

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chairperson Bob Raney, on February 3, 1989, at 3:45 p.m.

ROLL CALL

Members Present: All

Members Excused: None

Members Absent: None

Staff Present: Claudia Montagne, Secretary; Hugh Zackheim, Staff Researcher, Environmental Quality Council

Announcements/Discussion: CHAIRPERSON RANEY announced that testimony would be accepted on HB 515 today as well as on February 8, due to an improper hearing notification.

HEARING ON HB 380

Presentation and Opening Statement by Sponsor:

REP. DENNIS REHBERG, House District 88, opened on HB 380, stating that it represented a minor change in the Subdivision and Platting Act. He said the public interest criteria should not be a portion of criteria of review, or if it were to be part of the review, it should not be the basis for the determination on a subdivision. He said this had been a problem identified over the years in various studies. He said public interest criteria defied definition.

REP. REHBERG responded to a letter from the County of Gallatin and the City of Bozeman, and said public opinion input would still be allowed. He said the subdivision could be rejected on the basis of public testimony on any of the remaining criteria. He noted there was a change in that the local governing body would have to issue written findings of fact showing how the criteria were weighed and in what proportion.

Testifying Proponents and Who They Represent:

Rep. Bob Marks, House District 75
Tom Hopgood, Montana Association of Realtors
Jo Brunner, Montana Water Resources Association
H.S. Hanson, Montana Technical Council

R.A. Ellis, member, Montana Water Resources Association,
Helena Valley
William Spilker, self and Montana Association of Realtors
Alan Nicholson, Helena
Bill Diehl, Helena
Randy Poulson, Helena
Jerry Hamlin, Helena

Proponent Testimony:

REP. MARKS, co-sponsor of the bill, said he supported the bill for the same reasons mentioned by Rep. Rehberg. He said the most important part of the bill was to qualify the stricken language. He referred the committee to the middle of page 2, where the language stated that in determining the public interest, it be done with some criteria that could be defined. He said that the changes made the subdivision criteria more meaningful, and also provided for a means of appeal.

TOM HOPGOOD, stated that the subdivision act was susceptible to being used as a tool to inhibit responsible and well-founded growth and development. He said one of the problems his association believed was inherent in the act was the basic philosophy. He said they had a bill that Rep. Rehberg was carrying (HB 515), which would amend the purpose of the act to exclude public interest. He said that his association believed "public interest" to be vague, ill-defined, and unworkable. With this language, he said, planning a subdivision was a guessing game. He said it was his understanding that there was a general consensus on the EQC, during the course of its study, that "public interest" was unworkable and should be eliminated.

MR. HOPGOOD said the amended law would give the planner and developer a sense of direction. He said it would implement the basic change in philosophy that HB 515 proposed. In line with the revision of purpose, this bill removed the public interest requirement as a criteria as well as the basis of need criteria. He suggested that the market be left to decide public need.

JO BRUNNER testified for the bill with an amendment as set forth in EXHIBIT 1.

H.S. HANSON, representing engineers and land surveyors, said his organization supported this bill wholeheartedly. He said members of his organization had participated with EQC, and had reported that there was general agreement among the participants in the study that the public interest criteria, and thus subjective analysis, should be eliminated.

R.A. ELLIS, Chairman of the Board, Helena Valley Irrigation District, said he concurred with Jo Brunner and her

amendment. He mentioned the vandalism on irrigation systems that stemmed from subdivisions. Another problem he mentioned was that subdivisions did not allude to the fact that the ground was obligated under the Irrigation District for 40 years for O and M in construction and water storage from Canyon Ferry. Consequently, these people would get a water bill and wonder where the water was. He said they were obligated to take the water to the original turnout on the subdivided ranch.

WILLIAM SPILKER, a real estate broker and developer, represented himself and the Montana Association of Realtors. He said he supported both HB 515 and 380, outgrowths of the tedious exercise the EQC went through from 1986 to 1988. He said this bill improved the subdivision act by making the review criteria more objective. He said too often decisions regarding subdivisions were made in an arbitrary manner according to the "applause meter". In attempt to bring objectivity into the process, he said two items of the eight criteria were eliminated: 1) expressed public opinion; and 2) the basis of need. He said the marketplace should be the determinant of public need. He said the six remaining criteria were predictable and rational, and preserved the public interest in the subdivision review process.

MR. SPILKER said a second concern of his regarding basis of need had to do with the fundamental freedom of choice - the right to choose where a person lived. The idea of a local government determining where he should live went against his grain, he said. He said public hearings were still required.

ALAN NICHOLSON, representing himself as a local developer, said he believed in a strong and appropriate development law. He suggested that good planning and economic development could be promoted at the same time. He said the public interest section of the Subdivision and Platting Act had been abused and misinterpreted and "public interest" was not being served. He supported in particular the necessity that the governing body issue "written findings of fact". He said that in the listing of criteria, there might be missing a reference to a comprehensive plan.

BILL DIEHL, realtor, developer and appraiser, appeared in support of HB 380. He said while he might not agree with all of the views of the previous speaker, he agreed that the public interest criteria as presently constituted and used was a substitution of the rights of the public for private property rights. He said the Subdivision and Platting Act was enforced in an arbitrary and capricious manner, and had served to reduce competition and increase the costs of housing and other factors involving the real estate market. He said the modifications were necessary to make the act more objective in nature, and more representative of the interests of the private property owners.

RANDY POULSON, small scale developer and real estate broker, spoke in support of HB 380 and HB 515. He said he had not used the review process, but had exercised the exemptions (the occasional sale provision). He said he was not afraid of the review process per se, nor did he want to slip something by the local governing body. However, he was afraid of the subjective nature of the public review process. He doubted the ability of the local governing body to be objective in assessing "expressed public opinion" and "the basis of need". He added that adjacent landowners exercised undue influence on in blocking a development in the name of public interest.

JERRY HAMLIN, local real estate broker and building contractor, said he had been on the planning board for the past five years. He had seen the public interest criteria and the basis of need provision from both sides. He said the bill eliminated subjectivity through the removal of these two sections. He said the act as it stood increased the cost of property due to the increase in governmental regulations. He also said he was in favor of HB 515.

Testifying Opponents and Who They Represent:

Rep. Norm Wallin, House District 78
Linda Stoll Anderson, Montana Association of Counties
Harriett Meloy, Joint City-County Planning Board, Lewis and Clark County, and League of Women Voters
Kathy Macefield, City of Helena, Montana Association of Planners
Chris Kaufmann, Montana Environmental Information Center
Janet Ellis, Montana Audubon Legislative Fund
Mona Jamison, Montana Association of Planners
Robert Rasmussen, Lewis and Clark County Planning Department
Bob Dozier, Northern Plains Resource Council

Opponent Testimony:

NORM WALLIN, House District 78, entered the letter from the Gallatin County Commissioners (EXHIBIT 2). He asked the committee to consider the objections to the bill raised by them.

LINDA STOLL ANDERSON, Lewis and Clark County Commissioner, addressed the references to the consensus arrived at in the EQC meetings. She said she had participated in the EQC meetings, and the group had talked in terms of trade offs, rather than consensus. MS ANDERSON said she agreed with the proponents with respects to the measurability of the basis of need and expressed public opinion criteria. She spoke about those two criteria as they related to publicly financed improvements in subdivisions.

MS ANDERSON told of the experience of Lewis and Clark County with the Eastgate subdivision, an experience shared by other counties in the state. She said the subdivider could not sell all of the lots, and the county picked up the land for the taxes. The county, through all of the county taxpayers, then had to pick of the costs of the infrastructure and improvements (a total of \$950,000 since 1980, as per EXHIBIT 3). She said this was the reason for the basis of need provision. She said she was concerned about striking the language "expressed public opinion". She disputed that decisions were made on subdivisions on the basis of "applause meters", and referenced examples of approved subdivisions despite public opposition.

HARRIETT MELOY, member of the Joint City/County Planning Board, spoke in opposition to the bill (EXHIBIT 4). She also submitted into the record a letter in opposition to the bill from the Montana League of Women Voters (EXHIBIT 5).

KATHY MACEFIELD, a planner with the City of Helena, said that the City Commission had discussed HB 380, and had decided they could not support the bill. She reiterated Ms Meloy's comment that the bill as introduced would specifically exempt minor subdivisions from any kind of public interest criteria or any kind of consideration. She commented on points raised regarding property rights and values. She said the developers as well as adjacent landowners to a development had property rights. Regarding written findings of fact, she said that was already in the law. She urged a DO NOT PASS.

