

MONTANA STATE SENATE  
JUDICIARY COMMITTEE  
MINUTES OF THE MEETING

March 22, 1985

The fifty-sixth meeting of the Senate Judiciary Committee was called to order at 10:03 a.m. on March 22, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present.

CONSIDERATION OF HB 419: Representative Ray Brandewie, sponsor of HB 419, testified this bill repeals an act requiring an air instructors license or certificate. This is a function the FAA takes care of, so there is no need for the state of Montana to do the same thing.

PROPONENTS: Mike Ferguson, Administrator of the Aeronautics Division of the Department of Commerce, testified they were in favor of the bill. Elizabeth Timm, pilot, Timm's Aero Service, presented written testimony in favor of the bill although she did not testify before the committee (see witness sheet attached as Exhibit 1). In addition, Bert Poloson, of Polson, indicated his support of the bill although he did not testify before the committee (see witness sheet attached as Exhibit 2).

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Representative Brandewie commented Jim Houghton was available to answer questions.

CLOSING STATEMENT: Representative Brandewie stated it is a law that hasn't been used before, and it's duplication of responsibility.

Hearing on HB 419 was closed.

CONSIDERATION OF HB 354: Representative Ray Brandewie, sponsor of HB 354, testified this is a repealer repealing the necessity for the state to license airports. It is 40 years old and has never been used. This was brought to light because of a lawsuit brought against the division for not enforcing the law. He is carrying the bill at the request of the Montana Airport Licensing Division. He distributed a packet of information to the committee (Exhibit 3). There are 10 private airstrips that would be affected in the state of Montana by this. Two have said they would have to close their airports. Licensing doesn't enhance safety. That is already in place by airport inspections.

The strip is not solely reserved for the use of airports; that is just the available area. All this means is they can operate safely in the area shown on the map included in Exhibit 3. They are one of the most regulated operations for safety reasons.

PROPOSERS: Keith Colbo, of the Department of Commerce, presented written testimony to the committee (Exhibit 4). Nils Pearson, a commercially rated pilot and civil engineer with specialty of airport construction, testified on behalf of the Montana Pilots Association in support of the bill. He presented the committee with a map showing the airports in Montana (Exhibit 5). We have heard a lot of talk about the Seeley Lake incident. This bill will license all airports in the state of Montana. He addressed three issues: (1) The cost to the community. There are many airports in the state of Montana. To require the 120 airports to be licensed is \$200-1,000 per year where the majority have a total budget of between \$500-1,000 each year. (2) Safety. Airports are very safety conscious. When it comes to safety on an airport, it comes to operations. The day-to-day managerial operations of the airport such as snow removal. (3) Duplication of federal requirements. The cost of a new airport will require federal government approval, and it requires 4-6 months review process and 30-day input as to the environmental factors. He did not feel the legislature should saddle these small airports with this exorbitant cost. Ted Mathis, airport manager at the Gallatin Field in Bozeman, presented written testimony on behalf of the Montana Airport Management Association (Exhibit 6). In addition, Mr. Mathis presented written testimony from James McLean of the Montana Aeronautics Board (Exhibit 7). Russ Pankey, Director of Airports for the Missoula Airport Authority, testified the legislature has a chance to abolish a law that was never needed or implemented in 40 years. It will not require expense to the department to administrate it. He hoped the committee would not be influenced by a special interest group. The following also testified in support of the bill and presented written testimony: Leona Strouf, on behalf of the Montana Flying Farmers and Ranchers (Exhibit 8); Representative Janet Moore (Exhibit 9); Lewis Lindemer (Exhibit 10); Bert Poloson (Exhibit 11); Grace Poloson (Exhibit 12); Elizabeth Timm, Timm Aero Service (Exhibit 13); Henry Johnson (Exhibit 14); and Laurene Johnson (Exhibit 15). Laurene Johnson did not make an oral presentation of her testimony to the committee.

OPPOSERS: Mike Anderson, attorney from Billings representing the Seeley Homeowners Association, presented written testimony in opposition to the bill (Exhibit 16). He testified the fiscal note shows over a two-year period a cost of \$106,000. There would be no impact on the state general fund. Mr. Ferguson would have to tell you they do make money on the inspections. He makes \$220 per airport he inspects. They bid competitively, and every year he bids. Mr. Anderson stated he would

support an amendment that would exclude those 110 airports. Mr. Mathis paid \$1 for his license. He referred to the problems at Lake Union. He made reference to the advertisement for the Seeley Lake Airport in the "Water Flying Magazine." They have great problems involving noise. The cost of airport licensing is not before this committee; it is in HB 420. That bill has scared those local communities and is being used to get their support on a repeal. The Department of Commerce was requested to do something, and they did not. Some boat owners were found guilty and some found innocent. FAA did not respond when they were requested to check into the Seeley Lake matter. Oregon, Idaho, and Washington license airports. Federally, the Corps of Engineers waters are closed to seaplanes. There is a licensing law. It will either get you relief or it will get you a hearing. Under the licensing statutes, 61 of those airports have applied; 15 have been inspected since February 1; one has refused. Ken Dyrud, attorney from Great Falls, testified they have had safety problems with small airports for 40 years. When the FAA was asked to evaluate a serious hazard at the airport, the Montana Aeronautics Division asked the FAA to just evaluate a hazard caused by a radio antenna located near the runway at the Kalispell city airport. The response by the FAA was no. The FAA has rejected the recommendations of the Montana Aeronautics Division for a flight service center. The proponents are asking you as senators to take authority that the state now has and eliminate it and leave it up to the FAA. The FAA has disagreed time and time again with the Montana Division of Aeronautics. They have refused to evaluate or correct safety hazards from requests by the Montana Aeronautics Division. How do they think they will respond to a request from a private citizen. On the face of this bill it says these licensing statutes are not necessary because the FAA does this and it is a big cost to the state. The FAA does not license airports. We have licenses for almost everything we do. Mr. Houghton will tell you the FAA has no authority to stop development of an airport. If you repeal these statutes, there will be absolutely no authority to prevent someone from putting an airport in your background. The people here to comment have been asking for a resolution for over two years, long before they ever asked for legal counsel. For the safety of both pilots and the public, he did not feel the legislature should repeal a statute that gives authority they should be using. Mary Lou Ellinghouse, President, Seeley Lake Homeowners Association, testified they are concerned about seaplanes on a very busy lake, on a southeast bay on the lake with the only deeded property on the whole lake. They have tried to go to agencies for help. The homeowners themselves wrote and called and asked for help. What will happen is someone will get hurt. They finally sought legal counsel. For two years, they have been in court. Seeley Lake is now an airport. It needs to be licensed. Two different petitions with community support opposed the seaplane base. She has encouraged her homeowners to stay within an organized process. They

have had one incident. They broke the law, and they have answered. Bob Scott, resident of Seeley Lake, presented written testimony to the committee (Exhibit 18). They have been unable to get anybody to do anything for them with the law. What kind of a position will they be in with no law whatsoever? There must be a fence around airports, and there are no fences on that lake. Apparently we don't care if aircraft hit vessels or vessels hit aircraft. They could license airports at the same time they are inspected. It has all been engineered to take the Department of Commerce off the hook because of their inaction. The effective date of HB 354 should be set in such a manner that it would not become effective until after the litigation going on is settled in the courts. Minnesota and Oregon have regulations for seaplanes. Cy Baker, of Great Falls and a member of the Seeley Lake Homeowners Association, testified he owns and operates a business in Great Falls and must have a license for it (see witness sheet attached as Exhibit 19). He has witnessed numerous violations both by boats and seaplanes on Seeley Lake. He feels someone is going to get hurt. Margaret Farrell, member of the Seeley Lake Homeowners Association, testified you would be hard pressed in the state of Montana to find a body of water similar in area to this bay that is more congested. It is a very busy area. To this area comes the only seaplane base in the state of Montana. It seems there is nothing they can do about it. If airports are not licensed, there will be no recourse for the people. Mark Darrow, a member of the Seeley Lake Homeowners Association, testified in opposition to the bill (see witness sheet attached as Exhibit 20). He feels if the state doesn't have the authority to regulate the type of problem that has evolved at Seeley Lake during the past two years, they have no recourse. They need some agency to step in and allow or disallow this type of activity. Ken Dyrud testified again. He stated the state of Montana should have something to say about this before someone can put an airport anywhere he wants it and advertise it nationwide without even a possible hearing for consideration of public safety and public need. He presented an advertisement from the May 1984 issue of "Minnesota Flyer" advertising a steak house on Seeley Lake accessible by seaplanes. The state is doing now what it would have to do for licensing, but it calls it designating an airport as a public use airport. They are not against aviation. They should not be assuming more liability by licensing airports. The Montana Aviation Advisory Council did request the drafting of this bill, but as a condition to drafting it this bill and sponsoring and supporting it, the Department of Aviation had to agree to implement a self-policing volunteer education program. They are simply asking that it be left voluntary and they know from experience that doesn't always work. Irv Gysler, of Seeley Lake, testified the gentleman testifying from the Montana Pilots Association said Seeley Lake was federal water. He testified all water in the state of Montana belongs to the people of the state of Montana (see statutes attached as

Exhibit 22). Senator Pat Goodover presented written testimony in opposition to the bill (Exhibit 23). He stated Judge Loble took one and a half years to deliberate on what the committee is hearing in one hour. He asked that the committee please take time to read the copy of Judge Loble's order introduced into evidence. He felt the committee should hold this bill until all of the judges had presented their orders and then make their decision to benefit the people of Seeley Lake. This is not just a bill to repeal licensing of airports. He asked that the committee look at Judge Loble's order and wait for Judge McKenna's remarks, and the Seeley Lake Homeowners Association will then abide by their pronouncement. Mike Anderson spoke again and stated the existing regulation is for private use airports. The repeal of that would not affect that in any way.

QUESTIONS FROM THE COMMITTEE: Senator Shaw addressed Mr. Anderson and asked if this committee did not pass this bill, was he sure the state of Montana wouldn't issue a license to Seeley Lake and that will take care of the problem of the airport. Mr. Anderson responded if you don't pass this bill, there are licensing hearings underway which may or may not lead to licensing. He stated the Homeowners Association will abide by it. Senator Towe asked if no license had been issued at this time. Mr. Anderson responded that is correct. Senator Towe asked if they will use it as an airport. Mr. Anderson answered Judge Loble has determined it is an airport and should be licensed. Senator Mazurek asked if it was or was not being used. Mr. Anderson replied it was being used. Senator Towe asked if he were saying they just went out and started the operation without making any application to the state. Mr. Anderson responded that appeared correct. Senator Towe asked if at the present time court cases were pending. Mr. Anderson replied principal issue before Judge Loble is whether the department should enforce the licensing law. No one has imposed any penalties on those operating seaplanes. Senator Towe asked if it was the intent to enforce this statute. Mr. Ferguson replied yes. Senator Towe asked how this got into existence to start with. Mr. Ferguson answered there are two statutes--one is permissive and one is mandatory. Judge Loble issued an order that says the mandatory statute prevails. Senator Towe asked if the FAA issues licenses. Mr. Ferguson responded the FAA does not call it licensing; they call it certification. They certify 110 airports in Montana (air carrier airports). Senator Towe asked if they were inspected for safety. Mr. Ferguson replied yes; they contract with the Department of Aviation to do part of them. They did 82, and the FAA did the balance. Senator Crippen asked if it were correct that they hadn't used this licensing provision in the law for many years because they felt they were superseded by the FAA. Mr. Ferguson replied he could only assume it has been the position of old aeronautics commissioners that it is permissive. Because the FAA has been doing it, they never implemented the law for

reasons of duplication as well as finance. Senator Crippen stated suppose the FAA certifies an airport and the state did not. Who would prevail? Mr. Ferguson did not know. Senator Crippen stated reversing that situation, suppose the state were to license it and the FAA would not. Who would prevail? Mr. Ferguson responded he believed the FAA would. Senator Crippen stated if this bill is not passed and the outcome of the court cases requires that you certify or issue a license, in light of that, your department would have to go back and look at all of the airports in the state of Montana and go through the procedure for licensing as soon as possible. You might find some that are not up to standards. Do you have any standards? Mr. Ferguson stated they have developed rules since the court order. Senator Crippen asked what the cost of that would be. Mr. Ferguson stated they have lost 60% of their revenue since 1946 because of the closure of the Glasgow and Malmstrom airports. If they don't spend their entire amount budgeted, it does remain in the account. That may be construed as surplus. Their money doesn't come from or revert to the general fund. Airport licensing will cost about \$53,000 for the year. They don't expect all airports will apply. Regarding the 50-10 contract, they get \$220 per airport. There were 40 airports they did not inspect but the FAA did. They would have to be licensed. Senator Brown stated there are 120+ airports in the state of Montana. Have you had a request for licensure before the Seeley Lake problem? Mr. Ferguson replied no. Senator Brown asked if they had a request from a pilot who said it would be better from the aspect of safety. Mr. Ferguson replied no. He also reiterated they do not make a profit on the 50-10 inspections. Senator Brown asked if there would have to be an inspection fee in conjunction with the licensing fee. Mr. Ferguson stated they are proposing that would be increased to recoup the other costs. Senator Pinsoneault asked if this law is repealed, would he be able to go out and buy a seaplane and starting using Flathead Lake as a seaplane base? Mr. Ferguson replied it would depend on the jurisdiction of the land use around that lake, as well as the jurisdiction of the lake. Senator Mazurek asked Mr. Houghton if he had authority to deny an applicant licensure. Could they have stopped Seeley Lake from being used? Mr. Houghton responded the FAA does not license airports. They have what they consider an airspace determination. That requirement is the only statutory requirement. The local requirements of zoning and use would have to be considered. They would go to the local airport and influence them to stop the development. Senator Mazurek asked if safety in terms of airspace took into account impact on the adjoining landowners. Mr. Houghton replied it takes into account the use of the water. They believe there was sufficient open water for a pilot to operate a seaplane. Senator Mazurek asked if they would have the authority not to certify it if they determined it was unsafe. Mr. Ferguson answered they would give it an objectionable airspace report. Then it would be up to the local jurisdiction to stop

it. The major airports would have to stop it. Also, they would have a hard time getting insurance if they were given an objectionable airspace report. Senator Mazurek asked about the people who had appealed to them for investigation of problems and received no response. Mr. Ferguson responded they received a response they might not want to accept. They investigated the situation as far as the airspace determination. Under their authority, there was nothing there from a facility operation on the lake that would preclude them from allowing the airspace determination to stand as it is. They did convey that information back to those people.

CLOSING STATEMENT: Representative Brandewie stated a certificate and a license mean the same thing to the federal government. He restated the FAA does not recognize hazards. Every airport is on a chart; and in reference to the Kalispell city airport, there are two antennae on the map. There are hazards that are known to the local pilots. The picture of the lake shows 80% of the ownership of the lake is federal land. The airspace declared safe is on the end of the lake. The seaplanes land in that safe area. They taxi slowly into the dock. They don't come running up to the dock like a speedboat. They are also quieter than some speedboats. He felt the committee should consider the other 120 airports in the state. There is no general fund money that goes to the Aeronautics Division; it is all user funds.

Hearing on HB 354 was closed.

CONSIDERATION OF HB 423: Representative Bob Gilbert, sponsor of HB 423, testified our statutes say no person shall operate an aircraft either in the air or on the ground in a careless manner. They have inserted in the bill or over the water. This bill provides safe operation over the water. This is consideration for our agricultural pilots in the state. They spend more time traveling from the airport to the field when they are empty than they do on spraying. Landing on roads will cut down on the cost to farmers. He wants to make sure if a pilot is landing on a public road (not interstate) with permission, they can set their truck alongside the road, refuel their plane, and go back to work. At the present time in the statutes, there is no mention of landing on the waters. There is mention of flying over it. It is hard to enforce something that isn't legal or illegal. This would provide that landing on the water is legal, and proper safety standards must be followed. If we could put this in the statute, we get rid of the grey area. If you have a problem on the water or road, you can't enforce it because you don't know what it is.

PROPOSERS: Mike Ferguson, Administrator of the Aeronautics Division of the Department of Commerce, stated they favor the bill. He did not want

it confused with the issue at Seeley Lake. It is something totally separate. Nils Pearson, speaking for himself, has landed on public roads twice because of inclement weather. He felt this bill clarified a shady issue. Bert Poloson, seaplane pilot from Polson, testified in support of the bill (Exhibit 24). Lewis Lindemer reiterated the federal laws that make it legal for seaplanes to land on public waters in the United States. Elizabeth Timm, seaplane pilot, supported the bill (Exhibit 25). Leona Strouf, representing Montana Flying Farmers and Ranchers, testified they were in favor of the bill. Henry Johnson, of Pablo, indicated his support on a witness sheet (Exhibit 26).

OPPONENTS: Mike Anderson, on behalf of the Seeley Lake Homeowners Association, testified they are not unalterably opposed. He felt the committee should consider the interaction between one statute that allows landings anywhere and one that abolishes licenses. Judge McCarvel rendered a decision about insurance coverage which upheld an insurance exclusion which covered landing on any area that was not a designated landing area. The only way to designate a landing area is if it is licensed. Irv Gysler, of Seeley Lake, testified on his own behalf. He stated he was in favor of agricultural pilots being able to land on the county roads. The thing that bothered him about this law and the ownership of water in Montana is if you have a reservoir on your place, will a private person use that to land on? In checking with the FAA, he determined that Section 99.1 (Exhibit 27) covers operation in a careless or reckless manner to endanger the life or property of another. That is a standard practice and does not help the situation very much. He hopes the committee takes a good look at the seaplane operation in this bill, but he is in favor of the road lands. Bob Scott testified they would have the committee believe this bill will provide authority for some type of regulation. There are no provisions to have the Aeronautics Division stop any type of operation whatsoever. The standard answer from FAA is we approve airspace only. This has nothing to do with on the land or on the water. He believes HB 423 is connected with HB 354. If you take a look at this bill, and because of the Seeley Lake controversy, we have no objection to the crop dusters being left in but all references to water should be stricken. If the committee cannot strike water from this bill, it should take some of the wording into consideration from paragraph IV (Exhibit 28). If you cannot cover that situation, he asked that the effective date of this bill be deferred until the present litigation is completed regarding Seeley Lake. All of those people on the ground or on the lake will be subject to pilot judgment. The safety of those people on the lake will be up to pilot judgment. The FAA states crashes are due to pilot error, mechanical failure, or structural failure.

QUESTIONS FROM THE COMMITTEE: None.



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CLOSING STATEMENT: Representative Gilbert stated everyone seems to think that Seeley Lake is the only lake in the state of Montana. No one knows if it is legal to land on water. They are not the only people or the only place in the state of Montana where there are seaplanes. This bill has nothing to do with the Seeley Lake incident. Without this bill, the state cannot enforce the actions of a plane on the water.

Hearing on HB 423 was closed.

There being no further business to come before the committee, the meeting was adjourned at 12:02 p.m.

Committee Chairman



COMMITTEE ON \_\_\_\_\_

## VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Ken Dyrud	Seelye Lake Homeowners Assoc	354 423		✓
Mike Anderson	"	354 423		✓
W. Lindner	Self Lindner Landry Hrs	354	X	
Ted Mathis	MT AIRPORT MANAGEMENT ASSOC	354	X	
Russ Pankey	MISSOULA County AIRPORT	354	X	
Elizabeth A. Timm	Timm Bros Service Poleon M	419, 423 354	X	
Grace Polson	Seaplane Pilots	419, 423 354	X	
Wesley E. Johnson	Johnson Water Well Ser.	354	X	
Laurene Johnson	"	354	X	
Wesley E. Johnson	Seelye Lake property owner	423 354		✓
Hank Lapsley	Seelye Lake home owner	423 354		✓
Wesley E. Johnson	Seelye Lake home owner	423 354		✓
Art Wohl	"	354 423		✓
Stella Wohl	"	354 423		✓
Marilyn Luvie	Montana Flying Journal	354 + 423	X	
Lorna M. Storch	Montana Flying Journal	354 423	X	
Lorna Storch	Seelye Lake home owners	423 354		✓
Margaret Farrell	Seelye Lake Homeowners	HB 354		✓
Lee B. Farrell	Seelye Lake Home owner	HB 354		✓
Joe Busby	Seelye Lake Home owner	HB 354 423		
Bernice K. Ellinghouse	"	HB 354 423		X
Wesley E. Johnson	Seelye Lake Home owner	354 423		X
Mary Lou Ellinghouse	Seelye Lake Homeowners	354 423		X
Laurene Johnson	Seelye Lake - Home Owners	354 423		X
R. H. Scott	" " " "	354 423		X
Frank R. Baker	Seelye Lake	354 423		X

(Please leave prepared statement with Secretary)

DATE \_\_\_\_\_

COMMITTEE ON \_\_\_\_\_

# VISITORS' REGISTER

[illegible]

(Please leave prepared statement with C- )

(This sheet to be used by those testifying on a bill.)

NAME: Elizabeth A. Timm DATE: 3-22-85

ADDRESS: Polson, Md. 59860

PHONE: 406-883-5193

REPRESENTING WHOM? Pilot, Timm Aero Service

APPEARING ON WHICH PROPOSAL: H.B. 419

DO YOU: SUPPORT? ✓ AMEND?        OPPOSE?       

COMMENT:

F.A.A. Fully regulates pilots  
and all certification. We don't  
need more.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 1  
DATE 03 22 85  
BILL NO. H.B. 419

(This sheet to be used by those testifying on a bill.)

NAME: Bert Polson DATE: \_\_\_\_\_

ADDRESS: Box 410 Polson Mt.

PHONE: 883-4656

REPRESENTING WHOM? self

APPEARING ON WHICH PROPOSAL: 419

DO YOU: SUPPORT? ☒ AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENT: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 032285

BILL NO. HB 419

**67-3-203 through 67-3-210 reserved.**

**67-3-211. Airman licensing.** Except as provided in 67-3-102, a person may not engage in aeronautics as an airman in this state unless he has from the department an effective certificate of registration of an appropriate effective airman's license, certificate, or permit issued or approved by the United States government authorizing him to engage in the particular class of aeronautics in which he is engaged.

History: En. Sec. 9, Ch. 152, L. 1945; amd. Sec. 10, Ch. 348, L. 1974; R.C.M. 1947, 1-301(part); amd. Sec. 3, Ch. 157, L. 1983.

**Compiler's Comments**

1983 Amendment: After "permit issued" inserted "or approved".

**67-3-212. Flight plan required.** (1) The pilot of each flight carrying passengers and originating at a Montana public airport and to be flown under visual flight rules over a distance greater than 250 nautical miles is required to file a flight plan with the federal aviation administration.

(2) The department may adopt rules necessary to implement the provisions of this section.

History: En. Sec. 1, Ch. 417, L. 1983.

**67-3-213 through 67-3-220 reserved.**

**67-3-221. Air instructor license or certificate.** It is unlawful for a person to operate an air school or to give instructions in flying or ground subjects in this state unless that person, if an air school or aeronautics instructor in ground subjects, is the holder of an annual license issued by the department or, if an aeronautics instructor in flying subjects, has an appropriate effective license, certificate, or permit issued by the United States government authorizing him to engage in the particular class of flight instruction in which he is engaged, which has been registered with the department, and the registration with the department is in full force.

History: En. Sec. 11, Ch. 152, L. 1945; amd. Sec. 12, Ch. 348, L. 1974; R.C.M. 1947, 1-303.

**Part 3****Airport Licensing**

**67-3-301. Licensing — airports and other air navigation facilities.** All proposed airports, restricted landing areas, and other air navigation facilities shall be first licensed by the department before they are used or operated. A municipality or person acquiring property for the purpose of constructing or establishing an airport or restricted landing area shall, prior to that acquisition, apply to the department for a certificate of approval of the site selected and the general purpose for which the property is to be acquired to ensure that the property and its use conform to minimum standards of safety and serve the public interest. It is unlawful for a municipality or an officer or employee of it or for any person to operate an airport, restricted landing area, or other air navigation facility for which an annual license has not been issued by the department.

History: En. Sec. 12, Ch. 152, L. 1945; amd. Sec. 13, Ch. 348, L. 1974; R.C.M. 1947, 1-304.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

BILL NO. HB 354

**67-3-302. Applications for certificates and licenses — hearings.**

(1) When the department makes an order granting or denying a certificate of approval of an airport or a restricted landing area or an original license to use or operate an airport, restricted landing area, or other air navigation facility, and the applicant or any interested municipality, within 15 days after notice of the order has been sent to the applicant by registered or certified mail, demands a public hearing or when the department desires to hold a public hearing before making the order, a public hearing in relation to its action shall be held in the municipality applying for the certificate of approval or license or, in case the application was made by anyone other than a municipality, at the county seat of the county in which the proposed airport, restricted landing area, or other air navigation facility is proposed to be situated. At the hearing parties in interest and other persons shall have an opportunity to be heard.

(2) Notice of the hearing shall be published by the department at least twice in a newspaper of general circulation in the county in which the hearing is to be held, the first publication to be at least 15 days prior to the date of hearing.

(3) After a proper and timely demand has been made, the order shall be stayed until after the hearing, when the department may affirm, modify, or reverse it, or make a new order. If no hearing is demanded as provided in this section, the order becomes effective upon the expiration of the time permitted for making a demand.

(4) Where a certificate of approval of an airport or restricted landing area has been issued by the department, it may grant a license for operation and use and no hearing may be demanded.

History: En. Sec. 13, Ch. 152, L. 1945; amd. Sec. 14, Ch. 348, L. 1974; R.C.M. 1947, 1-305.

**67-3-303. Standards — certificates and licenses.** In determining whether to issue a certificate of approval or license for the use or operation of a proposed airport or restricted landing area, the department shall take into consideration its proposed location, size, and layout; the relationship of the proposed airport or restricted landing area to a comprehensive plan for statewide and nationwide development; whether there are safe areas available for expansion purposes; whether the adjoining area is free from obstructions based on a proper glide ratio; the nature of the terrain; the nature of the uses to which the proposed airport or restricted landing area will be put; and the possibilities for future development.

History: En. Sec. 14, Ch. 152, L. 1945; amd. Sec. 15, Ch. 348, L. 1974; R.C.M. 1947, 1-306.

**67-3-304. Revocation of license or certificate.** The department may temporarily or permanently revoke a certificate of approval or license issued by it when it determines that an airport, restricted landing area, or other navigation facilities are not being maintained or used in accordance with the provisions of this title and the rules adopted under it.

History: En. Sec. 16, Ch. 152, L. 1945; amd. Sec. 16, Ch. 348, L. 1974; R.C.M. 1947, 1-308.

