MINUTES OF THE MEETING NATURAL RESOURCES COMMITTEE MONTANA STATE HOUSE OF REPRESENTATIVES

February 8, 1985

The meeting of the Natural Resources Committee was called to order at 3:30 p.m. by Chairman Dennis Iverson in Room 312-1 of the Capitol Building.

ROLL CALL: All members were present except for Rep. Grady, who was excused.

HOUSE BILL 362: Rep. Francis Bardanouve, District 16, introduced HB 362, which he sponsored. Rep. Bardanouve explained that HB 362 is intended to amend and bring up to date the Major Facility Siting Act. He introduced a list of nine proposed amendments to HB 362, which were suggested by the department of natural resources and conservation. A copy of those amendments is attached as Exhibit 1.

Larry Fasbender, director of the department, spoke in support of HB 362, and further explained the background and purposes of the bill. He said HB 362 is the result of a year-long study of the siting act, and the certificate renewal process it requires. He said the provisions of HB 362 are compatible with the "resource options" program proposed by the Northwest Power Planning Council. He said that there are three major changes contained in HB 362. The first would authorize the board of natural resources and conservation to issue certificates conditioned on load growth reaching a specified level in the future; the second would require that construction of a facility begin within six years and continue in accordance with the construction schedule established in the certificate; and the third specifies that a certificate lapses unless it is extended or renewed in accordance with provisions of this bill.

Mr. Fasbender said that HB 632 would allow utilities to plan and be ready to build facilities to accommodate high load growth, but not be forced to build those facilities if that anticipated growth does not take place. He assured that HB 362 retains protection of the state's environmental resources.

Mark Stermitz, of Stanford, spoke in support of HB 362 on behalf of the Environmental Information Center. He said MEIC is not actively pushing HB 362, because the concerns of that group are adequately protected through the existing framework of the siting act. He said, however, that HB 362 does not dilute that framework. He said that if the legislature finds the "resource options" proposal attractive,

Natural Resources February 8, 1985 Page 2

then HB 362 would provide flexibility to adopt resource options without diluting the siting act or the powers of the Public Service Commission.

Don Reed, also representing MEIC, supported HB 362, saying it would work with the new siting act rules adopted by the board of natural resources. He noted that nothing in HB 362 should be interpreted as changing the PSC's right to determine whether a facility is "used and useful." A copy of his statement is attached as Exhibit 2.

Mike Zimmerman, an attorney for the Montana Power Company, said the utility supports HB 362, and has participated in the study that generated the bill. He also said that Gene Phillips, a representative of Pacific Power and Light, asked to be put on record in support of HB 362. He noted that MPC supports the resource options approach.

Russ Brown, representing the Northern Plains Resource Council, rose in "cautious support" of the bill. He asked the committee to specifically address the issue of the PSC's authority to determine "used and useful" in regard to facility siting. A copy of his testimony is attached hereto as Exhibit 3.

There were no further proponents, nor any opponents. The floor was then opened to questions from committee.

Rep. Joan Miles asked how many times a certificate could be renewed under HB 362, and Mr. Fasbender said only one renewal per application could be granted.

Rep. Kurt Krueger asked Mr. Zimmerman of MPC for an interpretation of the term "used and useful" in relation to HB 362. Mr. Zimmerman said that no interpretation is necessary because HB 362 does not address the issue. Rep. Krueger asked if it was Mr. Zimmerman's belief that no determinations made in relation to HB 362 would regard "used and useful," and Mr. Zimmerman said that the used and useful determination had been made by the Supreme Court, and is not addressed in HB 362 at all.

Rep. Raney asked Rep. Bardanouve for an opinion on how HB 362 relates to a "used and useful" determination. Rep. Bardanouve replied that the proposed legislation has no bearing on that issue, saying HB 362 "is a clean bill, I'm sure."

Rep. Kadas asked Mr. Fasbender how load growth on planned facilies would be determined under HB 362. Mr. Fasbender said that load growth would be monitored, and when it reaches

a predicted point, it would "kick in" the ability of a utility to decide whether to build a facility. The risk is still with the utility, he said.