CHRIS KAUFMANN, MEIC, said she had some of the same reservations regarding the bill. She said the bill eliminated the minor subdivision from review, and left a lot of discretion to the local governing body regarding the level of review. She also said that the public hearing would still be required, but would be a mockery, because public interest would no longer be a criteria. Regarding the EQC process, Ms Kaufmann said tradeoffs were considered, and that there had been talk of trading off some of those exemptions for change in some this language proposed in the bill.

JANET ELLIS said Audubon opposed HB 380 because it exempted minor subdivision from public interest criteria and because for majors, HB 380 removed the obligation of a local government to disapprove of a subdivision that was not in the public interest. She said the bill muddled the issue rather than making the subdivision process more objective.

MONA JAMISON said her organization opposed the bill because it specifically exempted minor subdivisions, which comprise the majority of subdivisions, from the public interest criteria. Also the present requirement that a subdivision be found in the public interest would be eliminated. The bill deleted the specific requirement that the governing body disapprove

a minor subdivision not found in the public interest. Regarding property values, she questioned why that should not be a consideration within public interest; i.e., the effect a minor subdivision might have on individual property values. She said public interest was vague, but suggested that public interest underlaid all legislative activity; i.e., whether or not any bill or proposal was in the public interest. She said that public interest as a criteria gave the governing body the opportunity to address the sum total of the project.

ROBERT RASMUSSEN, Director of the Lewis and Clark County Planning Department, presented the testimony of Randy Moy, former member of the Planning Boards of Lewis and Clark County and the City of Helena (EXHIBIT 6). For himself and the Planning Department, he said that with this bill, minor subdivisions would have no guidance with regards to criteria for review. He also said that there would be no ability to consider the testimony presented in the public hearing. He stated that written findings of fact were required in the existing law. He distinguished between public opinion and public interest, stating that public interest criteria as embodied in the statute reflected a larger perspective than strictly the public opinion of an adjoining property owner.

BOB DOZIER stated that NPRC opposed the bill for the same reasons aforementioned.

Opponent Testimony Received by Mail:

Gallatin County Commissioners (EXHIBIT 7)
Alfred M. Stiff, Mayor, City of Bozeman (EXHIBIT 8)
Steve Powell, Ravalli County Commissioner (EXHIBIT 9)

Questions From Committee Members:

REP. ROTH asked if the planning board had ever turned down a request for a subdivision, and MS MELOY said they had not, as far as she could remember. She said she would get that information for Rep. Roth (the number of subdivisions approved and disapproved).

REP. OWENS asked Mr. Ellis if he thought that the sponsors of the bill were knowingly trying to avoid addressing the minor subdivisions. MR. ELLIS said his association and himself had not taken this into consideration, but had wanted to get some criteria for irrigation districts and irrigators into the act.

REP. ADDY asked, with the elimination of expressed public opinion, what information a local governing body would use to determine whether review criteria A through F had been met. He asked if the sponsor was envisioning a process in

which all public opinion was eliminated. REP. REHBERG said no, and referred Rep. Addy to line 15, page 1, where it was stated that the process would be based on a number of criteria such as the preliminary plat, environmental assessment, and public hearing.

REP. ADDY asked if this bill passed, expressed public opinion would still be one of the factors that a governing body would consider. REP. REHBERG said in essence it would be a consideration, but not a determining factor. REP. ADDY asked if the public were to feel that the expression of their opinion at the hearing would be given no weight, where else might they direct their comments. REP. REHBERG said that the words "based upon" insured consideration of public opinion of the criteria (page 1, line 16). REP. ADDY repeated that the bill did not then eliminate expressed public opinion. REP. REHBERG said it was being eliminated as a determining factor. REP. ADDY asked if in considering the new A through F being equal, the sponsors did not want the governing board to use expressed public opinion to reject a subdivision. REP. REHBERG said that he would be surprised if a governing board could not find a way to reject in A through F. He said the rejection would then be objective, and the governing board would have to issue a written findings of how they weighed each of the criteria A through F, and perhaps the opinions from the public hearing. He did not feel the public's right to an opinion was in any way lessened by taking that language out.

REP. RANEY suggested that as written, the bill prevented Ms Brunner's desire to see water use from being considered as a criteria. He said there might be another hundred items that should be under A through F... REP. REHBERG said he could not disagree with this, except to say that he believed that effects on agriculture was a broad enough category to cover water use.

REP. RANEY asked what an individual's recourse would be if a proposed subdivision were to reduce the land value of an adjacent subdivision. REP. REHBERG said there were very few first generation areas right now that would have this problem. He felt that the categories were broad enough to find a reason to reject the subdivision under one of them.

REP. MCDONOUGH asked what would happen to minor subdivisions if this bill were to pass. REP. REHBERG said it was not his intention to exempt minor subdivisions, but to further define minor subdivisions to fall under another part of the act. He suggested taking that part of the bill out, if this was a concern of the committee.

REP. BROOKE asked how Linda Stoll Anderson defined "need". MS ANDERSON said that Lewis and Clark County had never rejected a subdivision on the basis of need. In order to quantify and objectify the determination of need, a study had been

conducted a number of years ago in which all of the divided and unsold lots in the county and city were counted. She suggested dividing this number by the type of lot to determine some level of need. As she had stated before, another consideration would be whether or not public financing of improvements would be required.

REP. HARPER posed a hypothetical situation in which a subdivision was built a long ways out, requiring bussing. He said that based on the impact on local services (criterion B), the governing body made a decision to deny the subdivision. The governing body would then have to issue a findings of fact based on how they weighed the criteria, which would in this case heavily weight the local services criterion. In another case in which an endangered species were impacted by a proposed subdivision, the weighting would change to another criterion. He asked what kind of legal standing the governing body would have once it had established a weighting system, and then in another case, had to change that weighting system. REP. REHBERG said that would not be problem because the weighting would be done within the various criteria, rather than in the weighting of one subdivision versus another.

REP. HARPER then suggested the bill read that a subdivision could be denied by any, or any combination, of these criteria. REP. REHBERG said that the developer would want to know to what level the criteria were considered so that they could mitigate the impact in a certain area, perhaps to the satisfaction of the local governing board.

REP. HARPER said his concern was that, in setting up a weighting scheme, it would have to be uniformly applied or be dashed in court. REP. REHBERG said he saw a problem in trying to weigh or define the same thing in expressed public opinion, rather than in absolute, objective criteria as spelled out in the bill.

REP. GILBERT said he understood that two things were being eliminated: basis of need and expressed public opinion. He asked Rep. Rehberg if he agreed that these were the two things upon which an attorney would tell you a subdivision could not be denied because of their undefensibility. REP. REHBERG said yes. REP. GILBERT said the bill was asking for the governing body to justify in writing through a weighted measure its reasons for denying a subdivision. REP. REHBERG agreed.

REP. COHEN said that in talking to his county treasurer, he discovered that there was a problem relating to subdivisions to which he would like a proponent and opponent to the bill reply. He said there were over 200 tax deeds to assess from developed land not sold. The treasurer said that once developed, the land was classified rural residential rather than agri-timber land, with resulting higher taxes. He said

that the developer was often not able to pay these higher taxes, and that the county was left holding these deeds. REP. COHEN asked if a development could be denied because a governing body believed a developer might not be able to pay his taxes. REP. REHBERG said no. He said that he believed the taxation criterion had to do with the effects on property values and also the ability of the subdivision to generate additional taxes for the local governing body, such as schools and services.

REP. COHEN said his question was if, with this legislation, a governing body, after looking at a proposed subdivision in light of all these excess lots, could deny the subdivision on the basis of those excess lots and the risk of the governing body inheriting the liability. REP. REHBERG said no, that would not be his determining factor. He said the cost of the lot would have to be considered as well. He said the reason people lost that property was due to the cost of the SID. REP. COHEN replied that the situation he had in mind did not include the factor of SID's.

MS ANDERSON replied to the same question and situation by saying that of all the criteria by which a subdivision could be denied, the basis of need section in current law would provide this ability to the governing body. She said the question would then arise regarding whether or not the local planning board or governing body would start dictating the conditions of the marketplace. She added that she did not know whether or not a governing body in Rep. Cohen's scenario could legally deny a subdivision on that basis with or without the bill, and allowed that it would be risky with the existing act.

REP. GIACOMETTO asked if the county commissioners would oppose the portion in the bill requiring in writing why a particular subdivision was turned down. MS ANDERSON said she personally did not oppose that section, and said that the Lewis and Clark County presently issued written findings of fact.