**67-3-305. Personal use exceptions.** The provisions of 67-3-301, 67-3-302, and 67-3-303 shall not apply to restricted landing areas designed for personal use.

History: En. Sec. 15, Ch. 152, L. 1945; R.C.M. 1947, 1-307.

SENATE JUDICIARY COMMITTEE  
 EXHIBIT NO. 3  
 DATE 032285  
 BILL NO. HB 354



**67-3-306. Federal government exceptions.** The provisions of 67-3-301, 67-3-302, 67-3-303, and 67-3-305 shall not apply to any airport, restricted landing area, or other air navigation facility owned or operated by the federal government within this state.

History: En. Sec. 17, Ch. 152, L. 1945; R.C.M. 1947, 1-309.

## Part 4

### Air Operators and Air Carriers

**67-3-401. Commercial air operators — insurance.** The department shall require every commercial air operator to procure and continue in effect, as long as the commercial air operator continues to offer its services for compensation, adequate protection against liability imposed by law upon a commercial air operator for the payment of damages for personal bodily injuries, including death resulting from those injuries, and property damage as a result of an accident.

History: En. Sec. 4, Ch. 122, L. 1967; amd. Sec. 19, Ch. 348, L. 1974; R.C.M. 1947, 1-314.

**67-3-402. Amount of insurance.** The department, after a public hearing, shall set the amount of liability insurance, required by 67-3-401, which is reasonably necessary to provide adequate compensation for damage incurred through an accident involving a commercial air operator.

History: En. Sec. 5, Ch. 122, L. 1967; amd. Sec. 20, Ch. 348, L. 1974; R.C.M. 1947, 1-315.

**67-3-403. Evidence of insurance.** (1) The protection required under 67-3-401, covering each aircraft used or to be used in commercial operations for compensation, shall be evidenced by providing one of the following to the department:

(a) a copy of the policy of insurance issued by a company authorized to write the insurance in the state;

(b) a bond of a surety company authorized to write surety bonds in the state; or

(c) evidence of the qualification of the commercial air operator as a self-insurer as may be authorized by the department.

(2) With the consent of the department, a copy of an insurance policy, certified by the company issuing it to be a true copy of the original policy, a photostatic copy of the original policy, an abstract of the provisions of the policy, or a certificate of insurance issued by the company issuing the policy may be filed with the department instead of the original or a duplicate or counterpart of the policy.

(3) The department may accept policies of insurance written by unauthorized insurers if the policies of insurance meet the rules adopted by the department.

History: En. Sec. 6, Ch. 122, L. 1967; amd. Sec. 21, Ch. 348, L. 1974; R.C.M. 1947, 1-316.

**67-3-404. Continuation of insurance — notice upon cancellation.** The protection against liability shall be continued in effect as long as the commercial air operator continues to offer his services for compensation. The policy of insurance or surety bond shall not be cancelable on less than

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 1975

BILL NO. 48354



U.S. Department  
of Transportation  
Federal Aviation  
Administration

Northwest Mountain Region  
Colorado Idaho Montana  
Oregon Utah Washington  
Wyoming

12001 Pacific Highway, South  
O 95756  
Seattle Washington 98168

November 4, 1982

Mr. Lewis W. Lindemer  
45 E. Golden Lake Road  
Circle Pines, Minnesota 55014

Dear Mr. Lindemer:

We have studied your Notice of Landing Area Proposal, FAA Form 7480-1, to establish a public-use seaplane base, Lindey's Landing West, near Seeley Lake, Montana, at latitude 47°10'28"N and longitude 113°28'45"W.

Aeronautical Study No. 82-ANM-124-NRA indicates that the proposed seaplane base would not impact the safe and efficient use of navigable airspace by aircraft. Hence, we have no objection to it.

This airspace determination should not be construed to mean FAA approval of the physical development involved in the proposal. It is only a determination with respect to the safe and efficient use of airspace by aircraft. In making this determination, the FAA has considered matters such as the effect the proposal would have on existing or contemplated traffic patterns of neighboring airports, the effects it would have on the existing airspace structure and projected programs of the FAA, and the effects that existing or proposed man-made objects (on file with the FAA) and natural objects within the affected area would have on the airport proposal. This determination in no way preempts or waives any ordinance, laws, or regulations of any other governmental body or agency.

No evaluation of the environmental aspects of your proposal has been made; therefore, this determination does not constitute environmental approval under the National Environmental Policy Act of 1969.

You should also be aware that the FAA cannot prevent the construction of a structure near the airport. The airport environs can only be protected through such means as local zoning ordinances or acquisition of property rights.

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 3  
DATE 032285  
BILL NO. HB 354

We suggest that the proposal be developed per the enclosed excerpt from a document entitled "Seaplane Facilities." This publication is a joint effort between the Northwest Mountain and Alaska Regions of the Federal Aviation Administration and Air Transport Canada. It should be considered an aid in designing and constructing facilities to accommodate seaplanes. This guide is not intended to be a complete design manual.

When the proposal becomes operational, please complete and return the enclosed FAA Form 5010-5, "Facilities Information Request." The enclosed "Appendix 1. Description and Instruction for each Data Element" is provided for your use in filling out this form. If the proposal does not become operational and/or the FAA Form 5010-5 is not submitted by December 31, 1984, this airspace determination will expire. A time extension may be requested, but its issuance will be dependent upon a review of aeronautical activity in the area.

Thank you for your cooperation in this matter. If you have any questions, please call me at (206) 767-2633.

Sincerely,

Original signed by:

Michael R. Crader  
Airport Planner

3 Enclosures

cc:

Michael D. Ferguson  
Chuck Engdahl

bcc:

AAS-330 (w/7480-1 and sketch)

ANM-530 ✓

ANM-900, -902

AWP-592

Northwest Public Power Association

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 3  
DATE 032285  
BILL NO. HB 354

DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION

NOTICE OF LANDING AREA PROPOSAL

☒ ESTABLISHMENT OR  
☐ ALTERATION  
☐ DEACTIVATION OR ABANDONMENT  
☐ CHANGE OF STATUS

OF ☐ HELIPORT  
☒ SEAPLANE BASE

PROPOSER, INDIVIDUAL OR ORGANIZATION

ADDRESS (No., Street, City, State, Zip Code)

WIS W LINDEMER

55 E GOLDEN LK RD, CIRCLE PINES, MN 55014

LOCATION OF LANDING AREA

NEAREST CITY OR TOWN

2. COUNTY

3. STATE

4. DISTANCE & DIRECTION  
FROM NEAREST CITY  
OR TOWN

SEELEY LAKE (UNINCORPORATED) MISSOULA

MONMONT

NAME OF LANDING AREA

6. LATITUDE

7. LONGITUDE

8. ELEVATION

MILES

DIRECTION

ANDREY'S LANDING WEST

47° 11' 40"

113° 30' 0"

3993

3 TO 3 SE END/LK

PURPOSE

36" MC 9/2/82

TYPE USE

TYPE OWNERSHIP

LOCALITIES SERVED

IF CHANGE OF STATUS OR ALTERATION,  
DESCRIBE CHANGE.

CONSTRUCTION DATES  
TO BEGIN/BEGAN

☒ PUBLIC

☐ PRIVATE

SEELEY LK,

N/A

N/A

☐ PRIVATE

☐ PUBLIC

CONDON, MT

EST. COMPLETION

☐ PERSONAL

☒ PRIVATE

SEELEY-EVAN

N/A SPRING 1983

REP. AS ABOVE

2. OTHER LANDING AREAS

VFR 5NM  
SEELEY LAKE, MT  
IFR 20NM  
(NONE)

DIRCT.  
FROM  
LANDING  
AREA

DIST.  
FROM  
LANDING  
AREA

D. LANDING AREA DATA

1.	EXISTING (If any)		PROPOSED	
MAGNETIC BEARING OF RUNWAY(S) OR SEALANE(S)	305			
LENGTH OF RUNWAY(S) OR SEALANE(S) IN FEET	125			
WIDTH OF RUNWAY(S) OR SEALANE(S) IN FEET	APPROX 14,000'			
MAGNETIC BEARING OF PRIMARY LANDING DIRECTION				
TYPE OF RUNWAY SURFACE (Concrete, Asphalt, Grass, Etc.)	305			
WATER				
2.	DIMENSIONS OF LANDING AND TAKEOFF AREA IN FEET		SENATE JUDICIARY COMMITTEE	
	DIMENSIONS OF TOUCHDOWN AREA IN FEET		EXHIBIT NO. 3	
	MAGNETIC DIRECTION OF INGRESS/EGRESS ROUTES		DATE 032285	
	TYPE OF SURFACE (Turf, rooftop, etc.)		BILL NO. 118354	
3.	DESCRIPTION OF LIGHTING (If any)		DIRECTION OF PREVAILING WIND	
ACL	NONE		WNW	

E. OBSTRUCTIONS

TYPE	HEIGHT ABOVE LANDING AREA	DIRCT. FROM LANDING AREA	DIST. FROM LANDING AREA
MOUNTAINOUS AREA	1600'	NE	3NM
NO MANMADE OBSTRUCTIONS WITHIN 3NM	800	SW	3NM

F. OPERATIONAL DATA

1. EST. OR ACTUAL NO. BASED ACFT.		PRESENT (If est. indicate by letter "E")	ANTICIPATED 5 YRS. HENCE
AIRPORTS	MULTIENGINE		
	SINGLE-ENGINE		
HELIPORTS	UNDER 3500 LBS. MGW		
	OVER 3500 LBS. MGW		
2. AVERAGE NO. MONTHLY LANDINGS			
AIR CARRIER			
GENERAL AVIATION		F-4	F 6-10
OTHER (Military, glider, etc.)			
3. ARE IFR OPERATIONS ANTICIPATED		TYPE N/A/VAID:	
NO YES WITHIN YEARS			

G. NOISE CONSIDERATIONS

IDENTIFICATION	DIRCT. FROM LANDING AREA	DIST. FROM LANDING AREA
SUMMER CABINS	W-SE	2NM
SEELEY LK HIGH SCH	E	1-3NM
" " GRADE SCH		
SEELEY LK COMMUNITY (UNINCORPORATED)	E	1NM- 3NM

H. APPLICATION FOR AIRPORT LICENSING

<input type="checkbox"/> HAS BEEN MADE	<input checked="" type="checkbox"/> NOT REQUIRED	<input type="checkbox"/> COUNTY
<input type="checkbox"/> WILL BE MADE	<input type="checkbox"/> STATE	<input type="checkbox"/> MUNICIPAL AUTHORITY

I. CERTIFICATION: I hereby certify that all of the above statements made by me are true and complete to the best of my knowledge.

NAME AND TITLE OF PERSON FILING THIS NOTICE (Type or print)

SIGNATURE (In ink)

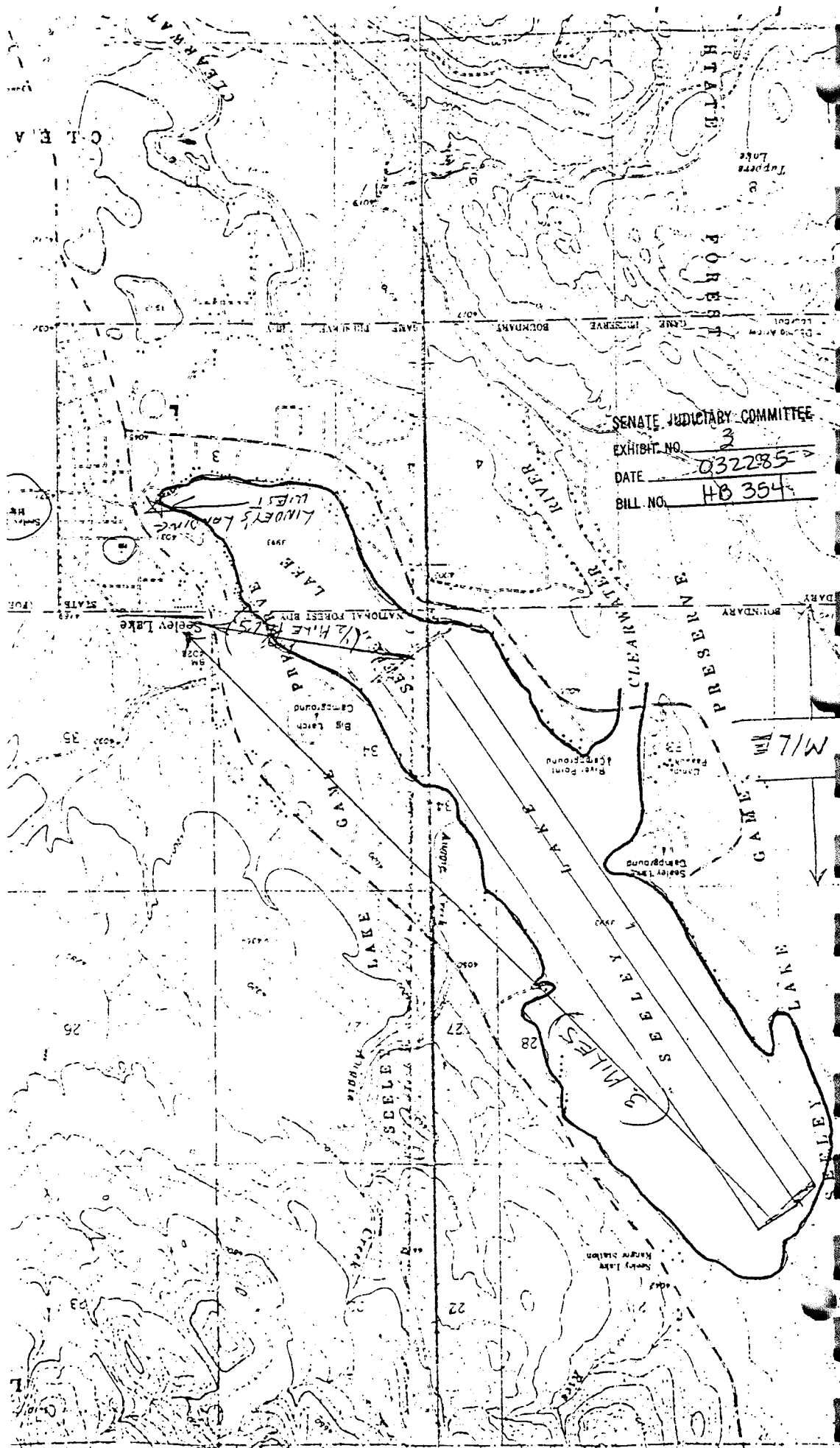
DATE OF SIGNATURE

TELEPHONE NO. (Precede with area code)

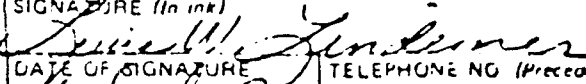
WIS W LINDEMER

6-2-82





#

DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION <b>NOTICE OF LANDING AREA PROPOSAL</b>				<input checked="" type="checkbox"/> ESTABLISHMENT OR ACTIVATION <input type="checkbox"/> ALTERATION <input type="checkbox"/> DEACTIVATION OR ABANDONMENT <input type="checkbox"/> CHANGE OF STATUS				<input type="checkbox"/> AIRPORT <input type="checkbox"/> HELIPORT <input checked="" type="checkbox"/> SEAPLANE BASE					
NAME OF PROPONENT, INDIVIDUAL OR ORGANIZATION				ADDRESS (No., Street, City, State, Zip Code)									
LEWIS W LINDEMER				45 E GOLDEN LK RD, CIRCLE PINES, MN 5501									
<b>A. LOCATION OF LANDING AREA</b>													
1. NEAREST CITY OR TOWN				2. COUNTY				3. STATE		4. DISTANCE & DIRECTION FROM NEAREST CITY OR TOWN			
SEELEY LAKE (UNINCORPORATED)				MISSOULA				MONTANA					
5. NAME OF LANDING AREA				6. LATITUDE		7. LONGITUDE		8. ELEVATION		MILES TO 3 SE END			
LINDEY'S LANDING WEST				47° 11' 0"		113° 31' 0"		3993					
<b>B. PURPOSE</b>													
TYPE USE		TYPE OWNERSHIP		LOCALITIES SERVED		IF CHANGE OF STATUS OR ALTERATION, DESCRIBE CHANGE.				CONSTRUCTION DATES TO BEGIN BEGAN			
<input checked="" type="checkbox"/> PUBLIC <input type="checkbox"/> PRIVATE <input type="checkbox"/> PERSONAL		<input type="checkbox"/> PUBLIC <input checked="" type="checkbox"/> PRIVATE		SEELEY LK, CONDON, MT SEELEY-SWAN		N/A				N/A			
				REF. AS ABOVE						EST. COMPLETION N/A SPRING 198			
<b>C. OTHER LANDING AREAS</b>				<b>D. LANDING AREA DATA</b>									
VFR 5NM SEELEY LAKE, MT IFR 20NM (NONE)				DIRCT. FROM LANDING AREA EAST DIST. FROM LANDING AREA 2½-4½ MILES		AIRPORT OR SEAPLANE BASE		1. EXISTING (If any)		PROPOSED			
								MAGNETIC BEARING OF SEAPLANE(S)		305 125			
								LENGTH OF RUNWAY OR SEAPLANE(S) IN FEET		APPROX 14,000'			
								WIDTH OF RUNWAY OR SEAPLANE(S) IN FEET		APPROX 1,000'			
								MAGNETIC BEARING OF PRIMARY LANDING DIRECTION		305			
				TYPE OF RUNWAY SURFACE (Concrete, Asphalt, Grass, Etc.)		WATER							
<b>E. OBSTRUCTIONS</b>				DIRCT. FROM LANDING AREA NE DIST. FROM LANDING AREA 3NM SW 3NM		HELIPORT		2. DIMENSIONS OF LANDING AND TAKEOFF AREA IN FEET		SENATE JUDICIARY COMMITTEE			
TYPE		HEIGHT ABOVE LANDING AREA						DIMENSIONS OF TOUCHDOWN AREA IN FEET		EXHIBIT NO. 3			
MOUNTAINOUS AREA		1600' 800'						MAGNETIC DIRECTION OF INGRESS/EGRESS ROUTES		DATE 032285			
NO MANMADE OBSTRUCTIONS WITHIN 3NM								TYPE OF SURFACE (Turf, sod, etc.)		BILL NO. HB 354			
						3. DESCRIPTION OF LIGHTING (If any)		ALL - NONE -		DIRECTION OF PREVAILING WIND WNW			
<b>F. OPERATIONAL DATA</b>						PRESENT (If est. indicate by letter "E")		ANTICIPATED 5 YRS. HENCE					
1. EST. OR ACTUAL NO. BASED ACFT.													
AIRPORTS				MULTIENGINE									
				SINGLE-ENGINE									
HELIPORTS				UNDER 3500 LBS. MAX									
				OVER 3500 LBS. MAX									
2. AVERAGE NO. MONTHLY LANDINGS				AIR CARRIER									
				GENERAL AVIATION		E-4		E 6-10					
				OTHER (Military, Police, etc.)									
<b>G. NOISE CONSIDERATIONS</b>						3. ARE IFR OPERATIONS ANTICIPATED		TYPE NAVAID					
IDENTIFICATION						<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES WITHIN _____ YEARS							
SUMMER CABINS				W-SE 2NM									
SEELEY LK HIGH SCH				E 1-3NM									
" " GRADE SCH													
SEELEY LK COMMUNITY (UNINCORPORATED)				E 1NM-3NM									
<b>H. APPLICATION FOR AIRPORT LICENSING</b>													
<input type="checkbox"/> HAS BEEN MADE				<input checked="" type="checkbox"/> NOT REQUIRED		<input type="checkbox"/> COUNTY							
<input type="checkbox"/> WILL BE MADE				<input type="checkbox"/> STATE		<input type="checkbox"/> MUNICIPAL AUTHORITY							
<b>I. CERTIFICATION:</b> I hereby certify that all of the above statements made by me are true and complete to the best of my knowledge.													
NAME AND TITLE OF PERSON FILING THIS NOTICE (Type or Print)						SIGNATURE (In Ink)							
LEWIS WALTER LINDEMER						 DATE OF SIGNATURE 16 Sept 1982							
						TELEPHONE NO. (Precede with area code) 612-633-4747							



USE BACK OF THIS SHEET AS WORKSHEET

NOTICE OF LANDING AREA PROPOSAL INSTRUCTIONS

AS USED HEREIN, THE TERM "AIRPORT" MEANS ANY AIRPORT, HELIPORT OR SEAPLANE BASE.

Federal Aviation Regulations Part 157 requires that each person who intends to do any of the following shall notify the Administrator:

1. Construct or otherwise establish a new airport or activate an airport.
2. Construct, realign, alter or activate any runway, landing strip or associated taxiway.
3. Deactivate, discontinue using or abandon an airport, runway, landing strip or associated taxiway for a period of one year or more.
4. Change the status of an airport from personal use (exclusive use by the owner), or private use (use by the owner or other persons authorized by the owner) to an airport open to the public.

The notice required shall be made by submitting this form in quadruplicate to the nearest Federal Aviation Administration's Airports District Office or Regional Office.

Section 901 of the Federal Aviation Act of 1958, as amended, provides that any person who violates a rule, regulation or order issued under Title III of this Act shall be subject to a civil penalty not to exceed \$1,000 for each violation.

GENERAL INSTRUCTIONS

1. For any project falling in categories 1, 2 or 4 above, complete all appropriate sections. If the project is, or will be, associated with a personal or private-use airport located more than 5 nautical miles from any airport open to the public and more than 20 NM from an IFR airport (an airport for which an instrument approach procedure has been authorized) only sections A, B, D and I need be filled out.
2. For deactivation or abandonment (category 3 above), complete sections A and I only.
3. Express all bearings as magnetic and mileages as nautical.
4. PLEASE PRINT OR TYPE ALL ITEMS AND BE SURE ALL COPIES ARE LEGIBLE.

Section A—Attach U.S. Geological Survey quadrangle map or equivalent. Plot locations of facility runway alignments, associated taxiways or seaplane alignments. When appropriate, use city map for heliports.

Section B—If the type of use is to be by the owner only, check "personal." If also used by persons authorized by the owner, check "private." If the airport is open to the public, check "public." If the airport is owned by a state or state agency, a municipality or other political subdivision or a tax supported organization, check "public" ownership. Otherwise indicate that the type of ownership is "private." If necessary, use a separate sheet of paper to describe changes or alterations.

Section C—Airport or seaplane base: List VFR airports and heliports within 5NM, and IFR airports within 20NM. Heliports: List VFR airports and heliports within 3NM and IFR airports within 10NM.

Section D—Self-explanatory.

Section E—List and plot on quadrangle map or equivalent any obstructions. Airport or seaplane base: Within 3NM radius for VFR airports and within 5NM for IFR airports. Heliports: Within 5,000 feet of the perimeter of the heliport landing and takeoff area.

Section F—Self-explanatory.

Section G—List schools, churches and residential communities within a 2NM radius for airports and within a 1 NM for heliports.

Section H—Self-explanatory.

NOTE: Additional copies of FAA Form 7480-1 may be obtained from the nearest FAA Airports District Office or Regional Office.

Notification to the FAA does not waive the requirements of any other government agency.

AIRPORTS FIELD OFFICE  
FEDERAL AVIATION ADMINISTRATION  
F. A. A. BLDG. — HELENA AIRPORT  
HELENA, MONTANA 59601

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 3  
DATE 032285  
BILL NO. HB 354

# INSPECTION AND SURVEILLANCE RECORD

ACTIVITY <b>Re-Evaluation of Seaplane Operations</b>		2. UNITS	3. HOURS
4. NAME AND ADDRESS OF CARRIER, OPERATOR, AIRPORT, AGENCY, OR AIRMAN  <b>Seeley Lake, Montana</b>	5. CERTIFICATE NO. OR AIRCRAFT REGISTRATION MARK (No.)	6. RESULTS	
		<b>X</b>	SATISFACTORY
			UNSATISFACTORY (Explain in Item 8)
		7. FURTHER ACTION REQ. <div style="display: flex; justify-content: space-between;"> <span>NO</span> <span>YES (Explain action in Item 8)</span> </div>	

**FINDINGS/RECOMMENDATIONS**

On June 12, 1983, a re-evaluation of the lake for seaplane operations was conducted. This was necessary because of complaints from individuals at Seeley Lake stating that seaplanes would endanger other users of Seeley Lake.

Our evaluation consisted of listening to residents and others at Seeley Lake who expressed concern for safety when mixing airplane and boat operations on the lake.

We also made a physical inspection of the lake shore area, including campgrounds, boat docks, swimming areas, commercial enterprises and residential areas.

The lake is 3½ miles long and various widths, up to ½-mile. Approach and take-off paths are clear of any obstructions affecting safety of aircraft, persons or property.

Our re-evaluation is the same as our initial evaluation - that from a safety standpoint, there should be no problem with aircraft endangering persons or property.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 032285

BILL NO. HB 354

(If more space is required, use reverse side)

OPERATIONS	DATE	REGION AND DISTRICT OFFICE	INSPECTOR'S SIGNATURE
MAINTENANCE	<b>06-12-83</b>	<b>NY-FSDO-65</b>	<b>C. R. TAYLOR</b>
UNITS			<b>A. W. BUNKOWSKE</b>

Original Signed by  
**C. R. Taylor**

Original signed by  
**A. W. Bunkowski**



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

AIRPORTS DISTRICT OFFICE  
FAA Building - Room 2  
Helena Regional Airport  
Helena, Montana 59601

(406) 449-5271

February 11, 1985

Representative Ray Brandewie  
Capital Station  
Helena, Montana 59620

Dear Mr. Brandewie:

We are pleased to provide the following information concerning Federal Aviation Administration regulations and procedures. The Federal Aviation Administration (FAA) does not license airports. Under our regulations (FAR's), we do certify some airport facilities. We conduct airspace studies for landing area proposals and conduct or contract for facility record inspections for public use airports.

FAR 139 CERTIFICATION OF AIRPORTS:

Under Part 139, we inspect and certify those airports which are served by scheduled air carriers utilizing aircraft with thirty-one or more passenger capacity. Presently there are ten certificated airports within the state of Montana.

FAR 157 AIRPORT AIRSPACE DETERMINATIONS:

FAR Part 157 requires each person who intends to construct or, otherwise, establish a new airport or alter an airport must notify the FAA administrator. Such notification is generally handled by submitting to the nearest FAA airport district office a Notice of Landing Area Proposal (FAA Form 7480-1). The FAA conducts an aeronautical study of the proposal. Such a study results in one of the following findings:

- (1) No objection to the proposal (The proposed airport will not adversely affect the safe and efficient use of airspace by aircraft.)
- (2) No objections to the proposal if certain conditions are met (The proposal will not adversely affect the safe and efficient use of airspace by aircraft, provided, the stated conditions are met.)



