

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - 1st SPECIAL SESSION

COMMITTEE ON APPROPRIATIONS

Call to Order: By Chairman Bardanoue, on June 26, 1989, at 1:03 p.m.

ROLL CALL

Members Present: 18

Members Excused: Representatives Bradley and Marks

Members Absent: None

Staff Present: Keith Wolcott, LFA

Announcements/Discussion: Chairman Bardanoue said this was a joint meeting with Senate Finance Claims, and Senator Aklestad's secretary called the roll for the Senate.

HEARING ON HOUSE BILL 46

AN ACT TRANSFERRING THE LITIGATION BUREAU OF THE TRANSPORTATION DIVISION OF THE DEPARTMENT OF COMMERCE TO THE DEPARTMENT OF JUSTICE; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Presentation and Opening Statement by Sponsor:

Representative Schye, House District 18, Glasgow, a grain farmer, and chief sponsor of House Bill 46 said he had done a lot of work in past sessions on the McCarty Farms bill, and when petitions came up to look into this legislation he had signed it, and it is an appropriations bill. He said the state in the past few years has spent over \$1 million in litigation with Burlington Northern over this bill and the grain farmers have spent \$350,000 to \$400,000 of their money as well as other amounts of money the state has invested in this litigation. He said constituents had called to find out what was going on with the McCarty Farms bill, if it was being dropped, and said a lot of people perceive that we have dropped the ball in the court case. He said the ICC has ruled pretty well in the favor of the producer, and Judge Hatfield has said to settle it out of court, we are in the last inning of the ball game with Burlington Northern, and to back off now is wrong. He said this will have a lot to do with future grain rates in Montana.

Testifying Proponents and Who They Represent:

Senator Jergeson, House District 8, Chinook
Terry Murphy, President, Montana Farmers Union
Mary Nielsen, State and National Transportation Chairman for
Women In Farm Economics (WIFE)
Randy Johnson, Ex Vice President, Montana Grain Growers
Association
Representative Bardanouve, House District 16, Harlem

Proponent Testimony:

- (069) Senator Jergeson said early in June he started getting phone calls from people in and outside his district asking what they were doing in Helena about the McCarty Farm case. He said since the agency had been reorganized he had to check to see if that had any effect. He said since this bureau was set up to handle this case on behalf of the grain farmers in the state of Montana, then we should ask, were the grain farmers complaining about the operation of the bureau. He said they were not, but he felt they were satisfied, neither had any criticism of the work or personnel that are there or were previously there. He said he did not think Burlington Northern had complained, but apparently the director of the department was concerned that having a bureau named the Litigation Bureau would send a bad business signal. He said he did not think the name concerned them, they were concerned over the fact that they were being sued. He said the question the farmers were asking him was if the reorganization represented a weakening of state support. He passed out EXHIBIT 1 and said the Litigation Bureau sort of disappeared in the shuffle. He also said the people who had been on the McCarty Farms case had been transferred to other departments, and he was concerned about both the reasons and the results.
- (183) Mr. Murphy said he was appearing in behalf of Montana Farmers Union as a proponent of the bill. He said they feel it is not acceptable at this time for the state to in fact or by perception, lessen it's involvement or commitment to the McCarty Farms case in any way, and certainly the downgrading or elimination of the Litigation Bureau would appear to send a strong negative signal in that regard. He said they feel it is crucial to maintain the bureau through the duration of the resolution of the case and feel the Justice Department is a logical place for it.
- (199) Ms. Nielsen said she had been sent over in place of the regular WIFE lobbyist, lives at Medicine Lake, their farm is there, and she agreed we have high freight rates, since in Northeast Montana they are some of the highest in the nation. She said they would like to share their concern over the situation that has made this bill necessary. She said in Washington D C, work on the McCarty Farms case is very well known and WIFE was instrumental in raising funds for the original class action suit which was just farmers, and was the forerunner of the McCarty Farms suit. She told

of their concern over the dissolution of the Litigation and Analysis Division just before the meeting at Billings where both sides were trying to reach an agreement. She said they had the loss of two and then the remaining two who had been involved in the McCarty Farms case were moved to a different division in the Department of Transportation. She said their lobbyist was told they should not try to interfere with any of the inner actions of any Department. With the 11 years of experience they had in working with the Transportation Division it indicates real problems could develop if those who have worked with the suit and know all the problems should no longer be available.

(272) Mr. Johnson said he was neither a proponent nor opponent, but they are one of the primary players in the McCarty Farms case because their organization actually originated the suit, and because this piece of legislation centers around the state's role in the McCarty Farms suit. He said House Bill 46 is an answer to Mr. Letson's decision to reorganize the Transportation Division of the Department of Commerce. He said they do not take issue with that decision. He said their organization is not partisan, work with whichever party is in power and believe they have the right and the obligation to run the state in the manner they choose. He said they were concerned early on about the support a new administration would give to the McCarty Farms case. He said they met with Governor Stephens in January and were pleased with his knowledge of the case and with his commitment to bring the case to a successful conclusion. He said they were again concerned when Mr. Letson announced the reorganization plan, we have met with him and he has personally assured us that is not the case. He has promised that this administration will continue to support the case and represent the interest of the grain shippers.

