

MINUTES OF THE MEETING
AGRICULTURE, LIVESTOCK AND IRRIGATION
MONTANA STATE SENATE

February 16, 1983

The Agriculture, Livestock and Irrigation Committee meeting was called to order on the above date, in Room 415 of the State Capitol Building, at 12:30 p.m., by Chairman Galt.

ROLL CALL: All members present.

SENATE BILL 355: Senator Don Ochsner, District 26, presented the bill - An act revising laws for alfalfa leaf cutting bees. He explained that this bill is a housecleaning bill and defines the custom polinator.

Arthur F. Shaw, Bozeman, proponent for the bill gave written testimony. Exhibit #1.

There were no opponents.

HOUSE BILL 432: Representative Gerry Devlin, HD 52, said the bill corrects conflicts regarding recording rights on state lands. The only change in the bill is on page 1 and refers to the Attorney General's opinion. Exhibit #2.

Lyle Manley, Attorney State Lands, spoke in regard to the preference right contained in the bill. He called attention to the Attorney General's opinion on the matter. Exhibit #3.

In reply to Senator Galt's question, if a holder of a state grazing lease subleases land through a state land office he loses his preference to renew the lease, even if it is done legally, the answer was yes.

There were no opponents.

SENATE BILL 238: Senator Don Ochsner, Senate District 26 introduced proponents.

Keith Kelly, Department of Agriculture, presented amendments. Exhibit #4. He stressed it was not their intention to go out and shut an applicator down by lifting his license on the spot. The Department wanted authority to be able to assess him a fine so the producer wouldn't have to be penalized. It has always been the Department's intent that civil penalties are for major, not minor violations. Licensing and record keeping would be beneficial to an applicator. Should there be a problem while he was not in the area, he would then have records to prove it. If out of state people are licensed it would make it easier for the Department to find them.

Jo Brunner, WIFE, supported the bill. Exhibit #5.

Steve Keil, Conrad, Montana Grain Growers Association, said the 3500 members of the Association echo Mrs. Brunner's statements and urged passage of the bill.

Esther Ruud, Montana Cattlemen's Association, supported the bill. Exhibit #6.

Tom Daubert, Montana Environmental Information Center, said their 1300 families state wide, who belong to the Montana Environmental Center, supported the bill.

Lowell Darington, MABA, and their 300 agriculture related businesses supported the bill with the amendments he presented. Exhibit #7.

Mons Teigen, Montana Stockgrowers and Janet Ellis, Montana Audobon Council, supported the bill.

OPPONENTS:

Bill Asher, Agriculture Preservation Association, PCLA, SCPA, mailed 70 copies of the bill to members of the associations. They still opposed the bill after meeting with the Department of Agriculture this morning.

Steve McDonnell, rancher at Three Forks, felt the bill was an effort to change fees and increase penalties and called the committee's attention to several pages in the bill supporting his testimony. He did not feel the people in agriculture could continue to support the cost of government agencies.

Paul Jordan, Belgrade APA, opposed SB 238. Exhibit #8.

Lyman Choate, Miles City, owner of a spraying service, opposed the bill. Exhibit #9.

John Semple, on behalf of himself, and his brother, opposed the bill.

Wayne Turner, Montana Aviation Trades Association, did not feel a new bill was needed. As the law now stands, the Department of Agriculture had enough flexibility as far as fees and training were concerned, he said.

Phil Cadwell, Vice President Montana Aviation Trades Association, member of the APA, and an aerial applicator for 22 years, wished to go on record as opposed to SB 238 and the amendments. He was against registration and control as well as the civil penalties. Licensing fees are too high. Drift damage should be inspected by experts as spray drifts are caused by other means. He knew of at least four states that have less regulations than Montana. He said the State of Mississippi applies more chemicals by air each year than Montana.

Mike Biggerstaff, on the staff of Montana Agriculture Business, said not all the members on the staff support the bill. Exhibit #10.

Frank Redfield opposed. Exhibit #11.

Paul Newby, owner of Agwagons, Inc., and an applicator, submitted testimony. Exhibit #12.

Lowell Jacobson, Glasgow, submitted testimony. Exhibit #13.

Sam Hoffman, member APA, and Darrell Hanson, representing himself, rose in opposition to SB 238.

Senator Graham questioned how long it took to get the 100 training credits. Mr. Kelly said they could be picked up over a five year period. It depended on the sessions attended.

Senator Graham asked former Director Gordon McOmber if he felt this bill was really necessary over and above the present pesticide regulation laws on the books. Mr. McOmber said it beefs up the Department's ability to do a good job and contributes money needed to implement the education programs. He said if the Department of Agriculture doesn't do the job, somebody else will. It was with the EPA formerly and they still have authority to take it back.