Edward Warren: First American Aloft

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 3  
DATE 032285  
BILL NO. HB 354

- (3) Objectionable (The proposal will adversely affect the safe and efficient use of airspace by aircraft. Reasons for objection are stated.)

The present agency directives provide that the following statement be included in the determination forwarded to the proponent:

"This determination does not mean FAA approval or disapproval of the physical development involved in the proposal. It is a determination with respect to the safe and efficient use of airspace by aircraft and with respect to the safety of persons and property on the ground."

"In making this determination, the FAA has considered matters such as the effect the proposal would have on existing or planned traffic patterns of neighboring airports, the effects it would have on the existing airspace structure and projected programs of the FAA, the effects it would have on the safety of persons and property on the ground, and the effects that existing or proposed manmade objects (on file with the FAA) and known natural objects within the affected area would have on the airport proposal."

"The FAA cannot prevent the construction of structures near an airport. The airport environs can only be protected through such means as local zoning ordinances or acquisitions of property rights."

From the above statements, you can see the aeronautical study recognizes aircraft to aircraft relationships and the safety of persons and property on the ground. However, the FAA determination in no way preempts or waives any ordinance, laws, or regulations of any other governmental body or agency.

#### FACILITY RECORD INSPECTIONS (FAA FORM 5010-1):

Our national program for airport charting and airman information on airport facility conditions stem from on site annual inspections of public use airports.

Presently, the FAA inspects all Part 139 certificated airports in the state of Montana. The remaining public use airports are inspected by FAA personnel or under the provisions of a contract inspection program with the Montana Aeronautics Department.

Under the contract, FAA pays the Aeronautics Department \$220 each for approximately 82 airport facility inspections and related reports.

The FAA/State facility inspection findings are submitted to the National Flight Data Center for information dissemination.

The private use airport information is solicited via a direct mail-out program from our headquarters in Washington D.C.

In conclusion regarding your inquiry of accident comparison related to airports with and without licensing programs, we do not have accident statistics to make a meaningful comparison between states that license airports and those that do not. However, a review of Montana aircraft accidents during 1984 (there were 41 accidents) revealed only one accident that could be attributed to airport conditions. An aircraft's wheel fell in a gopher hole on the turf runway while taxiing at Schafer Meadows.

SENATE JUDICIARY COMMITTEE

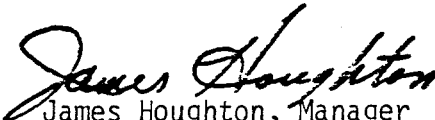
EXHIBIT NO. 3

DATE 032285

BILL NO. HB 354

We hope the above information is responsive to your inquiry regarding FAA regulations and procedures relative to airport actions. If other specific data or information is required during HB-354 committee hearings, we will endeavor to respond as timely as possible.

Sincerely,

  
James Houghton, Manager  
Airports District Office

Enclosure: Aeronautical Study  
No. 82-ANM-124-NRA  
Lindey's Landing West  
Seeley Lake, MT

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 3  
DATE 032285  
BILL NO. HB 354



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

FLIGHT STANDARDS DISTRICT OFFICE  
FAA BUILDING, ROOM 3  
HELENA REGIONAL AIRPORT  
HELENA, MT 59601

February 19, 1985

Mr. Lewis W. Lindemer  
Lindey's Landing West SPB  
Box 491  
Seeley Lake, MT 59868

Dear Mr. Lindemer:

In response to your question posed in your letter of February 18, 1985, yes, the Federal Aviation Administration does regulate aircraft while on the Earth's surface (both on water and on land). The applicable Federal Aviation Regulations are 91.9 and 91.10. I have enclosed a copy of those Regulations for your information.

If we can be of further assistance, please feel free to contact us.

Sincerely,

Robert A. Hill  
Manager

HB #354

Enclosure

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 3  
DATE 032285  
BILL NO. HB 354



**§ 91.9 Careless or reckless operation.**

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

**§ 91.10 Careless or reckless operation other than for the purpose of air navigation.**

No person may operate an aircraft other than for the purpose of air navigation, on any part of the surface of an airport used by aircraft for air commerce (including areas used by those aircraft for receiving or discharging persons or cargo), in a careless or reckless manner so as to endanger the life or property of another.

**§ 91.11 Liquor and drugs.**

(a) No person may act as a crewmember of a civil aircraft—

(1) Within 8 hours after the consumption of any alcoholic beverage;

(2) While under the influence of alcohol; or

(3) While using any drug that affects his faculties in any way contrary to safety.

(b) Except in an emergency, no pilot of a civil aircraft may allow a person who is obviously under the influence of intoxicating liquors or drugs (except a medical patient under proper care) to be carried in that aircraft.

**§ 91.12 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.**

(a) Except as provided in paragraph (b) of this section, no person may operate a civil aircraft within the United States with knowledge that narcotic drugs, marihuana, and depressant or stimulant drugs or substances as defined in Federal or State statutes are carried in the aircraft.

(b) Paragraph (a) of this section does not apply to any carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances authorized by or under any Federal or State statute or by any Federal or State agency.

**§ 91.13 Dropping objects.**

No pilot in command of a civil aircraft may allow any object to be dropped from that aircraft in flight that creates a hazard to persons or property. However, this section does not prohibit the dropping of any object if reasonable precautions are taken to avoid injury or damage to persons or property.

**§ 91.14 Use of safety belts.**

[(a) Unless otherwise authorized by the Administrator—

[(1) No pilot may take off a U.S. registered civil aircraft (except a free balloon that incorporates a basket or gondola and an airship) unless the pilot in command of that aircraft ensures that each person on board is briefed on how to fasten and unfasten that person's safety belt.]]

[(2)] No pilot may take off or land a U.S. registered civil aircraft (except free balloons that incorporate baskets or gondolas and airships) unless the pilot in command of that aircraft ensures that each person on board has been notified to fasten his safety belt.

[(3)] During the takeoff and landing of U.S. registered civil aircraft (except free balloons that incorporate baskets or gondolas and airships) each person on board that aircraft must occupy a seat or berth with a safety belt properly secured about him. However, a person who has not reached his second birthday may be held by an adult who is occupying a seat or berth, and a person on board for the purpose of engaging in sport parachuting may use the floor of the aircraft as a seat.

(b) This section does not apply to operations conducted under Parts 121, 123, or 127 of this chapter. Subparagraph [(a)(3)] of this section does not apply to persons subject to § 91.7.

**§ 91.15 Parachutes and parachuting.**

(a) No pilot of a civil aircraft may allow a parachute that is available for emergency

HB-354

NOTE \*\*\* NOTE \*\*\* NOTE

THESE STATE LAWS ARE NOT  
EFFECTED BY HB-354 TO REPEAL  
THE AIRPORT LICENSING LAW.

LICENSING OF AIRPORTS IS A  
DISTINCT, TOTALLY DIFFERENT  
ISSUE NOT ADDRESSED IN THESE  
STATE LAWS NOR IN THE FEDERAL  
(FAA) AIR REGULATIONS.

THESE STATE LAWS AS WELL AS THE  
FEDERAL (FAA) AIR REGULATIONS  
GOVERNING THE PILOT/AIRCRAFT  
SAFETY OPERATIONAL ISSUES ARE  
EFFECTIVE WHILE AN AIRCRAFT IS  
BEING OPERATED ON LAND, WATER,  
OR IN THE AIR AND THEREFORE,  
HAVE NO BEARING ON WHETHER OR  
NOT THE AIRCRAFT IS BEING  
OPERATED SPECIFICALLY ON A  
DESIGNATED AIRPORT (LICENSED  
OR NON-LICENSED).

#### TWO SEPERATE ISSUES:

- (1) Licensing airports.
- (2) State/Federal safety laws and regulations governing pilot/aircraft operations and enforcement of same.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

032285

HB 354

BILL NO.

67-1-102. Policy. It is hereby declared that the purpose of this title is to further the public interest and aeronautical program by:

- (1) providing for the protection and promotion of safety in aeronautics;
- (2) cooperating in effecting a uniformity of the laws relating to the development and regulation of aeronautics in the several states;
- (3) revising existing statutes relative to the development and regulation of aeronautics so as to grant to a state agency such powers and impose upon it such duties that the state may properly perform its functions relative to aeronautics and effectively exercise its jurisdiction over persons and property within such jurisdiction; may assist in the promotion of a statewide system of airports, may cooperate with and assist the political subdivisions of this state and others engaged in aeronautics and may encourage and develop aeronautics;
- (4) establishing uniform regulations, consistent with federal regulations and those of other states, in order that those engaged in aeronautics of every character may so engage with the least possible restriction, consistent with the safety and rights of others; and
- (5) providing for cooperation with the federal authorities in the development of a national system of civil aviation and for coordination of the aeronautical activities of these authorities and the authorities of this state by assisting in accomplishing the purposes of federal legislation and eliminating costly and unnecessary duplication of functions.

History: En. Sec. 2, Ch. 152, L. 1929; R.C.M. 1947, 1-102.

#### 67-1-204

#### AERONAUTICS

67-1-204. Lawfulness of flight and landings. (1) Flight in aircraft over the lands and waters of this state is lawful, unless at such a low altitude as to interfere with the then-existing use to which the land or water or the space over land or water is put by the owner or unless so conducted as to be imminent dangerous to persons or property lawfully on the land or water or in violation of the air commerce regulations which have been or may be promulgated by the department of commerce of the United States.

(2) No person shall operate an aircraft, as pilot thereof, either in the air or on the ground, in a careless or reckless manner so as to endanger the life or property of others, including the aircraft being operated and passengers carried therein.

(3) The willful and malicious use of aircraft in stunting or diving over live persons in a manner calculated to frighten or stampede them shall be deemed an unlawful use thereof, and actual and punitive damages, in addition to the penalties provided by this part, may be recovered in an action for damages caused therefrom.

(4) The landing of an aircraft on the lands or waters of another without his consent is unlawful, except in the case of a forced landing. For damages caused by forced landing, however, the owner or lessee of the aircraft or the pilot shall be liable for actual damage caused by such forced landing.

History: En. Sec. 7, Ch. 17, L. 1929; re-en. Sec. 2736.7, R.C.M. 1935; and, 1, Ch. 109, L. 1939; and, Sec. 1, Ch. 16, L. 1949; and, Sec. 1, Ch. 102, L. R.C.M. 1947, 1-603.

67-1-205. Penalties. A person who violates any provision of this part shall be guilty of a misdemeanor and punishable by a fine of not more than \$500 or imprisonment for not more than 6 months, or both.

History: En. Sec. 8, Ch. 17, L. 1929; re-en. Sec. 2736.8, R.C.M. 1935; R.C.M. 1947, 1-604.

67-1-206. Interpretation. This part shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it and to harmonize, as far as possible, with federal laws and regulations the subject of aeronautics.

History: En. Sec. 9, Ch. 17, L. 1929; re-en. Sec. 2736.9, R.C.M. 1935; R.C.M. 1947, 1-606.

67-2-102. Rules, orders, and standards. (1) The department may perform the following acts: issue and amend orders; adopt reasonable, general, or special rules; and establish minimum standards, consistent with this title, as it considers necessary to:

- (a) carry out this title;
  - (b) perform its duties for the purpose of protecting and ensuring the general public interest and safety, the safety of persons receiving instruction concerning (i) operating, using, or traveling in aircraft, and of persons and property on land or water; and
  - (c) develop and promote aeronautics in this state.
- (2) All rules prescribed by the department under this title shall be kept in conformity, as nearly as may be, with the then-current federal legislation governing aeronautics and the rules and standards adopted or issued under federal legislation.

History: En. 1-204.2 by Sec. 6, Ch. 348, L. 1974; R.C.M. 1947, 1-204.2.

#### Enforcement

67-2-601. Enforcement. The department and every state, county, or municipal officer charged with the enforcement of state or municipal law shall enforce and assist in the enforcement of this title and of all rules adopted under it and of all other laws of this state relating to aeronautics. In the aid of enforcement, the department possesses general police powers. The department may, also, in the name of the state, enforce this title and the rules adopted under it in conjunction in the courts of this state.

History: En. 1-204.4 by Sec. 8, Ch. 348, L. 1974; R.C.M. 1947, 1-204.4(1).



# Federal Aviation Regulations

## DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION



SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 3  
DATE 032285  
BILL NO. HB 354

### Subpart B—Flight Rules GENERAL

#### § 91.41 Applicability.

This subpart prescribes flight rules governing the operation of aircraft within the United States.

#### § 91.43 Waivers.

(a) The Administrator may issue a certificate of waiver authorizing the operation of aircraft in deviation of any rule of this subpart if he finds that the proposed operation can be safely conducted under the terms of that certificate of waiver.

(b) An application for a certificate of waiver under this section is made on a form and in a manner prescribed by the Administrator and may be submitted to any FAA office.

(c) A certificate of waiver is effective as specified in that certificate.

#### § 91.45 Operating near other aircraft.

(a) No person may operate an aircraft so close to another aircraft as to create a collision hazard.

(b) No person may operate an aircraft in formation flight except by arrangement with the pilot in command of each aircraft in the formation.

(c) No person may operate an aircraft, carrying passengers for hire, in formation flight.

(d) Unless otherwise authorized by ATC, no person operating an aircraft may operate his aircraft in accordance with any clearance or instruction that has been issued to the pilot of another aircraft for radar Air Traffic Control purposes.

#### § 91.47 Right-of-way rules; except water operations.

(a) General. When weather conditions permit, regardless of whether an operation is conducted under Instrument Flight Rules or Visual Flight Rules, vigilance shall be maintained by each person operating an aircraft

so as to see and avoid other aircraft in compliance with this section. When a rule of this section gives another aircraft the right of way, he shall give way to that aircraft and may not pass over, under, or ahead of it, unless well clear.

(b) In distress. An aircraft in distress has the right of way over all other air traffic.

(c) Converging. When aircraft of the same category are converging at approximately the same altitude (except head-on, or nearly so) the aircraft to the other's right has the right of way. If the aircraft are of different categories—

(1) A balloon has the right of way over any other category of aircraft;

(2) A glider has the right of way over an airplane, airship, or rocketcraft; and

(3) An airship has the right of way over an airplane or rocketcraft.

However, an aircraft towing or refueling other aircraft has the right of way over all other engine-driven aircraft.

(d) Approaching head-on. When aircraft are approaching each other head-on, or nearly so, each pilot of each aircraft shall alter course to the right.

(e) Overtaking. Each aircraft that is being overtaken has the right of way and each pilot of an overtaking aircraft shall alter course to the right to pass well clear.

(f) Landing. Aircraft, while on final approach to land, or while landing, have the right of way over other aircraft in flight or operating on the surface. When two or more aircraft are approaching an airport for the purpose of landing, the aircraft at the lower altitude has the right of way, but it shall not take advantage of this rule to cut in front of another which is on final approach to land, or to overtake that aircraft.

(g) Inoperability. This section does not apply to the operation of an aircraft on water.

#### § 91.49 Right-of-way rules; water operations.

(a) General. Each person operating an aircraft on the water shall, insofar as possible, keep clear of all vessels and avoid impeding

their navigation, and shall give way to any vessel or other aircraft that is given the right of way by any rule of this section.

(b) Crossing. When aircraft, or an aircraft and a vessel are on crossing courses, the aircraft or vessel to the other's right has the right of way.

(c) Approaching head-on. When aircraft, or an aircraft and a vessel, are approaching head-on or nearly so, each shall alter its course to the right to keep well clear.

(d) Overtaking. Each aircraft, or vessel that is being overtaken has the right of way, and the one overtaking shall alter course to keep well clear.

(e) Special circumstances. When aircraft, or an aircraft and a vessel, approach so as to involve risk of collision, each aircraft or vessel shall proceed with careful regard to avoiding circumstances, including the limitations of the respective craft.

#### § 91.73 Aircraft lights.

No person may, during the period from sunset to sunrise (or, in Alaska, during the period from a prominent unlighted object cannot be seen from a distance of three statute miles or the sun is more than six degrees below the horizon)—

(a) Operate an aircraft unless it has lighted position lights;

(b) Fly at or more an aircraft in, or in dangerous proximity to, a night flight operations area of an airport unless the aircraft—

(1) Is clearly illuminated;

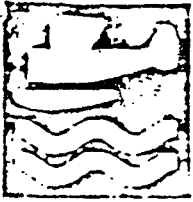
(2) Has lighted position lights; or

(3) Is in an area which is marked by obstruction lights; or

(4) As for an aircraft unless the aircraft—

(1) Has lighted anchor lights; or

(2) Is in an area where anchor lights are not required on vessels.



# Seaplane Pilots Association

421 Aviation Way • Frederick, Maryland 21701 • Phone (301) 695-2083

October 17, 1983

Mr. Spencer S. Hegstad  
Chairman  
Montana Fish and Game Commission  
Box 1184  
Dillon, Montana 59725

Dear Mr. Hegstad:

The Seaplane Pilots Association represents more than 4,000 seaplane pilots in this country; we also have affiliate organizations in Canada, France, Germany and Australia. We are administered by the Aircraft Owners and Pilots Association, which represents 265,000 pilots in this country alone.

We have 14 seaplane members in Montana, and we are deeply concerned about recent actions there. The violent attacks by boaters on the seaplane pilots who landed on Seeley Lake July 4 were deplorable. We are also concerned about the resolution against seaplane operations on Seeley Lake passed by the Montana Fish and Game Commission. We believe the resolution to be discriminatory, and we believe that it was based on false premises. We would hope that, being presented with correct information, the Commission would carefully consider the information and rescind the previous resolution.

An area of concern for the Fish and Game Commission appears to be boating density. The report submitted by District Ranger Dennis L. Johnson noted that there were 400 boats on Seeley Lake; this was later amended (in Ranger Johnson's letter of August 2, 1983, to Mr. Poloson) to indicate that the count included all boats on shore and tied up, not only on the Lake but two and a half miles up the river and "range from a high of 400 to a low of 98." There was no indication of the actual density of operating boats, but photographs and aerial observations taken on July 4, 1983, show no more than 30 boats actually in use.

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Mr. Spencer S. Hegstad  
October 17, 1983  
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Our president, David Quam, regularly flies his Cessna 172 on straight floats from Greenwood Lake, New York. The lake, which is six miles long by one mile wide, has 6,000 registered boats. The highest density of boats reported operating on the open areas of the lake at any given time was 400. Mr. Quam, who flies forest fire patrol for the New York and New Jersey Forest Service, as a volunteer, has never had any conflicts with boating traffic in 20 years. We have a number of such instances that we could detail, but let us turn to the overall national picture.

There are only 28,000 seaplane-rated pilots in the entire United States, so the possibility of Seeley Lake becoming inundated with seaplanes is remote. As for the safety aspects, we would like to point out some statistics gleaned from National Transportation Safety Board accident briefs of water-related seaplane accident. In the last five years for which reports are available, there were only 122 seaplane accidents on the water in the entire country; 47 of these occurred in Alaska. During that period, there were only eight seaplane-boat accidents, or 1.6 a year, in the entire country. None of the eight accidents caused a fatality to anyone enjoying the pleasures of boating--or of water flying.

In all of the eight accidents during the five-year period, only one accident involved injuries to boaters. In most of the cases, the accident was caused by the operator of the boat, not by the pilot, according to NTSB findings.

Compare the facts about seaplane-boating accidents with those of boating. In the United States, during the five-year period we are discussing, there were a total of 33,083 boating accidents, and a total of 7,700 boating fatalities.

As I am sure you are aware, pilots must be licensed by the Federal Aviation Administration, after extensive training, for their basic license. They must have a separate rating, which calls for additional training specifically in operating an aircraft from water, to be able to legally operate a seaplane. Each pilot must undergo a biennial flight review every two years to be able to fly, and must pass a periodic medical examination. Pilots are well regulated by the FAA when in the air; and on the water, they are considered a vessel by the Coast Guard and must observe all rules of the waterways.

We are distressed to see such a controversy erupt in Montana, where there are no other seaplane facilities, and where there is minimal seaplane activity. The trend throughout the country is to allow more and more seaplane operations. This summer a New York court ruled against New York City which had denied a permit for a seaplane base on the East River, invoking "safety" as the reason; helicopters and boats were not denied access to riverside landing areas. A court in Oregon has ruled that basing a seaplane at river property was an ordinary and legitimate accessory use of such property.

EXHIBIT NO. 032285  
DATE 10/17/83  
BILL NO. HB 354

Safety

INTERNATIONAL

Lights and Shapes

RULE 31

Seaplanes

Where it is impracticable for a seaplane to exhibit lights and shapes of the characteristics or in the positions prescribed in the Rules of this Part she shall exhibit lights and shapes as closely similar in characteristics and position as is possible.

*Only International Regs  
applicable to Seaplanes by  
the Coast Guard.  
Effective June 1, 1983*

INLAND

Lights and Shapes

RULE 31

Seaplanes

Where it is impracticable for a seaplane to exhibit lights and shapes of the characteristics or in the positions prescribed in the Rules of this Part she shall exhibit lights and shapes as closely similar in characteristics and position as is possible.

*Only Inland Regs applicat  
to Seaplanes by the Coast  
Guard.  
Effective 1 March, 1983*

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 3  
DATE 032285  
BILL NO. HB 354

617

BROOKS SEAPLANE SERVICE  
E K 1028  
COEUR D'ALENE, IDAHO  
83514

July 5th, 1963

MR. GARY BUCHANAN  
DIRECTOR OF DEPT. OF COMMERCE  
HELENA, MONTANA 59620

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 032285

BILL NO. HB 354

Dear Mr. Buchanan:

The reason for my writing you, is my concern over the mixed feelings that exist at Seeley Lake about occasional Seaplane operations.

For the last 37 years I have operated two and sometimes three seaplanes continuously without any accidents or complaints from the boating public. We also have seaplanes that come in here for gas from Seattle, Portland, Sandpoint, and Spokane. During the spring and summer months, there is a continual flow of Seaplanes that stop here for fuel on their way to Alaska and Canada.

I'm sure that you will find that the majority of seaplane pilots are courteous, respectful, and show good judgement during take-offs and landings. While on the water, seaplanes are considered boats and are operated under the same rules as other watercraft.

We probably have more boats on Coeur d'Alene Lake than any other inland lake in the western U. S. There are four major seaplane landing areas in the Seattle area. Kenmore Air Service is located at the north end of Lake Washington. They have over 120 Seaplanes stored at their facility besides operating twenty of their own. They operate in an area of about  $\frac{1}{2}$  mile by about  $1\frac{1}{2}$  mile in size. In the heart of Seattle is Lake Union that has two Seaplane operations and it is about  $\frac{1}{2}$  by 1 mile long. They have between 15 and 20 Seaplanes operating all the time. American Lake located west of Tacoma is about  $\frac{1}{2}$  by about  $1\frac{1}{2}$  miles long. Many private seaplanes are located on the lake besides a half dozen located at the American Lake Seaplane Service.

All the above operations mentioned above including my own have many hundreds of boats on the same waters. With a little consideration and courtesy boats and Seaplanes can get along just fine.

Hoping this has been of any help, I am

Sincerely yours,

*[Signature]*  
Brooks Seaplane Service

(over)

Mr. Spencer S. Hegstad  
October 17, 1983  
Page 3

SENATE JUDICIARY COMMITTEE  
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The U. S. Army Corps of Engineers, which controls vast amounts of the nation's waterways, did not allow seaplane operations at any of their projects until the Seaplane Pilots Association convinced them that seaplane operations were not hazardous or harmful; they changed the regulations to permit seaplanes at all projects except those few locations where the local District Engineer deemed such use unsuitable.

The state of California, when this organization started, allowed water landings at only one location; they, too, have relaxed their rules, and there are now 14 lakes open to California seaplane pilots. Many states have no seaplane regulations at all, and more are doing away with restrictions.

We hope that Montana will be listed among the enlightened states that do not practice discrimination against seaplanes, which have been proven in many jurisdictions to be compatible with other uses of the waterways.

If we can provide any further information that would be useful to you, please do not hesitate to let us know.

Sincerely,



Mary F. Silitch  
Executive Director

MFS/em

cc: Governor Ted D. Schwinden  
Mr. Michael Ferguson, Director of Aeronautics  
Mr. James W. Flynn, Director, Montana Department of Fish and Wildlife  
Mr. Lewis Lindemer✓  
Mr. Albert Poloson



U.S. Department  
of Transportation  
Federal Aviation  
Administration

FLIGHT STANDARDS DISTRICT OFFICE  
FAA BUILDING, ROOM 3  
HELENA REGIONAL AIRPORT  
HELENA, MT 59601

November 4, 1983

Mr. and Mrs. Albert Poloson  
P.O. Box 410  
Polson, Montana 59860

Dear Mr. and Mrs. Poloson:

Referencing your letter of October 23, 1983, I will answer your questions in the order asked.

1. The Fish and Game Department or Commission did not invite the Federal Aviation Administration to attend their June meeting concerning seaplane operations at Seeley Lake. Nor, did they contact us for information by letter or telephone.
2. The records of aircraft accidents and incidents for western Montana dating back to November 23, 1976, do not list any occurrences involving seaplanes. There was one accident involving a seaplane that made an emergency landing, but it did not involve any recklessness on the part of the pilot or involve any boats. There also have been four complaints registered against aircraft flying low over Flathead and Canyon Ferry Lakes. None were seaplanes.
3. We do not keep records of the number of seaplanes based in Montana or records of activity. During the past five years the only commercial venture we know of has been instructional flying by Mr. Phil Timm at Polson, Montana.
4. There is presently one Designated Seaplane Examiner in Montana and he has been the only one for at least four years.
5. We have reviewed the aircraft accident history for the past five years and there are no accidents listed involving boats/seaplanes.
6. Federal Aviation Regulation Part 91, 91.69, applies only to operations of aircraft on the water. FAR 91.79 applies to all aircraft not just seaplanes. In part, the rule states "except when necessary for landing and takeoff, no person may operate an aircraft below the following altitudes, etc., etc." (copies of 91.69 and 91.79 enclosed)



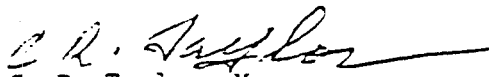
Edward Warren: First American Aloft

SENATE JUDICIARY COMMITTEE

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DATE 032285  
BILL NO. HB 354

7. All of our inquiries regarding the 12 seaplanes on Seeley Lake proved negative. We were never able to verify that there had been more than two at one time over the past year.

