

MINUTES OF THE MEETING OF THE HOUSE HIGHWAYS AND  
TRANSPORTATION COMMITTEE, MARCH 15, 1983

The meeting was called to order by Chairman Abrams on Tuesday, March 15, 1983 at 12:30pm in Room 129, State Capitol. All members were present with the exception of Rep. Shontz who was absent.

HEARINGS

SENATE BILL 330. SEN. JACK GALT, District 23, Meagher County, told the Committee the bill would satisfy all parties concerned with regard to special license plates for National Guard members.

MR. GARY SCOTT, Montana Army National Guard Enlisted Association, told the Committee the plates were distinctive and would be issued with identification.

MAJOR RICHARD MOONEY, Montana Army National Guard, said the plate would provide positive identification in case of emergency, citing the riot at Montana State Prison, to which National Guard members responded. He advised the plates would promote credibility on the part of the individual and are good advertising for the Guard, adding there would be no extra cost to the State in administering the program. A sample plate was provided for review by committee members and is red, white and blue, with the minuteman emblem.

MR. LARRY MAJERUS, Administrator, Motor Vehicle Division, Department of Justice, told the Committee Guardsmen need only to present authorization to the county treasurer for the plates.

MR. GEORGE SCHULZ, member of the National Guard stated his support of the bill.

OPPONENTS

There were no opponents of the bill.

QUESTIONS

REP. SOLBERG asked if county numbers would be printed on the plates. Mr. Majerus said they were not required in the bill, but are required on personalized plates. Major Mooney told committee members he would have no objection to such designations.

REP. HEMSTAD asked if the bill should be so amended. Mr. Majerus replied the county treasurer would probably provide the county designation as a routine matter.

Highways Committee Minutes  
March 15, 1983  
Page 2

REP. LYBECK asked if all license plate bills were processed separately, referring to Prisoner of War and handicapped plates. Rep. Keyser replied they were.

SEN. GALT closed and asked Rep. Holliday to carry the bill.

SENATE BILL 155. SEN. GEORGE MCCALLUM, District 12, Sanders County, testified as chief sponsor of the bill, which is an attempt to correct a specific situation in his district and may be applied to similar situations in the future. He advised committee members a strip of railroad right of way along the highway in Sanders County was deeded to the County in 1928 and quitclaim deeded to the State for \$1 in 1947. He said the State attempted to auction the land in 1955, adding the bill would allow persons whose property adjoined such frontage to purchase same from the State.

PROPONENTS

MR. HOWARD BROUTY, Co-Chairman, White Pines Land Owners Association, advised committee members the railroad gave up its rights to the right of way when the property was abandoned in 1928. He said the County received a quitclaim deed for \$1 in Augsut, 1982 and within 10 days the State Highway Department purchased an extra 50 feet on the West side and 25 feet on the East side for 100 feet and 75 feet of right of way, respectively, along a 12 mile strip of land. He explained the Department now claims to own 400 feet of right of way, which it intends to sell, while area landowners have abstracts and deeds to the contrary. He told the Committee a representative of the Department said neither quiet title nor good title could be produced to the land by the Department and that the land actually belongs to the federal government. Citing a specific incident, he said the State sold land to Everett McKenzie, who is unable to obtain a deed since the land allegedly belongs to the Louisiana Pacific Railroad and told the Committee the State should have to prove the title and not area land owners (exhibit).

MRS. BESSIE KLINE, White Pines Land Owners, read from a prepared statement and told the Committee on even sections of the land there is no mention of the land grant railroad until 1928, (exhibit).

MR. AL DAVIS, Trout Creek, presented the Committee with prepared testimony and said it was his understanding land abandoned by the railroad would revert to the original land owners and that the law was later amended to give land abandoned by railroads to the federal government for roads which had to be constructed within one year of acquisition of the land, (exhibit).

MRS. ADRIAN MORICH, provided copies of several letters from representatives of the Department of Highways, advising of differing amounts of right of way on her property (exhibits).

MR. FRED KLINE, White Pine Land Owners, told the Committee he purchased property four years ago, which was surveyed at 61 acres and on which he has paid taxes. He said he has found he does not actually own the land and questions Departmental actions and his constitutional rights. He asked the Committee to provide him with a definition of a quitclaim deed.

MR. NICK MARICH stated his support of prior statements made.

#### OPPONENTS

There were no opponents of the bill.

IN CLOSING, Sen. McCallum advised the Committee of an amendment made by Sen. Regan, wherein any land to be used for commercial purposes would revert to the State.

#### QUESTIONS

REP. KEYSER asked David Niss, Legislative Council Attorney, if it would be unconstitutional to limit use of the property to agriculture and non-commercial purposes. Mr. Niss replied he had not seen the amendment prior to the meeting but would consider them and advise the Committee of his findings, as it could pose legal problems.

REP. KEYSER said he wondered if the bill would pass if the amendment were stricken. Rep. Solberg asked those testifying in support of the bill if the State would not provide them with a quitclaim deed. Mrs. Brouty replied she already has a warranty deed to her property.

