

HOUSE NATURAL RESOURCES COMMITTEE MINUTES
February 21, 1983 - 5:50 p.m.

The House Natural Resources Committee convened at 5:50 p.m. on February 21, 1983, in Room 224K of the State Capitol with Chairman Harper presiding and all members present except Rep. Quilici, who was excused. Chairman Harper opened the meeting to executive session.

EXECUTIVE SESSION

HOUSE BILL 825 Rep. Ream gave the subcommittee report on this bill. Exhibit 1 is the list of people attending and participating in the subcommittee meeting on February 20, 1983. Exhibit 2 is a list of the suggested amendments that came from this meeting. Rep. Ream said they had a good working session and good representation from interested groups. He said the changes are mostly clean-up wording.

Rep. Hand moved the amendments be adopted. This motion carried unanimously with those present (absent at the moment were Reps. McBride, Quilici and Nordtvedt).

Rep. Brown moved the bill AS AMENDED DO PASS. This motion carried unanimously with those present (absent were Reps. Quilici and Nordtvedt).

HOUSE BILL 802 Rep. Brown went through his suggested amendments (Exhibit 3). He moved amendment 1 and this motion carried unanimously with those present. Rep. Brown then moved amendment 2. Keith Kelly of the Department of Agriculture^{was} asked if he had any problems with this and he responded in the negative. The motion carried unanimously with those present. Rep. Brown moved amendment 3 and this motion carried unanimously with those present. Rep. Brown moved amendment 4 and this motion carried unanimously with those present. Rep. Brown moved amendment 5 and this motion carried unanimously with those present. Rep. Brown said he had 3 more that weren't on the list. On page 10, line 5, strike "any" and insert "a." This motion carried unanimously with those present. On page 8, line 6, strike "shall" and reinsert "may." He said this was offered because of the department's concern that they would need to review every pesticide that came into the state. With this changed back to may they can select. This motion carried unanimously with those present. On page 16, lines 9 and 10, reinsert the stricken language. This motion was made and carried unanimously with those present.

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Mr. Ream asked Mr. Kelly what he thought of the bill as amended. Mr. Kelly said their primary concern was taken care of in making the "shall" back to "may" so they wouldn't need to review all the 350 or so chemicals that come into the state. He asked that the underlined part on page 10, from line 3 on to line 7 be struck. He said a system presently exists in which the Departments of Agriculture, Fish, Wildlife and Parks, Health, and Livestock meet to resolve pesticide issues.

Dr. Howard Johnson was also asked to respond as he'd been in on the drafting of the bill. Dr. Johnson said this request would remove the tri-agency expertise.

Rep. Asay moved that the bill be TABLED. He felt it would have a tremendous impact throughout the state of Montana. He felt there was too short a time to deal with it properly. A roll call vote was taken and it failed with 7 voting yes and 12 no. The 7 yes were Reps. Asay, Bertelsen, Curtiss, Hand, Iverson, Mueller, Neuman. Rep. Quilici had left his vote to be cast in favor of the bill.

Rep. Brown said he opposed Mr. Kelly's amendment.

Rep. Addy moved the bill AS AMENDED DO PASS.

Rep. Brown responded to a question on fees that the fees have been very low and the bulk of the program has been supported with money from the general fund. Now with the raising of the fees about 50 percent of the program will be paid for by people who use it and the other half will still be paid with money from the general fund. Rep. Neuman expressed concern that the people who will be paying more are happy with things as they are now.

Rep. Neuman moved a substitute motion of DO NOT PASS.

The question was called and a roll call vote was taken. The motion failed with 4 voting yes and 15 no. The yea votes were Reps. Asay, Curtiss, Hand and Neuman. Rep. Harper moved the vote be reversed and this motion carried so HB 802 receives an AS AMENDED DO PASS recommendation from the committee.

HOUSE BILL 842 Rep. Jensen went through the suggested amendments (Exhibit 4). He moved the amendments be adopted and this motion carried unanimously with those present (Rep. Quilici absent). He then moved to strike on page 14, lines 9-25 and on page 15, lines 1-23.

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This would delete section 6, the mandamus section. This motion carried unanimously with all present. Rep. Jensen then moved the bill DO PASS AS AMENDED. Rep. Brown made a substitute motion that the bill BE TABLED. This motion carried with 8 nos and 11 yes. The nos were Reps. Harper, Ream, Addy, Fagg, Jensen, McBride, Metcalf, Veleber.

