MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN BOB RANEY**, on February 18, 1991, at 3:00 pm.

ROLL CALL

Members Present:

Bob Raney, Chairman (D)
Mark O'Keefe, Vice-Chairman (D)
Beverly Barnhart (D)
Vivian Brooke (D)
Ben Cohen (D)
Ed Dolezal (D)
Orval Ellison (R)
Russell Fagg (R)
Mike Foster (R)
Bob Gilbert (R)
David Hoffman (R)
Dick Knox (R)
Bruce Measure (D)
Tom Nelson (R)
Bob Ream (D)
Jim Southworth (D)
Howard Toole (D)
Dave Wanzenried (D)

Staff Present: Gail Kuntz, Environmental Quality Council
Paul Sihler, Environmental Quality Council
Lisa Fairman, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

HEARING ON HB 401 AND HB 778

Presentation and Opening Statement by Sponsor:

REP. DAVE BROWN, HD 72 - Butte, said HB 401 is the State Land Board's bill, and HB 778 is legislation he produced. He is in an unusual position carrying both bills.

HB 401 would provide statutory authority to the Board of Land Commissioners to adopt a program for recreational use of state lands.

In 1988, the Coalition for Appropriate Management of State Lands filed suit in Helena District Court, asking that the Board of

Land Commissioners be required to open state lands to public access for recreational purposes. After negotiations broke down, the Board of Land Commissioners decided to settle the matter administratively.

In May 1990, the Commissioner of State Lands held public meetings in Glasgow, Miles City, Billings, Great Falls, Butte, Bozeman, Kalispell and Missoula. The commissioner reported findings to the Board in August 1990 and suggested alternative recreational-access programs the Board could adopt.

The Board instructed the commissioner to prepare an environmental assessment under the Montana Environmental Policy Act. The Board's intention was to choose one of the alternatives, and seek necessary funding and legislation after the assessment process was completed. This was not done because the assessment indicated a formal Environmental Impact Statement (EIS) was needed.

The Board instructed the Department to seek funding for the EIS, and legislation authorizing the Board to implement whatever recreational access it deemed most appropriate after completion of the EIS and acceptance of further public comment.

HB 401 would accomplish the second purpose. Section 1 is the heart of the bill. It authorizes the Board to implement various programs. He reviewed the bill.

HB 778 is in response to the state attorney general's failure to strictly interpret the statute regarding this issue. Sportsmen, environmental groups and others helped develop the bill. HB 778 declares by statute that all state lands are open to recreational use in the state. It allows the State Lands Board to close any section it deems appropriate to close, such as cropland, cabin sites, wildlife habitat and isolated sections within private property.

The bill establishes a land-access stamp, which would be a $1 tax on each conservation license. The fiscal note indicates the stamp would raise more than $40,000 per year. The public education trust must be compensated for recreational use of state lands. The question is how much. While HB 778 does not account for littering or damage to public lands, the state needs to provide such compensation. Lessees have every right to expect protection of leased lands.

Proponents' and Opponents' Testimony:

Dennis Casey, Department of State Lands (DSL) Commissioner, reviewed historical developments in the multiple-use controversy, and provisions of HB 401. **EXHIBIT 1**

REP. BROWN said he forgot to mention a key provision of HB 778. By the way it is drafted, the state would seriously jeopardize federal hunting and fishing revenues. He will provide amendments

to the committee to separate what is collected for access stamps from money collected for conservation licenses.

John Gibson, Billings Rod and Gun Club, supported HB 778. **EXHIBIT 2** He submitted information on current access policies. **EXHIBITS 3-4**

Tom Loftsgaard, Land Management Council representative and leaseholder, supported HB 401 and opposed HB 778. **EXHIBIT 5**

Garth Jacobson, Secretary of State's Office, said there is general agreement among Montanans that a solution should be worked out between leaseholders and recreational interests to enable reasonable access to state lands. This is not an issue that should be settled by the courts. The two sides are not far apart in their positions. Recreationists should have access to state lands and compensate the school trust for that access. Leaseholders should be compensated for damages. The Legislature should develop the framework for the compromise and the State Lands Board should fill in the details.

Tony Schoonen, Montana Wildlife Federation, supported HB 778. **EXHIBIT 6** He submitted informational handouts on the land-access issue. **EXHIBITS 7-8**

Ron Stevens, Public Land Access Association, supported HB 778 and opposed HB 401. **EXHIBIT 9**

Jack Jones, Skyline Sportsmen Association and Ducks Unlimited, said Montanans are willing to pay to use state lands. He supported HB 778, opposed HB 401 and submitted copies of a deposition regarding state access. **EXHIBIT 10**

Jack Atcheson, Butte resident, supported HB 778. He said Montana has had a multiple-use law since 1969. It says the state shall manage state lands so that they are used in the best combination to meet the needs of the people. Leases themselves include multiple-use language. Despite this, the state has not managed its lands under a multiple-use concept.

Bill Holdorf, Skyline Sportsmen's Association in Butte, said recreationists have been blamed for spreading knapweed. It came to Montana in 1922 around Missoula and spread to Eastern Montana during the drought of 1984-85. All kinds of people are spreading knapweed. It is spread by hay and logging trucks, animals, wagons, the United Parcel Service and mail delivery trucks. He submitted background information on knapweed and a letter from the association's president to the Department of Agriculture. **EXHIBIT 11-12**

Bob Bugni, Prickly Pear Sportsmen Association and the Montana Coalition for Appropriate Management of State Lands, supported HB 778 and opposed HB 401. He submitted written testimony and a copy of a financial-compliance audit of DSL. **EXHIBIT 13-14**

Gary Sturm, Prickly Pear Sportsmen Association, said 86 percent of the people who attended the meetings held by the Department were in support of state access. The issue is simple. The people who own the land want use of the land. He submitted a written witness statement. **EXHIBIT 15**

Paul Berg, Southeastern Montana Sportsmen Association, reviewed a newspaper article about school funding losses from low lease rates, **EXHIBIT 16;** a letter to Superintendent of Public Instruction Nancy Keenan from Madalyn Quinlan regarding land board "giveaways," **EXHIBIT 17;** a copy of the Rangeland Resources act, **EXHIBIT 18;** a statement by the Montana Coalition for Appropriate Management of State Lands presented at the Montana Wildlife Federation meeting in May 1989, **EXHIBIT 19;** a letter to Gov. Stan Stephens from the Southeastern Montana Sportsmen Association regarding access to state lands, **EXHIBIT 20;** a summary of testimony on behalf of the Billings Rod and Gun Club and Southeastern Montana Sportsmen Association, **EXHIBIT 21;** and a witness statement, **EXHIBIT 22.**

John Roylance, Whitehall resident, supported HB 778. He said administration of state lands has been discriminatory in the past. A survey by DSL showed 86 percent of Montanans want open access. He submitted a newspaper editorial that appeared in the Bozeman Daily Chronicle. **EXHIBIT 23**

Vince Fischer, Skyline Sportsmen Association Board of Directors, supported HB 778. **EXHIBIT 24**

Noel Rosetta, Helena resident, supported HB 778. **EXHIBIT 25**

Lorry Thomas, Anaconda Sportsmen Club, supported HB 778 and opposed HB 401. He submitted a statement by the Montana Wildlife Federation made at a meeting in Lewistown in August 1989. **EXHIBIT 26**

Bill Fairhurst, Three Forks resident, said proponents of HB 778 want the committee to know that Montana has an exclusive-use tax, otherwise known as a privilege tax. When state lands are posted, they fall under this tax. He submitted a copy of the law and a 1987 letter from the Department of Revenue regarding privilege-use taxation. **EXHIBIT 27**

Alan W. Rollo, Montana Coalition for Appropriate Management of State Land, Great Falls, did not testify but submitted written testimony in support of HB 778. **EXHIBIT 27A**

John Gaffee, did not testify but submitted testimony in support of multiple use on state lands. **EXHIBIT 27B.**

Opponents' Testimony:

Jim Peterson, Montana Stockgrowers Association (MSGA), Montana Cattle Feeders Association and the Montana Wool Growers

Association, supported HB 401 and opposed HB 778. **EXHIBIT 28**

Ward Jackson, rancher, opposed HB 778. He said it discriminates against youth over the age of 12. Land is for the benefit and education of the students of Montana. If HB 778 is passed, he will be forced to put a fence between his deeded land and state land. This would restrict game movement and force him to manage the land differently, which may reduce income to the state land trust. He would not be able to control hunting on the state land if HB 778 is passed. HB 401 allows him to control hunting. Birds will be adversely affected if indiscriminate hunting is allowed on state land. He would prefer to lease state recreation rights if he has to be responsible for weed control. He doesn't want hunters coming to his home to prove they have purchased the state stamp. HB 401 will generate more money for the state.

Robert DuPea, White Sulphur Springs farmer and rancher, supported HB 401 and opposed HB 778. **EXHIBIT 29**

Bob Fouhy, Land Management Council, supported HB 401 and opposed HB 778. **EXHIBIT 30**

Lorna Frank, Montana Farm Bureau, said the bureau agrees with the statement made by Mr. Peterson of MSGA and supports that position. **EXHIBIT 31**

Carol Moser, Montana Cattle Women, a rancher and state leaseholder, supported HB 401 and opposed HB 778.

Kay Norenberg, Women Involved in Farm Economics, supported HB 401 and opposed HB 778.

REP. LINDA NELSON did not testify but submitted a petition from residents of Daniels County opposing HB 778. **EXHIBIT 32**

Questions From Committee Members:

REP. ELLISON asked if HB 778 would bypass the EIS process. **REP. BROWN** said the bill would statutorily say that all public lands are open to public access for recreation and other purposes. A hearing would be required to close any of those lands.

REP. ELLISON asked **REP. BROWN** which provisions in HB 401 he doesn't agree with. **REP. BROWN** said he disagrees with the subsidy provision for leaseholders and the need for an EIS. He hopes to bring a compromise bill to the subcommittee.

REP. ELLISON asked **Mr. Casey** if DSL will be involved in a lawsuit over whether an EIS is necessary, if HB 778 passes. **Mr. Casey** said he couldn't predict what would happen.

REP. ELLISON asked if passage of HB 778 would enable DSL to retroactively change weed and fire control provisions of existing leases. **Mr. Casey** said that under DSL's preliminary plan, the

agency indicated funding would be needed for weed control. DSL has some ability to change leases in midterm. He doesn't know if the agency can strike those provisions.

REP. RANEY appointed **REP. COHEN** as chairman of the subcommittee. **REPS. FAGG, REAM, ELLISON and DOLEZAL** will serve as members.

REP. FOSTER said **Mr. Jackson** testified that he would have to build a fence to separate his deeded land from state trust land if HB 778 passes. He asked **REP. BROWN** if the bill addresses who would pay for the fence. **REP. BROWN** said he didn't think so. It wasn't intended to, even if it did. Flexibility language in whatever legislation comes about allows the State Land Board to set rules to handle such situations. He sees no need to put that in the statute.

REP. RANEY said opponents expressed concern about compensation for potential damage to property, equipment, stock, etc. He asked **REP. BROWN** if he had any thoughts on the subject. **REP. BROWN** said some people raised constitutional questions about how money from the education trust can be diverted for other purposes. HB 778 avoids constitutional problems by collecting and distributing the money before it goes into the trust. Money is needed to finance administration of the program and to mitigate problems. Federal funds for fire fighting and fees collected through car registration also are available to deal with this problem. There are roughly 4.1 million acres of state land in Montana. Leases bring in approximately $4.1 million, or $1 per acre. It could be reasonably argued that $1 per person for public access to those lands is too much compensation. He won't try to argue the point. It needs to be worked out in subcommittee.

REP. RANEY asked **John North, DSL Chief Legal Counsel,** how DSL could determine if a recreationist caused damage, who would act as the police force and how compensation would be handled. **Mr. North** said the same procedures used by Fish and Game would be used to determine who caused the damage. Leaseholders would have to police their own holdings. The Department of Fish, Wildlife and Parks (FWP) would have enforcement responsibility and be called in after damage occurred to determine the responsible party. Under HB 401, DSL would use a portion of the revenues to reimburse the lessee. Under existing law, the state could go against a responsible party. HB 778 does not include a compensation mechanism. It would be up to the lessee to determine who damaged the property and to pursue recovery. Criminal-mischief statutes would be available if it could be shown the damage was done intentionally.

REP. O'KEEFE asked **K.L. Cool, FWP Director,** how HB 401 and HB 778 would affect management of game species. **Mr. Cool** said hunting regulations are based on hunting districts. Recommendations to the commission are based on game populations within a district, regardless of ownership of the land. Access becomes an important issue so that a sufficient harvest can be maintained to control

and manage the resource. The agency considers state and private lands in the same category. Passage of either bill will not adversely affect management.

Closing by Sponsor:

REP. BROWN said concerns raised by opponents are legitimate and need to be worked out. He believes a compromise bill can be developed. The compensation issue needs to be kept separate. The main goal is to establish decent public access to state lands where private lessees are blocking access to federal lands, and where hunting may or may not be available on those private lands. He hopes to bring the subcommittee a compromise bill that will garner general support from both sides.

HEARING ON HB 351

Presentation and Opening Statement by Sponsor:

REP. COHEN, HD 3, Whitefish, said HB 351 addresses an omission from HB 678, which came out of an interim study on forest practices and was passed last session. HB 351 would include wildlife as a consideration in Best Management Practices (BMPs). He reviewed the bill.

He noted Montana forests provide important habitat for wildlife. Forests are given special treatment in the state's tax codes because they are important to Montana's quality of life. Opponents of HB 351 will say that inserting wildlife into BMPs will ruin the timber industry. In Oregon, the Bureau of Land Management does not prohibit timber harvests on any of its land because the kinds of cuts and methods of harvest have been adjusted to take wildlife into consideration. He urged Montana to protect its wildlife as timber harvesting progresses.

Proponents' Testimony:

Janet Ellis, Montana Audubon Legislative Fund, supported HB 351. **EXHIBIT 33**

Valerie Horton, Montana Wildlife Federation, supported HB 351 for reasons previously stated.

Jeff Jahnke, DSL Forest Management Bureau Chief, supported HB 351. **EXHIBIT 34**

Jim Jensen, Montana Environmental Information Center (MEIC), said he is confident DSL can come up with reasonable BMPs under HB 351. Some opponents will say the bill is too general, but DSL can determine what BMPs are appropriate for Montana. MEIC disagrees with the Montana Audubon Legislative Fund, which believes BMPs should become mandatory at some point. MEIC believes the time is now. Nonetheless, MEIC supports HB 351.

Opponents' Testimony:

Bud Clinch, Montana Logging Association, opposed HB 351. He said he has a high regard for wildlife and has been instrumental in the voluntary BMP program. He is concerned about how HB 351 will impact the current program. Wildlife considerations were left out of HB 678 because the bill was directed at protecting water quality. Wildlife is an entirely different issue and needs to be treated separately.

There is a fair amount of paranoia surrounding the timber industry when the word wildlife is mentioned, especially when considering endangered species such as the spotted owl. The bill's definition of wildlife indicates any species of non-domesticated animals naturally occurring on forest land. That brings to mind endangered-species regulatory action that has occurred on private land. He fears HB 351 will bring those types of restrictions to Montana's private lands. For those reasons he opposes HB 351.

Don Allen, Montana Wood Products Association, said association members share **Mr. Clinch's** concerns. The wood products industry and private timber owners are working with various agencies on road closures and posting to help wildlife distribution and address hunting issues. HB 678 last session was developed to deal with water quality. The issue broadens when considering wildlife. The association agrees these considerations are important, but is concerned about mixing wildlife concerns within a water quality bill. Such mixing of concerns could cause problems for timber sales. Wildlife concerns should be addressed differently.

Ms. Frank, Montana Farm Bureau, opposed HB 351. **EXHIBIT 35**

Jo Brunner, Montana Water Resources Association, did not testify but submitted written testimony opposing HB 351. **EXHIBIT 36**

Questions From Committee Members:

REP. WANZENRIED asked **Mr. Clinch** if the definition of wildlife caused him to testify against the bill. **Mr. Clinch** said he has a problem understanding the intent and level of implementation of the bill. As he reads the bill, the consideration of wildlife is similar to existing BMP language. If that language is insufficient, he wonders what this language will do.

REP. WANZENRIED asked **Mr. Clinch** which parts of the bill he found attractive. **Mr. Clinch** said the general principle that wildlife has value and should be considered. That is consistent with his personal and professional standards for forest practices.

REP. KNOX asked **Mr. Clinch** if he had seen a dramatic decline in wildlife due to present forest management practices. **Mr. Clinch** said no. In many places in the state, record numbers of deer and elk exist. He is concerned about the all-inclusive nature of the

definition of wildlife. He cannot speak to other populations of wildlife.

REP. ELLISON said the Forest Service uses controlled burns to provide habitat for some wildlife, but old growth is needed for other species. He asked which will take precedence. **REP. COHEN** said the bill does not establish precedence of one species over another. It only mandates the DSL, state forester and individual logger consider impacts on wildlife.

REP. ELLISON asked what is occurring under current BMPs that is detrimental to wildlife. **REP. COHEN** said snags are being removed from logging sites to be made into particle board when, in some cases, they could be left behind to provide valuable habitat for small creatures.

Closing by Sponsor:

REP. COHEN said HB 351 merely adds wildlife as a consideration in voluntary BMPs. This is the least the committee should do to address forest practices this session. Additional bills, including mandatory forest practices acts, will come before the committee before the session is over. If the state doesn't start adjusting logging practices to the needs of wildlife, Montana may end up in the same situation as other Pacific Northwest states. There are tremendous controversies in Washington and Oregon regarding wildlife and logging practices. If Montana wants to continue logging its forests on a sustained basis, the state must begin addressing these problems now, and not wait for legal challenges. It is in the state's best interest to include wildlife as a concern.

HEARING ON HB 399

Presentation and Opening Statement by Sponsor:

REP. MARY ELLEN CONNELLY, HD 8 - Whitefish, said HB 399 clarifies the purpose of the state's subdivision law to ensure protection of individual rights. She summarized main sections of the bill. The bill is pro-people, not anti-planning. She noted counties have enough parks and can't maintain what they have.

Proponents' Testimony:

Tom Hopgood, Montana Association of Realtors, supported HB 399. He said the bill takes steps to protect private property rights and the environment. The definition of private property-owner rights is extremely important and should have been in the original law. That area has been ignored in the subdivision process. The burden of proof should be on the government to show an exemption is not applicable. He urged the committee to consider HB 399 with the other three subdivision bills developed by the Subdivision Subcommittee. HB 399 could be incorporated into another bill or stand on its own.

William Spilker, Montana Association of Realtors and a real estate broker, supported HB 399 for previously stated reasons. He said the association would like to see HB 399 passed as is.

Chet Dreher, Helena resident and land owner, supported HB 399. **EXHIBIT 37**

Ray Brandewie, Lake County resident, supported HB 399. He said the current subdivision law is inadequate. People's rights to sell their property should be protected, as should the rights of other people in the area. It is time to change the state's subdivision laws. HB 399 is the right vehicle.

REP. TOM LEE, HD 49 - Bigfork, presented written testimony on behalf of **Douglas Knutson, Chuck Olsen Real Estate in Bigfork,** who supported HB 399. **EXHIBIT 38**

Opponents' Testimony:

Carlo Cieri, Park County Commissioner from Livingston and Montana Association of Counties (MACO) representative, described haphazard subdivision activity in his county. He said he doesn't believe personal property rights are being violated. Everyone can seek redress in court. MACO opposes exemptions of 20-acre subdivision plots and occasional sales. He and MACO oppose HB 399.

Mary Kay Peck, Gallatin County Planning Director, said the Gallatin County Commission opposes HB 399. A number of groups have worked together for the last six years to revise the current subdivision act. HB 399 is contrary to that effort and is not in the public interest. Local government must balance private property rights with public property rights and interests. Land divisions affect people and the environment. HB 399 weakens local government control and doesn't balance public and private rights. She urged the committee to reject the bill.

Kathy Macefield, City of Helena, said the City of Helena has participated in the process to improve the subdivision act. The city recognizes the inequity created by unreviewed land sales and how that affects the city's growth and economic development. Proposed changes in HB 399 are contrary to good subdivision legislation. The bill implies local government is untrustworthy and that developers must be protected from local government. If a proposed subdivision is not well designed and compatible with the environment, or would be located in an inappropriate area, it should not be approved. It is absurd to require permission from the property owner or to require the property owner to be compensated if what is proposed is an inappropriate subdivision. She urged the committee to reject HB 399.

Robert Rasmassen, Montana Association of Planners and Lewis and Clark County Planning Director, opposed HB 399 for previously stated reasons. HB 399 expands the use of the occasional sale

exemption beyond the original intent. Existing law provides a mechanism by which a landowner can divide his property in a manner that protects private property rights and public interest. HB 399 contains a potential conflict with sanitation and subdivision regulations. He has not found a presumption of guilt implied in any counties that have adopted exemption criteria. The criteria establishes a framework for appropriate use of exemptions.

He noted **Mr. Dreher** was aware of the regulations and had participated in the public hearing and adoption of those regulations. Lewis and Clark County has yet to receive an application from him for subdivision review. **Mr. Dreher** chose to appeal it in court rather than seek subdivision review.

Sharon Stratton, Flathead County Commissioner, opposed HB 399. She said that since the inception of the Subdivision and Platting Act of 1974, more than 8,000 certificate of surveys have been filed in Flathead County. They are land divisions without review. She submitted written testimony and a list of problems she has with HB 399. **EXHIBIT 39**

Steve Hurboly, Flathead Regional Development Office Planning Director, said northwest Montana is growing, especially in rural, residential areas of Flathead County. HB 399 is heading in the wrong direction. Montanans need to accept the fact that regulation is essential to preserve the quality of life. He opposed HB 399.

Ken Haag, Billings' Director of Public Works, did not testify but submitted written testimony in opposition to HB 399. **EXHIBIT 40**

League of Women Voters of Montana submitted a letter opposing HB 399. **EXHIBIT 41**

Questions From Committee Members:

REP. HOFFMAN said he was confused by language regarding park lands. He asked if the language was inconsistent and if the title needed to be corrected. **REP. CONNELLY** said yes. **REP. HOFFMAN** requested an amendment.

Closing by Sponsor:

REP. CONNELLY said Lines 23-24 on Page 5 were supposed to be removed from the bill. She submitted amendments that would accomplish that. **EXHIBIT 42** Subdivision planning is a problem in some areas and people's rights are being trampled on. No one objects to zoning or having property reviewed. She read excerpts of letters from constituents who have had problems selling their land.

She said she doesn't object to regulations, but exemptions are needed. If Montana is going to grow, Montanans need to be pro-

development. That is what HB 399 is about. Most of the problem stems from local governments' failure to properly use existing law in conjunction with good, comprehensive planning.

HEARING ON HB 671, HB 744 AND HB 844

Presentation and Opening Statement by Sponsors:

HB 671:

REP. GILBERT, HD 22 - Sidney, said the fiscal note summarizes HB 671. For years Montanans have been selling their heritage 20 unreviewed acres at a time, then dividing the parcels with occasional sales, which are also unreviewed. Subdivisions and entire communities are being created through a loophole in the law. Lack of planning and review has caused public health and safety problems, as well as environmental, cultural and historical damage.

The current 20-acre exclusion loophole has affected a lot of property in Montana. In most of these sales, the purchaser uses one or two acres of the parcel, leaving the rest to develop noxious weeds. The current review process is expensive, complicated and lengthy. Discussions of subdivision law are subject to emotionalism instead of facts. A different approach is needed, one that will ensure orderly development. HB 671 is the result of years of work. He reviewed the bill.

HB 744:

REP. O'KEEFE, HD 45 - Helena, described HB 744 as a compromise bill that was worked on by many planners in the state. The fiscal notes for HB 744 and HB 671 are almost identical. The basic difference is in the description of the bills. Other verbiage is virtually identical. HB 744 amends the existing subdivision statute. Because of this, the state can continue to rely on existing legal opinions and case law for guidance. It eliminates the occasional sale and 20-acre exemption. It establishes a violation and penalties statute, which differs from HB 671. A violator would be subject to a civil penalty not to exceed $1,000 per day. HB 671 provides for a one-time penalty. HB 744 includes an agricultural exemption to allow families to maintain their farming operation. He further reviewed the bill, noting there are only six to eight problems to work out if HB 671 and HB 744 are combined.

HB 844:

REP. WANZENRIED, HD 7 - Kalispell, said HB 844 is the simplest of the subdivision bills. It has no fiscal note. The bill is identical to the other two bills in that it proposes to eliminate the three exemptions. The review process is unaffected by HB 844. It may be impossible to combine it with the other two bills.

Proponents' Testimony:

Mona Jamison, Montana Association of Planners, supported all three bills, particularly HB 744. She said HB 844 is excellent. It eliminates exemptions that enable abuse under subdivision law. The other two bills do the same thing. But the problem with HB 844 is that it doesn't go far enough. HB 744 amends the statute. That is appealing because it enables use of attorney general opinions. HB 671 rewrites the law. There is nothing inherently wrong with that, but it is something to consider.

Purpose sections of HB 744 and HB 671 differ. She urged the committee to retain the original purpose. HB 744 does not change the purpose section. HB 671 substantially amended and deleted language. The whole point of subdivision law is to protect public health and safety. It is up to the state to regulate the division of land. A statement of purpose is not substantive law, but a court looks to that when interpreting the statute. The association believes it should be left untouched.

The association dislikes the primitive tract provision of HB 671. It sets up a new category of exemptions that would not undergo review. The association prefers the definition of dwelling in HB 744. HB 671 includes an eight-month standard. If something is inhabited for less than eight months, it would not be reviewed.

HB 671 requires identification of a hazard on a plat, and a recommendation for mitigation. The association wants mitigation to be required, not just recommended. She urged the committee to reject a provision that would allow developers to sue local governments and collect actual damages if the governing body exceeds the scope of its rules and decision-making authority. That provision would hurt voluntary boards and government employees if they make a bad decision.

HB 671 includes seven or eight provisions that the association dislikes, but the other provisions are good. The association worked with **REP. GILBERT** and supports his bill. It is a good bill. She urged support of all three bills.

Mr. Hopgood, Montana Association of Realtors, said it is important to protect the rights of private property owners. He read a position statement of the association that stated the association supports a strong, well-defined subdivision law. The law should be simple, understandable and should streamline the review process. Review criteria must be objective and public interest criteria must be eliminated before objectivity can be reached. If objective criteria are established in the law, the association will be able to support the law's revision.

He represents a plurality of opinion among association members. The association supports HB 671, and opposes HB 744 and HB 844. Provisions from all three bills may be incorporated into a single bill. HB 671 is more comprehensive and addresses many concerns.

The association opposes the proposed repeal of the 20-acre definition and exemptions, particularly the occasional sale. This could stifle development in Montana. He urged the committee to move cautiously.

Mr. Cieri, MACO and Park County Commissioner, supported all three bills. He said the bills are better than current law. HB 671 is lengthy and complicated. He would like to see aspects of the other two bills combined with HB 671. The definition of dwelling can be a serious loophole. Park dedication is complicated. HB 671 stipulates how many trailer spaces it takes before an area qualifies as a subdivision. The other two bills do not. The section about action against local government should be removed. The effective date is not realistic. More leeway should be allowed. HB 671 includes a mitigation process, which is good. Many other points have already been discussed.

Julia Page, Bear Creek Council, supported HB 744 and opposed HB 671. **EXHIBIT 43**

Kathy Schmook, Upper Yellowstone Defense Fund, supported HB 744, and opposed HB 399 and HB 671. **EXHIBIT 44**

Andrew Epple, Bozeman City-County Planning Director, urged the committee to stick with the basic format of the Montana Subdivision and Platting Act and to avoid changes that would limit the public's right to participate in the decision-making process. He mostly supports HB 844. **EXHIBIT 45**

Ms. Peck, Gallatin County Planning Director, supported HB 744. She said **Ms. Jamison** expressed many of her sentiments. She suggested public health, safety and welfare be the top consideration. She likes the fact that HB 671 and HB 744 remove the basis-of-need from subdivision evaluation. That criterion was not objective. She supports all three bills and is confident the subcommittee will choose good features from each bill and come up with model subdivision regulations.

Jerry Sorensen, Lake County Planning Director, said his support lies somewhere between HB 744 and HB 844. HB 671 is too complicated. The definition of a dwelling would eliminate review of virtually all development on Flathead Lake, which is primarily seasonal. He urged adoption of HB 744. **EXHIBIT 46**

Mr. Hurboly, Flathead County Planning Director, said it is ludicrous for people to think regulations will preclude quality development in Montana. If pressed to support a bill, the simplest would be preferred. He expressed appreciation of the subcommittee's efforts.

Bill Murdock, Director of the Big Sky Owners Association and President of the Montana Association of Planners, said the issue is fairness. Planners ideally would like to review everything. They are willing to work with other parties. The next part is up

to the subcommittee.

Rick Gustine, Montana Association of Registered Land Surveyors, Legislation Committee Chairman, supported HB 671 more than HB 744 and HB 844. He said the latter two bills eliminate whatever was good for private property owners. HB 671 is more positive. It has a better statement of purpose. The association has a problem with the definition of review authority. A governing body could delegate this to a single individual.

The wording for family sales is discriminatory. Property owners should be able to give their children a piece of land on which to build a house. Apparently there have been abuses of this exemption. It could be addressed through strict criteria. Section 5 of HB 671 addresses some issues in HB 399. There have been abuses of the authority given to local governing bodies.

Surveyor requirements are confusing. The occasional sale is being used as an exemption because of road standards and park requirements. None of these bills addresses small family-run operations and their potential need to sell property to cover their debts. It isn't necessary to build a county road to a single parcel that may be 500 feet off a county road, and there shouldn't be a park dedication for such a parcel either.

He suggested the road standard be limited to legal access instead of physical access, and that park dedication be removed and reviewed, which would take care of the person who has a parcel to sell. This is not for major developers. It is for individuals that get into a bind and need to dispose of a parcel.

Mr. Spilker, Montana Association of Realtors and a real estate broker, supported HB 671, and opposed HB 744 and HB 844. **EXHIBIT 47-49**

Stephen Granzow, Pegasus Gold Corp., said the corporation isn't clear about whether the bills apply to non-residential, non-recreational land divisions. **EXHIBIT 50**

Mr. Rasmassen, Lewis and Clark County Planning Director, said public health and safety issues should be addressed. The bill should provide the opportunity to fully evaluate the potential for hazards, and to develop strategies to mitigate or prevent them from occurring. Identification of hazard potential should be based on accepted scientific principles and available data. He supported review principles in HB 671 and HB 744, and submitted written testimony on behalf of **Lisa Bay, Helena planning consultant,** who supported HB 744. **EXHIBIT 51** He said **George Kerkowski, Miles City Planner,** supported previous testimony regarding the removal of the 20-acre threshold.