Rep. Kadas asked if there would be a required consultation with the PSC on that decision to build, and Mr. Fasbender said he did not think such consultation would be necessary.

Alan Davis, representing the department of natural resources and conservation, said the PSC may be involved in the decision process. Rep. Kadas posed a possible situation in which a plant was to be constructed to provide energy for out-of-state consumption, and asked Mr. Davis if the basis for load growth would be that consumption. Mr. Davis said BNRC can look "where the need will be" to determine load growth, but such review is done on a case-by-case basis, and generalizations should not be made.

Rep. Kadas asked Don Reed of MEIC if that organization had any problem with the amendments proposed by DNRC, and was told that no problems were apparent.

Rep. Bardanouve closed by saying he was confident that HB 362 is good legislation, and that his opinion was bolstered by the fact that HB 362 received support from both utilities and environmental groups.

HOUSE BILL 633: Rep. Earl Lory, District 59, introduced HB 633, which he sponsored. He said the legislation was offered as a solution to a problem that occurs in subdivision review. That problem, he explained, is that such review is currently paid for by lot fees, and that the subdivision bureau's income and budget varies with those fees. That oscillating character causes problems in providing consistent service, he said. HB 633 would stabilize the subdivision bureau's budget by appropriating money from the general fund. However, lot fees collected by the state would to into the general fund, and "in the end, I think it would wash," Rep. Lory told the committee.

Rep. Lory noted that figures cited on page 3, lines 17-18 are incorrect, and should read \$136,787.86 (line 17) and \$139,825.87 (line 18). He explained that the governor's budget office had included fees that would be returned to counties in its budget figures.

Jim Richard, representing the Montana Association of Planners, endorsed HB 633, saying it would improve the quality and thoroughness of subdivision review.

H.S. Hanson, representing the Montana Technical Council, supported HB 633, saying it would add stability to the subdivision review process.

Don Reed, representing the Montana Environmental Information Center, said the instability of funding could work against competent, professional review of subdivisions, and supported HB 633 as a solution. A copy of his testimony is attached as Exhibit 4.

Rep. Ben Cohen, DIstrict 3, spoke on behalf of the Whitefish City County Planning Board in support of HB 633.

Terry Carmody, representing the Montana Association of Realtors, said HB 633 would offer protection to the public that would make up for the use of general fund money.

Chairman Iverson read a telephone message from Betty Beal, of the Flathead Protection Association, in support of the bill.

No opponents rose against HB 633, and the floor was opened to questions from committee.

Rep. Miles asked Steve Pilcher of the Water Quality Bureau about budget difficulties under the current system of depending on lot fees for revenue. Mr. Pilcher said that it is almost impossible to predict subdivision activity, and that problem is complicated by the fact that different types of lots are subject to varying fees. He explained that it is hard for a program to operate on unknown funding, and that the subdivision review bureau has held off on filling a vacant position because that position might have to be terminated if lot fees decrease.

Chairman Iverson asked if a fiscal note should have been prepared to accompany the bill, and Rep. Lory said he did not ask for one because the bill will have to go to the appropriations committees, and also because he thought the money taken from the general fund would likely be balanced over time by lot fees going into the general fund.

EXECUTIVE ACTION

HOUSE BILL 633: The committee moved immediately to executive action, and Rep. Asay made a DO PASS motion on HB 633. That motion was passed unanimously.

HOUSE BILL 516: Committee researcher Hugh Zackheim explained three amendments proposed for HB 516, which was introduced on February 1. Those amendments, he said, would close a potential loophole for extensions; clarify terminology relating

to DHES regulations; and make the bill conform with current DHES rules on water quality. A copy of those proposed amendments is attached as Exhibit 5.

Rep. Tom Jones made a DO PASS motion on the amendments, which carried unanimously. Rep. Jones then moved DO PASS AS AMENDED on the bill.

Rep. Miles said she was still somewhat confused on how HB 516 would improve on existing statutes covering subdivisions. She also cautioned the committee that the bill appears to be directed at regulating both state and local subdivision rules, which she said are very different matters. She said Title 90 of MCA already says that subdivision rules will not be changed to the detriment of the applicant once an application for a subdivision has been approved.