Chairman Harper called for a recess as they needed to go back to the Committee of the Whole. The time was 6:30 p.m.

Chairman Harper reconvened the House Natural Resources Committee at 10 p.m. on February 21, 1983, in Room 224K of the State Capitol, with all members present except Rep. Nordtvedt. Chairman Harper reopened the meeting to executive session.

EXECUTIVE SESSION

HOUSE BILL 877 Rep. Jensen moved DO PASS. Rep. McBride asked what a person gets for buying a decal. Rep. Ream said the privilege of boating on Montana streams. He said we pay for using a ski area and we pay to stay in camp grounds and this is similar. He said the prime objective is to try to improve relations between recreationists and land owners.

Rep. Addy moved to amend on page 3, line 14 by striking that line. He said during the discussion it was brought out that there isn't any difference between the \$2 and \$4 annual registration.

Rep. Curtiss asked why we only apply this to crafts floating the streams and not the lakes. Rep. Ream said this is because most of the problems with land owners have occurred on the streams.

Rep. Addy said to make the first amendment complete we would need to strike on page 2, lines 2 following "craft" and all of 3; and lines 12 and 13. This would make it uniform for all by eliminating the distinction for single capacity crafts. This motion carried with Reps. Curtiss and Asay voting no.

Rep. Jensen moved the bill AS AMENDED DO PASS. Rep. Asay felt this would just be another revenue measure for the Fish and Game Department and would be used to pick up some more land. He said he opposed it.

Rep. Mueller expressed a fear that it would be costly to enforce. He felt, too, that it would be another form of bureaucratic control.

Rep. Iverson said it was not fair to stick another police action

on the game wardens.

Chairman Harper said there is a problem in some heavily used areas like along the Smith River. He said something like this is going to be needed in our state.

Rep. Ream said there are some real sore spots and this could help alleviate some. He said he fully supported HB 888 and some of the features in that bill were originally in this bill. He said a good example of this is in Missoula County where cooperation exists between the landowners and the recreationists. The landowners have given land easements and recreation easements along the Blackfoot River to better protect their rights and the rights of recreationists. This bill should further that kind of cooperation in other areas.

Rep. Quilici questioned whether the paying of the registration fee might not make some feel that they have paid for the right to use that stream and so might endanger relationships between landowners and recreationists.

Rep. Addy said his understanding of the bill is that it is to separate the people who want to use the stream for recreation from those that use it for economic purposes. He felt section 6 is the heart of the bill --by using the finances derived from the decals to alleviate the pressures landowners are feeling, and if administered properly he felt it would help.

The question was called and a roll call vote was taken and the motion carried with 10 voting yes and 8 no (Asay, Bertelsen, Brown, Curtiss, Hand, Iverson, Mueller and Neuman) and 1 absent (Nordtvedt). HB 877 receives an AS AMENDED DO PASS recommendation.

HOUSE BILL 803 Rep. Hand moved Mr. Berry's amendment which was on page 1, line 20, following "standard" to insert "where reasonably feasible."

Mr. Berry was asked to explain this amendment. He said there is a laundry list in the Act that an application has to be checked with. One of these is "scenic impacts" which is difficult to write quantifiable rules on. All this amendment says is that those portions of the act where quantifiable standards can be set, the agency will do it.

Rep. Ream asked if this bill will create problems in the litigation going on right now with BPA. Mr. Berry said the court said the Act does not have any standards and we are appealing the ruling. He said if the legislature takes this action now the court could reasonably imply from it that we don't have standards. So it could be detrimental to our case. We don't know that the court will take that stand but it's possible.

Mr. Phillips was asked to respond on this question also. He said Judge Battin's ruling that the BPA was not subject to the provisions of the MFSA because there are no substantive standards in the MFSA, is the reason we need this bill which requires standards be put in the Act. He said there are many areas where the department can adopt standards. He said they operate in six states and have no problem operating under the rules.

Rep. Jensen moved TO TABLE the bill. A roll call vote was taken and the motion carried with 11 voting yes, 7 no (Addy, Brown, Curtiss, Fagg, Hand, Iverson, Quilici), and 1 absent (Nordvedt).