Chris Kaufmann, MEIC, supported all three bills, particularly HB 844. MEIC could live with HB 744. MEIC also could live with HB 671 with certain changes. The important thing about the bills is

that they remove the three major exemptions. She urged the committee to take care in limiting public participation. Some elements of HB 671 and HB 744 may have a chilling effect on public participation. **EXHIBIT 52-53**

Ms. Ellis, Montana Audubon Legislative Fund, submitted testimony on HB 671 and copies of advertisements for 20-30 acre parcels of land in Montana. **EXHIBIT 54-55**

Ms. Macefield, City of Helena, said that if the state is going to try to mitigate hazards, it would be better for the bill to say "including, but not limited to." The city of Helena supports local governments' options to determine whether financial incentives are given to developers and what kind are given.

George Schunk, Department of Justice, said his job as an attorney in the Attorney General's Office is to defend the constitutionality of the state's statutes. He urged the committee to retain the existing statement of purpose, which is embodied in HB 671. Some legal terms have been taken out or inserted, which will make it difficult to defend the statute.

Opponents' Testimony:

REP. CONNELLY said she really isn't an opponent, but she is concerned that planners have too much power over other people and that property owners' rights may be forgotten. She urged the committee to be fair when deciding the fate of her bill and to consider it on its merits.

Mr. Haag, Billings' Director of Public Works, submitted written testimony on his concerns with HB 671. **EXHIBIT 56**

Questions From Committee Members:

REP. FOSTER said there obviously have been some abuses of the exemptions. He asked if there were examples of occasional sales of 20 acres to family members, and if the committee should consider cleaning up exemptions instead of wiping them out. **REP. GILBERT** said not all 20-acre exclusions or occasional sales are bad. Unfortunately there were enough abuses to cause problems. He doesn't believe the answer is to try to clean them up. It is time for a change. The 20-acre exclusion isn't the only problem. A poor set of review criteria is just as much of a problem.

REP. HOFFMAN said HB 671 does not define the rights of property owners, but **REP. CONNELLY's** bill does. He asked **REP. GILBERT** if he considered defining those rights. **REP. GILBERT** said he would like to, but he doesn't know how it could be done. **REP. HOFFMAN** said it would be helpful to have such a definition in the event of litigation. **REP. GILBERT** said he would look at **REP. CONNELLY's** definition.

REP. TOOLE asked **Mr. Schunk** what problem he sees in **REP.**

GILBERT's bill. **Mr. Schunk** said the committee will be deleting language from the statement of purpose. A number of Supreme Court and administrative decisions have been based on the statement of purpose. In the future, those actions may become the subject of dispute. A planning board relies on its ability to regulate. The court will say that when this section was deleted in 1991, it was for a reason. What is left is boiler plate, standard police-power language indicating a right to public health, safety and welfare. Boiler plate won't get Montana very far in legal disputes. The flowery language has a purpose.

Closing by Sponsor:

REP. GILBERT said it is time for change. HB 671 is new and more efficient. The old language has caused so much grief for the state. The Legislature must look to the future. The old language is not good. The proposed change is not a whim. It needs to be done.

REP. O'KEEFE apologized to people who didn't have sufficient time to testify. He urged them to come to the subcommittee's meetings. He said the committee is close to resolving the issue and pledged to bring back something that will be acceptable.

REP. WANZENRIED recommended passage of HB 844.

ADJOURNMENT

Adjournment: 7:25 p.m.

Bob Raney
BOB RANEY, Chairman

Lisa Fairman / Bob Raney
LISA FAIRMAN, Secretary

BR/lf

HOUSE OF REPRESENTATIVES

NATURAL RESOURCES COMMITTEE

ROLL CALL **DATE** 2-18-91

NAME	PRESENT	ABSENT	EXCUSED
REP. MARK O'KEEFE, VICE-CHAIRMAN	✓		
REP. BOB GILBERT	✓		
REP. BEN COHEN	✓		
REP. ORVAL ELLISON	✓		
REP. BOB REAM	✓		
REP. TOM NELSON	✓		
REP. VIVIAN BROOKE	✓		
REP. BEVERLY BARNHART	✓		
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	✓		
REP. MIKE FOSTER	✓		
REP. DAVID HOFFMAN	✓		
REP. DICK KNOX	✓		
REP. BRUCE MEASURE	✓		
REP. JIM SOUTHWORTH	✓		
REP. HOWARD TOOLE	✓		
REP. DAVE WANZENRIED	✓		
REP. BOB RANEY, CHAIRMAN	✓		

CS05NATRES.MAN

EXHIBIT 1
DATE 2-18-91
HB 401

The controversy surrounding the public use and recreational access of state trust lands is not a new issue however. It has been an issue with at least two legislative sub-committees over the past 25 years. In 1967 Senate Joint resolution No. 19 of the Fortieth Legislative Assembly resulted in the Committee to Study the Diversified Uses of State Lands, whose charge it was to develop a means to provide for the overall use of the State-owned lands for both public recreation and agricultural pursuits. This committee was responsible for drafting the present multiple use concept language in the present statute (77-1-203, MCA). During the 1975-77 legislative interim, the Subcommittee on Agricultural Lands was also directed to study the scope and possible solutions to the problem of public recreational access to school trust lands. Both committees prepared reports and recommendations but neither study has ended the controversy.

A major problem affecting the management and income producing capability of school trust lands shortly after statehood was finding someone with an interest in the widely scattered tracts. Over time the majority of the state's trust lands became leased to farmers and ranchers and became an integral part of their overall ranch or farm operations. Generally, because of personnel and funding levels, the Department of State Lands has historically allowed the lessee to manage the state's land because the lessee is on the property and closest to the land. This has resulted in a proprietary feeling among many of the lessees over "their" state land. The Department has exercised its management control in the past through the lease agreement and has designated the lessee to be largely the responsible party for fire, noxious weeds, and for damage to the property. This effectively resulted in an almost exclusive use right for the lessee.

In the mid-sixties the Board looked at the issue of access to school trust lands and determined that this access represented a compensable asset of the trust and that, at that time, it was not in the best interest of the trust to dispose of that asset.

In 1969 the multiple use concept was embodied in law and opened the way for consideration of a variety of resources other than direct products of the land.

In 1971 the Department began a survey, titled the "Recreation Inventory Program", to identify the types of recreational opportunities, locations of uses and general recreation potential existing on state trust lands. The survey evaluated recreation potential in terms of physical characteristics and potential or actual use to locate state lands that have great multiple use potential. The survey was completed in 1979 and the report titled Summary of Recreation Inventory was completed in 1982.

In 1979, the board adopted the surface leasing rules which reserved hunting and fishing access and authorized the lessee to post the lease to protect the leasehold interests.

With increasing demands by sportsmen for access, many landowners concerned with the problems of vandalism, carelessness, littering, and closed access to the state land. Sportsmen soon began to complain about state land lessees denying them access or charging them a fee for access to state owned land. In some cases complaints were made that landowners were blocking access to isolated tracts of federal lands by posting adjoining state lands against trespass.

In 1982 the State Land Department sent a letter to all lessees of state land stating that it had come to the Department's attention that some lessees of grazing or agricultural land were under a misunderstanding concerning hunting access rights on state trust land. The letter stated that the state has not issued hunting access rights on any state trust land and that the grazing or agricultural lessee could prevent unauthorized trespass on state land by hunters, but could not charge for hunting access without jeopardizing the lease.

In 1985 the Department developed a written policy on hunting on school trust lands in response to further questions and complaints by sportsmen. The Department's policy states:

> The Board has reserved hunting and fishing access. Strictly speaking no one is allowed to hunt or fish on state land. However, it is not realistic to expect the lessee to keep everyone off. The lessee may post the lease to protect his leasehold interest. If it is posted no one, including the lessee may hunt on the lease. The lessee may allow hunting on the tract. However, if hunting is allowed, everyone must be allowed to hunt. The lessee may require everyone to check in before going on the tract to keep track of who is on it. However, no one may be denied. The lessee may not charge for hunting. All evidence that a lessee is charging for hunting should be submitted to the Department. The evidence will be pursued, and if there is sufficient evidence, the lease will be canceled. Any trespasser should be directed to leave the tract if it is posted.

On classified forest lands that do not have an exclusive license or lease for a particular purpose, the Department has generally allowed the public to engage in most types of recreational activities in addition to hunting and fishing without compensation or permit. For example, horseback riding, cross country skiing, and snowmobiling have been allowed to the general public unless an exclusive license for those purposes has been issued to a particular individual or group on a specific tract. On classified grazing and agricultural lands the Department's procedures require a land use license to be obtained for any

recreational use other than hunting before access and use are formally permitted.

Lessees have generally been supportive of the present policy regarding recreational access and use of state trust lands and are opposed to allowing unrestricted public access on lands they lease from the state. They are concerned that increased traffic will bring increased weeds, erosion, fires, vandalism, litter, unwanted roads, trespass on private lands, increased administrative burdens, and a greater overall risk to them under the liability imposed by the terms of their state lease.

Sportsmen are generally opposed to the present policy which allows lessees the right to restrict the public from access to state trust lands. Sportsmen generally want access privileges to hunt and fish on state owned lands. Many do not feel compensation should be required for recreational uses as they are already paying taxes to support the land.

In February of 1988, a group of sportsman's organizations, organized as the Montana Coalition for the Appropriate Management of State Lands, filed suit in state district court in Helena against the Department of State Lands and the State Board of Land Commissioners. The Coalition alleges that trust land must be open to the public for recreational purposes without compensation to the trust, that the Department must prepare an environmental impact statement on its grazing lease program, and that the minimum rates for grazing land must be increased. As an alternative to the first allegation the Coalition alleges that, if the state must charge for recreational access, it must develop a system whereby state lands are available and compensation is secured. The Montana Stockgrowers Association, Montana Farm Bureau Federation, and certain individuals intervened as defendants.

In October of 1989 the Board directed the Department to explore parameters for settlement of the access suit and negotiations toward settlement were begun.

In March of 1990, after much progress had been made toward settlement of the access lawsuit, negotiations broke down over the issue of compensation to the lessees. The Coalition's position was that compensation to the lessees should occur only when physical damage had occurred on the lease. The view of the Montana Stockgrowers Association, was that all lessees who were impacted by increased accessibility by recreationists should receive compensation. The Board felt that, regardless of the impasse in negotiations, it should proceed towards resolving the access issue.

In April of 1990, the Department was directed by the Board to conduct public meetings to gather public input towards resolving the access issue and to accept written comments, summarize

in forming a recommendation to the Board. The following questions were asked:

1. How should the Department administer recreational uses of school trust lands(i.e. leasing by competitive bid, licensing for limited uses during specific timeframes, open public access at specific times of year, open public access at all times, others)?

2. At what monetary level should the school trusts be compensated for recreational uses?

3. What, if any recreational uses of school trust lands, would you be willing to pay for?

4. Should existing lessees be compensated for damages incurred by recreational users, and if so, in what form should this compensation be?

5. Under what conditions, if any, should school trust lands be closed to public recreational uses?

6. How should the issues of fire control, weed control, erosion control, and vehicle control regarding recreational uses be addressed?

7. Additional comments.

The Department accepted public comment through June 5, 1990 and received 150 public comment forms. In summarizing the comments, responses for each question were grouped into like categories and then totaled by category. Percentages were then determined for each category based upon the total number of responses received for each question. In questions where more than one response was appropriate, each response was noted in the appropriate category.

Responses to the first question, How should the Department administer recreational uses of school trust lands(i.e. leasing by competitive bid, licensing for limited uses during specific timeframes, open public access at specific times of year, open public access at all times, others)?, were as follows:

Open access at all times	79%
Open access at specific times	7%
Leasing by competitive bidding	7%
No change	5%
Licensing for limited uses	3%

86 %

In reviewing the comments to the first question it appears that the majority of the respondents favored open public access

EXHIBIT 2
DATE 2-18-91
HB 778

TESTIMONY SUPPORTING PUBLIC ACCESS TO MONTANA STATE SCHOOL LAND
HB778
By John Gibson, Secretary Billings Rod And Gun Club.

One of the arguments used to discourage public access to Montana State School Land involves the intolerable amount of vandalism and other damage that would occur to property that the lessee leaves upon the land.

I would like you to look at this argument a little closer.

The Custer National Forest, where I worked for 15 years provides grazing for over 130,000 livestock on about 2 million acres of land. There are more than a thousand structural range improvements on this land. These structures include windmill, solar panels and propane tanks to power water pumps, stock water tanks, loading corrals, oilers, and thousand of miles of fences and water lines. Every one of these structures is on land where the public has year-round access. There is almost no damage to these improvements as a result of hunters, fishermen and other recreation users.

Another example of multiple uses was sited by the District Ranger of the Sheridan District, Beaverhead National Forest. During General Big Game Season an average of 156 vehicles per day enter the Upper Ruby Grazing Allotment. Most years show no damage to range improvements attributed to hunters.

It is my opinion that there is little substance to this argument or any argument that suggests a public resource must be protected from the public by restricting it's use to a select few.

As I understand it over 70% of the comments from the public hearings favored reasonable public access to Montana State School Lands. Let government of the people prevail.

I ask you, on behalf of the Billings Rod and Gun Club and many other Montana citizens, to open this land to the public. It is time we followed the example of the majority of other western states and began to practice Multiple Use on public land.

Support HB778

John R. Gibson

EXHIBIT 2a
DATE 2-18-91
HB 401 & 778

HOUSE OF REPRESENTATIVES

WITNESS STATEMENT

PLEASE PRINT

NAME John R. Gibson **BUDGET** _____

ADDRESS 2518 Broadwater Ave. Billings MT 59102

WHOM DO YOU REPRESENT? Billings Rod & Gun Club

SUPPORT HB 778 **OPPOSE** _____ **AMEND** _____

COMMENTS:

U.S. Forest Service records show no significant vandalism or damage to range structures upon lands open to public access. There is no reason to believe there would be significant damage to these structures on School lands if the public had access.

HR:1991
CS16

EXHIBIT 3
DATE 2-18-91
HB 401 & 778

State of Montana
Office of the Governor
Helena, Montana 59620

TED SCHWINDEN
GOVERNOR

October 8, 1985

Answer

Mr. Jerry Manley
1806 Cobban
Butte, Montana 59701

Dear Mr. Manley:

Since you were involved with House Bill 265, you can appreciate the sensitivity of opening access to state school trust lands. Negotiations between the Departments of State Lands and Fish, Wildlife and Parks have continued and the issues narrowed. Hopefully, a resolution can be reached which is beneficial to sportsmen and to the school trust.

As Mr. Woodgerd told you, and Mr. Hemmer has reaffirmed, a lessee may not charge for access across state land. That action would be a violation of their lease and could result in lease cancellation. Likewise, if the lessee opens his lease to hunting, he may not restrict the access.

The Department of State Land's policy is to return all calls as promptly as possible. Prior to writing the November, 1984 letter you attached, Dennis Hemmer did try to call you without success. He was unaware of any other calls.

I assure you that progress has been made on the hunting and fishing access to state lands issue, and urge your continued cooperation. If you have further questions, please stop by my office for a visit.

Sincerely,

TED SCHWINDEN
Governor

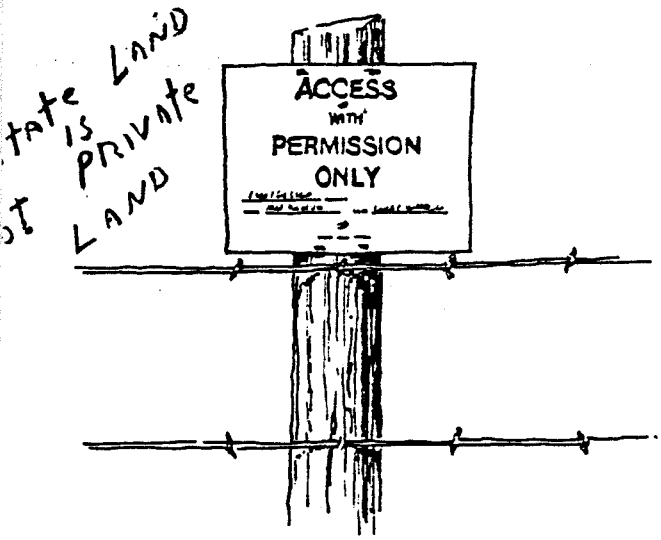
EXHIBIT 4
DATE 2-18-91
HB 378 & 401

NEW TRESPASS LEGISLATION

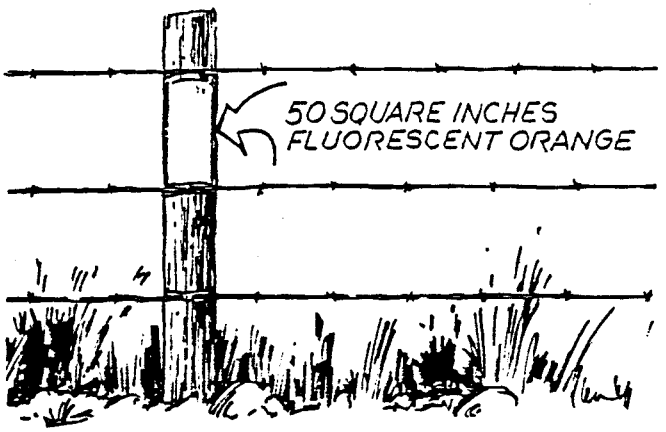
The 1985 Legislature addressed the issue of trespass in passing House Bill 911. The new law took effect on April 22, 1985.

The trespass law. This law states that lands can be closed to the public either by posting the land or through verbal communication by landowners or their agents. However, even if lands are not posted, recreationists are urged to seek landowner permission before pursuing any activities on private lands. *If permission is granted, the landowner may revoke the permission by personal communication at any time.* Also, because the posting of a notice closing land may, in some cases, revoke privileges previously extended, recreationists are urged to recontact landowners whenever new posting is observed.

Posting requirements. Notice denying entry to private land must consist of written notice on a post, structure or natural object or of notice by painting a post, structure or natural object with at least 50 square inches of fluorescent orange paint. In the case of a metal fencepost, the entire post must be painted. This notice must be placed at each outer gate and all normal points of access to the property, as well as on both sides of a stream where it crosses an outer property boundary line. In cases where land ownership is on just one side of a stream, only that side needs to be posted.



*This is just one of several signs offered free-of-charge to landowners by the Department of Fish, Wildlife and Parks. For infor-



What does the new law mean? Because landowners are no longer required to post the entire perimeter of their lands to deny access, it is the responsibility of the recreationist to determine whether private lands are posted. *If lands are posted, it is the recreationist's responsibility to obtain permission from landowners before recreating on these lands.*

The new law does not change the requirement that ***all big game hunters must obtain permission from landowners before hunting on private lands.*** Permission is required even if the lands aren't posted.

Enforcement of the law. The law also extends the authority of state game wardens to enforce the criminal mischief, criminal trespass and litter laws to all lands being used by the public for recreational purposes. Recreational purposes are defined in the law to include hunting, fishing, swimming, boating, water skiing, camping, picnicking, pleasure driving, winter sports, hiking and other pleasure expeditions.

Penalties. As stated in Montana law, any person who knowingly enters or remains unlawfully in or upon the premises of another will be guilty of criminal trespass and, if convicted, will be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed six (6) months, or both.

Assistance for landowners. Landowners requiring the assistance of law enforcement officers as it relates to this new law should call either their local game warden or

Ex. 4
2-18-91
HB 778 & 401

court pursuant to 87-1-111 through 87-1-113 must be remitted to the state treasurer for deposit in the state special revenue fund as provided in 87-1-601(1).

History: En. Sec. 4, Ch. 523, L. 1987.

Part 2

Department of Fish, Wildlife, and Parks

87-1-201. Powers and duties. (1) The department shall supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state. It possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the department.

(2) It shall enforce all the laws of the state respecting the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.

(3) It shall have the exclusive power to spend for the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, or from appropriations or received by the department from any other sources are appropriated to and under control of the department.

(4) It may discharge any appointee or employee of the department for cause at any time.

(5) It may dispose of all property owned by the state used for the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds which is of no further value or use to the state and shall turn over the proceeds from the sale to the state treasurer to be credited to the fish and game account in the state special revenue fund.

(6) It may not issue permits to carry firearms within this state to anyone except regularly appointed officers or wardens.

(7) The department is hereby authorized to make, promulgate, and enforce such reasonable rules and regulations not inconsistent with the provisions of chapter 2 as in its judgment will accomplish the purpose of chapter 2.

(8) The department is authorized to promulgate rules relative to tagging, possession, or transportation of bear within or without the state.

History: Ap. p. Sec. 4, Ch. 193, L. 1921; re-en. Sec. 3653, R.C.M. 1921; amd. Sec. 2, Ch. 77, L. 1923; amd. Sec. 2, Ch. 192, L. 1925; amd. Sec. 1, Ch. 200, L. 1935; re-en. Sec. 3653, R.C.M. 1935; amd. Sec. 1, Ch. 157, L. 1941; amd. Sec. 1, Ch. 40, L. 1951; amd. Sec. 1, Ch. 157, L. 1955; amd. Sec. 1, Ch. 151, L. 1957; amd. Sec. 1, Ch. 36, L. 1959; amd. Sec. 1, Ch. 96, L. 1959; amd. Sec. 1, Ch. 173, L. 1965; amd. Sec. 1, Ch. 344, L. 1969; amd.

EXHIBIT 5
DATE 2-18-91
HB 401 & 778

MR. CHAIRMAN AND COMMITTEE MEMBERS:

I'M TOM LOFTSGAARD A LEASEHOLDER AND REPRESENT THE LAND MANAGEMENT COUNCIL, WHICH IS A ORGANIZATION OF STATE LAND LEASEHOLDERS.

THE STATE LAND LESSEES ARE BOUND BY CONTRACT TO MANAGE THE LAND, FOR THE COMMISSIONERS, WITHIN THEIR TERMS AND CONDITIONS OF THE LEASE, AND OTHER DEPARTMENTAL POLICIES. THE TERMS AND CONDITIONS WHICH ARE OF MAJOR CONCERN, WHEN THE STATE LAND IS SHARED BY RECREATIONALISTS AND AGRICULTURE ARE:

TERM 8: IMPROVEMENTS- THE LESSEE MAY PLACE A REASONABLE AMOUNT OF IMPROVEMENTS UPON THE LANDS UNDER THIS LEASE UPON APPROVAL OF AN IMPROVEMENT PERMIT BY THE DEPARTMENT. A REPORT OF PROPOSED IMPROVEMENTS, CONTAINING SUCH INFORMATION AS THE COMMISSIONER MAY REQUEST CONCERNING THE COST OF THE IMPROVEMENTS, THEIR SUITABLENESS FOR THE USES ORDINARILY MADE OF THE LAND, AND THEIR CHARACTER WHETHER FIXED OR MOVABLE, SHALL BE SUBMITTED TO THE COMMISSIONER BEFORE INSTALLATION THEREOF ON THE PREMISES. FAILURE TO OBTAIN APPROVAL PRIOR TO PLACEMENT OF THE IMPROVEMENT MAY RESULT IN SUCH IMPROVEMENTS NOT BEING RECOGNIZED BY THE DEPARTMENT FOR PURPOSES OF REIMBURSEMENT OF SUCH IMPROVEMENTS. IN ADDITION, PLACING IMPROVEMENTS ON STATE LAND WITHOUT RECEIVING PRIOR APPROVAL, MAY RESULT IN CANCELLATION OF THE LEASE.

TERM 16: NOXIOUS WEEDS AND PESTS-THE LESSEE AGREES, AT HIS OWN EXPENSE AND COST, TO KEEP THE LAND FREE FROM NOXIOUS

WEEDS, AND IF NOXIOUS WEEDS ARE PRESENT, THEN CHEMICAL APPLICATION OR OTHER APPROPRIATE WEED CONTROL MEASURES MUST OCCUR IN TIME TO PREVENT SEED-SET ACCORDING TO STATE LAW AND TO EXTERMINATE PESTS TO THE EXTENT AS REQUIRED BY THE DEPARTMENT. IN THE EVENT THE LAND DESCRIBED IN THIS LEASE SHALL BE INCLUDED IN A WEED CONTROL AND WEED SEED EXTERMINATION DISTRICT, THE LESSEE SHALL BE REQUIRED TO COMPLY WITH THE PROVISIONS OF SECTION 77-6-114, MCA, WHICH PROVIDES AS FOLLOWS. IT SHALL BE THE DUTY OF THE BOARD IN LEASING ANY AGRICULTURAL STATE LAND TO PROVIDE IN SUCH LEASE, THAT THE LESSEE OF LANDS SO LEASED LYING WITHIN THE BOUNDARIES OF ANY NOXIOUS WEED CONTROL AND WEED SEED EXTERMINATION DISTRICT SHALL ASSUME AND PAY ALL ASSESSMENTS AND TAXES LEVIED BY THE BOARD OF COUNTY COMMISSIONERS FOR SUCH DISTRICT ON SUCH STATE LANDS, AND SUCH ASSESSMENTS AND TAX LEVY SHALL BE IMPOSED ON SUCH LESSEE AS A PERSONAL PROPERTY TAX AND SHALL BE COLLECTED BY THE COUNTY TREASURER IN THE SAME MANNER AS REGULAR PROPERTY TAXES ARE COLLECTED. FAILURE TO COMPLY WITH THIS PROVISION WHEN DIRECTED TO DO SO BY THE DEPARTMENT MAY RESULT IN CANCELLATION OF THE ENTIRE LEASE.

TERM 17: FIRE PREVENTION AND SUPPRESSION-THE LESSEE ASSUMES ALL RESPONSIBILITY FOR CARRYING ON AT HIS OWN COST AND EXPENSE ALL FIRE PREVENTION AND SUPPRESSION WORK NECESSARY OR REQUIRED TO PROTECT FORAGE, TREES, BUILDINGS AND STRUCTURES ON THE LAND.

EXHIBIT 5
DATE 2-18-91
HB 401, 778

TERM 21: INDEMNIFICATION-THE LESSEE AGREES TO SAVE HARMLESS AND INDEMNIFY THE STATE OF MONTANA FOR ANY LOSSES TO THE STATE OCCASIONED BY THE LEVY OF ANY PENALTIES, FINES, CHARGES OR ASSESSMENTS MADE AGAINST THE ABOVE LANDS OR CROPS GROWN UPON THE LANDS, BY THE U. S. GOVERNMENT BECAUSE OF ANY VIOLATION OF OR NONCOMPLIANCE WITH, ANY FEDERAL FARM PROGRAM BY THE LESSEE.

THE PROBLEMS:

IMPROVEMENTS: THE STATE LAND LESSEE OWNS ALL THE IMPROVEMENTS ON THE LEASE. THIS INCLUDES BUILDINGS, FENCES, SPRING DEVELOPMENTS, WELLS, DAMS, DUGOUTS, IRRIGATION SYSTEMS, RANGE IMPROVEMENTS, SUMMERFALLOW, CROPS, SHELTERBELTS, AND ETC.. THESE IMPROVEMENTS ARE PERSONAL PROPERTY AND NO PERSON HAS ANY RIGHT TO USE OR ABUSE THEM WITHOUT THE OWNERS PERMISSION.

NOXIOUS WEEDS AND PESTS: BY GRANTING OPEN PUBLIC ACCESS THE LESSEE WILL NOT HAVE ALL THE CONTROL OVER THE POSSIBILITY OF NOXIOUS WEED INFESTATION ON THEIR LEASE. THE COSTS INVOLVED IN CONTROLLING NOXIOUS WEEDS CAN BE ASTRONOMICAL. CONTROLLING ONE INFESTATION, AND IT NEED NOT BE LARGE, COULD ADD UP TO THE COST OF A NEW 4X4 AND THESE WEEDS CANNOT BE ERADICATED IN ONE OR EVEN TWO YEARS.

FIRE PREVENTION AND SUPPRESSION: GRANTING OPEN ACCESS, THE LESSEE'S LIABILITY IN THIS TERM AND CONDITION COULD BE UNBELIEVABLE. HOW MANY FIRES ARE CAUSED EACH YEAR BY

RECEATIONALISTS IN MONTANA? WE ARE RESPONSIBLE FOR FIRES CAUSED BY NATURE, OURSELVES OR BY OTHERS. IF THE GRASS IS BURNED BY A FIRE, CAUSED BY RECREATIONALISTS, HOW WILL THE LESSEE BE COMPENSATED FOR THE LOSS OF GRAZING ALREADY PAID FOR AND THE LOSS OF THE IMPROVEMENTS CONSUMED BY THE FIRE.

INDEMNIFICATION: UNDER THE FEDERAL FARM PROGRAM, CONSERVATION RESERVE PROGRAM AND CONSERVATION COMPLIANCE LAWS; THERE CAN BE EXPOSURE OF OUR LIABILITY WHEN ACCESS IS GRANTED. WE ARE BOUND BY CONTRACT TO THE FEDERAL GOVERNMENT TO MAINTAIN COVER ON AGRICULTURAL LAND TO PREVENT EROSION. IF A FIRE CAUSED BY RECREATIONALISTS BURNS THE STUBBLE AND LEAVES THE LAND BARE, WHICH PUTS THE LESSEE AND THE STATE OUT OF COMPLIANCE, WHO WILL COVER THE REPAYMENT OF BENEFITS AND PENALITIES ASSESSED BY THE FEDERAL GOVERNMENT?

OTHER: WHAT IS THE LESSEE LEASING THIS LAND FOR? THE DEPARTMENT OF STATE LANDS IS SELLING, TO THE LESSEE, ALL OF THE FORAGE GROWN ON STATE GRAZING LANDS FOR THE GRAZING OF LIVESTOCK. IF WE LEAVE TO MUCH, THEY RAISE OUR RENT. IF THE NEXT YEAR A DROUGHT OCCURS AND THE AMOUNT OF FORAGE WE PAID FOR WAS NOT GROWN, WE PAY THE RENT. IF A FIRE BURNED THE FORAGE, WHETHER STARTED BY NATURE OR HUMANS, WE PAY THE RENT. IF THIS FORAGE WHICH THE LESSEE HAS PAID FOR IS TRAMPLED BY THE PUBLIC WITH THEIR OFF-ROAD VEHICLES OR CONSUMED BY WILDLIFE, WE PAY THE RENT.