REP. HEMSTAD asked if the bill would help Mr. Kline. Mr. Niss replied abandonment of the land would depend upon real ownership of the State to begin with.

MR. MARICH asked why the State subdivision law would be applied in addition to county law. Rep. Stobie replied Section 5 should not be part of the bill, in that case.

REP. STOBIE asked if a different amendment would better address the situation of subdivision in lieu of Sen. Regan's amendment. Sen. McCallum replied a 100 foot strip of land would be fairly difficult to subdivide, adding he had spoken with Department Director, Gary Wicks, who agreed to wait on the sale of the land until the situation had undergone legislative review.

REP. LYBECK asked if there were a study commission to determine the prudence of the sale of such rights of way. Sen. McCallum asked who the property belonged to and if the Department of Highways had a right to the property.

MR. GREG PETESCH, Legislative Council Attorney, said the bill pertains to property abandoned by the State and not that abandoned by the railroad, unless it is later purchased by the State and a road is built on the property which is later abandoned.

REP. KEYSER told the Committee a bill assigned to Judiciary Committee relates to abandonment, repealers and fee simple. He asked Mr. Beck if the property in question was acquired through the abandonment procedure. Mr. Beck replied it was acquired through land grant railroad abandonment, quitclaimed by the Northern Pacific to Sanders County and then to the State of Montana, adding there was a problem within the granting clause of the quitclaim deed.

REP. KEYSER asked if the ICC ruling was ever challenged in court. Mr. Beck replied it was not.

REP. COMPTON asked Mrs. Kline if the Interstate Commerce Commission was given authority via the 1822 Act. Mrs. Kline told him a Sanders County Commissioner, who is active in real estate sales, said the 100 feet of frontage could be subdivided.

The hearing was closed on Senate Bill 155.

#### EXECUTIVE SESSION

SENATE BILL 330. REP. KEYSER moved the bill Be Concurred In with the intent that county numbers be placed on the plates. The motion was seconded by Rep. Solberg.

REP. HEMSTAD said there was no reason for county designations on the National Guard plates or on personalized plates.

CHAIRMAN ABRAMS asked if a statement of intent was necessary. Mr. Petesch said the statement would not be required but could be attached, or a Committee letter could be drafted informing the Department of Justice of committee intent.

REP. KEYSER said the county designation would make checking a vehicle registration easier.

The motion made by Rep. Keyser was unanimously approved with a letter of intent to be sent to the Department of Justice.

SENATE BILL 120. SEN. PAUL BOYLAN, District 38, Gallatin County, testified as sponsor of the bill and read from prepared testimony, advising committee members the bill would cut costs on leases.

#### PROPONENTS

MR. BEN HAVDAL, Montana Motor Carriers Association, told the Committee he supports the bill as it does not remove the requirement for a motor carrier to show a properly drawn lease, but omits the prefiling and prior authorization clauses.

MR. WAYNE BUDT, Montana Public Service Commission, said the bill would bring Montana into conformity with ICC regulations, adding the change would be effective July 1, 1983, coinciding with the fiscal year.

#### OPPONENTS

There were no opponents of the bill.

#### QUESTIONS

REP. KOEHNKE asked what power equipment meant. Sen. Boylan explained it referred to tractors pulling trailers.

REP. KEYSER asked Mr. Budt if there were a standard lease form. In response, Mr. Budt replied there was.

Highways Committee Minutes  
March 15, 1983  
Page 6

REP. BROWN asked if Senate Bill 170 conflicted with Senate Bill 155. Sen. Boyland replied he didn't think so and closed.

EXECUTIVE SESSION.

SENATE BILL 120. REP. HAMMOND moved the bill Be Concurred In. Rep. Stobie moved the effective date by amended to July 1, 1983, which was seconded by Rep. Brown and given unanimous committee approval.

REP. KEYSER moved the bill Be Concurred In as Amended. The motion was seconded by Rep. Hammond and given unanimous committee approval.

SENATE BILL 402. REP. ZABROCKI moved the bill Be Concurred In.

REP. STOBIE asked what position a motorist would be in when passing a bicycle with double yellow lines present. Mr. Petesch replied the motorist could not technically, pass the bicycle.



REP. LYBECK told the Committee he viewed defining a bicycle as a vehicle to be a problem in view of its speed on roads versus that of an automobile.

REP. BROWN commented the bicyclist would be required to ride as far to the right as possible. Rep. Koehnke asked if bicyclists could ride on wide shoulders when defined as a vehicle, since a vehicle may not do so.

REP. KEYSER said he was concerned with the section allowing bicyclists to ride two abreast with no clarification as to when it could be done. He explained that, according to statute, a vehicle shall not travel at a speed impeding traffic, which could happen if bicyclists travelled abreast on narrow roads.

REP. BROWN requested time to study the bill further and received committee approval to do so.

The meeting was adjourned at 2:27pm.