HOUSE BILL 711 Rep. Neuman moved to reconsider action on HB 711. He asked if Mr. Lewis could say a few words on this. Mr. Lewis said suggested amendments would cross off the last portion of the charge and now only people with more than 50 claims and which are not used for the purpose of stockwater or human consumption will be subject to the additional fees. He said he didn't know how much money this will raise. He said he was trying to make one last attempt to hit the large landowners with some fees to help defray the cost. He said it won't be enough but will eliminate some of the drain on the general fund. He said 3.7 million dollars is what is needed. He said an appropriate fee would be set through public hearings.

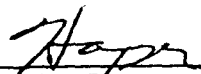
Rep. Asay questioned if this wouldn't be a revenue measure and not need to be handled at this time. Rep. Quilici questioned since it had not received prior approval if it would be accepted late by the Senate.

Rep. Iverson said the question of who is excluded is irrelevant but the fact the state is reneging is relevant. He didn't feel it was right.

Rep. Addy said one legislature can't bind future legislatures. He made a motion to reconsider the bill. Rep. Neuman withdrew his motion. He said he had made the motion to give Mr. Lewis a chance to suggest his amendment. A roll call vote was taken and carried with 11 voting yes, 6 voting no (Bergene, Brown, Curtiss, Iverson, Mueller, Neuman), and 2 absent (Fagg and Nordtvedt). Rep. Addy moved the amendments which are Exhibit 5 of the minutes. This motion carried unanimously with those present. Rep. Addy then moved the bill AS AMENDED DO PASS. This motion carried with 9 voting yes, 6 voting no (Bergene, Curtiss, Jensen, Mueller, Neuman, Quilici), and 4 absent (Brown, Fagg, Iverson, Nordtvedt).

Meeting adjourned at 10:40 p.m.

Respectfully submitted,


HAL HARPER, Chairman

Eminent Domain Subcommittee Meeting

2/20/83

Ex. 1

NAME	Agency / Organization	Phone
beck	Heflins	2584
Bob Gannon	Montana Power	449-7033
Tom Dowling	Mont. R.P. Assn	442-9000
Jon Allen	MT. Petroleum Assn.	442-7582
Pet Wilson	Montco	449-6927
Will Brooke	MT STOCKGROWERS	442-3420
John Lahr	MPC	449-4800
Bonnie Lippy	Mt Coal Council	442-6223
Rep Glenn Jordan		
Jim Mockler	MT. Coal Council	442-6223
Mary A Langley	MT. MINING ASSN.	443-7297
Jim Hughes	MOUNTAIN BELL	449-3385
Larry Huss	MOUNTAIN BELL	449-4160
Tim Stearns	NARC	443-4965
Ward Shanahan		442-8560

Subcommittee members:

Ream

Addy

Bertleson

1. Title, lines 5 through 12.

Following: "Sections"

Strike: lines 5 through 12 in their entirety

Insert: " 70-30-104, 70-30-111, 70-30-201, 70-30-202, 70-30-203, 70-30-206, 70-30-207, 70-30-308, 70-30-309, 70-30-311, 70-30-313 MCA; Repealing Sections 70-30-204 and 70-30-205; ~~AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.~~"

2. Pages 1 through 26

Strike: all of the bill following the Title

Insert:

Section 1. Section 70-30-104, MCA, is amended to read:

"70-30-104. What estates and rights in land may be taken. The following is a classification of the estates and rights in lands subject to be taken for the public use:

(1) such estate or rights as may be necessary up to and including a fee simple when taken for public buildings or grounds or for permanent buildings or for an outlet for a flow or a place for the deposit of debris or tailings of a mine or for the mining and extracting of ores, metals, or minerals when the same are owned by the plaintiff but located beneath or upon the surface of property where the title to said surface vests in others or for the underground storage of natural gas by a natural gas public utility as defined in 82-10-301. When the appropriation is for the underground storage of natural gas, all of the right, title, interest, and estate in the real property and in the subsand stratum, formation, or reservoir so appropriated shall be determinable and for all purposes terminate upon abandonment or upon cessation for the period of 1 year of the use for which the same was appropriated, and thereupon the ownership of the residue of natural gas therein remaining shall likewise vest in the then owners of such reservoir space.

