

MINUTES OF THE MEETING  
JUDICIARY COMMITTEE  
50TH LEGISLATIVE SESSION  
HOUSE OF REPRESENTATIVES

February 6, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on February 6, 1987, at 8:00 a.m. in Room 312 D of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Rapp-Svrcek who was absent.

HOUSE BILL NO. 212: Rep. Hanson, District No. 100, sponsor, and HOUSE BILL NO. 219, Rep. Holliday, District No. 31, sponsor, held both bills in hearing at the same time. Rep. Holliday stated because of the hardships caused by the risk of possible suits brought against a sponsoring organization, the sport of rodeo, as some of us know it, is becoming extinct. Data shows that nearly \$100,000.00 is spent within Montana during rodeos, plus another \$100,000.00 in purse money for a total circulation of nearly \$200,000.00 throughout the summer. Every rodeo association from Little Britches to the PRCA are experiencing a decline in approved rodeos because of both prohibitive cost and inavailability of insurance coverage. She submitted written testimony. (Exhibit A). HB #212 grants immunity for personal injury and property damage to certain rodeos, jackpot roping, rodeo schools, and horse shows. HB 219 limits the civil liability of nonprofit organizations for injuries suffered by contestants in sponsored amateur rodeo events. Rep. Holliday submitted the Articles, By-Laws and Official Rodeo Rules (Exhibit B), and the entry form from the National Old Timers Rodeo Association (Exhibit C). She further stated that she offers full support for HB 212.

PROPOSERS: LES GRAHAM, supported both House Bills stating that Rodeos are Montana's largest spectator sport and these types of bills are needed.

DARRELL HANSON, a member of the National Rodeo Association, supported both bills.

GINGER DECOCK, member of the National Rodeo Association, supported this type of legislation.

JUDY WAGNER, owner of a roping school, stated that liability is too high and both bills are needed.

SHIRLEY PARK, Montana Rodeo Association, high school level, supported both bills and submitted a letter from Mr. Robert

Haugland, State Director and National High School Rodeo Director for Montana. (Exhibit D). He stated these bills would help the rodeo schools and horse shows on tort immunity and civil liability.

BLAKE RUNNING, Rodeo Association, pointed out that rodeos are very important to the tourist trade. He supported both bills.

WAYNE MORFORD, representing private arena individuals and the Sage Riders Horse Club, stated he supported both bills and submitted eight pages of signatures in support of both bills. (Exhibit E-L).

BILL WILLIAMS, Vice-President of the Local Roping Club and Vice-President of the Rodeo Club, supported legislation of both bills.

CAROL MOSHER, Montana Cattlewomen, submitted written testimony on HB 212, (Exhibit M), stating this type of thing affects many of their families and they think this bill might offer some help. She also submitted written testimony on HB 219 (Exhibit N), stating they must all learn to be responsible for their own actions.

OPPONENTS: KARL ENGLAND, Montana Trial Lawyers, stated it was important that everyone understood the current of the duty imposed upon the proponents of the bills and the changes the bills would make on the law. Negligence is a very flexible concept and the definition of negligence is a failure to do what is reasonable under the circumstances. The cause of action in negligence is somebody that has failed to do what is reasonable under the circumstances which then causes an injury. A person who sponsors a rodeo, or similar type of activity, has, under the current law, an obligation to do whatever a reasonable person would do under the circumstances. That is the only obligation they have. They simply have to supply the facilities which are reasonable under the circumstances. The participants of the rodeo would have reason to know what they are doing is dangerous and, by doing it, assume the risk. The rising amount of insurance causes the people to suffer. His chief concerns are: 1) the bills are devising a new standard and they do not know what the new standard is. The gross negligent standard in HB 212 is used primarily in criminal law and the wilful and wanton standard in HB 219 is something that is used in the Federal system but not used much in Montana. 2) if the bills are the result of the high cost of insurance, then they must be responsible and mandate that as a result of their actions that the insurance costs come down.

There were no further opponents.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NOS. 212 AND 219:  
Rep. Darko asked Rep. Holliday if the insurance companies have said that with the passage of these bills, the rates will be frozen. Rep. Holliday stated there has not been any indication of lower rates. Rep. Darko asked her if there are any other states with this type of legislation and Rep. Holliday stated the state of Wyoming has it.

Rep. Bulger asked Mr. England if there are more problems underlined than just insurance. Mr. England stated the rodeo people do not have a list of serious problems. They have insurance rates that are too high. In fact, their insurance has gone up over 1,000%. Rep. Eudaily stated that it appeared that section 1 is the problem area and asked Rep. Hanson why they lumped everything together. Rep. Hanson pointed out that all activities take place in an arena and the primary concern is in this area. She also wanted cutting horses included in the bill.

Rep. Hanson closed the hearing by stating she believed HB 212 was simply asking for a clear definition of rodeo activities that take place. She urged support for the bill so that a sport that is Montana at its best, is not eliminated. She further stated she supported HB 219 wholeheartedly.

Rep. Holliday closed the hearing on HB 219.

HOUSE BILL NOS. 146 AND 286: Rep. Spaeth, District No. 84, sponsor, stated these bills dealt with irrigation and irrigation ditches and the liability that has arisen as a result of some of the problems encountered in the last few years. Rep. Spaeth pointed out that in HB 146, directors, officers, and other employees of private irrigation ditch operators, corporations, companies, and organizations are not civilly liable for actions and omissions within the course and scope of their employment of position, except as provided in subsection (5). The new section of the bill states this act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act. HB 286 states that an irrigation district or private person or entity owning or operating irrigation ditches, must keep irrigation ditches in good general repair and condition, but has no duty to:

- 1) erect fences;
- 2) install grates or other protective devices where a ditch goes underground or under a bridge or other object; or
- 3) prevent access to ditches by persons or animals.

He submitted an amendment to HB 286. (Exhibit A).