(344) Representative Bardanoue said he has never been involved in the McCarty Farms case, except through the appropriation committee and at times chairman over several years, in the Department of Agriculture and the Department of Commerce he has worked very closely with the people who were pursuing this case. He said he had been asked for cooperation so the McCarty Farms case could receive financial support from Montana. He said he had supported giving state help to the McCarty Farms case since the grain farmers could not raise enough money and the case could collapse. He said since he had been asked over the years by many farmers to help provide enough money to continue the case it concerns him that there has been a radical change in the final hours in this case. He said probably most important was the freight rates that will be reduced or credit given on accounts.

Testifying Opponents and Who They Represent:

Mike Letson, Director, Department of Commerce
Everett Snortland, Director, Department of Agriculture, and a

grain producer
Marc Raciot, Attorney General
Mike Micone, Commissioner, Department of Labor
John Craig, Chief of Intermodal Commodities Bureau, in the
Division of Transportation, Department of Commerce

Opponent Testimony:

(416) Mr. Letson said the Litigation and Analysis Bureau handles cost analysis of railroads, rate structure analysis, abandonments, coal research, ex parte proceedings, tariff maintenance, and most of the railroad properties owned by the state of Montana. He said all of these functions will continue, including the prosecution of the McCarty Farms case; there are no functions including the prosecution of the McCarty Farms case that will be discontinued. He said the ICC practitioner position that was characterized as being deleted is not being deleted, it is on the organization chart. The rate specialist position will not be deleted, it is being transferred to the Intermodal Commodities Bureau, he said, under a Transportation Bureau administered by John Craig. He pointed out they would continue to analyze rates and rate structures and present cases to the ICC, and it should be noted there has not been an attorney on the staff of the L&A Bureau for many years. He said his position on the McCarty Farms case has been clear and he has never wavered from it. He said he is 100% behind the farmers, 100% behind the shippers, and had made that known before the time of reorganization, to the plaintiffs in the McCarty Farms Case, to the attorneys and to most of the committee before this session started. He passed out EXHIBIT 2, a letter he had received from Mike Ogborn. He said all representation of the state is handled by the law firm of Heron, Burchette, Ruckert & Rothwell through Mike Ogborn. He said we hire expert witnesses to pursue the economic recovery of reparations on behalf of the named plaintiffs. He said we hire these expert witnesses to present our case before the ICC at Washington D. C. Staff personnel with the Department of Commerce does not present the case before the ICC, even though we have an ICC practitioner, he said.

(596) Mr. Snortland said he opposes H. B. 46. He said he was speaking both as the Director of the Department of Agriculture and as a grain farmer. He handed in his written testimony, EXHIBIT 3, which is attached to the minutes.

(688) Mr. Raciot said he was not involved in discussing the merits of the McCarty Farms, nor of this particular movement from one department to another. He said he was left to understand after listening to the testimony here, that the guts of that bureau will remain assigned to the Dept. of Commerce in other units, and particularly in the Intermodal Commodities unit. He said the kind of issues that obviously come before the Transportation Division in the Dept of

Commerce are some things that are totally unfamiliar to the people in the Department of Justice. He discussed some of the programs that overlapped, but said he felt this was an inappropriate transfer of function. He said the authority rests with the Legislature, and if the function is transferred they will take care of it.

(743 & Side B, 000). Mr. Micone said he is presently in the process of a reorganization effort, and has a draft study now. He said they could move from 7 divisions to 5 divisions as one of the proposals. He said the Legislature might feel he should have more or less, but hoped they would look at the functions they want performed and not become involved in the reorganization structure.

(011) Mr. Craig, expressed the regrets of the Division Administrator, Patricia Sandon for being unable to be here today. He said he was here to present the Transportation Division's position in opposition to House Bill 46. He said the Department of Commerce has been going through an organization review process for the past 2 months. He said each administrator had been asked to look at the statutory requirements and functions of their divisions and make recommendations on how to most efficiently carry out the responsibilities of the division. He said the Transportation Division completed it's review resulting in reorganization of the division with consolidation of two of it's bureaus. He said the Litigation and Analysis Bureau and the Intermodal Commodities Bureau dealt on a daily basis with many of the same constituency groups. He said both had a responsibility to Montana shippers who move products by rail or truck. He said the Intermodal Commodities Bureau's major function was Intermodal transportation planning, coordination and property management for the operations for (example) Montana Rail and Butte Historic Park's Railroad. He said the Litigation and Analysis bureau had two basic functions; one to litigate and the other to provide analysis of rates, transportation policy, constituent action and reaction, and statistical gathering and data base development. He said the Division has had no attorney on staff, for the past 9 years the focus has been on the McCarty Farms case and the attorney for the case is Mike Ogborn with a Denver firm. He said the L & A Bureau has provided statistical data based for evidence in the case, and an important liaison and focus between the litigants and the constituents that could have been impacted by the outcome. He said this work will continue with the reorganization. (042) He said financial and personell resources necessary for consultant services, technical analysis and expert witnesses can also be administered by contract of the Division with state general funds currently appropriated. He said the analysis function of the L & A Bureau needs to be maintained in the division in support of the planning and development activities of the Intermodal Commodities Bureau. He said the 2 positions (the

Transportation Cost Specialist and the Transportation Specialist ICC Practitioner have been retained and will allow the Intermodal Commodities Bureau the ability to complete a more complex and specialized planning activity and honor existing commitments to our constituent base.