(2) such estate or rights in the surface as are necessary for a reservoir or dam and for the permanent flooding that results, up to the edge of the maximum pool of the reservoir;

(3) an easement, leasehold, or license, for so long as the interest is necessary for the purpose described in the complaint, or fee simple when taken for any other use;

(4) the right of entry upon and occupation of land and the right to take therefrom such earth, gravel, stones, trees, and timber as may be necessary for some public use."

Section 2 . Section 70-30-111, MCA, is amended to read:

"70-30-111. Facts necessary to be found before condemnation. Before property can be taken, it must appear:

(1) that the use to which it is to be applied is a use authorized by law;

(2) that the taking is necessary to such use;

(3) if already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use;

(4) that a reasonable effort to purchase the property was sought and awritten offer was made and rejected; and

(5) that the public interest requires the taking."

Section 3. Section 70-30-201, MCA, is amended to read:

"70-30-201. Applicable rules of practice. Except as otherwise provided in this chapter, the provisions of Titles 25 and 26, including the Montana Rules of Civil Procedure and the Montana Rules of Evidence are applicable to and constitute the rules of practice in the proceedings mentioned in this chapter."

Section 4. Section 70-30-202, MCA, is amended to read:

"70-30-202. Jurisdiction and venue -- complaint and summons required. All proceedings under this chapter must be brought in the district court of the county in which the property or some part thereof is situated. They must be commenced by filing a complaint and issuing a summons thereon. A summons served under this Chapter must contain a notice to the defendant to file and serve an answer to the issue of public necessity and to appear and show cause at a time and place specified therein why the property described should not be condemned as preyed for in the complaint."

Section 5.

Section 70-30-203, MCA, is amended to read:

"70-30-203. Contents of complaint. The complaint must ~~contain~~ allege :

(1) the name of the corporation, association, commission, or person in charge of the public use for which the property is sought, who must be styled plaintiff;

(2) the names of all owners, mortgagees, and lienholders of record and any other claimants of the property of record, if known, or a statement that they are unknown, who must be styled defendants;

(3) a statement of the right of plaintiff;

(4) statements of each of the facts necessary to be found in 70-30-111;

~~(4)~~ (5) if a right-of-way is sought, the complaint must show the location, general route, and termini and must be accompanied with a map thereof, so far as the same is involved in the action or proceeding;

~~(5)~~ (6) a description of each ~~piece of land~~ interest in real property sought to be taken and whether the same includes the whole or only a part of the entire parcel or tract. All parcels lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of the parties. ~~When application for the condemnation of a right-of-way for the purposes of sewerage is made on behalf of a settlement or a town or a county, the county commissioners of the county may be named as plaintiff.~~

~~(6)~~ (7) if a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir is sought to be appropriated, a description thereof and of the land in which it is alleged to be contained and a description of all other property and rights sought to be appropriated for use in connection with the appropriation of the right to store natural gas in and withdraw natural gas from such reservoir. In addition, the complaint shall state facts showing that the underground reservoir is one subject to appropriation by plaintiff; also stating that the underground storage of natural gas in the land sought to be appropriated is in the public interest; that the underground reservoir is suitable and practicable for natural gas storage; that the plaintiff in good faith has been unable to acquire the rights sought to be

appropriated hereunder and a statement that the rights and property sought to be appropriated are not prohibited by law; and in addition, the complaint must be accompanied by a certificate from the board of oil and gas conservation as set forth in 82-10-304."

Section 6. Section 70-30-206, MCA, is amended to read:

"70-30-206. Powers of court -- preliminary condemnation order. (1) The court or judge has power to:

(a) regulate and determine the place and manner of making the connections and crossings and enjoying the common uses mentioned in 70-30-103(1)(e) and of the occupying of canyons, passes, and defiles for railroad purposes, as permitted and regulated by the laws of this state or of the United States;

(b) ~~determine whether or not the use for which the property is sought to be appropriated is a public use within the meaning of the laws of this state~~ limit the interest in real property sought to be appropriated if in the opinion of the court the interest sought is not necessary;

(c) ~~limit the amount of property sought to be appropriated if in the opinion of the court or judge the quantity sought to be appropriated is not necessary.~~

(2) If the court ~~or judge~~ is satisfied from the evidence presented ~~at the hearing provided for in 70-30-204~~ that the public interests requires the taking of such lands interests in real property and that the facts necessary to be found before condemnation appear, it ~~or he~~ must forthwith make and enter a preliminary condemnation order that the condemnation of ~~the land or other~~ the land or other interest in real property may proceed in accordance with the provisions of this chapter.