REP. HARPER commented that before, the points in question (effects on agriculture, etc.) were points that could be used to deny a subdivision. He suggested that in the proposed legislation, the list of criteria, A through F, merely became one more point in addition to the preliminary plat, the environmental assessment, public hearing, and planning board recommendations. He said that any one of those criteria (A through F) would then make up only one part of 1/6 of the total package of considerations. REP. REHBERG said that was no different than before, to which REP. HARPER disagreed.

Closing by Sponsor: REP. REHBERG closed, stating that he appreciated the testimony of the opponents because they had

mentioned trade offs. He said they had been active in the EQC process, and had been willing to trade these portions off if they got something. He said the other bills had not come in, for which he had no explanation.

HEARING ON HB 515

Presentation and Opening Statement by Sponsor:

REP. REHBERG, House District 88, opened on HB 515 for the benefit of those who would be unable to attend the formal continuation of the hearing on February 8. He said that his intent was to revise the Statement of Intent in the original Subdivision and Platting Act. He said that the SI did not have to be as specific as it was in the original act. This change would provide simple and clear guidelines to developers and would preserved and protected the property rights of the individual.

REP. RANEY announced that the hearing on HB 515 would be continued until Wednesday, February 8.

HEARING ON HB 463

Presentation and Opening Statement by Sponsor:

REP. THOFT, House District 63, introduced amendments to the bill, along with a copy of the bill as it would be with the amendments underlined (EXHIBIT 10 and 11). He said the bill allowed the district court to appoint a water mediator to mediate a water controversy in a non-decreed basin. He went through the circumstances under which a mediator could be appointed. He said that section 2 provided for education for the water mediator, and section 3 provided funding for the program from the Water Development and/or Renewable Resource Development Account.

REP. THOFT said the bill lent some value in drought situation to alleviate the heated arguments and disputes that arose.

Testifying Proponents and Who They Represent:

George Ochenski, Alliance for Montana Water
Stan Bradshaw, Montana State Council, Trout Unlimited
John Thorson, Doney and Thorson Law Firm
Kim Wilson, Montana Chapter, Sierra Club
Jo Brunner, Montana Water Resources Association
Jim Jensen, Montana Environmental Information Center

Proponent Testimony:

GEORGE OCHENSKI said that the water bills were developed during an interim process. They had drafted into bills the best ideas they had come up with that needed to be implemented, of which this was one. He said the bill had been drafted early, and distributed to both opponents and proponents for input. He said water was a complex, touchy issue. He said there was general acceptance, and said the proposed bill would provide a starting point for being able to help people work together when there were water shortages. Citing the example of the dewatering of the Ruby River during the previous summer, he said the benefits of the bill would outweigh the cost, and would provide people with a vehicle to work out their differences.

STAN BRADSHAW gave an explanation of the bill as outlined in EXHIBIT 12. He said the drought the previous summer had pointed out both the strengths and weaknesses of the current system. He said where a commissioner was appointed, rights could be administered fairly well, and generally the fisheries got some benefit from that. He said that it was in the interest of the irrigators and other off-stream users as well as in the interest of the in-stream uses that the system be well administered. He said the problem arose in those streams without a court decree of the water rights. This bill would provide for that situation.

JOHN THORSON spoke in favor of the bill, saying that it was important to have a mediator on non-decreed streams. He said the education for that mediator was also important, and that the bill allowed DNRC and Montana State University to develop materials for that purpose.

KIM WILSON echoed the sentiments of the other proponents, and said the Sierra Club stood in support of sound management of rivers would benefit all Montanans.

JO BRUNNER testified for the bill as set forth in EXHIBIT 13.

JIM JENSEN said this was a good bill, with no intent to confiscate any water or water rights.

Testifying Opponents and Who They Represent:

Carol Mosher, Montana Stockgrowers, Montana Cattlemen, and the Montana Association of Grazing Districts.

Opponent Testimony:

CAROL MOSHER testified against the bill as set forth in EXHIBIT 14. She said that the section which gave expressed authority to the Water Commissioner to develop mediation was

wrong. She said the commissioner would be the worst person to mediate. On the problem of mediation, she said that if the senior water user were having trouble getting water, he/she would benefit little from mediation. She said the only way to solve such a controversy was in the courts.

MS MOSHER continued, saying that section 4 was objectionable to her organization's water right users. She suggested that Water Commissioners were incompetent. She objected to the education for the Water Commissioner, saying there was no need for the section. She also objected to the development of materials by MSU and DNRC as an unnecessary expense.

Questions From Committee Members:

REP. GIACOMETTO asked Mr. Ochenski what he thought of Ms Brunner's amendment. MR. OCHENSKI said he was appalled that it would be suggested that confiscation was an intent. Regarding the amendments, he did not see any reason that a state agency could not petition for a water mediator. He said no one had raised the issue. He said it was up to the sponsor to accept the amendments.

REP. KADAS asked how much the bill would cost. REP. THOFT said it was discretionary on the part of the governor to fund the mediator, and a mediator may not be needed. The funding level could not be determined because it was drought dependent. He said it was appropriate to use disaster relief money.

REP. KADAS asked how big an educational program he was talking about. REP. THOFT said no one knew. He said he had no problem with the Extension Service providing the courses, but did have a problem with the testimony providing that Stockgrowers be part of developing the manual. He said it should be strictly law. In response to a further question by Rep. Kadas, MR. ZACKHEIM noted that there was a limit of \$10,000 for the education.

REP. KADAS said the other area of contention was the right of a state agency with water related interests to petition for a mediator. REP. THOFT supported the section, and said that District Court had jurisdiction over this. He had no problem with a state agency going to District Court to petition for a mediator.

REP. BROOKE asked what were the qualifications of a water mediator. REP. THOFT there were no qualifications, and this bill provided for some training and qualifications.

Closing by Sponsor: REP. THOFT closed.

HEARING ON HB 462

Presentation and Opening Statement by Sponsor:

REP. HARPER, House District 44, opened with the statement that the state needed a drought policy, and that the people of Montana had to be honest with themselves about the fact that they live in a semi-arid zone, and that the state would have more periods of drought. He stated that the state had to get ready for this eventuality. REP. HARPER said that HB 462 set up a Comprehensive drought mitigation program, a drought policy and a commission of 17 members with some ex officio members. He said that he was open to additions to the membership of the council, as well as its duties. He said that the governor or his representative would serve as chair of the commission. The bill provided for designation of priority basins, where efforts could be concentrated initially. The powers of the governor were outlined, and an appropriation of \$15,000 was suggested, with \$30,000 anticipated in addition. REP. HARPER said that he did not believe that the additional \$30,000 was necessary, and that he did not intend HB 462 as an extra funding tool. He added that he saw the bill as a starting point for discussion, setting a direction that was desperately needed in the state.

Testifying Proponents and Who They Represent:

George Ochenski, Alliance for Montana Water
Stan Bradshaw, Montana Council, Trout Unlimited (TU)
Jim Jensen, Montana Environmental Information Center (MEIC)
John Thorson, Doney and Thorson Law Firm
Peggy Haaglund, Montana Association of Conservation
Districts
Jo Brunner, Montana Association of Water Users

Proponent Testimony:

GEORGE OCHENSKI said that this was another bill that had been put together and distributed widely to the public, both proponents and opponents, for their input. He said that he chaired the Governor's Drought Task Force for the past two summers since its inception. He said that the process was painful, since the state had no guidelines for handling drought related conflicts. He said that there were many competing economic interests for water in Montana, and that some people got theirs and some didn't, even senior water rights holders that happened to be downstream. MR. OCHENSKI said that when that happened, all hell broke loose, and Montana suffered across the board. He said that people were brought together from all the various competing sectors for a free interchange of ideas for what could be done to avoid catastrophe and continual fighting.

MR. OCHENSKI said that the task force had voted unanimously on several issues and had no where to send its views. He said that as a result, its effort to mitigate the impact of drought was stalled. He said that HB 462 provided for a structure under the governor by which people could come together, assess water supply and demand, and focus the state's efforts on the drought problem. He said that he had heard nothing regarding a better way, and was willing to hear a better idea.

MR. OCHENSKI presented two amendments, which had been suggested to him. One was in Section 1, subsection c, the impact on health could be added in. In Section 3, subsection g, one representative of hydroelectric utilities would be an appropriate member of the commission. On page 4, after line 3, other members of the commission could be the Soil Conservation Service, and the Conservation Districts, and on page 4, line 24, the word "review" could be inserted before "drought mitigation effort". On page 5, line 3, the word "set" would be replaced with "recommend", since it was inappropriate that a citizen body set priorities for agency activities.