Questions From Committee Members: (072) Senator Keating asked a question of Mr. Craig. He said from the name Litigation Bureau one would assume they got involved in the litigation of the case, and yet you have no attorney in the bureau. He asked what you mean by Litigation Bureau? Mr. Craig said they did have an ICC practitioner who could handle cases and become involved in transportation cases but in the McCarty Farms situation the attorneys came from outside. He said they were involved in the collection of evidence.

Senator Keating asked if the Intermodal Commodities Bureau and the Litigation and Analysis Bureau are both statistical gathering bureaus in the Dept. of Commerce in regard to rail transportation? Mr. Craig answered yes, they both maintain data bases, for somewhat different purposes, but they are related.

Senator Keating asked, then would the people in the Litigation and Analysis Bureau working on the McCarty Farms case have gathered information useful for the Intermodal Commodities Bureau with regard to how they make recommendations for the transportation of other goods in the state to other people in the state? Mr. Craig answered yes, definitely.

(103) Senator Jergeson asked Mr. Craig, you said you maintain the data base for perhaps two different purposes? Mr. Craig answered yes. Senator Jergeson asked, could you define how the purpose of a data base in the Intermodal Commodities Bureau is different base from the purpose for the data base that is maintained in the litigation bureau. Mr. Craig answered under reorganization the data bases would be the same. We would continue on with the litigation effort and continue on with the planning effort within the same bureau. Prior to this time the data bases were maintained for exactly those same two purposes. The data bases that were maintained by the Litigation and Analysis had a primary purpose for litigation cases, the files that were maintained by the Intermodal Commodities Bureau were used in the development of the state rail plan, and were used in analysis of state rail planning activities and policy generation.

Senator Jergeson said, this is the question I want to get to. The development of state rail plan is not an adversarial type of relationship with any rail road. It is more of a cooperative type of relationship. Mr. Craig answered yes. Senator Jergeson said, clearly litigation support for the attorneys in Denver and support for the expert witnesses in Washington D. C. is an adversarial relationship with

Burlington Northern. The McCarty Farms case is an adversarial relationship as compared to the other being a cooperative relationship. Mr. Craig said that would be a fair characterization. Senator Jergeson asked, what you are proposing now is that you will have both the cooperative relationship as a function and the adversarial relationship as a function within the same bureau. Mr. Craig said, yes, within the same bureau as it was within the same division before this. Senator Jergeson asked, how are you going to keep those two functions separate, or how does one person say we are working on a rail plan project or a transloading facility in a cooperative relationship with Burlington Northern one day, and then as you are leaving that evening say, we will see you in court in Billings tomorrow. How is that going to work within that bureau? Mr. Craig said it will be an interesting challenge.

- (146) Representative Spaeth addressed a question to Mr. Letson. He said he understands the main function of this bureau has been the data base gathering in the planning part of this bureau, and you are going to maintain those two functions? Mr. Letson answered that is correct and there is one additional thing, we hire a great deal of expert witnesses to do the work John Craig was talking about. It amounts to about \$1 million and the Litigation and Analysis Bureau does a great deal of work on that case.

Representative Spaeth said, but the data base and planning are the two main functions and you are going to maintain those. He said you indicated that you were going to save money; in what way and how much and what are you going to do with what you save? He asked if that would be a reversion at the end of this biennium? Mr. Letson answered absolutely. Rep. Spaeth asked him to go through step by step what positions have been eliminated. Mr. Letson said, the only position that will be eliminated will be the Bureau Chief position and all travel money, all salary money, all benefit money etc. associated with that position will revert to general fund. Rep. Spaeth asked approximately how much that would be and Mr. Letson answered the salary and benefit position is about \$41,000, the travel and other expenses he said he had no estimate of. Rep. Spaeth said, then next biennium we will see a reversion here in your budget of approximately \$85,000 to \$95,000 as a result of this savings? Mr. Letson said it is entirely possible it will be more than that. Rep. Spaeth asked how it could be more and Mr. Letson said it would depend on the amount of travel, the amount of public benefits associated with that position. Rep. Spaeth asked if his agency could provide the budget as to what will actually be saved? Mr. Letson said he could provide it later on but did not know what travel or benefits other than salary will be eliminated because certain other duties will be picked up on behalf of that bureau chief.

Representative Spaeth said, we will at least see a minimum of

\$82,000 as a result of this. Mr. Letson said yes. Rep. Spaeth asked when they had first done an analysis to determine that this would be a good idea to undertake. Mr. Letson said he had asked all the Division Administrators in the Dept. of Commerce in late March or early April to start thinking of how they could produce more efficiently, and create a better working environment and to save money and become more efficient. He said many of the divisions had responded with reorganization plans. Rep. Spaeth asked where this idea had come from and was told from the Transportation Division. Rep. Spaeth asked who in the Transportation Division and was told Mrs. Sandon.