(3) If the property sought to be appropriated is a sand, stratum, or formation suitable for use as an underground natural gas storage reservoir and the existence and suitability of it for such use has been proved by plaintiff upon substantial evidence, the order of the court ~~or judge~~ shall direct the commissioners to ascertain and determine the amount to be paid by the plaintiff to each person for his interest in the property sought to be appropriated for use as such underground natural gas storage reservoir and/or as the annual rental for the use of such underground gas storage reservoir and for the use of so much of the surface as is required in the operation of the underground gas storage reservoir and for the use in connection with the creation, operation, and maintenance thereof and for all the native gas contained in said reservoir as compensation and damages by reason of the appropriation of such property. However, the amount to be paid for such native gas and all thereof shall be no less than the market value of such gas. The court shall appoint three persons, qualified as experts and recommended as such by the board of oil and gas conservation, to assist and advise the commissioners in determining the compensation and damages to be paid by plaintiff to each person for his interest in the property sought to be appropriated, and the fees and expenses of such persons shall be chargeable as costs of the proceedings to be paid by the plaintiff."

Section 7. Section 70-30-207, MCA, is amended to read:

"70-30-207. ~~Appointment~~ of commissioners -- qualifications -- affidavit. (1) ~~Immediately upon making and entering the preliminary condemnation order, the judge must meet with the respective parties or their attorneys of record for the purpose of appointing condemnation commissioners to ascertain and determine the amount to be paid by the plaintiff to each owner or other persons interested in such property by reason of the appropriation of such property.~~ The appointment of Within 10 days of entry of a preliminary condemnation order, the defendant shall file a statement of his claim of just compensation. If within 20 days of service of defendant's claim plaintiff fails to accept the claim, the court must appoint condemnation commissioners and the commission hearing may be waived by written consent of both parties, in which case the proceeding shall be conducted in the district court as if the case had been appealed from an award by such commissioners

(2) The court must thereupon appoint three qualified, disinterested condemnation commissioners, unless appointment has been waived. One of such commissioners shall be nominated by the party or parties plaintiff. One of such commissioners shall be nominated by the party or parties defendant. The third commissioner shall be the chairman and shall be nominated by the two commissioners previously nominated. However, if said two commissioners fail to make such choice at the time of their appointment, then such nomination shall be made by the presiding judge.

(3) Each commissioner shall possess the following qualifications:

- (a) a citizen of the United States and over 18 years of age;
- (b) that he is not more than 70 years of age;
- (c) that he is in possession of natural faculties, of ordinary intelligence, and not decrepit;
- (d) that he is possessed of sufficient knowledge of the English language;
- (e) that he was assessed on the last assessment roll of a county within the judicial district in which the action is pending;
- (f) that he has not been convicted of malfeasance in office or any felony or other high crime;
- (g) that he is not related within the sixth degree to any party;
- (h) that he does not stand in the relation of guardian and ward, master and servant, debtor and creditor, or principal and agent or partner or surety as to any party.

(4) At the time of such meeting and nominations, there shall be filed with the court by each nominating party or judge an affidavit of the person so nominated stating substantially as follows:

(a) that he has formed no unqualified opinion or belief as to the compensation to be awarded in the proceeding or as to the fairness or unfairness of the plaintiff's offer for the lands and improvements of the defendants;

(b) that he has no enmity against or bias in favor of any party and has not discussed, communicated, or overheard or read any discussion or communication from any party relating to values of the lands in question or the compensation offered, demanded, or to be awarded;

(c) that if selected as a condemnation commissioner, he is willing to serve and will well and truly try the issues of compensation

and render a true decision according to the evidence and in compliance with the instructions of the court;

(d) that he will not discuss the case with anyone except the other commissioners until a decision has been filed with the court.