  
REP. HUBERT ABRAMS, CHAIRMAN  


Joann T. Gibson, Secretary

# STANDING COMMITTEE REPORT

MARCH 15 19 83

MR. **SPEAKER:**

We, your committee on **HIGHWAYS AND TRANSPORTATION**

having had under consideration **SENATE** Bill No. **330**

**THIRD** reading copy ( **BLUE** )  
color

**A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAW  
RELATING TO SPECIAL LICENSE PLATES FOR MEMBERS OF THE  
NATIONAL GUARD; AMENDING SECTION 10-1-110, MCA."**

Respectfully report as follows: That **SENATE** Bill No. **330**

**BE CONCURRED IN**  
~~EXHIBIT~~

**REP. HUBERT ABRAMS**

Chairman.

STATE PUB. CO.  
Helena, Mont.

COMMITTEE SECRETARY

# STANDING COMMITTEE REPORT

MARCH 15

19 83

MR. SPYAKER:

We, your committee on HIGHWAYS AND TRANSPORTATION

having had under consideration SENATE Bill No. 120

THIRD reading copy (BLUE color)

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE PROVISIONS RELATING TO THE LEASING OF POWER EQUIPMENT BY CLASS A, B, C, AND D CARRIERS BY DELETING THE REQUIREMENT FOR SPECIFIC APPROVAL AND CERTIFICATION BY THE PUBLIC SERVICE COMMISSION; AMENDING SECTION 69-12-611, MCA."

Respectfully report as follows: That SENATE Bill No. 120

Be amended as follows:

- 1) Title, line 8  
Following: "MCA"  
Insert: "; AND PROVIDING AN EFFECTIVE DATE."
- 2) Page 2, line 16  
Following: line 17  
Insert: "Section 2. Effective date. This act is is effective July 1, 1983."

AND AS AMENDED  
BE CONCURRED IN

~~EXHIBIT~~

REP. HUBERT ABERMS

Chairman.

STATE PUB. CO.  
Helena, Mont.

COMMITTEE SECRETARY



## VISITORS' REGISTER

HOUSE

## Highways

COMMITTEE

BILL

SB 330

Date \_\_\_\_\_

3-15-83

**SPONSOR**

Gait.

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## VISITORS' REGISTER

HOUSE

Highways

COMMITTEE

BILL

SB 155Date 3-15-83

SPONSOR

McCallum

NAME

RESIDENCE

REPRESENTING

SUPPORT

OPP

FRANK CHEMA

TROUT CREEK

LAND  
WHITEPINE OWNERS

X

Lance J. Hines

"

"

X

Fred Johnson

"

" "

X

Blaine Houty

Big Fork

" "

X

Blaine Houty

Big Fork

\* (

X X

Adrian March

Box 124  
Trout Creek, MT

" "

X

Adrian Davis

Box 1398 Trout Creek, MT

"

X

Adrian Davis

Box 1398 Trout Creek, MT

"

X

Rick Marick

" "

X

Monst Teigen

Helena

Mt. Stockgrowers Cont.  
" Woodgrowers Cont.

X

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## Highways

COMMITTEE

SB 120

Date 3-15-83

**SPONSOR**

Boylan

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

Name GARY D. SCOTT Committee On Highways  
Address Box 97 SR Clancy Date 3-15-83  
Representing MONT NATIONAL GUARD Support ✓  
Bill No. SB 330 Oppose \_\_\_\_\_  
Amend \_\_\_\_\_

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. BETTER WAY OF ADMINISTERING THE GUARD  
PLATE PROGRAM

2. VERY LITTLE COST TO STATE

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

Name Dick Mooney, MAI Committee On Highways  
Address 2037 Gold Rush Av - Helena, MT Date 15 Mar 83  
Representing MT ARNG Support ✓  
Bill No. SB 330 Oppose \_\_\_\_\_  
Amend \_\_\_\_\_

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Identification in case of emergency
2. Pride in membership - Espired D' Corps
3. Recognizes stability on part of Guardsperson -
4. Recruiting and Retention - Advertising

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

WITNESS STATEMENT

NAME HOWARD WIPROUTY BILL No. S.B. 155  
ADDRESS EASTSHORE RT BIGFORK MONT DATE MAR-15-1983  
WHOM DO YOU REPRESENT WHITEPINE LANDOWNERS ASS.  
SUPPORT X OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

The State Hi-way Comm. should survey any property to be sold at Auction because they have no idea of lines. Property owners should not have to survey. Private owners have to survey so the state should have to when less than 20 acre tracts.

Should have to give good merchantable title before selling. They have attempted to sell land they could only give a quit claim deed. Should not be up to buyer to quiet title - the seller should do that.

Clarify bill S-155

WITNESS STATEMENT

NAME James Al Davis BILL No. SB 155  
ADDRESS Box 1398 Trout Creek, Mt. DATE 3-15-82  
WHOM DO YOU REPRESENT White Line Land Owners  
SUPPORT yes OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_  
PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: It is my understanding that:

When the federal government granted their right away to the Rail Road across the country, it was with the stipulation, in case of abandonment of the right away for Rail Road purposes. The property was to revert back to the adjacent land owners. At some later date, I'm not sure of the exact date. There was an Amendment passed to this bill, that the Rail Road could abandon the right away to a government body for the purpose of roads, providing they constructed the roads within one year.