STAN BRADSHAW stated that he had served on the Drought Task Force as well. This bill related to his experience there, which indicated to him that the state did not have its act together to deal with the problems of drought in advance, even though the problems were anticipated. He said that the bill was rooted in the conviction that preparedness for drought well in advance of the impacts of the drought would go far in mitigating those impacts. Another important aspect, he said, was that the bill emphasized a multi-disciplinary, multi-faceted cooperative approach from all users. He stated that the commission had representatives from all sectors. He added he had been gratified on the task force by working together with all of the competing groups such as Trout Unlimited, stockgrowers and irrigators, and making some headway on the problems of drought.

JIM JENSEN stated that MEIC was in support of the bill, and that the state was in dire need of policy and a mechanism to implement that policy. He said that the bill would give the governor the power to do some things that the former governor felt he could not do.

JOHN THORSON stated that he served on the Drought Task Force, and said that the bill directed attention to several weaknesses that resulted from the task force's experience. He said that there was a Drought Plan in the state, but that it was woefully inadequate to deal with the drought experienced by the state last summer, superficial, and ignored by agencies. This bill would mandate a delineation of an adequate drought plan. It would also bring all of the people to one table for a coordinated response. He added that the state was

still heading for a third year in this drought cycle. He said that in the past they had the task force meeting, developing some good recommendations, having communication among some of its members, but that the recommendations would be lost when the Disaster Emergency Council would meet at a later date. He said that this bill would bring all of these people together at the same table to develop recommendations to the governor. He urged support of this bill.

PEGGY HAAGLUND, Executive Vice President to the Montana Association of Conservation Districts. She said that she had debated with herself as to being a proponent, opponent, or neutral. She said that she decided to be a proponent, and said that she, too, had been a member on the Drought Task Force. She said that she truly thought that this idea was good, and compared it to the emergency that had occurred the day previous (the Rail Link train explosion in Helena), when the community and state were prepared to react. MS HAAGLUND said that she thought it important to be prepared to react to a drought, that she agreed the state was still in. She said that she had an amendment to one of the amendments offered by Mr. Ochenski. She said that there were now, in the bill, 17 members of the commission. She proposed that there be 18 members, with the Conservation Districts having a representative on the commission, rather than being an ex officio member as proposed in the Ochenski amendment.

MS HAAGLUND distributed information on the Conservation Districts (EXHIBIT 15), and stated that they were subdivisions of state law, and responsible for conservation work within their district and within all of Montana. She said that there were 59 of them, and that they were a sister agency to the Soil Conservation Service. She said that the SCS could work through the Conservation District on the commission, and were the people with the Snow Survey information. She added that the Conservation Districts also were closely related to the landowners, through technical assistance with the SCS. MS HAAGLUND said that another reason for Conservation Districts' representation on the commission was that they were responsible for the 310 law.

MS HAAGLUND also encouraged the involvement of the Cooperative Extension Service, an excellent agency that provided education and worked directly with the people.

JO BRUNNER rose in support of the bill.

Testifying Opponents and Who They Represent:

Carol Mosher, Montana Stockgrowers Association, Montana Cattlewomen, and the Montana Association of State Grazing Districts.

Opponent Testimony:

CAROL MOSHER testified as set forth in EXHIBIT 16. She was concerned about the level of appropriation in the bill, \$15,000, stating that it was a very dangerous part of the bill. She said that her organization believed that the \$15,000 appropriation would not be enough money to support the commission for the biennium. She said that the requests in the bill could adequately be provided for by the present system for governor appointed boards without going through the legislative and appropriation process.

Questions From Committee Members:

REP. GIACOMETTO asked how the proponents felt about the amendment proposed by the conservation districts. MR. OCHENSKI said that the initial thought was that not everyone would be able to be a member, and that the ex officio members were primarily state agencies. He was concerned that by putting one agency on with voting power, difficulties regarding the other agencies would arise.

REP. BROOKE asked if there were any other states in the region that had a similar commission, and MR. OCHENSKI said that one of the driving forces for the creation of this bill and this commission had been a variety of actions taken by the state of Washington and its governor during the past summer.

REP. GIACOMETTO asked for clarification regarding the governor's unwillingness to exercise power that he already had. MR. OCHENSKI replied that Governor Schwinden did not feel he had the power to do what was suggested in this bill. This bill would remove a political aura from decisions regarding drought.

Closing by Sponsor: REP. HARPER addressed Ms Mosher's concern on page 6. He said that the language was referring back to Rep. Thoft's bill. He said that the word on line 14 would be changed from commissioner to mediator, and then the blanks would read "HB 463". He said that this would not provide any additional power besides that allowed for in that bill. He closed, stating that the bill had been covered thoroughly, and thanked the committee.

HOUSE COMMITTEE ON NATURAL RESOURCES

February 3, 1989

Page 17 of 17

ADJOURNMENT

Adjournment At: 6:25 p.m.



REP. RANEY, Chairperson

BR/cm

2912.min

DAILY ROLL CALL

HOUSE NATURAL RESOURCES COMMITTEE

50th LEGISLATIVE SESSION -- 1989

Date 2/3/89

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Raney, Chairman	✓		
Rep. Ben Cohen, Vice-Chairman	✓		
Rep. Kelly Addy	✓		
Rep. Vivian Brooke	✓		
Rep. Hal Harper	✓		
Rep. Mike Kadas	✓		
Rep. Mary McDonough	✓		
Rep. Janet Moore	✓		
Rep. Mark O'Keefe	✓		
Rep. Robert Clark	✓		
Rep. Leo Giacometto	✓		
Rep. Bob Gilbert	✓		
Rep. Tom Hannah	✓		
Rep. Lum Owens	✓		
Rep. Rande Roth	✓		
Rep. Clyde Smith	✓		

EXHIBIT 1

DATE 2-3-89

HB 380

HB380 Natural Resources Feb. 3. 89

Montana Water Resources Association, Jo Brunner, Ex. Sec.

Support Oppose Amend X

Mr. Chairman, Members of the Committee for the record, my name is Jo Brunner, and I am the Executive Secretary of the Montana Water Resources Association.

Mr. Chairman, for over three years the Montana Water Development Association, now the Montana Water Resources Association, participated in Legislative session, and in interim committee meetings concerning Subdivision laws. After three years of rehashing the efforts by the many interests involved to come to agreements on what was necessary in subdivision law revisions, MWRA withdrew from participation, reluctantly, but with the conviction that any changes would have to come through specific legislation, not through joint agreement by all parties. We stressed when we withdrew from the effort, that we would, if legislation was introduced that did not include certain wording, that we would appear before the Legislature and request the such wording be inserted.

Now, we spent those years, and those miles, and those hours and finances, to keep a very short phrase in any subdivision legislation. That short phrase was, and still is, EFFECTS ON EXISTING WATER USER FACILITIES.

You will note that it is not included within this bill.

It was argued, and I assume it will continue to be argued, that any effects on water user facilities is included in the existing definitions, or is covered in other areas of subdivision law. We do not beleive that. We are firm in our conviction that specifics to the effect on existing water facilities must be considered within the subdivision law.

Too many of our irrigation districts/water user entities are constantly harrassed by residents of enroaching subdivisions. Our ditches are used illegally by children, often with the knowledge of parents, and then if there is an accident, the hue and cry for fencing, etcetera is great, and our limited operating expense must be paid out for protecting the district from liable suits.

Litter and refuse from subdivisions gets into the canals and delivery systems, in many instances plugging culverts and causing a back up of the water to the users, and often flooding.

Some of you may recall the slides MWRA presented during the last Legislative Session which showed instances of owners within subdivisions using the existing irrigation district ditch banks as a part of their landscaping. Parents have built bridges over canals so that their children won't have to walk further to get to school. Water user entities have been sued over the death of a small child

EXHIBIT 1
DATE 2-3-89
HB 380

who had wandered from a comparatively speaking new development to an water delivery system that had been in existance for a great many years, and covered quite a distance for a little tot to do so.

Billings for instance, has a great problem with seepage in basements that were built within the last dozen or so years, under a canal that has been there for more than 1/2 a century. Why wasn't the fact that the existing canal running above the development will carry a tremendous amount of water through it for several months of the year, considered.? Because the law did not specifically state that existing water user facilities must be considered!!!!