PROPOSERS: DEAN HALL, Superintendent of the Billings Bench Water Association, and a director of the Montana Water Development Association, stated the Billings Bench Water Association is a private non-profit corporation which was established for the purpose of providing irrigation water to its shareholders. They began to supply water in the early 1900's and there are 27,000 acres encompassed within the system that has water rights. Due to the ditch company's increased exposure by way of city growth and the liberality of the court systems, they find themselves without insurance coverage for the first time this year. He urged support for these liability bills and he submitted written testimony. (Exhibit B).

JERRY NYPEN, representing Greenfields Irrigation District and Montana Water Development Association, stated that Montana irrigators are being faced with an increasing burden of responsibility for accidents in and around their facilities - accidents involving inadvertent events not controllable by irrigators, such as drownings and physical harm to trespassers, seepage, and unpredictable washouts. He pointed out that he would like to see waterways and structures less exposed to the public, but the cost of doing so is astronomical. Undue burden placed on the irrigators by the public who choose to house and recreate along irrigation facilities is unjustified. He submitted written testimony. (Exhibit C).

ED LENHARDT, President and Director of the High Ditch Company, supported both bills.

LORENTERS GROSFIELD, Montana Association of Conservation Districts, stated the liability addressed in these bills are beyond the control of the ditch companies. He urged support of both bills especially because water rights are constitutionally guaranteed.

GINGER DECOX, representing Wives and Woman Involved in Farm Economics, stated she is in support of both of the bills.

RONALD SCHOFIED, Manager of the Helena Valley Irrigation District, pointed out that these bills are reasonable and make common sense. Irrigation ditches are planned, constructed, operated and maintained for the purpose of transporting water for irrigation, period! He stated the purpose of irrigation ditches is not for boating, swimming, jogging, dump sites, dog training, ATV or motorcycle courses or such uses; other than transportation of irrigation water. He urged support. He submitted written testimony. (Exhibit D).

DUANE CALVIN, Manager of the Huntley Project Irrigation District, Ballantine, stated it would seem that at times many of us are living outside of reality, in that, we expect far more than is economically or even physically possible. This seems to be especially true when it comes to our expectations concerning irrigation ditches. HB 286 is a clear definition of what are and are not our duties and responsibilities. He submitted written testimony. (Exhibit E).

MARK ETCHART, stated he supported both bills because they are so important to Montana.

R. A. ELLIS, Commissioner of the Helena Water District and Director of the Montana Water Development Association, stated that they were recently notified that there will be no more liability insurance for their directors. They support both bills.

MONTANA CATTLEMEN'S ASSOCIATION INTERNATIONAL, submitted written testimony. (Exhibit F). They stated this is one of the most timely and appropriate bills that will come before the committee. In the uncertain legal climate in which all Montanans now live, a law to clarify the duties and liabilities of ditch owners could not be more welcome. Irrigation water is the lifeblood of a majority of Montana ranching operations. Irrigation could be considered the largest source of new wealth and basic economic activity in the state. They urge a "do pass" on HB 286 and hope this important legislation receives the support of the necessary two-thirds on the House Floor.

OPPONENTS: KARL ENGLAND, Montana Trial Lawyers Association, addressed HB 146 first, stating that the bill needed some correcting but the association was not an opponent to it. The change he proposed is found on page 3, line 10, subsection (a) which should contain the word, "within". He further stated that HB 286 imposed a duty upon the operators of an irrigation ditch, to keep ditches in good repair and condition, and then it defines the scope of that duty. He pointed out that in populated areas there should be a duty to keep ditches in good repair and install grates in dangerous places of public access. The bill states that if there is a drowning, the ditch company does not have any liability. This is not a good bill. It may save the companies some money, in cases that they win, but it will cost them a substantial amount of money in cases they lose.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 146 AND 286:  
Rep. Addy asked Rep. Spaeth if the language on page 2 of HB 286, the injury to a person who is trespassing, is that broad enough language to protect ditch companies from

drowning suits that is found in subsection 4. Rep. Spaeth stated that Mr. England has brought up a good point in that he felt no one should be excused from actions gross or wilful and perhaps this should be amended.

Rep. Grady asked Mr. England about section 1 and wondered if that could be amended. Mr. England stated that it could be amended successfully.

Rep. Spaeth closed the hearing by stating that ditch companies are very important for the State of Montana and this will give them peace of mind. He suggested that the committee work on amendments for HB 286. His overview of the bills is that they do not state anything different from the last ten years but times are changing and there needs to be clarification in certain areas.

HOUSE JOINT RESOLUTION NO. 13: Rep. Keenan, District No. 66 submitted guidelines for the fair treatment of child witnesses in cases where child abuse is alleged. HJR 13 urges that the State of Montana follow the American Bar Association in approval and adoption of the guidelines in order to achieve procedural reform to improve the handling of child abuse cases and minimize the trauma suffered by child victims.

There were no proponents and no opponents.

QUESTIONS (OR DISCUSSION) ON HOUSE JOINT RESOLUTION NO. 13: Rep. Lory asked Rep. Keenan where the amendments to this resolution should be sent and she answered that it should go to the Supreme Court.

Rep. Keenan closed the hearing on HJR 13.

#### EXECUTIVE SESSION

ACTION ON HOUSE BILL NO. 305: Rep. Addy moved DO PASS. Rep. Giacometto opposed the bill. Question was called and a voice vote was taken. The motion CARRIED 9-5.