By the hi-way departments own admission, the property in question is surplus, and therefore it should be returned to the adjacent property owners.

WITNESS STATEMENT

NAME .Fred Choin BILL No. S.B. 155  
ADDRESS Box 128 Thompson Falls, Mt. 59873 DATE March 15, 1983  
WHOM DO YOU REPRESENT White Pine Land Owners  
SUPPORT yes Bill 155 OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: Feb. 18, 1982 I got a letter from the Highway Dept. telling me that part of the property I bought and paid taxes on would be sold at public auction. Feb. 24, 1982 Mr Foley expressed the thought we could either buy the property in dispute (which we had already bought or owned) and there was nothing we could do about it. March 4, 1982 Mr. Proudly, Mr. Chemia and my self met with The Govoner and Repesentative of the High Way Dept. and were informed that the High Way Dept. Did not have clear title to the property. We were told that we could not aquire property by paying taxes from the State. Mar 10, 1982 Mr. Chemia, Mrs Kline and my self met with comessioners. Jan 26, 1983 several of the land owners and others met with the Senate Judicial Cimmittee where I got the empression that the land belonged to the Federal Government, and the despute would have to be setteled in a federal court.

I understand that all the highway Dept could give us , even if we were foolish enough to pay them for the land , is a Quit Claim Deed. All this means to me is that they do not claim any part of it. ~~How~~, I will give you a quit claim deed to this Bldg. for a ~~half~~ of a lot less than they want from us, if that is all it is worth.

If I understand the consitution right , it grants the rigght to own property, a home, as long as the purchas price and taxes has been paid up to date. The White Pine Land Owners had doubts instilled in them, and have been thrown into a finiciaal struggle they can ill aford. We are supposed to be proud of that constituition. Hundreds of thousands of men have died for that right. I have begin to wonder if they have not died in vain.

I think it was ~~Patrick Henry~~ that said "togather we stand, devided we fall". The United states has been fragmented Right from the presedent to the individual famly members.

NO ONE can agree on any thing. I was told that the war MY uncles



fought in would end all wars. I was told the war I fought in would end all wars. I was told that the WORLD IS OUT OF FUEL. I am told that there is a glut of oil now. I was told I could own my home. I paid the price and now I find I have been lied to again. I have taken the same income report to more than one internal revenue man and no two can fill them out the same. I am told that I must fill them out correct or be subjected to prosecution. I see crime syndicates flourish, known members on the street to maim, murder and exploit and go free because no one wants to get involved.-----The sad part is that all comes down on the back of thoes least able to aford it. The 9 to5 laborer.

It makes little difrents if it is the White Pine Land Owners, The logger, The Farmer or the little merchant trying to eek out a living, that has been expoited, when it is all gone YOU have got trouble. This nation was built by REBELS. Some body better get there marbles in the right pocket.

The bible thought at Hosea 4:6 is staring this nation in the face. "My pepple are destroyed for lack of knowledge".

If you don't have knowledge enough to see it, when it happens ask your self " how much did I contribute to it.

History indicates that the great nations that have fallen was because of the decay on the inside, not force from with out.

I smell one big rotten stink.

I under stand that the IRS has added about 100 more laws, rules or requirements to what they already could not read, and placed the responability on the working man to interput it correct.

How much----how long----until the people say " I don't care. Come take me away". You know and I know I have not even scratched the surface of the problem. You are a fool if you try to denie that it is there. The little man is the one that pays YOUR WAGES. Continue to add to that load and some day he balk. *Because the Highway Dept. has implimented this situation These comments are mostly directed to them, but if you are trying to empose personal desires on Any one for The purpose of Exploiting others you are partailly Responsable for The skattered condation of this county, state & nation.*

WITNESS STATEMENT

NAME Nick S. Marich BILL No. SB 155  
ADDRESS ST. RT 1, Box 124 Trout Creek, MT DATE 3-15-83  
WHOM DO YOU REPRESENT Whiteline Landowners  
SUPPORT \_\_\_\_\_ OPPOSE \_\_\_\_\_ AMEND ✓

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

If the State Highway Department has  
possative proof of ownership to the 400 ft.,  
why don't they lay it on the table in  
front of this committee and the public?  
Our papers of ownership should be just as  
good as theirs and ours are open to the  
public, all you have to do is go to the  
county courthouse.

If the highway owned 400 feet why  
did they buy different amounts of footage  
from landowners in the area and pay  
them so much a rod to put up a fence?