Colleges have been built around a delivery canal, and when those young exuberant people decide to spend a few minutes in the canal between classes, the district has no recourse but to turn thier fun and games over to the law, just as is the obligation of the water entities when young children decide to float innocent pieces of board, or a cardboard box, or maybe try out an inter tube, or a piece of plywood for a raft. Such innocence can cause injury or death to a youngster, but in the least can be a great expense to the water facillite with plugged culverts as I mentioned before. If the water entity is aware of trespass of any kind, and does not protest, they can be construed as liable.

Excessive run-off from towns and from surrounding sub-divisions can not only be harmful to an existing water user facility, through the introduction of contaminants, but be very costly in repairs to a system not constructed to handle such an influx.

MWRA does not beleive that such problems will disappear with the enjection of our few words within this bill. Our reason is to show that problems do and will continue to arise, usually costly to the users, and sad to say sometimes disastrous to residents of the subdivisions .

It is our very firm belief that when a subdivision is proposed, the criteria for showing effects of the subdivision which will include the language 'EFFECTS OF EXISTING WATER USER FACILITIES,' will induce the developers to seriously stress to thier buyers that such facilities do exist in close proximity to the development and consequently the responsability of those buyers to respect the facilities.

I wish to offer an amendment to HB380--Section 1, line 10, page 2 which will read, (h) effects on existing water user facilities.

Thank you.

State of Montana

County of Gallatin

Bozeman



FILED 2
FEB 2-3-89
G HB380

January 31, 1989

Representative Norm Wallin
Capitol Station
Helena MT 59601

Re: HB 380

Dear Representative Wallin:

The Gallatin County Commission is opposed to House Bill No. 380, an act to revise the criteria used by a local governing body to review a subdivision proposal under the Montana Subdivision and Platting Act; amending Section 76-3-608. We have sent the enclosed letter, which details the reasons for our opposition, to all members of the House Natural Resources Committee.

HB 380 will be heard by the Committee at 3:00 on Friday, February 3, 1989. We strongly oppose HB 380 and respectfully request that you oppose it in Committee and on the floor.

Sincerely,
GALLATIN COUNTY COMMISSIONERS


RAMON S. WHITE, CHAIRMAN


JANE JELINSKI, MEMBER


A.D. PRUITT, MEMBER

enc.

rlrj



City County Building
P.O. Box 1724
316 North Park
Helena, Montana 59624
Telephone 406/443-1010

LEWIS AND CLARK COUNTY

Board of County Commissioners

RECEIVED 3
DATE 2-8-89
HB 380

February 11, 1989

The Honorable Representative Bob Raney, Chairman
House Natural Resources Committee
Capitol Station
Helena, Montana 59604

Dear Representative Raney:

Lewis and Clark County residents have paid about \$950,000.00 since 1980 in debt retirement costs for the parcels at the Eastgate Subdivision.

Sincerely,

Linda Stoll-Anderson, Commissioner
Lewis and Clark County

EX- 4
DATE 2-3-89
HB 380

Feb. 2, 1989

HB 380

My name is Harriett Meloy, and I am a member of the Joint City County Planning Board of Lewis & Clark County and Helena.

I also represent the Montana League of Women Voters.

I am here today to oppose the passage of HB 380.

This bill is not in the public interest and should be opposed for the following several reasons:

1. Public interest criteria are the mechanism used to review subdivisions, and to determine if the proposal should be approved, conditionally approved or disapproved. As proposed, this bill specifically exempts minor subdivisions (five lots or less) from the public interest criteria and essentially from subdivision review.
2. The proposed bill would specifically delete the present requirement that a subdivision be found in the public interest.
3. The proposed bill would specifically delete the present requirement that a governing body disapprove any subdivision not found to be in the public interest.
4. This bill reduces the status of the public criteria to additional information. It specifically removes public opinion which may include addressing adverse effects on property values.
5. The bill would specifically delete the opportunity for the public's right to comment on a subdivision. The right to comment on land use proposals is specifically guaranteed by Montana's constitution.

Harriett Meloy
1317-9th
Helena, MT 59601
442-8112

To: Representative Bob Raney, Chairman
House Natural Resources Committee

From: The League of Women Voters of Montana
Peggy Munoz, Tonia Bloom

Re: HB 380

5
DATE 2-3-89
RE 380 .

The League of Women Voters of Montana opposes HB 380. Most counties in Montana have not adopted master plans. In the absence of a plan the public interest criteria have provided the public with a mechanism for input into the review process. The eight criteria have also provided planning boards with concrete guides to address when making recommendations on subdivisions they pass on to local governing bodies.

Eliminating the need and public opinion criteria weakens the use of the remaining six criteria.

Eliminating minor subdivisions from the criteria makes review of those subdivisions a rubber stamp gesture.

Eliminating the public interest language from the law is a slap in the face of all citizens who will have to live with bad and ill-advised development. We urge that the committee reject HB ~~380~~ 380.

Testimony, House Bill #380

6
2-3-89
380

My name is Randy Moy. I live at 4258 Franklin Mine Road in Helena, Montana. I am here to testify on House Bill 380, an act to revise the criteria used by a local governing body to review subdivision proposals under the Montana Subdivision and Platting Act.

I, in particular, do not like regulations, but there are times when they are needed to protect ourselves from others - that is the reason we have regulations in general. I served from 1978 to 1986 (8 years) on the Planning Boards of Lewis & Clark County and the City of Helena. I am disappointed today to see efforts to dilute existing subdivision regulations. If anything, now is the time to improve land use planning across the state. Two summers ago I travelled with my son across North Dakota, Minnesota and into Wisconsin. I was amazed by the pride exhibited by the people in these states. Homes and yards were groomed and clean. On the return trip into Montana, what does one see - trailers on every 5 to 10 acres ^{with} yards cluttered by junk - not just a little junk, but lots of junk. When I see this, there are times that I am ashamed to be a third generation Montanan. The pride that is exhibited in the other states, seems not to exist here anymore. It used to! I've come to label people without the Montana pride as "Montana Slobs". These people hate all forms of government until something goes wrong in their lives, and then are the first to ask for government handouts. I could speak for hours on this type of individual and some day I will.

Today everyone is talking about economic development, but ask yourself, "Who wants to come and reside in a state that yes, has probably the greatest natural treasures in its beauty than any other state, but yet has people who

Ex. #6
2-3-89

simply do not care how they live or how their yards look. If I was looking to come into Montana to start up a business, the first thing I would look at is the pride that the people in Montana exhibited - how clean was the state! Good land use planning reflects good Montana pride and hospitality, which translates into a better business climate.

So, I am opposed to House Bill 380 and am saddened to see efforts to weaken subdivision regulations.

State of Montana

County of Gallatin

Bozeman



January 31, 1989

EXHIBIT 7
DATE 2-3-89
HB 380

Representative Bob Raney
Chairman
Natural Resources Committee
Capitol Station
Helena MT 59601

Re: HB 380

Dear Representative Bob Raney:

The Gallatin County Commission is opposed to House Bill No. 380, an act to revise the criteria used by a local governing body to review a subdivision proposal under the Montana Subdivision and Platting Act; amending Section 76-3-608.

The Commission is opposed to HB 380 for the following reasons. First, HB 380 would remove all criteria for approving minor subdivisions. It is important to have a basis to evaluate all subdivisions, no matter what the size.

Second, HB 380 would remove expressed public opinion as a means of evaluating subdivision proposals. The Commission feels it is important to hear and consider public testimony, just as the Legislative Committee system does.

Finally, HB 380 would delete the requirement that, to approve a subdivision, local governments must find that the subdivision is in the public interest. Subdivision of land involves more than just the buyer and seller of land; it influences the character of the community and therefore is of public interest.

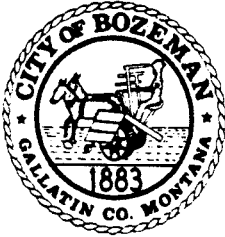
For the above reasons, we strongly oppose HB 380 and ask that you oppose it in committee.

Sincerely,
GALLATIN COUNTY COMMISSIONERS

Ramon S. White
RAMON S. WHITE, CHAIRMAN

Jane Jelinski
JANE JELINSKI, MEMBER

A.D. Pruitt
A.D. PRUITT, MEMBER



THE CITY OF BOZEMAN

411 E. MAIN ST. P.O. BOX 640 PHONE (406) 586-3321
BOZEMAN, MONTANA 59711-0640

FILE 8
DATE 2-3-89
HB 380

January 31, 1989

Representative Bob Raney
Chairman
Natural Resources Committee
Capitol Station
Helena, Montana 59620

Dear Representative Raney:

On behalf of the Bozeman City Commission, I wish to state our opposition to HB380, an act to revise the criteria used by local governing bodies to review a subdivision proposal under the Montana Subdivision and Platting Act, amending Section 76-3-608, Montana Code Annotated.