Senator Aklestad asked if a lot of companies didn't set up their own training courses. Mr. Kelly answered yes.

Senator Aklestad asked who defines misdemeanors and fines. He was told the district court.

Senator Conover asked if the Department would object to readjusting the fines and fees. Mr. Kelly said they could be adjusted accordingly.

Senator Kolstad asked Mr. Kelly if he could give an example of pesticide abuse in this area under the present law. Mr. Gingerly answered that the EPA was allowing continued use of a number of units that have been stockpiled, such as heptachlor. In 1982 applicators misapplied on the wrong field. Another applicator accidentally sprayed a fencing crew. He felt these acts were not continual infractions of the law and these applicators were actually conscientious people and did not feel it was necessary to jerk their licenses. If they could have been assessed a civil penalty, they could have gone on to finish the job.

Senator Boylan asked Mr. Cadwell if other states he had sprayed in were more or less restrictive. Mr. Cadwell answered that California is more restrictive than Montana and he presumed Washington and Oregon are also, but there are lots of states that have less regulation than we do.

Mr. Semple had sprayed in both Oregon and California and he didn't feel they were any more restrictive than Montana. He felt Montana is more restrictive.

Agriculture
February 16, 1983
page 4

In closing, Senator Ochsner thanked the committee and people who came to testify. He said the Department of Agriculture had been most helpful and considerate and it was his feeling the Department had been pressured into the bill.

The hearing closed on SB 238.

Senator Galt informed committee members that Friday's meeting would be held at 12:00 p.m.

There being no further business, the meeting adjourned.



Jack E. Galt, Chairman

ROLL CALL

AGRICULTURE COMMITTEE

48th LEGISLATIVE SESSION - - 19 83

Date 2-16-83

NAME	PRESENT	ABSENT	EXCUSED
GALT, Jack E.	✓		
KOLSTAD, Allen C.	✓		
AKLESTAD, Gary C.	✓		
OCHSNER, J. Donald	✓		
GRAHAM, Carroll	✓		
BOYLAN, Paul F.	✓		
CONOVER, Max	✓		
LANE, Leo	✓		
LEE, Gary	✓		

Each day attach to minutes.

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
PHIL CADWELL	MATA & APA	238		✓
Frank Ahorn	Belgrade APA	238		✓
Steve McDonald	Circle S Ranch Three Forks MT.	238		✓
HERMAN BROEKEMA	Manhattan MT APA	238		✓
Lowell Jackson	Glasgow MATA-NABA	238		✓
Jan Colton	Dorson MATA	238		✓
GARY J. MARTIN	Glasgow MATA	238		✓
Michael Biggerstaff	Stanford MATA-MABA	238		✓
Gary Semple	Flaxville Farmer Application	238		✓
Frank Redfield	Opheim MATA	238		✓
WILLIAM W. WYATT	Self	11		✓
Paul R. Newby	APA and Self	238		✓
John Semple	Spraying business self	238		✓
Paul Jordan	Belgrade APA	238		
Lowell Brantner	MABA	238	✓	
STEVE KEIL	MIGA	238	✓	
Janet Ellis	Montana Audubon Council	238	✓	
KEITH KELLY	DEPT. OF AGRICULTURE	238		
Franklin Garfield	Self	238		✓
Russ Sims	APA	238		✓
George Reich	Rancher	238		✓
Walter Hangeruber	Rancher	238		✓
Mons Tergeen	Mt. Stockgrowers	238	X	
MARK COOPER	Rancher	238		✓
LUKE GRAF	Rancher	238		✓
Tom M. Miskin	Rancher	238		✓

SENATE AGRICULTURE COMMITTEE

COMMITTEE

BILL

VISITORS' REGISTER

DATE 2-16-83

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

SENATE BILL 355

Testimony by
ARTHUR F. SHAW
Commercial Pollinator

February 16, 1983

I am Arthur F. Shaw, Bozeman, Montana, former Agronomist for the Montana Cooperative Extension Service, Montana State University, now a commercial pollinator with the leaf cutting bee, (*Megachile rotundata*) and servicing an alfalfa producer in the Forsyth area. It was during my career as an Extension Agronomist, and using my interest and influence that the leaf cutter was introduced into Montana by alfalfa seed producers. I have followed the progress of the introduced pollinator program and nearly 100 growers used this pollinator in 1981. Nearly 350 leaf cutter cell samples were analyzed by the laboratory at Montana State University during the 1981-82 season. Alfalfa seed yields have increased 3 and 4-fold on farm operations where an adequate number of bees are used.