WITNESS STATEMENT

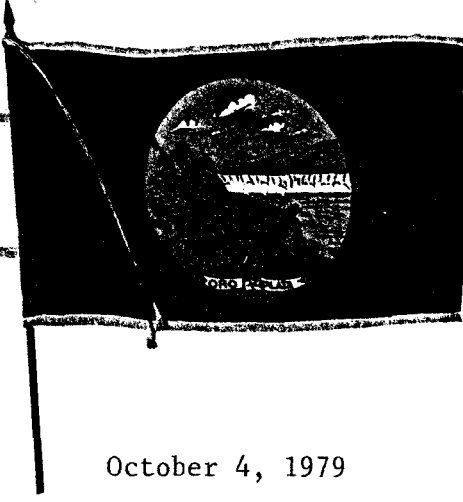
NAME Adrienne Marich BILL No. SB 155  
ADDRESS Rt 1, Box 124 Trout Creek, MT DATE 3-15-83  
WHOM DO YOU REPRESENT Whiteline Landowners  
SUPPORT \_\_\_\_\_ OPPOSE \_\_\_\_\_ AMEND ✓

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

The State Highway Dept. should be required to provide possative proof of ownership of the 400 feet of right of way on which Hwy Dept. claims to own before it can sell any portion thereof at a public auction to the highest bidder.

How can the Dept of Hwy R/W legally redo maps showing width of R/W by simply drawing new lines when ever they please. There are letters from the Dept. of Hwy R/W stating different amounts of R/W in front of my property and yet they claim 400 feet. I don't think the Hwy Dept. really knows or can prove what they own or they would show possative proof now. A Quit Claim Deed is not possative proof to me.



THOMAS L. JUDGE  
GOVERNOR

STATE OF MONTANA  
DEPARTMENT OF HIGHWAYS

HELENA, MONTANA 59601

RONALD P. RICHARDS  
DIRECTOR OF HIGHWAYS

IN REPLY REFER TO:

October 4, 1979

Re: FHP 6J2  
Parcel 38-Sanders County  
Ref: 68-HLJ


Nick S. Marich, Sr.  
Route 1 Box 124  
Trout Creek, MT 59874

Dear Sir:

Your letter to Mr. Bill Hebert at Kalispell has been forwarded to this office handling and reply.

As explained to you by our land agent, Howard L. Johnson, in his telephone call to you on October 1, 1979, the title of the right of way in this area is very complex. We have turned this over to our title people and as soon as they complete reviewing this matter we will be in further contact with you.

Sincerely,

  
Robert E. Champion, P.E.  
Chief, Right of Way Bureau

REC:HJL:dd:3F

cc: Supervisor, Field Right of Way Section-Missoula  
Chief, Field Maintenance Bureau-Kalispell  
File

GEORGE VUCANOVICH, CHAIRMAN  
HELENA

Wm M. KESSNER, VICE CHAIRMAN  
GREAT FALLS

JOHN S. COTE  
BUTTE

DAVE McNALLY  
BILLINGS

DAVID LARSON  
WOLF POINT

EQUAL EMPLOYMENT OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER



**BURLINGTON NORTHERN**

OFFICE OF  
DIVISION SUPERINTENDENT

Missoula, Montana 59801  
Telephone (406) 728-8450

Missoula, Montana  
June 13, 1980

Mr. Nick Marich, Sr.  
Route 1, Box 124  
Trout Creek, Montana 59874

Dear Mr. Marich:

Please refer to your letter of May 24 regarding property description of Section 2, Township 23, Range 31 in Sanders County, 17 miles west of Thompson Falls, Montana on Highway 200.

In this particular area we had 200 feet of right-of-way on each side of the track. This right-of-way was turned over the highway department by easement and you would have to contact the Montana State Department of Highways in regard to any use of this land.

Very truly yours,

D. W. Scott  
Superintendent

RDB:st

## DEPARTMENT OF HIGHWAYS

To Chief - Right of Way Bureau  
From Supervisor - Field R/W Section-Missoula

Date August 28, 1973

Subject FHP 6-J2  
Thompson Falls-West  
REF: 61-JRR

Over the past several years, Mrs. Helen R. Wuerl of Trout Creek, MT has been in contact with the highway department because her neighbor fenced the approach close to her property. Mrs. Wuerl has been in contact with Bill Hebert, Chief-Maintenance Bureau, Kalispell, who in turn requested this office to investigate the problem.

The problem is that the highway maps do not show the right of way line as purchased.

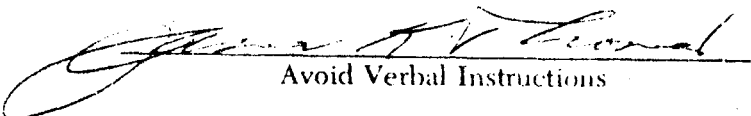
If the maps were changed to show the right of way as owned by the department, the fence causing the problem would be removed as an encroachment. If we do not own the right of way, Mrs. Wuerl could claim a prescriptive right as this approach was notorious for a period of more than 7 years. With the cloud of ownership over the property, nothing can be done to resolve the problem.

