent domain laws serve the interests of private corporations exceedingly well; unfortunately, private citizens are left with almost no rights. Indeed, current eminent domain laws do not even spell out provisions for public hearings. This is ironic, when you consider that eminent domain is to be used only for projects that profess to be necessary for the public good. Present laws consider the public too stupid to know what is good for them.

Montana is one of the few states which allow the so-called

"quick take" procedure to be implemented. Affected landowners have only 20 days to make a response to a notification of condemnation. Given the Byzantine nature of modern legal procedure, this does not allow time to prepare an adequate defense. Moreover, companies have a right to pre-build projects prior to negotiating damage compensation with the landowners; my attorney tells me that research indicates residents of states that allow pre-building generally receive only 50-60 % of fair market value on condemned property.

Not only does this "quick-take" procedure work to the detriment of landowners, but it also impairs the power of local and state government. The law allows condemnation of a site prior to obtaining the necessary permits from local and state agencies. In the condemnation I am involved in, Northern Border has not yet signed a single permit with any local or state agency. Obviously, any local, county or state control over a project is hamstrung. The company becomes the sole arbiter of what is in the public good; too often, public good is thereby perverted and sacrificed to company profits.

I could go on to speak of the unfairness of forcing a perpetual easement when a term lease would do, or of the injustice of allowing a private, profit-making company to condemn a man's property and use it for a garbage dump. Instead, I shall close by reminding the committee that originally, the power of eminent domain properly resided with the sovereign state, and was meant to be used very, very carefully. In Montana, the sovereign state has relinquished almost all of its power to private companies to use as they see fit. In a time when an energy-starved country is attacking Montana's

mineral and energy resources, a time when a new project is planned almost daily, our ineffectual and outmoded eminent domain law simply cannot cope with the impact.

House Bill 799 does not provide all the answers, but it does restore some power to the state and to its citizens, i.e., to the public that the law originally intended to benefit. Therefore, I wholeheartedly support it, and I urge the committee to do the same.

Mr. Chairman and Committee Members:

My name is Dean Harmon; I farm and ranch near Bainville and am here today to voice my support of House Bill 799. As present secretary of Northern Border Pipeline Caucus and having served in the same capacity in landowner negotiations (with True Oil Company) on right of way acquisitions in 1977, I have had time to formulate a strong view point particularly regarding lease vs perpetual easement.

To begin with a perpetual easement provides compensation only to the existing surface owner or controller. The corporations who take right of way with the use of such instrument hold that right indefinitely. Landowners do not occupy their land forever therefore subsequent owners or occupiers are subjected to the inconveniences of all previous easements without just compensation. Some may say the price of the land would reflect the imposition of existing easements but in fact this is seldom the case.

Further, is it appropriate that landowners be forced to yield on a permanent basis to a Pipeline Company such as Northern Border who tells us the life expectancy of their line is 99 years and expect to depreciate it out in 12 years?

On the one hand there is the monetary inequality such as Northern Border Pipeline agreeing to pay the Fort Peck tribes \$46.93 per rod, while offering area private landowners of equal ground \$12.00 per rod.

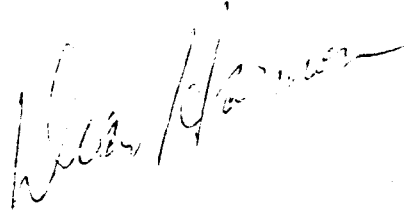
On the other hand is the ideological inequality of the Bureau of Land Management issuing only thirty year term leases to privately held companies with reappraisal as frequently as annually for highest and best use. Annual rental is adjusted according to reappraisal.

We, the tax paying private citizens are presently being denied both equal monetary compensation and ideological equality.

The power of Imminent Domain! What a colossal power it is under existing law. It totally denies fair and equal treatment that I have assumed I was entitled to as a U.S. citizen and a citizen of Montana.

If the sum of all parts equal a whole, is not the opposite true? Are we to be treated as less than equal to our state and nation?

Gentlemen I urge a do pass on House Bill 799.

A handwritten signature in dark ink, appearing to read "Nick Harper", is written diagonally across the right side of the page.

Chairman Keyser and Members of the Judiciary Committee:

I am Ruth Nyquist, ranchwife from Bainville.

My husband and I were victims of Condemnation of our land for a gas pipeline.

I am concerned about Montana's antiquated "eminent domain" law that gives the landowner no rights at all, except, to accept whatever reimbursement the Company offers until after Condemnation.

In our particular case, the Gas Company's proposal of payment was not negotiable until after we went to Court. We went to Court to "hear" the Condemnation

Proceedings - - and found we had no testimony to give; no defense to make.

Our objections were personal; deep frustration and disagreement with the reimbursement offered; none of which were germane to the proceedings at hand.

