

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN BOB RANEY**, on March 6, 1991, at 3:00 p.m.

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 SJR 10

Presentation and Opening Statement by Sponsor:

SEN. JOE MAZUREK, SD 23 - Helena, said SJR 10 urges Congress to adopt legislation authorizing the Assiniboine and Sioux tribes at the Fort Peck Indian Reservation to enter into water agreements for the delivery, use and transfer of water within or outside the reservation. In 1985, the Compact Commission entered into a pact with the tribes, quantifying reserved water rights for all time. The compromise allowed the tribe to market a portion of the water received under the pact, but Congress has not passed enabling legislation. He distributed testimony presented to the Senate Natural Resources Committee by Tribal Chairman Lawrence Wetsit.
EXHIBIT 1

Proponents' Testimony: None

Opponents' Testimony: None

Questions from the Committee: None

Closing by Sponsor: SEN. MAZUREK closed.

HEARING ON HB 906

Presentation and Opening by Sponsor:

REP. MARY ELLEN CONNELLY, HD 8 - Kalispell, said HB 906 asks for additional funding for another extension forester. The existing extension forester is financed with \$54,000 in federal money appropriated through the Renewable Resources Extension Act. The federal funding has to be re-approved each year. Long-term, stable funding is needed.

Sections 1 and 2 of HB 906 would amend existing fire-hazard reduction law to allow an additional 15 cents per 1,000 board-feet of harvested timber. That would provide \$120,000 over the biennium for the Forestry Extension Program. The General Fund appropriation would be \$121,000 for the biennium. Existing federal funding would be maintained at approximately \$108,000.

Amendments would cap the contribution of any single company at \$20,000. Approximately \$400-\$500 million is brought into the state by the lumber industry. HB 906 is an attempt to get information out to small, private land owners, wood shops and extension programs.

Proponents' Testimony:

Bud Clinch, Montana Logging Association, said the Montana Logging Association represents 600 logging contractors and family-owned businesses in Montana. Two years ago the industry pledged to educate its ranks about Best Management Practices (BMP).

An introductory brochure was developed for the BMP Education Program. Workshops have been held during the last two years. The association is trying to develop certification standards for logging contractors, and the Montana Forest Stewardship Program disseminates information to 11,000 non-industrial, private landowners. Extension Forestry has been involved in windbreak projects, development of living snow fences and the Flathead Valley Forestry Exposition. EXHIBIT 2-3

Extension Forestry provides a broad base of services to a broad base of landowners. Continuation and expansion of BMP education is paramount to the industry. The association supports a tax on the logging industry because it wants to be a part of the solution. He recommended passage of HB 906.

Max Amberson, Acting Dean of the College of Agriculture and Director of the Extension Service at Montana State University (MSU), said MSU tried to fund an additional extension forester under a budget modification. The request was turned down by the education subcommittee. The additional extension forester would join 42 extension specialists with MSU's Extension Service and 53 county extension agents statewide. It isn't known from year to year whether funding for the existing forester will be continued. Under HB 906, the position would be funded on a continuing basis.

Gordon Sanders, Champion International Corp., said Champion is the largest industrial, private forest landowner, with 880,000 acres of fee lands in Montana. The company doesn't need additional costs given current market conditions and the high cost of raw materials. However, as professional land managers, the company recognizes the role and importance of education and natural resource management for Montana. Champion supports HB 906.

Bob Frazier, Assistant to the President of the University of Montana, said the additional extension forestry position would be important to Montanans. The bill demonstrates cooperation between the two university units to deliver services. The program provides education in forestry management, water quality and land use. The program serves the entire state, but more can be done if HB 906 is approved.

Don Schiltz, Bigfork non-industrial private forest landowner, said he represents 350,000 acres of Montana forest land. Education of non-industrial landowners in multi-resource management is necessary. Such education is going to take a lot of effort. This bill is a step in the right direction. He urged approval of HB 906.

Don Allen, Montana Wood Products Association, said all the good arguments as to why HB 906 should pass have been made. The Montana Wood Products Association pledged two years ago to work hard to make a voluntary program work. The way to make it work is through a strong educational program. The association endorses HB 906 and previous statements.