Sincerely,

  
C. R. Taylor, Manager  
Flight Standards District Office

Enclosures

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 032285

BILL NO. HB 354

PART 91

# GENERAL OPERATING AND FLIGHT RULES

23

## § 91.69 Right-of-way rules; water operations.

(a) *General.* Each person operating an aircraft on the water shall, insofar as possible, keep clear of all vessels and avoid impeding their navigation, and shall give way to any vessel or other aircraft that is given the right of way by any rule of this section.

(b) *Crossing.* When aircraft, or an aircraft and a vessel are on crossing courses, the aircraft or vessel to the other's right has the right of way.

(c) *Approaching head-on.* When aircraft, or an aircraft and a vessel, are approaching head-on or nearly so, each shall alter its course to the right to keep well clear.

(d) *Overtaking.* Each aircraft or vessel that is being overtaken has the right of way, and the one overtaking shall alter course to keep well clear.

(e) *Special circumstances.* When aircraft, or an aircraft and a vessel, approach so as to involve risk of collision, each aircraft or vessel shall proceed with careful regard to existing circumstances, including the limitations of the respective craft.

## § 91.79 Minimum safe altitudes; general.

Except when necessary for takeoff or landing, no person may operate an aircraft below the following altitudes:

(a) *Anywhere.* An altitude allowing, if a power unit fails, an emergency landing without undue hazard to persons or property on the surface.

(b) *Over congested areas.* Over any congested area of a city, town, or settlement, or over any open air assembly of persons, an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft.

Ch. 27 (Amdt. 91-152, Eff. 5/26/78)

(c) *Over other than congested areas.* An altitude of 500 feet above the surface, except over open water or sparsely populated areas. In that case, the aircraft may not be operated closer than 500 feet to any person, vessel, vehicle, or structure.

(d) *Helicopters.* Helicopters may be operated at less than the minimums prescribed in paragraph (b) or (c) of this section if the operation is conducted without hazard to persons or property on the surface. In addition, each person operating a helicopter shall comply with routes or altitudes specifically prescribed for helicopters by the Administrator.



## FEDERAL AVIATION REGULATIONS

- (c) *Converging.* When aircraft of the same category are converging at approximately the same altitude (except head-on, or nearly so), the aircraft to the other's right has the right-of-way. If the aircraft are of different categories:

- (1) A balloon has the right-of-way over any other category of aircraft;
- (2) A glider has the right-of-way over an airship, airplane or rotorcraft; and
- (3) An airship has the right-of-way over an airplane or rotorcraft.

However, an aircraft towing or refueling other aircraft has the right-of-way over all other engine-driven aircraft.

- (d) *Approaching head-on.* When aircraft are approaching each other head-on, or nearly so, each pilot of each aircraft shall alter course to the right to pass well clear.
- (e) *Overtaking.* Each aircraft that is being overtaken has the right-of-way and each pilot of an overtaking aircraft shall alter course to the right to pass well clear.
- (f) *Landing.* Aircraft, while on final approach to land, or while landing, have the right-of-way over other aircraft in flight or operating on the surface. When two or more aircraft are approaching an airport for the purpose of landing, the aircraft at the lower altitude has the right-of-way, but it shall not take advantage of this rule to cut in front of another which is on final approach to land, or to overtake that aircraft.
- (g) *Inapplicability.* This section does not apply to the operation of an aircraft on water.

### 91.69 RIGHT-OF-WAY RULES: WATER OPERATIONS

- (a) *General.* Each person operating an aircraft on the water shall, insofar as possible, keep well clear of all

vessels and avoid impeding their navigation, and shall give way to any vessel or other aircraft that is given the right-of-way by any rule of this section.

- (b) *Crossing.* When aircraft, or an aircraft and a vessel, are on crossing courses, the aircraft or vessel to the other's right has the right-of-way.
- (c) *Approaching head-on.* When aircraft, or an aircraft and a vessel, are approaching head-on or nearly so, each shall alter its course to the right to keep well clear.
- (d) *Overtaking.* Each aircraft or vessel that is being overtaken has the right-of-way, and the one overtaking shall alter course to keep well clear.
- (e) *Special circumstances.* When aircraft, or an aircraft and a vessel, approach so as to involve risk of collision, each aircraft or vessel shall proceed with careful regard to existing circumstances, including the limitations of the respective craft.

### 91.70 AIRCRAFT SPEED

- (a) Unless otherwise authorized by the Administrator, no person may operate an aircraft below 10,000 feet MSL at an indicated airspeed of more than 250 knots (288 MPH).
- (b) Unless otherwise authorized or required by ATC, no person may operate an aircraft within an airport traffic area at an indicated airspeed of more than:
- (1) In the case of a reciprocating engine aircraft, 156 knots (180 MPH); or
  - (2) In the case of a turbine-powered aircraft, 200 knots (230 MPH).
- (c) No person may operate aircraft in the airspace beneath the lateral limits of any terminal control area at an indicated airspeed of more than 200 knots (230 MPH).

DEPARTMENT OF COMMERCE  
AERONAUTICS DIVISION



TED SCHWINDEN, GOVERNOR

P.O. BOX 5178  
2630 AIRPORT ROAD

STATE OF MONTANA

(406) 449-2506

HELENA, MONTANA 59604

November 8, 1983

Mr. and Mrs. Albert Poloson  
Box 410  
Polson, MT 59860

FILE: S5G II

Dear Mr. and Mrs. Poloson:

This will respond to the questions contained in your letter of October 23, 1983, concerning the matter of float plane use of Seeley Lake. Our answers are in the same order as the questions posed.

1. No invitation to the June 7 - 8 meeting of the Fish and Game Commission was received.
2. We have received no inquiries from either the Fish and Game Department or Commission regarding seaplane/boat accident statistics in Montana.
3. The tenure of certain existing staff members at the Aeronautics Division dates from 1962; and we can, therefore, only speak with certainty about the ensuing time since 1962. In those 21 years, we have no knowledge of any incidents or accidents involving reckless seaplane flying in Montana. To our knowledge, the only incident which has ever taken place in Montana involving a seaplane(s) with a boat(s) was that which occurred on Seeley Lake July 4 of this year.
4. The Federal Aviation Regulations are quite specific and detailed regarding the rules under which any aircraft, including seaplanes, may be operated. In addition to the many hours required in becoming licensed by the Federal Aviation Administration as a pilot, the seaplane pilot must demonstrate a proficiency in operation of that particular type of aircraft and a knowledge of the specific rules governing its operation on the surface of the water (i.e., right of way rules, clearances, etc.).
5. Our inspection of the Lindemer property at Seeley Lake on June 11 revealed no underground fuel storage facilities. What we did find was one new standard aircraft refueling truck of the type commonly used on airports throughout Montana. Although the refueling truck had just been delivered and had no fuel in it, we understand it is primarily intended for use at the Seeley Lake airport; and in the event a seaplane should arrive needing fuel, it may be driven from the airport to the Lindemer dock facility to

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"AN EQUAL OPPORTUNITY EMPLOYER"


Mr. and Mrs. Albert Poloson  
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November 8, 1983

accomplish the required refueling. We were informed that the refueling truck will be kept in a secure fenced yard located on the Seeley Lake airport.

6. We have visited with our state aviation counterparts in numerous parts of the country, including the East Coast, the West Coast, Alaska, Minnesota, etc., and have received essentially the same information from all. In each of these states, which seem to have more water related activities than we here in Montana, seaplanes regularly and without incident operate in the same environment with boats, water skiers, sailboats, paddleboats, swimmers, etc.

We hope the foregoing has answered your questions adequately; and if further information is required, please advise.

Sincerely,

  
Michael D. Ferguson, Administrator  
Aeronautics Division

mk

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 3  
DATE 032285  
BILL NO. HB 354

Glen Wohl  
2610 Glen Drive  
Missoula, Montana 59801  
January 27, 1985

Dear Legislators:

I am writing in regard to Senate Bill 231 introduced by Senator Pat Goodover titled SAFETY OF SEAPLANES. Also of concern is a second bill being drafted by Senator Goodover, but presently not introduced, titled LICENSING OF AIRPORTS AND AIR NAVIGATION FACILITIES.

To adequately explain the true reasons behind the above described bills, it is necessary to briefly review the events which took place at Seeley Lake, Montana July 4, 1983 in regard to the harrassment of two seaplanes by boaters; and Mr. Goodover's personal feud with Mr. Lindemer owner of Lindey's Steak House and Lindey's Landing West, a seaplane base, located adjacent to Mr. Goodover's recreational home at Seeley Lake.

While at my cabin at Seeley Lake on July 4, 1983, I personally witnessed the following events. Two seaplanes landed on Seeley Lake. The first plane, a 185 Cessna piloted by Bert Poloson, was able to make a proper and safe landing. However, immediately after the plane touched down approximately a dozen boats began to circle the plane in an attempt to prevent it from taxiing to Lindey's Landing West while verbally harrassing and making obscene gestures to the occupants in the plane. Eventually Mr. Poloson was able to taxi to Lindey's Landing West where the harrassment continued.

A short time later another seaplane attempted to land on Seeley Lake. However the boaters, upon seeing another seaplane making an approach to land, swarmed to the part of the lake which the airplane was attempting to land on, making a safe landing impossible. After making several attempts the plane was able to land. Immediately after its landing the plane was harrassed in the same manner as the first plane. Ultimately some of the boaters involved were prosecuted and fined.

Many people at Seeley Lake have been concerned and upset by Mr. Lindemer's first commercial development (Lindey's Steak House) from the onset. Mr. Goodover, being an adjacent property owner, has been one of those involved. The hostility has become worse since Mr. Lindemer's further development of Lindey's Landing West (a seaplane base) at the same location. Seaplanes have always been welcome at Seeley Lake in the past. It was only after the development of Lindey's Landing West did people turn their frustration on incoming seaplanes.

Mr. Goodover has been personally opposed to Mr. Lindemer's commercial development from the beginning. The question needs to be answered, should Mr. Goodover's personal vendetta with Mr. Lindemer's commercial establishment extend to the control of seaplane aviation.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 032285

FILE NO. H8 354

Glen Wohl

U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION

## AIRPORT MASTER RECORD

PRINT DATE 8/9/26/84  
FORM APPROVED, DMS No. 04-00051

Brandewie

>1 ASSOC CITY: SEELEY LAKE 4 STATE: MT FAA SITE NR: 12496.11C  
>2 AIRPORT NAME: LINDEY'S LANDING WEST 5 COUNTY: MISSOULA MT  
>3 CBO TO AIRPORT(NM): 81 NW 6 REG/ADO: ANM/MLN 7 SECT AERO CHT: GREAT FALLS

GENERAL		SERVICES	BASED AIRCRAFT
18 OWNERSHIP: PRIVATE		>78 FUEL: 88 188LL	98 SINGLE ENG:
>11 OWNER: LEWIS W LINDEMER		>71 AIRFRAME RPRS:	91 MULTI ENG:
>12 ADDRESS: 45 E GOLDEN LK RD		>72 PWR PLANT RPRS:	92 JET:
CIRCLE PINE, MN 55814		>73 BOTTLE OXYGEN:	TOTAL
>13 PHONE NR: 612-784-6838		>74 BULK OXYGEN:	93 HELICOPTERS:
>14 MANAGER: GRANT G LINDEMER		75 TSMT STORAGE:	94 GLIDERS:
>15 ADDRESS: BOX 491		76 OTHER SERVICES:	95 MILITARY:
SEELEY LAKE, MT 59868			96 ULTRA-LIGHT:
>16 PHONE NR: 486-677-9229			
>17 ATTENDANCE SCHEDULE:*			
MONTHS ALL	DAYS ALL	HOURS DALGT	
		FACILITIES	OPERATIONS
18 AIRPORT USE: PUBLIC		>88 ARPT BCN:	188 AIR CARRIER:
19 ARPT LAT: 47-18-28N ESTIMATED		>81 APT LGT SKED:	181 COMMUTER:
20 ARPT LONG: 113-28-45W		>82 UNICOM: 122.888	182 AIR TAXI:
21 ARPT-ELEV: 3995 ESTIMATED		>83 WIND INDICATOR: NO	183 G A LOCAL: 288
22 ACREAGE:		84 SEGMENTED CIRCLE: NONE	184 G A ITNRNT: 28
>23 RIGHT TRAFFIC: NO		85 CONTROL TWR: NO	185 MILITARY:
>24 NON-COMM LANDING FEE: NO		86 FSS: MISSOULA	TOTAL: 228
25 NASP/FEDERAL AGREEMENT:		87 FSS ON ARPT: NO	
26 FAR 139 INDEX:		88 FSS PHONE NR: 486-542-2238	OPERATIONS FOR 12
		89 TOLL FREE NR:*	MOS ENDING 38APR84

## RUNWAY DATA

>30 RUNWAY IDENT 12/38  
>31 LENGTH: 14888  
>32 WIDTH: 1888  
>33 SURF TYPE-COND WATER  
>34 SURF TREATMENT  
35 GROSS WT: SW  
36 (IN THSDS) DW  
37 OTW  
38 DDTW

## LIGHTING/APCH AIDS

>48 EDGE INTENSITY 12/38  
41 NOW ELEMENT 81  
>42 RWY MARK TYPE-COND / / / / /  
>43 VASI / / / / /  
44 THR CROSSING HGT / / / / /  
45 VISUAL GLIDE ANGLE / / / / /  
>46 CNTRLN-TDZ / / / / /  
>47 RVR-RVV / / / / /  
>48 REIL / / / / /  
>49 APCH LIGHTS / / / / /

## OBSTRUCTION DATA

58 FAR 77 CATEGORY 12/38  
>51 DISPLACED THR / / / / /  
>52 CTLG OBSTN / / / / /  
>53 OBSTN MARKED/LGTD / / / / /  
>54 HGT ABOVE RWY END / / / / /  
>55 DIST FROM RWY END / / / / /  
>56 CNTRLN OFFSET / / / / /  
57 OBSTN CLNC SLOPE / / / / /  
58 CLOSE-IN OBSTN / / / / /

## 28:1 LANDING LENGTH

68 LANDING RWY-LENGTH 12/38  
61 CTLG OBSTACLE / / / / /  
62 HGT-ABOVE THR / / / / /  
63 DIST FROM THR / / / / /  
64 CNTRLN OFFSET / / / / /

(&gt;) ARPT MGR PLEASE ADVISE FSS IN ITEM 86 WHEN CHANGES OCCUR TO ITEMS PRECEDED BY &gt;

## &gt;118 REMARKS:

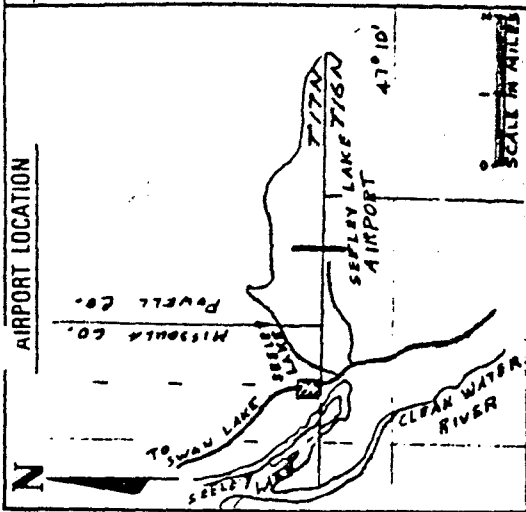
AR17 SERVICE ON REQUEST CALL 486-677-9229 OR CTC UNICOM.  
AR89+G LONG DISTANCE CALL TO FSS DIAL (AREA CODE) 542-2238

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 032285

BILL NO. HB 354



SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 3  
DATE 032285  
BILL NO. HB 354

REMARKS:

Summer homes sur-  
round lake

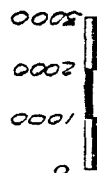
[illegible]

TO SWAN LAKE

A hand-drawn map of the Seeley area. The map shows a coastline with several labels. 'HIGHWAY 83' is written along a road that runs diagonally from the top left towards the center. Below the highway, the word 'SEELEY' is written. A line labeled 'SEA LANE - 14,000'' runs diagonally from the bottom left towards the top right, intersecting the highway. To the right of this line, the word 'TINIAN' is written vertically. Further to the right, the word 'BER' is visible, likely part of 'BERNARD'. At the bottom of the map, the word 'VALLEY' is written, with 'VAL' being more prominent. The map is drawn with simple lines and handwritten text.

5 TOWNSITE

SEAPLANE DOCK -  
"LINDY'S LANDING"  
WEST"



## AIRPORT LAYOUT

## AIRPORT MASTER RECORD

PRINT DATE 05/19/84  
FORM APPROVED. OMB No. 04-00051

1 ASSOC CITY: HELENA 4 STATE: MT FAA SITE NR: 12482.A  
2 AIRPORT NAME: HELENA REGIONAL 5 COUNTY: LEWIS AND CLARK MT  
3 CBD TO AIRPORT(NM): 02 NE 6 REG/ADO: ANM/HLN 7 SECT AERO CHT: GREAT FALLS

GENERAL		SERVICES		BASED AIRCRAFT	
10 OWNERSHIP: PUBLIC		70 FUEL: 100 A 80		90 SINGLE ENG: 102	
11 OWNER: HELENA LEWIS CLARK CO		71 AIRFRAME RPRS: MAJOR		91 MULTI ENG: 8	
12 ADDRESS: 2850 SKYWAY DR		72 PWR PLANT RPRS: MAJOR		92 JET: TOTAL 118	
HELENA, MT 59601		73 BOTTLE OXYGEN: HIGH			
13 PHONE NR:		74 BULK OXYGEN: HIGH			
14 MANAGER: HR KELLEHER		75 TSNT STORAGE: TIE HGR		93 HELICOPTERS: 2	
15 ADDRESS: 2850 SKYWAY DR		76 OTHER SERVICES: AFRT		94 GLIDERS: 1	
HELENA, MT 59601		INSTR RNTL SALES SURV		95 MILITARY: 42	
16 PHONE NR: 406-442-2821		TOW AGRI CHT		96 ULTRA-LIGHT:	
17 ATTENDANCE SCHEDULE:					
MONTHS ALL	DAYS ALL	HOURS 0500-0100			

FACILITIES		OPERATIONS	
18 AIRPORT USE: PUBLIC	80 ARPT BCN: *CG	100 AIR CARRIER: 4887	
19 ARPT LAT: 46-36-24.6N SURVEYED	81 APT LGT SKED: *DUSK-DAWN	101 COMMUTER:	
20 ARPT LONG: 111-58-54.8W	82 UNICOM: 122.950	102 AIR TAXI: 2503	
21 ARPT-ELEV: 3873 SURVEYED	83 WIND INDICATOR: YES-L	103 G A LOCAL: 13849	
22 ACREAGE: 1452	84 SEGMENTED CIRCLE: NONE	104 G A ITNENT: 28222	
23 RIGHT TRAFFIC: 23 26 34	85 CONTROL TWR: YES	105 MILITARY: 5968	
24 NON-COMM LANDING FEE: NO	86 FSS: GREAT FALLS	TOTAL: 47429	
25 NASP/FEDERAL AGREEMENT: NGY3	87 FSS ON ARPT: NO		
26 FAR 139 INDEX: 8S 05/73	88 FSS PHONE NR: 406-761-7110	OPERATIONS FOR 12	
	89 TOLL FREE NR: 442-9982	MOS ENDING 16APR84	

RUNWAY DATA			
30 RUNWAY IDENT	05/23	08/26	16/34
31 LENGTH:	4599	9000	3155
32 WIDTH:	75	150	75
33 SURF TYPE-COND	ASPH-G	ASPH-G	ASPH-G
34 SURF TREATMENT	PFC	PFC	
35 GROSS WT: SW	12.5	100	12.5
36 (IN THSOS) OW		160	
37 DTW		225	
38 DDTW			

LIGHTING/APCH AIDS			
40 EDGE INTENSITY	05/23	08/26	16/34
41 NOW ELEMENT 81		HIGH	MED
42 RWY MARK TYPE-COND	BSC-F /BSC-F	PIR-G /PIR-G	BSC-F /BSC-F
43 VASI	N /N	V4L /V4L	N /N
44 THR CROSSING HGT	/	45 /55	/
45 VISUAL GLIDE ANGLE	/	3 /3	/
46 CNTRLN-TDZ	N-N /N-N	N-N /N-N	N-N /N-N
47 RVR-RVY	N-N /N-N	N-N /N-N	N-N /N-N
48 REIL	N /N	N /N	N /N
49 APCH LIGHTS	/	/MALSR	/

OBSTRUCTION DATA			
50 FAR 77 CATEGORY	05/23	08/26	16/34
51 DISPLACED THR	C /C	C /PIR	C /C
52 CTLG OBSTN	POLE /	/POLE	FENCE /GND
53 OBSTN MARKED/LGTD	/	/	/
54 HGT ABOVE RWY END	88 /	/32	8 /4
55 DIST FROM RWY END	1350 /	/1600	350 /200
56 CNTRLN OFFSET	200R /	/700L	/
57 OBSTN CLNC SLOPE	19:1 /50+:1	50+:1 /50:1	*20:1 /0:1
58 CLOSE-IN OBSTN	N /N	N /N	N /N

20:1 LANDING LENGTH			
60 LANDING RWY-LENGTH	05/23	08/26	16/34
61 CTLG OBSTACLE	/	/	/
62 HGT-ABOVE THR	/	/	/
63 DIST FROM THR	/	/	/
64 CNTRLN OFFSET	/	/	/

&lt;&gt; ARPT MGR PLEASE ADVISE FSS IN ITEM 86 WHEN CHANGES OCCUR TO ITEMS PRECEDED BY &gt;

## &gt;110 REMARKS:

A057 RWY 34 22:1 FM DSPLCD THR TO ROAD.  
A088 ROTG BCN LCD TO LAT 46-36-09.1N LONG 111-59-39.8W.  
A081 WHEN ATCT CLSD: ACTIVATE HIRL 8/26 & MALSR 26 - 118.3; MRL 16/34 ARE OFF.  
A095 HELICOPTERS.  
A110 -01 <E 2400\* S PERIMETER TWY & 1ST 900\* RWY 26 NOT VSBL FM ATCT.  
A110 -02 4 ANG HELIPADS ON TAXIWAY C.  
A110 -03 CFR COVERAGE PRVD FOR SKED PART 121 ACRS ONLY EXCF WITH PRIOR APPROVAL  
406-442-2821.

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 3  
DATE 032285  
BILL NO. 48354

# HELENA REGIONAL AIRPORT (CH2N) HELENA, MONTANA

RUNWAY MARKING LIGHTING  
8/26 PIR  
16/34 BASIC  
5/23 BASIC

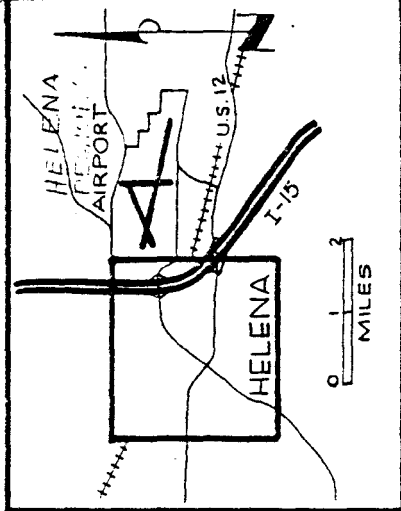
SENATE JUDICIARY COMMITTEE

EXHIBIT NO.

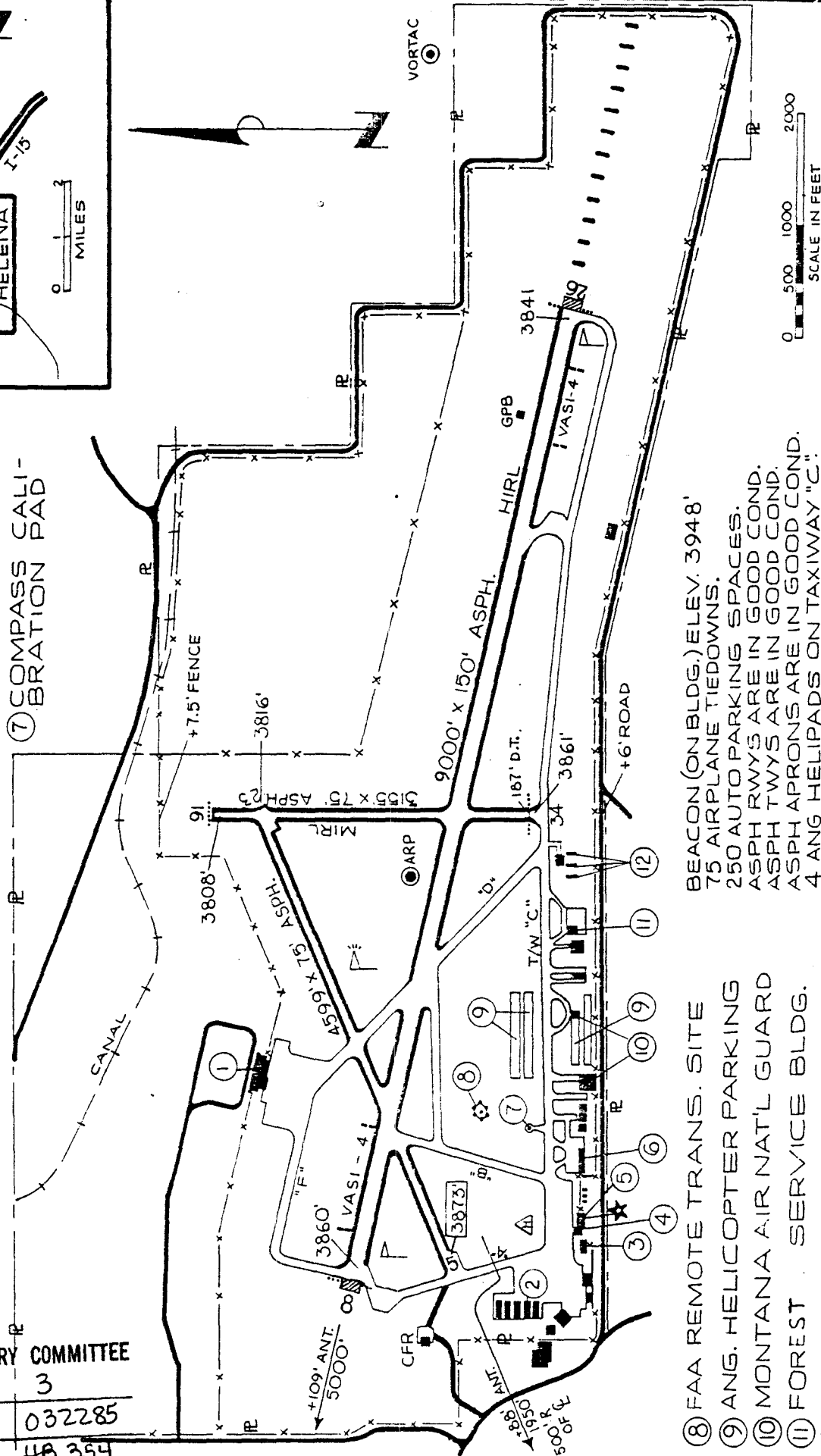
DATE

BILL NO.