Representative Spaeth addressing Mr. Craig, said one of the concerns most everyone has is that you are not necessarily operating in a vacuum. He said the administration is having some difficulty with the public relations involving Burlington Northern with such places as Livingston and such sites on their toxic cleanup around the state. Some people at least, perceive it as a sellout to Burlington Northern; others disagree with that position. He said, your idea in the context of that previous setting and people are very concerned about the position of your administration toward Burlington Northern and that this might also be impacted by the previous position, might have been poorly timed? Mr. Craig said he would first like to address the aspect of the sellout which can certainly be addressed by that letter from the plaintiff's attorney. He said there is no sellout, no contemplated sellout and no deviation from our position. Rep. Spaeth said, I am not necessarily accusing you of that sellout, I am just saying some people feel there has been one. He said he was just asking, if in the context of all that, this was poorly timed. Mr. Craig answered that reorganization or consolidation or reshuffling of positions is an ongoing process, and there is always a reason to do it and a reason to not do it. He said he is confident there are days that could have been better and some that could have been worse. He said he felt it was important to recognize that as soon as a decision is made the employees that are affected know about it. Representative Spaeth asked if it was properly timed or poorly timed, and Mr. Craig said he could not answer that question.

(235) Senator Devlin objected to the line of questioning as not pertaining to the bill.

(243) Representative Bardanoue, addressing Mr. Letson, said he would commend him as a department head and any department head for consolidating bureaus and reducing expenses, but it was hard for him to understand when a man has done a fine job, an outstanding job, for several years, that he should be rewarded by a demotion and a cut in salary. He asked if it is the philosophy of the state government that when a Bureau Chief does an outstanding job, a job that has benefited the agricultural interests of Montana, to demote

him and cut his salary--is that a philosophy of your department and this administration--when people do a good job to fire them or demote them and cut their salary?

Mr. Letson said certainly not, that is not the case. He said he doesn't believe a person signs off for a life time contract with the state government, either. He said jobs change, funding amounts change and certainly government responsibilities change and they have to be prepared to meet the change through continual reorganization so that they can better serve the constituency that pays the bill. He said he was sure the committee would like to have a bureau that really is involved with the major case they had worked on for years and did a good job in, but now it is time to move forward and meet new challenges and responsibilities.

Representative Bardanoue said it appeared to him they were moving backward. He said he was concerned about something that had come to him. He said he understood Mr. Letson had done considerable lobbying against potential witnesses who were for this bill. He said from one very good source he understood Mr. Letson had put a lot of pressure on one person not to appear today. Mr. Letson asked for the name. Representative Bardanoue answered that he would know yes or no as to whether he had been lobbying against the bill. Mr. Letson said Mrs. Kay Norenberg came into his office and that was the only person he knew of that he had talked to about this bill and he had asked her if she would be coming and he had encouraged her to do so. He said he called Randy Johnson and asked him to come because he has a very great stake in this. He said it was also interesting to him that not one of the named plaintiff's is here because not one of them knows that he is against their position.

(291) Senator Nathe to Mr. Letson, said he has been involved in this since the time it started raising money in March and April of '81. He said he has raised money from farmers in Sheridan and Daniels county on the fact that we were going to try to get something done, and said he is really concerned about settlement negotiations. He said if they break down and this case then goes to the ICC, and they make a ruling to come along with reparations in the area of what the plaintiffs have suggested, and then the Burlington Northern says this is an administrative arm of government and we have the right to appeal in the federal courts, and is successful; then where in state government or in the Dept of Commerce is there anyplace that is going to provide the data and the information to us in regard to legislation to appropriate money to continue this, and is your department or what is left in there, going to carry it forward if we have to get into the federal courts.

Mr. Letson said, rest assured if the ICC does find reparations due in an amount of even half of what the plaintiffs have suggested that it will be in federal court because the

Burlington Northern probably will not go along with a finding such as that. He said they have been incapable of providing the rate data to any major extent in our department for a long time and have been seeking special and regular appropriations from both houses to finance these rate hearings to the tune of close to \$1 million. He said this will continue, we are not in the 9th inning, we have several innings to play, but we are not providing the data anymore, we are hiring it because of its complexity. He said the Burlington Northern is also presenting very complex data and that facilitates the exacerbation of the problem.

Senator Nathe said he still wanted to know what part of his department, as to whether it would be the Transportation Division that would push forward in case we are in the federal courts. He said, we should keep in mind that this is a non-coal commodity flagship case for the United States, and that all coal commodity cases that were settled, some of them exceed this half amount figure you mentioned. He said NIPD in Omaha, Nebraska was \$20 million; San Antonio Light and Power was about \$35 million, and he did not know what the others were but asked him to keep in mind there are a lot of dollars here that B.N. and ICC developed their methodology for the coal commodities and this is the flagship case for non-coal commodities and we would hate to see it go down the tube. Mr. Letson said that is why he thought it would be in the Supreme Court before any place else. He said the Transportation Division will continue with what service it can give to the attorneys who are working on a contingency. He said the Transportation Division will provide every available piece of data and access to computers to run data on if necessary.