Rep. Raney asked if there was any time limit within which a subdivision would have to be built after approval in order to be allowed to rely on the rules in effect at the time of approval. Researcher Hugh Zackheim said it was his understanding of the bill that the time would be indefinite.

Rep. Raney said that although he understands the reason for allowing development and construction to continue under the rules in effect at the time of applications, he was not comfortable with the idea that no new regulations could be enforced at a later time, even if such new regulations were clearly necessary.

Rep. Kadas made a substitute motion to table HB 516, which carried, with Reps. O'Hara, Cobb, Iverson and Jones voting no.

HOUSE BILL 434: Hugh Zackheim explained a list of proposed amendments to HB 434, which had been suggested by the Montana Coal Council and the Montana Mining Association.

Rep. Asay made a DO PASS motion on the proposed amendments, which were then discussed in committee. Rep. Addy asked about the difference between "reasonable inquiry" and the proposed substitute, "with due diligence." Rep. Krueger said the difference was nebulous, but that he thought due diligence might require a higher standard of responsibility.

Rep. Addy moved to strike proposed amendment 11, which carried unanimously. The committee then unanimously adopted the remaining amendments, as moved by Rep. Asay.

Rep. Ream suggested an amendment to the bill, striking the 60-day redemption period (page 5, line 24, and page 3, line 6) and inserting a period of 180 days. Rep. Krueger suggested a redemption period of one year, which he said is the general allowance on foreclosures and like matters.

Rep. Addy noted that the bill specifies that this action will take place after a 20-year period of disuse, and is designed to make mineral interests more useable. He said a redemption period of one year might make the bill less effective by reducing the incentive for development.

Rep. Krueger said he did not believe that would be a problem, and moved the amendment of the 60-day period to one year. The motion carried, with Reps. Asay and Cobb voting no.

The committee then voted on Rep. Asay's DO PASS AS AMENDED motion, and the bill was approved, with Reps. Raney, Miles, Krueger, Garcia and Driscoll voting no.

There being no further business before the committee, the meeting was adjourned at 5:20 p.m.

Rep. DENNIS IVERSON, Chairman

4) Page 3, Italiowing line 19 Insert: "(d) the mineral interest or any portion thereof is the subject of a sale, mortgage, or other transfer evidenced by a document or a memorandum thereof recorded in the office of the clerk and recorder of each county wherein the interesteis located prior to the end of the 20-year period set forth in [section 2] or within 2 years after [the effective date of this act], whichever is later.

Redumber subsequent subsection.

- Page 4, line 4 Pollowing "carvad" Insert: "if the surface owner complies with the notice requirements of [section 4]."
- 6) Page 5, line 1 Following: "Any" Strike: "parson who succeeds" Insert: "surface wener of the land who wishes to succeed"
- 7) Page 5, line 3 Following: "shall" Strike: ".upon succeeding to that interest,"
- Page 5, line 5 E) Pollowing: "publishing" Strike: "the same" Insart: "a notice at least once each week for three consecutive weaks
- Page 5, lines 9-10 9) Following: "determined" Strike: "by reasonable inquiry" Insert: "with due diligence"
- 10) Page 5, line 10 Following: "by" Strike: "mailing" Insert: "personal service or by registered mailing of"
- Page 5, line 17 11) Pollowing: "notice" ", which must be verified by the surface owner, "

STANDING COMMITTEE REPORT

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STATE PUB. CO. Helena, Mont.

DAILY ROLL CALL

HOUSE NATURAL RESOURCES COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date February 8, 1985

NAME	PRESENT	ABSENT	EXCUSED
IVERSON, Dennis (Chairman)	\times	,	
KADAS, Mike (Vice-Chairman)			
ADDY, Kelly	X		
ASAY, Tom	X		
COBB, John	\times		
DRISCOLL, Jerry	\times		
GARCIA, Rodney	>		
GRADY, Edward			X
HARP, John	X		
JONES, Tom	X.		
KRUEGER, Kurt	<u> </u>		
MILES, Joan	X		
MOORE, Janet	X		
O'HARA, Jesse	X		
PETERSON, Mary Lou	X		
RANEY, Bob	X		
REAM, Bob	X		
SMITH, Clyde	\downarrow		
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STANDING COMMITTEE REPORT