Section 8. Section 70-30-308, MCA, is amended to read:

"70-30-308. How payment made -- execution or annulment for nonpayment. (1) Payment may be made to the defendants entitled thereto, or the money may be deposited in court for the defendants and be distributed to those entitled thereto. However, at the option of the defendants, payments may be made:

(a) ~~if a fee simple interest in the defendant's land is taken~~, on an annual basis, utilizing the installment contract method; or

(b) if other land is reasonably available and the plaintiff consents, by means of a land exchange between the defendants and plaintiffs if the land to be provided by the plaintiffs in the exchange is of equal or more value than the land being condemned. ~~or~~

~~(c) if an easement over or through the defendants' property is involved, in either a single payment or in not more than five consecutive annual installments.~~

(2) If the money be not so paid or deposited, the defendants may have execution as in civil cases, and if the money cannot be made on execution, the court or judge, upon a showing to that effect, must set aside and annul the entire proceedings and restore possession of the property to the defendant if possession has been taken by the plaintiff. "

Section 9. Section 70-30-309, MCA, is amended to read:

"70-30-309. Final order of condemnation -- contents -- vesting upon filing. (1) When payments have been made and the bond given, if the plaintiff elects to give one, as required by 70-30-307 and 70-30-308, the court ~~or judge~~ must make a final order of condemnation, which must describe the property condemned and the purposes of such condemnation.

(2) A copy of the order must be filed in the office of the county clerk and recorder, and thereupon the property described therein shall vest in the plaintiff for the purposes therein specified."

Section 10. Section 70-30-311, MCA, is amended to read:

"70-30-311. Putting plaintiff in possession. (1) At any time after the filing of the preliminary condemnation order or after the report and assessment of the commissioners have been made and filed in the court and either before or after appeal from such assessment or from any other order or judgment in the proceedings, the court ~~or any judge thereof at chambers~~ upon application of the plaintiff shall have power to make an order that, upon payment into court for the defendant entitled thereto of the amount of compensation claimed by the defendant in his answer under 70-30-207

or the amount assessed either by the commissioners or by the jury, as the case may be, the plaintiff be authorized:

(a) already in possession of the property of such defendant sought to be appropriated, to continue in such possession; or

(b) if not in possession, to take possession of such property and use and possess the same during the pendency and until the final conclusion of the proceedings and litigation and that all actions and

proceedings against the plaintiff on account thereof be stayed until such time.

(2) However, where an appeal is taken by such defendant, the court ~~or judge~~ may, in its or his discretion, require the plaintiff before continuing or taking such possession, in addition to paying into court the amount assessed, to give bond or undertaking with sufficient sureties to be approved by the ~~judge~~ court and to be in such sum as the court ~~or judge~~ may direct, conditioned to pay the defendant any additional damages and costs over and above the amount assessed, which it may finally be determined that defendant is entitled to for the appropriation of the property, and all damages which defendant may sustain if for any cause such property shall not be finally taken for public uses.

(3) The amount assessed by the commissioners or by the jury on appeal, as the case may be, shall be taken and considered, for the purposes of this section, until reassessed or changed in the further proceedings, as just compensation for the property appropriated; but the plaintiff, by payment into court of the amount claimed in the answer or the amount assessed or by giving security as above provided, shall not be thereby prevented or precluded from appealing from such assessment but may appeal in the same manner and with the same effect as if no money had been deposited or security given. In all cases where the plaintiff deposits the amount of the assessment and continues in possession or takes possession of the property, as herein provided, the defendant entitled thereto, if there be no dispute as to the ownership of the property, may at any time demand and receive upon order of the court all or any part of the money so deposited and shall not by such demand or receipt be barred or precluded from his right of appeal from such assessment but may, notwithstanding, take and prosecute his appeal from such assessment; provided that if the amount of such assessment is finally reduced on appeal by either party, such defendant who has received all or any part of the amount deposited shall be liable to the plaintiff for any excess of the amount so received by him over the amount finally assessed, with legal interest on such excess from the time such defendant received the money deposited, and the same may be recovered by action; and provided, further, that upon any appeal from assessment by the commissioners to a jury, the jury may find a less as well as an equal or greater amount than that assessed by the commissioners; and provided, further, that the court shall not order the delivery to any defendant of more than 75% of the money deposited on his account except upon posting of bond by such defendant equal to the amount in excess of 75%, with sureties to be approved by the court, to repay to the plaintiff such amounts withdrawn as are in excess of his final award in the proceedings.