ACTION ON HOUSE BILL NO. 413: Rep. Grady moved DO PASS. Rep. Miles stated there is a dividing line right now in the statutes between misdemeanor possession of marijuana and felony possession and this bill has no limit for intent to sell and this bothers her. She suggested the limit of 60 grams of marijuana be the dividing line and should be put in the bill. Rep. Bulger moved to AMEND THE BILL on the bottom of section 1 to include the language of "60 grams possession of marijuana or one gram of hashish". Rep. Mercer clarified the meaning of "intent to sell" by the fact that it has to be proven that the "intent to sell" was there. Rep. Addy

stated he had reservations in regard to the amendment. He explained the presumption would apply at 61 grams if the amendment was put on. Question was called. A voice vote was taken. The motion FAILED 12-4. Rep. Brown pointed out it was in 1981 that the present language was passed by the legislature and what bothered him was 1 in 3 people will be in a lot of trouble under the bill. He opposed the bill. Rep. Giacometto stated if something was illegal then it was illegal. Rep. Addy moved amendment of compromise to find the center of gravity, by inserting 250 grams of marijuana and 4 grams of hashish. Rep. Meyers reminded the committee of the testimony heard in the hearing on this bill by the law officers and the county attorneys on how much they needed this bill in order to arrest and convict. He stated he will go along with the bill as it is written. Rep. Mercer agreed with Rep. Meyers. Question was called. A voice vote was taken. The motion FAILED 17-1. Question was called on the bill. A roll call vote was taken and the motion CARRIED 13-5. HB 413 DO PASS. (Roll call vote attached).

ACTION ON HOUSE BILL NO. 435: Rep. Giacometto moved DO PASS. Rep. Rapp-Svrcek moved to amend on page 2, line 24, inserting the words "which is" and on page 3, line 1, inserting "with intent to sell". Question was called. A voice vote was taken. The motion CARRIED unanimously. (See amendments attached.) Rep. Meyers moved, DO PASS AS AMENDED. Question was called and a voice vote was taken. The motion CARRIED 16-2, with Rep. Cobb and Strizich dissenting. HB 435 DO PASS AS AMENDED.

ADJOURNMENT: There being no further business to come before the committee, the hearing was adjourned at 11:23 a.m.

  
\_\_\_\_\_  
EARL LORY, Chairman

## DAILY ROLL CALL

JUDICIARY

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb. 6, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)		✓	
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		



# ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE Feb. 6, 1987 BILL NO. 413 TIME 11:13

NAME	EXCUSED	AYE	NAY
JOHN MERCER		✓	
LEO GIACOMETTO		✓	
BUDD GOULD		✓	
AL MEYERS		✓	
JOHN COBB			✓
ED GRADY		✓	
PAUL RAPP-SVRCEK			✓
VERNON KELLER		✓	
RALPH EUDAILY			✓
TOM BULGER		✓	
JOAN MILES			✓
FRITZ DAILY		✓	
TOM HANNAH		✓	
BILL STRIZICH		✓	
PAULA DARKO		✓	
KELLY ADDY		✓	
DAVE BROWN			✓
EARL LORY		✓	

TALLY

13 5

Janice J. Rodall  
Secretary

Earl Lory  
Chairman

MOTION: Do Pass

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# STANDING COMMITTEE REPORT

February ~~11~~ 6, 19 87

Mr. Speaker: We, the committee on JUDICIARY

report HOUSE BILL NO. 413

☒ do pass  
☐ do not pass

☐ be concurred in  
☐ be not concurred in

☐ as amended  
☐ statement of intent attached

\_\_\_\_\_  
Chairman

  
**FIRST**

reading copy ( WHITE )  
color

# STANDING COMMITTEE REPORT

February 6,

19 37

Mr. Speaker: We, the committee on JUDICIARY

report HOUSE BILL NO. 305

☒ do pass

☐ do not pass

☐ be concurred in

☐ be not concurred in

☐ as amended

☐ statement of intent attached

\_\_\_\_\_  
Chairman

  
**FIRST**

reading copy ( **WHITE** )  
color

# STANDING COMMITTEE REPORT

February 6,

1987

Mr. Speaker: We, the committee on **JUDICIARY**

report **HOUSE BILL NO. 435**

☒ do pass  
☐ do not pass

☐ be concurred in  
☐ be not concurred in

☒ as amended  
☐ statement of intent attached

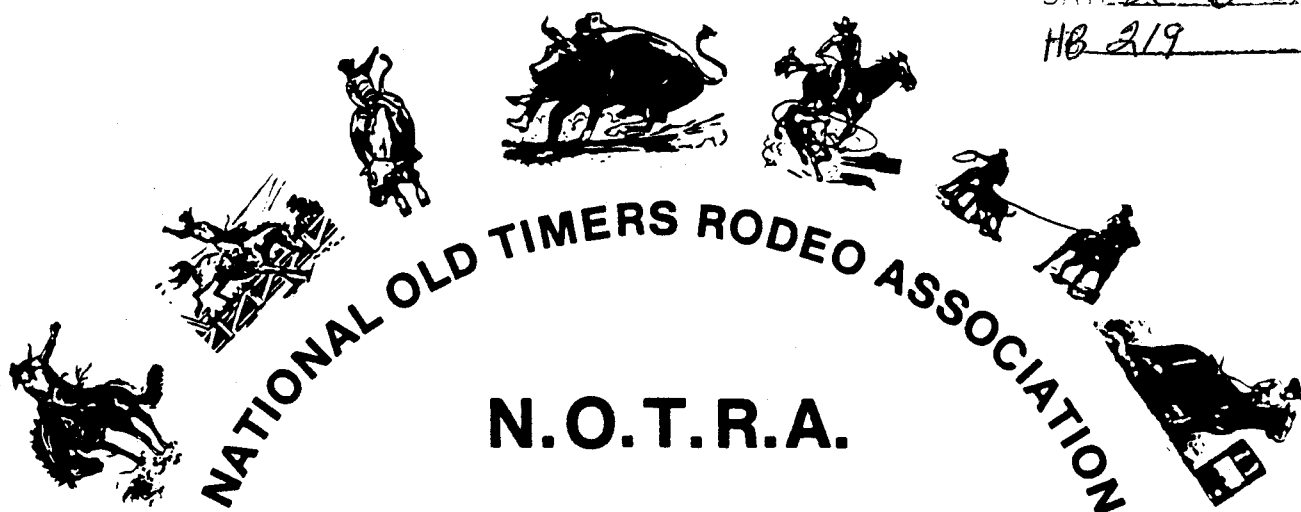
Chairman

1. Page 2, line 24.  
Following: "property"  
Insert: "which is"

2. Page 3, line 1.  
Following: "have"  
Insert: ", with intent to sell,"

**FIRST**

reading copy ( **WHITE** )  
color



Testimony before the House  
Judiciary Committee

Rep. Gay Holliday - District 31  
Executive Secretary - National Old Timers Rodeo Association  
N.O.T.R.A.