THE LESSEE LEASES THE AGRICULTURAL LAND TO RAISE CROPS..AND IF MOTHER NATURE HELPS WE CAN HAVE A BOUNTIFUL HARVEST. WE PLACE THE NECESSARY SEED, FERTILIZER, CHEMICALS, TILLAGE AND HARVEST OPERATIONS TO RAISE THESE CROPS. THE STATE RECEIVES A SHARE OF THESE CROPS OR CASH PAYMENT FOR RENT. THIS RENT GOES INTO THE SCHOOL TRUST FUND. IS IT THE PUBLIC

RIGHT TO TRAMPLE AND DESTROY THE CROP WITH NO REGARD TO THE LESSEE AND THE TRUST? THAT SUMMERFALLOW OR STUBBLE, WHICH IN MANY CASES IS SEEDED TO WINTER GRAINS, THAT THE PUBLIC LIKES TO DRIVE UPON, IS NEXT YEARS CROP. EXTRA VEHICLE TRAFFIC ON HAYLAND DOES NOT HELP IT'S PRODUCTIVITY EITHER.

THE LESSEE OF SCHOOL TRUST LAND IS HELD DIRECTLY RESPONSIBLE FOR THE PHYSICAL APPEARANCE OF THE LEASE.

ANOTHER MAJOR CONCERN TO LESSEES IS THE FACT THAT LIVESTOCK GRAZING UPON STATE LANDS HAVE BEEN SHOT DURING HUNTING SEASON EVERY YEAR. (TWO COWS WERE KILLED IN OUR NEIGHBORHOOD LAST FALL). IN AN AREA SUCH AS OURS OPEN ACCESS WILL INCREASE THE AMOUNT OF HUNTERS AND VIRTUALLY INSURE THAT THIS PROBLEM WILL BECOME MUCH WORSE.

THERE WILL BE SOME CONSIDERATION AND RELUCTANCE GIVEN ON THE PART OF FUTURE SURFACE USE LESSEES, TO EVEN LEASE THIS LAND, WHEN IT CARRYS STIPULATIONS WHICH THEY CANNOT PARTLY CONTROL BECAUSE OF THE LARGE PERSONAL INVESTMENT WHICH IS CURRENTLY PLACED UPON SCHOOL TRUST LAND.

AGRICULTURE IS THE LARGEST INDUSTRY IN MONTANA. THE IMPACT OF THESE BILLS ON AGRICULTURE AND THE SCHOOL TRUST IS IMPERATIVE ENOUGH; WE WOULD ASK THE COMMITTEE; THAT SINCE THE BOARD OF LAND COMMISSIONERS HAS ASKED FOR AN E.I.S. ON PUBLIC ACCESS, THAT IT BE ONLY PRUDENT AND RESPONSIBLE TO COMPLY WITH THEIR ACTIONS.

FOR THESE REASONS WE SUPPORT THE CONCEPT OF H.B.401 AND OPPOSE H.B.778.

THANK YOU.

EXHIBIT 6
DATE 2-18-91
HB 778

Brief introduction — Tony Schoonen
Representing the M.W.F.

Most of the M.W.F affiliates are members of the State Lands Coalition, but several of them could not attend The meeting today.

I will turn in a letter from The Sportsmen's Club in Great Falls who are opposing H.B. 401 and endorse H.B. 778.

The Federation has been involved in working for recreational access on State school lands for nearly a quarter of a century but to no avail. We are no further along today than we were 25 years ago. Delays, excuses, broken promises are all that we have to show for our efforts.

Refer to the maps on each wall—

Before the lawsuit was filed in March of 1988 — The Coalition for Appropriate management paid a lawyer Jim Goetz to try to negotiate a settlement with the agricultural groups, but to no avail. The only other alternative was to go to court.

The case was supposed to go to Court last July — but the Coalition opted to try again for an out of court settlement.

The legislature seems to be our only hope to settle out of court and maybe

million dollars for an EES.

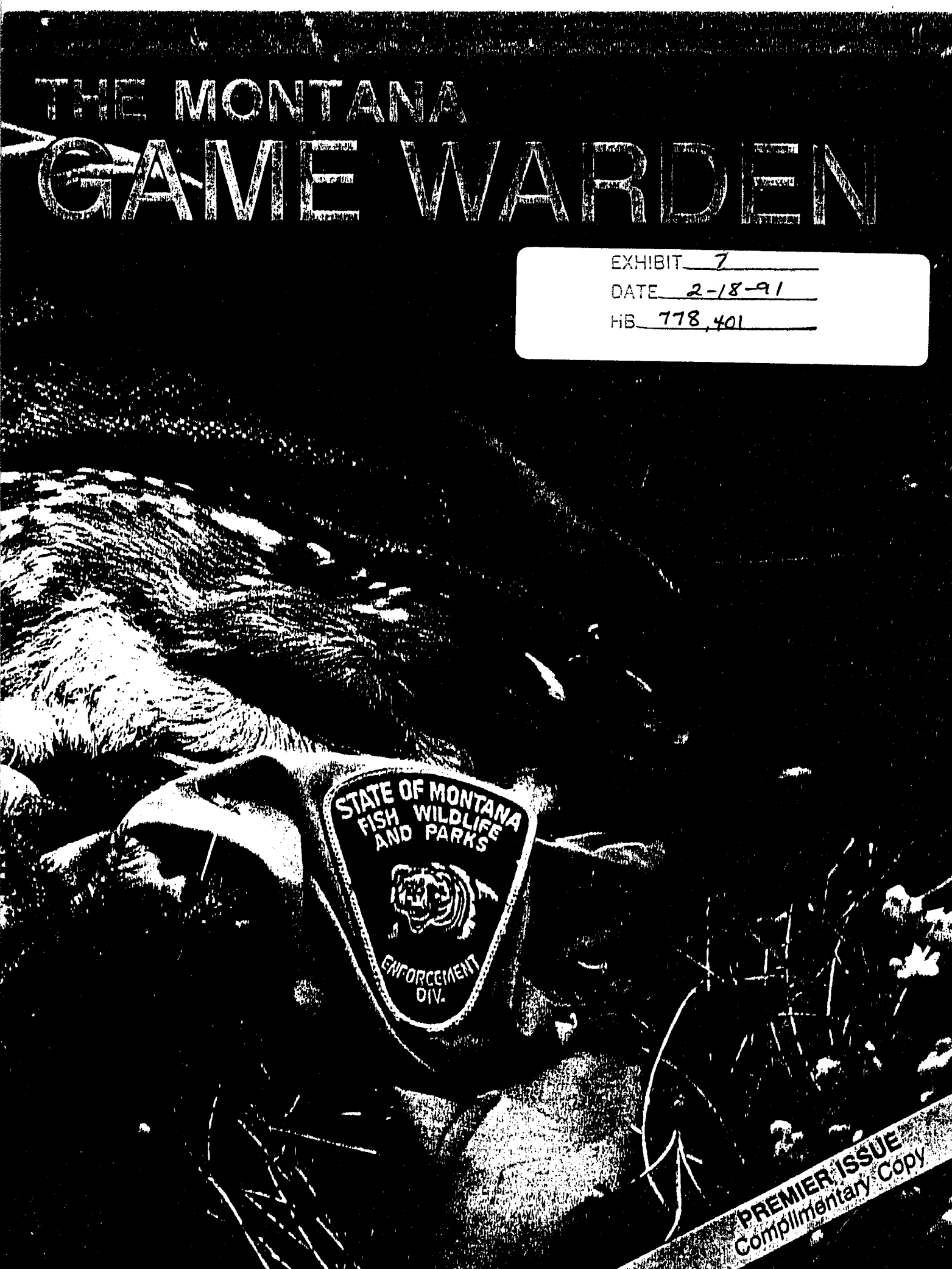
I would like to submit some important articles for consideration by the committee.

Chairman Kraus, with your approval I will line up our proponents of H.B. - 778 to speak time

Think you

THE MONTANA GAME WARDEN

EXHIBIT 7
DATE 2-18-91
HB 778, 401



PREMIER ISSUE
Complimentary Copy

EXHIBIT 7
DATE 2-18-91
HB 401-778

NAPWEED

Y ; sportsmen, mailmen, UPS, loggers and ranchers ıd knapweed. According to a pamphlet provided by e Soil Conservation Service of Montana, knapweed ı has been introduced to near areas by the movement ıtaminated seed and hay. These problems were mag- d by the large shipment of hay from western to tern Montana during the 1984 and 1985 drought.

IAGE TO STATE LAND

s not legal to damage the property of another. There- e, the lessee is protected by the laws of Montana. It likely that the public would damage State public any more than they damage BLM or Forest Serv- and. Neither of these agencies reports too many blems. Calving areas or other such sites could be d at certain times by special permit.

ICULTURE

Only 12% of the entire 5.2 million acres of State land s ı lized for agriculture, mostly in three counties. We u remember that crops are only in the field during e summer.

RESIDENT COMPETITION

7 % of the leases checked by the Coalition for Access e actually controlled by a nonresident, someone who cks access and makes money in Montana, and prob- does their banking in Texas. It is amazing that the g ranchers of Montana don't rise up and demand t these low cost grazing leases be held for the young ple of Montana, not for the big corporations in Texas d California.

The public is not asking for access across private operty to reach State land, only for the legal right to e their land if it can be reached by legal means, just ther public lands....the US Forest Service and the reau of Land Management.

RSIDIES

t year on a ranch in eastern Montana, 22 Texas law- were caught in a situation where each lawyer ceived about $900,000 in subsidies. The tax payer was g the pockets of nonresidents. Do large, nonresident rations qualify as a depressed farmer who should paying low grazing fees to the State? Why aren't these te people, who can afford to buy their Montana ıts, paying full value for the privilege? Where the ock industry is a dying industry, the real estate iness is big time. If the land can't be sold, it is leased e exclusive use of the nonresident hunter. This is we are talking about private land, but the public be allowed the use of their public lands. Besides the subsidized elite drain our rivers, kill the "fish t" business; and then want me to be sympathetic, he subsidy and give them exclusive use of public te land.

Just a few years our private land will all be sold to eman farmers from out of state. These people are o plow up our grasslands, then paid not to grow s, then paid a subsidy on what they do grow....and bank that money in Texas. Somehow the "real farm- rancher", the guy who is really working to make ng, doesn't get in on the windfall the Government ds out. He ends up selling and goes to work for the sident.

CONCLUSION

We have been involved in access issues for many years. We believe that if there is no access, people lose interest in hunting and fishing, which hurts a variety of Montana businesses. If there is no access, people do not buy recreational vehicles. They do not buy hunting licenses. They do not buy jackets, coats, rifles, boots or all of the other paraphernalia bought by hunters, fisherman, archers and others. The father can't take his son hunting or fishing since there is nowhere to go.

Most of the public is willing to compensate the trust as required. Tourism is the number two employer and third in bringing revenue into the state, and as agriculture and mining are steadily declining, recreation is rapidly increasing.

JIM HECK

Under the current system, livestock grazing leases provide revenue for the State school system.

THE LEASE HOLDER'S POSITION

By Jim Moore

The Coalition for the Appropriate Management of State Lands has sued the Montana Board of Land Commissioners and the Montana Department of State Lands. In the documents filed with the Court, the Coalition sets forth many allegations, three of which are of most significance. Those three deal with: access to state trust lands; the fees that are charged to agricultural lease holders of the state trust lands; and a request that the Court order that the Department of State Lands prepare an Environmental Impact Statement.

The lands in question differ from such public lands as the forest reserves and the lands that are managed by the Bureau of Land Management. At the time of the creation of the State of Montana, the federal government transferred title to certain lands to the state. The state then was obligated to utilize the income from those lands for educational purposes. The State of Montana has elected to retain ownership of most of the state trust lands and has historically leased those lands, with the income being paid into the state educational trust fund. The

school trust lands are leased for agricultural purposes, mining, cabin sites, recreation and several other uses. Under the Enabling Act that created the State of Montana and our Montana Constitution, the state must manage the land in accordance with the trust, thereby receiving monetary compensation for the uses that it allows upon the lands.

There are about 5 million acres of state school trust lands scattered throughout the State of Montana. They are divided into some 10,000 individual tracts, varying in size from two acres for cabin sites, to thousands of acres. Most of the tracts are approximately 640 acres in size.

The state has historically managed these lands on a most cost effective basis. It has leased a large part of the land to agricultural operators and imposed an obligation upon those agricultural operators to protect and preserve the lands. This arrangement has eliminated the need for the state to employ hundreds of people to manage and supervise the thousands of individual tracts of state trust land. Among other stewardship activities, the lease holders are responsible for weed control, maintaining fences and providing water. The number of people required by the Department of State Lands to manage its 5 million acres, as compared to the number of people required by the Bureau of Land Management or the Forest Service to manage a like number of acres, is unbelievably small. The effect of this arrangement is to maximize the monetary return to the state educational trust fund.

The Coalition has asked the Courts to require that the Department and the Land Board change their management arrangement. The Coalition is seemingly asking the Court to allow the public to have unrestricted access to state trust lands. If such unrestricted access is granted, the whole concept upon which the state lands are managed must necessarily change. If the lease holders cannot determine the times and circumstances under which members of the public may enter upon the lands, then the lease holders' ability to manage their leased lands has disappeared. The obligation to protect and preserve the state trust lands would shift to the state and the state would be required to hire the necessary people to not only supervise the activities of the public on these trust lands, but also to be involved in the costly management of the lands. Not only would this impose an astronomical cost burden upon the Department of State Lands, but the free public access to the state trust lands would diminish their value for agricultural and grazing purposes. The net result would be a tremendous loss of revenue to the state educational trust fund.

IF THE LEASE HOLDERS CANNOT DETERMINE THE TIMES AND CIRCUMSTANCES UNDER WHICH MEMBERS OF THE PUBLIC MAY ENTER UPON THE LANDS, THEN THE LEASE HOLDERS' ABILITY TO MANAGE THEIR LEASED LANDS HAS DISAPPEARED.

The Coalition has also asked the Court to determine that the fees charged to agricultural and grazing lease holders are inadequate. They simply state that the fees are not comparable to the amounts paid by agricultural users to lease other kinds of land. There is nothing to indicate they recognize the various kinds of leasing arrangements provided to the lessee by the owner of other kinds of lands. Under other leasing arrangements, the lessor provides water, maintains fences, controls weeds and allows for reduced fees when grass is scarce. If fees are increased on state lands, additional services must be provided by the state.

Finally, the Coalition has asked the Court to order the Department of State Lands to prepare an Environmental Impact Statement on these lands. The Complaint does not indicate what they expect the preparation of such an Environmental Impact Statement to accomplish. Ordinarily, Environmental Impact Statements are prepared for the purpose of analyzing the environmental impacts of new activities, not to review ongoing activities. The management system of our state school trust lands has been ongoing for nearly a century.

While it is almost a certainty that the public has been excluded from access to some of the state trust lands by the agricultural lease holders of those lands, there is no clear indication that the public has been excluded from any large portion of the school trust lands. It is important to remember that most of the hunting, fishing and other kinds of outdoor recreation that occur in Montana take place on private lands. Most farmers and ranchers have in the past allowed the public to hunt and fish on private land asking only that the members of the public observe the common courtesies. Those are the same farmers and ranchers who lease the state school trust lands and allow hunting and fishing on the trust lands that they lease.

An increasing number of farmers and ranchers have restricted hunting and fishing upon their property in the last few years. This is probably a reaction to the efforts of some organizations such as the Coalition to change the accustomed relationship between the recreating public and the owners of agricultural lands. The greater the attempt by small numbers of the public to force landowners to accommodate their wishes, the greater will be the resistance of those land owners to public use of their property.

The Coalition wants free and unrestricted access to state lands. The Enabling Act and the state Constitution prohibit the Land Board and the Department of State Lands from allowing free usage. The Legislature could appropriate money from the general fund to be paid to the Department of State Lands as compensation for public use of those lands for recreational purposes. That is a legislative decision and should not be mandated by the Courts. It is possible that the Department of State Lands could negotiate recreational leases on the individual parcels of state land. Should that happen, the person who secures the recreational lease will then of course have the ability to use that land for his own recreational purposes and exclude every other individual from such recreational use. Such a solution would only result in less access to state lands than there is under the present system.

The Department of State Lands and the State Land Board are following a policy that has been in existence for nearly 100 years. Because the system is cost effective, it has provided an optimum amount of money to the State School Trust Fund. Until most recent times, the

relationship that has existed between those of our citizens who wish to hunt and fish and those of our citizens who are the lease holders of agricultural land has resulted in some of the finest hunting, fishing and outdoor recreation in all of the world. Our efforts should be directed toward the maintenance of that amicable relationship that has been so beneficial to everyone. Lawsuits such as the one filed by the Coalition for the appropriate Management of State Lands will only cause the deterioration of that relationship.

This reflects the views of the Montana Stockgrowers Association and the Montana Farm Bureau Federation, but does not necessarily reflect the opinions of the Montana Department of State Lands and the Board of Land Commissioners. ■

EXHIBIT 8
DATE 2-18-91
HB 778, 401

THE LAW FIRM
MOORE, O'CONNELL, REFLING & MANOS
A PROFESSIONAL CORPORATION
SUITE 10 LIFE OF MONTANA BUILDING
601 HAGGERTY LANE
REPLY TO
P. O. BOX 1288
BOZEMAN, MONTANA 59771-1288
TELEPHONE: (406) 587-5511
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PERRY J. MOORE
BARRY G. O'CONNELL
MARK D. REFLING
CHRISTOPHER L. MANOS
DOROTHY L. BROWNLOW
W. RUSSELL McELYEA
CINDY E. YOUNKIN

June 28, 1990

Marvin LeNoue
Bureau of Land Management
P.O. Box 36800
Billings, MT 59107

Re: Public Access Lawsuit
Our File No. 67018-005

Dear Mr. LeNoue:

The date of the trial of the State Lands Access Lawsuit has been continued from July 9, 1990, to April 22, 1991. The Order continuing the trial has just been received in our office.

More than a year ago, the Attorney General initiated an attempt to resolve the state lands access dispute through negotiation. The agricultural community, represented by the Montana Stockgrowers Association and the Montana Farm Bureau Federation, participated in the negotiation process in a positive way. Rather than simply stating that public access to accessible tracts of state land should not occur at all, they made known to the Department of State Lands and to the Attorney General those problems that would arise if unrestricted public access to the lands was granted. They made constructive suggestions for administrative regulations and legislative changes that would result in access that would preserve the trust lands, provide money from recreation for the educational trust fund and minimize the detrimental effects upon the agricultural lessees.

The agricultural community took the position that a lease that was impacted by public access would have less value than a lease that was not so impacted. A lessee would be impacted only if his leased land was accessible by a public road. They propose that there either be a differentiation in the lease fee between the impacted and the nonimpacted leases, or that there be an actual payment to the impacted lessee for his additional stewardship responsibilities. The Coalition that filed the lawsuit refused to accept this concept. It was at this point that the negotiations broke down.

At the direction of the Land Board, the Department then held a series of hearings throughout the state to gather public input with regard to the need and desirability of public access to state trust lands. It is our understanding that the Department will now make recommendations for future action that will be submitted to the Land Board for consideration.

Based upon the presentations at the public hearing, the agricultural community believes the system that has been in place during previous years has been working. Most agricultural lessees allow the public onto state school trust lands for recreational purposes. The lessees do exert management control for purposes of protecting the resource. As far as we know, the Coalition has not identified any significant instances where recreational access has been unfairly denied.

During the preliminary court proceedings, the attention of the Judge came to focus upon the trust obligation of the state to receive monetary compensation for any disposition of a trust interest. The Judge intimated that the obligation of the Land Board is to seek out those who would lease recreational interests and to derive the fair market value of those interests. With that focus upon monetary return, it may not be possible for the Land Board to continue with its present policy. The agricultural community recognizes that possibility and has submitted to the Land Department a proposal where the present system would remain in place for those tracts of state trust land that do not have significant recreational value, but would allow private persons or entities, including the Department of Fish, Wildlife and Parks, to negotiate leases for tracts of state school trust land that have significant recreational value. Such an arrangement would certainly not satisfy the objectives of the Coalition that brought the lawsuit. It does, however, seem to address the requirements of the trust.

Thank you for your interest in this issue. If you have any questions or concerns, please feel free to contact me.

With warmest regards,

Jim Moore

PJM/mh
67018-005.900619.L10

EXHIBIT 8
DATE 2-18-91
HB 401-778

STATE OF WYOMING
OFFICE OF THE GOVERNOR
CHEYENNE 82002

KE SULLIVAN
GOVERNOR

December 18, 1989

Thanks for your recent letter regarding the new rules for recreational use on State of Wyoming lands. You asked if problems have arisen as a result of these rules.

While the program is only a year old, I have heard it reported that the 1989 hunting season generated fewer access problems than any year in recent memory. Needless to say, I am pleased with this outcome and look forward to continued progress in the future.

With warm personal regards, I am

Very truly yours,

Mike Sullivan

MS/rmt

Public State land in North
kota, South Dakota, Washington, Idaho, Oregon, Utah,
vada, Arizona, New Mexico, California, and Wyoming are all
en to the public. The Governor of Wyoming claims there are
problems than ever before

why NOT MONTANA

OVER

Opinion, comment

EXHIBIT 8
DATE 2-18-91
HB 778, 401

Land access

State land board action means courts will decide

The State Lands Board voted two weeks ago to delay a decision on giving the public access to millions of acres of public lands in Montana. The Republican majority on the board voted Sept. 24 for a full environmental impact study into the question of letting the public use public school lands that are leased by farmers and ranchers.

Only a month earlier, the board had voted for a 30-day environmental assessment of the matter, which would have allowed the board to make recommendations to the 1991 Legislature. Now, by voting for the full impact study, the board probably has delayed action on the access question for almost three years. This is because the Legislature must appropriate $250,000 for the environmental impact study, and the money won't be available until July 1, after the Legislature adjourns. So, any legislative action regarding access to leased lands wouldn't come before the 1993 Legislature convened.

Also, it's possible that agricultural interests will try to block funding for the impact study in the 1991 Legislature, which would delay any resolution of the access issue indefinitely.

The board's latest vote seems to represent a flip-flop from its August position. There has been understandable speculation that agricultural interests successfully pressured the majority to have second thoughts.

What the land board may have done, in calling for a time-consuming study, is surrender any significant influence of its own in the matter. A sportsmen's coalition has filed suit to open these public lands, and the courts could make any future action by the land board or the Legislature moot.

If that happens, Montana agriculture may find itself desperately wishing the board had beaten the courts to the punch. The last major access case to go before Montana courts led to a revolutionary stream access right for the public. Some observers feel the courts will decide the school lands access question the same way.

Secretary of State Mike Cooney, a Democratic member of the land board, says the impact study should be carried out. However, Cooney also says it is ridiculous for the board to take the position that there can be no access until the study is finished and the Legislature gets the issue. The board could grant at least some public access now, Cooney says.

Cooney is right. The sportsmen and recreationists who want access the most have been reasonable about the issue. Lands Commissioner Dennis Casey wrote a reasonable report on the matter last summer. The board itself seemed reasonable, until two weeks ago.

Our feeling is that the board should start being reasonable again, while it still can. We don't think the courts will leave it any excuses for allowing the public to be locked out of these lands any longer.

2-18-91

778, 401

Sportsmen say state 'reneged'

latter is headed back to court

By Eric Williams
Standard Staff Writer

The state has reneged on an assurance that public access would be granted to state lands this fall or next, the leader of a sportsmen's coalition said Monday, and therefore the matter is headed back to court.

Jack Atcheson Sr. of Butte, who heads the Coalition for the Appropriate Management of State Lands, said he and attorney Jim Goetz of Bozeman have decided to go ahead toward an April 1991 court date.

The State Land Board voted 3-2 Monday to conduct a lengthy Environmental Impact Statement on the access issue and send the findings to the 1993 Legislature to iron out the matter.

Other side pleased

"We've told them it's totally unacceptable," said Tony Schoonen of Ramsay, also of the coalition. "It's a political stall."

Meanwhile, the leading group on the other side of the access issue is pleased with the Land Board's decision.

Kim Enkerud, natural resources coordinator for the Montana Stockgrowers' Association said "We're very favorable" to having the two-year impact study conducted.

Last month, board member and Secretary of State Mike Cooney suggested an impact statement be done, but the board opted for a less-extensive Environmental Assessment.

'Big disappointment'

But state lands officials, including Commissioner Dennis Casey, said Monday a full-blown Environmental Impact Statement is needed to assess all aspects of granting public access.

Cooney's proposal would take only several months, and the coalition supported that move because it believed the situation could be ironed out before the 1991 Legislature.

Schoonen said "this 360-degree turnaround" by the Republican majority of the Land Board was difficult to understand.

"The whole thing was just a real big disappointment," he said, but added he was pleased with efforts by Cooney and Superintendent of Public Instruction Nancy Keenan to resolve the matter more quickly.

The coalition filed suit in February 1988, and negotiations were off and on for more than a year. This summer, the Department of State Lands held several public hearings around the state to help determine what decisions should be made and how they should be implemented.

Atcheson said Monday the coalition had agreed to hold off on its lawsuit, for which a court date had been set for this past July. Atcheson said that decision was made with assurances that some sort of access arrangement to state-owned lease lands would be made by this fall or next. Now, the Land Board has pushed any administrative/legislative decision back to mid-1993.

'Breach of faith'

"We think they lied to us," Atcheson said of the state. "This is a breach of faith by the government."

And, Atcheson said, all previously negotiated terms are called off, as far as the coalition is concerned.

"We will proceed with all the rigors of the original suit," he said, including a requirement that "fair market value" be returned by the state school trust lands.

A Department of State Lands' fact sheet said the 4.1 million acres leased for grazing yield the state school foundation about $1 an acre, which the coalition contends is far from fair market value. There is another 1.1 million acres leased for other uses.

A district judge earlier said the state school trust fund is not getting fair market value out of the land. Schoonen said taxpayers and recreationists have to make that up, through higher mill levies and $1 million annually paid to operate the department.

Grazing impact

Ironically, the coalition also had agreed in negotiations to drop a request that an impact statement be done on the grazing of state lands.

Now, Atcheson said, the coalition will request that the impact st ment, aimed at assessing the pacts of allowing access on state-owned tracks, also evalu the effects the grazing on the l as well.

Enkerud said she has no qua about the impact statement inc ing how grazing effects the land.

"We expect it would take car all uses and concerns," she said, cluding additional weed con needed because of more traffic how to handle the firing of g near homes, as well as gen recreation.

Grazing "is just one of the use state lands," she said.

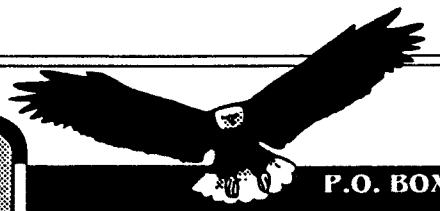
Until contacted by "The Sta ard," Enkerud said she was aware what approach the coali would take, and she said she disappointed to hear it would re rect the lawsuit.

"We're sorry to hear the going to take that route," she s "The (impact statement) would ter face the facts (and issues) t going to court."

She also said the impact st ment would be better than an sessment because it means pe "would be on the ground" gathe information. "You can't do it f a desk in Helena."

Atcheson said Montana is only state or federal holder of lic lands which does not require allowance of some sort of acces

EXHIBIT 7
DATE 2-18-91
HB 778



PUBLIC LAND ACCESS ASSOCIATION INC.

P.O. BOX 3902 • Bozeman, Montana • 59772-3902
(406) 587-2736 or 586-7810

18 February 1991

Representative Bob Raney, Chairman
House Natural Resource Committee

I am Ron Stevens, President of the Public Land Access Association, Inc. (PLAAI) representing approximately 835 individual and 6,000 affiliate members, all public land users.

Approximately 2½ years ago then Governor Schwinden said access was the most important issue facing the Montana recreationist. Shortly thereafter Jim Flynn, then Director of the Montana Dept of Fish, Wildlife and Parks, when asked to identify the most important problem facing his department stated, "In a word, access." On 5 December last year K. L. Cool, current Department Director announced, "The number one Sportsman issue in Montana is access. It overrides everything else."

On 10 December 1990 I accepted Governor Stephen's invitation to attend a three day conference in Billings. The governor's invitation read, "It is my pleasure to invite you to what I feel is one of the most important conferences of the year--the Governor's Conference on Rangelands." The conference theme was Building Partnerships for the 90s. Sixty one speakers emphasized the importance of working together to solve rangeland management problems. At an appropriate time during the last day of the conference I noted the attendees prevailing fear of the "Cattle Free By '93" and "No More Moo By '92" movement. I stated that we public land users also believe the animal rights and anti-hunting groups will soon introduce another catchy slogan like "No More Boomin in the Bloomin." I said then, and I repeat it now, if the Governor and the rangeland community are serious about building partnerships for the 90s, what better group to woo than the 53% of Montana's population which annually purchases conservation licenses and has a stake in the husbandry of rangelands?

HB 778 offers a marvelous opportunity to establish the first, and most important, partnership for the 90s, a partnership between landowners and sportsmen of this great state, a partnership Governor Stephens challenged Director Cool to make his number one priority upon his appointment. Conversely, HB 401 just prolongs the debate and inserts another wedge in the relationship. PLAAI opposes HB 401 and strongly supports HB 778.

Respectfully submitted.

Ronald B. Stevens
President

DATE 2-18-91
HB 401 & 778
YOU OR I

The record discloses numerous instances of denial of public recreational use of state public lands (see, e.g., Plaintiff's answer to DSL's Interrogatory No. 9). It is the position of Plaintiff that judicial action is necessary to compel the State Defendants to administer the public lands of the State of Montana according to the requirements of the Montana Constitution and of the Multiple Use Act, MCA § 77-1-203. As demonstrated below, the DSL and the Board have long stifled public efforts to get those departments to manage the state public lands on a multiple use basis and to allow public recreational use. For years, the agencies have promised one thing (that they were developing a meaningful recreational inventory and working on a program to accomplish public access) and done another. They have bureaucratically stifled any progress on public access.

More recently the DSL has attempted to excuse its failures to follow multiple use dictates on the theory that it has an obligation under the Enabling Act to optimize economic return to the trust. As demonstrated below, this is a political justification not supported by the evidence.

II. THERE IS A LONG HISTORY OF BROKEN PROMISES BY THE STATE OF MONTANA REGARDING MULTIPLE USE OF AND PUBLIC ACCESS ON STATE PUBLIC LANDS.

A. History, 1968-1972. Enactment of the Multiple-Use Statute and Revision of the Constitutional Provision Regarding Public Lands.

The issue of multiple use of and public access on state public lands for recreational purposes has been with us a long

time. In a speech delivered by then-Commissioner of State Lands Dennis Hemmer in the spring of 1986, he said: "While the issue of hunting and fishing access to school trust lands has become a very hot issue recently, it is not a new issue. The issue has been discussed and studied since the 1960's." Hemmer Depo. Exh. 31.