The cell sampling program by the Montana Department of Agriculture is concluding its second season--that for 1982. The Department personnel, working with the Leaf Cutter Bee Committee of the Montana Alfalfa Seed Association, have recommended changes in the 1981 law which are being addressed here today. Members of the committee regret their inability to be present to testify here today because of their busy schedules, however, I was asked to appear and speak on their behalf and to respond to questions which you may have.

At the Annual Meeting of the Montana Alfalfa Seed Growers Association in Great Falls in January the current Leaf Cutter Bee Law was supported by a margin of 2 to 1--28 in support, 14 opposed.

Recommended changes include:

1. The definition for a "Commercial Pollinator". Up to now he has been considered a wild trapper but the nature of his operation is considerable different. This is my main interest and in working with a producer I play a very significant role in the care and management of the alfalfa seed crop from the beginning of the season to the end. Water management, weed and insect control are factors that affect pollinators as well as seed production.
2. In reporting the incidence of disease the recommendation to use "none detected" instead of disease-free is a more practical method of reporting based on the sampling techniques applied. It tends to lessen the incidence of liability as it is difficult to assure a "disease free" situation without an exhaustive and prohibitively expensive examination of each lot of cells.
3. The shipment, importation and holding of a lot of bee cells for sampling and cell testing purposes has presented problems since the inception of the program. The proposal to set up temporary locations for "holding" bee cells during the test period will be in the best interest of the industry.

4. The exclusion of the drilled boards from use in the state is necessary if Chalkbrood prevention and control systems are to work effectively. It is recognized that this may serve as a hardship with producers more interested in selling bees to out-of-state producers of alfalfa seed. Our interest in the program is to better serve and build the Montana Alfalfa Seed industry and to protect the health of our Montana Leaf Cutter Bees and to maintain their aggressiveness as a pollinator.

Drilled boards are mainly shipped into Montana from out-of-state suppliers--either manufacturers or possibly supplier/producers. Boards may be new, one or two years or possibly older, or they may be redrilled and sanded--who knows? The probability of chalkbrood or other disease or parasite introduction may be quite high--depending upon where or under what conditions the material may have been manufactured or stored. Manufacturers are located in areas where diseases and parasites currently prevent effective pollination with a concurrent increase in the leaf cutter bee population.

Further, the use of the solid drilled boards are contrary to the present law and our disease prevention and control programs, besides presenting many supervision and enforcement problems. Age of boards, their origin, their destination once in the state, their disappearance and accountability are situations which have arisen.

This concludes my remarks, except to ask that you study them carefully and respond favorably to the wishes of the seed producers who are diligently pursuing and improving their bee management systems. They need your help. Thank You!

that he should not be penalized any further. Jerke was clearly applied retroactively and that issue was briefed and argued to the Court.

However, based upon the Court's recognition of pre Jerke expectations and practice, it is unlikely that they would require the immediate retroactive invalidation of all leases issued in this manner in the last ten years. On the other hand, it is equally clear, based upon what actually happened in Skillman, the Jerke holding must be applied to those leases as they come up for renewal.

4. If a lessee violates the terms of his lease, even inadvertently, has he lost the right to renew the lease and the preference right?

It is assumed that this question is asked in the context of a lessee who has not subleased. Even so, there are two distinct situations which seem to be involved. First, 77-6-205, provides that a lessee who has paid his rent and "has not violated the terms of his lease" is entitled to renew his lease for a comparable term. Second, 77-6-205 then provides that if a competitive bid is received, the lessee has a preference right to renew by meeting that bid.

The language concerning violation of the lease must be construed to apply to both a simple renewal and to a renewal by preference right. Otherwise a lessee who had violated his lease would be penalized when no one else wanted the land, but not if competitive bids were received. That result would make no sense at all.

In Skillman the Court raised the "serious question" of whether a lessee who violates his lease has either a right to renew or a preference right. (The lessee there had subleased without approval). The Court did not decide the issue, however, assuming arguendo that the violation was not serious enough to deprive the preference right.

If 77-6-205, MCA were the only statute on the subject it could easily be construed to require loss of both the right to renew and the preference right upon violation of lease terms. However, section 77-6-211 allows the Board to examine lease violations to determine whether they are "serious enough to warrant cancellation." If violations are not serious, the lessee's "rights and privileges" under the

The clear impact of these statutes on the present question is that a lessee who violates his lease loses his right to renew or preference right only if the Board determines that the violations are sufficiently serious to warrant cancellation.

5. Does lease reinstatement pursuant to 77-6-211 restore the preference right to a lessee who has violated the terms of his lease?