The Commission is opposed to HB380 for the following reasons. First, HB380 would remove all criteria for reviewing minor subdivisions. It is important to have a basis to evaluate all subdivisions, no matter what the size. Second, HB380 would remove expressed public opinion as a means of evaluating subdivision proposals. The Commission feels it is important to hear and consider public testimony just as the legislative committee system does. Finally, HB380 would delete the requirement that to approve a subdivision, local governments must find that the subdivision is in the public interest. Subdivision of land involves more than just the buyer and seller of land; it influences the character of the community and, therefore, is of public interest.

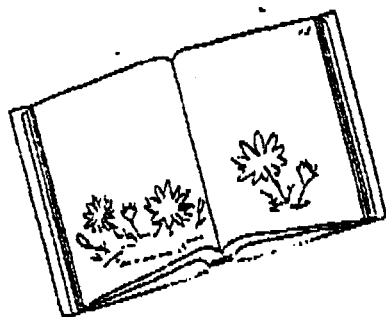
For the above reasons, we strongly oppose HB380 and ask that you oppose it in committee.

Sincerely,

ALFRED M. STIFF
Mayor

AMS:rs

cc: Members of the House
Natural Resources Committee

DATE 2-3-89HB 350.

BITTERROOT PUBLIC LIBRARY

306 State Street * Hamilton, Montana 59840

Phone: (406)363-1670

Fax phone: (406)363-1678

DATE: Feb. 3, 1989RM 317
or 312-4TO: House Natural Resources CommitteeFROM: Steve Powell, Ravalli County Commissioner

RE: FAX TRANSMISSION

Number of pages in transmission: 2
(including cover sheet)

If this FAX transmission is not being received properly or is not readable please call (406) 363-1760.

Thank you!!!

SPECIAL INSTRUCTIONS:

House Natural Resources Committee

Re: HB 380

Feb 3, 1989

EXHIBIT

9

DATE

2-3-89

HR

HB 380

I wanted to register my opposition to the proposed changes in the Montana Subdivision and Platting Act as contained in HB 380.

Before being elected County Commissioner, I practised land surveying in Ravalli County for over 15 years and was very involved in subdivision activity.

Although it is rare in our county for a proposed development to be denied on the basis of need for the proposal or expressed public opinion, I feel that the public does have an interest in ~~these~~ private land use decisions and that these are valid criteria for assessing that interest. By removing these criteria from the law you ~~would~~ be limiting a local government's ability to establish its own policies to review subdivision proposals.

I encourage you to delete the proposed exemption of minor subdivisions from assessment since a considerable

Amendments to House Bill No. 463
First Reading Copy

Requested by Rep. Bob Thoft
For the Committee on Natural Resources
January 31, 1989

1. Title, line 5
Following: "WATER"
Strike: "COMMISSIONER"
Insert: "MEDIATOR"

2. Title, line 6
Following: "IN A"
Strike: "DECREED OR"

3. Title, lines 6 through 12.
Following: "BASIN;" on line 6
Strike: remainder of line 6 through "COMMISSIONER;" on line 12

4. Title, line 13
Following: "COMMISSIONERS"
Insert: "AND MEDIATORS"

5. Title, lines 14 through 16
Following: "APPROPRIATION;" on line 14
Strike: "remainder of line 14 through "MCA;" on line 16

6. Page 1, line 19 through line 4, page 12
Following: line 18
Strike: sections 1 through 8 in their entirety
Renummer: subsequent sections.

7. Page 12.
Following: line 4
Insert: "NEW SECTION. Section 1. Appointment of water
mediators. (1) The judge of the district court may appoint
a water mediator to mediate a water controversy in a
nondecreed basin under the following circumstances:

(a) upon request of the governor;
(b) upon petition by at least 15% of the owners of
water rights in a nondecreed basin; or
(c) upon petition by a state agency with water-related
interests.

(2) A water mediator appointed under this section may:
(a) discuss proposed solutions to a water controversy
with affected water right holders;

(b) discuss water use and water needs with persons and
entities affected by the existing water use;

(c) meet with principal parties to mediate differences
over the use of water; and

(d) hold public meetings and conferences to discuss and
negotiate potential solutions to controversies over use of
water.

(3) If the governor requests or a state agency petitions for a water mediator, the governor or agency shall pay all or a majority of the costs of the water mediator, as determined equitable by the district court having jurisdiction.

(4) The governor may use funds appropriated under 17-7-502 and 10-3-312 to pay the costs of a water mediator."

Renumber: subsequent sections

8. Page 12, line 5
Following: "commissioner"
Insert: "and mediator"

9. Page 12, line 11
Following: "commissioners"
Insert: "and mediators"

10. Page 12, line 12
Following: "commissioner"
Insert: "and mediator"

11. Page 12, line 15
Following: "commissioner"
Insert: "and mediator"

12. Page 12, line 17
Following: "commissioners"
Insert: "or mediators"

13. Page 12, lines 18 through 23
Following: "Appropriation."
Strike: the remainder of line 18 through "(2)" on line 23
Insert: "(1)"

14. Page 13, line 2
Following: "commissioners"
Insert: "and mediators"

15. Page 13, line 3
Following: line 2
Strike: "(3)"
Insert: "(2)"

16. Page 13, line 5
Following: "subsection (1)"
Strike: "or (2)"

17. Page 13, line 9
Following: line 8
Strike: "Section 9"
Insert: "Sections 1 and 2"
Strike: "is"
Insert: "are"

10
2-3-89
HB463

18. Page 13, line 11
Following: "["
Strike: "section 9"
Insert: "sections 1 and 2"

11
EXHIBIT

DATE

HB

House Bill No. 463

Introduced By _____

A draft for a bill entitled: "An act ALLOWING A DISTRICT COURT TO APPOINT A WATER COMMISSIONER MEDIATOR TO MEDIATE A WATER CONTROVERSY IN A DECREED-OR NON-DECREED BASIN; ENABLING-THE GOVERNOR-TO-APPLY-TO-THE-DISTRICT-COURT-FOR-APPOINTMENT-OF-A WATER-COMMISSIONER;-ALLOWING-THE-DISTRICT-COURT-TO-ASSESS REASONABLE-FEES-FOR-A-WATER-COMMISSIONER-TO-THE-DEPARTMENT-OF NATURAL-RESOURCES-AND-CONSERVATION-OR-TO-A-PETITIONING-STATE AGENCY;-MAKING-OTHER-REVISIONS-TO-THE-WATER-COMMISSIONER-LAWS-TO CLARIFY-THEM-AND-TO-DISTINGUISH-THE-MEDIATION-AND-DISTRIBUTION RESPONSIBILITIES-OF-A-WATER-COMMISSIONER; ESTABLISHING AN EDUCATIONAL PROGRAM FOR WATER COMMISSIONERS AND MEDIATORS; AMENDING-SECTIONS-85-5-101,-85-5-102,-85-5-105,-85-5-108,-85-5-201,-85-5-206,-85-5-301,-AND-85-5-302,-MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Be it drafted for sponsor approval

Existing sections 1 through 8 are stricken. The substantive part of the bill would read as follows:

NEW SECTION. Section 1. Appointment of water mediators.

(1) The judge of the district court having jurisdiction may appoint a water mediator to mediate a water controversy in a nondecreed basin under the following circumstances:

2-3-89

(a) upon request of the governor;

(b) upon petition by at least 15% of the owners of water rights in a nondecreed basin; or

(c) upon petition by a state agency with water-related interests.

(2) A water mediator appointed under this section may:

(a) discuss proposed solutions to a water controversy with affected water right holders;

(b) discuss water use and water needs with persons and entities affected by the existing water use;

(c) meet with principal parties to mediate differences over the use of water; and

(d) hold public meetings and conferences to discuss and negotiate potential solutions to controversies over use of water.

(3) If the governor requests or a state agency petitions for a water mediator, the governor or agency shall pay all or a majority of the cost of the water mediator, as determined equitable by the district court having jurisdiction.

(4) The governor may use funds appropriated under 10-3-312 to pay the cost of a water mediator.

NEW SECTION. Section 2. Water commissioner and mediator education. The department of natural resources and conservation, in cooperation with the Montana supreme court, the Montana water courts, the district courts of Montana, the Montana university system, and other appropriate state and federal agencies, shall develop an educational program for water commissioners and

mediators that includes:

(1) an annual seminar on commissioner and mediator duties, mediation techniques, and water measuring techniques;

(2) preparation and, as necessary, revision of a water commissioner and mediator manual; and

(3) an outreach program that identifies persons who might serve as water commissioners or mediators.