RE: Rodeo Liability - HB 219

Mr. Chairman and members of the committee, for the record I am  
Rep. Gay Holliday, Roundup, District #31, sponsor of HB 219.

Amendment

I am also the Executive Secretary of the National Old Timers Rodeo Association, an organization that sanctions an average of 50 rodeos per year in 14 western states and two Canadian Provinces.

Because of the hardships caused by the risk of possible suits brought against a sponsoring organization, the sport of rodeo as some of us know it, is becoming extinct.

Very few wish to continue to assume the responsibility of participating when the attitude of bringing suit prevails.

We pay insurance premiums of nearly \$60,000 per year for limited coverage and feel fortunate in obtaining any coverage at all.

I have no fewer than nine sanctioned rodeos per year in the state of Montana and would have more if it weren't for the liability issue.

Contestants at each rodeo number between 300 and 450, with a vast majority of these contestants from outside the state. Therefore, the money spent is "new" money and an economic boost to each locality, such as Chinook, Absarokee, Glendive, Roundup and others.

Data shows that nearly \$100,000 is spent within Montana during these rodeos, plus another \$100,000 in purse money, for a total circulation of nearly \$200,000 throughout the summer.

We take every precaution possible and utilize safeguards such as a signed release that each contestant signs at every sanctioned National Old Timers Rodeo in every state.

Every rodeo association from Little Britches to the PRCA are experiencing a decline in approved rodeos because of both the prohibitive cost and inavailability of insurance coverage.

I believe you will hear additional testimony confirming this.

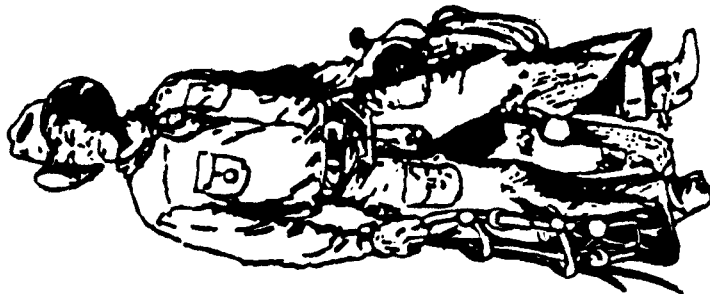
**ARTICLES, BY-LAWS  
and**

**OFFICIAL  
RODEO RULES**

EXHIBIT *B*

DATE *Feb 1987*

**NOTRA®**



**NATIONAL OLD TIMERS RODEO ASSOCIATION  
INCORPORATED®**

**EFFECTIVE  
1987**



# National Old Timers Rodeo Association

Name of Rodeo \_\_\_\_\_

Name \_\_\_\_\_ Age \_\_\_\_\_ NOTRA No. \_\_\_\_\_ Entry No. \_\_\_\_\_

Address \_\_\_\_\_

Preferred Performance \_\_\_\_\_ Performance Up \_\_\_\_\_

Event:

Bareback  
Saddle Bronc  
Bull Riding  
Steer Wrestling  
Calf Roping  
Team Roping  
Ribbon Roping  
Ladies Barrel Race

1. \_\_\_\_\_  
[team roping partner]

2. \_\_\_\_\_  
[ribbon roping partner]

☐ Cash ☐ Check ☐ Money Order

Secretary Signature

I do hereby release, acquit, and forever discharge the NATIONAL OLD TIMERS RODEO ASSOCIATION and all Rodeos approved by same, including all PRODUCERS AND RODEO COMMITTEES from all claims, demands and causes whatsoever, arising from and growing out of any personal injuries or damages sustained by me, or to my property, by virtue of my participation as a contestant or worker, in any certain rodeo, approved by the NATIONAL OLD TIMERS RODEO ASSOCIATION, as well as any and all claims, demands, and causes of action of whatsoever kind or character, which I, or my heirs, executors, or administrators, now have or may hereafter have against the NATIONAL OLD TIMERS RODEO ASSOCIATION or any RODEO PRODUCER or MANAGEMENT as all NATIONAL OLD TIMERS RODEO ASSOCIATION approved rodeos.

I have read and fully understand the meaning and effect of this release, and do hereby agree.

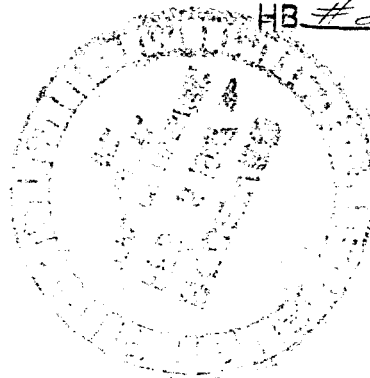
Contestant's Signature \_\_\_\_\_



EXHIBIT D

DATE 2-6-87

HB # 212 & #219



February 4, 1987  
4911 Biggs Haugland Rd  
Belgrade Montana 59714

Dear Committepersons:

After reading House Bills #212 and #219 that will be on the floor on Friday, I would like to have your support and vote on passing such two bills. This will help the rodeo schools, horse shows on Tort immunity and civil liability.

I have been a State High School Director for Rodeo as well as the National High School Rodeo Director for the State of Montana for several years and this needs to be done.

I donate my time and effort as do many others to help these kids and we would like to have your help so we can continue to do so.

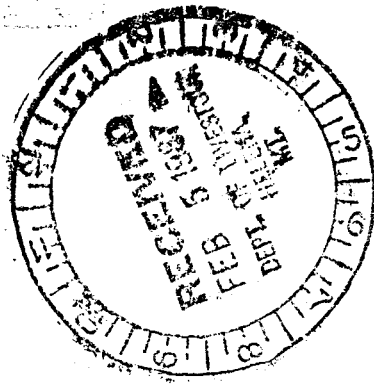
Thank You!