		February 3,	19
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MR. SPEAKER:	•••••		
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PEES IN THE STATE GEN	ERAL FUND AND	REQUIRING THAT FUND	ing for
•			
SUBDIVISION REVIEW BI	ALLOCATED PRO	4 THE STATE GENERAL	FUND;
Providing an appropri	ation; anemois	3 SECTION 76-4-105,	ACA:
AND PROVIDING AM EFFE	CTIVE DATE.		
	: C 5% 4 # 27 578		
Respectfully report as follows: That	HOUSE	······	Bill No. 633
DO PASS			
State addresses industria.			

COMMITTEE SECRETARY

Chairman.

STATE PUB. CO. Helena, Mont.

Pebruary 3 19 35

- 12) Page 5, line 24
 Following: "within"
 Strike: "60 days"
 Insert: "one year"
- 13) Page 6, line 3
 Pollowing: "within"
 Strike: "60 days"
 Insert: "one year"

AND AS AHENDED,

DO PASS

ROLL CALL VOTE

DATE Folo. 8, 1985	BILL NO	· #B	434	TIME	5:00
NAME			AYE		NAY
IVERSON, Dennis (Chairman)			,	/	
KADAS, Mike (Vice-Chairman)			5	ζ	
ADDY, Kelly				K	
ASAY, Tom				Χ	
COBB, John				X	
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JONES, Tom	•			X	
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Secretary		Chairm	ian .		
Motion: Rep. Assy - Do	PASS	HB 4	134 As	AMENE	ED

Exhibit 1 2/8/85

PROPOSED AMENDMENTS

HOUSE BILL 362

INTRODUCED BILL

1. Page 1, Line 20.

Following: "75-20-301(2)(a)"

Insert: "FOR A FACILITY DEFINED IN 75-20-104(10)(a)(i)"

2. Page 1, line 22. Following: "Level"

Strike: "within a specified time"

3. Page 1, line 23. Folowing: "other" Insert: "PLANNED"

4. Page 3, Line 13.

Following: "accordance with"

Strike: "the"

Insert: "PRELIMINARY"

5. Page 3, line 14.

Following: "construction"

Strike: "schedule"
Insert: "PLANS"

6. Page 3, line 20. Following: "limit" Strike: "shall" Insert: "MAY" Following: "a"

Insert: "REASONABLE"

7. Page 3, line 21. Following: "period" Strike: "of 2 years"

8. Page 3, Line 23.

Following: "construction"

9. Page 3, line 24. Following: "effort" Strike: "to complete construction"

TESTIMONY IN SUPPORT OF HB 362

By Don Reed, Montana Environmental Information Center February 6, 1985

1

Mr. Chairman and members of the House Natural Resources
Committee, I'm Don Reed and I'm here on behalf of the members
of the Montana Environmental Information Center in support of
HB 362.

Since the 1983 legislative session, we have participated in the work of the legislative interim committee on the Regional Power Act, which discussed and recommended this legislation to you.

Montana EIC is not pushing this legislation. We believe that the existing electric utility regulatory framework of the Major Facility Siting Act and the Public Service Commission statutues form a reasonable process for planning and constructing new power plants.

We appear as proponents to convey the idea that these proposed changes to the Siting Act do not unduly weaken the Siting Act.

If the legislature believes there is merit in any form of "resource optioning" as proposed by the Regional Power Council, then this is the legislation which implements "resource options" without diluting or damaging Montana's utility regulatory framework.

There are several aspects to HB 362 which are significant to Montana EIC. First, the decision whether to invoke the "resource option" in a Siting Act certificate lies with the Board of Natural Resources. Not every certificate need be conditioned on load

growth. This will allow the Board to examine each application individualy and decide whether or not the options concept is useful in certifying that specific facility.

Second, we believe that the changes in the Siting Act proposed in HB 362 along with new rules adopted by the Board to implement the Siting Act constitute significant progress to make the certification of new major facilities easier for utilities without diluting the important elements of environmental protection in the act.