As early as 1967, the Fortieth Montana Legislature passed Senate Joint Resolution No. 19 which requested "that the Governor appoint a committee to study the diversified uses of state lands and to recommend such plans and programs as the committee deems necessary to provide for the overall use of state lands for both public recreation and agricultural pursuit to the greatest benefit for the public in general." See Senate Joint Resolution No. 19, Fortieth Legislature, attached to this brief as "Attachment A". Among other points stated in the Joint Resolution was the following:

> WHEREAS, the multiple use concept of management of state lands is generally accepted as a just method for obtaining maximum diversified use for the overall public benefit; and
> WHEREAS, recreational use of state lands is generally compatible and not necessarily restrictive, with other uses of state lands, including production of oil, gas and minerals, grazing of livestock, and other agricultural pursuits, logging operations, and others....

Pursuant to that Joint Resolution, a committee was appointed to study the issue and submit plans and programs with suitable recommendations and a draft of proposed legislation to carry out such objectives. The submission was to be to the Forty-First Montana Legislative Assembly. That resulted in 1968 in The

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Report of the Committee Established to Study the Diversified Uses of State Lands, Depo. Exh. 107.[3] The report stated:

> Senate Joint Resolution No. 19 appears to be heralding a new era. It recognizes that the Multiple-use concept of land management is generally accepted as a just method for obtaining maximum diversified use for the overall public benefit. The resolution notes that certain uses, such as recreation, are compatible and not unreasonably restrictive with other uses such as grazing of livestock, logging operators, and the production of gas, oil and minerals. The resolution calls for a study of the potential and diversified uses of state land to meet the future needs of the people of Montana not only for public recreation but to permit the expected and desired growth of the agricultural and livestock industry of the state.

Id. at 9-10.

The committee, including then-Commissioner of State Lands, Mons Tiegen, made an important endorsement for multiple use management of state public lands:

> The committee subscribes to the multiple use concept of management. It recognizes that a single use of certain tracts in relation to a larger land base and many diverse uses is reasonable and prudent. Grazing, agriculture or recreation may be the highest and most important use of a single parcel of land, yet it does not necessarily rule out other uses.

Id. at 12. The committee recognized that the approach of the 1889 Montana Constitution to the management of public lands (requiring a rigid classification of the lands into one of four categories--grazing, agriculture, timber and city lots) "reflect[s] an earlier, exploitive attitude toward land

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[3] The deposition exhibits are numbered separately. Accompanying this brief is a notebook with all deposition and trial exhibits referred to herein. Also, Plaintiff is lodging all depositions cited herein together with a motion for leave to file them.

management" and is "far too restrictive for modern scientific conservation management." Id. The consensus of the committee was that the Constitution should be amended to provide the Board of Land Commissioners the authority to classify lands in accord with sound land management principles.

Strikingly, the committee came up with a definition of the "multiple-use concept" which is identical to the definition subsequently adopted by the Montana Legislature in 1969 (Session Laws of the Forty-First Legislative Assembly, 1969, attached as "Attachment B"), now codified as M.C.A. § 77-1-203(1). That definition, found on p. 17 of the report, is as follows:

> The management of all the various resources of the State-owned lands so that they are utilized in that combination best meeting the needs of the people and the beneficiaries of the trust; making the most judicious use of the land for some or all of those resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources; and a harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources.

See Chapter 113, Session Laws Forty-First Legislative Assembly, amending Section 81-103 R.C.M. (1947), approved February 24, 1969.

Several years later the Montana Legislature followed up on the recommendation of the "diversified uses" committee regarding a constitutional amendment. The Forty-Second Legislative Assembly passed House Joint Resolution No. 32 on March 1, 1971, "urging the Constitutional Convention to amend Section 1 and

EXHIBIT 11
DATE 2-18-91
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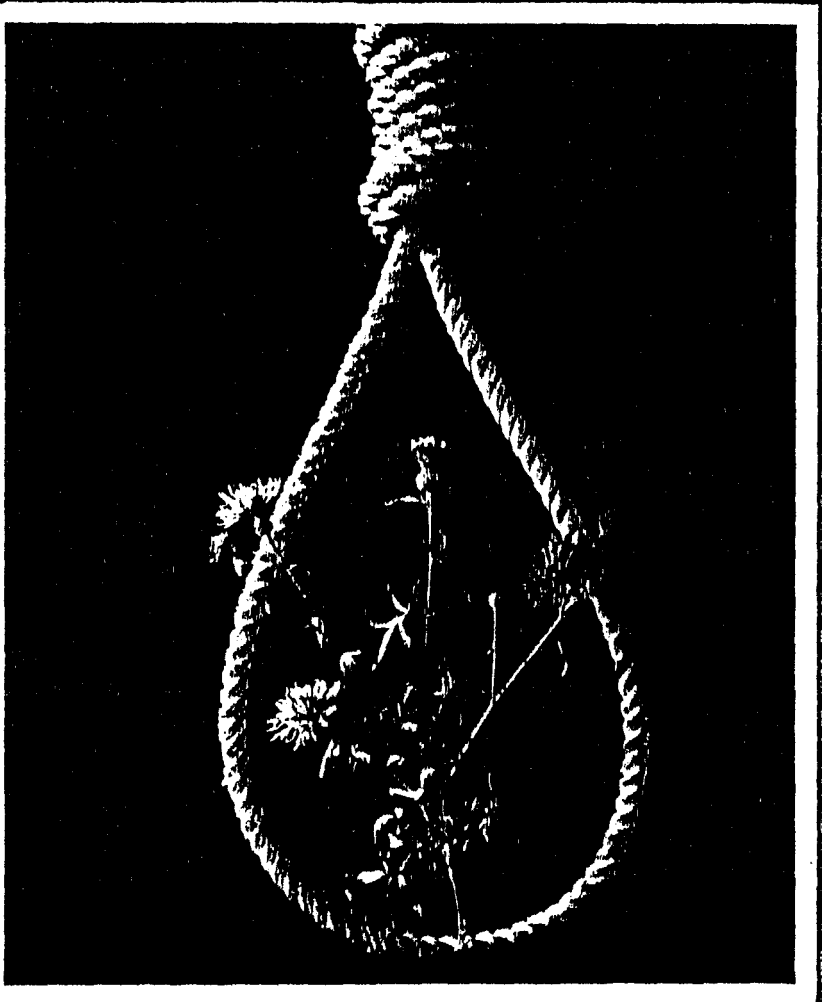
CONTROLLING KNAPWEED ON MONTANA RANGELAND



Cooperative Extension
Montana State University

If the rest period is followed with another period of grazing in the fall, livestock has an opportunity to utilize the basal leaves of rosettes at least twice during the year. This may reduce the competitive ability of the knapweed plants. While partial control may be possible in small, intensively managed pastures, there is no evidence that control of knapweed by sheep or any other livestock is feasible on extensively-managed rangelands.

Strategies to Slow Knapweed Spread

The spread of spotted knapweed by people must be addressed in any knapweed control project. Elimination of public access through infested areas would reduce the rate of spread.

Knapweed also has been introduced to new areas by the movement of contaminated grain seed and hay. These problems were magnified by the large shipment of hay from western to eastern Montana during the 1984 and 1985 drought. The subdivision of rural areas is another serious problem. Subdivision activity disturbs soil, creating an ideal seedbed conducive to weed invasion. The problem is compounded by owners of small tracts who do not recognize the need for weed control.

Good grazing management often is the first defense to the rapid spread of spotted knapweed on rangeland. While knapweed can invade excellent condition range, its rate of spread is slower than it appears to be on poor condition range. Although it is not known how much of the recent spread of knapweed can be attributed to poor condition range, the invasion is accelerated by any soil disturbance (Morris and Bedunah, 1984).

Grazing systems, or alternating periods of grazing use in a pasture with periods of rest to allow desirable plants to regain vigor, are an important tool for keeping rangeland in good and excellent condition. The rest rotation system, which allows one pasture to be rested from livestock use for a full year, has proved highly useful on Montana ranges. However, several Montana ranchers have observed that rest rotation is not effective on knapweed-infested range. They report that year-long rest allows knapweed seed production, and seed planting then is aided by hoof action the following year. This may indicate the need of a rotation system that allows repeated periods of grazing and non-grazing during each growing season on knapweed-infested range. A herbicide program should be implemented in conjunction with a grazing system, because competition by native forage species alone will not lower knapweed density.

Summary

Successful control of knapweed in Montana requires cooperation between private landowners, public land users and governmental agencies. To minimize the future spread of knapweed, each of us must do our part:

- Avoid driving motorized vehicles across knapweed infested areas.
- Do not purchase or transport hay or grain contaminated with knapweed.
- Minimize soil disturbance on range and other non-crop land.
- Use herbicides to eliminate small patches of knapweed.

EXHIBIT 12
DATE 2-18-91
HB 401-778

SKYLINE SPORTSMEN'S ASSOCIATION, INC.

P. O. BOX 173 BUTTE, MONTANA 59701

NO REPLY
1st Request
OR
2ND Request

January 18, 1991

Director, Montana Dept. of Agriculture
Agriculture/Livestock Building
Capitol Station
Helena, MT 59620

Dear Sir:

We are writing to obtain information on weeds in Montana; more specifically knapweed. Could you provide us with a map or maps that show the spread of knapweed throughout Montana for the past several years?

Specifically, could you provide us with a map and data on the knapweed situation State land (school trust)? As you know, recreational use of State lands has been limited. If knapweed is on the 5.2 million acres, where did it come from?

Also, we would like to know the following:

1. Date and location of winter feeding (hay) on State land. Is the hay certified as knapweed free? Do you require certification of hay fed on State land?

2. Who pays for knapweed control and how much and where? Is general fund dollars used for knapweed control on State land?

3. How is the knapweed problem addressed on new timber sales, road building, etc., on State land? Who pays for knapweed control on timber sales? Also mining activity.

4. How is the knapweed problem addressed on plowed State land? Plowed prairie has the potential to develop knapweed stands, due to excessive surface disturbance. How much knapweed resulted from the 'sodbusting' period on State land? Do you have a record of increases in knapweed on overgrazed school trust land?

Much is being said these days about the recreation sites spreading knapweed. Since recreational use of State land has been extremely limited, what is the source of knapweed on State land? Is State land free of knapweed then?

Thanks for your response.

Sincerely,

William Patrick
President,
Skyline Sportsmen's Assn.

EXHIBIT 13
DATE 2-18-91
HB 778

HOUSE OF REPRESENTATIVES

WITNESS STATEMENT

PLEASE PRINT

NAME BOB BUGNI **BUDGET** BILL # 778

ADDRESS 2545 BRIGHTY STAR AVE

WHOM DO YOU REPRESENT? BRIGHTY STAR SPORTSMAN ASS - HELENA

SUPPORT X 778 **OPPOSE** * 401 **AMEND** _____

COMMENTS: THE POINT WE WOULD LIKE TO MAKE TO THIS COMMITTEE NOT COVERED BY OTHER PROPONENTS COMMENTS AUDIT REPORT BY LEGISLATIVE AUDITOR

IT IS IMPORTANT THAT THE PUBLIC & MEMBERS OF THE LEGISLATURE RECOGNIZE THAT THE GENERAL FUND IS SUBSIDIZING BUDGET OF STATE LANDS DEPT TO THE TUNE OF $8 MILLION EACH YEAR WHICH IS ABOUT 50% OF DEPT'S BUDGET. 100% OF DEPTS BUDGET FOR LAND ADMINISTRATION IS PAID BY TAXPAYERS OF MONTANA THROUGH THE GENERAL FUND.

ISN'T IT IRONIC THAT RECREATIONAL ACCESS TO GENERAL PUBLIC HAS BEEN DELAYED SINCE THE 1960's BUT THE GENERAL PUBLIC HAS BEEN PAYING THE TAB ALL ALONG.

THE 1972 CONSTITUTION SET FORTH PROCESS TO ALLOW MORE RECREATIONAL USE OF STATE LANDS BUT DEPT HAS NOT COMPLIED WITH INTENT OF LAW.

HR:1991
CS16

OUR SUIT AGAINST DEQT + 1983 LEGISLATIVE PERFORMANCE AUDIT BOTH QUESTION WHETHER LESSEES ARE PAYING THEIR FAIR SHARE WITH LEASING TRUST LAND. SPORTSMEN HAVE BEEN WILLING TO COMPENSATE THE SCHOOL TRUST FOR RECREATION ACCESS EVEN THOUGH OTHER STATES THAT HAVE SCHOOL TRUST LANDS DON'T CHARGE FOR RECREATIONAL USE.

THE LAND BOARD HAS REJECTED SPORTSMEN OUR OFFER TO COMPENSATE THE TRUST WHILE IGNORING POTENTIAL INCOME TO THE TRUST. FACED INCREASING LEASE CHARGES TO OTHER USERS OF STATE LAND, THIS IS NOT FAIR.

WITH MORE & MORE LAND IN MONTANA BEING CLOSED TO THE PUBLIC AT SAME TIME INCOME DEMANDS ~~FOR RECREATION BASED OUT OF RESOURCES~~ FOR RECREATION OPPORTUNITIES BRING MORE, THE PUBLIC IS DEMANDING ACCESS TO STATE LAND.

COPY OF LEGISLATIVE AUDIT REPORT

EXHIBIT 14
DATE 2-18-91
HB 401-778

STATE OF MONTANA

Office of the Legislative Auditor

STATE CAPITOL
HELENA, MONTANA 59620
406/444-3122

LEGISLATIVE AUDITOR:
SCOTT A. SEACAT

LEGAL COUNSEL:
JOHN W. NORTHEY

DEPUTY LEGISLATIVE AUDITORS:
MARY BRYSON
Operations and EDP Audit
JAMES GILLETT
Financial-Compliance Audit
JIM PELLEGRINI
Performance Audit

January 16, 1991

Representative Robert Pavlovich
Capitol Station
Helena, MT 59620

Dear Representative Pavlovich:

Enclosed is a memorandum discussing the issues you raised related to the Department of State Lands. Also enclosed is a copy of our latest financial-compliance audit of the department and our 1983 performance audit of "State-Owned and Leased Land." Most of the issues in your request have been previously examined and debated.

We found the various trust funds are showing a stable gain in both income and fund balance. The combined trusts are currently earning over $50 million a year with the largest beneficiary being common schools.

The questions related to the potential of increasing trust income are hard to answer. Currently leases on trust lands are raising about 26 percent of trust income. By far, investment earning is the largest contributor to trust income.

Currently the General Fund supports about 50 percent of the Department of State Land's budget. We have made some recommendations in our reports that could reduce the use of the General Fund. The Governor has also proposed changing some of the department's funding source to reduce the use of the General Fund. The Legislative Fiscal Analyst questions whether the change will really reduce overall General Fund expenditures.

Recreation access may be the most controversial issue covered. It appears this issue is on hold, at least until the Environmental Impact Statement (EIS) requested by the Board of Land Commissioners is completed.

fund. Appendix A shows the various sources of income from each of the trusts for FY 1989-90.

Use of General Fund Moneys for DSL Operations

Questions were raised about the use of General Fund moneys to support the Department of State Lands. Currently the department funds its Land Administration program entirely from the General Fund. The General Fund is also used for significant parts of the Central Management and Forestry programs. The following chart shows the percent of General Fund used by each DSL program for FY 1987-88 and FY 1988-89.

Department of State Lands
Expenditures by Program and Fund
Fiscal Years 1987-88 and 1988-89

Fiscal Year 1987-88

Program	General Fund Expenditures	All Other Fund Expenditures	Total Expenditures	Percent General Fund
Central Management	$1,058,184	$ 413,266	$ 1,471,450	71.9%
Reclamation	82,797	6,018,566	6,101,363	1.4%
Land Administration	544,506	0	544,506	100.0%
Resource Development	0	234,594	234,594	0.0%
Forestry	6,470,984	2,836,274	9,307,258	69.5%
Total	$8,156,471	$9,502,700	$17,659,171	46.2%

Fiscal Year 1988-89

Central Management	$ 1,061,811	$ 346,677	$ 1,408,488	75.4%
Reclamation	83,975	6,958,828	7,042,803	1.2%
Land Administration	556,443	0	556,443	100.0%
Resource Development	0	263,319	263,319	0.0%
Forestry	16,132,137	2,760,696	18,892,833	85.4%
Total	$17,834,366	$10,329,520	$28,163,886	63.3%

Source: OLA F/C Audit of the Department of State Lands FYE June 30, 1989

Our F/C audit of DSL for fiscal years 1987-88 and 1988-89 noted the department could have reduced its General Fund expenditures and used funds available in the Special Revenue Fund for both the Central Management and Forestry programs. The law requires the department to apply expenditures against non-General Fund money wherever possible before using the General Fund Appropriation. The potential General Fund savings amounted to approximately $250,000.

The department's expenditures for the Forestry program were significantly higher in FY 1988-89 due to higher fire suppression costs. Because of the unpredictable nature of fires, it is difficult to budget fire suppression costs. Often the department must request approval for supplemental appropriations. During the 1989 session the department was granted a supplemental appropriation of approximately $12.6 million in General Fund money. The current executive budget requests a supplemental appropriation of approximately $2.5 million for the 1991 biennium for fire suppression costs. In our F/C audit we recommended the department work with the Office of Budget and Program Planning to find a funding source to build a reserve fund for payment of future fire suppression costs. Eventually the department could build a large enough reserve fund to replace the General Fund as the source of fire suppression funding.

Proposed Funding Changes

The executive budget for the 1993 biennium proposes replacing General Fund money with trust fund interest for department functions related to the management of trust lands ($3.39 million in each year of the biennium). The budget states it is customary for governmental and private trusts to finance management of these trusts with a portion of the earnings generated. Ten other western states use trust revenues to finance trust management activities. The money would be raised by diverting up to 10 percent of trust lands income that is not designated for placement in the permanent funds.

The 1993 biennium LFA budget analysis states the Governor's proposal raises constitutional issues since the full 95 percent of interest and income from the common school trust would not be deposited in the school equalization account (SEA). The LFA discusses how this will not really save General Fund moneys even though the department will not be spending the money because more General Fund will be needed to fund the SEA. This use of trust lands income will also affect the other agencies that receive trust income.

Are Lease Rates Too Low?

Questions were raised about whether farmers and ranchers are paying their fair share when leasing trust lands. Are trust lands to support public schools or to subsidize agriculture? The question of fair lease rates for trust lands has been debated for years. In our 1983 performance audit, we found grazing rates were not maximizing income to the trust fund because the department charges below fair market value for its leases. The Board of Land Commissioners is required to "administer this trust to secure the largest measure of legitimate and reasonable advantage to the state." The department sets a minimum lease rate based on a formula tied to the price of beef. The department only charges the minimum rate unless the lease has been let through competitive bid. We recommended the department raise the grazing rate to a level that provides the "largest ... reasonable advantage to the state."

Our report also noted one way to help maximize the trust fund would be to seek competitive bids on state leases. At the time of our audit the department did not seek competitive bids. We found only 5 percent of grazing leases and

2 percent of agricultural leases were competitively bid. Department officials stated the lack of competitive bidding is largely due to two factors: the statutory provision allowing the current lessee to meet the high bid, and people do not want to create problems with their neighbors by bidding on their lease. We recommended the department advertise the leases that are coming up for renewal each year to encourage competitive bidding.

Management of Trust Lands

The lease rate issue is only part of the larger issue of the department's overall management approach to trust lands. In our report we had several other recommendations related to increasing income from trust lands and improving management of the lands. For example, we found the department managed many parcels which were less than 40 acres each. Many of state's small isolated parcels were unproductive, yet the department had not specifically evaluated what to do with these lands. Statutes allow the Board of Land Commissioners to exchange land in order to consolidate state lands and to sell land when it is in the best interest of the state. We recommended the department establish a program to remove unproductive small parcels from the inventory and consolidate lands into more manageable tracts.

We also recommended the department develop a plan to provide for active management of the state's trust lands. Implementation of such a plan could require legislative direction and changes in funding and staffing patterns. The Governor's budget states that public demand for a multitude of uses and the proper management of trust lands has increased in recent years. Increased management can be expected to produce greater long-term revenues to the trusts. These new uses and management efforts have created needs for updating procedures, changing lease stipulations, and conducting field reviews and investigations. To address these trust management needs the Governor proposes to add 3 FTE land use specialists, 2 FTE land use technicians, and 1.75 FTE clerical positions

Leasing of Recreation Access

The request mentioned that one way to increase trust lands income would be to have leases for recreation access. Again this has been a controversial issue for many years. In August 1990 the Board of Land Commissioners considered a report prepared by the department on the issue. The report listed several options to handle recreation access including recreation leases. The Board determined that an Environmental Impact Statement would be necessary before decisions are made on public access to trust lands. The EIS will assess social, economic, and environmental impacts of providing the public with recreational access to trust lands. The Governor's budget includes $300,000 in General Fund biennial appropriation for the study.

The issue of recreation access is part of the larger issue of multiple-use management of trust lands. Section 77-1-203, MCA, requires the department to manage state lands under the multiple-use management concept. Multiple-use management of state land involves using all of the various resources of the lands in the combination that best meets the needs of the people and the beneficiaries

of the trust. If a parcel with one classification, for example grazing, has other multiple uses or resource values, then it should be managed to maintain or enhance these multiple-use values. Other multiple uses include recreation use, wildlife use, and public use.

At the time of our performance audit the department did not have a plan for the multiple use of state land. Individual parcels were generally not used for multiple purposes other than the leasing of surface and mineral rights. Partly in response to the enactment of the multiple-use statute, the department conducted an inventory of state trust land to determine the recreational potential of the land. From this study some fishing access sites were leased by the Department of Fish, Wildlife and Parks. We recommended the department develop plans and policies for the multiple-use of trust land.

Conclusion

The various trust funds are showing a stable gain in both income and fund balance. The combined trusts are currently raising over $50 million a year with the largest beneficiary being common schools. Should lease rates be increased to provide more money to the trusts? Would improved management practices increase trust income? These are hard questions to answer. Appendix A shows that for FY 1989-90 leases on trust lands raised about 26 percent of trust income. By far, investment earnings are the largest contributor to trust income. The Governor has proposed increasing staffing levels for land management efforts.

Currently the General Fund supports about 50 percent of the department's budget. This can vary considerably depending on the amount of money needed for fire suppression costs. OLA has made some recommendations that could reduce the use of the General Fund. The Governor has also proposed changing the department's funding source for land management functions.

Recreation access may be the most controversial issue covered. It appears this issue is on hold, at least until the EIS requested by the Board of Land Commissions is completed.

v/v9.mem

EXHIBIT 15
DATE 2-18-91
HB 778, 401

WITNESS STATEMENT

778

NAME Gary L. Sturm BILL NO. 401

ADDRESS 146 Briarwood DATE 2-18-91

WHOM DO YOU REPRESENT? Prickly Pear Sportsmen

SUPPORT HB 778 OPPOSE HB 401 AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: While I personally could support the existing State land access policy of either everybody gets access or nobody, including the leaseholder, gets access for recreational purposes, it is obvious that this policy is being blatently violated by many leaseholders. The fair, equitable solution is to open all State lands to recreational access. In reference to compensation for this access, I personally find it strange that a Department that realizes less than a 4% return on the value of the land they management, can make the argument that Montana citizens should pay to access <u>their</u> lands. State land is <u>our</u> land. Let us use it.

EXHIBIT 16
DATE 2-18-91
HB 401-778

Last August, representatives of hunting and fishing groups came before the Land Board to suggest a program in which people could pay

follow and disregard the requirements of the Montana Constitution and the Montana Environmental Policy Act," Goetz wrote.

Lulle Thursday 02-26-87

Analyst says low lease rates cost schools millions

By Dan Carter
Standard Staff Writer

Montana's public schools are being shorted between $3.5 million and $5.2 million because the Department of State Lands does not achieve fair market value on its grazing leases, according to a recent report from the Legislative Fiscal Analyst.

"The Board of Land Commissioners has not implemented a policy of assessing a fair market value from each parcel of grazing land as required by the (state) constitution," according to the report written by Senior Fiscal Analyst Carl Schweitzer. "The constitution requires the board to achieve a fair market value on each grazing lease it negotiates."

The report, released to the Legislative Finance Committee in mid-January, was done to determine the net income earned from state trust land and examine alternatives to increase it.

The department's policy on leasing state grazing land is also a main issue in a lawsuit filed Thursday against the Board of Land Commissioners and department by the Montana Coalition for Access on Public State Lands.

The report noted that the state could be charging twice what it is now for grazing leases and still be within the fair market rates determined for private and federal land.

Schweitzer wrote in his report that there are three indicators to suggest that.

First, he said, the Department of Agriculture said in 1987 that average rental rate for privately leased grazing land in Montana was $7.94 per animal-unit-month (AUM), which is the amount of natural feed available for one cow, horse or five sheep one month.

Secondly, he said, the Bureau of Indian Affairs has reported that the current fair market price for Indian land is between $6 and $7 per AUM.

And third, Schweitzer wrote, a 1984 appraisal of Forest Service and Bureau of Land Mangement Land indicated that the market value of federal grazing land in Montana to be $7.60 per AUM.

In fiscal 1988, the state's minimum rental rate was $3.27 per AUM. It is estimated that over 90 percent of the state's grazing land lessees pay no more than the minimum rate.

"If the fair market value of state grazing lands was raised to within the range of $6 to $7.60 per AUM, the income to trust recipients would be increased between $3.7 million and $5.6 million per year," the analyst's report said.

Because about 93.5 percent of grazing income funds the state equalization payment, he said, raising the rental rates would increase school funding between $3.5 million and $5.2 million a year.

Attorney General Mike Greely issued an opinion in 1983 that recommended raising rates to fair market value, Schweitzer said, but "the Board of Land Commissioners has not changed."

The report also notes that the state could earn up to $56 million more a year if it sold its 5.1 million acres of state-owned land and invested the proceeds.

That, however, would require amendments to state law, the report said, which prohibits the sale of timber lands, lands with oil, gas, coal or valuable minerals and land adjacent to lakes and navigable streams.

EXHIBIT 17
DATE 2-18-91
HB 778, 401

February 8, 1991

To: Nancy Keenan

From: Madalyn Quinlan

Subject: Land Board Giveaways

I have gone back through the agendas, minutes, notes, etc. for the State Land Board meetings since January 1989. Since the beginning of your term on the land board, there have been three significant "giveaways" to the mineral industry.

Westmoreland Coal Lease

The Land Board renewed Westmoreland Coal Company's coal lease for ten years at a rate lower than the federal royalty rate. The giveaway resulted in a $1 million revenue loss to the common school trust. Westmoreland is estimated to produce 4 million tons of coal from the renewed state lease.

Conoco Settlement with the State of Montana

The land board settled for a $20,000 payment from Conoco in a lawsuit where the state's geologist had estimated that the common school trust should receive $188,000 over ten years.

Bull Mountain Coal Exchange

The Land Board supported a proposal by the Meridian Minerals to exchange rather than lease federal land in the Bull Mountains for a coal mine. The revenue loss to the public schools of Montana under the land exchange is estimated to be as high as $780,000 annually over the 30 life of the mine. The state of Montana would need to receive $5.7 million today in order to make up for the royalty revenue that we will forego in the next 30 years.

and fitted for public vehicle travel that is commonly used by the public with the express or implied consent of the owner.

History: En. Sec. 1, Ch. 133, L. 1981; amd. Sec. 1, Ch. 621, L. 1983; (5)En. Sec. 2, Ch. 621, L. 1983.

Compiler's Comments

1983 Amendment: In (1), near beginning changed "highways of this state" to "ways of this state", and decreased number of trees that may be transported from 10 to 5; and inserted (3); (5) was enacted as a separate section but codified as part of this section.

Cross-References

Place of imprisonment when not specified by law, 46-18-211.

CHAPTER 14

RANGELAND RESOURCES

Part 1 — Rangeland Management

Section
76-14-101. Short title.
76-14-102. Purpose.
76-14-103. Definitions.
76-14-104. Types of land included as rangeland.
76-14-105. Role of state coordinator.
76-14-106. Duties of rangeland resources committee.
76-14-107 through 76-14-110 reserved.
76-14-111. Rangeland improvement loan program.
76-14-112. Rangeland improvement loan special revenue account.
76-14-113. Eligibility for loans.
76-14-114. Criteria for evaluation of loan applications.
76-14-115. Selection of loan recipients.
76-14-116. Rules.

Part 1
Rangeland Management

76-14-101. Short title. This part shall be known as the "Montana Rangeland Resources Act".

History: En. 76-301 by Sec. 1, Ch. 408, L. 1977; R.C.M. 1947, 76-301.

76-14-102. Purpose. The purpose of this part is to establish a program of rangeland management whereby:

(1) the importance of Montana's rangeland with respect to livestock, forage, wildlife habitat, high-quality water production, pollution control, erosion control, recreation, and the natural beauty of the state is recognized;

(2) cooperation and coordination of range management activities between persons and organizations charged with or having the management of rangeland, whether private or public, can be promoted and developed; and

(3) those who are doing exceptional work in range management can receive appropriate recognition.

History: En. 76-302 by Sec. 2, Ch. 408, L. 1977; R.C.M. 1947, 76-302.

76-14-103. Definitions. As used in this part, the following definitions apply:

EXHIBIT 18
DATE 2-18-91
HB 778, 401

(1) "Committee" means the Montana rangeland resources committee selected as provided in 2-15-3305(2).

(2) "Department" means the department of natural resources and conservation.

(3) "Grazeable woodlands" means forest land on which the understory includes, as an integral part of the forest plant community, plants that can be grazed without significantly impairing other forest values.

(4) "Montana rangeland resource program" means the rangeland resource program administered by the conservation districts division of the department of natural resources and conservation in concert with the Montana conservation districts law and the Grass Conservation Act to maintain and enhance the rangeland resources of the state.

(5) "Person" means any individual or association, partnership, corporation, or other business entity.

(6) "Range condition" means the current condition of the vegetation on a range site in relation to the natural potential plant community for that site.

(7) "Rangeland" means land on which the native vegetation (climax or natural potential) is predominantly grasses, grasslike plants, forbs, or shrubs suitable for grazing or browsing use.

(8) "Range management" means a distinct discipline founded on ecological principles and dealing with the husbandry of rangelands and range resources.

(9) "State coordinator" means the state coordinator for the Montana Rangeland Resources Act provided for in 2-15-3304.

(10) "Tame pasture" means land that has been modified by mechanical cultivation and whose current vegetation consists of native or introduced species, or both.

(11) "Users of rangeland" means all persons, including but not limited to ranchers, farmers, sportsmen, recreationists, and others appreciative of the functional, productive, aesthetic, and recreational uses of rangelands.