Sincerely,

Robert Haugland

A handwritten signature of Robert Haugland in cursive script.

State Director and National High  
School Rodeo Director for Montana



Chicago, Ill. 60601  
May 19, 1967

Dear Mr. [Name]:

After reading your letter of May 15, 1967, and the fact that you are the Director of the Illinois State Board of Education, I would like to have your support and vote on passing such the bill. This will help the people of Illinois, however, those on the minority and civil liberty.

I have been a State High School Director for 10 years as well as the National High School Policy Director for the State of Illinois. The several years and this needs to be done.

I donate my time and effort as an expert to help those kids and we would like to have your help to be our assistance to do

Sincerely,

[Signature]

State High School Director

State High School Director  
Illinois State Board of Education

EXHIBIT E  
DATE 2-6-87  
HB # 219

RESIDING <sup>HR #</sup> IN

miles City, mt.

Miles City, Montana

Miles City, Mont.

my <sup>old</sup> city

Miles City.

Mile City

miles city

Miles <sup>F</sup> Col

Miller City

Ther. Kitt. Pt

Wiley City, N.H.

Wiles City - Custom Co.

Mr. O'Leary

Miles. C. Ty

Miles City

Bull City Pt.

Philip C. J. M.

Miles City

Skills City, MT

We, the undersigned are in support of House Bill 219.  
It's a good step in the right direction toward the  
Insurance and Liabilities Problems of our state.

EXHIBIT F  
DATE 2-6-87  
HB #219

~~Nancy McRae~~  
Barbara Carpenter  
Lynn King  
~~John Smith~~  
Ray Murphy  
~~Barbara~~  
Ernest Butler

~~Dann Stiles~~  
Regina White  
Angie Shuler  
Alice Stagg  
Gordon Lohr  
Lonna Allison  
Linda Watters  
Sori McKee  
Melanie Buck

~~Jack Jones~~  
~~Jack Smith~~  
Marion Rollins  
Jack Heming  
William Bauer  
~~(Grant)~~  
~~John Smith~~  
Mable O. Dahl  
Grant Olson  
R. L. Miller  
Ernest E. Stord  
W. Wayne Thum

~~Agnes Enget~~  
Larry Smith  
Paul Smith  
Jerry Day  
Douglas P. Moyn  
Douglas Smith

We, the undersigned are in support of House Bill 219.  
It's a good step in the right direction toward the  
Insurance and Liabilities Problems of our state.

EXHIBIT 6  
DATE 2-6-87  
HB #219

Carl L. Jahn  
Alan C. Carter

Mary D. Melhorn

Wesley D. Howard

Judy Moyer  
Rob Kottmann

Julie Brockston

Dee W. Goring

Tony Buckingham

A. L. Phelps

Betty Phelps

Ene Mothershead

Mike Moullet

W. D. Taylor

Marlynn Portune

Harry Green

Walter Amerdi

Jim Donahoe

Dave Clawson

Rock Swanson

Jim Phelan

Leon Robinson

Walter Davidson

Donna Redd

Clint Wood

Doug Wall

Cecil Kolka

Brian Kane

Donald A. Kolka

Frederic Fortune

James Ady

Freddie Sennrich

Michael L. Clawson

Dorothy Garrett

Marjorie McFarland

Bob Paulsen

Rene de Montigny

Walter M. Furbush

John E. Marger

We, the undersigned are in support of House Bill 219.  
It's a good step in the right direction toward the  
Insurance and Liabilities Problems of our state.

312D

EXHIBIT H  
DATE 2-6-87  
HR #219

Steve Terin  
Julie A. Jordan  
John A. Jones  
Eugene D. Hoff  
John M. Klein  
Peter G. Tibbault  
H. M. Davis  
Louis K. Alexander  
Jeff Landers  
Clavin Morfery  
Charlotte Hubing  
Betsy Williams  
Frank Wehling  
Charles Wehling  
Bob Ditzelmann  
Joe S. Vassar  
W. L. Euel  
Bill Brannan  
James Brannan  
Raele Brannan  
Rull Lee  
Mark Pellitt  
Rull Lee  
Jack Chapman

We the undersigned are in support of House Bill 212 EXHIBIT I  
It's a good step in the right direction toward the DATE 2-6-87  
Insurance and Liabilities Problems of our state. HB # 212

John R. Tooke  
Jim Bishop

Residing at Miles City, MT  
Miles City, Mont

Raymond J. Bouché

Miles City, MT.

Gloria J. Green

M.C. MT.

Edward W. May

Miles City

Lytle Derrine

Miles City.

W. M. McMillan

Miles City

Genette Huntzicker

miles city

Thomas Ketch

Miles City

C. R. Seach

Miles City

Pauline Boughton

Miles City

Lid. Derrine

Miles City

W. T. Seach

Miles City

Fredrick A. McKee

Miles City - Carter Co

A. N. Perkins

Miles City

Larry Shipp

Miles City

Shirley Disher

Miles City, MT.

Don Bishop

Miles City, MT

Maureen Metzger

Miles City, MT

We the undersigned are in support of House Bill 212.  
It's a good step in the right direction toward the  
Insurance and Liabilities Problems of our state.

EXHIBIT J  
DATE 2-6-87  
HB # 212

~~Barbara Capron~~

~~Barbara Capron~~

~~Ken King~~

~~John R. King~~

~~John R. King~~

~~John R. King~~

~~Forest Butts~~

~~W. Ann Wilson~~

~~Regina White~~

~~Angela Harper~~

~~Allice Hegg~~

~~Calleen K. Orr~~

~~Conna Allison~~

~~Linda Watters~~

~~Sori McRae~~

~~Melanie Buck~~

~~Pat Farney~~

~~Wendy Smith~~

~~Tab Stemming~~

~~William Bauer~~

~~(Grant)~~

~~Jeff Allen~~

~~Mark O. Paul~~

~~Grant Olson~~

~~R. Jimmy Malson~~

~~Ernest Estrid~~

~~W. Wayne Thum~~

~~Arthur Grant~~

~~Larry Grant~~  
~~Paul Grant~~

~~Poppy Grant~~

~~Douglas P. Blayn~~

~~Douglas P. Blayn~~



We the undersigned are in support of House Bill 212  
It's a good step in the right direction toward the  
Insurance and Liabilities Problems of our state.