NEW SECTION. Section 3. Appropriation. ~~{1}-There-is appropriated-\$50,000-from-the-water-development-special-revenue account-to-the-department-of-natural-resources-and-conservation for-the-biennium-ending-June-30,-1991,-to-pay-water-commissioner fees-and-costs---~~

~~{2}~~ (1) There is appropriated \$10,000 from the water development special revenue account to the department of natural resources and conservation for the biennium ending June 30, 1991, to prepare and offer an educational program for water commissioners and mediators.

2 ~~(3)~~ If ^{10,000} ~~funding~~ is not available from the water development special revenue account for the activities funded in subsections subsection (1) ~~or-{2}~~, there is appropriated from the renewable resources development account any ^{an amount = to the diff} ~~remaining~~ money necessary to provide complete funding.

NEW SECTION. Section 4. Codification instruction.
[~~Section-7~~ Sections 1 and 2] is are intended to be an integral part of Title 85, chapter 5, part 1, and the provisions of Title 85, chapter 5, part 1 apply to [~~section-7~~ sections 1 and 2].

Ex. # 11
2-3-89

NEW SECTION. Section 5. Saving clause. [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].

NEW SECTION. Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval.

-END-

LC300 Machine ID wpceqc

EXHIBIT 12
DATE 2-3-89
HB HB 463

HOUSE BILL 463

EXPLANATION

BACKGROUND

Under existing law, water commissioners can only be appointed to enforce water rights on streams where the water rights have been established by court decree. On streams where there is no court decree, a water user who wishes to enforce his water right must sue everyone on the stream who he believes is interfering with his right. There are many streams in Montana where the water rights have not been established by court decree.

RESPONSE

H.B. 463 would allow the appointment of mediators on non-decreed streams to assist in the negotiation of settlements to disputes over the use of water. A mediator:

Would have no affirmative enforcement authority;

Would only assist water users in resolving disputes;

Could be appointed only in the following ways -

Upon request of the governor

Upon petition of at least 15% of
the water users in a stream, or

Upon petition by a state agency
with water related interests

OTHER FEATURES

H.B. 463 would also provide for the development of an educational program for water commissioners. The program would include:

An annual seminar on commissioner duties, mediation techniques, and water measuring techniques;

Preparation of a water commissioner's manual

An outreach program that identifies persons who might serve as water commissioners

Steve Beckman

EXHIBIT 13
DATE 2/3/89
HB 463

HB436 Natural Resources Feb. 3, 1989

Montana Water Resources Association, Jo Brunner, Executive Sec.

 Support X Oppose Amend X

Mr. Chairman, members of the Committee, for the record, my name is Jo Brunner, and I am Executive Secretary of the Montana Water Resources Association.

Mr. Chairman, the Montana Water Resources is certainly more in approval of this bill, now that it has seen some slight amendments - we were not in support of it in its original LC form.

MWRA recognizes the need for mediation of water concerns on nondecreed basins. We are well aware that there are horrendous problems existing that may be solved by such a program and we support the ability of the court to appoint a mediator in such instances.

We believe that in cases of extreme emergency, the Governor should have the ability to request a mediator.

However, we also recognize within this bill the continuing efforts to confiscate agriculture waters for instream flow protection during low flow/ drought years such as we have had recently.. While this bill does not actually address the governor, or Fish Wildlife and Parks confiscating the rights of water holders, it appears to be written to that end. And it appears to allow a state department, without any water rights--only an interest--within the decreed basin to request mediation over a controversy. In other words, should Fish Wildlife and Parks decide that a certain nondecreed basin, where they have no reservations or permits is running low on instream flow, and that the irrigators could use less water, they could in themselves start the controversy, and then request a mediator.

It is inconcievable to MWRA that the Governor would ever request a mediator on any basin, decreed, or nondecreed, without very thorough and extensive consultation with Fish, Wildlife and Parks, with Department of Natural Resources, or Health and Environmental Sciences, both seperately and together. We would hope that Department of Agriculture would be included also.

It is doubtful to us, that the Governor would even begin to instigate such action without the recommendation of a Department with water related interests.

Section 1 (1)

(a) upon the request of the Governor, indicates the concern of the Departments of the State of Montana for water situations within a basin.

(b) allows any department, in conjunction with any other water right owner, by a 15% petition, in a non decreed basin, to request a

EXHIBIT 13
DATE 2/13/89
HB 463

mediator.

(c) says that any time a state agency with water related interests wants to confiscate water within a basin they do not have a water right in, they just have to request a mediator, considering they have been able to stir up a controversy. The wording may be somewhat more polite, but that is what it says.

The Montana Water Resources Association wishes to offer the following amendments to HB346.

Section 1, Paragraph (1), delete subparagraph (c).

Section 1, Paragraph (3) after the words 'governor requests,' delete the words 'or a state agency petitions for' a water mediator, the governor, then delete the words 'or agency ' shall pay all or a majority of the cost of the water mediator-----etcetera.

Now on the assumption that we are going to hear that the mediator only mediates, we also offer a following amendment, considering the interests of agriculture water users have in any mediation of any controversy:

Section 2, Water Commissioner and mediator education. The department of natural resources, in cooperation with the Montana Supreme Court, the Montana water courts, the district courts of Montana, the Montana University system, and other appropriate state and federal agencies, and at least one representative from the Livestock industry and one representative from agriculture irrigation interests, shall develop and educational program for water commissioners and mediators that include:

14
DATE 2-3-89
HB 463

February 3, 1989

TO: House Natural Resources Committee

FROM: Montana Stockgrowers, Montana Cattlemen, Montana Association of State Grazing Districts

SUBJECT: House Bill 463, Water Commissioner Appointment

Mr. Chairman, Members of the Committee:

My name is Carol Mosher. I am representing the Montana Stockgrowers, Montana Cattlemen, and the Montana Association of State Grazing Districts.

We are in opposition to this bill that would involve the Governor in the appointment of a water commissioner. The Governor does not have to pay the salary of the commissioner. We, the water users do. In this bill, it goes on to say the water commissioner would have the authority to develop mediation. This part is very, very wrong. If a water user has a legal right to a certain amount of water and is NOT getting it, then someone else is probably getting that water and so already at that point, one side or the other, is at odds with the commissioner. The commissioner would be the very worst person in the world to mediate.

The problem of mediation, if the senior water user is having trouble getting his water, what good would it be for him to consider mediation. He has nothing to give up. This is not a problem where everyone sits down at the table and compromises. Many water rights are protected by law. If a controversy has come that far, then about the only way to solve it is through the court process.

On page 3, subsection 4. Most of this section is unacceptable to our water right users. There may well be many competent water commissioners, but there are also many very incompetent ones in the state. The job is not all that stimulating. The wages are not the best and many people do not want a possibly controversial job.

On pages 4, lines 12 thru 17 ^{are} ~~is~~ not needed as the water users are satisfied with the present law as to the appointment process and the method of paying the water commissioner.

On page 12, new Section 9 - water commissioner education.

EXHIBIT 14
DATE 2-3-89
HB 463

page 2

This book is not on water law, but on how to measure water

This bill requires a sizeable amount of money to accomplish and there is no need for this section. Several weeks ago I visited with LeRoy Luft of MSU and I asked him if he would please consider just these types of educational classes that could be handled by the college and extension service. He seemed to think it would be a good idea to consider. On page 12, lines 14 and 15, it calls for preparation and printing of a water manual. This would be an unnecessary expense because the University of Wyoming has available an excellent book which has been updated periodically and this sells for less than \$5.00. Using this book and the water laws of the State of Montana gives a commissioner adequate written information. Line 16 and 17 would be a very good idea for any group to encourage *and any practical on the job training would be good*

The problems with HB 463 that I have mentioned are just some of the questions we raise and we think they make the entirety of the bill unacceptable.

We urge you reject this bill.

Thank you.

Carol Mesher

HB 462
DATE 2-3-89
HB 15
Exhibit

76-15-104

LAND RESOURCES AND USE

(11) "United States" or "agencies of the United States" includes the United States of America, the soil conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

History: En. Sec. 3, Ch. 72, L. 1939; amd. Sec. 2, Ch. 73, L. 1961; amd. Sec. 1, Ch. 146, L. 1967; amd. Sec. 2, Ch. 431, L. 1971; amd. Sec. 88, Ch. 253, L. 1974; R.C.M. 1947, 76-103(part); amd. Sec. 393, Ch. 571, L. 1979.