As indicated above in response to the last question, the answer is "yes."

6. If a lessee who has violated the terms of his lease loses the preference right, is a subsequent assignee of the lease entitled to exercise those rights?

An assignee of all the lessee's rights to the lease (assuming the lease was properly assigned under 77-6-208) is entitled to enjoy the preference right. In effect he becomes a new lessee and, as long as he has not violated the lease or the law, retains all lessee rights. This includes the renewal and preference rights of 77-6-205, MCA. This conclusion furthers wise management of the land by giving an incentive to a lessee who will actually use the land to take over the lease from one who will not.

THEREFORE, IT IS MY OPINION:

1. A lessee who subleases the entire tract for the entire lease period is not entitled to exercise the preference. Lessees who sublease only a portion of the tract for the entire term must be judged on a case by case basis to determine whether the goals of sustained yield are being met as required in Jerke.
2. Lessees who sublease all or part of the tract for only a part of the term will lose their preference right if, on a case-by-case basis, it is determined that the goals of sustained yield are not being met as required in Jerke.

5. Lease reinstatement pursuant to 77-6-211, MCA, restores the preference right to a lessee who has violated the terms of his lease.
6. An assignee of a lessee who has violated the terms of his lease enjoys all rights of a new lessee who has not violated the terms of his lease.

Very truly yours,



MIKE GREELY
Attorney General

DEPARTMENT OF STATE LANDS TESTIMONY ON HOUSE BILL #432

BEFORE THE SENATE AGRICULTURE, LIVESTOCK, AND IRRIGATION COMMITTEE

The Department of State Lands supports HB 432; however, it wishes to caution the members of the committee that this bill does not solve the problem created by the Supreme Court decisions of Jerke v. State Department of Lands and Skillman v. Department of State Lands. These cases hold that the preference right to renew state leases is unconstitutional in the case where a lessee has allowed someone other than himself to use state land. Since these decisions were based on the constitution, they cannot be overturned by statute.

What this bill will do is allow the Board of Land Commissioners to cancel a lease and, if the reason for cancellation is not of a serious nature, restore the lease and the preference right. However, if a lessee has allowed someone else to use the land, the preference right cannot be restored because of constitutional reasons.

It should be noted that the Attorney General's Office has issued an opinion which states that the Board of Land Commissioners can reinstate the preference right after cancellation. Therefore, this bill is consistent with current policies, but would ensure that the policy is set by the legislature rather than the courts.

EN #4
2-16-83

MONTANA DEPARTMENT OF AGRICULTURE

PROPOSED AMENDMENTS TO S .238 (INTRODUCED COPY)

1. Page 21

Insert in line 1, between the word "livestock." and the word "The" the following:

"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."

2. Page 21

Insert in line 9 the following, as subsection (e):

"(e) All civil penalties assessed by the department shall be placed in the general fund."

3. Page 21

Strike all of line 9 through line 21.

- END -



WIFE Women Involved In Farm Economics

NAME JO BRUNNER BILL NO. SB 238
 ADDRESS 563 3rd ST. HELENA DATE 2-15-83
 REPRESENT WOMEN INVOLVED IN FARM ECONOMICS
 SUPPORT X AMEND OPPOSE

COMMENTS:

Mr. Chairman, members of the committee, my name is Jo Brunner and I represent the members of the Women Involved in Farm Economics organization today. We are appreciative of the opportunity to be able to speak once more on Senate Bill 238.

It is our wish to support the Agriculture Departments proposals for the sale and use of pesticides. After the Endrin situation, one of our members was appointed to work on the committee that reviewed, and made suggestions for these changes. We stayed aware of many of the problems that arose. I testified for W.I.F.E. at the Endrin hearing protesting the rules and regulations being forced on our industry.

And as an organization, we still protest such regulations. But we also recognize the fact that a few of our own people have not adhered to correct procedure in application, whether through ignorance or through carelessness. As an industry, agriculture is mindful of protecting our environment and our citizens from needless exposure to such substances, but, we also recognize our need for pesticides and herbicides and for fertilizers if we are going to feed those same citizens.

Consequently, we participated along with the other agriculture organizations to present a workable solution to this dilemma. And we are concerned that there is concern for a raise in fees for the licenses and the fact that agriculture applicators will have to recertify every so often. We feel this is a small price to pay to ensure safe application. To us, this is a minimal protest, as is the worry that the cost of the chemical manufacturer will pass his cost down to us. Of course they will, and just how are you going to ascertain my cost in a 5 gallon pail of pesticide that costs a lot of dollars per gallon and our farm uses 20 gallons, or more of it. --We consider these proposed rules and regulations the lesser of the two evils--we rejected suggestions that all pesticide and such control go to the Health Department--that everytime there was an outbreak

"Hell has no fury like a woman scorned"



WIFE Women Involved in Farm Economics

SB 238

of wireworms or cutworms, the Fish, Wildlife and Parks and the Health Department be contacted to investigate before we

would be able to take care of the problem.