History: (1) thru (6), (8)En. 76-303 by Sec. 3, Ch. 408, L. 1977; Sec. 76-303, R.C.M. 1947; (7)En. by Code Commissioner, 1979; R.C.M. 1947, 76-303(part); amd. Sec. 1, Ch. 171, L. 1983.

Compiler's Comments

1983 Amendment: Inserted (5), (6), and (10).

76-14-104. Types of land included as rangeland. The term "rangeland" includes lands revegetated naturally or artificially to provide a forage cover that is managed like native vegetation. Rangelands include natural grasslands, savannahs, shrublands, most deserts, tundra, alpine communities, coastal marshes, and wet meadows.

History: En. 76-303 by Sec. 3, Ch. 408, L. 1977; R.C.M. 1947, 76-303(part).

76-14-105. Role of state coordinator. The state coordinator shall:

(1) serve as an advisor, counselor, and coordinator for and between persons and agencies involved in range management;

(2) strive to create understanding and compatibility between the many users of rangeland, including sportsmen, recreationists, ranchers, and others;

(3) promote and coordinate the adoption and implementation of sound range management plans to minimize conflicts between governmental agencies and private landowners;

(4) participate in zoning and planning studies to insure that native ranges are adequately represented at sessions for development of zoning and planning regulations;

(5) coordinate range management research to help prevent duplication and overlap of effort in this area.

History: En. 76-304 by Sec. 4, Ch. 408, L. 1977; R.C.M. 1947, 76-304(2).

76-14-106. Duties of rangeland resources committee. (1) The committee shall:

(a) review and recommend annual and long-range work programs;

(b) suggest priorities of work;

(c) provide advice and counsel to the coordinator for carrying out the rangeland resource program.

(2) The committee may consult with state and federal agencies and units of the university system as it considers appropriate in performing its duties.

History: En. 76-307 by Sec. 7, Ch. 408, L. 1977; R.C.M. 1947, 76-307; amd. Sec. 2, Ch. 44, L. 1985.

Compiler's Comments

1985 Amendment: Inserted (2).

76-14-107 through 76-14-110 reserved.

76-14-111. Rangeland improvement loan program. The department may make rangeland improvement loans for rangeland development and improvement, including but not limited to stockwater development, cross fencing, establishment of grazing systems, reseeding, mechanical renovation, sagebrush management, and weed control.

History: En. Sec. 2, Ch. 171, L. 1983.

76-14-112. Rangeland improvement loan special revenue account. (1) There is created a rangeland improvement loan special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be allocated to the rangeland improvement loan earmarked account 15% of the total amount of renewable resource development grants and loans as provided by 90-2-113, any principal and accrued interest received in repayment of a loan made under the rangeland improvement loan program, and any fees or charges collected by the department pursuant to 76-14-116 for the servicing of loans, including arrangements for obtaining security interests.

History: En. Sec. 3, Ch. 171, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

Compiler's Comments

1983 Amendment: In (1), substituted "special revenue account" for "earmarked account" and substituted "state special revenue fund" for "earmarked revenue fund".

76-14-113. Eligibility for loans. (1) Any person may apply for a loan to finance rangeland improvements to be constructed, developed, and operated in Montana who:

(a) is a resident of Montana;

(b) is engaged in farming or ranching; and

(c) possesses the necessary expertise to make a rangeland loan practical.

(2) All loans must be for rangeland improvement or development exclusively.

(3) An application for a loan must be in the form prescribed by the department and accompanied by a resource conservation plan, which may be prepared in consultation with the United States soil conservation service.

History: En. Sec. 4, Ch. 171, L. 1983.

76-14-114. Criteria for evaluation of loan applications. The following criteria must be considered in selecting loan recipients:

(1) Loan applications must be ranked according to the following priorities:

(a) Range improvement or development projects undertaken on native rangeland, resulting in the improvement of native range condition and of benefit to more than a single operator, have first priority.

(b) Range improvement or development projects undertaken on native rangeland, resulting in the improvement of native range condition but of benefit to only a single operator, have second priority.

(c) Range improvement or development projects undertaken on either native rangeland or tame pastureland used in conjunction with native rangeland, or both, resulting in the improvement of native range condition and the condition of the tame pastureland used in conjunction with native rangeland, have third priority.

(d) Range improvement or development projects undertaken on tame pastureland, resulting in the improvement of the tame pastureland exclusively, have fourth priority.

(e) Range improvement or development projects undertaken to return to rangeland status land that was once native rangeland and that has since been cultivated have fifth priority.

(2) Consideration must be given to the number of related resources that will benefit, including but not limited to water quality, wildlife habitat, and soil conservation.

(3) Consideration must be given to the amount of funding from other sources.

(4) Consideration must be given to the feasibility and practicality of the project.

History: En. Sec. 5, Ch. 171, L. 1983.

76-14-115. Selection of loan recipients. (1) Conservation district supervisors shall initially review loan applications for feasibility and prioritize applications for referral to the department.

(2) The department shall organize and review applications for clarity and completeness prior to committee review.

(3) The committee shall consider applications and make recommendations to the department.

(4) The department shall finally approve or disapprove applications recommended by the committee and shall select loan recipients.

History: En. Sec. 6, Ch. 171, L. 1983.

76-14-116. Rules. The department shall adopt rules:

(1) prescribing the form and content of applications for loans and the required conservation plan;

(2) governing the application of the criteria for awarding loans and the procedure for the review of applications by conservation district supervisors, the committee, and the department;

(3) providing for the servicing of loans, including arrangements for obtaining security interests and the establishment of reasonable fees or charges;

(4) providing for the confidentiality of financial statements submitted; and

(5) prescribing the conditions for making loans.

History: En. Sec. 7, Ch. 171, L. 1983.

CHAPTER 15

CONSERVATION DISTRICTS

Part 1 — General Provisions

Section

Part 2 — Creation of Conservation Districts

Part 3 — Administration of Conservation Districts

EXHIBIT 19
DATE 2-18-91
HB 401 - 778

SUMMARY - UPDATE
PUBLIC ACCESS ON STATE SCHOOL LANDS IN MONTANA

By: Paul F. Berg[1/]

Pursuant to the 1889 Enabling Act, the U. S. Congress granted 5.2 million acres of land to Montana. This land is called State School Land. The act classified it as public land.

The 1969 Montana Multiple-Use Act provided for the multiple-use management of these lands, and multiple-use is written into each grazing lease.

The 1972 Montana Constitution provides that all lands granted to the state by the U. S. Congress, and from other sources, shall be public lands.

The 1979 Handbook of the Board of Land Commissioners states that these lands are to be administered under the multiple-use concept.

State law directs the state to manage all wildlife within the state. It does not exclude wildlife on State School lands.

State Rule points out that the state should collect maximum revenues from grazing leases. Instead, it collected as low as $2.70/Animal Unit Month (AUM), and some leases went for as little as 27 cents/AUM in 1987.

The 1988 minimum grazing rate was $3.27/AUM on State lands. The average grazing rate was $7.94/AUM on private land.

According to a Feb. 27, 1988 Billings Gazette article, Carl Schweitzer, a Legislative Fiscal Analyst, submitted his report to the State Legislative Finance Committee. He said that school funding would increase by between $3.5 and $5.2 million a year if the state raised its lease rate on grazing lands to fair market value.

The Department of State Lands claims that our State School lands are Trust lands, not public lands, not for multiple-use, not to be managed for fish and wildlife, no public access -- many lessees consider these lands their private lands; 70% are nonresident landowners/lessees.

The Department of State lands is financed by about $2 million of our tax money each year!

Sportsmen are blamed for spreading noxious weeds. However, what about mailmen, UPS drivers, loggers, ranchers, overgrazing, erosion, inter and intra state hay shipments, cows, wildlife, wind, etc.?

Only about 12 percent, or 624,000, of the 5.2 million acres are in agricultural production, primarily in Daniels and Meagher Counties. The rest (4.6 million acres) is devoted mostly to grazing, forestry, oil and gas operations, etc.

About 70%, or 3.6 million acres of State School lands, is accessible through other public lands or by public roads or trails.

Many State School sections block public access to thousands of acres of Forest Service and BLM lands.

1/ Director, Montana Coalition for Appropriate Management of State Lands, Inc. Statement presented May 6, 1989 at the Montana Wildlife Federation annual meeting, Lewistown, MT, May 5, 6, 7, 1989.

We want public access on those 3.6 million acres. We are not asking for access on the 12% that is agricultural land, or on private land, or to cross private land to get to state land. However, after the crops are harvested, we hope to gain access on the agricultural lands that are State School lands.

Ten other states (Washington, Idaho, Utah, Nevada, Oregon, North Dakota, South Dakota, Arizona, Wyoming and New Mexico) allow public access on their State School lands at no cost to the public, and have not had any particular problems.

Based on 1982 MDFWP data, the average daily expenditures by hunters and fishermen statewide were $9.50 per acre. So, $9.50 x 3.64 million acres of State School land suitable for recreational use -- if access was allowed -- would bring in about $34.6 million to the economy of our state each year.

Sportsmen spend money all over the state for sporting equipment, gasoline, groceries, motels, restaurants, 4X4's, etc. Therefore, this money is hard to track and is not recognized as important, but many permanent and seasonal jobs are provided by these expenditures in Montana.

Even if we assume that recreational use already occurs on some State School lands now, -- because many sections are not identified -- and that only a quarter of the above estimated public use would increase with public access -- that would amount to about $8.6 million generated by sportsmen each year.

Over the past 15 years, Jack Atcheson, Tony Schoonen and others have been trying to convince the state administration that it should follow the mandates of our state constitution, laws, policies, and rules, and the leadership examples of the 10 other western states that provide public access on their State School lands.

The late State Representative Herb Huennekens submitted many bills to the legislature during his 10-year tenure to gain public access to State School lands.

Jack, Tony, and Jim Goetz, our lawyer, worked diligently with Ron Waterman, the stockgrowers' lawyer, and Mons Tigen and Jerry Jack, the stockgrowers' former and present leaders, for several years.

No deal!

Finally, in February 1988, after all negotiations failed, Jim Goetz, representing the Montana Coalition for Appropriate Management of State Lands, Inc., sued the Department of State Lands and the Board of Land Commissioners for failure to comply with the Enabling Act, the state constitution, and state laws, policies, and the rule mentioned above.

Litigation is still in the pre-trial discovery stage.

If any of you folks have been denied recreational access on State School land, or denied permission to cross private property to get to State School lands, I suggest that you write a letter, as I have done, to the Coalition following the examples contained in the handout (copy attached).

We conclude that the public is entitled to equal rights on our public State School lands for public recreational access use and enjoyment and that these lands should be managed following the multiple-use management concept including fish, wildlife and other recreational resources pursuant to our state constitution, laws, policies, rules -- and common sense.

Paul F. Berg

Paul F. Berg
3708 Harry Cooper Place
Billings, MT 59106

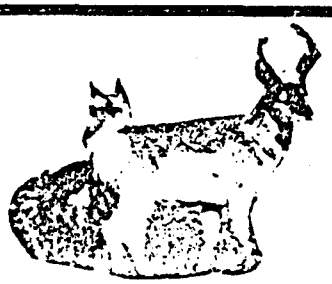
Phone: (406) 656-2015

SOUTHEASTERN MONTANA SPORTSMEN ASSOCIATION

EXHIBIT 20
DATE 2-18-91
HB 401-778

Billings, MT
April 11, 1990

Governor Stan Stephens
State of Montana
Office of the Governor
Helena, MT 59620



Dear Governor Stephens:

Your efforts concerning the acquisitions of the Brewer and Nelson Ranches, completion of the Memorandum of Understanding between your office, Bureau of Land Management, Forest Service, and Montana Association of Counties concerning access to public lands are excellent examples of your positive leadership. These accomplishments will benefit the people of Montana and our visitors for generations to come.

Public access to our public lands is the key to equal use and enjoyment of our public lands by all of our people who pay taxes that support the public agencies and management of our lands.

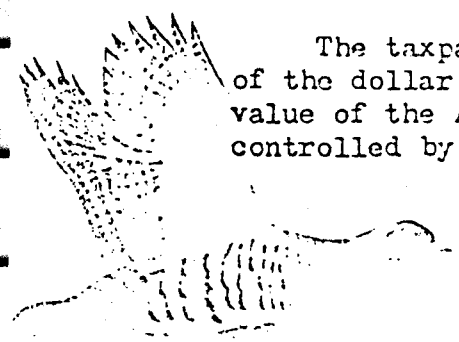
As you know, the negotiations for access on our State School lands have bogged down.

I attended the March 22, 1990 meeting of the State Land Board in Helena, along with other sportsmen representatives from Butte and Bozeman, hoping to have an opportunity to discuss this matter with you and the board members. However, the meeting was closed.

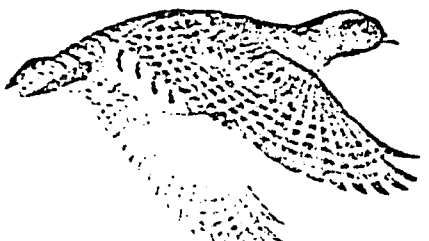
The information packet we sent to you and all State Land Board members last year pointed out that according to the 1972 Montana Constitution (Article X, Sec. 11-(1)) State School lands are public lands. The Multiple-Use Act, No. 72-1-203, Montana Codes, provides for multiple-use management of these lands. The Handbook of the Board of Land Commissioners (May 10, 1979, General Provision 26.3.102) provides for multiple-use administration of these lands. State Law No. 87-1-201 provides for management of wildlife in Montana and <u>does not</u> exclude State School lands. Rule No. 77-1601 indicates that the state should collect maximum revenue from grazing leases.

About 70% of the 5.2 million acres of State School lands that are devoted to grazing, forestry, and oil and gas activities are accessible via public roads and trails and other public lands, and are suitable for hunting, fishing, hiking, camping and other public recreational uses. Many State School sections block public access to large areas of Forest Service and BLM lands, thereby privatizing these public land areas.

The State Land Board is funded with about $2 million of our tax dollars annually, according to former Commissioner Dennis Hemmer.



The taxpayers of Montana subsidize the grazing leases by the amount of the dollar difference between what the lessees pay and the fair market value of the Animal Unit Months of grazing. About 70% of the leases are controlled by nonresidents.



Ten other states (Washington, Idaho, Utah, Nevada, Oregon, North Dakota, South Dakota, Arizona, Wyoming and New Mexico) allow public access on their State School lands with no cost to the public and have had no significant problems with access.

Why does the Department of State Lands and the State Land Board continue to operate in violation of our state constitution, state laws and policy?

We respectfully request an open meeting with the State Land Board as soon as possible to again attempt to resolve this matter in the public interest.

Sincerely yours,

Paul F. Berg

Paul F. Berg, Legislative Committee
Southeastern Montana Sportsmen Association *
3708 Harry Cooper Place
Billings, MT 59106

Phone: (406) 656-2015

* Representing 9 clubs and
5,000 Montana sportsmen

Copy to:

Attorney General, Helena
Supt. of Schools, Helena
Sec. of State, Helena
Dept. of State Lands, Helena
State Auditor, Helena
SMS Assoc. Member Clubs
The Billings Gazette

EXHIBIT 21
DATE 2-18-91
HB 401-778

PUBLIC ACCESS TO STATE SCHOOL LANDS IN MONTANA

STATEMENT BY PAUL F. BERG *

BEFORE THE STATE LAND BOARD, HELENA, MONTANA, AUGUST 19, 1987

Public access for fishing, hunting, and other recreational purposes is denied to r 5 million acres of State School lands in Montana.

We estimate that 70%, or 3.5 million acres of this land contains fish, wildlife, recreational resources and is suitable for public access, use, and enjoyment.

Public access to public lands is a critical problem that was highlighted by a ies of recent public events. For example, about 130 people attended a November 1986 eting of the International Right of Way Association in Helena. Speakers and attendees luded the Governor and several other state officials, the Regional Forester, the BLM te Director, numerous legal and university personnel, conservation groups, sportsmen's anizations, county officials, and the general public.

The President's Commission on America's Outdoors requested that each Governor provide nput. The Governor had a special task force conduct public meetings throughout Montana. dequate public access to public lands, including the State School lands, was the number ne public concern.

The public is tired of the bureaucratic stalling tactics that continue to deny public cess to the State School lands, and wants action now to correct this problem in the public erest.

Let's look at some economic reasons for providing access to State lands.

Over one million hunting and fishing licenses and special permits are purchased each ear. They bring in over $14.5 million to the Montana Department of Fish, Wildlife and ks.

Resident and nonresident hunters and fishermen devoted over 5 million days and spent ver $207 million in Montana in 1982.

According to the economists, each dollar spent turns over 3 to 4 times in our economy. herefore, the $207 million generated over $800 million to the economy of Montana in 1982.

We estimate that 90% of the 93 million acres of land and water in Montana support some rm of fishing, hunting, or other recreation. Therefore, about 84 million acres are ilable for the use and enjoyment of sportsmen, tourists and other recreationists.

The $800 million generated in 1982 in Montana by sportsmen's activities amounted to ut $9.50 per acre benefit to our economy.

If we apply this $9.50 to the 3.5 million acres of State School lands suitable for hing and hunting, we get an economic benefit of $33 million each year.

---

egislative Committees, Billings Rod and Gun Club and Southeastern Sportsman Assoc., epresenting 5,000 Montana Sportsmen. Address: 3708 Harry Cooper Place, Billings, T., 59106. Phone: (406)656-2015.

Table 1. HUNTER AND FISHERMAN EXPENDITURES IN MONTANA - 1982 [1]
(In thousands of days and thousands of dollars - rounded)

Species	RESIDENTS			NONRESIDENTS			TOTAL	
	Days Afield	$/Day [2]	Total $	Days Afield	$/Day [2]	Total $	Days	$
Elk	532.8	62	33,033.6	100.6	198	19,918.8	633.4	52,952.4
Deer	719.5	44	31,658.0	107.0	114	12,198.0	826.5	43,856.0
Antelope	20.8	82	1,705.6	20.8	176	3,660.8	41.6	5,366.4
Moose	3.3	80	264.0	.07	179	12.5	3.4	276.5
Sheep	3.1	92	285.2	.3	324	97.2	3.4	382.4
Goat	1.5	80	120.0	.06	180	10.8	1.6	130.8
Bear	43.5	5	217.5	18.6	20	370.0	62.1	587.5
Birds	245.1	27	6,617.7	11.7	37	432.9	256.8	7,050.6
Waterfowl [3]	300.0	27	8,100.0	-	37	-	300.0	8,100.0
Fishes	2,000.0	33	66,000.0	1,000.0	23	23,000.0	3,000.0	89,000.0
Totals	3,869.6	-	148,001.6	1,259.1	-	59,701.0	5,128.7	207,702.6

SUMMARY: Resident and nonresident hunters and fishermen devoted over 5 million days to their sport, and spent over $207 million in Montana in 1982.

[1] Basic data from Montana Department of Fish, Wildlife and Parks. Bowhunters, trappers, tourists, and other recreationists are not included.

[2] The average daily expenditure by the average hunter and fisherman.

[3] Includes resident and nonresident hunters.

EXHIBIT 21
DATE 2-18-91
HB 401, 778

EXHIBIT 22
DATE 2-18-91
HB 401, 778

HOUSE OF REPRESENTATIVES

WITNESS STATEMENT

PLEASE PRINT

NAME Paul F. Berg **BUDGET** _____

ADDRESS 3708 Harry Cooper Place Billings, MT. 59106

WHOM DO YOU REPRESENT? Southeastern Montana Sportsmen Association

SUPPORT HB. 778 **OPPOSE** H.B. 401 **AMEND** —

COMMENTS: Our 9 clubs and 5,000 Montana Sportsmen strongly support public recreational access to our public state school lands via H.B. 778

See my statements submitted for the record for details.

Ten other states allow public recreational access to their state school lands without cost to sportsmen and recreationalists and have had no significant problems with vandalism, trashing, etc. What is the matter with Montana? Where is our pioneer spirit.

Paul F. Berg
Feb 18, 1991

HR:1991
CS16

John Roylance

EXHIBIT 23
DATE 2-18-91
401 + 778

OPINION

State lands riddle

Fishing access site points out failure of school trust policy

Here's a real head-scratcher for you to ponder between holiday dinners:

The state of Montana recently paid the state of Montana $20,300 for 5.8 acres of land owned by, you guessed it, the state of Montana. The cost: $3,500 an acre.

The land in question, which lies along the Madison River, is part of a 540-acre tract of state land that the state leased last year to a Madison Valley rancher for $308. That's 57 cents an acre.

To further muddy the waters, the 5.8 acres was purchased, state officials say, to provide access to fisherman. Prior to the purchase, some of the land was already being used to provide, guess what, access for fishermen — for no charge.

If the ridiculous nature of the situation hasn't yet settled in, look at it this way — the state paid itself for land it already owned to serve people it was already serving.

If it still sounds confusing, welcome to the weird, wacky world of state lands policy, a sort of Twilight Zone where common sense often disappears in a haze of history, double standards and contradictory intent.

The Madison River access is a perfect example of how the policy doesn't always work toward the best interest of most Montanans.

The state land involved is state school trust land, land which is leased to private users — mostly farmers and ranchers. Money from the leases is put into a fund to help pay the state's share of educating Montana's children.

That's certainly a well-intentioned purpose, but somewhere along the way the purpose has been warped in the political process.

Why, for instance, does it make sense (or cents) for the state to lease the state school trust land to a rancher for 57 cents an acre and then turn around and sell the same land to other Montanans for $3,500 an acre?.

The money used in the purchase came out of the pockets of Montana sportsmen and taxpayers, who also pay a pretty tithe for schools. Why aren't they entitled to the same low prices the state was charging the rancher? Why the double standard?

For $20,800, our Madison Valley rancher could have leased the entire 540-acre parcel, at present rates, for the next 67 years.

That only begs another question: If the idea behind state lands is to make money for schools, then why does the state offer the land at such bargain-basement prices to ranchers and farmers?

It seems the state needs to rethink its policy about state school trust lands. Is it really to be a money maker for state schools or is it merely a subsidy for agriculture?

Clearly, the state is bound and determined to manage state school trust land as private property. Lessees presently have every right to keep the public off the property.

For sportsmen concerned about access to public lands, that concept would be easier to swallow if the state were truly managing the land to make the most money possible for schools, and thereby lowering taxes.

To truly maximize that revenue, the state should allow sportsmen access to more state land — and charge them for the use — rather than let lessees put up "no — trespassing" signs.

But if the state wishes to continue its practice of giving agriculture a break, it should give sportsmen a break as well in terms of access and the cost of purchasing it.

Submitted by Skyline Assoc Fisher Butte

EXHIBIT 24
DATE 2-18-91
HB 401 & 778

STATE LAND

--MULTIPLE USE AND ACCESS ON--

1. Multiple Use 77-1-203 is law but the law is not being implemented. This has been highlighted by Judge Sherlock's opinion and order, ADV 88-114, June 1990, and Legislative Performance Auditor Jim Pellegrini, June, 1983 - March, 1990.

2. Access on State land is open to the public in Wyoming, Idaho, North Dakota, South Dakota, Utah, Washington, Oregon, California, Nevada, Arizona, New Mexico, BUT NOT MONTANA. Governor Mike Sullivan of Wyoming says since opening State land "there are fewer access problems in recent memory". They pay no access fee either!

3. Are the people of Montana less worthy? If we were not meant to have multiple use, why did we enact the multiple use law in 1969? The Montana Rangeland Resource Act also addresses recreation, date 1947.

4. The people of Montana do not noticably damage the BLM and USFS public land. They will not destroy their public State land. The public can be trusted, don't you think?

5. The goal of the trust IS to raise money for public schools. But Legislative Performance Auditor Jim Pellegrini says the State is not collecting full market value on grazing and agriculture? Shouldn't something be done to correct this?

6. At this time 50% of the State land budget is paid for out of the General Fund! 100% for land administration is paid out of the General Fund. Yet the public does not have equality, despite our multiple use law. The hunters and fishermen who pay the bills, with tax money, are deprived of multiple use!

7. Only 12% of <u>all</u> State land is used for growing crops.

8. Maps showing State land are available from any BLM or USFS office.

9. Crossing private land is not an issue. In fact, 80% of all State land is touched by roads, trails, and waterways and is connected to USFS and BLM public land. Very little is truly isolated amid private land!

10. Fire control on State land is already funded by the Federal Clark-McNary Act of 1924 and with reciprocal agreements between DSL, BLM, USFS, and county fire departments. In 1990, $770,000 in Federal funds were deposited in budget for fire control.

11. Weed control--according to Cooperative Extension Service, Montana State University Circular 311, knapweed was magnified by large shipments of weed-contaminated hay from western to eastern Montana because of drought in 1984-85. Hay trucks still travel on back roads and highways without being covered. Logging trucks go unchecked into undeveloped areas daily.

12. Private land must be respected but State land <u>is</u> public land according to Montana's 1972 Constitution and the Enabling Act.

13. Vehicle use on State land must be limited to existing roads and trails with no unauthorized expansion of off-road vehicle use.

14. Lessees are protected from liability claims through existing laws.

15. Governor Stephens, Attorney General Racicot, Mike Cooney, and other Land Board members agree something must be done to permit public access on State land.

Surveys done by the Department of State Lands show 86% of Montanans want to open access. That is a lot of interest.

EXHIBIT 12
DATE 2-18-91
HB 778

Mr. Chairman and Members of the Committee February 18, 1991

My name is Noel Rosetta. I am a hunter and fisherman. I believe the public has a right to use our state land under applicable laws. I support House Bill 778 for the following main reasons:

1. Multiple-use is guaranteed under the Act of 1969 and has been reinforced by recent opinions of the court and a legislative auditor's report.

2. All other western states have opened state lands to public use and thereby have expressed their opinion that the public use is right and legal.

3. Although the public is taxed to pay costs of state land administration they are presently denied use of these lands. It is only fair to correct this by opening this land to multiple-use.

4. About 80% of all state land can be reached by roads, trails, or by land bridges of other public land (National Forest or BLM land--so trespass is not a major concern).

5. Many other questions on fire, weeds, location, et cetera, have already been taken care of by applicable laws and actions.

6. HB778 does not require an Environmental Impact Statement (EIS).

On the other hand, the Governor's bill, HB401, does require an EIS: that may delay opening these lands for up to 3 years. This will cost the state about $690,000 to accomplish what appears to be already a fact.

This issue has been stalled for the last 25 years or more. This situation can be effectively redressed by passing HB778.

Noel Rosetta

Noel Rosetta
1100 Missoula Avenue
Helena, MT 59601

EXHIBIT 26
DATE 2-18-91
HB 401 & 778

EDUCATION - CONSERVATION

Montana Wildlife Federation

AFFILIATE OF NATIONAL WILDLIFE FEDERATION

Larry Thomas
Tony Schoonen
Ramsay, Montana 59748
406-782-1560

INTERRELATIONSHIP OF PUBLIC LAND IN MONTANA

Before Senator Max Baucus and Senator Conrad Burns
Lewistown, Montana
August 5, 1989

The main thrust of my talk is to impress on you the importance of access on all public lands and the interrelationship and volume of these public lands, including State school lands and federal lands.

First, I would like to give you a couple of examples to strengthen my point and show you the frustration residents and non-residents face when they look for places for recreation.

In the Tom Miner Basin, **Bruce Malcolm** of Dunavant Enterprises, Inc. leases one section of State school land, which is blocked to the public. By blocking this one section of public land, thousands of acres of Forest Service land are blocked also. Only his wealthy clients have use of these lands.

Mr. **Gene Ayres**, formerly of California, leases nine square miles of public State land near Bozeman in the Bear Canyon Management Area, which is padlocked and painted orange. Although Mr. Ayres holds the grazing leases on this highly valued recreational land, which at one time included the Bear Canyon Ski Lodge, he controls the ten sections of Forest Service land adjoining it.

I would like to read you part of a letter from **Don Schauffler** from Ennis. This letter emphasizes that he crossed from Forest Service land to State school lands.

Bill Meyers in the Gallatin Canyon leases 1-1/2 sections of State school land, thus blocking over ten sections of prime wildlife habitat on Forest Service lands.

South of Butte, along Interstate 90 near the Divide exit, **Matt Urick** leases three sections of State school land which are posted and blocked. Again, closing off thousands of acres of BLM land including the Humbug Spires Wilderness Study Area.

This has been going on all over Montana and is rapidly accelerating. It must be stopped. It would probably be easier to ask where in Montana isn't this happening to our public lands - we have all kinds of examples where it is happening.

Access was the key issue brought out in Ted Schwinden's Recreational Forum by citizens from all across Montana. The problem is compounded even more by the rapid rise in the value of recreation and wildlife. Montana has the best of everything, yet a large majority of Montanans complain that it is harder and harder to find places for recreation.

Leaseholders are violating their lease agreements by either sub-leasing to special interest groups or charging fees for hunting on public lands where they only hold a grazing lease. Public agencies are also violating the multiple use act by allowing these single uses to dominate our public lands.

This was brought out by a recent sting operation in the eastern part of the state. The Fish and Wildlife Service found numerous infractions of illegal guiding on public lands. If the BLM and Forest Service could do more monitoring, they would detour much of the illegal guiding on our public lands.

EXHIBIT 27
DATE 2-18-91
HB 401 & 778

held under contract of sale or lease with option to purchase with lease moneys applicable to purchase price by any person for his exclusive use, shall be subject to assessment to purchaser or lessee for ad valorem property taxation.

History: En. Sec. 1, Ch. 39, L. 1965; R.C.M. 1947, 84-204.

15-24-1202. Taxable interests in state and other exempt property — assessment. When such property is held under a contract of sale or other agreement whereby on certain payment or payments the legal title is or may be acquired by such person, such property shall be assessed to such person and taxed without deduction on account of the whole or any part of the purchase price or other sum due on such property remaining unpaid, provided that the lien for such tax neither attach to, impair, nor be enforced against any interest of the state of Montana or any department, agency, or subdivision thereof.

History: En. Sec. 2, Ch. 39, L. 1965; R.C.M. 1947, 84-205.

15-24-1203. Privilege tax on gainful use of tax-exempt property — exceptions. After March 17, 1969, there is imposed and shall be collected a tax upon the possession or other beneficial use enjoyed by any private individual, association, or corporation of any property, real or personal, which for any reason is exempt from taxation. No tax may be imposed upon the possession or other beneficial use of buildings owned by public entities and located upon public airports. However, privately owned buildings located on such airport property are subject to tax. No tax shall be imposed upon the possession or other beneficial use of public lands occupied under the terms of mineral, timber, or grazing leases or permits issued by the United States or the state of Montana or upon any easement unless the lease, permit, or easement entitles the lessee or permittee to exclusive possession of the premises to which the lease, permit, or easement relates. The tax shall be imposed upon the possession or other beneficial use of an electric transmission line and associated facilities, except that lines and facilities of a design capacity of less than 500 kilovolts shall not be subject to the tax. **(Last sentence applicable to taxable periods beginning after December 31, 1983.)**

History: En. Sec. 1, Ch. 370, L. 1969; amd. Sec. 1, Ch. 387, L. 1977; R.C.M. 1947, 84-207; amd. Sec. 3, Ch. 683, L. 1983.