(370) Representative Swysgood asked Representative Schye if the appropriations contained in the bill, the reversion back to the general fund for the operating expenses and personnel services from the Dept of Commerce, is it exactly the same amount that was appropriated to them? Rep. Schye answered yes. Rep. Swysgood said it is a little unclear in section 2, subsection 3, the appropriation in 1 c for the litigation amount of \$180,000, it just says the Department is to recover that plus the interest. He asked if that money is also being transferred to the Dept. of Justice or is it going to stay in the Dept. of Commerce? Rep. Schye said it would transfer with them. Rep. Swysgood said, the bill doesn't say that, and Rep. Schye said maybe we need to change it. Rep. Schye said Senator Jergeson and Mr. Letson were each telling him different things.

Senator Jergeson said he would like to answer the question that Rep. Swysgood had asked. He said subsection 2 is an appropriation to the Dept of Justice, including the McCarty Farms litigation that we approved during the regular session in House Bill 100. He said subsection 2 removes that same amount from the Dept of Commerce, and that is how the

transfer is accomplished.

(406) Representative Quilici said earlier in questions there was some question to Mr. Craig concerning the differences between the two bureaus, and it seemed to him there are some differences between them. He said one is the Litigation Bureau, which in looking at exhibit 1 would be to litigate. What kind of cooperation did you have between the law firm and the Litigation Bureau during the hearings on the McCarty Farms? Mr. Letson said the law firm has worked with the people in the Transportation Division, not only the Litigation Bureau throughout this entire proceedings. He said he felt the cooperation with the Transportation Division has been outstanding.

Representative Quilici asked it if would seem to him that there could be a conflict if you combine the bureaus. One is to enhance the capabilities of the rail track and the other is to litigate. He asked how they propose to keep them separated? Mr. Letson said, since we don't have an attorney on staff we don't do any litigating, and our litigation bureau is the Attorney General's office. He said if we get to the point where we have to litigate something we will go to the Department of Administration or to the Attorney General's office. He said he believed many of the attorneys in state government were necessary, but he did not feel every bureau should have an attorney in case they want to litigate.

Representative Quilici asked if there was coordination between the bureaus and the Denver law firm? Mr. Letson said yes, there was coordination, an exchange of information, and the people in the Litigation and Analysis Bureau continue to work on cases beyond the scope of litigation. Rep. Quilici asked if they compiled that information and have it data based somewhere? Mr. Letson said in the past they have compiled a great deal of data for the case, but in recent years the majority of the data that has been compiled have been compiled by a firm in Washington D. C. who is an expert witness firm, or a rate fact finding firm, L. E. Peabody and associates for which we have been paying large sums of money.

(461) Senator Jenkins asked Mr. Letson to clarify a couple questions that had come up during the questioning. He said there was a statement that you used to have a ICC practioner but no lawyer to litigate. He asked if this person was a lawyer. Mr. Letson said they still have an ICC practioner and the position will remain in the Intermodal Commodities Bureau. He said an ICC practioner can practice before the ICC on rate hearings and present evidence, but he is not a lawyer, cannot appear in court nor file pleadings etc. He can practice only before the ICC on rate hearings.

Senator Jenkins asked, you do now have one, and Mr. Letson said

we do have one and will have one in the future. Senator Jenkins asked, is it the same one? Mr. Letson said before this reorganization took place the current ICC practioner applied for another job in the Department of Commerce and he will be moving to a new job within the Department of Commerce but the position of ICC practioner is still available and will be handled by the current bureau chief whose former position was eliminated.

Senator Jenkins said according to the testimony he heard you can provide data on the McCarty Farms case and then heard again that you can't provide data, and he was trying to catch up. He said earlier you did provide data but now you go to Peabody to provide all the data. He asked if that data is available in your bureau then? Mr. Letson said generally speaking the difference between can and shall is the question here. He said given a sufficient amount of time and an increase in personnel they would be able to generate the majority of the data necessary for the ICC filings. He said a number of years ago when the case became very complex the McCarty Farms case and the state's case against the Burlington Northern for market dominance and rate unreasonableness were combined by Judge Hatfield, it was determined that we would continue to provide expert testimony through these firms in Washington D. C. He said at that time there were 5 firms that were being used by the state, and that has been consolidated to one for the sake of brevity and factual findings, so we can if given an increase in staff and a great deal of time, find the data that was necessary but L. E. Peabody keeps most of the necessary data at hand since they practice before the ICC consistently on behalf of many cases.

Senator Jenkins said he is trying to find out exactly what you are doing with the McCarty case. You are not providing expert testimony, you are hiring that done, you are not using the data because you have hired that done, what are you doing? Mr. Letson said after the expert testimony is prepared and submitted to the ICC they often review it. He said they will sometimes provide computer access for running hypothetical cases through the states computer. Senator Jenkins said in reviewing it you don't have a lawyer with you, you have the lay person review it? Mr. Letson said yes, that is correct.

Senator Jenkins said he was lost since he thought the state, with the money they come in to appropriate, was doing more for the farmers than it sounds like they are.

(546) Chairman Bardanouve asked Mr. Snortland if he could recall the names of the two people who were transferred from the Department of Agriculture to Department of Commerce in this case? Mr. Snortland said he thought Ralph Peck could provide that information. Mr. Peck said they were Terry Whiteside and Vern Matil.