The plaintiff, on the other hand, had the right to condemnation and required only to compensate us for damages to the land and an easement. We were

condemned and negotiations proceeded, that was in the fall of 1977. Agreement

was reached in October of 1980. We received one dollar per rod, easement and

reimbursement for damages and cost of restoration. The Pipeline Company

instigated the litigation -- we didn't -- but compensation did not include our

expenses incurred in retaining a lawyer, the trips to our lawyer and the Court,

the invasion of construction equipment all over the ranch because they didn't

seem to know where they were going, and the many, many hours taken away from

our business spent in decision making at home or at the lawyers.

HB 799 shows someone else is concerned about our law of "eminent domain" but I

feel it still doesn't have any real teeth whereby the defendant is given any real

rights. Referring to Page 7 of the bill, lines 10, 11, and 12, the defendant

isn't limited to the right to compensation for entry -- but no new rights are

given.

Section 4 of the bill , also on page 7, it does make it a requirement that permits necessary must be obtained before condemnation including that of the Public Service Commission. (This was not true in our particular case.) (I'd much prefer that Public Service Commission hearings be held near the area of concern to make it more possible for involved parties to testify.)

In the "New Section" of the bill , Section 7 on page 9, I would prefer a safety clause be included stipulating that payment of taxes by the plaintiff would in no way give the plaintiffs future legal claim to the property.

In order to insure the privilege and right of negotiation between parties who cannot reach agreement, I would recommend a commission-hearing, or other method, be set up before condemnation whereby arguments and view points of both parties could be presentd., followed by commission recommendations and arbitration.

I really feel this bill doesn't do nearly enough for the individual land-owner, but, I do support it as a step in the desired direction of improving our old "eminent domain" law,

Thank You! for your patience and your time!

Luck Nyquist
Barnes, Ont.

HOUSE BILL 799 RE: EMINANT DOMAIN.

FEBR. 1981 Exhibit 9

LADIES AND GENTLEMEN! I AM HANNEKE IPPSCH FROM 9 MILE, HUSON, MONTANA.

THE FACT THAT I AM A LANDOWNER IN WESTERN MONTANA ADDS ONLY TO MY DISBELIEF THAT THERE EXISTS SUCH A THING AS THE POWER OF EMINANT DOMAIN.

COURSE I AM AT A COMPLETE DISADVANTAGE BECAUSE I AM A LANDOWNER AND NOT A BIG CORPORATION OR INDUSTRY, WHICH BY MERELY WRITING TO THE PUBLIC SERVICE COMMISSION CAN OBTAIN THIS BLATANTLY UNDEMOCRATIC RIGHT OF EMINANT DOMAIN.

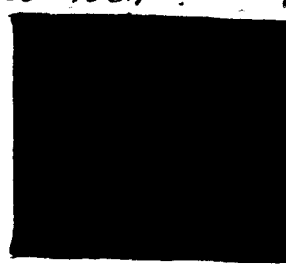
SO LET ME GIVE YOU SOME HONEST ADVICE: DO NOT BECOME A LANDOWNER, BECAUSE YOU MIGHT FIND THAT YOU ACTUALLY HAVE NO RIGHTS ON YOUR OWN LAND UNLESS

HOUSE BILL 799 BECOMES REALITY.

AT LEAST THEN A LANDOWNER HAS A RIGHT TO AN ANNUAL PAYMENT,
AT LEAST THEN THE PUBLIC SERVICE COMMISSION HAS TO HOLD A HEARING IF EMINANT DOMAIN IS GRANTED

AT LEAST THEN CAN A COMPANY NOT EXERCISE THE POWER OF EMINANT DOMAIN UNTILL IT HAS ALL THE NECESSARY PERMITS.

I URGE YOU TO SUPPORT THIS BILL, WHICH IF PASSED WILL
AT LEAST GIVE THE LANDOWNER A RAY OF HOPE FOR A FIGHTING CHANCE
OF SOME RIGHTS.
THANK YOU SO MUCH!



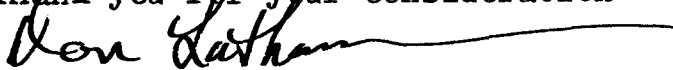
~~Text~~

Statement for the committee hearings on Eminent Domain:

Gentlemen:

I simply do not think that any private corporation should be given the right of eminent domain by the state, for any purpose whatever. I am specially angered and shocked that in the state of Montana, a private corporation can obtain that right by simply writing a letter. If private corporations wish access to private property, let them buy it in the open market, just the same as any citizen must do. I beg you to consider the people in this matter, not the special pleading of a bunch of non-people, ie. corporations.

Thank you for your consideration



Don Latham

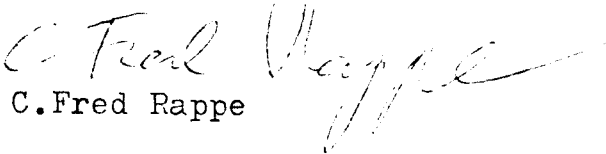
Huson, Montana

Exhibit 11

Gentlemen:

I think that it is Unconstitutional for any private corporation to get eminent domain over private land by just writing a letter to Montana's P.S.C. If private corporations wish access to private property, let them buy it in the open market, just the same as any citizen must do. Please remember that the owners of private property are human beings with feelings, not just numbers.