Compiler's Comments

1983 Amendment: Inserted last sentence.

Applicability of 1983 Act: Section 7, Ch. 683, L. 1983, provided: "This act is applicable to taxable periods beginning after December 31, 1983."

15-24-1204. Rate of privilege — tax credit for federal payments in lieu of taxes. The tax imposed upon such possession or other beneficial use of tax-exempt property shall be in the same amount and to the same extent as the ad valorem property tax would be if the possessor or user were the owner thereof, provided that there shall be credited against the tax so imposed upon the beneficial use of property owned by the federal government the amount of payments which are made in lieu of taxes.

History: En. Sec. 2, Ch. 370, L. 1969; R.C.M. 1947, 84-208.

Cross-References

Federal sums in lieu of taxes, Title 17, ch. 3, part 3.

If you use for exclusive use you owe TAX

Ex. 27
2/18/91
HB 401 & 778

DEPARTMENT OF REVENUE

TED SCHWINDEN, GOVERNOR

MITCHELL BUILDING

STATE OF MONTANA

HELENA, MONTANA 59620

November 25, 1987

In your recent correspondence you inquired if leased land which was posted should be subject to taxation under 15-24-1203, MCA. More specifically, you inquired if leased land which was posted against trespassing or other private use would be subject to privilege use taxation.

The application of this statute in Montana to public land generally centers around an "exclusive use" test. If an individual enjoys the exclusive use of public land which is otherwise tax exempt, then our responsibility is to assess privilege use tax under 15-24-1203, MCA. As you can see from reading the statute, however, there are specific prohibitions against the application of beneficial use tax to grazing leases or easement of state lands unless the lease provides for exclusive use of the land.

In the example you raise, I presume the lease provides for the lessee to post the property against trespass during the period of the lease. If that is the case, it would be my judgment that land should be subject to privilege use tax.

Before we would make a final determination in this matter, it would be helpful to be able to review sample copies of leases which have been issued to individuals who are posting the leased lands.

If we were to levy privilege use tax assessments, we are required by law to classify the lands according to their use. From your example it would appear the land would be classified as grazing land. The assessed value of average grazing land in Montana is $3.72 per acre. It is classified in class 3 at a 30% tax rate. If you assume the average mill levy to be about 220 mills for rural land that would calculate to a tax bill of $.245 per acre, or less than a quarter.

Sincerely,

Gregg Groepper, Administrator
Property Assessment Division

GG:kc
gg58k
cc: Dan Bucks
John LaFaver

EXHIBIT 27A
DATE 2-18-91
HB 778

February 19, 1991

House Natural Resources Committee
State Capitol
Helena, Montana

Chairman Raney and Members of the Committee:

My name is Alan W. Rollo and I am reading testimony presented by our members in Great Falls who are unable to attend today.

We support HB778 for many reasons, but allowing recreational use of state lands under the multi-use concept as prescribed by law is the most important consideration.

Most of our surrounding states have their state lands open to all citizens for recreational use under the multi-use concept. While we have this same mandated multi-use concept in Montana, it has only been in theory and not in fact; based, we have been told, on economic factors. HB778 addresses this economic issue by having the sportsmen pay for this right of multi-use. Sportsmen have and are still willing to pay for what they use.

While sportsmen in surrounding states have enjoyed the benefits of free multi-use with no financial re-imbursement, the sportsmen of Montana have addressed this financial quantum by assessing a fee for recreational use of state lands. Half of the money goes to the Department of State Lands for management and the other half goes to the state school trust, who should be the ultimate beneficiary.

The intent of this bill is not to interfere with the rights of the lessee, but to comply with the multi-use concept. We acknowledge that there may be a compelling need to restrict or close public access for a specific classification of land, ie. the 12% of state lands utilized for crops should be denied access during the growing period. This bill addresses this issue, enabling the board to close any section when convincing evidence dictates.

There is also a concern of potential property damage and liability. There are existing laws to protect the lessee, which should keep this problem to a minimum through proper enforcement of these appropriate regulations. This bill even goes a step farther by allowing access to only those sections that can be reached by a public right of way, not through private property. It also states that vehicle use would be limited to existing roads and trails, with no expansion of off-road vehicle use allowed.

Ex 27A
2-18-91
HB 778

For more than a decade we have attempted to resolve this matter through the State Lands Board to no avail. This bill, as you can see, has been thoroughly researched to eliminate those potential problems that the State Lands Board and others are concerned about. Let us all put this issue behind us by passing HB778.

Sincerely,

Alan W. Rollo

Alan W. Rollo
Great Falls Spokesman
The Montana Coalition for
Appropriate Management of
State Land

EXHIBIT 27B
DATE 2-18-91
HB 401-778

STATE LAND

February 18, 1991

According to Montana's Multiple Use Law and its Constitution, State land is public land. In order to better administer State land, as early as 1967, the 40th Montana Legislature passed Senate Joint Resolution 19, which requested the Governor to appoint a committee to study the diversified uses of State land and to recommend such plans and programs as the Committee deemed necessary to provide for the better overall use of State land for both recreation and agricultural pursuits to the fullest benefit of the public in general.

The Committee, including then Commissioner of State Lands Mons Teigen, made an important endorsement for multiple use management of State public land. Among other things, the Committee recognized grazing, agriculture, or recreation may be the highest and most important of a single parcel of land. At another meeting, Mons Teigen stated the Committee envisioned even berry-picking as being included in multiple uses.

The Committee came up with a definition of the multiple use concept which is identical to the definition **adopted** by the Montana Legislature in 1969.

Multiple Use Management. 77-1-203.

(1) The board shall manage state lands under the multiple use management concept defined as the management of all the various resources of the state lands so that:

(a) they are utilized in that combination best meeting the needs of the people and the beneficiaries of the trust, making the most judicious use of the land for some or all of those resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions and realizing that some land may be used for less than all of the resources; and

(b) harmonious and coordinated management of the various resources, each with the other, will result without impairment of the productivity of the land, with consideration being given to the relative values of the various resources.

(2) If a parcel of state land in one class has other multiple uses or resource values which are of such significance that they do not warrant classification for the value, the land shall, nevertheless, be managed insofar as is possible to maintain or enhance these multiple use values.

A **third statue 36**, provides that the department inventory such items as wildlife use, public use, aesthetic values, and cultural values prior to the classification of state trust land.

Although, recreation is not specifically mentioned in the multiple use management plan, neither is grazing or agricultural.

On the back of each grazing lease, **multiple use** is clearly written.

Despite the direction provided by the Legislature, the Department of State Land has failed miserably to live up to their commitment to the people of Montana. This was pointed out by the general public for many years and by Legislative Performance Auditor, Jim Pellegrini, in June 1983 and again in March 1990.

In depositions taken from Dennis Hemmer, past State Land Commissioner, Hemmer acknowledges that although many things were promised to the public concerning multiple use and a recreational inventory, nothing was done (Deposition Exchange 56, pages 54, 48, 49). Hemmer further testified that there were gross screens used to exclude land as recreational.

Clearly, the Department of State Lands has done everything possible to fool the public. This is pointed out again in the State's motion to dismiss a lawsuit and **Judge Sherlock's response, pages 36, 37, and 38, "The Constitution gives the Legislature the discretion to pass a multiple use statue and the Legislature did so. Failure to follow this statue would seem to conflict with Legislature's Constitutional grant of authority to enact such a law which was somewhat foreshadowed by the delegates."**

If we were not supposed to have a multiple use law, why was it enacted?

The Montana Rangeland Resource Act 76-14-102, clearly points out that wildlife habitat, recreation, and ranching are part of the act. Obviously, state land is part of Montana.

John Gaffee

EXHIBIT 38
DATE 2-18-91
HB 399

Representative Thomas N. Lee
Capitol Station
Helena, Montana 59620

Re: House Bill #399 - introduced by Mary Ellen Connelly
Committee Hearing - Natural Resources Committee
3:00 P.M. Monday - February 18, 1991

Dear Tom;

I would appreciate it very much if you would see that my opinions on the above H.B. 399 are made known to the committee, and also that you would urge the committee members to vote in favor of it.

It is my understanding that H.B. 399 reiterates and confirms the present State (of Montana) Subdivision and Platting Act, as regards the Occasional Sale Provision and the Direct Family Transfer Provision, among other items.

It (H.B. 399) also overrides or negates local policy such as the infamous Flathead County Resolution 509, now in it's third revised form. In my opinion and experience Flathead County Resolution 509 takes away basic landowner-ship rights, and 509 is in direct conflict with the State Subdivision and Platting Act, in many areas. 509 virtually eliminates the Occasional Sale Provision as a subdivision vehicle, or possibility, in direct conflict with the State Act, in that 509 requires the landowner to prove that he has the right and the need to divide off a parcel of land AND that he has never used the Occasional Sale Provision on the particular parcel of land at an earlier time. Flathead County Resolution 509 also says that a Direct Family Transfer provision can not be used to transfer a parcel of land to one's Mom or Dad; if a person's Mom or Dad are not eligible for the Direct Family Transfer exemption Provision how would you define Direct Family?
Flathead County Resolution 509 assumes that the landowner/taxpayer is evading (EVADING) the Subdivision and Platting Act and 509 places a heavy burden on the landowner/taxpayer to prove a basic right.

The State Subdivision and Platting Act has been a fairly good vehicle, and it should not be derailed by local rules such as Flathead County Resolution 509.

EXHIBIT 28
DATE 2-18-91
HB 401 - 778

TESTIMONY ON H.B. 401 & H.B. 778

HOUSE NATURAL RESOURCES COMMITTEE
February 18, 1991

Mr. Chairman and members of the committee. My name is Jim Peterson. I am a farmer and rancher from Central Montana and my family operation includes state land. I also am representing the Montana Stockgrowers Association, which represents more than 3,000 livestock producers in Montana, the Montana Cattle Feeders Association, the Montana Wool Growers Association, many of whom have state leases within their operations.

Montana Stockgrowers Association rises in support of H.B. 401 and in adamant opposition to H.B. 778. While both bills address the question of recreational access to state lands, H.B. 401 authorizes the Board of Land Commissioners to implement a program allowing recreational access to state land. On the other hand, H.B. 778 requires the Board of Land Board Commissioners to open up existing state land leases to the public for recreation use. And only if certain clear and convincing conditions are met will any public access to state land be restricted.

In making any decision with regard to recreational access to state school trust lands, the Department of State Lands and other agencies of government must be governed by the trust responsibility imposed upon the Board of Land Commissioners and by the provisions of the Montana Environmental Policy Act.

It is the obligation of the trustees of the educational trust fund to protect the trust assets and to secure optimum value for the sale or lease of those assets. The Montana Environmental Policy Act requires that any agency of state government which undertakes an action covered by the Act must secure accurate and adequate information so as to document with certainty the effect the action will have upon the social and economic structure of the State of Montana.

The Board of Land commissioners, in fulfilling its trust responsibility, must get optimum value for the recreational attributes of the tracts of land which will be impacted by any policy implemented. A responsible decision cannot be made with regard to the value of the recreational attributes on such lands until the land itself has been identified. The Department of State Lands must determine which tracts of land are accessible without trespass across private property. An assessment cannot be made by simple reference to a map. For example, maps prepared by the U.S. Forest Service and the United States

Bureau of Land Management do not always differentiate between public and private roads.

Once the tracts are identified, it will then be necessary to determine in some systematic way to the value of the recreational attributes on the accessible tracts. Some analysis of this must be conducted before the value of the recreational attributes can be established to the degree that is required to satisfy both the Environmental Policy Act and the trust obligation of the Board of Land Commissioners.

When land location and recreational value is determined, then it becomes the responsibility of the State to perform the tasks (that protect the land) which historically have been performed by the agricultural lessee. Some of the tasks include:

1. Properly managment and maintenance the game resource itself through control of hunter or recreation density.

2. Vehicular traffic control. Even if off-road travel is prohibited, someone has to make sure it does not happen.

3. Fire protection and suppression. And even more important, fire prevention. If the rancher-lessee cannot control access on the property, with the State assume liability?

4. Control of noxious weeds. This cost is now the responsibility of the lessee and if unrestricted public access is granted, there must be some control and cost reimbursement associated with weed control.

5. Protection of the livestock grazing on state land. Will the rancher be able to direct hunters to an area where no cattle are located or prohibit hunting where there are cattle? If not who assumes that liability?

6. Protection of personal property and improvements --water tanks, windmills, irrigation systems and buildings.

All of these issues must be addressed, along with damage reimbursement when damage occurs. Each of the above costs must be correctly determined. If the Department, or this legislature, does not assume the responsibility contemplated by any new arrangement, and the the new program is not fully funded, the result will be deterioration of the state school trust lands. And this would be an abrogation of the Land Boards trust responsibility.

EXHIBIT 28
DATE 2-18-91
HB 401, 778

The agricultural community believes that a decision with regard to recreational access to state school trust lands may not properly be made until all of the information affecting that decision is available to the Board of Land Commissioners. And that information must be all incompassing and accurate. The recreational EIS that is currently included in the Governor's budget would provide that information. And H.B. 401, with some funding changes, would provide the mechanisum to implement what could be a very workable program.

However, the sledge hammer approach proposed in the H.B. 778 is not the answer and will continue to polarize the issue worse in the future.

We strongly recommend these bills be referred to sub-committee where a reasonable approach, as proposed in H.B. 401, be brought back before this committee.

Thank you.

EXHIBIT 29
DATE 2-18-91
HB 401-778

TESTIMONY ON H.B. 401 & H.B. 778

HOUSE NATURAL RESOURCES COMMITTEE
February 18, 1991

Mr. Chairman and members of the committee. My name is Robert DuPea. I am a farmer and rancher from White Sulphur Springs. I rise in support of House Bill 401 and in opposition of House Bill 778.

It is the obligation of the trustees of the educational trust fund to maximize the recreational returns to the school trust. If recreational access is granted, it will then require the state of Montana to become responsible for the following:

1. Proper managment and maintenance of the game resource.

2. Vehicular traffic control.

3. Fire protection and suppression, and prevention.

4. Control of noxious weeds.

5. Protection of the livestock grazing on state land.

6. Protection of personal property and improvements --water tanks, windmills, irrigation systems and buildings.

Each of the above costs must be correctly determined. If the Department, or this legislature, does not assume the responsibility contemplated by any new arrangement, and the new program is not fully funded, the result will be deterioration of the state school trust lands.

Thank you.

CHAIRMAN Raney AND MEMBERS OF THE COMMITTEE:

EXHIBIT 30
DATE 2-18-91
HB 401-778

MY NAME IS BOB FOUHY. I AM A LIFE MEMBER OF THE NATIONAL RIFLE ASSOCIATION, AM A HUNTER SAFETY INSTRUCTOR FOR THE DEPARTMENT OF FISH, WILDLIFE AND PARKS, PRESIDENT OF THE WEST DANIELS GUN CLUB, A BOARD MEMBER FOR THE LAND MANAGEMENT COUNCIL, A DEPUTY SHERIFF FOR OVER 20 YEARS FOR DANIELS COUNTY, AND I LEASE SCHOOL TRUST LANDS.

I HAVE ALWAYS ALLOWED HUNTING ON THE SCHOOL TRUST LAND WHICH I LEASE. THIS HAS MAINLY BEEN POSSIBLE BECAUSE I CURRENTLY HAVE THE AUTHORITY TO PROTECT THESE LANDS FOR THE STATE OF MONTANA AND MY LEASE-HOLD INTEREST.

SINCE I AM A LAW-ENFORCEMENT OFFICER, I AM ALSO AN EX-OFFICIO WARDEN FOR THE DEPARTMENT OF FISH, WILDLIFE & PARKS.

DANIELS COUNTY IS 24% SCHOOL TRUST LANDS WITH THE BULK OF THIS BEING IN THE WEST END OF THE COUNTY. THIS AREA IS A MYRIAD OF SCHOOL TRUST LANDS AND PRIVATE LAND, AS YOU CAN SEE BY THIS MAP. THERE IS VIRTUALLY NO BLM LAND IN THIS COUNTY.

AS IT STANDS, EVEN NOW, IT IS ALMOST A TOTAL IMPOSSIBILITY TO ENFORCE THE EXISTING STATE STATUTES IN REGARDS TO THE WILDLIFE LAWS IN THIS AREA. EVEN THE LOCAL PEOPLE HAVE NO IDEA WHERE STATE LEASE BOUNDARIES ARE IN RELATION TO PRIVATE LAND.

WE HAVE ONLY ONE LOCAL WARDEN IN THIS AREA AND HIS DISTRICT IS THE LARGEST IN MONTANA--ROUGHLY COVERING THE AREAS OF DANIELS, SHERIDAN, AND ROOSEVELT COUNTIES.

THIS LEGSLATION [HB778] WOULD EFFECTIVELY TAKE AWAY MOST OF THE REMAINING ABILITY OF THE LEASE-HOLDER TO PROTECT THESE LANDS FOR THE COMMON GOOD OF THE PEOPLE OF MONTANA. THE LESSEE IS DIRECTLY RESPONSIBLE FOR THE PHYSICAL APPEARANCE OF THESE LEASES. IN RECENT YEARS, THE DEPARTMENT OF STATE LANDS STRIPPED THE LESSEE OF THE ABILITY TO POLICE DAMAGES TO AND GARBAGE LEFT ON THESE LANDS BY SEISMOGRAPHERS. THE RESULT WAS INCREASED GARBAGE AND MORE DAMAGES ALL WHICH HAS TO BE PICKED UP OR CORRECTED BY THE LESSEE WITH VERY LITTLE COMPENSATION FOR HIS ADDED COSTS, LABOR AND TIME. THE PICTURE IN THE UPPER LEFT-HAND CORNER OF THE HANDOUT EFFECTIVELY ILLUSTRATES JUST ONE INSTANCE OF THIS.

BEGINNING WITH SECTION 8 UNDER SECTION 87-1-102 PENALTIES, OF HB 778, WHILE THE NEW INCLUSIONS WHICH ARE INSERTED IN CURRENT STATUTES MUST BE WELL INTENTIONED, IT BASICALLY ONLY AMOUNTS TO A LIP SERVICE AND NOTHING ELSE BY THE PROPONENTS OF THIS BILL. IT IS UNDERSTANDABLE THAT THEY CANNOT REALIZE THAT THESE STATE STATUTES ARE ALMOST UNENFORCEABLE WHEN THE ABILITY OF THE LESSEE TO POLICE THESE LANDS IN AN AREA LIKE THE WEST END OF DANIELS COUNTY IS REMOVED. THERE ARE MANY MORE AREAS SUCH AS THIS IN EASTERN MONTANA.

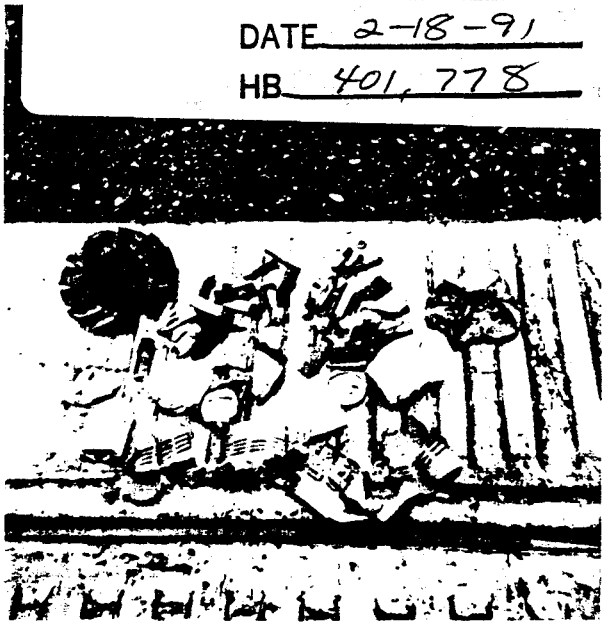
BY GRANTING WHAT WOULD BASICALLY BE UNLIMITED ACCESS THIS AREA WOULD BE OVER-RUN WITH HUNTERS AND RECREATIONISTS SINCE IT WOULD EFFECTIVELY BECOME OPEN PUBLIC LAND FOR RECREATION IN A HUGE AREA WHERE THERE IS NO BLM OR FOREST SERVICE LAND.

THANK YOU,

Robert J. Fouhy

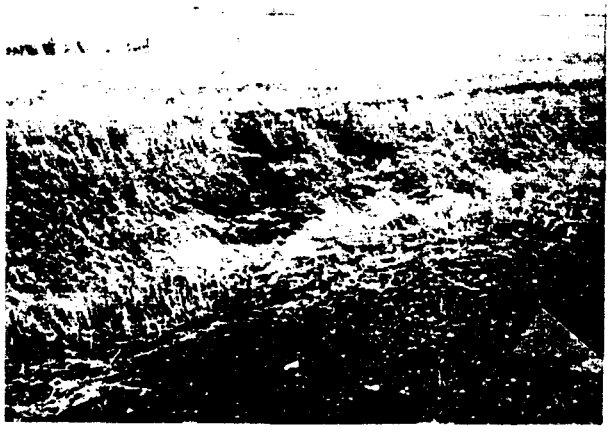
EXHIBIT 30
DATE 2-18-91
HB 401, 778

Whitetail buck became entangled in seismograph wire left on state lands shortly before hunting season. Left front leg was dislocated and wire was choking the animal to death.



A collection of beer cans, cartridge cases, pop cans, shotgun shells, oil cans, and seismograph litter left by hunters, recreationists and seismographers.

EXHIBIT
DATE 2-18-91
HB 401-778



Track damage left by hunter's vehicles leaving a main road into CRP where there was not an approach. Where one goes, they all go.

Track damage left by hunters chasing deer with a pick-up truck in a stubble field that had just been planted to winter wheat.

MONTANA FARM BUREAU FEDERATION
502 South 19th • Bozeman, Montana 59715
Phone: (406) 587-3153

EXHIBIT 31
DATE 2-18-91
HB 401

BILL # HB 401 ; TESTIMONY BY: Lorna Frank

DATE 2/18/91 ; SUPPORT Support ; OPPOSE _____

Mr. Chairman, members of the committee:

For the record, I am Lorna Frank, representing over 4,000 Farm Bureau members in the state.

We support HB 401 as it addresses many of our concerns on leasing state land for recreational purposes. It addresses compensation to other lessees for damage to their improvements, prohibits trespass onto private property, and addresses the weed control issue. It also limits the liability of the state and the lessee.

As we see it, the bill would not go into effect until after the EIS on recreational use of state lands is completed. The EIS is essential in determining where we are now, and where we want to go in the future.

~~We urge this committee to do pass HB 401~~.

We are adamantly opposed to HB 778 as it would open all existing state land to public access. It does not address weed control or the liability issue.

We understand these two bills will go to a sub-committee to be worked on, we would prefer HB-401 as the vehicle to move forward.

SIGNED: Lorna Frank

EXHIBIT 32

FOR REPRESENTATIVE LINDA NELSON

DATE 2-18-91

HB 778

We the undersigned residents of Daniels county, which has 23.8% of the School Trust Lands in Montana, do strongly oppose HB 778. We urge you to kill this bill in committee.

NAME	OCCUPATION	ADDRESS
Louise Nieskens	Farmer	Peerless Mt. 59253
Jack C. Hames	Farmer	Peerless, Mt. 59253
Luverne Nieskens	"	" " 59253
Bruce Fladager	Rancher	" " " "
Lola Fladager	"	" " "
[illegible] Paton Jones.		Peerless, Mt. 59253
Lester Estenson		Peerless Mt. 59253
Marvin [illegible]	Farmer	Peerless Mt 59253
Ray L Brandt	Rancher Farmer	Peerless Mt 59253
Art Snare		peerless Mt 59253
Mark Dighans		Peerless, Mt. 59253
[illegible]		Peerless Mt 59253
Gary Nieskens	Farmer	
[illegible]		Peerless mt. 59253
Kenneth Kjos		Peerless, Mt 59253
Ernest R Fouhy		Peerless 59253
Helen Fouhy		Peerless mt 59253
Patrick [illegible]		Peerless mt 59253
[illegible] Fladager		Peerless Mt 59253
Norman Miller		Richland, Mont. 59260
[illegible] Gray		Richland Mont. 59260
[illegible]		[illegible]

Page #2
RR Linda Nelson

Name	Occupation	Address
Bill Fladager	Farmer	Box 456 Peerless, MT
Laurence Fouhy	Farmer	Box 44 RICHLAND MT
M. Brown	Farmer	BOX 561 Peerless Mont.
Helen Mangerud	Farmer	Box 584 Peerless Mt.
Farnes Sundby	"	Peerless Mont.
Carol Fouhy	Farm Wife / Secretary	Peerless, MT
Judy Kjos	farmwife - teacher	Peerless, MT
[illegible] Tinstad	Farmer Rancher	Scobey, Mont
Gary Tinstad	Farmer Rancher	Scobey, Mont
Kerry Tinstad	Farmer Rancher	Scobey, Mont
Alvin Allen	Farmer	Scobey Mont.
Leonard Hersel	Farmer - Rancher	Peerless, Mt.
Hersel Ranches, Inc.	Farmer-Rancher	Richland, Mt.
Edwin Hersel	Farmer-Rancher	Richland, Mt.
Andrew E. Hersel	Farmer - Rancher	Richland, Mt.
Joyce Chapman	Farmer	Peerless, MT
Russel Tinstad	Farmer - Rancher	Scobey Mt.
[illegible] Valley Farms By [illegible] Jones / pres.		Peerless Mt
Dary[illegible] Fladager	Rancher	Peerless Mt.

Rep Linda Nelson #3

EXHIBIT 32
DATE 2-18-91
HB 778

Name	Occupation	Address
Albert R. Oglesby	Farmer	Pearlea Mt
John J. Dilgard	Rancher	Peerless, Mt
Dulcie A Dilgard	Rancher	Peerless Mt.
Mary E Oglesby	Farmer	Peerless, Mt
Carol H. Dilgard	Farmer	Peerless, Mt.

MT Audubon Council, Janet Ellis

EXHIBIT 33
DATE 2-18-91
HB 351

Audubon Fact Sheet: House Bill 351

Purpose:

* House Bill 351 is designed to include wildlife as a factor to be considered in the Better Management Practice (BMP) of timber harvest.

Reasons that HB 351 is necessary:

* Present BMPs in Montana's forests are voluntary and are only designed to protect water quality.

* Wildlife is greatly affected by timber harvest due to loss and destruction of habitat. The bill addresses the impact of the following upon wildlife but does not prohibit the occurrance of :

1. timber sale planning.
2. road construction and reconstruction.
3. timber harvesting.
4. site preparation.

What HB 351 may be able to do:

* The following is a list of factors that other states, like Washington, with wildlife considerations in forest management consider:

1. road density
2. snag retention
3. clear cutting (ie. size and location) wetlands
4. regulation of road location
5. maintainance of habitat diversity
6. maintainance of vegetative diversity
7. protection of water quantity and quality

* This piece of legislation would add wildlife to the voluntary BMP guidelines.

Goals:

* House Bill 351 will recommend to :

1. provide the greatest diversity of habitats, particularly riparian, wetlands, and old growth forests.
2. assure the greatest diversity of species within those habitats.
3. protect the water needs of fish and wildlife.

House Bill 351 is a small but vitally important step in the protection of wildlife. This bill does not set mandatory regulations. It would be a voluntary action for BMPs. It is a necessary step in the direction of protection and survival of wildlife species and habitat.

EXHIBIT 7
DATE 2-18-91
HB 351

House Natural Resources Committee

February 18, 1991

Testimony of Jeff Jahnke
Forest Management Bureau
Department of State Lands

HB 351

In order to comply with existing hazard reduction laws, private loggers and landowners currently notify the Department of State Lands in advance of all forest practice activities. When notification is received, as required by legislation passed during the last legislature, information regarding best management practices for water quality and soil productivity is distributed. At the same time, the Department identifies those locations with a high potential for water quality problems. If this high potential exists, an onsite consultation prior to the beginning if the forest practice is conducted by the Department.

HB 351 directs the Department to distribute wildlife information as well as water quality information when notified of a forest practice. The Department would provide information provided by the Department of Fish Wildlife and Parks and developed by the Department of State Lands and others through the forest stewardship program. The Department would not develop additional wildlife BMP's as a result of this bill. The Department of Fish, Wildlife and Parks would be requested to provide criteria for onsite consultations. They would also be asked to participate in consultations selected as a result of wildlife concerns.

The Department supports HB 351 and, with the cooperation of the Department of Fish, Wildlife and Parks, could carry out the act without additional resources.

DATE 2-18-91
HB 351

MONTANA FARM BUREAU FEDERATION
502 South 19th • Bozeman, Montana 59715
Phone: (406) 587-3153

BILL # HB 351; TESTIMONY BY: Lorna Frank

DATE 2/18/91; SUPPORT _____; OPPOSE Oppose

Mr. Chairman, members of the committee:

For the record, I am Lorna Frank, representing The Montana Farm Bureau.

We oppose HB 351 as it is written. our concern is that the harvest of trees could be curtailed by including wildlife as a factor in the management of forest lands. We would not want to see that happen, since it would close down a vital industry in Montana, put people out of work, and the state would lose more of its economic base. The Department of State Lands would lose a vital management tool if that were to happen.

On the federal level, we have seen the sale and harvest of trees fall off dramatically due to appeals and we would hate to see that happen with state land.

We urge this committee to not include wildlife in the management of state forest lands since they are already being considered.

SIGNED: Lorna Frank

EXHIBIT 36
DATE 2-18-91
HB 351

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 18 day of Feb, 1991.

Name: JO BRUNNER

MONTANA WATER RESOURCES ASSOCIATION
501 N. Sanders • Helena, Montana 59601 • (406) 442-9666

Appearing on which proposal?

HB 351

Do you: Support?____ Amend?____ Oppose? X

Comments:

Would allow all best management practices to consider even the transfer of canals - for water - or for any use - [redacted]

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

EXHIBIT 37
DATE 2-18-91
HB 399

STATEMENT IN SUPPORT OF HB 399 BY: CHET DREHER
1962 COLORADO GULCH
HELENA, MONTANA
FEBRUARY, 1991

Mr. Chairman, Members of the Committee:

In the spring of 1988 an old acquaintance and friend, Bill Kerns, came to Helena from his home in Florida to attend the funeral of his uncle, and stopped in to see us. When my wife and I first became land owners in Colorado Gulch in 1962, we began an neighborly association that included Bill's mother, brother, two uncles and one cousin, and through them, Bill his wife and two children. Because of Bill's close association with relatives and friends here, he asked if we had ground we could sell him on which he hoped to erect a summer home to which he and his family could retreat.