Our preliminary investigation indicates that in Section 2, Township 23 North, Range 31 West, the department owns 150 feet of right of way on the northeast side. Please advise if this is correct, and change the map accordingly, advising Mr. Hebert so he can act on this matter.

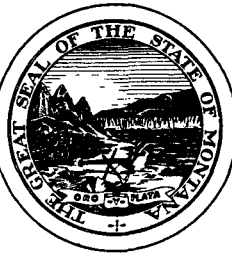
JKT:VEJ:mw

Attachment: Deed - Railroad to County  
Deed - County to Muir  
Deed - County to Department

cc: Wm. J. Hebert, Chief-Field Maintenance Bureau

  
Avoid Verbal Instructions

# DEPARTMENT OF HIGHWAYS



TED SCHWINDEN, GOVERNOR

2701 PROSPECT

STATE OF MONTANA

HELENA, MONTANA 59620

December 23, 1981

F 6-1(11)

Trout Creek - Thompson Falls

Ref: 68-GDF

Mrs. Nick Marich, Sr.  
Route 1, Box 124  
Trout Creek, MT 59874

Dear Mrs. Marich:

The Department of Highways is considering sales of excess portions of the old railroad right of way between Thompson Falls and Trout Creek. It is probable that when our plans for these sales are completed, you will have the opportunity to purchase the portion in which you are interested.

We do not intend to offer this excess right of way for sale as one tract, but rather would divide it into parcels which correspond as closely as possible to the adjoining ownership. This plan would allow the adjacent owner to bid on such portion rather than the entirety.

State laws mandate that these lands must be offered for sale at public auction. Therefore, we cannot negotiate sales or accept offers of purchase until this has been done. If no bids are received at the public auction sale, we can then sell at a private sale, provided we receive at least 90% of the appraised value.

At this time, we are working on appraisals and making a determination of our permanent right of way needs and on dividing the excess into appropriate tracts. Several sales are planned offering one or more of these tracts. We cannot estimate at this time just when your tract will be offered, but you may rest assured that you will be notified and provided with all information concerning the sales as soon as it is available.

Mrs. Nick Marich, Sr.  
December 23, 1981  
Page 2

We do thank you for your letter, and appreciate your comments.  
Please fell free to contact us any time we can be of assistance.

Sincerely,

*Carl R. Linder for*  
Robert E. Champion, P.E., Chief  
Right of Way Bureau

REC:WES:mb:70

cc: Mail & File



WITNESS STATEMENT

NAME Bessie J. Kline BILL No. SB # 155

ADDRESS Star Route #1, Box 123, Trout Creek, Mt. DATE Marcy 15, 1983

59874  
WHOM DO YOU REPRESENT Whitepine Landowners

SUPPORT x OPPOSE            AMEND           

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: First of all thank you for this hearing.

1. ~~Why?~~ We feel the Mt. Hwy St. Dept. should have to prove ownership of land.
2. When land is to be <sup>appraised</sup> ~~asses~~, that the state appoint one <sup>appraiser</sup> ~~assessor~~, the land owner appoints the second, and the two <sup>appraisers</sup> ~~assessors~~ appoint the third. They <sup>appraised</sup> ~~asses~~ the land individually, add up the total and divide by three for a fair market value.
3. When a land owner sells property he is required to have his land surveyed. Therefore we feel the State should have the same requirements as the land owners, and the surveyor has to stand good on his survey. We have a piece of property in Whitepine, Mt. that has been surveyed by the same surveyor several times and he is from 1' to 20' with each survey.
4. We have people trying to sell property now. The Title Insurance Companies do not want to give a good Title. Because of the problems before us, which in the past they have given good title with the easement clauses in their Title. Now the Title Insurance Co.'s are trying to make the seller be responsible for the land they have on the market.
5. According to our abstract there is a paragraph, which reads.  
"The Railway Company agrees to convey by quit claim deed to the County for highway purposes, and for no other purpose, that portion of its old right of way between a point about 2550 west of Belknap Railroad Station, and a point where the old main line intersects the north section lines of Section 27 and 28, T. 24 N. of R. 21 W.

IN WHICH WE THOURTH terminology of the an ABSTRACTER, but  
we find in the law book 43 U.S.C.S. 912, 913 which is reference  
that the Abstracter <sup>used</sup> as, which is of Federal Actions.

This concludes my statement.

I would like a transcript please. Plus a copy of the bill that is  
Voted upon.

Bessie J. Kline  
Star Route #1, Box 123  
Trout Creek, Mt. 59874

406-827-4800

Odd

43 USCS 893 Right of permissive settlers on railroad lands restored to Public Domain.

All persons who shall have settled and made valuable and permanent improvements upon any odd numbered section of land within any railroad withdrawal in good faith and with the permission or license of the railroad company for whose benefit the same shall have been made, and with the expectation of purchasing of such company the lands so settled upon, which lands so settled upon and improved, may, for any cause, be restored to the public domain, and who, at the time of such restoration, may not be entitled to enter and acquire title to such lands under the pre-emption, homestead, or timberculture acts of the U. S., shall be permitted, at anytime within 3 month after such restoration, and under such rules and regulations as the Commissioner of the General Land Office [Sec. of the Interior] may prescribe, to purchase not to exceed 106 acres in extent of the same by legal subdivision, at the price of \$2.50 per acre, and to receive patents therefor. (1-13, 1881 Ch. 19, 21 Stat. 315)

Public Lands

43 USCS 861 Refers to States ND., S.D., MT., ID., OR.

" " 863-Survey of same states as above.