Thank you for your consideration


C. Fred Rappe

Huson, Montana

Exhibit 12

John W Appelt
P.O. Box 75
Hudson, NY 59846

Dear Sir:

I would like to express my opinion, on the matter of Communist Domains. I firmly believe this law violates one of the basic precepts of the United States Constitution, in that it contradicts a tenet which states "A man's home is his castle." In essence a man should have complete control of how his property is utilized and disposed of.

On the State level, this law, relegates its' Citizens to a position of servitude to that State, instead of the State being the servant of its' Citizens.

Respectfully yours

John W Appelt

House Bill No. 799 contains provisions similar to those indicated in Senate Bill No. 269. Section 5 and section 7 of H.B. 799 could create difficulties for the Department of Highways. The amendments to section 70-30-308 contained in section 3 of the bill deserve comment.

1. Referring to subsection (a) providing for annual payments. It is assumed that the money will be paid into court and that the clerk of court will make the annual payments. This could create additional bookkeeping work and expense for the clerks of court. Who will decide the size of the annual payments, the defendant, the plaintiff or the court?

2. Referring to subsection (b) pertaining to a land exchange. The language on line 8 of page 8 states "at the option of the defendants" payments may be made by a land exchange. A literal reading of the words indicate that the defendant could choose any piece of land the plaintiff owned; this even though the plaintiff may have good reasons for not parting with the land. More importantly it also indicates that the defendant could demand land of greater value than the property taken by the plaintiff. This could create a multitude of problems. It might also be unconstitutional inasmuch as the defendant would be receiving property that is of a value in excess of what has been determined to be just compensation for the property taken.

3. Referring to subsection (c) providing for annual payments for easements. It is assumed that these payments would have to be recalculated on an annual basis. If that is the case there is

a potential lawsuit every year over the amount of the annual payment. This could also create a problem for the Department of Highways with the Federal Highway Administration. The FHWA requires that a completed highway project be closed after a period of time. This would seem to require that the project be left open for as long as the easement exists. If that was the case then the payments would probably have to be made solely out of state funds.

The annual payment could create a problem for the Department insofar as determining to whom and how much the payment is once the property is sold. Suppose the Department had an easement across a forty acre tract of land and it was determined that it must pay for the easement annually. If the tract of land is subdivided into lots and sold, what do we do? It would appear that the Department would then have to run a title search on the lots, determine who the owners are, calculate the amount of the easement over every lot and attempt to arrive at an annual payment for each lot holder.

Section 7 on the proration of taxes could be interpreted as requiring the Department of Highways to pay taxes on its highway right of way. This is something that has never been done. Under the present law the Department does reimburse a landowner for a prorated share of the taxes paid by him in the year the property is condemned.

Judicial

COMMITTEE

205

Date 2/20/81

Island

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE

Indigony

COMMITTEE

BILL

799

Date

7/20/81

SPONSOR

Keed

NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
Mike Zimmerman	Sutter	NPC		X
Karla Gray	Buck	Dura		X
J. Beck	2701 Prospect	H/Wiz		X
Gene Pigeon	(G)endicor	N. D. L.		X
Mike Kogel	Nye	Barber	X	
Colby G. Donner	Nye	Barber	X	
Tom Doolan	H. L. N. B.	Mt. R. R. Ass'n		
CEC T. BENNETT	HELENA	MOUNTAIN RAIL ROADS DAK. TERRITORY		X
Steve Doherty	NPC Helena		X	
Steve Elliot	Wesley			X
Robert P. Wilson	Bainville MT	Rancher	X	
Bill Hand	Helena	Mt. May Ass'n		X
Dale Sailer	Bainville MT	Property owner	X	
Don Harmon	Bainville MT	Property owner	X	
Paul Nugent	Bainville MT	Property owner	X	
M. W. GORRICKSON	LIVINGSTON MT	UNITED TRAILS UNION		
K. D. Black	Mike's Ck.	W. T. U.		
Heri Hendrum	Selma	Self	X	
Pat Wilson	Bainville	Montec		X
Bill Stamborg	Helena, Mt.	Northwest Mining Ass'n.		✓

JIM RABE

MISSOULA MT

NORTHERN MOUNTAIN INDUSTRIES

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

CHRIS SIEGLER

HELENA MT

VALLEY INDUSTRIES

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

DAVE APPELSON

MISSOULA

SELF

Form CS-33

11/1/80

HELENA

SELF

1-81

11/1/80

HELENA

SELF

OVER

FB 799

			Support	from
Lee Rome	Bainville	Self	X	
Daniel Kemmer	Merrills	Rest 9/11	X	
James H. Helle	Helena	McCallum		✓
Dennis H. Helle	Redstone		X	
Don Allen	- Helena	- NB det. house		✓
Ann Scott	Mont. Edwards	Univ.	X	