We do resent the fact that we are forced into situations where we have to compromise to the detriment of our industry, but the fact is, this is a compromise bill, and agriculture participated in this compromise—we feel that we can live with it, and we ask your approval of SB 238.

NAME: Esther Reed DATE: 10 16 83ADDRESS: Calumet Ave

PHONE: _____

REPRESENTING WHOM? Montana Cattlemen's AssocAPPEARING ON WHICH PROPOSAL: 1/15/83DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: Senator Reed and members of the
Committee, I have discussed this bill
several times with Keith Kelly and although
I did not care to have farmers and
ranchers pay any additional costs it appears
this is the issue of two evils. Therefore
we support this bill.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Exhibit 27

SENATE AG COMMITTEE

BILL 238

As stated in previous hearings, the Montana Ag. Business Association gives our total support to Senate Bill 238 and strongly recommend its passage with the following minor changes for clarification.

Page 6, line 3. Should be amended to read:

State and Federal agencies, and Industry as . . .

Page 9, line 2. Should be amended to read:

or whenever Scientific data shows significant danger to man . . .

Page 11, line 13 and 14. Should be amended to read:

cancellation. Dealers and Applicators will have a maximum of 2 years to eliminate existing stocks.

Page 11, line 6. Should be amended to read:

or before March 1 of that . . .

Lawell E. Livingston
Montana Ag. Bus. Assn.
Legislative Committee

EX # 8
SB 238
2/16/83
Ag

SADDLE MOUNTAIN RANCH

8373 Saddle Mtn Road
Bozeman, MT 59715
6 February 83

Senator Jack Galt, Chairman
Senate Agriculture, Livestock
& Irrigation Committee
Helena, MT 59601

Dear Senator Galt:

I attended the committee hearing 2/2/83, on SB238--'An act to generally revise the laws relating to the regulation of the sale and use of pesticides'.

To me, the real issue in those amendments was not economics; nor does the bill in any way truly improve or enhance the environmental or personal protection which was well provided for by the original bill. Unfortunately the discussion about the financial burdens of increased fees, etc., turned out to be a smokescreen which kept the real monster hidden. It was alluded to, but somehow failed to catch much attention because of all the other facets of the issue which were being aired, and the Department of Agriculture was able to get it back in the closet before its ugly hulk was ever really noticed.

Do you really intend to create another OSHA? Do you really wish to shift the emphasis of a department whose intended function was to evaluate, register, and/or cancel various pesticides; whose function also legitimately, was to provide education and disseminate information--and suddenly turn it into a force with virtually unlimited police power in its own area of jurisdiction? Do they have the judgement, and legal expertise to pursue this course of action? Is there any reason for them to develop this area of expertise?

May I interject an example: If I hit another person's car in a parking lot, does this call into question the evaluation of the automobile as a suitable means of transportation? Does the DOT arrive in force to see if I have fully complied with the operator's manual? Of course not!! But, I have wronged a fellow citizen. Therefore, 1) I may be able to satisfy his claim on the spot, 2) Failing this, we can go to small claims court--a streamlined course of action to prevent court docket overload, 3) Finally and only if necessary, we can go to District Court.

Getting back to pesticides--the department of agriculture has full power under the current act to invoke an injunction or remove licenses in the case of willful violations. Please reread the amendments to SB238, page 20, Sec. 9 (5) a), b), c). There seem to be no absolutes; the amendments even provide for the relative judgement of the DEPARTMENT as it acts as policeman, judge, jury, and executioner.

Page 20, line 21 5(c) "in determining an appropriate penalty, the department shall consider the effect on the person's ability to continue in business, the gravity of the violation which occurs, the degree of care exercised by the offender...."

Does this fit your sense of justice? In other words, an applicator's immediate future may hinge upon whether the presiding official has just had a big steak or whether he has a migraine headache. This is an insult to our constitutionally developed legal system.

I am aware that subsection (5) c) states that a person charged must be given a hearing if he insists, and does not voluntarily forfeit this right. I have made and read copies of portions of the Montana Administrative Procedures Act referred to, and find under Part 6, 2-4-601 through 2-4-711 (starting on page 30) "Contested Cases" that the plaintiff has the above mentioned right in addition to further recourse to the court system if necessary.