Date: Aug. 18, 1894 Ch. 301 § 1, 28 Stat. 394  
Jun. 26, 1934 Ch 756 § 22, 48 Stat 1236)

" " 869 Disposal of land for public rec. p.r.

Beattie J. Kline  
H. D. 123  
7C 117.59874

43 USCS § 913 Conveyance by land grant railroads of portions of right of way to State, County, or municipality

All railroad companies to which grants for right of way through the public lands have been made by Congress, or their successors in interest or assigns, are hereby authorized to convey to any State, County, or municipality any portion of such right of way to be used as a public highway or state: Provided, That no such conveyance shall have the effect to diminish the right of way of such railroad company to a less width than 50' on each side of the center of the main tract of the railroad as now established and maintained. (5-25-20, Ch. 197, 41 Stat. 621)

921-929 (omitted) NPSRR land Grant under Act July 2, 1864

Chapter 21. Grants in Aid of railroads and wagon roads

§ 886 Survey of lands within limits of railroad grants.

(as Amended Oct. 19, 1980, P. L. 96-470, Title I § 108(b), 94 Stat. 2239.)

§ 888-Title of settlers

§ 886 As amended Oct. 19, 1980 P. L. 96-470, Title I, § 108 (b), 94 Stat. 2239.)

1980 Act Oct. 19, 1980, deleted, "and the Sec. of the Interior shall report at each regular session of Congress what has been done under the foregoing provisions" following "providing for the survey of such lands."

63 Am Jur 2d Public Land § 78, 82, 88

65 Am Jur 2d Railroads § 41

Chapter 21 Grant in aid of RR and WR.

Section 881-914

*Bevin J. Fine*  
*J. P. 123*  
*TC, MT 59674*

43USCS 912 Disposition of abandoned or forfeited Railroad Grant

Whenever Public Lands of the U. S. have been or may be granted to on railroad company for use of a right of way for its railroad or as sites for railroad structures of any kind, and use and occupancy of said land for such purposes has sceaased or shall hereafter cease, whether by forfeiture or by abandonment by said railroad company declared or decreed by a court of competent jurisdiction or by Act of Congress, then and thereupon all rights, title, interest and estate of the U. S. in said lands shall, except such part thereof as may be embraced in a public highway legally established within one year after the date of said decree or forfeiture or abandonment be transferred to and vested in any person, firm, or corporation, assigns, or successors in title and interest to whom or to which title of the U. S. may have been or may be granted, conveying or purporting to convey the whole of the legal subdicision or subdivisions traversed or occupied by such railroad or railroad structrues of any kind as aforesaid, except land within a municipality the title to which, upon forfeiture or abandonment, as herein provided, shall vest in such municiplaity, and this by virtue of the patent thereto and without the necessity of any other or further conveyance or assurance of any kind or nature whatsoever: Provided, That this Act [ this sections ] shall not affect conveyances made by any railroad company of portion of its right of way if such conveyance be among those which have been or may hereafter [after 3-8-1922] and before such forfeiture or abandonment be validated and convirmed by any Act of Congress; nor shall this Act [this section] affect any public highway now on said right of way [On Mar. 8-1922] : Provided further, That the transfer of such lands shall be subject to and contain

*Revised by Kink*  
*117. 59874*  
*TC.*

43USCS 912

reservations in favor of the U. S. of all oil, gas, and other minerals in lands so transferred and conveyed, with the right to prospect for mine, and remove same (Mar 8, 1922, Ch. 94, 42 Stat. 414)

Cases: St. of Wyoming (1976) 83 Id 364.

Wyoming V Andrus (1977, CA 10 Wyo) 602 F2d 1379

Case

In action to quiet title in themselves as abutting landowners to 50' strip of land lying on either side of 100' right of way owned and maintained by railroad, where landowners allege abandonment by railroad of strip in question with subsequent vesting of title in themselves, partial abandonment by railroad except of way, granted by U. S., is not permissible under "Act of 1922 on the Abandoned Portions of right of way Granted to railroad company" (43 USCS § 912; history of legislation indicated only 2 situations in which Act would apply, namely, subsequent forfeiture by railroad of complete **right** of way or change in railroads location, neither of which pertains. Allard Cattle Co. v. Colorado and S. R. Co (1974) 187 Colo 1, 530 P2d 503.