I took Bill up the mountain and showed him a piece of ground. He was pleased with the acerage, we briefly talked price, came to an understanding, but I told him selling it might be subject to new subdivision regs passed by Lewis and Clark County. "Fine," he said. "Go through the hoops and when that's completed, we'll close the deal."

We wrote to the Lewis and Clak County Attorney asking whether the proposed transaction would be legal under the terms of the new subdivision regulations.

We received a response from the County Attorney which requested further information, including all of the land transactions we had engaged in. We furnished the information.

The response we then received, to put it gently, was pretty astonishing. The County Attorney couldn't tell us, "No, it can't be sold." nor could he tell us, "Yes it can be sold." Under the terms of the new regulations, a committee consisting of the County Commission, the Clerk and Recorder and the County Attorney, or their designates, would have to make the decision. Imagine. A law so ambiguous the County Attorney alone could not determine whether or not our proposed use of the occasioanl sale exemption would or would not be in violation of the law. He did say, however, that due to our past use of the occasional sale provision, we might possibly be found in violation.

He also said that not all was lost. Possibly, by our consultation with the County Planner, this proposed transaction might be approved. That further astounded us. It was as though perhaps in the past we had erred by use of the occasional sale exemption, but atonement could be purchased with a fee paid to the county planner.

First, we had paid for legal advice many years previously, not on how to evade the intent of the subdivision law, but how to conform to it. Second, we had rigidly conformed to all the laws and regs, paid all the review fees required by DHES, the County Health Department and the Clerk and Recorder's office, and we were and are of the opinion that we have always conformed to the law.

We therefore proceeded to have the tract surveyed, hired a backhoe to dig test holes required by the local Health Department, had the sanitary restrictions lifted by the Department of Health, took the paper to DHES where they reviewed all of the foregoing, and took it then to the Clerk and Recorder where the aforementioned committee met and rejected the transaction. Our cost to that point was $373.57, exclusive of the preparation of the deed.

We hired an attorney and appealed to the County Commission, the same body that had written and passed the regs, and were not too surprised when it upheld the decision of the committee, since it is a component of the committee. As I mentioned earlier, we had corresponded with the County Attorney, and he assured us that no one at the county level was accusing us of violating the law. Thus we were quite surprised when we received the opinion of the Commission stating:

"...Since 1981 (you have)...circumvented many regulations...all in violation of the Montana Subdivision and Platting Act."

Judging from what I read of my copy of that law, my wife and I, and quite possibly my son and his wife, are now subject to a fine of $500 and three months in jail. My wife and I derive some small comfort recalling we had voted for the new county jail.

We again required the services of an attorney to appeal to the District Court, and if we lose at that level we must go on to the Supreme Court. Our costs are now into the thousands of dollars and we have yet to be heard in District Court.

For all of the above reasons I strongly support House Bill 399. I have carefully read the bill and see only one portion that gives me concern. That is lines two and three on page five which may provide certain county agencies the opportunity to make a subjective judgement as to what constitutes "public health, safety and welfare." I respectfully suggest that portion be stricken or more strongly defined.

Thank you for this opportunity to be heard.

EXHIBIT 38
DATE 2-18-91
HB 399

Representative Thomas N. Lee
Capitol Station
Helena, Montana 59620

Re: House Bill #399 - introduced by Mary Ellen Connelly
Committee Hearing - Natural Resources Committee
3:00 P.M. Monday - February 18, 1991

Dear Tom;

I would appreciate it very much if you would see that my opinions on the above H.B. 399 are made known to the committee, and also that you would urge the committee members to vote in favor of it.

It is my understanding that H.B. 399 reiterates and confirms the present State (of Montana) Subdivision and Platting Act, as regards the Occasional Sale Provision and the Direct Family Transfer Provision, among other items.

It (H.B. 399) also overrides or negates local policy such as the infamous Flathead County Resolution 509, now in it's third revised form. In my opinion and experience Flathead County Resolution 509 takes away basic landowner-ship rights, and 509 is in direct conflict with the State Subdivision and Platting Act, in many areas. 509 virtually eliminates the Occasional Sale Provision as a subdivision vehicle, or possibility, in direct conflict with the State Act, in that 509 requires the landowner to prove that he has the right and the need to divide off a parcel of land AND that he has never used the Occasional Sale Provision on the particular parcel of land at an earlier time. Flathead County Resolution 509 also says that a Direct Family Transfer provision can not be used to transfer a parcel of land to one's Mom or Dad; if a person's Mom or Dad are not eligible for the Direct Family Transfer exemption Provision how would you define Direct Family?
Flathead County Resolution 509 assumes that the landowner/taxpayer is evading (EVADING) the Subdivision and Platting Act and 509 places a heavy burden on the landowner/taxpayer to prove a basic right.

The State Subdivision and Platting Act has been a fairly good vehicle, and it should not be derailed by local rules such as Flathead County Resolution 509.

OPPOSITION TO
House Bill 399

EXHIBIT 39
DATE 2-18-91
HB 399

Sec 1 Eliminates original statemt of purpose substituting a generic stmt - "public health, safty & welfare" - an ambiguous phrase - "protects rts of real prop ownership" - which will be a goldmine for litigation attorneys
Original stmt was result of great effort by leg when original act passed & it enunciates specific and legitimate purposes/goals for the act.
It should not be so lightly discarded

Sec 2 (14) This phrase will be subject to wide interpretation and as such may foster litigation.
ie) (14)(a) - what rights are being refered to here.
(14)(b) - generic catchall

Sec 3 What "rights" are being refered to
Current statutory and case law protect property owners in this manner (1) + (2)
- activities must be restricted now for public health safty welfare.

- US Constitution provides for just compensation if property is "taken" by government. But this expands definition of a "taking" to include any restriction on any subdivision of prop — ie. taxpayers must pay owner. Effect: any subdv by exemption will be allowed & soon no one will go thru formal review by C. Commissioners. End of regulation of subdivisions

Sec 4 (4) It is physically impossible to obtain a Court order prior to filing of a COS. because no one in govermnt sees the COS prior to it being brought in for filing. When surveyor shows up at C+R w/ COS how can the County get a Ct order w/o first immediately refusing COS's filing
Effect: No COS will ever be refused for filing

(4) "interest on a proposed sale"
- how to determine a real vs fictious propos sa

- demonstrates this is a realator

EXHIBIT 17
DATE 2-18-91
HB 399

Sec 7 Changing cash in lieu amount to 1% while park dedication or cash in lieu may need improvement the effect of this is to make cash in lieu meaningless. Amount would be so small so as to not matter.

Developer not paying a reasonable amt for his/her impact on community

Local parks dept - because of I-105 - depend on this for operations. No provision is made for replacing funding that will be lost

General Thoughts

- Bill would effectively eliminate subdv review for anyone that didn't want their develpmt to be reviewed.
- Developer could just use exemptions anytime & in any number
- Original purpose of exemptions included in Act was to be used in limited circumstances not unlimited use.
- Why not just repeal Subdv + PUDs Act
- Realtor sponsored special interest legislation

Hi Pt

- Background – why bill came about:
  - F. Co. one of highest subdv by COS Co. in St.
  - 2-3 yr process to revise 509
  - Realators wanted no regulation of use of exemption (altho they claim otherwise). When unable to eliminate Resid 509 they put this bill together.
  - M. E. Connelly has used 0 or Sale exemption to subdv & sell her prop. Last time has COS reviewed by C. Coms – who approved filing – but she is upset w/ being regulated.

  - Over last 3 yrs approx 1% to 2% of proposed COSs have been refused for filing under evasion criteria after C. Com. review.
  - Criteria are not a problem that hampers or limits development. What evasion criteria do is control/regulate some develpmts by requiring subdv review when general public interest is affected

EXHIBIT 7C
DATE 2-18-91
HB 399

CITY OF BILLINGS

PUBLIC WORKS DEPARTMENT
ADMINISTRATION DIVISION

510 N. Broadway, 4th Floor
Billings, Montana 59101
Office (406) 657-8230
FAX (406) 657-8293

February 15, 1991

House Natural Resources Committee

REFERENCE: **HOUSE BILL 399**

Ladies & Gentlemen:

I am here today to testify in opposition to House Bill 399. Basically, House Bill 399 would make it impossible for local government to properly plan and develop the property within their community. The result of this bill would be improper platting and subdivision which would drastically increase the cost of providing services to future generations.

In 1985, the City of Billings was tasked with supplying sanitary to area known as Billings Heights. This area served as home for more than 5,000 people, but had largely developed prior to the 1972 Subdivision and Platting Act. Thus, the property was developed much the same as would occur if House Bill 399 became law. In addition to very major expenses on this sewer project, it was necessary to obtain over 3,000 easements to cross private properties in order to provide a basic sanitary sewer system to this area. Needless to say, this type of construction is extremely costly and the property owners and the community paid the bill for the lack of proper planning in this area. If House Bill 399 is adopted, it would create a situation where proper planning and subdivision could not take place.

Please kill HB 399.

Thank you for the opportunity to present this testimony.

Sincerely,

Ken Haag, P.E.
Director of Public Works

KH:csb

Billings Pride: City-wide

EXHIBIT 41
DATE 2-18-91
HB 399

February 18,1991

To: House Natural Resources Committee
From: League of Women Voters of Montana
Re: HB 399

The League of Women Voters opposes HB399. Passage of this bill will be a step backwards in many areas of subdivision review.

The definition of occasional sale will allow a person more than one sale a year if they own more than one parcel thus further opening up the abuses of that exemption. Section 4 (4) and (5) will place local governments in constant litigation proceedings. Local governments are underfunded and understaffed and this additional cost will have a chilling effect on subdivision review. Section 6 (3) also will tie the hands of local officials in providing for the "orderly development of their jurisdictional areas" with the use of the vague word "presumption". Again this will open the door for litigation.

The new Section 3 will deny local government the authority to regulate subdivisions under their jurisdiction.

This bill should receive a "do not pass".

Ex. 41
2-18-91
HB 399

TO: House Natural Resources Committee
FROM: League of Women Voters of Montana
RE: HB 671 and HB 744

The League of Women Voters of Montana would like to offer testimony in opposition to HB 671 and in support of HB 744, with modifications.

Subdivision laws in Montana have long been plagued by the existence of major loopholes, which have allowed the vast majority of development in the state to take place essentially without review. The resulting scattered and often poorly designed developments have increased the cost to local governments of providing services, further straining local budgets. In many instances very large developments have come into existence totally through the use of various exemptions in the law and have escaped review. Each legislative session there is an attempt to remedy this situation and each session that attempt fails.

The two bills before this committee represent the latest efforts to deal with the exemptions and loopholes in current law. New legislation should do the following: close the current loopholes; allow local governments to review all proposed subdivisions in a manner that is thorough and fair; and not create new loopholes.

We believe that, while HB 671 eliminates two major loopholes now in the law (the 20 acre exemption and the "occasional sale"), it also opens up several new loopholes and weakens the ability of local governments to review proposed subdivisions.

Specifically, by changing the statement of purpose of the act and by eliminating the public interest criteria, HB 671 would weaken the ability of the law to protect the public. The definition of a "dwelling unit" as a unit which is occupied for 8 or more months of the year would seem to open up a loophole for vacation homes. Section 2, (11) provides for review of second or subsequent minor subdivisions from a tract of record as minor subdivsions, rather than as major subdivisions, ignoring the major impact of cumulative small-scale development. This would reopen a major loophole in the law.

The review process contained in this bill for major and minor subdivisions seems unecessarily complex. HB 671 also places restrictions on testimony at informational hearings. The treatment of "hazards" would create a "buyer beware" situation. In conclusion, with the exception of the

elimination of the 20 acre exemption and the "occasional sale," this bill seems to be a step backwards.

We believe that HB 744 avoids most of these problems. It provides a clearly stated and thorough review process for all divisions of land, with a shorter, expedited review for minor subdivisions and a more extensive review for major subdivisions. HB 744 provides a precise definition of an agricultural producer and avoids the problems created by the HB 671 definition of "dwelling." This legislation also leaves the statement of purpose intact and retains the requirement that a subdivision be in the public interest. It also ensures that subsequent minor subdivisions from a tract of record will be reviewed as major subdivisions.

Our chief concern with HB 744 is its elimination of expressed public opinion and the basis for need from the public interest criteria. The elimination of expressed public opinion places a greater burden on the local government to discover relevant facts about a proposed development, which might not be included in the data provided by the developer. As it is now, it is often public input which provides local review authorities with important information which they may want to deal with in their review process. Directing local review authorities to consider the basis for need can help prevent the proliferation of partially occupied subdivisions, all of which demand costly local fire, road, law enforcement and school transportation services.

The League of Women Voters hopes that this is the year that legislation will finally be passed to remedy the deficiencies in Montana's subdivision laws. Good land use planning and orderly growth will not be possible until the law is reformed. In this time of financial difficulty for local governments it is more important than ever that development not be unecessarily costly to the public. We must not burden present or future taxpayers with poorly planned development.

EXHIBIT 20
DATE 2-18-91
HB 399

Amendments to House Bill No. 399
First Reading Copy

Requested by Rep. Connelly
For the Committee on Natural Resources

Prepared by Michael S. Kakuk
February 6, 1991

1. Page 5, line 20.
Following: "welfare;"
Insert: "or"

2. Page 5, lines 22 through 24.
Following: "restriction"
Strike: "; or" on line 22 through "rights" on line 24

EXHIBIT 43
DATE 2-18-91
HB 671-744

BEAR CREEK COUNCIL

P. O. Box 448 — Gardiner, Montana 59030

Testimony on HB-744 and HB-671, February 18, 1991

Mr. Chairman, members of the Committee: my name is Julia Page. I live and work in Gardiner, Montana. I am a member of Bear Creek Council, an affiliate of Northern Plains Resource Council, for whom I am speaking today. I am also President of the Upper Yellowstone Defense Fund. Both are citizen's groups dedicated to protecting and enhancing the natural resources of our area. The largely unrestrained development of the Church Universal and Triumphant in Paradise Valley, in particular at their unreviewed subdivisions at Glastonbury North and South and at their long established, but in some cases unlicensed work camps in the Corwin Springs area, has demonstrated a number of deficiencies and loopholes in the present subdivision law which need to be corrected.

It seems to me that HB-671 is a dangerous bill for several reasons. It tries to narrow down the criteria to be used in subdivision review to only mechanical requirements of the actual land division. It eliminates most of the nice language that guides the reviewing authority when considering the effect of the subdivision on the environment and infrastructure of the affected area. Its provisions for damages for a subdivider who feels he's been wrongly denied approval will insure that no subdivision is ever turned down. The definition of a dwelling unit as something that is lived in for more that 8 months should be a red flag for anyone - especially anyone familiar with our problems in the upper Yellowstone valley.

HB-744 does a much better job of correcting some of the problems we've seen. It leaves in the language in its Statement of Purpose and other sections which require environmental and infrastructure-type considerations in subdivision review. It defines dwelling unit more realistically so as to include summer cabins, second homes, bomb shelters and other forms of housing that might, but might not be, occupied full time. Both bills include much needed language to address the problem of work camps that will exist for more than one year.

I am not sure, but would like to have clarified, how this subdivision bill would control the problem we have seen where multiple dwelling units, belonging to unrelated persons, are placed on one undivided piece of land. This is one of the loopholes being used in Glastonbury. It is a clear evasion of the intent of the subdivision law and the deficiency needs to be corrected.

Also, several different people have suggested that it is impractical and actually counter productive to have a new subdivision law become effective immediately. There needs to be time for local governments to revise their own regulations in response to any law we pass now. This would be a protection for both those governments and any landowner wishing to divide land.

Thank you,

Julia Page

EXHIBIT 44
DATE 2-18-91
HB 399-671-744

Upper Yellowstone Defense Fund

Box 405 — Gardiner, Montana 59030

Testimony of the Upper Yellowstone Defense Fund on HB-399, HB-671 and HB-744
February 18, 1991

Mr. Chairman, members of the Committee; my name is Kathy Schmook. I live near Emigrant south of Livingston with my children and my husband, a third generation Montanan. I am a board member of the Upper Yellowstone Defense Fund, a local citizens group dedicated to protecting Paradise Valley. Over the last several years we have watched our private property rights, and our valley, eviscerated by a developer unrestrained by sense, conscience or law. We can't do much about their first two failings but you have the power and the opportunity to do something about the weakness of the law.

Neither HB-399 nor HB-671 improves the situation. Indeed, the developer in question was heavily involved in the drafting of what became HB-671 and it includes several tailor made loopholes that will make the situation worse. Defining a dwelling unit as a residence occupied for more than 8 months is bizarre. Eliminating the criteria that a local governing body can use to evaluate a proposed division certainly doesn't solve any problems except those of marginal developers.

What we need are stronger and clearer rules. They need to address several key ways in which the subdivision law has been evaded. The 20 acre threshold for review must be lifted. The occasional sale exemption must be limited. The placement of several, unrelated, households on a single tract, which itself escaped review because of the 20 acre rule, must be halted. This last perversion of the intent of the legislature and the expectation of the citizens has been extensively employed at Glastonbury in view of my home. HB-744 looks like the best vehicle to protect our property and the public purse by putting some teeth into the subdivision law. Please help us. Thank you,

Kathy Schmook

EXHIBIT 45
DATE 2-18-91
HB 671-844-744

Testimony of

ANDREW C. EPPLE, AICP
BOZEMAN CITY-COUNTY PLANNING DIRECTOR
P.O. BOX 640
BOZEMAN, MT 59715
(phone) 586-3321 EXT. 227

February 18, 1991

Thank you for the opportunity to comment on the four subdivision bills which would generally revise the Montana Subdivision and Platting Act (MSPA). I would like to add several comments to what has already been said, without getting repetitive.

1. Stick with the basic format of the Act and keep the changes simple. The concept of "incrementalism" in State and Local government has merit since it retains the basic framework of knowledge and understanding. Bozeman has recent experience with discarding many years of cumulative land use regulations in favor of an entirely new set of regulations and procedures. I can say from first-hand experience that such an approach to drafting and implementing regulations creates a tremendous amount of strain on the development community, administrators, and decision-makers. I fear that the problems we have experienced locally in this regard would be magnified tremendously at the state-wide level if an entirely new MSPA framework were to be adopted.

2. Recognize that in 1986, the EQC sponsored a two day seminar in which several nationally-recognized experts in the field of land use law pronounced the MSPA to be a sound piece of legislation, with the exception of the 20-acre definition of subdivision, and the availability of the use of "exemptions." Recent problems with unreviewed land developments in Park County and elsewhere are the direct result of these identified problems with the Act.

3. Also recognize that the aforementioned land development problems in Park County and elsewhere were not created by public participation in the review process. Therefore, I urge you to not make any changes in the Act which would limit the public's right and opportunity to participate in the decision-making process. This would especially include changes that would require testimony on subdivision proposals to be given under oath. Some would conclude that this would simply intimidate and discourage members of the public from participating in the decision-making process. In the same light, I also urge you to consider very carefully the appropriateness of eliminating "expressed public opinion" from the list of public interest criteria.

Thank you again for the opportunity to comment. Should you have any questions, I would be happy to discuss any of these issues with you further at your convenience.

LAKE COUNTY LAND SERVICES

PLANNING AND SANITATION
106 Fourth Avenue East
Polson, Montana 59860-2175
Telephone 406-883-6211

EXHIBIT 46
DATE 2-18-91
HB 399-671-744

February 15, 1991

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

Re: House Bills 399, 671, and 744 on subdivisions

Dear Chairman Raney:

My name is Jerry Sorensen, and I have been employed as Planning Director for Lake County for the last ten years. During that time I have been involved in the review of over 180 subdivisions and have seen over 4000 certificates of survey recorded in Lake County. I am very familiar with the Montana Subdivision and Platting Act.

I worked closely with the Environmental Quality Council in their interim study on this law leading up to the Legislative Sessions in 1985, and in 1987. During those efforts, it became apparent that the existing law does not work well because of the liberal use of exemptions to the law. In fact, most land division in Montana that has occurred since the law was enacted in 1973 has been done by exemption from the law.

As concerns the present legislation before you, House Bill 399 is regressive and allows for even more liberal use of exemptions than at present. If this approach is intended by the Legislature, I question the need to even have a Subdivision and Platting ACt.

I commend the approach as proposed in House Bill 671 (Gilbert) and House Bill 744 (O'Keefe). These bills eliminate the most commonly used exemptions. I believe that it is important to make the law as simple as possible for the private landowner and local government to understand and implement. Of the two bills, H.B.744 is the easiest to understand and implement in an efficient and fair manner.

I urge that H.B. 744 be passed. Thank you for your consideration, and I am hopeful that this Legislature can amend the existing Subdivision and Platting Act in a way that enhances good land development in our state.

Sincerely,

Jerry Sorensen
Planning Director

EXHIBIT 47 W. Spilker
DATE 2-18-91 MT Assn of Realtors
HB 671 HB 671

1. Rise in support of this legislation, however this support is somewhat conditional The position our association has found itself is not unlike that of your body. We do not always have consensus. We have differing points of view within our association - those points of view have not occurred in haste. Our association has been a player in this issue since it began, and were part of the lengthy discussions prior to the 1987 session.
2. Quite frankly we are as tired, and frustrated with this process as our opponents and the veteran legislators. But it has been our position and will continue to preserve private property rights, maintain housing affordability and support those proposals whereby we believe there is an attempt to make the process of subdivision review more objective and streamlined and eliminate the ambiguous, arbitrary, discretionary and subjective features which lead to restriction on property rights.
3. Specifically with respect to HB 671 we believe there are certain features which are sound efforts ~~to accommodate our concerns~~ BALANCE LOCAL government concerns with essential private property rights. These are incorporated throughout the bill and set a positive tone towards a property owner that has been absent in the existing legislation. We believe the following are favorable points of the legislation.

   a. The change of the intent section incorporates the concern for private property rights and eliminates the public interest as a criteria.

   b. Provides for the right of a landowner to bring an action against a governing body AND VICE VERSA and enumerates the conditions to protect a landowners rights.

   c. Sets some limits on the scope of subdivision regulations a local government may adopt but not unreasonably restrict the ability to

to develop land.

d. Puts some restrictions on the conduct of the hearing process, and attempts to keep the hearing process pertinent to the proposed subdivision.

e. Established abbreviated review for the special subdivisions, which rewards the concept of the master planning and capital budgeting, and provides the objective review of minor subdivisions.

f. The review process does provide for the requirement of mitigation, however the governing body may not unreasonably impose standards which would preclude development.

g. Park dedication requirements have become much more realistic in terms of amount of land or cash. It is still not clear as to whose choice to require land or cash. We view this as a subdivision tax however, but there are restrictions on the local government as to the use of the money with respect to the process of acquisition of parks or open space.

h. Review criteria has been written in an objective form for minors and specials. This is mandatory in any legislation that terminates the use of exemptions. The discretionary part remaining is that portion concerning the review for natural and man made hazards. We are still concerned with this feature however there is an attempt to place some guidelines on the manner in which these factors are reviewed.

i. A major positive feature is the public interest, express public opinion and the basis of need has been eliminated as review criteria for major and minor subdivisions.

Having enumerated what we believe are favorable points of this legislation there remain concerns of our association with respect to the proposal.

DATE 2-18-91

~~HB~~ 671

There is ~~strong~~ opposition in our association to major changes in the subdivision bill, ~~and that a status quo situation is not unrealistic~~ IN BELIEF THAT EXISTING LAW PROVIDES SUFFICIENT BASIS FOR SOUND PLANNING.

Specifically HB 671 contains features that are ~~objectionable:~~ OF SUBSTANTIAL CONCERN TO OUR MEMBERS AND PROPERTY OWNERS

1. The elimination of the 20 acre definition of a subdivision. Hope that an over reaction to the CUT situation will not impose unnecessarily harsh restrictions on landowners. Twenty acre divisions are not necessarily that bad, and in many cases have been beneficial.
2. Elimination of the gifting and occasional sale - this has been a very beneficial way to help some agricultural people during times of severe financial strain, and we believe the features were incorporated in the original act for good reason.
3. The mortgage financing exemption has enable homeowners and lending institutions to overcome some of the high cost of housing affordability.
4. The way the proposal is written it seems the agricultural exemption may create more questions than it solves. What is agriculture; What if a family member ceases to be engaged in the operation. It could be confusing.
5. The review for natural hazards still could lead to arbitrary actions.
6. A major concern is the ability a local government can go to require road construction standards beyond reason, and thereby preclude the ability to divide land.
7. THERE IS STILL FEAR OF LOCAL GOVERNMENT EXCEEDING ITS AUTHORITY AND THE INTENT OF THE LEGISLATURE. THIS FEAR IS NOT GROUNDLESS AS EARLIER TESTIMONY HAS INDICATED.

~~Our support and opposition to this legislation is mixed. As it progresses we will continue to be involved in the process.~~

WE BELIEVE THIS LEGISLATION, WHILE NOT PERFECT NOR DOES IT HAVE THE UNANIMOUS SUPPORT OF OUR ASSOCIATION, COMES CLOSEST TO A RESOLUTION OF THE SUBDIVISION REVIEW DILEMMA.

Wm Spilker
Mt Assoc of Realtors

HB 744

EXHIBIT 48
DATE 2-18-91
HB 744

1. Montana Association of Realtors opposes this legislation.
2. It tends to parallel HB 671 by Rep. Gilbert, however it fails to incorporate any features that would give recognition to the protection of private property rights.
3. The bill eliminates the 20 acre definition of a subdivision, it eliminates the occasional sale, it eliminates the gift to a family member (except in the case of agriculture which only creates more questions) it eliminates the use of the mortgage exemption.
4. The bill does not eliminate public interest as a criteria for review and denial of a subdivision.
5. The bill does not streamline the review of minor subdivisions - the same criteria exist under the administration of the existing law.
6. The park dedication section expands the use of park money beyond the provision of parks beneficial to the land being subdivided. It truly becomes a tax on the division of land as opposed to the concern for park provision for the subdivided land.
7. The bill clearly states the right of a local government to bring an action against a landowner. Why can't a landowner bring an action against a local government.
8. This bill is an expanded version of what we have encountered the past several sessions of the legislature - i.e. eliminate the exemptions - does nothing to make the current law more objective and realistic.

Wm Spilker
Mont Assoc. of Realtors

HB 844

EXHIBIT 49
DATE 2-18-91
HB 844

1. Montana Association of Realtors opposes this legislation.
2. This has been a long standing position of our association that the MSPA was originally enacted with certain exemptions, and those exemptions and the 20 acre definition were incorporated for good reasons.
3. Almost every session since the late 1970's and the so called "red book study" has LEGISLATION INTRODUCED FOR ~~incorporated~~ the elimination of these features. Every session the legislature in its wisdom has seen fit to retain exemptions and the 20 acre definition.
4. The proponents of this legislation continually cite the number of unreviewed divisions of land created by use of the occasional sale and gift to family member - with the presumption unreviewed subdivisions are bad and conversely reviewed subdivisions are good. Neither of these statements is necessarily correct.
5. I believe it is much more appropriate if, in fact proponents of this legislation believe unreviewed parcels are bad and there has been an abuse of the law, that those individuals investigate and examine why these exemptions are used. Perhaps the review process, rules and demands by local governments are so uncertain, arbitrary and expensive that the entire point of subdivision review has been missed.
6. There are proposals before you that incorporate this legislation plus taking into consideration other issues in the subdivision review process. Your attention would be better spent in that direction than consideration of this bill.

EXHIBIT 50
DATE 2-18-91
HB 671-744-844

51
2-18-91
44

HOUSE OF REPRESENTATIVES

WITNESS STATEMENT

PLEASE PRINT

Swanzow BUDGET

Montana Ave, Suite 4, Helena MT 59601

...ENT? Pegasus Gold Corporation

OPPOSE AMEND XX???

...nclear on weather the language in these
...residential non recreational divison of land
... Platting Act.
...sells part of his land to a mining company
...of mining does not come under the bills
...own. If, however, that same transaction
...company under the Subd. & Platting Act
...e the committee to consider an
...here by divisions of land made for
...mining are not divisions of land if
...has been submitted or a permit or
...en received under provisions of
...pter 4, Montana Code Annotated.

...eoretician or a
...ur law governing
...n illness. The
...g board members,
...ion of Planners,
...f Representative
possible.

have any special
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...ou would reserve
...er, the MAP bill
...ee.

... and hard with
...ll. With all due
...B 671 [redacted]
..., less accessible
...d in some cases,
...ral resources and

public health and safety (revised review criteria).

I urge you, having worked as a planner in Montana for the past 14 years, to adopt the concepts embodied in HB 744. Thank you.

Lisa Bay
31 Division Street
Helena, MT 59601

The Montana Environmental Information Center Action Fund

• P.O. Box 1184, Helena, Montana 59624 (406)443-2520

MEIC's concerns with HB 671

General Concerns: The bill gets rid of the three exemptions--20 acres, family conveyance, and occasional sale--that have been so abused. For this reason MEIC supports HB 671. However, we are concerned that the review process, while covering more land divisions, is weakened. The review process must not simply be a rubber stamp deal.

The intent of the Montana Subdivision and Platting Act is to improve the quality of land development and provide for public review. The law is not working. Fewer than 10% of land divisions are reviewed; the rest fall under the exemptions. When land is subdivided, development patterns are established, transportation networks are determined, air and water quality is altered, agricultural production is determined--in short, a new direction for the future is set. When these divisions are not reviewed, roads and bridges are built that can not handle the traffic load, road intersections are not designed with safety in mind, natural drainage patterns are blocked, no provisions are made for storm run-off, and lots are not designed to accomodate failure of septic systems. These problems can result in public health problems, environmental degradation, and expense to communities which must correct the problems.

These problems can all be corrected by eliminating the three exemptions. This bill does alot more than that. The presumption has been made that for the exemptions to be eliminated, the developers must get something in return, such as more objective review criteria and a streamlined review process. The committe must decide whether that presumption is correct and how far to carry it.

While the language in this bill compares to the language in a bill that resulted from an EQC process several years ago, several key elements are left out. The most notable are the planning components and provisions for review of critical resources such as wildlife habitat. MEIC's support of that bill,which failed, depended on those provisions. That bill did not represent a consensus among environmentalists, planners, realtors, and land developers. Some components represented "trade-offs", but others were simply suggested compromises by EQC after parties failed to reach agreement.