Because of these procedures now in place, it becomes difficult to express to you what I really feel towards the department's move to enhance and expand their tenacles into the area of judging civil disputes related to them only by virtue of the vehicle through which the dispute occurred.

I cannot believe that 'violators' so called, under the despised OSHA did not also have final recourse of this sort. (And statistically, by the way, it cannot be shown that OSHA enhanced safety in any way). So let's be realistic. HEARINGS have got to be somewhat biased. Can you imagine the department not standing behind one of its own agents or inspectors if at all possible?

So lets move to the next level--appeal--that of redress of grievances against the department in the case of civil penalties. Some of your committee are farmers; all of you are busy men. Do you believe (except in extreme circumstances) that the commercial applicator or the man on the farm will, in the middle of a busy season, take the time and money required to effect the repeal of a fine or judgement already paid? He will simply let the alledged injustice stand. Justice at this level, unfortunately, requires both time and money. Therefore, in the case of civil disagreements and civil reparations, it would seem we are working backwards.

In the first place, why should the department pocket a 'fine' when what is really needed in most cases is restitution to the person whose apple tree got wilted because of some unforeseen circumstance, or if you wish--human error? If the department needs increased revenue for educational purposes, so be it, but let's not make fines the channel of acquisition.

We do not live in a 'no risk' universe, but believe me, intentional misuse or flagrant violations of pesticide labeling will be few and far between. No one can afford the financial and psychological repercussions of such action. (For instance, a farmer stands to lose far more than the stated fines, in the form of crop reduction if he uses only a fraction too much herbicide).

It would be a shame if the department had to dilute its educational and evaluational mandate in order to shift its emphasis toward becoming a claims court. As pointed out, the department still has the option of revoking licenses and suspending labeled uses if necessary. Therefore, I see no need for them to intercede or usurp the legitimate channels of justice already in place.

The department has given these amendments an innocuous connotation, but they are not innocuous. This section is a real sleeper and I am sure that in your busy schedules the full import just has not become obvious. I sincerely hope that this grim spectre will not be given embodiment, lest it come home to haunt us.

I should have spoken to this issue at the hearing, but by the time I realized the waterfront was not being covered, it was too late to register and testify. I apologize.

Just for the record and only to establish a degree of credibility--

My name is Paul W. Jordan, a native Montanan, although I spent many years overseas (in the Middle East mostly) to financially secure the farm which I now operate full time.

I received most of my education at MSC/MSU having a degree in electrical engineering and another (masters) in agricultural engineering. I have studied herbicides and weed control at the university level and for a few years on my return from overseas I engaged in watershed research and provided instrumentation for agricultural projects. All this, simply to say that I understand and appreciate the problems of evaluation and control of pesticides, but also that I feel as strongly for the position of the commercial operator and farm user.

I thank you very much.

Sincerely,

A handwritten signature in cursive script that reads "Paul W. Jordan". The signature is written in dark ink and is positioned above a horizontal line.

Paul W. Jordan

cc: Members of Senate Agriculture Committee
Glenn Jacobsen, Chairman, House Agriculture Committee
Morm Wallin, Representative
Paul Boylan, Senator
Robert Ellerd, Representative
Paul Newby, Agwagons, Belgrade, MT

*Montana-Dakota
Spraying Service, Inc.*

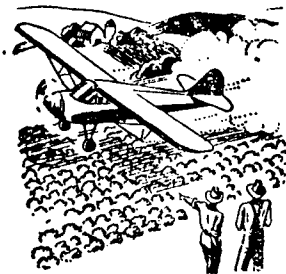


Exhibit #9
119 South Jordan Ave.
MILES CITY, MONTANA 59301

LYMAN CHOATE
Phone 232-1467

Feb. 13, 1983

Sena or Don Ochsner
Montana State Senate
Helena, Mont.

Dear Don:

Thank you for your request for my comments and views regarding Senate bill # 238, a proposed new pesticide act.

I have been engaged in aerial application of pesticides in Eastern Montana ~~for~~ continuously since 1951, spanning 32 years. Many changes have occurred during those years, perhaps most of them for the better. The business has also become much more complex, with a great many new pesticides, accompanied by strict and complex labelling of each product and use restrictions.

The present Montana Pesticide Act is known within the industry throughout the United States as one of the most effective and toughest in any of the states. The present act certainly does provide for sufficient penalties for any violations of the rules. The requirements for certification for commercial applicators and dealers are most surely adequate, as you people will easily see upon examination of the present pesticide act as amended. Federal requirements, for which we are additionally certified, provide additional safety for the public and environment.