EXHIBIT K  
DATE 2-6-87  
HB # 212

Carl L. Taylor  
Alan C. Andrus

Mary D. Melchior

Richard E. Howard

Judy Moyer

Bob Bartholomew

Julie Brodston

Deirdre W. Fleming

Terry Buckingham

A. R. Phelps

Betty Phelps

Gene Mothershead

Mike Mallett

James D. Taylor

Marilyn Fortune

H. D. Green

Wale Amende

Jim Phalen

Leon Robinson

Nalley Gaudin

Donna Redd

Clint Wood

Doug Wall

Bessie Lane

Cecil Kolka

Donald Kolka

Deidre Fortune

Jeffrey S. Samsel

James Ady

Dea Ann Adams

Dorothy Garrett

Marcia J. McFarland

Bob Paulley

Rene J. Montigny

Mary M. Hall

John E. Margard

We the undersigned are in support of House Bill 212. EXHIBIT L  
It's a good step in the right direction toward the DATE 2-6-87  
Insurance and Liabilities Problems of our state. HB #212

Steve Ferrin  
Judge G. Jordan  
John A. Jones  
L. L. Schaff  
Phil M. Fleming  
R. B. Abbott  
D. M. Davis  
Louis K. Alexander  
Jeff Landers  
Lewin J. Moberg  
Kassette Hubert  
Betty Williams  
Frank Mehlina  
Charles Mehlina  
Bob Barthelmess  
Joe S. Vance  
H. L. Eick  
Bill Brann  
James Brown  
Jackie Brown  
Mark Klutt  
Jack Chipwase



P.O. Box 1679  
Helena, Montana 59624  
(406) 442-3420

EXHIBIT N  
DATE 2-6-87  
HB # 219

NAME Carol Mosher BILL NO. HB 219  
ADDRESS P.O. Box 1679 Helena, MT. 59624 DATE 2-6-87  
WHOM DO YOU REPRESENT Montana CattleWomen  
SUPPORT XX OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I Was unable to be at this hearing due to another important hearing being held at the same time.

We are in support of this type of legislation as it would help many of our families. There was probably much good testimony given in support of it. We must all learn to be responsible for our own actions.



P. O. Box 1679  
Helena, Montana 59624  
(406) 442-3420

EXHIBIT 14  
DATE 2-6-87  
HB #212

NAME Carol Mosher BILL NO. HB 212  
ADDRESS P.O. Box 1679 Helena, MT. 59624 DATE 2-6-87  
WHOM DO YOU REPRESENT Montana CattleWomen  
SUPPORT XX OPPOSE                      AMEND                     

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I was unable to be at this hearing due to another important hearing being held at the same time.

We would like to support this bill and am sure that much fine testimony was offered. This type of thing affects many of our families and we think that this bill might offer us some help.



L. Abbott Larson © 1976

## The Montana Environmental Information Center Action Fund

• P.O. Box 1184, Helena, Montana 59624

(406)443-2520

AMENDMENT HB 286, *proposed by sponsor, Rep. Spaeth*

EXHIBIT A

DATE 2-6-87

HB # 286

INSERT: Page 2, line 5, following "land;"

"provided that such seepage does not carry toxic chemicals  
onto another's land."

**BILLINGS BENCH WATER ASSOCIATION** #146 & 28

1111 MAIN

P. O. BOX 50150

BILLINGS, MONTANA 59105

I am Dean Hall, Superintendent of the Billings Bench Water Ass'n and a director of the Montana Water Development Association. The Billings Bench Water Association is a private non-profit corporation which was established for the purpose of providing irrigation water to its shareholders. We began to supply water in the early 1900's. There are 27,000 acres encompassed within the system that has water rights.

When the ditch was first constructed the area was rural farm land. The city has grown in size and its boundaries encompass approximately sixteen miles of main canal, plus many miles of laterals. Schools, parks, trailer courts, housing projects, etc. have been built against the ditch right-of-way. This growth has subjected the ditch company to potential liability. This liability concerns the possibility of persons falling into the ditch as well as the liability due to claims being filed in the event of ditch bank failure. The high surface water table is an exposure for liability. These problems have caused the ditch company to become uninsurable.

We spend from \$800.00 to \$1,000.00 per mile of ditch for operational costs every year.

Due to the ditch company's increased exposure by way of city growth and the liberality of our court systems, we find ourselves without insurance coverage for the first time this year.

Under normal times, the profit margin experienced by farmers per acre does not allow the absorption of heavy per acre assessments. Under the present agricultural crises, the situation is even worse. As a consequence, the BBWA finds itself unable to handle what it foresees a potential liability. In addition, the farmers supporting the ditch company do not have the financial ability to absorb these costs. It is absolutely imperative that legislation be passed which would protect us from litigation for claims for which we have no control. Limiting damages to reasonable amounts, and relieve us of liability for damages for personal injury or property damage resulting from the operation of the system, for which we have no control, and which would be financially unable to change.

Water is one of our State's most valuable asset. It is the livelihood of our farmers. Without it our farmland would be barren again, much of the state's economy rests with the farmers and ranchers. The farm prices are down... We cannot take away the water, which would also take away the ability to raise crops. If payment of these claims for damages results in loss of our being able to operate the ditch which furnishes the much needed water to the farmers and ranchers, the whole state will suffer economically.

I urge you to support this liability bill.