SITE NO. 402 A  
ACRES 1452 (E)



- ① TERMINAL BLDG.
- ② T-HANGARS
- ③ FAA OFFICE
- ④ NAT'L WEATHER SERV.
- ⑤ ADM. BLDG. AND CONTROL TOWER
- ⑥ DIV. OF AERO.
- ⑦ COMPASS CALIBRATION PAD



BEACON (ON BLDG.) ELEV. 3948'  
75 AIRPLANE TIEDOWNS.  
250 AUTO PARKING SPACES.  
ASPH RWYS ARE IN GOOD COND.  
ASPH TWYS ARE IN GOOD COND.  
ASPH APRONS ARE IN GOOD COND.  
4 ANG HELIPADS ON TAXIWAY "C".

- ⑧ FAA REMOTE TRANS. SITE
- ⑨ ANG. HELICOPTER PARKING
- ⑩ MONTANA AIR NAT'L GUARD
- ⑪ FOREST SERVICE BLDG.
- ⑫ FUEL FARM

AIRPORT LAYOUT



>1 ASSOC CITY: SCHAFER 4 STATE: MT FAA SITE NR: 12494.A  
>2 AIRPORT NAME: SCHAFER /USFS/ 5 COUNTY: FLATHEAD MT  
>3 CBD TO AIRPORT(NM): 15 SE 6 REG/ADO: ANM/HLN 7 SECT AERO CHT: GREAT FALLS

GENERAL		SERVICES	BASED AIRCRAFT	
>10 OWNERSHIP: PUBLIC		>70 FUEL:	90 SINGLE ENG:	0
>11 OWNER: U S FOREST SERVICE		>71 AIRFRAME RPRS: NONE	91 MULTI ENG:	0
>12 ADDRESS: SPOTTED BEAR RANGER STATION		>72 PW PLANT RPRS: NONE	92 JET:	0
HUNGRY HORSE, MT 59919		>73 BOTTLE OXYGEN: NONE	TOTAL	0
>13 PHONE NR:		>74 BULK OXYGEN: NONE	93 HELICOPTERS:	0
>14 MANAGER: DIST RANGER		75 TSNT STORAGE: TIE	94 GLIDERS:	0
>15 ADDRESS: SPOTTED BEAR RANGER STATION		76 OTHER SERVICES:	95 MILITARY:	0
HUNGRY HORSE, MT 59919			96 ULTRA-LIGHT:	0
>16 PHONE NR: 406-387-5243				
>17 ATTENDANCE SCHEDULE:				
MONTHS DAYS HOURS				
MAY-NOV ALL DAYLIGHT				
		FACILITIES	OPERATIONS	
		>80 ARPT BCN: N	100 AIR CARRIER:	
		>81 APT LGT SKED:	101 COMMUTER:	
		>82 UNICOM:	102 AIR TAXI: 300	
		>83 WIND INDICATOR: YES	103 G A LOCAL:	
		84 SEGMENTED CIRCLE: NONE	104 G A ITRNT: 100	
		85 CONTROL TWR: NO	105 MILITARY:	
		86 FSS: CUT BANK	TOTAL: 400	
		87 FSS ON ARPT: NO		
		88 FSS PHONE NR: 406-873-4522	OPERATIONS FOR 12	
		89 TOLL FREE NR:	MOS ENDING 20JUL84	

>18 AIRPORT USE: PUBLIC  
>19 ARPT LAT: 48-05-15N ESTIMATED  
>20 ARPT LONG: 113-15-00W  
>21 ARPT-ELEV: 84855 ESTIMATED  
>22 ACREAGE:  
>23 RIGHT TRAFFIC: NO  
>24 NON-COMM LANDING FEE: NO  
>25 NASP/FEDERAL AGREEMENT:  
>26 FAR 139 INDEX: N

## RUNWAY DATA

>30 RUNWAY IDENT 87/25  
>31 LENGTH: 3625  
>32 WIDTH: 165  
>33 SURF TYPE-COND TURF-G  
>34 SURF TREATMENT  
>35 GROSS WT: SW  
>36 (IN THSDS) DW  
>37 DTW  
>38 DDTW

## LIGHTING/APCH AIDS

>40 EDGE INTENSITY 87/25  
>41 NOW ELEMENT 81  
>42 RWY MARK TYPE-COND  
>43 VASI N /N  
>44 THR CROSSING HGT  
>45 VISUAL GLIDE ANGLE  
>46 CNTRLN-TOZ N-N /N-N  
>47 RVR-RVV N-N /N-N  
>48 REIL N /N  
>49 APCH LIGHTS

## OBSTRUCTION DATA

>50 FAR 77 CATEGORY 87/25  
>51 DISPLACED THR A(V) /A(V)  
>52 CTLG OBSTN N /N  
>53 OBSTN MARKED/LGTD TREES /FENCE  
>54 HGT ABOVE RWY END N /N  
>55 DIST FROM RWY END 40 /A  
>56 CNTRLN OFFSET 200 /B  
>57 OBSTN CLNC SLOPE 15:1 /B:1  
>58 CLOSE-IN OBSTN N /Y

## 20:1 LANDING LENGTH

>60 LANDING RWY-LENGTH 87/25  
>61 CTLG OBSTACLE  
>62 HGT-ABOVE THR  
>63 DIST FROM THR  
>64 CNTRLN OFFSET

(X) ARPT \*GR PLEASE ADVISE FSS IN ITEM 86 WHEN CHANGES OCCUR TO ITEMS PRECEDED BY >

## &gt;110 REMARKS:

AP11 LOW AREA NORTH SIDE OF RWY APROX 1100' FROM RWY 25 USE CAUTION.  
AB16 <SUMMER PHONE 406-755-7311.  
AP89+G LONG DISTANCE CALL TO FSS DIAL (AREA CODE) 873-4522  
A110 -01 FENCED ON ALL SIDES.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO.

3

DATE

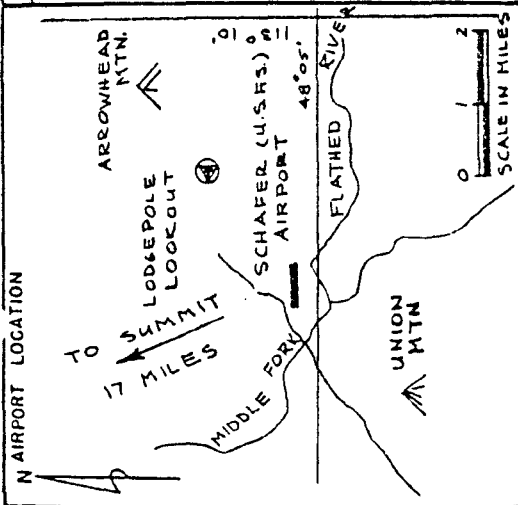
032285

BILL NO.

HB 354

REMARKS:

RUNWAY NOT MARKED  
"T" ON LANDING STRIP  
IS RECOMMENDED TAKE  
OFF DIRECTION.



SCHAFFER U.S. AIRPORT  
SCHAFFER, MONTANA

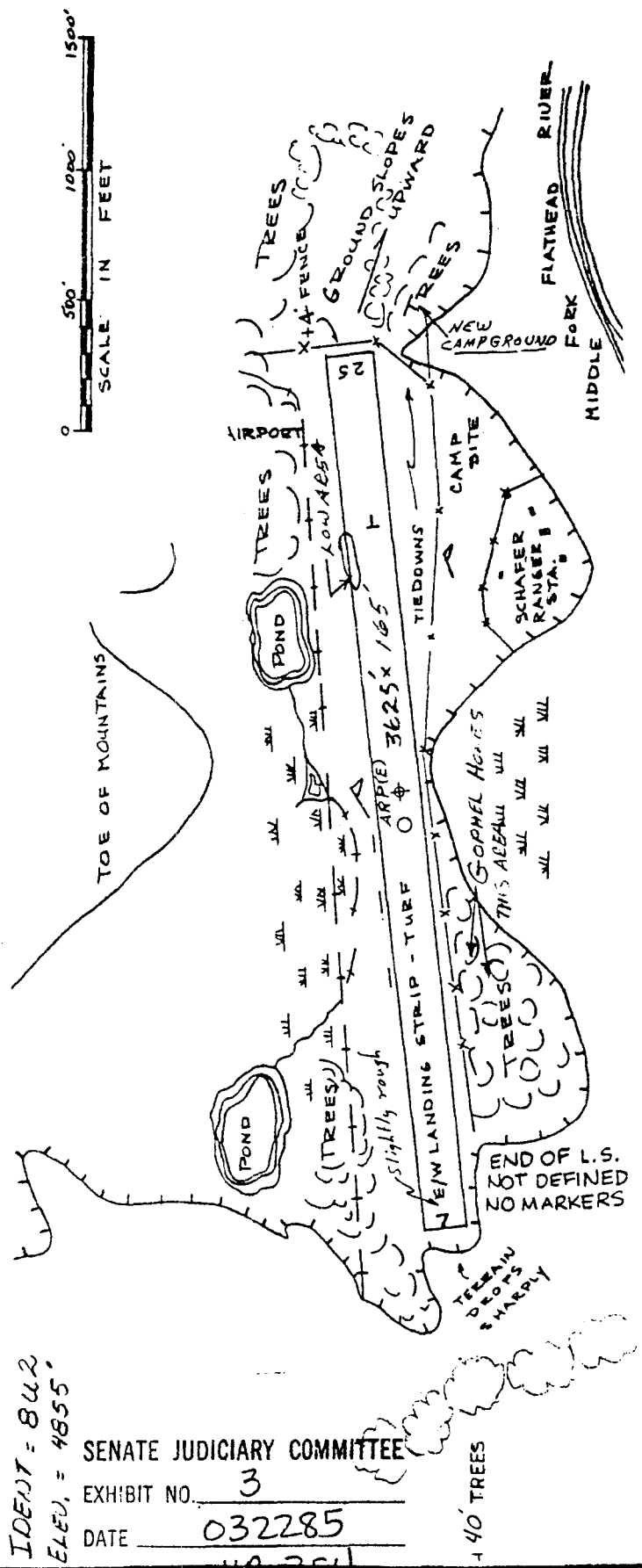
IDENT = 842  
ELEV. = 4855'

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 032285

BILL NO. #8354



AIRPORT LAYOUT

7/20/84

>1 ASSOC CITY: SEELEY LAKE  
>2 AIRPORT NAME: SEELEY LAKE  
>3 CBD TO AIRPORT(NM): 82 E

&gt;4 STATE: MT

FAA SITE NR: 12496.1A

&gt;5 COUNTY: MISSOULA MT

&gt;6 REG/ADO: ANM/HLN &gt;7 SECT AERO CHT: GREAT FALLS

GENERAL		SERVICES	BASED AIRCRAFT	
>10 OWNERSHIP: PUBLIC		>70 FUEL: 88 188	90 SINGLE ENG:	1
>11 OWNER: MISSOULA COUNTY		>71 AIRFRAME RPRS: NONE	91 MULTI ENG:	8
>12 ADDRESS:		>72 PWR PLANT RPRS: NONE	92 JET:	
MISSOULA, MT 59881		>73 BOTTLE OXYGEN: NONE	TOTAL	1
>13 PHONE NR:		>74 BULK OXYGEN: NONE		
>14 MANAGER: GRANT LINDEMER		75 TSNT STORAGE:	93 HELICOPTERS:	8
>15 ADDRESS: BOX 491		76 OTHER SERVICES:	94 GLIDERS:	
SEELEY LAKE, MT 59868			95 MILITARY:	
>16 PHONE NR: 486-677-922*			96 ULTRA-LIGHT:	
>17 ATTENDANCE SCHEDULE:*				
MONTHS	DAYS			
UNATNDD	HOURS			
		FACILITIES	OPERATIONS	
>18 AIRPORT USE: PUBLIC		>80 ARPT BCN:	180 AIR CARRIER:	
>19 ARPT LAT: 47-18-45N ESTIMATED		>81 APT LGT SKED:	181 COMMUTER:	
>20 ARPT LONG: 113-26-48W		>82 UNICOM: 122.888	182 AIR TAXI:	
>21 ARPT-ELEV: 84235 ESTIMATED		>83 WIND INDICATOR: YES	183 G A LOCAL:	48
>22 ACREAGE: 48		84 SEGMENTED CIRCLE: YES	184 G A ITNRT:	258
>23 RIGHT TRAFFIC: NO		85 CONTROL TWR: NO	185 MILITARY:	
>24 NON-COMM LANDING FEE: NO		86 FSS: MISSOULA	TOTAL:	298
>25 NASP/FEDERAL AGREEMENT:		87 FSS ON ARPT: NO		
>26 FAR 139 INDEX: N		88 FSS PHONE NR: 486-542-2238	OPERATIONS FOR 12	
		89 TOLL FREE NR:*	MOS ENDING 38APR84	

RUNWAY DATA					
>30 RUNWAY IDENT	16/34				
>31 LENGTH:	3588				
>32 WIDTH:	75				
>33 SURF TYPE-COND	TURF-G				
>34 SURF TREATMENT					
35 GROSS WT: SW					
36 (IN THSDS) DW					
37 DTW					
38 ODTW					
LIGHTING/APCH AIDS					
>40 EDGE INTENSITY	16/34				
>41 NOW ELEMENT B1					
>42 RWY MARK TYPE-COND					
>43 VASI	N /N	/	/	/	/
>44 THR CROSSING HGT	/	/	/	/	/
>45 VISUAL GLIDE ANGLE	/	/	/	/	/
>46 CNTRLN-TDZ	N-N /N-N	/	/	/	/
>47 RVR-RVV	N-N /N-N	/	/	/	/
>48 REIL	N /N	/	/	/	/
>49 APCH LIGHTS	/	/	/	/	/
OBSTRUCTION DATA					
>50 FAR 77 CATEGORY	16/34				
>51 DISPLACED THR	A(V) /A(V)	/	/	/	/
>52 CTLG OBSTN	TREES /TREES	/	/	/	/
>53 OBSTN MARKED/LGTD	/	/	/	/	/
>54 HGT ABOVE RWY END	38 /68	/	/	/	/
>55 DIST FROM RWY END	1288 /1588	/	/	/	/
>56 CNTRLN OFFSET	/	/	/	/	/
>57 OBSTN CLNC SLOPE	18:1 /28:1	/	/	/	/
>58 CLOSE-IN OBSTN	N /N	/	/	/	/
28:1 LANDING LENGTH					
>60 LANDING RWY-LENGTH	16/34	/	/	/	/
>61 CTLG OBSTACLE	/	/	/	/	/
>62 HGT-ABOVE THR	/	/	/	/	/
>63 DIST FROM THR	/	/	/	/	/
>64 CNTRLN OFFSET	/	/	/	/	/

&gt;&gt; ARPT MGR PLEASE ADVISE FSS IN ITEM 86 WHEN CHANGES OCCUR TO ITEMS PRECEDED BY &gt;

&gt;118 REMARKS:

AR17 SERVICE ON REQUEST CALL 486-677-9229 OR CTC UNICOM.

AR89\*G LONG DISTANCE CALL TO FSS DIAL (AREA CODE) 542-2238

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 032285

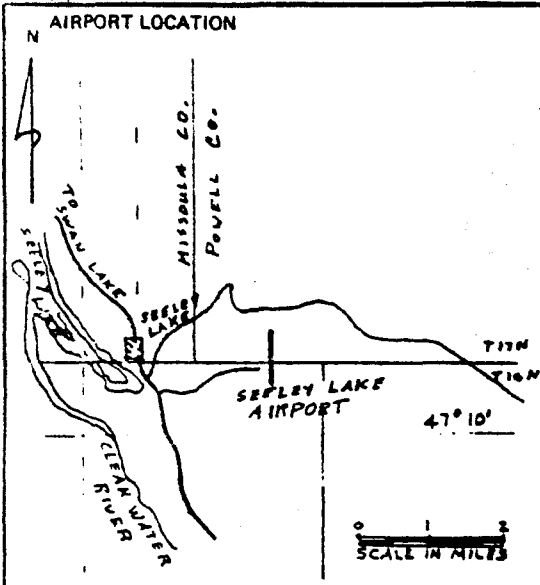
BILL NO. HB 354

SITE NO. 12496.1A

ACRES 48

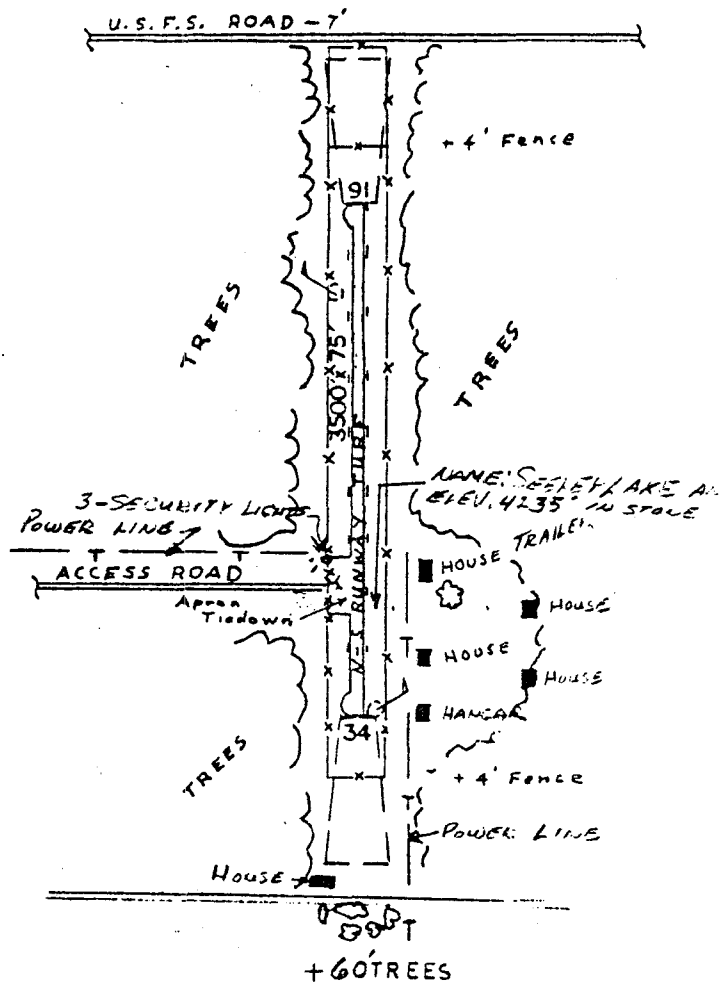
REMARKS

*B Tiedowns*



SEELEY LAKE AIRPORT  
SEELEY LAKE, MONTANA (235)

+30 TREES

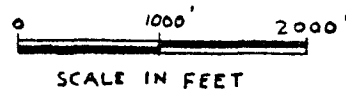


SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

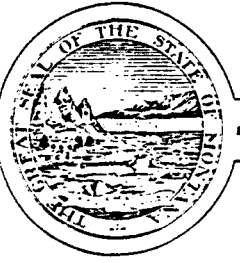
DATE 032285

BILL NO. H0 354



6-16-83

# DEPARTMENT OF COMMERCE



TED SCHWINDEN, GOVERNOR

1424 9TH AVENUE

STATE OF MONTANA

(406) 444-3494

HELENA, MONTANA 59620-0401

## TESTIMONY ON HOUSE BILL 354

Senate Judiciary Committee

Keith Colbo

Before I begin, I want to make it perfectly clear to this committee that the Department of Commerce did not draft House Bill 354; it did not request this bill; and the Department is neither for nor against this bill.

The Department was incorrectly listed as a proponent of the bill in the minutes of the House hearing. The House Committee was told verbally by Mr. Markle that the Department was neutral and that fact remains unchanged.

Being neutral, however, does not mean that we are not interested or concerned.

Montana has 125 airports which are available for public use. There are more than 3500 aircraft in Montana which are registered with the FAA or the State. There are almost 5,000 pilots in Montana similarly registered.

At present, the Division of Aeronautics has 11 FTE's. We estimate that one additional FTE will be needed to license airports each year.

Whether we license airports or not, safety inspections will continue to be made -- both by the FAA and by the State. The inspections, known as "5010" (Fifty-Ten) inspections, comply with

SENATE JUDICIARY COMMITTEE

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The Mandate also states that the Seeley Lake seaplane base is an airport and must be licensed accordingly. Seeley Lake is a public body of water. The seaplane base itself is operated on privately owned land located in the residential area on the far southeast shore of the lake. It is designated as Lindy's Landing West. Quite frankly, we have found it difficult to apply these old rules to the Seeley Lake seaplane situation.

Confrontation have occurred between boat users and seaplanes on the waters of Seeley Lake. A genuine and serious safety problem exists between these groups of lake users. I believe it is the Department's responsibility to investigate and resolve the safety problems as best it can within statutory authority.

The repeal of airport licensing laws does not, in my opinion, abrogate any of the Department's responsibilities to the public concerning safety.

Our sister states of Wyoming, Idaho, North Dakota, Colorado and Washington do not license airports at all. On the other hand, South Dakota and Oregon do issue licenses and Utah and California are involved to a limited degree. All of these states, however, are concerned with safety issues and conduct investigations. And most of them, with or without licensing laws, are involved in the safe use of airplanes and seaplanes.

The Department will license airports if you feel we should, and when property is to be acquired for a new airport, the Department will ensure that the property and its use will conform to minimum standards of safety and serve the public interest. These standards will be imposed by the State and the FAA regardless of the issuance of a

SENATE JUDICIARY COMMITTEE

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federal regulations. In fact, FAA contracts with Aeronautics each year to perform some of these inspections.

This year, FAA will conduct about 40 "5010" inspections and we will conduct about 85 such inspections. These inspections are performed at all public airports. In addition to "5010" inspections, the FAA conducts more detailed inspections at airports used by airline companies. There are 10 such airports in Montana, mostly in our larger communities.

In any event, these safety inspections have been performed in the past and will be in the future, regardless of actual airport licensing by the Department. The licensing function, as originally designed, was primarily intended to give the State control over safe site selection for new airports established by cities or counties. Approval was given if the proposed airport complied with certain safety standards and with a comprehensive plan for statewide and nationwide development. As you know, these laws were written 40 years ago, and have never been enforced by the State.

The Department is interested in this bill for another reason. These licensing laws have recently received great attention because of the Seeley Lake situation.

The Seeley Lake Homeowners Association went to court and obtained a Writ of Mandate which orders the Department to exercise its airport licensing authority. This Mandate was issued on August 2, 1984. Since the Department had never licensed airports, it had no rules or procedures, and we immediately set out to develop rules. The rules were finally adopted in December.

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 4  
DATE 032285  
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"THE BIG SKY COUNTRY"

*See original minutes  
for complete map*



SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 5  
DATE 032285  
BILL NO. HB 354

# MONTANA

## AERONAUTICAL CHART



**MONTANA  
AIRPORT  
MANAGEMENT  
ASSOCIATION**

Ted Mathis  
Airport Manager  
Gallatin Field  
P. O. Box 146  
Bozeman MT 59715

Reply To:

Testimony Regarding House Bill 354  
Given by Ted Mathis, Airport Manager,  
Gallatin Field, Bozeman, and  
President of the Montana Airport Management Association

The Montana Airport Management Association requested that this bill be drafted and introduced to repeal the antiquated, unused and unnecessary airport licensing law.

Montana's air carrier airports are already required to have federal inspections and certification. If state government is required to duplicate this effort as recently ordered, it will mean a great waste of money, effort and manpower.

Currently, all of Montana's public use airports are inspected under one of two Federal Aviation Administration programs. Following these inspections, the airport operators are advised of potential maintenance problems and asked to make necessary corrections. Again, state licensing is not needed.

We ask you to please give this bill favorable consideration and a "Do Pass" recommendation.

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 6  
DATE 032285  
BILL NO. HB 354

STATEMENT IN SUPPORT OF HB 354, REPEALER OF AIRPORT LICENSING LAW

The Board of Aeronautics at its regular meeting held March 6, 1985, voted in favor of HB 354, the repeal of the Airport Licensing Law. The position of the Board of Aeronautics on airport licensing is as follows:

1. The State of Montana has gotten along quite well without airport licensing since the law was passed in approximately 1945. There are very few states which require airport licensing.

2. The Federal Aviation Administration is authorized by statute to promulgate regulations with regard to the use of the navigable airspace and to promulgate air traffic rules and regulations and is further empowered by statute to inspect, classify and rate any air navigation facility available for the use of aircraft as to its suitability for such use (49 U.S.C.S. Sections 1348a, 1348c, 1426 and 14 CFR, Part 71, Part 77 and Part 91). The F.A.A. currently inspects Montana airports open to the public, both for airport ground safety and for airport air safety. Safety is its primary concern. In fact, the F.A.A. contracts with the Montana Aeronautics Division to conduct the inspections.

Furthermore, if as a result of any such inspection or investigation made by the F.A.A., a determination is made that there is an unsafe condition on an airport that is uncorrectable or not corrected, if the public interest requires, the F.A.A. may issue an order shutting down the airport. It also may issue advisory information to pilots using public airports.

3. The amount of money that would be necessary to license airports and enforce the licensing provisions of the statute may

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 7

DATE 032285

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be substantial and unreasonable for the amount of public good gained from licensing airports. The license fees may be too expensive for small airports, and the smaller airports may be required or elect to close. Closure would not be in the best interests of the aviation community!

4. The constituency making up the Aeronautics Board feels that licensing is an unnecessary burden on the State of Montana and on its airports, and that safety factors can be taken care of by other means such as a progressive education program.

5. The Board of Aeronautics is an independent governmental body appointed by the Governor of the State of Montana and is made up of nine members from the public as follows:

- One member of the Montana Pilot's Association;
- One member of the Montana Chamber of Commerce;
- One representative of the Montana Airport Management Association;
- One member of the Montana County Commissioner's Association;
- One person actively engaged in aviation education in this State;
- One person representative of interstate commercial airline operators;
- One member of the Montana League of City and Towns;
- One person representing the general public;
- One person who is a fixed base operator of flying services or flying schools.

The Board is allocated to the Department of Commerce for administrative rules only and acts in an advisory capacity to the Department of Commerce and Division of Aeronautics. Therefore, the Montana Aeronautics Board's position is an independent representation of a broad segment of the public.