Section 11. Section 70-30-313, MCA, is amended to read:

"70-30-313. Current fair market value. Current fair market value is the price that would be agreed to by a willing and informed seller and buyer, taking into consideration, but not limited to, the following factors:

(1) ~~the highest and best reasonably available use of the property and its value for such use~~ and its value for such use, provided current use may not be presumed to be the highest and best use;

(2) the machinery, equipment, and fixtures forming part of the real estate taken; and

(3) any other relevant factors as to which evidence is offered."

Section 12. Repealer. Sections 70-30-204 and 70-30-205, MCA are repealed.

Section 13. Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun prior to the effective date of this act.

~~Section 14. Effective date. This act is effective on passage and approval.~~

-End-



The Big Sky Country

MONTANA STATE HOUSE OF REPRESENTATIVES

REPRESENTATIVE DAVE BROWN
HOUSE DISTRICT 83

HOME ADDRESS:
 3040 OTTAWA
 BUTTE, MONTANA 59701
 PHONE (406) 782-3604

COMMITTEES:

JUDICIARY, CHAIRMAN
 NATURAL RESOURCES
 HIGHWAYS
 ENVIRONMENTAL QUALITY COUNCIL, VICE-CHAIRMAN

BROWN AMENDMENTS for HOUSE BILL 802

Amendment 1

(page 10, after line 7, before line 8, INSERT:)

The departments, in determining whether to request such review for a particular chemical product, may not request a review unless the chemical material or its by-products have been shown to :

- (1) have a half-life in the environment greater than seven days; and
- (2) accumulate in vegetation, soils, or animal tissues; and
- (3) be a suspected carcinogen, mutagen, or teratogen.

Amendment 2

1. Page 7, line 22.
 Following: "all"
 Strike: "available"
 Following: "information"
 Insert: "in the possession of the applicant"
2. Page 7, line 23.
 Following: "on"
 Insert: "representative"

Amendment 3

Page 11, line 24.
 Following: "Montana."
 Strike: "For the purposes of bringing such pesticides into Montana for sale or use, the cancellation is effective upon announcement of the cancellation by the federal agency."

Amendment 4

(page 22, in line 3, between the word "livestock." and the word "The", INSERT:)



The Big Sky Country

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"A civil penalty shall only be assessed against a person when one or more major violations is proven under the procedure of this act and the Administrative Procedures Act. Major violations include misuse of a pesticide which results in proven harm to human health, the environment or to agricultural crops or livestock; selling of a restricted pesticide to a person not certified or authorized to purchase such pesticides; use or sale of unregistered pesticides; failure to maintain any individual pesticide application and sales records; using or selling pesticides without the required license, or permit; or reoccurrence of any identical violations within the same calendar year."

Amendment 5

Page 22, line 11.

Strike: Section 10.

Insert: "Deposit of fees and penalties in general fund.

All licensing, permitting, registration, and equipment inspection fees collected under (part 2 of this chapter) and any civil penalties collected under 80-8-306 must be deposited in the general fund."

Ex. 4

Tabled

Amendments to HB 842

- 1) page 11, lines 4, after "permanent", strike "noxious-weed free"
- 2) page 11, line 6, after "required", strike "For purposes of this section and 82-4-341, "noxious weed" has the meaning provided in 7-22-2101."
- 3) page 12, line 14, strike "commencement", insert "Completion"

Page 14, line 9-25 ^{Page 15} 1-23 delete section 6

EX.5



The Big Sky Country

MONTANA STATE HOUSE OF REPRESENTATIVES

REPRESENTATIVE DAN W. HARRINGTON
MAJORITY WHIP

COMMITTEES:
TAXATION
RULES

HOUSE DISTRICT 88

HOME ADDRESS:

1201 N. EXCELSIOR
BUTTE, MONTANA 59701
PHONE 782-0332

February 21, 1983

AMENDMENTS TO HOUSE BILL NO. 711
(Introduced Bill)

1. Page 2, line 1.

Before: "Adjudication"

Insert: "(1)"

2. Page 2, line 8.

Following: "collection."

Insert: "However, no additional fee may be assessed for claims primarily for the purpose of stockwater or human consumption or ^{to} claimants with fewer than fifty individual claims. As used herein actual adjudication costs include all costs incurred in the adjudication of existing rights since May 11, 1979 through completion of the adjudication process under this chapter.

~~(2) All fees paid by a claimant pursuant to 85-2-225 shall be credited against the assessment made in subsection (1)".~~

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