WITNESS STATEMENT

NAME Ken Hall BILL NO. 146 296  
ADDRESS Billing Bench Mont DATE 2-6-87  
WHOM DO YOU REPRESENT? Billing Bench Water Ass  
SUPPORT ✓ OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I am representing Greenfields Irrigation District and Montana Water Development Association and testifying in favor of HB 286.

Montana irrigators are being faced with an increasing burden of responsibility for accidents in and around their facilities - accidents involving inadvertent events not controllable by irrigators, such as drownings and physical harm to trespassers, seepage, and unpredictable washouts. I will give you the magnitude of the exposure in Montana - there are about 3½ million acres irrigated, the greatest portion accomplished by diverting water from live rivers and streams and distributing it through open canals and laterals. There are roughly 25,000 miles of these waterways and include roughly 125,000 control structures.

We would like to see these waterways and structures less exposed to the public, but the cost of doing so is astronomical. For instance, replacing an open contour ditch with a buried conduit, one carrying water to only ten farms, would cost about \$690,000 per mile. Installing high chain link fencing around ditch rights-of-way, a non-foolproof venture, would cost \$112,000 per mile and create a significant future maintenance burden. Cost per farm for fencing would be \$590,000.

We want to place very strong emphasis on the fact that the irrigation facilities in Montana were first in time, most of the 25,000 miles of waterways put in use in 1900-1920. These facilities carry water possessed by the State of Montana and used for the economic development and strength of Montana. Regarding them as nuisances, as is sometimes raised in legal action, is like regarding our public roads and railroads as nuisances. Undue burden placed on the irrigators by the public who choose to house and recreate along irrigation facilities is unjustified. Please vote in favor of HB 286.

Thank you.



# HELENA VALLEY IRRIGATION DISTRICT

3840 N. MONTANA AVE.  
HELENA, MONTANA 59601  
(406) 442-3292

February 5, 1987

Dear Chairman, Committee Members:

My name is Ron Schofield, I am the Manager of the Helena Valley Irrigation District.

I request that the committee pass House Bill #286. House Bill #286 is reasonable and makes common sense. Irrigation ditches are planned, constructed, operated and maintained for the purpose of transporting water for irrigation, period!

Irrigation ditches, because of the design and the structures involved, do not operate well as Flood Control Facilities. It is an entirely different purpose and we cannot expect Irrigation Facilities to successfully be Flood Control Facilities.

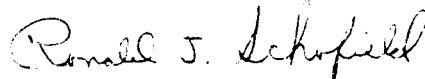
As long as water is transported in earthen canals, seepage will exist to some extent. Reasonable seepage losses have been recognized as being acceptable. Changes in land use should not place additional burdens on existing Irrigation Facilities.

The purpose of Irrigation Ditches is not for Boating, Swimming, Jogging, Dump Sites, Dog Training, ATV or Motorcycle Courses or uses; other than transportation of Irrigation Water.

Those of us who own and/or operate Irrigation Ditches, have the goal of providing Irrigation Water in the quantity needed and at the time needed; to be an economic benefit to the Irrigated lands of this state of Montana. We want to be able to concentrate our total resources on that goal.

PLEASE PASS HOUSE BILL #286.

Sincerely,



Ronald J. Schofield, Manager  
Helena Valley Irrigation District

RJS/sw

EXHIBIT

EXHIBIT E  
DATE 2-6-87  
HB #286

Concerning: HOUSE BILL No. 286

I am Dueane Calvin, manager of the Huntley Project Irrigation District, Ballantine, Mt.

I wish to thank you for this opportunity to speak on behalf of the above mentioned bill, urging it's speedy passage.

It would seem that at times many of us are living outside of reality, in that we expect far more than is economically or even physically possible. This seems to be especailly true when it comes to our expectations concereng irrigation ditches.

First, I want you to know that the District I represent spends an annual average of \$1250.00 per mile for maintenance and up-keep of it's system. This envolves some 465 miles of Canals, Laterals, Drainage systems and their associated rights-of-ways. To be more specific that amounts to eighteen (18) dollars per arce of irrigated land within the Project.

Second, thoughs things that we spend most of this money on promotes safety and efficiency for thoughs that must use the system. A few of the major items included, but are not limited to shaping and sloping banks, smoothing bottom sections, repairing structures, maitaining O&M roads, weed and pest control.

I guess the thrust of my thoughts are, that we (Irrigation Ditch Operators) are all doing everything that we can within the monetary constraints that are are placed on us by our users. What we would ask of you, through the adoption of this bill, is a clear definition of what are and are not our duties and responsibilities.

We believe that House Bill 286 does that justly and again I would urge that you adopt and move this bill forward as rapidly as possible. Thank you.

Respectfully

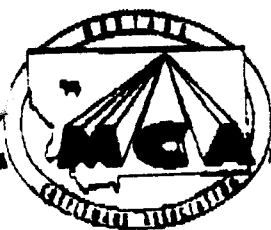
  
Dueane Calvin

WITNESS STATEMENT

NAME RON SCHORFIELD BILL NO. 286  
ADDRESS 3840 N. MONTANA HELENA DATE 2-6-87  
WHOM DO YOU REPRESENT? HELENA VALLEY IRR DIST.  
SUPPORT ☒ OPPOSE ☐ AMEND ☐

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:



# MONTANA CATTLEMEN'S ASSOCIATION INTL

WITH A LARGE "Steed" IN MONTANA'S FUTURE

EXHIBIT F  
DATE 2-6-87  
HB # 286

P.O. Box 1224  
Helena, Montana 59624

TESTIMONY CONCERNING HB 286

House Judiciary Committee

Mr. Chairman, this is one of the most timely and appropriate bills that will come before your committee. In the uncertain legal climate in which all Montanans now live, a law to clarify the duties and liabilities of ditch owners could not be more welcome.

Irrigation water is the lifeblood of probably a majority of Montana ranching operations. Cattle spend more months of the year eating hay grown on irrigated fields than they do eating grass. The tremendous economic activity that characterizes the agriculture industry would be reduced to a fraction without the ability to get this water to its area of use. And, there is very seldom an alternative to the open ditch or canal for transporting and distributing irrigation water.