- (565) Senator Hofman asked Mr. Raciot if this bill passes and you get this thing in your lap, do you have any idea how you will handle it at this time. Mr. Raciot answered no.
- (575) In answer to a question from Representative Bardanouve Mr. Raciot answered that he would guarantee if the Legislature did it they would get the best job they can get, but he had no idea how to handle it at this point.
- (583) Senator Aklestad asked Representative Schye a question. He said as a grain producer and not knowing what the Dept. of Commerce has done in the past since he had not kept track of the case as close as some producers although he did contribute to the voluntary fund, he had a concern after listening to the testimony today that we would be taking the authority away from the Dept of Commerce when it appears that all of the functions that would be pertinent to the case would still remain in the Dept of Commerce, possibly with different personnel involved and after a different title. He said under the bill proposed, this effort at least monetarily, would be transferred to another area and that within that department they would receive the monetary health but have no one within that area with the expertise to carry on the functions that have been put together, he asked if that is a concern of his.

Representative Schye answered no. He said he has some concerns, but in reality your question was, do you think the Department of Justice can do the job and he said he had a lot of faith in the Attorney General to do the job and do it well.

Senator Aklestad said he is being asked to do that with personnel that has not had any direct involvement in the past when, with testimony we heard today it remains in the Department of Commerce, he understands two or three individuals were just being transferred under another heading who do have the working knowledge of the case and have been involved in the transformation of the data. He said the data could be transferred but it would take longer to decipher the information than anyone who had been involved. Rep. Schye said he did not feel that was a detriment to the farmers of Montana, that a lot of the information could be transferred and maybe the people could be transferred. He said there is no reason that could not happen, the departments do work together on a lot of things. He said when we talk litigation where else should a litigation bureau be except in the Department of Justice.

Senator Aklestad said as a producer he has a concern throwing that much data to a new kid on the block when the old kid has all the information.

Chairman Bardanouve said we are running out of time and asked if


Representative Schye would like to close.

Closing by Sponsor: (687) Representative Schye said he is also a grain producer, that is what he does in his real life, and that is how he makes his living and is concerned in what has happened in the past couple weeks over changing things. He said the perception is there, he felt there is bad timing right now to do this. He said this has been compared to a football game with the quarterback, or a baseball game in the ninth inning. He said all he knew was if the legislature or the Department of Commerce fumbles or they throw a wild pitch you will see a lot of angry grain farmers out there waiting. He said he felt it would be better for the Legislature to err on the side of being positive and keeping what we have and make sure the team stays intact. He said we talk about money and he comes from a grain producing area and one cent freight rate in his county on a poor year costs \$100,000 extra for people who could spend on the streets and businesses down town, and that goes up to \$600,000 a year on good crops. He said they are talking about a lot of money.

Chairman Bardanouve said they had run out of time for the meeting, and he would have to consult with the leadership as to the time the committee could have executive action on House Bill 46 and 44 tomorrow.

ADJOURNMENT

Adjournment At: 2:35 p.m.