76-15-104. Adjournment of hearings. At any hearing held pursuant to the notice, at the time and place designated in the notice, adjournment may be made from time to time without the necessity of renewing the notice for the adjourned dates.

History: En. Sec. 3, Ch. 72, L. 1939; amd. Sec. 2, Ch. 73, L. 1961; amd. Sec. 1, Ch. 146, L. 1967; amd. Sec. 2, Ch. 431, L. 1971; amd. Sec. 88, Ch. 253, L. 1974; R.C.M. 1947, 76-103(part).

76-15-105. Duties of department. In addition to the duties hereinafter conferred upon the department, it shall:

- (1) offer assistance as may be appropriate to the supervisors of conservation districts in the carrying out of their powers and programs;
- (2) keep the supervisors of each of the several districts informed of the activities and experiences of all other districts and facilitate an interchange of advice and experiences between the districts and cooperation between them;
- (3) coordinate the programs of the several conservation districts hereunder so far as this may be done by advice and consultation;
- (4) secure the cooperation and assistance of the United States and of agencies of this state in the work of the districts;
- (5) disseminate information throughout the state concerning the activities and programs of the conservation districts; and
- (6) encourage the formation of districts in areas where their organization is desirable.

History: En. Sec. 4, Ch. 72, L. 1939; amd. Sec. 1, Ch. 21, L. 1951; amd. Sec. 1, Ch. 47, L. 1967; amd. Sec. 1, Ch. 291, L. 1969; amd. Sec. 3, Ch. 431, L. 1971; amd. Sec. 89, Ch. 253, L. 1974; R.C.M. 1947, 76-104.

Part 2

Creation of Conservation Districts

76-15-201. Petition to create conservation district. (1) Any 10% of the qualified electors within the limits of the territory proposed to be organized into a district may file a petition with the department asking that the board approve the organization of a conservation district to function in the territory described in the petition.

- (2) The petition shall set forth:
 - (a) the proposed name of the district;
 - (b) that there is need in the interest of the public health, safety, and welfare for a conservation district to function in the territory described in the petition;
 - (c) a description of the territory proposed to be organized as a district, which description may not be required to be given by metes and bounds or by legal subdivisions but shall be considered sufficient if generally accurate;

CONSERVATION DISTRICTS

76-15-103

soil-holding crops; retardation of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

History: En. Sec. 2, Ch. 72, L. 1939; amd. Sec. 1, Ch. 5, L. 1959; R.C.M. 1947, 76-102(A) thru (C).

76-15-102. Declaration of policy. It is hereby declared to be the policy of the legislature to provide for the conservation of soil and soil resources of this state, for the control and prevention of soil erosion, for the prevention of floodwater and sediment damages, and for furthering the conservation, development, utilization, and disposal of water and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state.

History: En. Sec. 2, Ch. 72, L. 1939; amd. Sec. 1, Ch. 5, L. 1959; R.C.M. 1947, 76-102(D).

76-15-103. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.

(2) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) "District" or "conservation district" means a governmental subdivision of this state and a public body corporate and politic organized in accordance with this chapter, for the purposes, with the powers, and subject to the restrictions hereinafter set forth.

(5) "Due notice" means notice published at least twice, with an interval of at least 14 days between the two publication dates, in a newspaper or other publication of general circulation within the proposed area or by posting at a reasonable number of conspicuous places within the appropriate area, the posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally.

(6) "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

(7) "Land occupier" or "occupier of land" includes a person, firm, corporation, municipality, or other entity who holds title to or is in possession of lands lying within a district organized under this chapter, whether as owner, lessee, renter, tenant, or otherwise.

(8) "Petition" means a petition filed under 76-15-201 for the creation of a district.

(9) "Qualified elector" means an elector as defined in Title 13.

(10) "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with this chapter.

EXHIBIT 15
DATE 2-3-89
HB 462

February 3, 1989

TO: House Natural Resources Committee

FROM: Montana Stockgrowers, Montana Cattlemen, Montana Association of State Grazing Districts

SUBJECT: HB 462 - Provides for Comprehensive State Drought Response and Drought Commission

Mr. Chairman, Members of the Committee:

My name is Carol Mosher. I am representing the Montana Stockgrowers, Montana Cattlemen, and the Montana Association of State Grazing Districts.

HB 462 is a laudible effort to address the problems of drought. For the past year the Governor has had in place a Drought Task Force. He has that authority now to set up an advisory group to keep him informed. Page 6, lines 13 and 14 — By involving the Governor in this bill, it puts him in a position of circumventing the water courts. *call your attention to - Sec. 5 it is a very dangerous part of this bill and makes us very concerned.* We believe the \$15,000 appropriations would not be nearly enough funding to support this 17 member board for the biennium.

The requests in this bill can adequately be provided for with the present system we have for Governor appointed boards without us going through the legislative and appropriations process.

We urge a do not pass on HB 462.

Carol Mosher

VISITORS' REGISTER

Natural Resources COMMITTEE

BILL NO.

HB 380

10/2

DATE

2/3/89

SPONSOR

Rehberg

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Janet Ellis	Audubon		✓
Ruth Macfield	City of Helena		✓
Randy Poolser	self	✓	
Bill Spilker	SELF & REACTOR	✓	
Jo Brunner	MWRA	✓	
Gary Hamlin	self- ^{homebuilders} contractors	✓	
Alan Nichols	self	✓	
Harriet McLoag	City Co. Planning Bd. ^{Mont. L.W.V.}		✓
Tom Hopgood	Mont. Assoc. Realtors	✓	
Mona Jamison	MT Assoc. Planners		✓
Mon Wicks	Sterra Club		✓
Beverly Gibson	mt. Assoc. of Counties		✓
Chris Kaufman	MEIC		✓
Stan Bradshaw	Food Unit. Fed	✓	✓
Robert Rasmussen	LEWIS & CLARK CO. PLANNING		✓
Bill Dietl	Self	✓	
R.A. Ellis	MWRA	✓	
Bob Dozier	N. P. R. C.		✓
HS Hansen	mt. Assoc. of Counties	✓	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

Natural Resource COMMITTEE

BILL NO. #380 2062 DATE 2/3/89

SPONSOR Rehberg

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

Natural Resource COMMITTEE

BILL NO. HB 515DATE 2/3/89SPONSOR Rehberg

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Janet Ellis	Audubon		✓
Kathy Macfield	City of Helena		✓
Randy Douken	Self	✓	
Bill Spilker	Self and Realtors	✓	
Jerry Hamlin	Self and Homebuilders	✓	
Alan Nicholson	Self	✓	
Tom Hoggood	Mt. Assoc. Realtors	✓	
Mona Jamison	Mt. Assoc. Planners		✓
Beverly Dixon	Mt. Assoc. of Counties		✓
Harriet C. McLaughlin	Mt. LHV		✓
Chris Kuehn	Joint City/Co. Planning Bd		✓
Robert Rasmussen	MEIC		✓
Bill Seehl	LEWIS & CLARK Co. Planning	✓	
Kim Wilson	Self		✓
Stan Bartholomew	St. Helena CIO		✓
Mona J. Jamison	T.H.		✓
	Mt. Assoc. of Counties		✓

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VISITORS' REGISTER

Natural Resources COMMITTEE

BILL NO. HB463DATE 2-3-89SPONSOR Thrift

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Joe B...	MWPA	amend	
Joe B...	Seaf	✓	
Marvin Barber	Sierra Club	✓	
Star Blackman	Thrift Unlimited	✓	
GEORGE OCHENSKI	AMW	✓	
P. A. Ellis	M. W. R. I. T.	✓?	
Marvin Barber	A. P. R.		✓
Carol Mosher	Mt. Stockman's Battle Women		✓
Jim Jensen	MELC	✓	
Lorna Frank	Farm Bureau		✓
Janet Ellis	Audubon	✓	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

Natural Resource COMMITTEE

BILL NO. H.B. 462DATE 2-3-89SPONSOR Wagner

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Jim Brown	Mesa	amend	
John Brown	Salt	✓	
Jim Wilcox	Steno Club	✓	
GEORGE OGRENSKI	AMW	✓	
Stan Bradshaw	Treat Unlimited	✓	
R. A. E. 1110	M.W.T. Rec. Ass'n	✓	
Marvin Barber	A. P. A.		✓
Reggie Haaglund	Mt Assoc. of Cons. Dist	amend	
Carol Mosher	Mt. Stockgrower		✓
Jim Jensen	METC	✓	
Lorna Frank	Barn Bureau		✓
Janet Ellis	Andubon	✓	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.