Irrigation could be considered the largest source of new wealth and basic economic activity in this state. As such, it deserves a clear statement of non-liabilities relating to personal injury or property damage. Representative Spaeth provides us with just that in HB 286. Given that the ditch owner has little control over the acts of persons or the effects of floodwaters, the list of non-liabilities is certainly not too generous.

As more and more businesses are threatened by the loss of their liability insurance, here is way this committee can help at least one basic industry around a potential crisis. We urge a "do pass" on HB 286 and hope that this important legislation receives the support of the necessary two-thirds on the House floor.

Thank you for this opportunity to comment.

BE IT RESOLVED, that the American Bar Association approves the  
"Guidelines for the Fair Treatment of Child Witnesses in Cases  
Where Child Abuse Is Alleged" dated May 1985.

EXHIBIT A

DATE 2-6-87

HB HJR #13

"Guidelines for the Fair Treatment of Child Witnesses in Cases Where  
Child Abuse Is Alleged" - dated May 1985

#### A TEAM APPROACH

1. A multidisciplinary team involving the prosecutor, police and social services resource personnel should be utilized in the investigation and prosecution of cases where a child is alleged to be a victim of or witness to abuse in order to reduce the number of times that a child is called upon to recite the events involved in the case as well as to create a feeling of trust and confidence in the child.

a) Members of such teams should receive specialized training in the investigation and prosecution of cases where children are alleged victims and witnesses of abuse.

b) Whenever possible, the same prosecutor should be assigned to handle all aspects of a case involving an alleged child victim or witness including related proceedings outside the criminal justice system.

#### FA SPEEDY TRIAL

2. In all proceedings involving an alleged child victim, the court should take appropriate action to ensure a speedy trial in order to minimize the length of time a child must endure the stress of his or her involvement in the proceeding. In ruling on any motion or request for a delay or continuance of a proceeding involving an alleged child victim, the court should consider and give weight to any potential adverse impact the delay or continuance may have on the well-being of a child.

#### PROCEDURAL REFORM

3. In criminal cases and juvenile delinquency and child protection proceedings where child abuse is alleged, court procedures and protocol should be modified as necessary to accommodate the needs of child witnesses including:

a) If the competency of a child witness is in question, the court should evaluate competency on an individual basis without resort to mandatory or arbitrary age limitations.

b) Leading questions may be utilized on direct and cross-examination of a child witness subject to the court's direction and control.

c) To avoid intimidation or confusion of a child witness, examination and cross-examination should be carefully monitored by the presiding judge.

d) When necessary, the child should be permitted to testify from a location other than that normally reserved for witnesses who testify in the particular courtroom.

e) A person supportive of the child witness should be permitted to be present and accessible to the child at all times during his or her testimony, but without influencing the child's testimony.

f) The child should be permitted to use anatomically correct dolls and drawings during his or her testimony.

g) When necessary, the child should be permitted to testify via closed-circuit television or through a one-way mirror or any other manner so long as the defendant's right to confrontation is not impaired.

h) Persons not necessary to the proceedings should be excluded from the courtroom at the request of the child witness or his or her representative during pretrial hearings in cases where the child is alleged to be the victim of physical, emotional or sexual abuse.

i) At pretrial hearings and in child protection proceedings the court, in its discretion, if necessary to avoid the repeated appearance of a child witness, may allow the use of reliable hearsay.

j) When necessary the court should permit the child's testimony at a pretrial or noncriminal hearing to be given by means of a videotaped deposition.

#### LEGISLATIVE INITIATIVE

4. State legislatures should, where necessary, enact appropriate legislation to permit modification of court procedures and evidentiary rules as suggested herein and in addition should:

a) extend the statute of limitations in cases involving the abuse of children;

b) establish programs to provide special assistance to child victims and witnesses or enhance existing programs to improve the handling of child abuse cases and minimize the trauma suffered by child victims, in cooperation with local communities and the federal government.

#### MEDIA RESPONSIBILITY

5. The public has a right to know and the news media have a right to report about crimes where children are victims and witnesses; however, the media should use restraint and prudent judgement in reporting such cases and should not reveal the identity of a child victim.

## VISITORS' REGISTER

COMMITTEE

BILL NO.

HB 2862/44

DATE

2-6-87

SPONSOR

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
RON SCHOFIELD	HELENA VALLEY ERR. DIST.	✓	
Dean Hall	Billings Benchwater Ass	✓	
Sam T. Davis	3655 Valley Dr Helena	✓	
Ed Lenhardt	10002 So 722 West Billings	✓	
Dean Patin	Worden MT	✓	
Les Mahan	Helena	212/219 ✓	
Shirley Clark	✓	212/219 ✓	
Quake Womack	Helena	212/219 ✓	
Debbie Burghdoff	Helena	212/219	
Muri Wagon	Helena	212/219	
MARK ETCHEART	GLASGOW	212/219 ✓	
Gerry myer	Fairfield	✓	
GEORGE OCHENSKI	HELENA MEIC	amended	
MATT THIEL	ASS. STUDENTS		
Larry Weinberg	MT. UNIV. SYSTEM	212/219 ✓	
Steve J. Downing	Helena	✓	
R.A. Ellis	Helena MT water Development	✓	
Along Torgon	MT. STUDENTS ASSN	✓	
Carol Meston	MT. Cattle Ranch	✓	
Henry Dahl			

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

## VISITORS' REGISTER

COMMITTEE

BILL NO.

HB 286 + 146

DATE

SPONSOR

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.



## VISITORS' REGISTER

COMMITTEE

BILL NO.

HB 212 + 219

DATE

2/6/87

SPONSOR

Hanson

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Wayne Moutford	Miles City MT	X	
Bob Kinn	Helena	X	
Barrel Hanson	Ashland	X	
Ken Alexander	Miles City	X	
WIFE		X	
Ginger DeLoek	Forney	X	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.