REP. FRANCIS BARDANOUE, Chairman

FB/sk

020626

DAILY ROLL CALL

HOUSE APPROPRIATIONS

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date

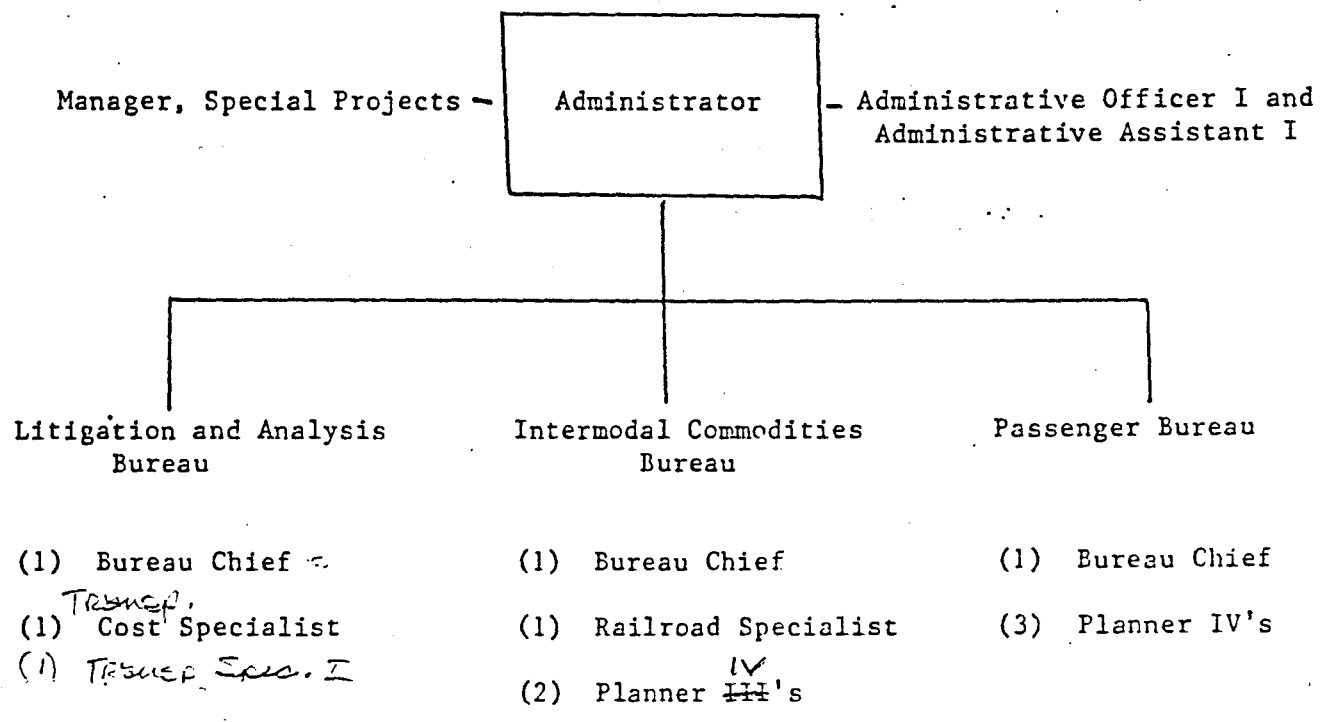
June 26, 1989

NAME	PRESENT	ABSENT	EXCUSED
REPRESENTATIVE BARDANOUVE	✓		
REPRESENTATIVE SPAETH	✓		
REPRESENTATIVE PECK	✓		
REPRESENTATIVE IVERSON	✓		
REPRESENTATIVE SWIFT	✓		
REPRESENTATIVE QUILICI	✓		
REPRESENTATIVE BRADLEY			✓
REPRESENTATIVE PETERSON	✓		
REPRESENTATIVE MARKS			✓
REPRESENTATIVE CONNELLY	✓		
REPRESENTATIVE MENAHAN	✓		
REPRESENTATIVE THOFT	✓		
REPRESENTATIVE KADAS	✓		
REPRESENTATIVE SWYSGOOD	✓		
REPRESENTATIVE KIMBERLEY	✓		
REPRESENTATIVE NISBET	✓		
REPRESENTATIVE COBB	✓		
REPRESENTATIVE GRINDE	✓		
REPRESENTATIVE CODY	✓		
REPRESENTATIVE GRADY	✓		

4401

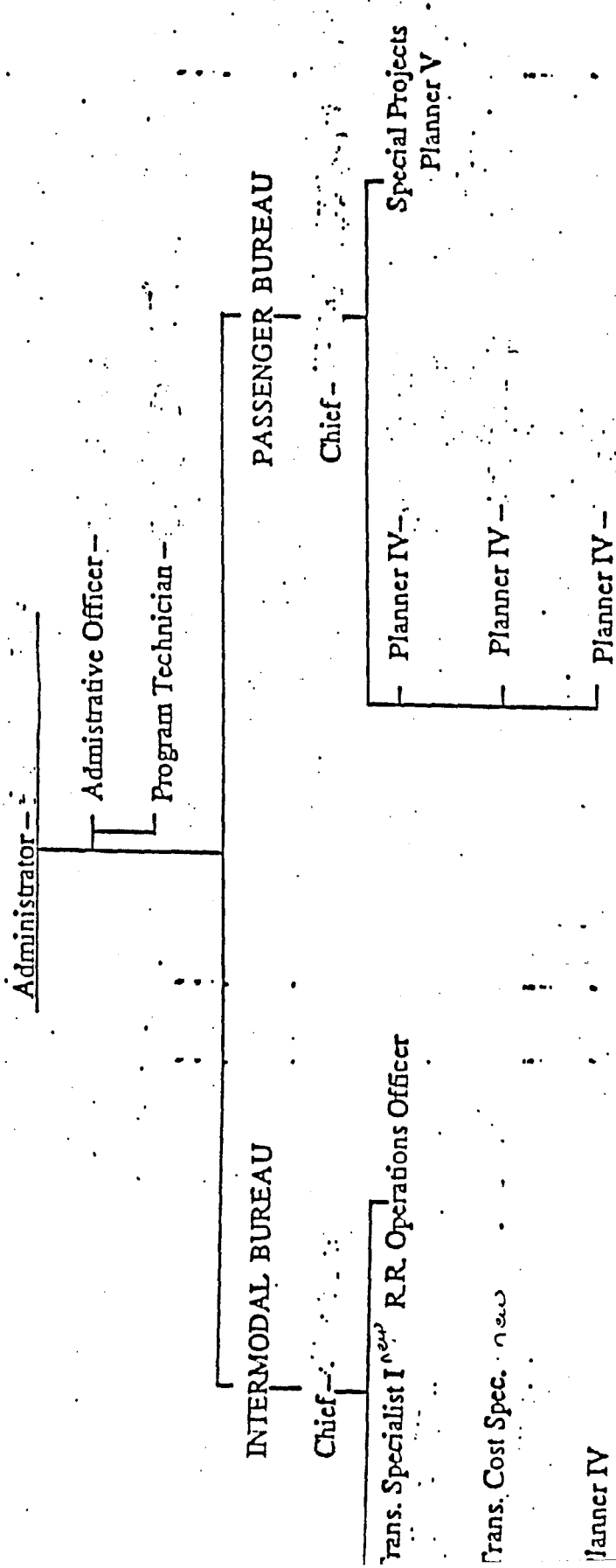
EXHIBIT 1
DATE 6/26/89
HB 44

DEPARTMENT OF COMMERCE
TRANSPORTATION DIVISION



TRANSPORTATION DIVISION

PROPOSED STRUCTURE



Transferred from Litigation Bureau

Ex. #1
6-26-89
#B 46

6762

Heron, Burchette, Ruckert & Rothwell

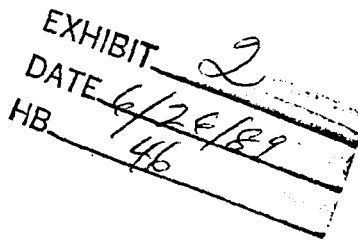
Washington, D.C.
Austin, Texas
Sacramento, California
Phoenix, Arizona
Mesa, Arizona