6. The Board of Aeronautics is seriously concerned with the safety of airports and recently passed a Resolution to investigate and attempt to come up with a program to improve the safety and maintenance at Montana airports. We feel that the Seeley Lake

SENATE JUDICIARY COMMITTEE

EXHIBIT NO.

DATE

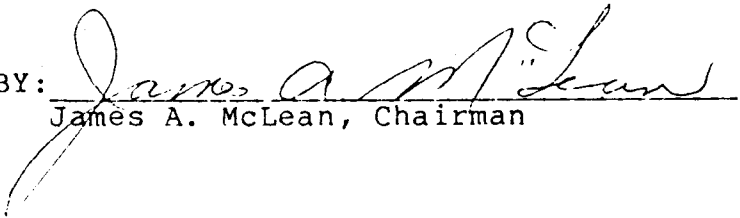
problem may be clouding the airport licensing issue. I can assure you that even if the airport licensing statute is repealed, the Board of Aeronautics will continue to be very concerned about the safety of seaplanes and boats at Seeley Lake. We will advocate finding a solution to the problem, and if necessary through the promulgation of safety rules and regulations on the lake for both seaplanes and boats. We advocate working with whatever State agencies may have authority over the boats and seaplanes, including the Fish and Game and the Montana Division of Aeronautics.

Licensing, by itself, will not solve the safety problems on airports. Only an active and enforceable program of safety education and inspection can solve the problems.

Thank you for your consideration of our comments.

MONTANA BOARD OF AERONAUTICS

BY:

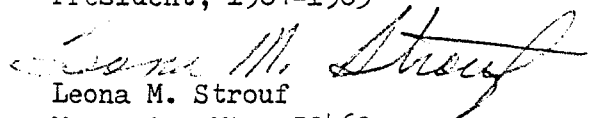
  
James A. McLean, Chairman

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 7  
DATE 032285  
BILL NO. HB 354

The Montana Flying Farmers and Ranchers go on record as being for the passage of House Bill 354 concerning the repeal of the airport licensing law. We feel since this is already the responsibility of the United States Government, it does not need to be repeated by the State of Montana. If all small grass-landing strips owned by our individual members were to be licensed, the cost of doing so would be prohibitive and also very unnecessary. If any of these strips were closed, it would cause a great inconvenience to the owners as many are needed in their business operations.

Therefore, we urge the passing of House Bill 354.

President, 1984-1985

  
Leona M. Strouf  
Moccasin, Mt. 59462

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 8

DATE 032285

BILL NO. HB 354



## *The Big Sky Country*

# MONTANA HOUSE OF REPRESENTATIVES

REPRESENTATIVE JANET MOORE

HOUSE DISTRICT 65

HELENA ADDRESS:  
CAPITOL STATION  
P.O. BOX 94  
HELENA, MONTANA 59620  
PHONE: (406) 444-4800

HOME ADDRESS:  
P.O. BOX 1017  
SWAN VALLEY  
CONDON, MONTANA 59826  
PHONE: (406) 754-2473

March 22, 1985

COMMITTEES:  
FISH AND GAME  
NATURAL RESOURCES  
STATE ADMINISTRATION

Senator Joe Mazurek, Chairman, Senate Judiciary  
Committee, and Members of the Committee

Since Seeley Lake is in the heart of my House District 65, I would like to speak in favor of HB-354 to abolish state licensing of airports and other air navigation facilities;

First, please let the record show I am not on either side be it the homeowners or seaplane enthusiasts. I love them both.

HB-354 does two important things. It prevents federal and state duplication and it will save more than \$50,000 per year which is good in tight money times like now.

HB-354 will also help me live up to two campaign promises if elected. (1) to repeal old, ineffective, unenforceable laws and (2) to work to solve local problems locally. Too often I believe we rush to the legislature to solve our local problems rather than sit down at home and reason together to find neighborhood solutions. Already we're overburdened with too many laws and regulations with too little money to effectively enforce them.

Why dig up the old state licensing law after 40 years of dormancy to solve the Seeley Lake homeowners vs. seaplane conflict, a local problem, and lay that thing on the whole state? It doesn't make sense. I honestly believe we should repeal the old law and tell the people to go home and plan their lake -- what they want for their lake? Then identify all users from fishermen to seaplaners and find solutions for all to peacefully cohabit with minimal impact to the lake, its waters and aquatic life.

For these reasons, Mr. Chairman and members of this committee, I urge you to give HB-354 a do pass.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 9

DATE 032285

BILL NO. HB 354

Thank you,

A handwritten signature in cursive script that reads "Janet Moore".

Representative Janet Moore  
House District 65

Box 491 - Seeley Lake, Mt. 59868  
ADDRESS: 3600 No. Snelling Ave - St Paul, Minn. 55112

REPRESENTING WHOM? Self. Lincoln Landing West SPB

DO YOU: SUPPORT? X AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

[illegible]

attachment.

BILL NO. HB 354



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

FLIGHT STANDARDS DISTRICT OFFICE  
FAA BUILDING, ROOM 3  
HELENA REGIONAL AIRPORT  
HELENA, MT 59601

February 19, 1985

Mr. Lewis W. Lindemer  
Lindey's Landing West SPB  
Box 491  
Seeley Lake, MT 59868

Dear Mr. Lindemer:

In response to your question posed in your letter of February 18, 1985, yes, the Federal Aviation Administration does regulate aircraft while on the Earth's surface (both on water and on land). The applicable Federal Aviation Regulations are 91.9 and 91.10. I have enclosed a copy of those Regulations for your information.

If we can be of further assistance, please feel free to contact us.

Sincerely,

Robert A. Hill  
Manager

Enclosure



Edward Warren: First American Aloft

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 10  
DATE 032285  
BILL NO. HB 354



**§ 91.9 Careless or reckless operation.**

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

**§ 91.10 Careless or reckless operation other than for the purpose of air navigation.**

No person may operate an aircraft other than for the purpose of air navigation, on any part of the surface of an airport used by aircraft for air commerce (including areas used by those aircraft for receiving or discharging persons or cargo), in a careless or reckless manner so as to endanger the life or property of another.

**§ 91.11 Liquor and drugs.**

(a) No person may act as a crewmember of a civil aircraft—

- (1) Within 8 hours after the consumption of any alcoholic beverage;
- (2) While under the influence of alcohol;
- or
- (3) While using any drug that affects his faculties in any way contrary to safety.

(b) Except in an emergency, no pilot of a civil aircraft may allow a person who is obviously under the influence of intoxicating liquors or drugs (except a medical patient under proper care) to be carried in that aircraft.

**§ 91.12 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.**

(a) Except as provided in paragraph (b) of this section, no person may operate a civil aircraft within the United States with knowledge that narcotic drugs, marihuana, and depressant or stimulant drugs or substances as defined in Federal or State statutes are carried in the aircraft.

(b) Paragraph (a) of this section does not apply to any carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances authorized by or under any Federal or State statute or by any Federal or State agency.

**§ 91.13 Dropping objects.**

No pilot in command of a civil aircraft may allow any object to be dropped from that aircraft in flight that creates a hazard to persons or property. However, this section does not prohibit the dropping of any object if reasonable precautions are taken to avoid injury or damage to persons or property.

**§ 91.14 Use of safety belts.**

[(a) Unless otherwise authorized by the Administrator—

[(1) No pilot may take off a U.S. registered civil aircraft (except a free balloon that incorporates a basket or gondola and an airship) unless the pilot in command of that aircraft ensures that each person on board is briefed on how to fasten and unfasten that person's safety belt.]

[(2)] No pilot may take off or land a U.S. registered civil aircraft (except free balloons that incorporate baskets or gondolas and airships) unless the pilot in command of that aircraft ensures that each person on board has been notified to fasten his safety belt.

[(3)] During the takeoff and landing of U.S. registered civil aircraft (except free balloons that incorporate baskets or gondolas and airships) each person on board that aircraft must occupy a seat or berth with a safety belt properly secured about him. However, a person who has not reached his second birthday may be held by an adult who is occupying a seat or berth, and a person on board for the purpose of engaging in sport parachuting may use the floor of the aircraft as a seat.

(b) This section does not apply to operations conducted under Parts 121, 123, or 127 of this chapter. Subparagraph [(a) (3)] of this section does not apply to persons subject to § 91.7.

**§ 91.15 Parachutes and parachuting.**

(a) No pilot of a civil aircraft may allow that is available for emergency

SENATE JUDICIARY COMMITTEE

AIRPORT MASTER RECORD

FORM APPROVED OMB No. 04-R0051

> 1 ASSOCCITY: SEELEY LAKE 4 STATE: MT FAA SITE NR:  
> 2 AIRPORT NAME: LINDEY'S LANDING - WEST 5 COUNTY: MISSOULA  
> 3 JBO TO AIRPORT (NM): .5 NM 6 REG/ADO: NWR/SEA 7 SECT AERO CHT: GREAT FALLS

GENERAL		SERVICES	BASED AIRCRAFT	
10 OWNERSHIP: PUBLIC		>70 FUEL: 80/100LL	90 SINGLE ENG:	- 0 -
> 11 OWNER: LEWIS W LINDEMER			91 MULTI ENG:	- 0 -
> 12 ADDRESS: 45 E GOLDEN LK RD CIRCEL PINES, MN 55014			92 JET:	- 0 -
> 13 PHONE NR: 612-784-6838			TOTAL	- 0 -
> 14 MANAGER: GRANT G LINDEMER			93 HELICOPTERS:	- 0 -
> 15 ADDRESS: BOX 491 SEELEY LAKE, MT 59863			94 GLIDERS:	- 0 -
> 16 PHONE NR: 406-677-9229			95 MILITARY:	- 0 -
> 17 ATTENDANCE SCHEDULE		FACILITIES		
MONTHS	DAYS	HOURS		
MAY-NOV	ALL	DAYLIGHT		
18 AIRPORT USE: PUBLIC		>80 ARPT BCN: NONE		
19 ARPT LAT: 47° 11' 0" N		>81 BCN SCHEDULE: NONE		
20 ARPT LONG: 113° 31' 0" W		>82 UNICOM: 122.800 MHZ		
21 ARPT ELEV: 3993 MSL		>83 WIND INDICATOR: NO		
22 ACREAGE: N/A		84 SEGMENTED CIRCLE: NONE		
> 23 RIGHT TRAFFIC: NONE		85 CONTROL TWR:		
24 NON-COMM LANDING FEE: N		86 FSS:		
25 NASP/FEDERAL AGREEMENT:		87 FSS ON ARPT:		
		88 FSS PHONE NR:		
		89 TOLL FREE NR:		

RUNWAY DATA

> 26 RUNWAY IDENT: 30/12  
> 27 LENGTH: 14,000'  
> 28 WIDTH: 1,000'  
> 29 SURF TYPE: COND WATER

LIGHTING/APCH AIDS

> 40 EDGE INTENSITY: NONE  
> 41 EDGE SCHEDULE: NONE  
> 42 RWY MARK TYPE: COND NONE

OBSTRUCTION DATA

50 FAR 77 CATEGORY: N/A  
> 51 DISPLACED THR: N/A  
> 52 CTLG OBSTN: NONE  
> 53 OBSTN MARKED/LGTD: N/A

*Completed and  
Sent  
Date 11-9-82*

( > ) ARPT MGR PLEASE ADVISE FSS IN ITEM 86 WHEN CHANGES OCCUR TO ITEMS PRECEDED BY >  
110 REMARKS:

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 10  
DATE 032285  
BILL NO. HB 354

NAME: Bert Poloson DATE: 3-22-85

ADDRESS: Box 410 Polson mt.

PHONE: 883-4656

REPRESENTING WHOM? \_\_\_\_\_

APPEARING ON WHICH PROPOSAL: 354

DO YOU: SUPPORT? ✓ AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: \_\_\_\_\_

This would not make  
airports safer by licensing  
No benefits -

Bert Poloson  
safety problems at Lake Lake are caused by  
reckless boating & lack of law enforcement  
fact - a fatal accident July 16 just a few  
days after seaplane incident, caused by  
reckless boating

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 11

DATE 032285

BILL NO. HB 354

NAME: Grace Polason DATE: 3-22-85

ADDRESS: P O Box 410 Polson, Mt.

PHONE: Phone 583-4656

REPRESENTING WHOM? tax-payer - & seaplane pilot

APPEARING ON WHICH PROPOSAL: House Bill 354

DO YOU: SUPPORT? X AMEND?        OPPOSE?       

COMMENTS: We do not need our tax  
money spent needlessly, with  
no apparent benefit.  
This is an antiquated law.

Thank you for your consideration  
to vote yes.  
Thank you.

Grace Polason  
Bob Scott is a director of the

Seely Lake Home Owners Assoc. Inc.

Brad Lewis has copy of Articles of Incorporation

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Purpose: To prevent seaplane activity  
on Seely Lake.

Seaplanes have used Seely Lake since  
late 1930's.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 12

DATE 032285

FILE NO. 413 354

NAME: Elizabeth A. Timm DATE: 3-22-85

ADDRESS: Timm Aero Service  
Polson, MT. 59860

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 13

PHONE: 406-883-5193

DATE 032285

BILL NO. HB 354

REPRESENTING WHOM? Timm Aero Service, Seaplane pilots + Taxpayers.

APPEARING ON WHICH PROPOSAL: House bill 354

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENT: This law is useless, out dated and  
will not promote safety, -or interest in  
aviation. It is an unnecessary tax  
which will not be of value to anyone.  
- This law if enforced would only  
increase the burden on the counties  
across the state.

In the 20 yrs our family ran the Polson Airport  
It was not needed. Please support this bill!!!  
Seely Lake is not an issue here, even though opposing people  
try to make it <sup>the</sup> issue. Thank you for your thoughtful  
consideration.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Note - History of Seaplane activity on Seely goes  
back to the 30's, that we have eye witnesses to this  
~~historic~~ fact. (Fish and Game needs to impose  
sustaining Boat regulations, <sup>then</sup> there would be no problems in S. Lake.)  
- F.A.A. Received NO signed complaints ~~to~~ against

- at the time that boats used force against Seaplanes. Photos taken before landing shows that 30 objects were on the lake before landing. The

lake ~~is~~ is about  $3\frac{1}{4}$  miles long.

(Lake Union  $1\frac{1}{4}$  mile, has 2 Seaplane Bases, Coastguard and general public use)

There was no safety hazard until the boats grouped together

to encircle the seaplanes. One Seaplane was in distress and boats did not give preference to the distress vessel. State + International law broken, here.

- Again, it is not a local issue, H.B 354, but a state issue which will not help any one.

- Holding their vote ~~off~~ - will not solve the safety issue on Sealeys Lake.

- Please vote yes on H.B 354 to abolish licensing of airport.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 13

DATE 032285

BILL NO. HB 354

(This sheet to be used by those testifying on a bill.)

NAME: HENRY T JOHNSON DATE: MAR 22 85

ADDRESS: Box 36 PABLO, MT 59855

PHONE: 406 675-2221

REPRESENTING WHOM? JOHNSON WATER WELL SER.

APPEARING ON WHICH PROPOSAL: 354

DO YOU: SUPPORT? X AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENT: TOO BAD JUDGE LOBLE DIDN'T MAKE  
FUNDS AVAILABLE TO HIRE LAWYERS FOR OUR SIDE ALSO.  
IT IS TOO BAD ALSO, THAT ALL AIRPORTS IN OUR STATE  
HAVE TO BE ASSESSED JUST TO SATISFY A MINOR DISAGREEMENT  
WHICH SHOULD HAVE BEEN TAKEN CARE OF POSSIBLY BY  
LOCAL ZONING.

ALSO, IF BOAT DRIVERS WERE AS CAREFUL AS PILOTS THERE  
SHOULD BE NO PROBLEM.

I URGE YOU TO SUPPORT THIS BILL.

H.T.J.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 14  
DATE 032285  
BILL NO. HB 354

(This sheet to be used by those testifying on a bill.)

NAME: Laurene Johnson DATE: Mar. 22, 1985

ADDRESS: Box 36

PHONE: 406-675-2221

REPRESENTING WHOM? Johnson Water Well Service

APPEARING ON WHICH PROPOSAL: 354

DO YOU: SUPPORT? X AMEND?        OPPOSE?       

COMMENT: Montana taxpayers are saying  
enough taxes. We have survived without  
it, therefore I feel it is unnecessary.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 15

DATE 032285

BILL NO. HB 354



NAME: MIKE ANDERSON DATE: 3/22

ADDRESS: 4036 LAREDO PL; BILLINGS

PHONE: 252-2166

REPRESENTING WHOM? SEELEY LAKE HOMEOWNERS

APPEARING ON WHICH PROPOSAL: 423, 354

DO YOU: SUPPORT?        AMEND?        OPPOSE? X

COMMENTS: NB 423 and 354, IN COMBINATION EFFECTIVELY  
ELIMINATE ANY STATE SUPERVISION OVER AIRCRAFT OPERATION  
ON STATE-OWNED WATERS. IN SPITE OF A RECOGNIZED  
SAFETY HAZARD AND A COURT ORDERING THEM TO  
LICENSE AN AIRPORT, THE DEPARTMENT OF COMMERCE,  
AERONAUTICS DIVISION HAS DONE NOTHING. WORSE,  
THE DEPARTMENT HAS CREATED AND FAILED TO CORRECT  
ERRORS IN THE DESCRIPTION OF THE NEED FOR THE  
LAW - (1) THE FAA DOES NOT LICENSE AIRPORTS  
(2) LICENSING WOULD NOT INCREASE COST -  
THE EXISTING FUNDS COVER THE COST  
AND A PROFIT

(3) SAFETY IS NECESSARY AND SMALL AIRPORTS  
HAVE BEEN RECOGNIZED AS A PROBLEM  
FOR 40 YEARS - AS REFLECTED BY AVIATION

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

BOARD MINUTES.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 16

DATE 032285

BILL NO. HB 354, 423

(This sheet to be used by those testifying on a bill.)

NAME: Mary Lou Ellinghaus DATE: 3-22-85  
ADDRESS: 839 Poplar Mesa Mt. P.O. Box 131 - Seely Lake, Mt.  
PHONE: 543-4196 677-2511

REPRESENTING WHOM? Leeky Lake Homeowners

APPEARING ON WHICH PROPOSAL: HA 354 HA 423

DO YOU: SUPPORT? \_\_\_\_\_ AMEND? \_\_\_\_\_ OPPOSE? X

COMMENT: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 17

DATE 032285

BILL NO. HBs 354 + 423

DEPARTMENT OF COMMERCE

Aeronautics Division  
Division Administrator: Mike Ferguson

Program Description

The Division provides technical and financial assistance to communities, maintains state-owned airports, enforces state laws related to pilot and aircraft registration, conducts search and rescue activities for lost aircraft, and provides aeronautics education services.

Program Activities (Biennium)

- . Disbursed airport loans worth \$1.3 million in state funds to match \$13 million in federal funds to 22 communities
- . Coordinated 6 search operations
- . Performed safety inspections of 185 airports
- . Maintained 12 state-owned airports
- . Maintained 25 radio and visual beacons
- . Issued new and renewal licenses for 3,114 pilots and 1,946 aircraft

Fund Source

- 1) Special Revenue Fund (Seeking 1c per gallon increase in fiscal 1987 in aviation fuel tax to maintain operations. Current 1c per gallon level will cause the Division to run out of operating funds by fiscal year 1987. Each 1c of tax raises \$321,000 in revenue.)
- 2) Proprietary Fund (For West Yellowstone Airport operations)

OBPP/LFA Funding (Current Level)

	FY 86	FY 87
OBPP	\$679,788	\$668,832
LFA	671,846	657,799
Difference	\$ 7,942	\$ 11,033

2% Reductions (15,365) (15,149)  
(Calculated with modified request as part of the total budget)

LFA Vancancy Savings

FY 86 = \$13,678

FY 87 = \$13,686

*Fy End*  
1982 1,205,207  
1983 1,026,226  
1984 976,442

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 18  
DATE 032285  
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14 = \$321,000 per year

If mal 13 approved, will be \$32,000 in hole by FY 87.

Modified Request

	<u>FY 86</u>	<u>FY 87</u>
F.T.E.	1.0	1.0
Budget	\$ 53,473	\$ 53,625

- . 1 F.T.E to conduct airport licensing as required by statute and ordered by 1984 ruling of District Court. (Legislation is pending which would remove the licensing requirement.)

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 18  
DATE 032285  
BILL NO. HB 354

REPORT EBSR106  
DATE : 01/07/85  
TIME : 17/47/35

OFFICE OF BUDGET & PROGRAM PLANNING  
EXECUTIVE BUDGET SYSTEM  
AGENCY/PROGRAM/CONTROL --- BUDGET WORKSHEET

PAGE 409

AGENCY : 6501 DEPARTMENT OF COMMERCE  
PROGRAM : 40 DIVISION OF AERONAUTICS  
CONTROL : 40001 LICENSE AIR PORTS

MODIFIED LEVEL SERVICES ONLY

AE/OE	DESCRIPTION	OBPP FY 86	LFA FY 86	DIFF. FY 86	SUB-CMT. FY 86	OBPP FY 87	LFA FY 87	DIFF. FY 87	SUB-CMT. FY 87
0000	FULL TIME EQUIVALENT (FTE)	1.00				1.00			
1100	SALARIES	22,654				22,654			
1400	EMPLOYEE BENEFITS	4,347				4,358			
1500	HEALTH INSURANCE	1,200				1,200			
1600	VACANCY SAVINGS	-1,128				-1,128			
	TOTAL LEVEL	27,073				27,084			
2021	CONTRACTED SERVICES-INFLATION	196				196			
2023	COMMUNICATIONS-INFLATION	240				380			
2024	TRAVEL-INFLATION	395				395			
2100	CONTRACTED SERVICES	4,900				4,900			
2300	COMMUNICATIONS	2,000				2,000			
2400	TRAVEL	15,775				15,775			
2800	OTHER EXPENSES	2,894				2,895			
	TOTAL LEVEL	26,400				26,541			
	TOTAL PROGRAM	53,473				53,625			
02827	AERONAUTICS DIVISION	53,473				53,625			
	TOTAL PROGRAM	53,473				53,625			

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 18  
D. 032285  
BILL NO. HB 354

REPORT EBSI:99  
DATE : 12/04/84  
TIME : 17/30/40

OFFICE OF BUDGET & PROGRAM PLANNING  
EXECUTIVE BUDGET SYSTEM  
AGENCY/PROGRAM/CONTROL -- BUDGET DETAIL COMPARISONS

PAGE 597

AGENCY : 6501 DEPARTMENT OF COMMERCE  
PROGRAM : 40 DIVISION OF AERONAUTICS  
CONTROL : 00000

AE/OE	DESCRIPTION	ACTUAL FY 84	BUDGET FY 85	REC. CUR FY 86	REC. MOD FY 86	TOTAL FY 86	REC. CUR FY 87	REC. MOD FY 87	TOTAL FY 87
0000	FULL TIME EQUIVALENT (FTE)	12.84	12.84	12.84		12.84	12.84		12.84
1100	SALARIES	278,261.59	272,457	286,706		286,706	287,084		287,084
1300	OTHER COMPENSATION	11,550.00	4,700	5,400		5,400	5,400		5,400
1400	EMPLOYEE BENEFITS	55,424.03	43,675	46,929		46,929	47,131		47,131
1500	HEALTH INSURANCE		12,326	13,200		13,200	13,200		13,200
1600	VACANCY SAVINGS			-14,089		-14,089	-14,113		-14,113
	TOTAL LEVEL	338,235.62	333,158	338,146		338,146	338,702		338,702
2100	CONTRACTED SERVICES	41,156.21	81,248	72,679		72,679	59,747		59,747
2200	SUPPLIES & MATERIALS	33,465.87	55,075	35,585		35,585	35,585		35,585
2300	COMMUNICATIONS	30,340.03	33,367	24,983		24,983	26,543		26,543
2400	TRAVEL	22,160.09	27,874	22,493		22,493	22,493		22,493
2500	RENT	11,760.83	11,086	16,365		16,365	16,365		16,365
2600	UTILITIES	18,543.76	23,043	17,525		17,525	17,525		17,525
2700	REPAIR & MAINTENANCE	24,661.41	22,942	23,239		23,239	23,239		23,239
2800	OTHER EXPENSES	83,942.80	48,056	85,753		85,753	85,813		85,813
2900	GOODS PURCHASED FOR RESALE	32,750.67	25,352	43,680		43,680	43,680		43,680
	TOTAL LEVEL	298,381.77	328,043	342,302		342,302	330,990		330,990
3100	EQUIPMENT	50,832.99	45,400	23,400		23,400	23,200		23,200
	TOTAL LEVEL	50,832.99	45,400	23,400		23,400	23,200		23,200
5100	FROM STATE SOURCES	40,000.00	39,000						
	TOTAL LEVEL	40,000.00	39,000						
6100	FROM STATE SOURCES	10,940.27	34,000	10,940		10,940	10,940		10,940
	TOTAL LEVEL	10,940.27	34,000	10,940		10,940	10,940		10,940
	TOTAL PROGRAM	738,390.65	779,601	714,788		714,788	703,832		703,832
02827	AERONAUTICS DIVISION	631,638.86	689,085	589,396		589,396	578,415		578,415
06007	WEST YELLOWSTONE AIRPORT	106,751.79	90,516	125,392		125,392	125,417		125,417
	TOTAL PROGRAM	738,390.65	779,601	714,788		714,788	703,832		703,832

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 18

DATE 032285

BILL NO. HB 354

*Handwritten:* No. 18 should be Step



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

AIRPORTS DISTRICT OFFICE  
FAA Building - Room 2  
Helena Regional Airport  
Helena, Montana 59601

(406) 449-5271

February 8, 1985

Mr. R. W. Scott  
P.O. Box 223  
Seeley Lake, MT 59868

Dear Mr. Scott:

The Federal Aviation Administration does not license airports. We certify, under Federal Aviation Regulation (FAR) Part 139, those airports which are served by scheduled air carriers utilizing aircraft with thirty-one or greater passenger seating capacity. There are ten certificated airports in the state of Montana.

FAR 157 requires that each person who constructs or, otherwise, establishes a new airport or activates an airport must notify the administrator. This is done by completing FAA Form 7480-1, "Notice of Landing Area Proposal", and submitting it to the appropriate airports office. Enclosed is a copy of a Form 7480-1. The airports office then prepares a package for circularization with the operating divisions within the appropriate region. Air traffic division then conducts an aeronautical study. If the action is controversial or has a potential adverse effect on the users of airspace, it will be circularized. Otherwise, all comments will be returned to the appropriate airports office, who will then issue the official determination. The determination is not an approval of the physical development involved in the proposal. It is only a determination with respect to the safe and efficient use of airspace by aircraft. It does not in any way preempt or waive any ordinance, law, or regulation of any other governmental body or agency.