Third, nothing in HB 362 should be construed to change the authority of the PSC to determine when and which utility facilities are "used and useful." This concept of "used and useful" is key to Montana's utility regulation.

Fourth, we believe that any proposal to implement "resource options" must adequately address the need to assess any changes in the physical or social environment and changes in technology at the time a certificate is renewed. This is crucial to our support of the legislation. Without adequate reveiw of any changes in the facts at the time of renewal, resource options would represent a weakening of the Siting Act.

Fifth, the concept of "resource options" began with the idea of lessening the risk to utilities of building new power plants. With "resource options," the risk does not disappear. A portion of the risk is transferred to the community in which a new plant may_be located in the form of inflated land values due to speculation. The risk does not disappear.

We support HB 362 as a responsible means of implementing resource options without weakening the Siting Act.

NORTHERN PLAINS RESOURCE COUNCIL 2/8/05

Field Office Box 858 Helena, MT 59624 (406) 443-4965 Main Office 419 Stapleton Building Billings, MT 59101 (406) 248-1154 Field Office Box 886 Glendive, MT 59330 (406) 365-2525

TESTIMONY PRESENTED BEFORE THE HOUSE NATURAL RESOURCES COMMITTEE IN CAUTIOUS SUPPORT OF HOUSE BILL 362.

PRESENTED FEBRUARY 8th, 1985

MR. CHAIRMAN AND MEMBERS OF THE HOUSE NATURAL RESOURCES COMMITTEE. FOR THE RECORD, MY NAME IS RUSS BROWN AND I WORK FOR THE NORTHERN PLAINS RESOURCE COUNCIL, A MONTANA NON-PROFIT AGRICULTURALLY BASED CITIZENS ORGANIZATION.

WE ARE RISING IN CAUTIOUS SUPPORT OF HOUSE BILL 362. IT MUST BE SOMEWHAT PRÉCENDENT SETTING FOR NORTHERN PLAINS TO TESTIFY TWICE IN ONE WEEK IN SUPPORT OF BILLS THAT THE UTILITY INDUSTRY IS ALSO SUPPORTING. IT IS A UNIQUE BUT NOT UNPLEASENT FEELING.

OUR SUPPORT IS CAUTIOUS FOR SEVERAL REASONS, OF WHICH I'D LIKE THE COMMITTEE TO ADDRESS AT LEAST ONE. TO WE WOULD LIKE IT TO BE MADE CLEAR, THAT THIS BILL DOES NOT, AND IS NOT INTENDED TO IN ANY WAY UNDERMINE THE AUTHORITY OF THE PUBLIC SERVICE COMMISSION TO DETERMINE WHETHER OR NOT A FACILITY IS "USED AND USEFUL" WHEN DECIDING RATES.

WE AGAIN THANK YOU FOR THE OPPORTUNITY TO EXPRESS OUR CAUTIOUS SUPPORT OF HB 362.

TESTIMONY IN SUPPORT OF HB 633

By Don Reed

for the Montana Environmental Information Center

February 8, 1985

Mr. Chairman and members of the Natural Resource Committee, my name is Don Reed and I'm here on behalf of the members of the Montana Environmental Information Center in support of HB 633. We have long supported thorough review of subdivisions. In fact, we have consistantly supported <u>better</u> subdivision review.

Prior to the 1983 legislative session, the Subdivision Bureau of the Department of Health and Environmental Sciences (DHES) disappeared from state government due to a lack of funding. Subdivision activity had temporarily slowed. Since the funding system for subdivision review is linked directly to the number of subdivisions applications submitted, the Subdivision Bureau had no money to maintain staff.

To make a long story short, the responsibilities of the Subdivision Bureau were transferred to the already overworked and under-funded Water Quality Bureau. Since that time, the Water Quality Bureau has scrambled to carry out those additional responsibilities.

I do not intend to attack the difficult job done by the Water Quality Bureau. Given limitations in funding and staffing, the Water Quality Bureau has done the best it could. Subdivision review under the Water Quality Bureau, however, has been difficult and erratic.

HB 633 would take subdivision review funding off the roller coaster of lot fees. Montana EIC believes that this change will lead toward more professional and competent review.