2600 Manville Plaza
717 Seventeenth Street
Denver, Colorado 80202

(303) 298-7707
FAX (303) 297-0260

Omaha, Nebraska
Lincoln, Nebraska
Colorado Springs, Colorado
Rapid City, South Dakota
Moscow, U.S.S.R.

June 15, 1989



Mr. Michael Letson
Director
Department of Commerce
State of Montana
1424 Ninth Avenue
Capitol Station
Helena, MT 59620-0430

Re: Case No. CV-80-103-GF-PGH, McCarty Farms, et al. v. Burlington Northern, Inc.

Dear Mike:

Thank you for your advice and assistance during the settlement conference held in Billings on June 12 and 13, 1989. We appreciated your suggestions and comments. Rest assured those suggestions and comments were very useful to us in the attempt to reach a settlement in this matter.

I know the Plaintiffs were also comforted by your remarks that the State is behind this case 100 percent and will not waiver from its support of the farmers' position. Just hearing from you that the money appropriated for the case by the legislature will be spent if necessary allayed many of the concerns of the Plaintiffs.

At the close of the settlement conference BN said its representatives thought it would be useful for the BN marketing people to speak directly to the Plaintiffs or the State about settlement ideas. The class action rules are very clear on this point: all communications between parties about a pending case must be channelled through counsel. BN is well aware of this requirement. In fact, BN tried to circumvent these rules in the past which caused us to ask for the "gag" order now in place. Accordingly, if anyone from BN contacts you or anyone in State government about the case, please let me know so that I can let the Court know.

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Mr. Michael Letson
June 15, 1989
Page 2

I will keep you informed of further developments in this case. In the meantime, if you have any questions concerning it or the settlement conference, or if I can provide any information to the Governor, please feel free to contact me.

Best regards.

Sincerely,



Michael J. Ogborn

MJO:pwl
cc: Named Plaintiffs
Tim Engler

exh 3

MONTANA DEPARTMENT OF AGRICULTURE

TESTIMONY
ON
HOUSE BILL 46

HOUSE APPROPRIATIONS COMMITTEE
Monday June 26, 1989

EXHIBIT 3
DATE 6/26/89
HB 46

Chairman, Representative Francis Bardanouve:

For the record I am Everett Snortland, Director of the Montana Department of Agriculture and a grain producer from Conrad. I am here today to speak both as the Director of the Department of Agriculture and as a grain farmer.

The Montana Department of Agriculture has been highly involved in transportation issues including the McCarty Farm Case, both prior to and since the transfer of the Transportation Division from the Department of Agriculture to the Department of Commerce on July 1, 1981. We have remained vitally interested in the actions of the Department of Commerce in relation to agricultural transportation issues and have worked in concert with Commerce to support them as we provide grain movement data and analysis that has been critical for the McCarty Case.

I oppose HB 46 as I believe the Department of Commerce has, and will, properly represent Montana agriculture on transportation issues. Department directors need the ability to organize and manage their department to achieve the most efficient utilization of your tax payer dollars. We as directors have committed to the Governor, and are committed to you as legislators and the people of Montana, to total accountability and proper administration of our departments. And we are rightfully held accountable for that administration. As Mr. Letson has stated, the ICC practitioner and the rate specialist positions will remain in the Transportation Division. These positions will maintain the states ability to analyze rates and rate structures for presentation to the ICC. I don't believe that transportation rate analysis functions should be performed by the Department of Justice but are transportation issues that should continue to reside in the Transportation Division. The administrative bureau level structure is well defined in Mr. Letson's testimony.

As a grain farmer, I am very interested not only in the McCarty case but in continued representation of my industry on transportation issues. On April 11, 1981, when HB 854 was heard it was stated that the intent was to combine the Department of Agriculture's Transportation Unit with the Department of Commerce Rail Planning Unit. This placed all transportation planning and transportation rate analysis in a single unit within state government*. As a result of HB 854 the two positions of ICC practitioner and rate specialist were transferred from the Department of Agriculture to the Department of Commerce and they

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have continued to provide the services we need as an industry. The objective was to provide consolidated transportation services to the state of Montana. I see no reason why these services will not continue to be properly provided by the Department of Commerce and in fact can not identify any reason to change your 1981 actions and again split transportation issues between agencies.

Mr. Chairman, members of the committee, we stand opposed to HB 46.

* June 1981, Office of The Legislative Fiscal Analyst,
"Appropriations Report 1983 Biennium", pg. 103