To infer that the applicators and dealers in Montana are derelict in their responsibilities, and that we need more policing control over our activities is nonsense. The proposed bill would suggest that a commercial applicator is less competent than a farmer applicator who sprays only his own or his neighbors property. At least the requirements for his certification, and the penalties for mis-use of a pesticide by him is far less to say the least.

As a commercial applicator I have attended a great many training sessions through the years. They have been, for the most part, very worthwhile. I think they have also been adequate for the protection and welfare of the public and the environment. The commercial applicators in Montana are doing their very best to follow label directions and to perform their work in the safest and most efficient ways possible. Mistakes and errors will sometimes occur of course, as in any other industry. However, the pesticide industry functions as safely and efficiently as in other states.

I firmly believe that the public safety is adequately protected under our present pesticide law, rules and regulations. Bill 238 simply adds a greater burden, both on our industry as well as upon Montana State. I oppose this bill on the premise that it is restrictive legislation, of which there is enough already.

APPROVED COST WILL BE BORNE BY AGRICULTURE

*Montana-Dakota
Spraying Service, Inc.*

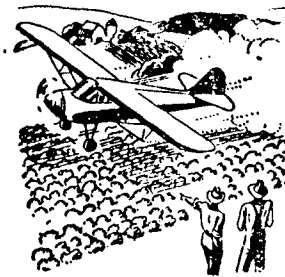


EXHIBIT #9 p.2
119 South Jordan Ave.
MILES CITY, MONTANA 59301

LYMAN CHOATE
Phone 232-1467

(To Senator Ochsner, Page 2)

The Montana Pesticide Act was enacted in 1971 and has been amended in 1973, 1977 and 1979 to keep up to date.

It has been suggested that without this new bill, the Federal Government might move in and regulate pesticides in Montana. The truth is that Federal regulations take precedence over State regulations in most cases. The present Montana pesticide act was enacted and amended specifically to conform to Federal regulations.

Referring to license fees, section 80-8-205 provides and states "The Department of Agriculture may establish procedures for controlling pesticide operators, including necessary fees BY REGULATION."

Chapter 80-8-105 states that the department may adopt by reference, without a public hearing, regulations adopted under the Federal Insecticide, Fungicide and Rodenticide Act as amended. The nearly 3 pages of rules covered under this chapter include about everything the mind of man can imagine to protect the public and the environment. Reading this chapter will surely disclose that the present rules are adequate. Subsection (4) of this chapter provides that if the department finds that an emergency exists which requires immediate action regarding the registration, use or application of pesticides they may, without notice or hearing, issue necessary rules or orders to protect the public health, welfare and safety.

80-8-109 PROVIDES E.D. PROGRAMS
Section 80-8-211 states "The department SHALL establish the policy and procedures on the revocation of licenses or permits. They also MAY refuse to grant, renew, or may revoke a license or permit, as the case may require." To date, the only departmental action against violations has been against licensed applicators. Nothing to date has been done with regards to violations by unlicensed applicators, although several such cases exist.

I would just ask this committee, do you really believe that this proposed bill # 238 is needed? Our industry is a very essential part of agriculture in Montana and serves a very useful purpose. I know that we are sufficiently regulated under the present pesticide act. It is in the best interests of Montana to stay with your original decision to recommend that this bill do not pass.

Thank you,

Lyman Choate
Lyman Choate

NAME: Michael Biggersbatt DATE: 2-16-83ADDRESS: Box 390PHONE: 406-566-2236REPRESENTING WHOM? MABA MATAAPPEARING ON WHICH PROPOSAL: SB-238DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ☒COMMENTS: Majority of the board of directors
at MABA is in opposition to SB-238I am on the board of directors of
MABA and 5 out of 8 are
in opposition to SB-238IT is on record that MABA supported
this Bill, when actually it did not.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: FRANK RedfieldDATE: Feb-16-83ADDRESS: Box 227 Ophelim MT. 59750PHONE: 724-3434REPRESENTING WHOM? MATA & AGRICULTURAL APPLICATORSAPPEARING ON WHICH PROPOSAL: B, 11 238DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? XCOMMENTS: This Bill is unnecessary & will not provide
any thing that the industry needs-The industry is already regulated by four
agencies, the EPA, FDA, CSH, & Dept. of Agriculture.The penalty to be imposed has already been
implemented in the law already in effect.Education of applicators is already taken care of
in the present law - & the Dept. can change any further
desired to set. The National Aviation Org. has test equipment
available to us & is being used by us at present, to test
circum-spray patterns & to detect potential drift problems.
We as applicators are a responsible group & do not need
to be policed in such a manner. It looks very much like
a make job situation.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

FEBRUARY 15, 1983

Testimony of:

Paul G. Newby, representing the AFA before the SENATE AGRICULTURE COMMITTEE in session in the Capital in Helena, Montana.