*Bailey Line*  
*H. R. 123*  
*7C. MT 99874*

NORTHERN PACIFIC RAILWAY COMPANY,  
a corporation

and

THE COUNTY OF SANDERS,  
State of Montana

AGREEMENT

Re: abandoned railroad  
right of way

Dated May 7, 1928

Filed May 11, 1928

Book 2 Contracts, p. 50

Consideration: Mutual  
dependent promises herein

WHEREAS, the Interstate Commerce Commission has granted to the Railway Company authority to abandon a portion of its old line of railroad in Sanders County between the east connection of said old line with its new main line at Pinehurst near Mile Post No. 37, and the west connection of said old line with its new main line at Trout Creek near Mile Post No. 54, and the Railway Company is now removing the rails, etc. therefrom; and the County desires to make use of a large portion of the old right of way and road bed for public highway purposes.

NOW THEREFORE: the County agrees to procure the necessary right of way and to legally establish, construct and thereafter maintain a satisfactory public highway from the Village of White Pine to a point on the main line of the Railway Company in the SW<sup>1</sup>/<sub>4</sub> of Sec. 17, T. 23 N. of R. 30 W. Construction will be completed not later than July 1, 1928.

The Railway Company agrees to convey by quit claim deed to the County ~~for highway purposes, and for no other purpose,~~ that portion of its old right of way between a point about 2550 west of Belknap Railroad Station, and a point where the old main line intersects the north section lines of Section 27 and 28, T. 24 N. of R. 31 W.

As to such portions so quit-claimed, upon which the County shall ~~within one year from May 7, 1928, legally establish a highway,~~ the Railway Company agrees to save the County harmless, in the use thereof as a highway, as against any adverse claim thereto.

NORTHERN PACIFIC RAILWAY COMPANY

By C. W. Bunn  
Vice President

COUNTY OF SANDERS, STATE OF MONTANA

By A. Zebish  
As Chairman of Board of County  
Commissioners.

(SEAL OF SANDERS COUNTY)

Attest: A. J. Dorris  
Clerk & Recorder

(ABSTRACTER'S NOTE: pp. 42 concern the abandoned railroad r/w,  
and are included for information)

FEB 42

326  
11/27  
7C. 117 59874

WITNESS STATEMENT

Name Wayne Burt Committee On H&T  
Address 911 Llewellyn Date 3-15-83  
Representing MPSC Support X  
Bill No. SB 12C Oppose \_\_\_\_\_  
Amend \_\_\_\_\_

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.



## HOUSE HIGHWAYS AND TRANSPORTATION

### BILL SUMMARIES

March 15, 1983

SB 120 removes the requirement that the Public Service Commission must approve all leases of power equipment by regulated motor carriers.

SB 155 provides that upon the abandonment by the state of its interest in real property which it acquired for the purpose of establishing a highway, the property reverts to the contiguous owner or his successor in interest. The property may not be used for commercial purposes or it reverts to the state.

SB 330 revises the law relating to distinctive license plates for national guardsmen. The plates will be in lieu of regular plates. The plates will be issued by county treasurers upon payment of all applicable taxes and fees.

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even  
18  
amended

aye - SB 402 -  
NO TO any Tagline motion

JM Hammond  
@

Aye - SB - 312

Aye - SB - 287

## SENATE BILL 120

Senate Bill 120 proposes to remove the requirement that all leases between Owner Operators and Carriers be approved by the Commission. Under the present statute the carriers are required to submit to the Commission all equipment leases. The Commission staff must then sign off on these leases and return copies to the carriers. A copy must then be carried in the vehicle.

Under the proposed language in Senate Bill 120, the requirement for prior Commission approval would be eliminated.

The carrier or his agent would still be required to have a lease and carry a copy in the operating vehicle so that enforcement personnel can follow the trail of ownership of that particular vehicle.

Elimination of the prior approval requirement should result in:

1. Less time and expense to the carriers.
2. Less time and expense to the Commission.
3. Bring Montana leasing requirements in line with those of the Interstate Commerce Commission.

The Montana Public Service Commission feels that Senate Bill 120 would help eliminate paperwork for both the carrier and the Commission, but would not in any way diminish enforcement of the Motor Carrier Act.

We urge this Committee to give a do pass to Senate Bill 120.



*The Big Sky Country*

MONTANA STATE HOUSE OF REPRESENTATIVES

March 16, 1983

Mr. Larry Majerus  
Administrator, Motor Vehicle Division  
Department of Justice  
Room 255, Scott Hart Building  
303 Roberts  
Helena, MT 59605

Dear Mr. Majerus:

The House Highways and Transportation Committee  
is writing this letter in regard to Senate Bill No. 330.

The Committee wishes to express to you its desire  
that the Motor Vehicle Division include nonremovable  
county designation stickers on special National Guard  
license plates.

As you indicated in your testimony on Senate Bill  
No. 330, the Motor Vehicle Division can do this under  
existing law. The Committee wishes to express its  
intent that this be done. Thank you for your consideration  
in this matter.

Sincerely,

*Rep. Hubert Abrams*

Rep. Hubert Abrams  
Chairman, House Highways and  
Transportation Committee

HA/jg