I would like to highlight the following important points about HB 633:

- 1) HB 633 would fund the review of subdivisions from the general fund.
- 2) The present system of funding subdivision review is through lot fees (\$48 per lot) for each subdivision reviewed.
- 3) The present system is unstable. When subdivision activity is low, the Department of Health and Environmental Science (DHES) is unable to retain competent staff to review subdivisions.
- 4) This instability in funding source can work against developers, who have an interest in competent DHES staff to complete reviews in a timely fashion.
- 5) The Governor's proposed budget includes some general funding for subdivision review (\$43,000). HB 633 would expand general funding.
- 6) Subdivision review is an ongoing responsibility of the state. Like other ongoing responsibilities, it should be funded from the general fund with fees for applications going to the general fund in return.
- 7) HB 633 would not change lot fees charged developers. It would direct those monies to the general fund.

HB 516A Rep. Keyser House Natural Resources Committee 2-8-85

PROPOSED AMENDMENTS TO HB 516

Page 2, line 10
Following: "plat"
Insert: "or for an extension under 76-3-610"

2. Page 4, line 11 Following: "time"

Strike: "an application"

Insert: "plans and specifications are"

3. Page 4, line 12

Following: "department"

Insert: ", except that in cases where current rules would preclude the use for which the lot was originally intended, the applicable requirements in effect at the time such lot was recorded must be applied. In the absence of specific requirements, minimum standards necessary to protect public health and water quality will apply"

Suggested Amendments to HB 434 Montana Coal Council Montana Mining Association

- Page 2, line 12
 Following: "water"
 Strike: "and common forms of sand and gravel"
- 2) Page 3, line 16
 Following: "when"
 Insert: "the mineral interest is leased or"
- 3) Page 3, following line 19
 Insert: (d) the mineral interest or any portion thereof is the subject of a sale, mortgage, or other transfer evidenced by a document or a memorandum thereof recorded in the office of the clerk and recorder of each county wherein the interest is located prior to the end of the 20-year period set forth in [section2] or within 2 years after [the effective date of this act], whichever is later.

Renumber subsequent subsection.

- 5) Page 5, line 1
 Following: "Any"
 Strike: "person who succeeds"
 Insert: "surface owner of the land who wishes to succeed"
- 6) Page 5, line 3
 Following: "shall"
 Strike: ",upon succeeding to that interest,"
- 8) Page 5, lines 9-10
 Following: "determined"
 Strike: "by reasonable inquiry"
 Insert: "with due diligence"
- 9) Page 5, line 10
 Following: "by"
 Strike: "mailing"
 Insert: "personal service or by registered mailing of"

Suggested Amendments to HB 434 Page 2

- 10) Page 5, line 17
 Following: "notice"
 Insert: ", which must be verified by the surface owner,"
- 11) Page 5, following line 22
 Insert: (e) that to the best information, knowledge, and belief of the surface owner, the severed mineral interest is unused as defined in [section 1]; and Renumber subsequent subsection.

VISITOR'S REGISTER

		HOUSE	NATURAL	RESOURCES	 COMMI	TTEE			
BILL_	HOUSE	BILL 633			DATE_	FEBRUARY	8,	1985	
SPONSO	R EARI	LORY							

		<u> </u>		
NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
Dry Reed	Melena HECENA	MEIC	/	
AS Louson	HECENA	MT. TECH. Caracic	~	
1. Reduced	E. Halery	MAP	/	
Joy Bruck	Helena	LWV	~	/
Rep. Lovey	Mssla	·HD 59	V	
Leavy Gamacy	Helena	Mut REALTOR		
Gorden Martis		MACO.	/	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.
WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITOR'S REGISTER

	HOUSE NATURAL RESOURCES	_ COMMI	TTEE
BILL	HOUSE BILL 362	DATE_	FEBRUARY 8, 1985

SPONSOR FRANCIS BARDANOUVE

		+	+	
NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
James Lirol	Hetro	Dalk (_	-	
Rus Brown	Helena	NPRC		
200 Reid	/Holeno	MEIC	(-	
Mach Stemmes	Stanford	MEIC	V	
Joy Bruck	Holen	\$ LWV	V	
l l				
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