Reference:

Senate Bill 238

Mr. Chairman and Senators of the Committee,

For the record I am Paul Newby, owner of Agwagons, Inc., an Aerial Application business in the Belgrade area.

As you are all aware, I testified earlier in opposition to this bill, and I have not changed that stance, first, as I did before, I oppose this bill for financial reasons, and here is part of my reasoning:

The Department of Agriculture became a financial factor in the application business approximately 8 years ago, and following are some of the effects they have had on my business--At the insistence of the Department Applicators must carry "Drift Insurance" which has increased my cost of business approximately \$3000.00 per year for the last 8 years. One of the results, which our industry forecast accurately 8 years ago, is a tremendous increase in false or "nuisance" claims which can never be settled because the "claimant" is either totally unreasonable, or just makes a false claim. I have faced one such claim myself which in total cost me approximately \$6000.00 because the Departmental Regulation allowed the claimant to prevent me from doing business for one entire season and I had to hire a licensed Applicator to operate my equipment that season. The Department finally set the claim aside after I spent the time, dollars, and effort to prove the claim unreasonable. Considering other such situations over the past 8 years, this has cost me approximately \$1000.00 per year, and I am certain that if all applicators were polled across the state you would find my costs due to the presence of the Department are representative of the industry. Another cost to consider here is the loss of production that occurs when time is spent on these and other issues instead of production--I'll be very conservative and estimate that this costs only \$2000.00 per year per applicator, and we now have an average cost of \$6,000.00 per year per applicator across the state. If there has been an average number of 130 aerial applicators per year for those 8 years we now have an economic impact of \$6,240,000.00 over the 8 years, or \$780,000.00 per year, and the consumer of our services must pay that cost--the farmer and rancher of Montana!

The Department also has an economic impact on the cost of our chemicals in as much as they unnecessarily require re-registration of all chemicals annually, and again, the

farmer and rancher ultimately pays that cost through increased prices for the chemicals as well as taxes to support the number of people dedicated to "doing it over" each year when there seems to be no need for that at all! I hereby submit that there is a very strong possibility that the increases in fees would not be necessary if the department would eliminate those repetitive procedures and apply its efforts to more productive efforts!

I would also like to point out that I am a member of MABA and I do not agree with the stand the MABA Board of Directors has taken in their letter of February 14, and I believe there is a significant number of the membership which takes strong exception to the the Board's position. First--a great majority of applicators across the state try very hard all the time to operate within the bounds of the law and within the bounds of self-imposed restrictions which are often much more restrictive than the law--because common sense dictates so, and it is not possible to write the law to cover all situations. We don't fear "harassment"--we detest it because it should not be there, but many of us have already experienced it, it is a fact which cannot be escaped, and it exists because of a small number among us who will not do things right, and many of those are still operating uninhibited by the department because they seem unable to bring them under control. The law is already more than adequate if it would be enforced where it needs to be!

I agree with the MABA that the current law is oppressive and overbearing in dealing with "suspected" violations--many have been punished rather severely on the basis of "suspicion" or circumstantial evidence only, and this should not happen. I think we are all experienced enough to realize that the law and its associated regulations are already so complex that it is literally impossible to operate without an occasional inadvertant indiscretion occurring, and I believe that the mandate here should be that the Department spend its time pursuing those who are willfully and continuously in operation outside the provisions of law and regulation. The great majority of the "professional" applicators, ground and air, are already spending a great deal of time, money and effort in improving in every way possible, and we do not need nor can we afford the oppression and expense that will always come with an increase in government! We need cooperation and the freedom to improve, not a governmental mandate--more layers of government will only impede progress.

Thankyou for your time and attention.

Paul G. Newby

PGN/cp

Exhibit #13.

NAME: Lowell D Jackson DATE: 2-16-83

ADDRESS: 208 5th St N. Glasgow, Mt.

PHONE: 228-2013

REPRESENTING WHOM? myself, MHTA, NAAA

APPEARING ON WHICH PROPOSAL: SB-238

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ☒

COMMENTS: I oppose all of Senate B-230

I don't believe Civil Penalties are going to help in any way, make the pesticide application business any safer

we don't need any Policemen in the Dept. of Ag.

Any money Taken in fines will be eaten up in Attorney Costs

we also the application business are overregulated Now, and don't need any more regulated by F.A.A. E.P.A. O.S.H.A. Dept of Ag.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.