I hope this answers your questions concerning FAA's regulations in the handling of new airports.

Sincerely,

*Harold N. Handke*

Harold N. Handke  
Certification Safety Inspector

Enclosure



Edward Warren: First American Aloft

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 18  
DATE 032285  
BILL NO. HB 354

(This sheet to be used by those testifying on a bill.)

NAME: Charles C. Boh DATE: 4/22/85

ADDRESS: 2204 5th St. NW. Great Falls

PHONE: 452/448

REPRESENTING WHOM? Coley Lake Home-owners

APPEARING ON WHICH PROPOSAL: H.B. 354 - 423

DO YOU: SUPPORT? \_\_\_\_\_ AMEND? \_\_\_\_\_ OPPOSE? ☒

COMMENT: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 19

DATE 032285

BILL NO. H.B. 354



(This sheet to be used by those testifying on a bill.)

NAME: Mark Charlie Darrow DATE: 3/22/85

ADDRESS: Box 395 Seely Lake, MT. 59868

PHONE: 677-2457

REPRESENTING WHOM? Seely Lake Homeowners

APPEARING ON WHICH PROPOSAL: HB 354

DO YOU: SUPPORT? \_\_\_\_\_ AMEND? \_\_\_\_\_ OPPOSE? XXX

COMMENT: \_\_\_\_\_

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 20

DATE 032285

BILL NO. HB 354



# Lindley's

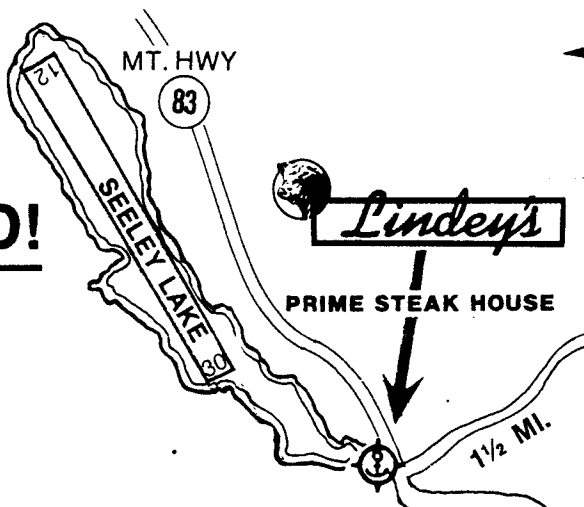
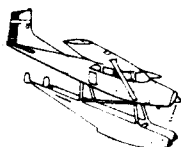


## PRIME STEAK HOUSE

●KALISPELL

GLACIER NATIONAL PARK

●GREAT FALLS

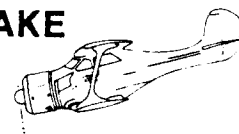


9L

SEELEY LAKE

4235-35-U

NOTAM



FREE TRANSPORTATION  
BETWEEN SEELEY LAKE  
AIRPORT AND *Lindley's* PRIME  
STEAK HOUSE - 1-406-677-9229  
OR CONTACT  
LINDEY'S LANDING WEST  
SEAPLANE BASE  
UNICOM - 122.8MHz BOX 491

3500' x 75' SOD

34

LINDEY'S LANDING WEST  
3993-140 U-122.8MHz.

★HELENA

YELLOWSTONE NATIONAL PARK

## "THE PLACE FOR STEAK"

(Serving from 5:00 Sun.-Mon.-Tues.-Thurs.-Fri.-Sat. Closed Weds.)

OPEN YEAR ROUND

SEELEY LAKE, MONTANA



Mobil  
Travel  
Guide

quality rated

BY LAND

MONTANA STATE HIGHWAY 83 AT SEELEY LAKE

BY SEA

LINDEY'S LANDING WEST SEAPLANE BASE

DOCKAGE - AVGAS - UNICOM 122.8MHz

BY AIR

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 21

DATE 032285

ROLL NO. HB 354

SEELEY LAKE AIRPORT

(CHECK NOTAMS - MSO - FSS)

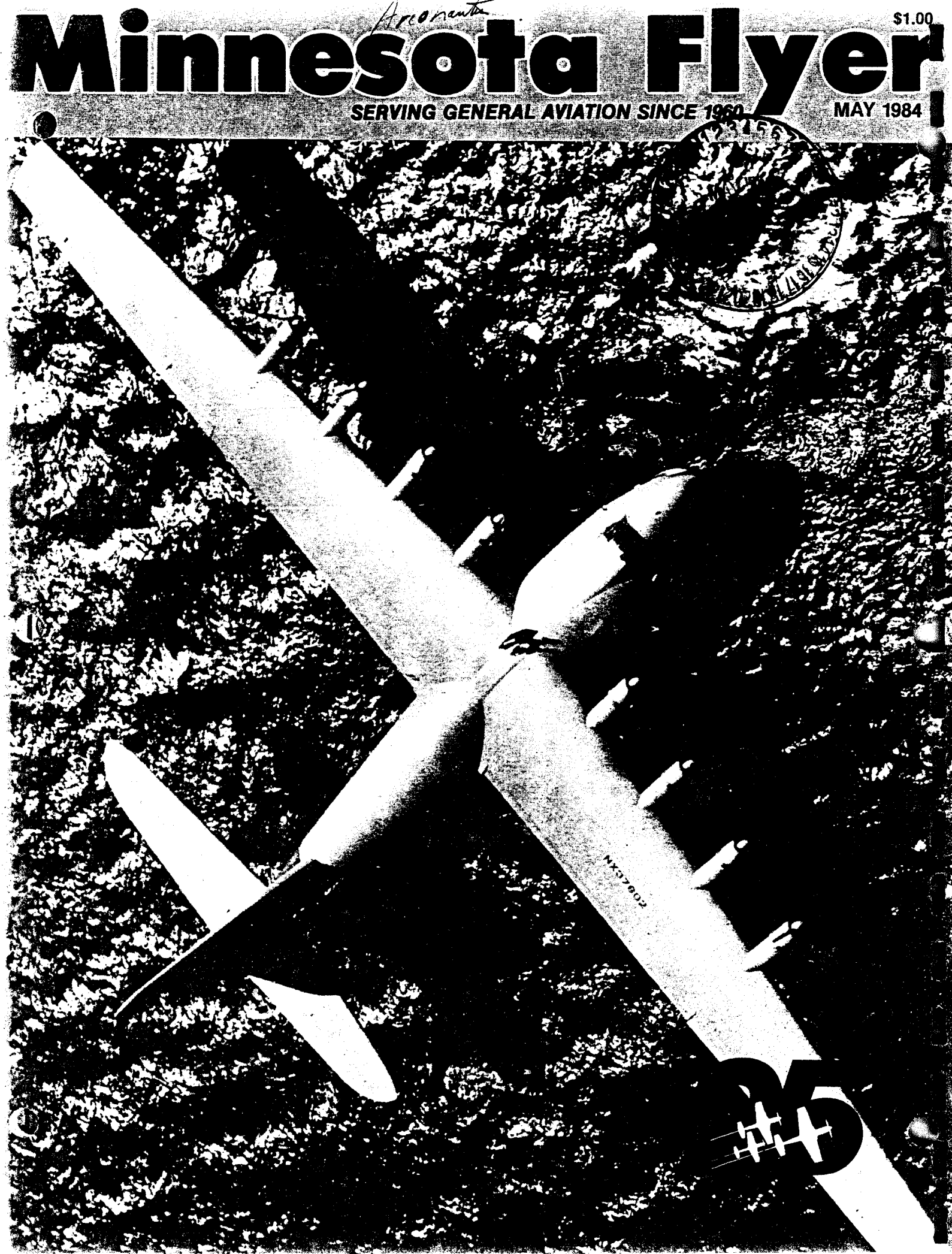
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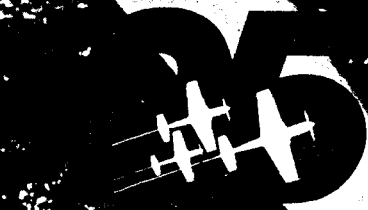


# Minnesota Flyer

SERVING GENERAL AVIATION SINCE 1960

MAY 1984

\$1.00



**§ 91.9 Careless or reckless operation.**

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

**§ 91.10 Careless or reckless operation other than for the purpose of air navigation.**

No person may operate an aircraft other than for the purpose of air navigation, on any part of the surface of an airport used by aircraft for air commerce (including areas used by those aircraft for receiving or discharging persons or cargo), in a careless or reckless manner so as to endanger the life or property of another.

**§ 91.11 Liquor and drugs.**

(a) No person may act as a crewmember of a civil aircraft—

(1) Within 8 hours after the consumption of any alcoholic beverage;

(2) While under the influence of alcohol; or

(3) While using any drug that effects his faculties in any way contrary to safety.

(b) Except in an emergency, no pilot of a civil aircraft may allow a person who is obviously under the influence of intoxicating liquors or drugs (except a medical patient under proper care) to be carried in that aircraft.

**§ 91.12 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.**

(a) Except as provided in paragraph (b) of this section, no person may operate a civil aircraft within the United States with knowledge that narcotic drugs, marihuana, and depressant or stimulant drugs or substances as defined in Federal or State statutes are carried in the aircraft.

(b) Paragraph (a) of this section does not apply to any carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances authorized by or under any Federal or State statute or by any Federal or State agency.

**§ 91.13 Dropping objects.**

No pilot in command of a civil aircraft may allow any object to be dropped from that aircraft in flight that creates a hazard to persons or property. However, this section does not prohibit the dropping of any object if reasonable precautions are taken to avoid injury or damage to persons or property.

**§ 91.14 Use of safety belts.**

[(a) Unless otherwise authorized by the Administrator—

[(1) No pilot may take off a U.S. registered civil aircraft (except a free balloon that incorporates a basket or gondola and an airship) unless the pilot in command of that aircraft ensures that each person on board is briefed on how to fasten and unfasten that person's safety belt.]

[(2)] No pilot may take off or land a U.S. registered civil aircraft (except free balloons that incorporate baskets or gondolas and airships) unless the pilot in command of that aircraft ensures that each person on board has been notified to fasten his safety belt.

[(3)] During the takeoff and landing of U.S. registered civil aircraft (except free balloons that incorporate baskets or gondolas and airships) each person on board that aircraft must occupy a seat or berth with a safety belt properly secured about him. However, a person who has not reached his second birthday may be held by an adult who is occupying a seat or berth, and a person on board for the purpose of engaging in sport parachuting may use the floor of the aircraft as a seat.

(b) This section does not apply to operations conducted under Parts 121, 123, or 127 of this chapter. Subparagraph [(a)(3)] of this section does not apply to persons subject to § 91.7.

**§ 91.15 Parachutes and parachuting.**

(a) No pilot of a civil aircraft may allow a parachute that is available for emergency

*Kempner Hall*

SEELEY LAKE SEAPLANE BASE HEARING

Lolo National Forest Testimony

~~March 15, 1985~~  
March 15, 1985

My name is Dennis Johnson. I am District Ranger on the Seeley Lake Ranger District, Lolo National Forest. I am here representing Forest Supervisor Orville Daniels. I would like to provide the following statement for the record.

An analysis conducted through the Forest Planning Process in the last few years has resulted in the proposed Lolo National Forest Plan. This is an integrated management plan that establishes direction for the entire Lolo National Forest. It was developed in compliance with the National Forest Management Act and the National Environmental Policy Act requirements. These requirements include an extensive public involvement program.

The analysis divided the lands within the Lolo National Forest into management areas according to different resource potentials and limitations. That analysis, which again included extensive public involvement, led us to conclude that National Forest lands around the Clearwater Chain of Lakes should be managed principally to provide for the heavy concentration of public recreation use occurring there. That use includes summer home and resort special use permits, developed and dispersed recreation and a youth camp. Management direction in the proposed Forest Plan for that area accommodates ~~dispersed~~ *existing* recreation, minimizes user conflicts, and provides for acceptable levels of public safety and sanitation, while protecting basic environmental resources.

To locate a seaplane base on the most popular and heavily used lake in the Clearwater Chain of Lakes is, in our opinion, in conflict with

~~the proposed management direction~~ *existing recreation use and proposed long term management direction*

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 22

DATE 032285

BILL NO. HB 354

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

I AM PAT GOODOVER, A RESIDENT OF GREAT FALLS, AND A MEMBER OF THE HOMEOWNERS ASSOCIATION AT SEELEY LAKE. I APPEAR HERE AS A PRIVATE CITIZEN IN OPPOSITION TO H B 354, ALONG WITH THE HOMEOWNERS REPRESENTED HERE, WHO HAVE FOR OVER TWO YEARS BEEN DENIED PROTECTION UNDER THE MONTANA CONSTITUTION - SEC. 3 ARTICLE II - CHAPTER 3, PART 1, SEC. 2-3-101, (103) AND (104), COPIES OF WHICH ARE SUBMITTED WITH THIS TESTIMONY, INCLUDING SUBPARAGRAPH (1) WHICH STATES THAT AN ENVIRONMENTAL IMPACT STATEMENT MUST BE PREPARED AND DISTRIBUTED AS REQUIRED BY THE MONTANA ENVIRONMENTAL POLICY ACT, TITLE 75, CHAPTER I.

H B 354 IS HERE UNDER FALSE COLORS. TO REPEAL THE NEED OF LICENSING AIRPORTS. THE LICENSURE<sup>E</sup> LAW HAS BEEN ON THE BOOKS FOR OVER 40 YEARS - AND JUST BECAUSE MONTANANS HAVE BEEN LAW-ABIDING CITIZENS FOR 40 YEARS, THE DEPT HAS HAD NO NEED TO ENFORCE THAT LICENSING. THE REAL NEED OF THE LAW NOW IS EVIDENT BECAUSE THE HOMEOWNERS OF SEELEY LAKE HAVE BEEN DENIED ITS PROTECTION, BY AN OUT OF STATE INDIVIDUAL, LOOKING FOR A TAX SHELTER IN MONTANA TO EVADE PAYING EXCESS PROFIT TAXES IN MINNESOTA, AND IN LOCATING HIS SEAPLANE BASE<sup>E</sup> IN THE PRIVATE DEEDED LAND AREA OF THE LAKE, HAS DEFIED MONTANA LAW, FORCED HIS COMMERCIAL DEVELOPMENT UPON THIS RESIDENTIAL, RECREATIONAL COMMUNITY, EFFECTIVELY CREATING SAFETY PROBLEMS, ENVIRONMENTAL PROBLEMS, ADVERSELY AFFECTING THE LIFESTYLE OF PEOPLE WHO INVESTED IN PROPERTY FOR THEIR OWN ENJOYMENT AND FOR THEIR FAMILIES AND THE

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 23  
DATE 022285  
BILL NO. HB 354

DEPT. OF COMMERCE HAS FAILED FOR 2 1/2 YEARS TO RESPOND TO THEIR CONCERNS AND FRUSTRATIONS.

SINCE 1982 WHEN THIS STARTED, THE HOMEOWNERS HAVE ASKED FOR PUBLIC HEARINGS FROM MANY STATE AGENCIES --- DEPT. OF COMMERCE, STATE LANDS, EQC, DEPT. OF NATURAL RESOURCES, PUBLIC HEALTH, WATER SAFETY PEOPLE, MISSOULA COUNTY PLANNING BOARD, COUNTY COMMISSIONERS, AND THE COUNTY ZONING BOARD.

NONE OF THESE PEOPLE WOULD ACCEPT JURISDICTION IN THIS PROBLEM -- EXCEPT WE FOUND OUT THE FISH WILDLIFE & PARKS COMMISSIONER HAD ONE OF THEIR MEETINGS SCHEDULED IN THE SPRING OF 1983. THE HOMEOWNERS WERE GIVEN THE OPPORTUNITY TO APPEAR AND HAVING HEARD THE PROBLEM, FWP ADOPTED A RESOLUTION OPPOSING ESTABLISHING THE SEAPLANE BASE IN THAT AREA. THE FOREST SERVICE CAME OUT WITH A STATEMENT IN OPPOSITION TO THIS SITE, BUT BOTH AGENCIES THEN ADVISED THAT WE HAD TO GO TO THE DEPT. OF COMMERCE, SINCE THE LAW DID NOT GIVE THEM JURISDICTION.

WE WENT TO THE DEPT. BUT GOT NO HEARING, NO SITE SELECTION HEARING, NO ENVIRONMENTAL IMPACT STUDY, NO SAFETY HEARING, NO WATER QUALITY INVESTIGATION, AND NO ASSURANCE THAT ANYTHING WOULD BE DONE TO HEED THE CONCERNS OF THE HOMEOWNERS.

THE 4TH OF JULY CONFRONTATION DEVELOPED --- YOU'VE READ ABOUT THAT -- AND STILL NO RESPONSE FROM STATE AGENCIES. FRUSTRATED AND CONCERNED, THE HOMEOWNERS HIRED LAWYERS AND SPENT MANY HOURS, DAYS, AND EXPENSE MEETING WITH LEGAL REPRESENTATIVES WHO TOOK THE CASE TO JUDGE LOBLE. THE JUDGE HEARD ALL SIDES OF THIS ISSUE STARTING IN 1983, AND ISSUED HIS DECISION ON

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 23  
DATE 032285  
BILL NO. HB 354

AUGUST 2, 1984, WITH A WRIT OF MANDATE TO THE DEPT. OF COMMERCE TO PROCEED WITH THE REQUIREMENTS OF THE LAW, WHICH IS NOW HERE BEFORE YOU TO BE REPEALED, AND TO SUBVERT THE JUDGE'S RULING.

I IMPORE YOU TO READ JUDGE LOBLE'S RULING, ESPECIALLY YOU LAWYERS ON THE COMMITTEE. YOU OTHERS SHOULD READ IT, TOO, BECAUSE YOU WILL KNOW WHY THE HOMEOWNERS ARE HERE, AND WHY THE DEPT. HAS DRAGGED ITS FEET FOR 8 MONTHS AFTER THE JUDGE MADE HIS RULING.

KEITH COLBO TOOK OVER THE DEPARTMENT IN JANUARY AND ISSUED THE NOTICE FOR A PUBLIC HEARING IN MISSOULA. HIS NOTICE WAS DATED FEBRUARY 7th AND JUDGE MC KINNON OF LEWISTOWN WAS NAMED HEARING OFFICER. THIS IS THE FIRST TIME THE HOMEOWNERS HAVE HAD AN OPPORTUNITY TO BE HEARD AS REQUIRED BY LAW. THERE STILL HAS BEEN NO ENVIRONMENTAL IMPACT STATEMENT OR SAFETY HEARINGS RELATING TO PUBLIC HEALTH, WATER QUALITY OR LIFESTYLE AND PROPERTY RIGHTS. JUST RECENTLY YOU HAVE SEEN WHERE ENVIRONMENTAL IMPACT STATEMENTS ARE REQUIRED FOR DRILLING AN OIL WELL.

I SUBMIT TO YOU THAT THE ENVIRONMENTAL IMPACT OF THIS SEAPLANE BASE IN THAT LOCATION SHOWN ON MAPS AT YOUR DESK, IS MORE DETRIMENTAL TO SEELEY LAKE THAN DRILLING AN OIL WELL ON THAT SAME SITE.

THE HEARING IN MISSOULA LAST FRIDAY AND SATURDAY BY JUDGE MC KINNON, HAS BEEN CONTINUED AND IS GOING ON HERE IN HELENA. I AGAIN ASK YOU NOT TO PASS THIS BILL WHILE JUSTICE IS BEING DONE UNDER THE LAW WHICH HAS BEEN IGNORED AND WHICH WOULD DENY

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 23

DATE 032285

HB 354



THE HOMEOWNERS THE PROTECTION THEY HAD TO SEEK THROUGH LEGAL ACTION, BECAUSE THE STATE AGENCY WOULD NOT ACT AS REQUIRED BY LAW.

HOLD THE BILL TIL JUDGE MC KINNON COMPLETES THE ON-GOING HEARING AND ISSUES HIS RULING.

YOU HAVE JUDGE LOBLE'S COMPLETE REPORT AT HAND -- READ IT -- AND AFTER JUDGE MC KINNON REPORTS, YOU WILL HAVE THE FULL STORY FROM TWO JUDGES, AND CAN DECIDE THE NEED OF HB 354, ONE WAY OR THE OTHER.

I WILL BE AVAILABLE TO ANSWER QUESTIONS.  
THANK YOU.

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 23  
DATE 032285  
BILL NO. HB 354

22. Excessive sanctions.
23. Detention.
24. Rights of the accused.
25. Self-incrimination and double jeopardy.
26. Trial by jury.
27. Imprisonment for debt.
28. Rights of the convicted.
29. Eminent domain.
30. Treason and descent of estates.
31. Ex post facto, obligation of contracts, and irrevocable privileges.
32. Civilian control of the military.
33. Importation of armed persons.
34. Unenumerated rights.
35. Servicemen, servicewomen, and veterans.

**Section 1. Popular sovereignty.** All political power is vested in and derived from the people. All government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole.

**Cross-References**

Self-government, Art. II, sec. 2, Mont. Const.  
 Right of participation in governmental affairs, Art. II, sec. 8, Mont. Const.  
 Right to know, Art. II, sec. 9, Mont. Const.  
 Right of suffrage, Art. II, sec. 13, Mont. Const.  
 General government, Art. III, Mont. Const.  
 Constitutional revision, Art. XIV, Mont. Const.  
 Government Structure and Administration, Title 2.  
 Basic political rights, Title 49, ch. 1, part 2.

**Constitutional Convention Transcript Cross-References**

Adoption, Trans. 2933, 2934.  
 Committee report, Vol. II 620, 626, 957, 962, 967, 969, 1038.  
 Cross-references, 1889 and 1972 Constitutions, Vol. II 646.  
 Debate — committee report, Trans. 1635, 1636.  
 Debate — style and drafting report, Trans. 2476, 2921.  
 Final consideration, Trans. 2627, 2628.  
 Text as adopted, Vol. II 1087.

**Section 2. Self-government.** The people have the exclusive right of governing themselves as a free, sovereign, and independent state. They may alter or abolish the constitution and form of government whenever they deem it necessary.

**Cross-References**

Popular sovereignty, Art. II, sec. 1, Mont. Const.  
 General government, Art. III, Mont. Const.  
 Local government, Art. XI, Mont. Const.  
 Constitutional revision, Art. XIV, Mont. Const.

Committee report, Vol. II 620, 626, 957, 962, 967, 969, 1038.  
 Cross-references, 1889 and 1972 Constitutions, Vol. II 646.  
 Debate — committee report, Trans. 1636.  
 Debate — style and drafting report, Trans. 2476, 2921.  
 Final consideration, Trans. 2628, 2629.  
 Text as adopted, Vol. II 1087.

**Constitutional Convention Transcript Cross-References**

Adoption, Trans. 2933, 2934.

**Section 3. Inalienable rights.** All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO

23

DATE

032285

BILL NO.

HB 354

Part 1

Notice and Opportunity to be Heard

2-3-101. **Legislative intent.** The legislature finds and declares pursuant to the mandate of Article II, section 8, of the 1972 Montana constitution

147

PUBLIC PARTICIPATION  
IN GOVERNMENTAL OPERATIONS

2-3-103

that legislative guidelines should be established to secure to the people of Montana their constitutional right to be afforded reasonable opportunity to participate in the operation of governmental agencies prior to the final decision of the agency.

History: En. 82-4226 by Sec. 1, Ch. 491, L. 1975; R.C.M. 1947, 82-4226.

2-3-102. **Definitions.** As used in this part, the following definitions apply:

(1) "Agency" means any board, bureau, commission, department, authority, or officer of the state or local government authorized by law to make rules, determine contested cases, or enter into contracts except:

- (a) the legislature and any branch, committee, or officer thereof;
- (b) the judicial branches and any committee or officer thereof;
- (c) the governor, except that an agency is not exempt because the governor has been designated as a member thereof; or
- (d) the state military establishment and agencies concerned with civil defense and recovery from hostile attack.

(2) "Rule" means any agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule but does not include:

- (a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public; or
- (b) declaratory rulings as to the applicability of any statutory provision or of any rule.

(3) "Agency action" means the whole or a part of the adoption of an agency rule, the issuance of a license or order, the award of a contract, or the equivalent or denial thereof.

History: En. 82-4227 by Sec. 2, Ch. 491, L. 1975; amd. Sec. 23, Ch. 285, L. 1977; amd. Sec. 1, Ch. 452, L. 1977; R.C.M. 1947, 82-4227(part); amd. Sec. 1, Ch. 243, L. 1979.

2-3-103. **Public participation — governor to insure guidelines adopted.** (1) Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures shall assure adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public.

(2) The governor shall insure that each board, bureau, commission, department, authority, agency, or officer of the state adopts coordinated rules for its programs, which guidelines shall provide policies and procedures to facilitate public participation in those programs, consistent with subsection (1) of this section. These guidelines shall be adopted as rules and published in a manner which may be provided to a member of the public upon request.

History: En. 82-4228 by Sec. 3, Ch. 491, L. 1975; amd. Sec. 24, Ch. 285, L. 1977; amd. Sec. 2, Ch. 452, L. 1977; R.C.M. 1947, 82-4228(1), (5).

Cross-References

Right of public participation in government,  
Art. II, sec. 8, Mont. Const.

Adoption of rules, 2-4-302.

Publication of rules — availability, 2-4-312.

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**2-3-104. Requirements for compliance with notice provisions.** An agency shall be considered to have complied with the notice provisions of 2-3-103 if:

- (1) an environmental impact statement is prepared and distributed as required by the Montana Environmental Policy Act, Title 75, chapter 1;
- (2) a proceeding is held as required by the Montana Administrative Procedure Act;
- (3) a public hearing, after appropriate notice is given, is held pursuant to any other provision of state law or a local ordinance or resolution; or
- (4) a newspaper of general circulation within the area to be affected by a decision of significant interest to the public has carried a news story or advertisement concerning the decision sufficiently prior to a final decision to permit public comment on the matter.

History: En. 82-4228 by Sec. 3, Ch. 491, L. 1975; amd. Sec. 24, Ch. 285, L. 1977; amd. Sec. 2, Ch. 452, L. 1977; R.C.M. 1947, 82-4228(2).

**Cross-References**

Montana Administrative Procedure Act —  
proceedings, 2-4-302, 2-4-306, 2-4-601.

**2-3-105. Supplemental notice by radio or television.** (1) Any official of the state or any of its political subdivisions who is required by law to publish any notice required by law may supplement such publication by a radio or television broadcast of a summary of such notice or by both of such broadcasts when in his judgment the public interest will be served.