Specific concerns:

1. Page 1, Section 1. The change in the statement of intent sets a tone for the bill which is more oriented toward land development than public health, safety and welfare. This change of emphasis will be noted in any court hearings related to subdivisions, and could have a serious environmental impact in the future. The change in tone is carried throughout the bill. (see page

18, line 11). We prefer that the statement of purpose remain as in existing law. Deleting it in it entirety might be preferrable to HB 671's changes.

2. Page 5, line 25. Primitive tracts will be the next exemption. This could lead to an eventual "primitive" subdivision which could come about with no review.

3. Pages 7-9, Section 2. This definition includes essentially the same exemptions as the old law, which posed few problems. However, the language is moved to the definition section and in some cases just slightly changed. The effects of this are not immediately clear.

4. Page 10, Section 5. This language will have a chilling effect on the reviewers who may approve a subdivision they would otherwise deny or mitigate because they fear the law suit.

5. Page 23, Section 20. This will have a chilling effect on public participation. First a citizen who wants to request a public hearing has to find out about it within 21 days of the application. There are no minimum standards for notifying the public of the application. Second, the citizen may have to pay for it. And third, the citizen is required to speak in a very formal setting, under oath and may be intimidated with the threat that testimony may be judged irrelevant, immaterial or unduly repetitious. This is nothing more than an attempt to limit public participation. This proceedure must be changed.

6. Page 27, Section 21. Again this serves to limit public participation. The wording on page 27, line 6 is unclear about what conditions require a public hearing. Again, notice provisions are limited. The reveiw authority is not allowed to call a public meeting unless petitioned by an affected citizen. That citizen must hear about the application within 15 days. The local government must also agree that there are unique resources which will be affected. (What is unique anyhow?) Again, at the request of the developer, the hearing will be very formal. MEIC believes the local government needs to hear from the people who live there; they know the most about the land.

7. Page 31, Section 23. MEIC does not favor reduction in park land dedication.

8. Page 35, Section 25. All public interest criteria has been eliminated. MEIC believes this is alot to give up. These are what force a thorough review. There are arguements for making the criteria more subjective, but in the absence of good land use planning, they should not be eliminated. In addition, while it is clear what conditions force the review authority to approve a subdivison, it is not clear under what conditions the review authority may deny an application. Minor subdivisions require almost no review for environmental factors. Review authority does not have a strong position for requiring mitigation of adverse effects.

The Montana Environmental Information Center Action Fund

• P.O. Box 1184, Helena, Montana 59624 (406)443-2520

EXHIBIT 53
DATE 2-18-91
HB 671-744-844

MEIC's concerns with HB 744.

Generally, MEIC favors this bill over HB 671. We get what we want, and give up less.

Specific concerns:

1. Page 19, Section 18. There is no provision for a hearing on a minor or special subdivision. None at all. Hearings for major subdivisions are again quite formal and will have a chilling effect on public participation. Same concerns as in 5 above.

2. Page 21, Section 19. MEIC does not support reductions in park land dedication

3. Page 25, lines 19-21. In the absence of good land use planning laws, MEIC can not support the elimination of any public interest criteria. The basis of need protect us from land speculation and premature subdivision. Expressed public opinion is important, unless that opinion has been expressed in planning or zoning hearings.

MEIC's concerns with HB 844.

MEIC fully supports this bill. Our only concern is a general one--can it pass the Senate and be signed into law.

Montana Audubon Legislative Fund

EXHIBIT 54
DATE 2-18-91
HB 671

Testimony on HB 671
House Natural Resources Committee
February 18, 1991

Mr. Chairman and Members of the Committee,

My name is Janet Ellis and I'm here today representing the Montana Audubon Legislative Fund. The Audubon Fund is composed of nine Chapters of the National Audubon Society and represents 2,500 members throughout the state.

We support much of this bill. In the early 1970s, a common bumper sticker read "Don't Californicate Montana." In order to get a handle on the uncontrolled development that was occurring, the 1973 Montana Legislature passed the Montana Subdivision and Platting Act. This act may be the single most ineffective statute ever adopted by the state, primarily because most subdivisions are exempt from the law.

Uncontrolled development can hurt local governments and their ability to provide services; displace wildlife and destroy wildlife habitat; spread noxious weeds; and damage and destroy streamside areas that are important to wildlife, fisheries and water quality. Numerous attempts have been made to strengthen the Subdivision and Platting Act; all have failed. Few statistics have been gathered documenting the extent of the uncontrolled subdivisions because most development is exempt from review by local governments. What is known is that most subdivisions escape any review process:

a. Between 1974 and 1979, 90% of all subdivisions in Gallatin, Missoula and Ravalli Counties escaped any review because they were exempt from the Subdivision and Platting Act.

b. Since 1981, the Church Universal and Triumphant has been able to develop a 4,500 acre subdivision just south of Livingston without any review.

c. In the Greater Yellowstone area, 10,615 lots covering 134,904 acres have been created without review (Carbon, Madison, Park, Stillwater, and Sweet Grass Counties).

d. Between 1986 and 1989 in Lewis & Clark County (Helena), 1028 parcels of land were not reviewed by local government, while 126 subdivisions completed a review.

We are particularly in support of the elimination of the 20-acre and occasional sale exemptions, and tightening of the family conveyance requirements. We do have questions and comments on this bill that I will try to outline in my comments:

1. **Primitive Tract.** We feel that this could be the next subdivision exemption nightmare. This creates a number of questions: how will the primitive tract provisions be kept as primitive tracts; what happens when someone wants to build on a primitive tract; how will local governments track what's going on with primitive tracts? We can think of several areas that have subdivision problems now that could potentially be problems under this bill:

a. The Wine Glass development near Livingston. This is developed by Yellowstone Basin Properties. The roads are all private. Many tracks are farther than one mile down the road.

b. Glastonbury, developed by the Church Universal & Triumphant largely uses private roads.

2. **Notification of proposed subdivisions.** On page 18, line 17, local governments are told to provide public notice of subdivisions. Since notification is key to calling any public hearing, it is a critical aspect of this bill. Notification should be adequate to give the public a fair chance at seeing the notice - not just a note on a bulletin board.

3. **Review of unique/critical natural resource impacts.**

a. Minor and special subdivisions must be review for "unique...natural resources" (page 27, line 8-9). Major subdivisions must be reviewed for its "effects on...the natural environment" (page 38, lines 7-9 and line 12). What is the difference between the terms natural environment and natural resource? They should be consistent.

b. This bill eliminates the review of subdivisions for their effects on wildlife and wildlife habitat (page 35, line 21). Because "wildlife and wildlife habitat" are specifically eliminated but, in the case of major subdivisions, "natural environment" is not elimnated, we wonder where this puts "wildlife and wildlife habitat." We feel it is critical that "wildlife and wildlife habitat" be considered for subdivisions. Is "wildlife and wildlife habitat" included in subdivision review. Because of the elimination of this phrase on page 35, line 2, we would like it stated in the record (at a minimum) that wildlife and wildlife habitat is included in "natural environment" and/or "natural resource."

c. We like the fact that in this bill a minor subdivision can have a public hearing for significant impacts to natural resources. Minor subdivisions can affect wildlife, for example. A proposed minor subdivision in the Canyon Ferry area last year proposed to develop an area that would directly impact the Bald Eagle congregation that happens there in the fall.

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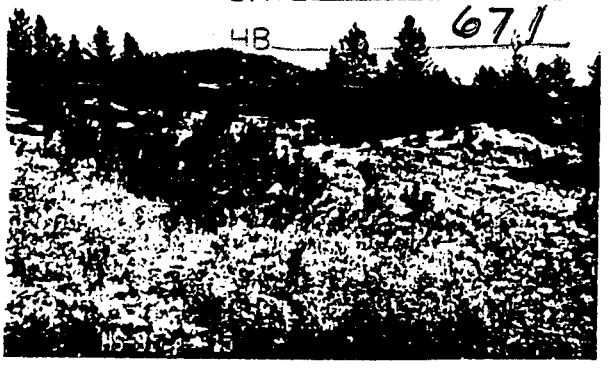
These are prime parcels at our Hidden Springs Ranch, brand-new releases, never before on the market. Now is the best time for you to own a piece of Montana Paradise at a great price!

- HS-48 20 ac., 15 ac. Trees ..... Special $12,900!
- HS-49 20 ac., 10 ac. trees ..... Special $11,900!
- HS-50 20 ac., Several cabin sites ..... Special $10,900!
- HS-51 20 ac., 16 ac. trees ..... Special $11,900!
- HS-52 20 ac., 1/4 tree cover ..... Special $10,900!
- HS-53 20 ac., Ponderosa pine sites ... Special $ 9,750!
- HS-61 20 ac., Secluded meadows ..... Special $10,900!
- **HS-62 20 ac., Great access, sites ... Special $ 9,750!**
- HS-63 20 ac., One half trees ..... Special $ 9,750!
- **HS-81 70 ac., Mini-ranch, County road .... Spcl. $29,900!**
- **HS-82 30 ac., County road, 1/2 trees ..... Spcl. $19,900!**
- HS-84 21 ac., Great bargain ..... Special $ 8,900!
- **HS-85 21 ac., 1/4 trees, Super price ... Special $ 8,900!**

Hurry! Parcels not sold in this special sale will be advertised to the general public after the first of the year.

HS-35 21 acres Only $8900!

EXHIBIT 55
DATE 2-18-91
HB 671



HS-81 70 acres Only $29,900!

HS-62 20 acres Only $9750!

HS-82 30 acres Only $19,900!

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YELLOWSTONE BASIN PROPERTIES
COMPANY

1-800-252-5263

Travis, MT Audubon Legislative Dinner

EXHIBIT 55
DATE 2-18-91
HB 671

Questions Most Often Asked

Why is the land so inexpensive? What's the catch?
There is no catch. By buying large parcels, we are able to negotiate a lower per acre price. We pass our low costs on to our customers.

How do I get there?
Montana is well serviced with airlines and modern interstate highways. Bozeman is serviced by Delta, Continental and Northwest Orient...and Interstate 90 is just two blocks from our office.

Can I buy less than 20 acres?
No. All of our property is in parcels of at least 20 acres in size. We feel that owning a large parcel of land is an important part of the "Big Sky Country" experience.

Can I buy more than 20 acres?
Yes. You may combine as many 20 acre parcels as you wish.

Is the property surveyed?
Yes. All our land is surveyed under the direction of a registered land surveyor who prepares maps and files them in the county courthouse. All boundary corners are monumented with iron bars topped by aluminum caps stamped for clear identification. There is also a metal post four feet tall placed along-side each corner.

How does your financing work?
We can finance a large percentage of the purchase price. We ask you to supply us with basic credit information and the down payment. Upon receipt of these items, our closing department will immediately send you the final paper work for your review and signature.

What is a Warranty Deed?
A warranty deed is the best form of deed available for transferring land. The reason for this is the seller warrants the title to be good at the time of closing. When you buy from us we give you the deed immediately, you don't have to wait 10 years or more.

What is a title insurance policy?
This policy insures that the property is owned by the party named therein and shows the condition of the title. Title insurance protects you against loss and lawsuits due to errors of incomplete facts, and is available on all Yellowstone Basin Properties Ranches.

Can I use the land while I am paying for it?
Yes, beginning on the day you close, the land is yours to use and enjoy.

May I build a cabin?
Yes. You may begin building any time after you have closed on your property.

What are county zoning restrictions for building?
Building codes vary from county to county. You can verify zoning codes through the appropriate county office. Generally, almost any type of structure is permitted on recreational land.

Now that I own land in Montana, can I get a Montana resident hunting license?
You must be a Montana resident for six months in order to qualify for a resident hunting license. We strongly suggest you go out of your way to abide by Montana's game laws so we can all continue to enjoy the bounty currently available.

What do you mean by guaranteed access?
In the deed we reserve a 60-foot easement on your behalf for your going to and from your property and for utilities going to your property. The title company also insures that you have the right of access.

What are "seasonal roads"?
These roads are built from native soil and generally do not exceed a 6% grade. You should be able to travel them in the summer months; they are not kept open in the winter months because of the snow. Some roads at lower elevations can be used in the winter with 4-wheel drive vehicles.

Who maintains the seasonal roads?
The roads are the responsibility of the owners. Each property owner may maintain the road to the level he/she desires. There is no owners association or assessment for road maintenance.

What if I have other questions?
These are the most often asked questions but you may have others. Be assured our years in the land business have given us the opportunity to hear every type of question and there is no such thing as a "silly" question. We know this is an important purchase for you and we want you to have every question answered to your satisfaction.

Prices and terms are subject to change without notice. All properties are sold on a first come first served basis.

EXHIBIT 56
DATE 2-18-91
HB 671

CITY OF BILLINGS

PUBLIC WORKS DEPARTMENT
ADMINISTRATION DIVISION

510 N. Broadway, 4th Floor
Billings, Montana 59101
Office (406) 657-8230
FAX (406) 657-8293

February 15, 1991

House Natural Resources Committee

REFERENCE: **HOUSE BILL 671**

Ladies & Gentlemen:

I am here today to express some major concerns about several of the provisions in House Bill 671. On this bill, I agree with several of the major provisions in the bill. I fully agree that many of the loopholes in the existing Subdivision and Platting Act need to be closed. However, I do have some very major concerns about the provisions in the bill which rely on adopted comprehensive plans and zoning ordinances to make the approval of subdivisions almost automatic if it meets the provisions of these plans.

The largest community in the State, Billings and Yellowstone County, recently went through a comprehensive planning process. I think that this process involved over 3 years of work by the Planning staff and at the point where it went to public hearing, it generated comment from approximately 10 people in a community of over 100,000. Quite simply, the plan is so vague and general that it would not provide any basis for a subdivision approval and because of the lack of public interest in the planning process would not serve as a viable tool to eliminate the public hearings from the subdivision processes.

It has been my experience that public hearings have provided a very valuable service in the subdivision review process. It allows the individuals that surround a property to be heard by the governing body, and in many cases, points out problems within the layout or design which a technical review has not identified. To limit or deny this public input into the platting process goes against the national trend of additional public input into various legislative processes and should not be taken lightly.

The second caution that I would raise on basing any of these on a master plan occurred as I was putting this letter together. I called the planning office to ask for a copy of the comprehensive plan and found

that the only copy that the office had was at the printers getting copies made. I would become almost laughable to base long range land subdivision decisions on a document which is not only not available, but, after I received a copy of the document, proved to be so vague and general as to be totally unusable to make a decision on a specific piece of land. I am attaching a copy of the table of contents for the portion entitled land use and growth management and a copy of page K-20 from this plan which covers residential land and industrial and commercial land use. I think that a brief review of these pages would show how unwise it would be to base a subdivision review decision on this type of document.

I also note that the proposal decreases the amount of park land and places additional restrictions on the use of the park land fund. These provisions seem to be counterproductive in a society which seems to value park land and open space and to do not appear to have any trade off for the decrease in the amount of park land to be dedicated under the provisions of the act.

As presently written, I simply cannot support this legislation even though two years ago I spent a considerable amount of time trying to reach a compromise solution with the real estate interests. It appears that many of the compromised positions reach at that time have been dropped simply in favor of making it easier to subdivide property. I have no objection to making life easier for subdividers as long as it does not create additional burden to local government (and its citizens). I fear that in many of the provisions contained herein that local government would ultimately end up paying the bill for poorly thought out and poorly controlled subdivision activities.

I would suggest that the legislature take a close look at adopting the provisions in this legislation under a local option provision. In those communities where the developers wished to work with local government to assure that proper comprehensive planning, zoning ordinances, and other documents were in place to implement the provisions, the local government could then implement these and we could obtain a track record on how well they would work. However, I feel that the existing set of laws should be left in place until some communities have established a track record on this new concept.

Thank you for the opportunity to present this testimony.

Sincerely,

Ken Haag, P.E.
Director of Public Works

KH:csb

Local tax structure may also create a situation that encourages land owners to retain vacant land. In Yellowstone County, vacant land may be zoned for one use, but appraised for taxation as another use. The result may be land appraised at a value that is less than its zoning would indicate. Tax savings could thus act as an incentive to retain the land as a vacant parcel.

Land Ownership

Yellowstone County is 2,666 square miles in size, or a total of 1,706,240 acres. Of this total, 18.8 percent is in Federal ownership, 4.5 percent is in State ownership, and the remaining 76.7 percent is in private ownership. Detailed information on land ownership is included in the Land Use and Growth Management Technical Appendix to the Comprehensive Plan.

Capacity for Future Residential, Commercial, and Industrial Needs

Residential

The ability of existing land use patterns to meet future residential needs is an important element to be considered in the comprehensive plan. Demand for residential land use will increase with the county's population. The impact of such demand is related to several factors including the type of home desired, the numbers of persons residing in the home, and locations desired by home buyers and renters. Estimates of the existing availability of land for future residential needs were calculated based on the population projections from the population element of the comprehensive plan and statistics from the housing element. Based on information detailed in the Technical Appendix, it is estimated that 3,732 acres would be sufficient to supply residences for a population increase of 51,638, which is the increase projected for the County under the high growth scenario. Table 1 indicates that Yellowstone County currently has nearly 11,000 vacant residential acres, and of this total nearly 2,000 acres are located within Billings and Laurel.

Although it is clear that there is sufficient existing vacant land available for residential growth, it is not clear if there are adequate amounts for demands and needs for each housing type and density. Existing information sources cannot readily provide an accurate accounting of how much land is available under each zoning classification or how or if the land is serviced by public facilities.

It is also important to point out that in addition to new construction on vacant residential land, some of the increased demand for residential housing would be absorbed by use of currently vacant residences. According to the U. S. Bureau of the Census, there were 2,811 vacant units in 1980. Of this total 592 units were for sale. In 1987, the Billings Multiple Listing Service had 1,600 active listings for single family residences, condominiums, residences with land, farms and ranches, multi-family units, and mobile homes.

Industrial and Commercial

As indicated by Table 2, there are significant amounts of vacant land for industrial and commercial purposes. In fact, approximately 63 percent of the commercial and industrial land in the county is vacant. Additionally, the vacancy rate for commercial and industrial buildings was nearly 17 percent in 1989. Determining the suitability of existing vacant land and property to meet future needs is dependent on several factors, including the type of use, transportation access and provision of water, sewer, energy utilities, and other public facilities. Type of use is particularly critical in determining site suitability. Although Table 2 indicates an overall vacancy rate of 44% for industrial land in the county, the amount of land zoned for heavy industry is extremely limited. The high vacancy rate is likely attributable to vacancies in areas zoned light industrial.

There are sites in the county that could potentially meet industrial needs without contributing the Billings/Laurel air quality problems. However, without further studies, it is not clear whether such sites would have all of the features that make Billings such an attractive location: excellent interstate, air, and rail

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Natural Resources COMMITTEE HB BILL NO. 351 wildlife in forest management

DATE 2-18-91 SPONSOR(S) Rep Cohen

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Jeff Jahnke	DSL			—
Valerie Horton	MWF			✓
Janet Ellis	MT Audubon			✓
George Schunk	Attorney General			
Jo Brunner	MT Water Resources Assn	HB351	✓	
Lorna Frank	Farm Bureau		✓	
Tony Schoonen	Skyline Sportsmen			✓
Don Allen	MT. Wood Products Assn		✓	
Bud Clinch	MT. Logging Assoc		✓	
Jim Jensen	MEIC			✓
Susan Lenard	SELF	351		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Natural Resources **COMMITTEE** **HB BILL NO.** 401
rec. access to state lands

DATE 2-18-91 **SPONSOR(S)** Rep. Dave Brown

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
BOB BUGNI	PRICKLY PEAR SPORTSMAN - HELENA		X
BILL HOLDORF	SKYLINE SPORTSMEN BUTTE		✓
Gary L. Sturm	Prickly Pear Sportsmen Assn.		X
JACK ATCHESON	BUTTE CITIZEN		X
JACK DAINES	Butte Sportsman		X
LARRY THOMAS	ANACONDA SPORTSMEN		X
Tony Schoonen	MWF		X
Marvin Barber	A P A	X	
Paul F Berg	Southeastern Montana Sportsman Association		X
T A Kummer	PRICKLY PEAR		X
Thomas Loftsgaard	Land Mgmt Council	X	
WARD JACKSON	SW. M.T. STOCKMEN	X	
DENNIS CASEY	DSL	X	
Robert Fouhy	Land management Council	X	X

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HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

National Resources COMMITTEE BILL NO. 401

DATE 2-18-91 SPONSOR(S) Rep. Dave Brown

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Lynda Tabor	Golden Valley Cattlewomen	401	X	
Kathleen Gill - Livingston	Golden Valley Cattlewomen		X	[redacted]
Ron Stevens	Public Land Access Assoc, Inc		X	
WILLIAM A FAIRHURST	THREE FORKS SPORTSMEN		X	
Rep J Nelson	HD 19		X	X
VALERIE HORTON	MWF		X	
George Schunk	AG			
Jim Tillman	MSGA			X
Robert Durgea	MSGA			X
Jim Moore	MSGA			X
Lorna Frank	Farm Bureau			X
CAROL MOSHER	MT. CATTLEWOMEN			X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. 401

DATE 2-18-91 SPONSOR(S) Rep Dave Brown

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
John Koyfance	Self		X	
Noel Rosetta	self		X	
Dave Brown	Sponsor - HD #72			X
Kay Merkley	Wife			X
John North	Dept of State Lands	401		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Natural Resources COMMITTEE BILL NO. 401

DATE 2-18-91 SPONSOR(S) Dave Brown rec access on state lands

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Kim Enkerud	MT Assn. State Dist. Grazing	401	778
Jean McPherson	Buffalo Mt Ranchers	401	778

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

1 of 3

Natural Resources COMMITTEE BILL NO. HB 778
rec use on state lands

DATE 2-18-91 SPONSOR(S) Dave Brown

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
JACK Atchesun	Butte citizen	✓	
JACK D. JONES	Butte Sportsman.	✓	
LORRY THOMAS	ANACONDA SPORTSMEN	✓	
Tony Schoonen	MWF	✓	
John R. Gibson	Billings Rod & Gun Club	✓	
Marvin Barber	a P. A.		✓
CATHY A. BROWN	Helena Sportswoman	✓	
Paul F Berg	Southwestern Montana Sportsman Assoc. Rep	✓	
TA KUMMER	PRICKLY PEAR	X	
G. Vince Fischer	Skyline Sportsmen Bd. Butte	✓	
Robert Fouhy	Land Management Council		X
Tom Loftsgaard	LAND Mgmt Council		X
WAIID JACKSON	SW. MT. STOCKMEN		X
Linda Isaac	Golden Valley Cattlewoman		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Natural Resources COMMITTEE HB BILL NO. ~~798~~ 798
rec. access to stak lands

DATE 2-18-91 SPONSOR(S) Rep Dave Brown

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Gary L. Sturm	Prickly Pear Sportsmen Assc.	X	
Bill HOLDORF	SKYLINE SPORTSMEN BUTTE	✓	
BOB BUGNI	PRICKLY PEAR SPORTSMAN	X	
Kathleen Ott Ryegate, MT	Golden Valley Cattle Women		X
Ron Stevens	Public Land Access Assoc, Inc	X	
WILLIAM A FAIRHURST	THREE FORKS SPORTSMEN	X	
Rep L Nelson	HD 19		X
VALERIE HORTON	MWF	X	
George Schunk	AG		
Kay Nordberg	WIFE		X
Jim Pittman	MSGA		X
Robert Murphea	MSGA		X
Stan Moore	MSGA		X
Lorna Frank	Farm Bureau		X

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

NATURAL RESOURCE COMMITTEE BILL NO. 778

DATE 2-18-91 SPONSOR(S) REP. DAVE BROWN

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
CAROL MOSHER	MONT. CATTLEWOMEN		X
Noel Rosetta	Self	X	[redacted]
John Roylance	Self	X	
DAVE BROWN	SPONSOR - HD #72	OK	
Stan Bradshaw		✓	
Ruth Jacobsen	Sec of State	✓	

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Natural Resources COMMITTEE HB BILL NO. 399 subdivision

DATE 2-18-91 SPONSOR(S) Connelly

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Ken Haag	City of Billings		✓
Carlo Cieri	Park Co - [illegible]		✓
Linda Stoll-Anderson	L&C County - MT Assn. of Counties		✓
CHET DREHER	SELF	✓	
Janet Ellis	MT Audubon		✓
George Schunk	AG		
Joanne C. Chance PE	MT Tech Council		
Steve Herbaly	Flathead Regional Dev		✓
Tony Schoonen	Skyline Sportsmen		✓
Ray Brandewie	Self	✓	
Betty T. Lund	Ravalli Co. Club & Rec		✓
Andrew C. Epple	Bozeman City-County Planning		
Warren E. Kersman	Flathead - Surveying	✓	
Sharon Stratton	FHD Co Commission		✓

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

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Natural Resources COMMITTEE BILL NO. 399

DATE 2-18-91 SPONSOR(S) Connelly

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Mary Kay Peck	Gallatin County		✓
Tom Hopgood	MT. Assoc Realtors	✓	~~✓~~
Bill Spitzer	"	✓	~~✓~~
Stan Bradshaw	MTL		✓
B G Wood	LWV		✓
Kathy Macefield	City of Helena		✓
Doug Knutson	Bigfork	✓	
Chris Kaufmann	MEIC		✓
Robert Rasmussen	Lewis & Clark County Planning		✓

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. 844

DATE 2-18-91 SPONSOR(S) Rep Wanzenried

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Robert Rasmusson	Lewis + Clark Co.	✓	
Nina Jamison	Mt. Assoc. of Planners	✓	
Jerry Sorensen	Lake County	✓	
Chris Kaufmann	MEIC	✓	
Bill Murdock	Montana Assoc. of Planners	✓ w/ amendments	

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

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Natural Resources COMMITTEE H BILL NO. 844

DATE 2-18-91 SPONSOR(S) Rep. Wanzenried Subdivisions

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Dan Lusch	DOC	N/A	N/A
Rob McCracken	DOC	N/A	N/A

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

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Natural Resources COMMITTEE BILL NO. 399

DATE 2-18-91 SPONSOR(S) Rep. Connelly Subdivisions

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Jim Beach	Dept of Commerce	N/A	N/A
Bob McCracken	Dept of Commerce	N/A	N/A

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Natural Resources COMMITTEE H. BILL NO. [illegible] 671

DATE 2-18-91 SPONSOR(S) Rep. Gilbert Subdivisions

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Ken Haag	City of Billings	✓	✓
CARLO CIERI	PARK CO - MACO	✓	
Stephen Granzow	Pegasus Gold		X
LINDA Stoll-Anderson	L&C County · MT. Assn. of Counties	✓	
George Schunk	Attorney General		
[illegible]			
Janet Ellis	MT Audubon	✓	
Joanne [illegible] PE	MT Tech Council	✓	
Steve [illegible]	Flathead Co	✓	
RICK GUSTINE	MARLS		
DAVID E. BOWMAN	MARLS		
Sharon Stratton	Flthd Co Commission	✓	
Tom Hopgood	Mt. Assoc Realtors	✓	
Bill Spilker	~	✓	

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Natural Resources COMMITTEE BILL NO. 671

DATE 2-18-91 SPONSOR(S) Rep Bob Gilbert

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Stan Bradshaw	MTCA	✓ with amendments	
Andrew Epple	Bozeman City-Co. Planning		
Julia Page	Bear Creek Council		✓
Kathy Schmook	Upper Yellowstone Defense Fund		✓
B.J. Wood	LWV		✓
Kathy Macefield	City of Helena	✓ with amendments	
Rosora Rasmusson	Lewis & Clark Co. Planning Dept	✓ w/ amendments	
Mona Jamison	Mt. Assn. Planners	✓ w/ amendments	
Chris Kaufmann	MEIC	✓ w/ amendments	
Bill Mudock	Montana Assoc. of Planners	✓ w/ amendments	

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

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Natural Resources COMMITTEE BILL NO. 671 subdivisions

DATE 2-18-91 SPONSOR(S) Rep Gilbert

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Jon Leach	DOC	N/A	N/A
Bob McCracken	DOC	N/A	N/A

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Natural Resources COMMITTEE BILL NO. 744

DATE 2-18-91 SPONSOR(S) Rep. O'Keefe Subdivision

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Kent Lacy	City of Billings	✓	—
CARLO CIERI	Park Co - MACO	✓	
Linda Stoll-Anderson	Lewis & Clark County - MT Assn. of Counties	✓	
Geo Schunk	Attorney General		
☑ Janet Ellis	MT Audubon	✓	
Joanne C Charnefe	MT Tech. Council		
Jerry Sorensen	Lake County	✓	
Steve Hughey	Flathead Co	✓	
Rick Gustine	MARLS		
David E. Bowman	MARLS		
Mary Kay Peck	Gallatin County	✓	
Sharon Stratton	Fish & Game Commission	✓	
Lynn Bay	SELF	✓	
To — Hopgood Bill Sponsor	MT Assoc Realtors		✓

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Natural Resources COMMITTEE BILL NO. 744

DATE 2-18-91 SPONSOR(S) Rep O'Keefe

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Stan Bradshaw	MTA	✓ Amend.	
Andrew Epple	Bozeman City-County Planning		
Julia Page	Bear Creek Council	✓	
Kathy Schnook	Upper Yellowstone Defense Fund	—	
B.J. Wood	LWV	✓	
Kathy Macefield	City of Helena	✓	
Robert Rasmussen	Lewis & Clark Co. Planning Dept	✓	
Mona Jamieson	Mt. Assoc. of Planners	✓	
Chris Kaufmann	MEIC	✓	
Bill Mudock	Montana Assoc. of Planners	✓	

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

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Natural Resources COMMITTEE H BILL NO. 744

DATE 2-18-91 SPONSOR(S) O'Keefe Subdivisions

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Don Clark	DOC	N/A	N/A
Bob McCracken	DOC	N/A	N/A

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Natural Resources COMMITTEE H. BILL NO. 844 subdivisions

DATE 2-18-91 SPONSOR(S) Rep. Wanggensteid

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Carlo Cicci	Park Co	✓	
Linda Stoll-Anderson	L&C County · MT Assn. of Counties	✓	
George Schunk	Attorney General		
MT Audubon	MT Audubon	✓	
Joanne Chance, PE	MT Tech Council		
Steve Hinchey	Pintail Co	✓	
Rick Gustine	MARLS		
David E. Bowman	MARLS		
Sharon Stratton	Flathead Co Commission	✓	
Tom Hopgood	MT. Assoc		✓
Bill Spitzer	Realtors		✓
Stan Bradshaw	MTU	✓	
Andrew Epple	Bozeman City-County Planning		
Kathy Macefield	City of Helena	✓	

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