(2) The summary of such notice shall only be read with no reference to any person by name then a candidate for political office.

(3) Such announcements shall be made only by duly employed personnel of the station from which such broadcast emanates.

(4) Announcements by political subdivisions may be made only by stations situated within the county of origin of the legal notice unless no broadcast station exists in such county, in which case announcements may be made by a station or stations situated in any county other than the county of origin of the legal notice.

History: En. Sec. 1, Ch. 149, L. 1963; R.C.M. 1947, 19-201.

**2-3-106. Period for which copy retained.** Each radio or television station broadcasting any summary of a legal notice shall for a period of 6 months subsequent to such broadcast retain at its office a copy or transcription of the text of the summary as actually broadcast, which shall be available for public inspection.

History: En. Sec. 2, Ch. 149, L. 1963; R.C.M. 1947, 19-202.

**2-3-107. Proof of publication by broadcast.** Proof of publication of a summary of any notice by radio or television broadcast shall be by affidavit of the manager, an assistant manager, or a program director of the radio or television station broadcasting the same.

History: En. Sec. 3, Ch. 149, L. 1963; R.C.M. 1947, 19-203.

**Cross-References**

Affidavits — generally, Title 26, ch. 1, part  
10.

Affidavit defined, 26-1-1001.

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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF MONTANA, IN AND FOR THE COUNTY OF LEWIS AND CLARK

\*\*\*\*\*

SEELEY LAKE HOMEOWNERS'  
ASSOCIATION, a Montana  
nonprofit corporation,

Plaintiff,

vs.

LEWIS W. LINDEMER, STAKE, INC.,  
a Montana corporation,  
individually and doing business  
as LINDEY'S PRIME STEAK HOUSE;  
LINDEY'S, INCORPORATED, a  
Minnesota corporation; MONTANA  
DEPARTMENT OF COMMERCE; MONTANA  
DEPARTMENT OF HEALTH AND  
ENVIRONMENTAL SCIENCES; and  
MONTANA DEPARTMENT OF STATE  
LANDS,

Defendants.

No. 49580

PEREMPTORY WRIT OF MANDATE

*Aug 2, 1984*

\*\*\*\*\*

TO THE MONTANA DEPARTMENT OF COMMERCE:

You are hereby ordered, directed and mandated by this court to forthwith and immediately enforce, undertake, and discharge your duties and responsibilities under the provisions of Title 67, M.C.A. concerning "Airport Licensing," and in particular Sections 67-3-301 through 67-3-306 inclusive, as well as 67-3-501 M.C.A., plus all other statutes and regulations regarding licensing and operation of airports, restricted landing areas or other air navigation facilities.

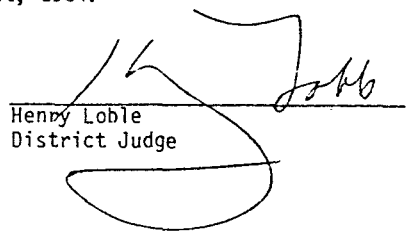
This mandate is specifically concerned with the seaplane base known as "Lindey's Landing West" at Seeley lake, Montana, and is to be construed in light of this court's opinion, memorandum of decision and order issued on August 2<sup>nd</sup>, 1984, to which reference is hereby made with the same force and effect as if the same were fully set forth herein, and a copy of which is hereto attached.

This peremptory writ of mandate is made and issued because in the case of

1 said seaplane base, it manifestly appears that you have failed to enforce and  
2 discharge the clear legal duties mandated to you by the airport licensing  
3 statutes above referred to.

4 Further, if an application for a certificate of approval of said seaplane  
5 base is made to you which reasonably complies with Section 67-3-301 M.C.A.,  
6 you are directed to receive and process same under the applicable statutes  
7 above referred to for the purpose of ascertaining and ensuring that said  
8 property and its use conform to minimum standards of safety and serve the  
9 public interest.  
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11 DATED this 2<sup>nd</sup> day of August, 1984.

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Henry Loble  
District Judge

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF MONTANA, IN AND FOR THE COUNTY OF LEWIS AND CLARK

\* \* \* \* \*

SEELEY LAKE HOMEOWNERS'  
ASSOCIATION, a Montana  
nonprofit corporation,

Plaintiff,

vs.

LEWIS W. LINDEMER, STAKE, INC.,  
a Montana corporation,  
individually and doing business  
as LINDEY'S PRIME STEAK HOUSE;  
LINDEY'S, INCORPORATED, a  
Minnesota corporation; MONTANA  
DEPARTMENT OF COMMERCE; MONTANA  
DEPARTMENT OF HEALTH AND  
ENVIRONMENTAL SCIENCES; and  
MONTANA DEPARTMENT OF STATE  
LANDS,

Defendants.

No. 49580

OPINION, MEMORANDUM OF  
DECISION, AND ORDER

\* \* \* \* \*

This Opinion, Memorandum of Decision, and Order is made pursuant to Rule  
52 (a) Montana Rules of Civil Procedure which states in part as follows:

"If an opinion or memorandum of decision is filed,  
it will be sufficient if the findings of fact and  
conclusions of law appear therein."

Pursuant to this court's Orders of April 25 and May 18, 1984, the  
plaintiff has filed its motion for a summary judgment against the defendant  
Montana Department of Commerce. The motion was orally argued before the court  
on July 31, 1984. Appearing on behalf of the plaintiff and in support of the  
motion were Michael B. Anderson, Esq., and Kenneth R. Dyrud, Esq. Appearing  
on behalf of the defendant, Montana Department of Commerce, was Raymond W.  
Brault, Esq. Mr. Lewis W. Lindemer was present in court and was given an  
opportunity to speak but stated that neither he nor his counsel felt there was  
any necessity for them to address the court on this subject. All of the  
parties were given an opportunity to file their views in the form of briefs,  
or proposed findings but only the plaintiff submitted proposed findings, and  
only the plaintiff and the defendant Department submitted briefs. No other

FILED

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CLARA DELMONTE  
CLERK OF DISTRICT COURT

DARLENE K. GALLAGHER

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1 parties submitted anything whatsoever to the court on this issue.

2 At the same time and place, the defendant Department of Commerce,  
3 hereinafter called "Department" presented and argued its "MOTION FOR LEAVE TO  
4 PRESENT ORAL TESTIMONY." This motion was denied by the court. The Department  
5 has had ample opportunity under Rule 56, M.R. Civ. P. to present testimony to  
6 the court for consideration under the motion for summary judgment. This could  
7 have been done by affidavit, deposition, interrogatories, or other form of  
8 discovery at any time since the filing of the action on July 26, 1983. The  
9 Department chose not to present any such testimony. It had no need for court  
10 permission to do so. The Department argued that it thought the court's  
11 previous orders foreclosed it from presenting further facts. However, this is  
12 clearly not the ruling of the court in either of its previous orders. In both  
13 orders the court referred to "the facts as they appeared at that time," and  
14 the action was expressly not stayed as to the Department of Commerce.

15 Rule 56 (e) states, in part, as follows:

16 "When a motion for summary judgment is made and supported  
17 as provided in this rule, an adverse party may not rest  
18 upon the mere allegations or denials of his pleadings, but  
19 his response, by affidavits, or as otherwise provided in  
20 this rule, must set forth specific facts showing that  
there is a genuine issue for trial. If he does not so  
respond, summary judgment, if appropriate, shall be  
entered against him."

21 See Shimsky v. Valley Credit Union, \_\_\_ Mont. \_\_\_, (February, 1984) 41 St.  
22 Rptr. 258, 262; Krone v. McCann (Mont. 1982), 638 P.2d 397, 399-400, 39 St.  
23 Rptr. 1013. Our court has said:

24 "Once the movant has established that no material issues  
25 of fact exist, the burden shifts to the opposing party  
to raise an issue of fact."

26 This burden has not been satisfactorily assumed by the Department.

27 The undisputed facts as established and set forth in the pleadings,  
28 discovery processes, hearings upon the issue of temporary injunction, the  
29 briefs of the parties, and the record as a whole, clearly establishes that the  
30 plaintiff is entitled to summary judgment against the Department. There are  
31 no material questions of fact which have not been resolved. Under the  
32 authority of Shimsky this is a case in which the facts are uncontested for the



1 purposes of this order, and summary judgment is entirely proper and  
2 appropriate.

3 The Court specifically adopts the facts set forth in its order of April  
4 25, 1984, page 2, line 23 to the end of the page and on page 3, lines 1  
5 through 21, which reads as follows:

6 "The defendants Lindey, either some or all of them,  
7 have established a seaplane base or airport known as  
8 "Lindey's Landing West" on the southeast end of Seeley Lake.  
9 The perimeters of an area of water have been designated for  
10 pontoon equipped aircraft to land, take off and taxi. The  
11 defendants Lindey have represented and advertised Lindey's  
12 Landing West as an existing, approved, seaplane facility  
13 with landing and take off area, communication facilities,  
14 dockage and fuel facilities. The defendants Lindey have  
15 solicited use of the facility through advertisements and  
16 caused it to be designated as a seaplane base on  
17 navigational charts. Seaplanes have landed there and have  
18 used the defendants' Lindey fuel facility and their other  
19 facilities for seaplanes, and the defendants Lindey have  
20 encouraged and solicited such use of the seaplane base.  
21 Seeley Lake is a congested vacation and recreational area  
22 during certain times in certain months of the year, with  
23 many boats operating upon it, together with water-skiing,  
24 swimming and fishing activities. There have been incidents  
25 where the plaintiff and others have felt that a safety  
26 hazard occurred through the operation of seaplanes in and  
27 out of this crowded lake. Several governmental agencies,  
28 such as the United States Forest Service and the Montana  
29 Fish, Wildlife and Parks, have expressed concern about  
30 safety under the circumstances. The Missoula County  
31 Commissioners requested the Department of Commerce to take  
32 action '...over the problems resulting from aircraft  
attempting to land on a lake heavily used by boaters, water  
skiers and anglers,' but the Department failed to do so.  
The above facts point to jurisdiction of the Department of  
Commerce as concerns airport licensing and airport control  
as set forth in Part 3, Chapter 3, Title 67, M.C.A. Among  
other things, it appears to be the responsibility of the  
Department of Commerce to see to it that those operating an  
airport '... ensure that the property and its use conform to  
minimum standards of safety and serve the public interest.'  
Seeley Lake seaplane base is such an airport.

25 The defendant Department admits that it has not licensed the airport  
26 facility at Seeley Lake, nor has it licensed any other facility in Montana.  
27 The Department has never sought to enforce any provisions of Title 67, Montana  
28 Code Annotated. The court repeats the wording in its order of April 25, 1984,  
29 page 4, line 18 to the end of the page, page 5, line 1 through 26, as follows:

30 "Section 67-3-301, M.C.A., provides, in part, that all  
31 airports (including Seeley Lake seaplane base)'... shall  
32 be first licensed by the Department (of Commerce) before  
they are used or operated.... It is unlawful... for  
a person to operate an airport... for which an annual  
license has not been issued by the Department (of  
Commerce).'

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1 "The standards given to the Department of Commerce for  
2 consideration in granting or denying the license are set  
forth in Section 67-3-303, M.C.A., which reads as follows:

3 Standards--certificates and licenses. In  
4 determining whether to issue a certificate of  
5 approval or license for the use or operation of a  
6 proposed airport or restricted landing area, the  
7 department shall take into consideration its  
8 proposed location, size, and layout; the relation-  
9 ship of the proposed airport or restricted landing  
10 area to a comprehensive plan for statewide and  
11 national development; whether there are safe areas  
available for expansion purposes; whether the ad-  
joining area is free from obstructions based on a  
proper glide ratio; the nature of the terrain; the  
nature of the uses to which the proposed airport or  
restricted landing area will be put; and the  
possibilities for future development.

12 "The Department of Commerce is given ample enforcement  
13 authority. See Section 67-2-501 which gives the department  
14 general police powers and enables it to enforce its  
15 authority '...by injunction in the courts of this  
16 state.'

17 "The court has carefully read the brief of the  
18 Department of Commerce and is not persuaded the Department  
19 can ignore a controversy wherein its mandate is so clearly  
20 defined.

21 "This court has a duty to the public to require the  
22 enforcement of the laws of this state by agencies given  
23 that duty.

24 "Defendant Department of Commerce has been requested  
25 by the Missoula County Commissioners to take action at  
26 Seeley Lake seaplane base and to undertake its lawful  
27 responsibilities. The department has ignored this request.  
28 The plaintiff asked the department to issue an airport  
29 license; and was told that notwithstanding the law the  
30 department had never issued airport licenses, nor followed  
31 the licensing procedures imposed upon it by the law, and  
32 didn't intend to start with Lindey's Landing West.

"The Department of Commerce has offered no valid  
reason why it should be excused from exercising the  
mandatory duties required of it in the licensing and  
control of airports. The statutes appear to have been  
written and enacted by the legislature to provide a means  
of solving precisely the sort of problem that currently  
exists on Seeley Lake."

This court is convinced that had the Department assumed its  
responsibilities under the law, much, if not all of the controversy which has  
occurred at Seeley Lake could have been avoided. The legislature intended to  
provide an administrative forum for the resolution of issues such as those

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1 presented at Seeley Lake. It is apparent to the court that the principal  
2 reason the Department has not discharged its duties under the law is because  
3 it never has done so; it never has held any hearings under the applicable  
4 statutes, and it doesn't propose to do so at this time.

5 The Department also argues that the Federal Aviation Agency has usurped  
6 the law relating to the use of air space, thus preempting the field to the  
7 federal government and denying state authority as far as licensing of airports  
8 is concerned. The court specifically rejects this argument. Under the  
9 sovereign attributes of statehood, a state may enact regulations affecting the  
10 operation of aircraft, in the exercise of its police power and in the interest  
11 of public welfare and safety. See the annotation in 36 ALR 3rd 1314, 1316.  
12 In that annotation it is also stated:

13 "A town ordinance which prohibited seaplanes from taking  
14 off or landing upon any portion of the channel system of  
15 the town, except in emergency situations, was held to be a  
16 proper exercise of the town's police power, having in mind  
17 the safety of its residents, to prohibit air traffic upon  
18 its channels, in People v. Altman (1969) 61 Misc 2d 4, 304  
19 NYS 2d 534, the court finding the defendant guilty of  
20 violating the ordinance." (p 1317)

21 In this case, the court sees no burden being placed upon interstate commerce  
22 by the Department assuming its duties under Title 67, M.C.A., pertaining to  
23 airport licensing. It is said on page 1315 of 36 ALR 3d:

24 "Thus, federal and state governments, endeavoring to adjust  
25 private rights and harmonize conflicting interests by  
26 comprehensive statutes for the public welfare, have  
27 undertaken to meet the problems growing out of the use of  
28 aircraft and rapid development of modern air travel and  
29 transportation, by the enactment of statutes regulating,  
30 or creating administrative bodies with authority to  
31 regulate, air traffic. The jurisdiction of the sovereign  
32 states to control the airspace above their territories  
rests on the necessity of the self-protection which is an  
attribute of sovereignty. The authority of the various  
states is circumscribed by that of the Federal Government  
in this respect, but the states, in the exercise of the  
police power, may, in the interests of the public welfare  
and the safety of those on land, enact regulations  
affecting the operation of aircraft.

Likewise, the Department's contention that Seeley Lake is "navigatable"  
and thus exempt from regulation by this state is rejected by the court.

This court has jurisdiction over the parties and over this controversy.  
Title 67, M.C.A., gives defendant department jurisdiction over airports and

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1 other facilities, as is set forth in said statutes and in particular Sections  
2 67-3-301 through 67-3-306, M.C.A., inclusive. The Department is required  
3 under the terms of the Airport Licensing Laws in question to discharge  
4 certain enforcement duties with respect to facilities such as this seaplane  
5 base and its activities, all of which are the subject of this controversy.  
6 The Seeley Lake Seaplane Base of Defendants Lindemer is a facility governed  
7 by the operation of Section 67-3-301, M.C.A. In determining whether to issue  
8 a certificate of approval or license for the Seeley Lake Seaplane Base, the  
9 standards to be applied by the Department are as set forth in Section 67-3-  
10 303, M.C.A. The Department has a clear legal duty to enforce the provisions  
11 of Sections 67-3-301, et seq. regarding issuance of a certificate of approval  
12 or license. The Department is given enforcement powers under Section 67-2-  
13 501, M.C.A. Both the plaintiff, the Defendants Lindey, and the Missoula  
14 County Commissioners have requested the Department to discharge its clear  
15 legal duties under the applicable statutes above referred to, but the  
16 Department has refused so to do. This refusal is in violation of the  
17 Department's clear legal duty to enforce and assist in the enforcement of  
18 Title 67, M.C.A. and any and all rules which may have been adopted pursuant  
19 thereto. These statutes are mandatory in nature, insofar as the Department is  
20 required to follow them and is obligated to enforce them. The court, is not,  
21 of course, attempting in any way, to control the discretion of the Department  
22 of Commerce, but the Department has no discretion to completely ignore the  
23 applicability of these statutes in this case. The Department cannot be  
24 excused in the non-performance of its enforcement and licensing  
25 responsibilities where matters of public health, welfare and safety are  
26 involved. The acts of enforcement directed to be performed by the Department  
27 are acts which the law specially enjoins as a duty resulting from the  
28 Department's status as an administrative and executive office of the State of  
29 Montana. It is not the purpose nor intent of this court, however, to control  
30 the discretion of the Department in such matters as may be discretionary with  
31 it while going about the enforcement of the statutes in question.  
32

1 The plaintiff does not have a plain, speedy and adequate remedy in the  
2 ordinary course of law.

3 The plaintiff is entitled to have and recover from the defendants its  
4 attorney fees, together with its costs herein expended in accordance with law.  
5 The amount of attorneys fees will be set by the court upon application by the  
6 plaintiff and after hearing of which notice is duly and regularly given to the  
7 defendant Department. Costs may be recovered in the same manner as costs in  
8 other actions.

9 A peremptory writ of mandamus shall enter herein.

10 IT IS SO ORDERED.

11 DATED this 2<sup>nd</sup> day of August, 1984.

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14 Henry Loble  
District Judge  
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DATE 032285

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TOWN OF  
SEELEY  
LAKE

Private deeded land and homes

FISHING  
BOATING  
RAFTS  
INNERTUBES  
SAILBOATS  
SWIMMERS  
SNORKELERS  
WATER SKIING

marina  
pump

HAS HAD  
GASOLINE  
SPILLS  
WATER

Seaplane  
Dock

Steakhouse

2 - 1000 gal  
gas tank

Private deeded land and homes

y GOODOVER

MOST CONGESTED AREA OF SEELEY LAKE

SEELEY LAKE SEAPLANE BASE HEARING

Lolo National Forest Testimony

~~March 15, 1985~~ March 15, 1985 MISSOULA, (Y)T.

My name is Dennis Johnson. I am District Ranger on the Seeley Lake Ranger District, Lolo National Forest. I am here representing Forest Supervisor Orville Daniels. I would like to provide the following statement for the record.

An analysis conducted through the Forest Planning Process in the last few years has resulted in the proposed Lolo National Forest Plan. This is an integrated management plan that establishes direction for the entire Lolo National Forest. It was developed in compliance with the National Forest Management Act and the National Environmental Policy Act requirements. These requirements include an extensive public involvement program.

The analysis divided the lands within the Lolo National Forest into management areas according to different resource potentials and limitations. That analysis, which again included extensive public involvement, led us to conclude that National Forest lands around the Clearwater Chain of Lakes should be managed principally to provide for the heavy concentration of public recreation use occurring there. That use includes summer home and resort special use permits, developed and dispersed recreation and a youth camp. Management direction in the proposed Forest Plan for that area accommodates ~~dispersed~~ *existing* recreation, minimizes user conflicts, and provides for acceptable levels of public safety and sanitation, while protecting basic environmental resources.

To locate a seaplane base on the most popular and heavily used lake in the Clearwater Chain of Lakes is, in our opinion, in conflict with ~~the proposed long term management direction~~ *existing recreation use and proposed long term management direction.*

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(This sheet to be used by those ~~testifying~~ on a bill.)

NAME: Albert Polson  
Grace Polson DATE: 3-22-85

ADDRESS: Box 410 Polson Mt

PHONE: 883-4656

REPRESENTING WHOM? Self-

APPEARING ON WHICH PROPOSAL: H-423

DO YOU: SUPPORT? X AMEND?        OPPOSE?       

COMMENT:       

Please Support H.B. 423-

Pilots are regulated by

Federal Air Regulations on

A-L Surfaces of the earth

Seaplanes have used Montana

waters since 1913 - Newspaper  
article - Polson Mt.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 24

DATE 032285

BILL NO. HB 423

NAME: Elizabeth Timm DATE: 3-22-85

ADDRESS: Box 516, Palson, N.J. 59860

PHONE: 883-5193

REPRESENTING WHOM? Seaplane pilots  
Seaplanes, and general aviation

APPEARING ON WHICH PROPOSAL: HB 423

DO YOU: SUPPORT? ✓ AMEND?        OPPOSE?       

COMMENT: On behalf seaplanes, I support  
the bill.

On behalf of spray pilots, I  
support there need to use highway  
at times in a safe manner. This  
will help our state economy, as well  
as, provide for spray pilots needs.

Note: Most of those Seely people are  
members of the Seely, Homeowners, Inc.  
Their purpose in the Inc. is to prevent  
Seaplane activity.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 25

DATE 032285

BILL NO. HB 423

(This sheet to be used by those testifying on a bill.)

NAME: HENRY I JOHNSON DATE: MAR 22 '85

ADDRESS: Box 36 PABLO, MT, 59855

PHONE: 675-2221

REPRESENTING WHOM? SELF

APPEARING ON WHICH PROPOSAL: 423

DO YOU: SUPPORT? X AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENT: THIS WOULD BE VERY HELPFUL FOR SKOP-SPRAYING.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 26

DATE/ 032285

BILL NO. HB 423

**§ 91.9 Careless or reckless operation.**

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

**§ 91.10 Careless or reckless operation other than for the purpose of air navigation.**

No person may operate an aircraft other than for the purpose of air navigation, on any part of the surface of an airport used by aircraft for air commerce (including areas used by those aircraft for receiving or discharging persons or cargo), in a careless or reckless manner so as to endanger the life or property of another.

**§ 91.11 Liquor and drugs.**

(a) No person may act as a crewmember of a civil aircraft—

(1) Within 8 hours after the consumption of any alcoholic beverage;

(2) While under the influence of alcohol; or

(3) While using any drug that effects his faculties in any way contrary to safety.

(b) Except in an emergency, no pilot of a civil aircraft may allow a person who is obviously under the influence of intoxicating liquors or drugs (except a medical patient under proper care) to be carried in that aircraft.

**§ 91.12 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.**

(a) Except as provided in paragraph (b) of this section, no person may operate a civil aircraft within the United States with knowledge that narcotic drugs, marihuana, and depressant or stimulant drugs or substances as defined in Federal or State statutes are carried in the aircraft.

(b) Paragraph (a) of this section does not apply to any carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances authorized by or under any Federal or State statute or by any Federal or State agency.

**§ 91.13 Dropping objects.**

No pilot in command of a civil aircraft may allow any object to be dropped from that aircraft in flight that creates a hazard to persons or property. However, this section does not prohibit the dropping of any object if reasonable precautions are taken to avoid injury or damage to persons or property.

**§ 91.14 Use of safety belts.**

[(a) Unless otherwise authorized by the Administrator—

[(1) No pilot may take off a U.S. registered civil aircraft (except a free balloon that incorporates a basket or gondola and an airship) unless the pilot in command of that aircraft ensures that each person on board is briefed on how to fasten and unfasten that person's safety belt.]

[(2)] No pilot may take off or land a U.S. registered civil aircraft (except free balloons that incorporate baskets or gondolas and airships) unless the pilot in command of that aircraft ensures that each person on board has been notified to fasten his safety belt.

[(3)] During the takeoff and landing of U.S. registered civil aircraft (except free balloons that incorporate baskets or gondolas and airships) each person on board that aircraft must occupy a seat or berth with a safety belt properly secured about him. However, a person who has not reached his second birthday may be held by an adult who is occupying a seat or berth, and a person on board for the purpose of engaging in sport parachuting may use the floor of the aircraft as a seat.

(b) This section does not apply to operations conducted under Parts 121, 123, or 127 of this chapter. Subparagraph [(a)(3)] of this section does not apply to persons subject to § 91.7.

**§ 91.15 Parachutes and parachuting.**

(a) No pilot of a civil aircraft may allow a parachute that is available for emergency

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"III. AIRPORT LICENSING (1) Applications for licensing of airports and restricted landing areas, required to be licensed under 67-3-301, MCA, shall be made upon forms provided by the department, and shall be accompanied by the license fee of \$1.00 as provided by 67-3-101, MCA.

(2) Upon receiving the licensing application and fee, the department shall conduct an inspection which shall take into consideration whether the facility is serving the public convenience and necessity in a safe and efficient manner; whether or not discrimination is practiced; whether the appropriate FAR Part 77 standards relative to imaginary surfaces are obstruction free; whether or not all things affecting the safety and efficiency of the airport are being operated and/or maintained in accordance with reasonable, effective, and applicable standards. A determination will be made by the division of the appropriate class to which an airport will be assigned. A license issued under the provisions herein shall expire one year from the date of issuance. Licenses issued under these rules will be prominently displayed at the airport."

Auth: 67-2-102, MCA Imp: 67-3-101 (3), 104, 301, 303, MCA

"IV. SEAPLANES AND FLOAT PLANES (1) Seaplanes utilizing public waters on which to land, take off, and taxi shall comply with appropriate United States Federal Aviation Administration and United States Coast Guard regulations, as well as those regulations which may be set forth by other appropriate authorities or enforcement agencies for boats or vessels, which are deemed appropriate for seaplane/boat safety while operating on such public waters."

Auth: 67-2-102, MCA Imp: 67-3-304, MCA

"V. INSPECTION (1) Aeronautics division personnel shall be permitted at any time to make such inspections as deemed necessary to determine compliance with Montana Codes Annotated and these rules."

Auth: 67-2-102, MCA Imp: 67-3-105, 304, MCA

"VI. REVOCATION (1) The department may temporarily or permanently revoke a certificate of approval or license issued by it when it determines that an airport or restricted landing area fails to meet safety standards; is practicing discrimination; or is not being maintained or used in accordance with the provisions of the Montana aeronautics code and these rules."

Auth: 67-2-102, MCA Imp: 67-3-104, 304, MCA

"VII. PUBLIC HEARINGS (1) The department may, in its discretion, hold a public hearing before making an order granting or denying a certificate of approval or original

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