Janet Ellis, Montana Audubon Legislative Fund, said the Extension Forestry program warrants a stable and expanded funding source. She is concerned with the bill's statement of intent. It reads, "The Legislature has committed the State of Montana to a course of voluntary compliance with best management practices for forestry." There are a number of bills, including HB 731, that would mandate at least certain BMPs in riparian areas. There is some interest, even within the timber industry, to make some BMPs mandatory.

Opponents' Testimony: None

Questions from the Committee: None

Closing by Sponsor:

REP. CONNELLY said HB 906 will not cover workshops, soil erosion, watershed conditions, wildlife habitat, pesticides, herbicides, weed control, sustained yield, etc. MSU's extension budget is over \$9 million. Only \$54,000 is spent on forestry, the fourth largest business in Montana. The state should put a little more time and effort into it. She urged support of HB 906.

Submitted as an exhibit during the hearing was a letter from REP. GILBERT, on behalf of the Environmental Quality Council, to Gov. Stan Stephens, who was asked to help develop an acceptable and fair funding source for extension forestry staff at MSU. EXHIBIT

4

HEARING ON HB 476Presentation and Opening Statement by Sponsor:

REP. COHEN, HD 3 - Whitefish, said HB 476 is similar to HB 906. In the next 20 years, Montana will be more dependent on the 11,000 non-industrial, private woodland owners to supply timber to the state's mills. HB 476 proposes a timber severance tax, rather than the addition of 15 cents onto hazard agreements. Sufficient money will not come from hazard agreements on state and federal timberlands. He wants to get money from timber cut on those lands as well.

The Department of Revenue had problems with the way the taxation section was written, so staff drafted amendments. Twelve of 18 members of this committee also sit on the House Taxation Committee. If this committee is interested in pursuing the severance tax, the bill could be transferred to the House Taxation Committee for consideration. The amendments are extensive but necessary to properly fund the bill with a severance tax.

He referred to Section 10, Page 8. Most of the information relates to the timber severance tax. HB 476 does not require an appropriation. HB 906 requires \$121,000 for the biennium from the Legislature, which is more money than industry will pay through hazard agreements at 15 cents per 1,000 board-feet. The severance tax is 20 cents per 1,000 board-feet.

Section 3 in HB 906 says more money will be available for Cooperative Extension Services. Though it is run by MSU, a Forestry Extension Service is needed at the University of Montana. Section 10 of HB 476 addresses a forestry extension services account. This money would go into the account and be available to the university system.

The bill states that forestry services must be conducted at MSU, the University of Montana and Flathead Valley Community College. He wants the Legislature to mandate that some staff be present on

the other campuses, rather than trying to run all the programs with one person at the University of Montana. Flathead Valley Community College already has an excellent forestry program. There is no reason the program couldn't be expanded with support from the Extension Service.

Proponents' Testimony:

Janet Ellis, Montana Audubon Legislative Fund, said the Montana Audubon Legislative fund supports funding of an expanded Extension Forestry Program. The group believes in the program and doesn't feel tied to one funding source, but there are technical problems with the timber severance tax. The organization would be willing to work with the committee to iron out details.

Opponents' Testimony:

Keith Olson, Montana Logging Association (MLA), Kalispell, said the Montana Logging Association appreciates the support the Expanded Forestry Extension Program seems to be receiving from a variety of sources. Nonetheless, the association opposes HB 476 because it ties funding for extension forestry too closely to timber harvest.

The association firmly believes funding for extension forestry should be representative of more than timber interests. One of the constant criticisms of forest management priorities in Montana is they are biased toward timber. HB 476 continues that bias. Many of Montana's 11,000 non-industrial, private timberland owners do not want a timber-oriented land management philosophy. The association cautions against HB 476.

He clarified REP. COHEN's statement that the state appropriation would exceed monies in HB 906. Based on industry calculations, \$108,000 over the biennium would come from federal sources, \$121,000 from state sources and \$130,000 from industry.

Dennis Burr, Montana Taxpayers Association, said the Legislature has considered implementing a timber severance tax before. It is generally regarded as an alternative to property tax on timber. Property taxes on a natural resource tend to encourage rapid harvest. A severance tax puts the penalty on the cutting of timber, not the growing. A property tax is a cumulative tax paid each year until harvest. The way to stop paying property tax is to cut timber.

There is a problem in trying to shift the system. A timberland owner who has been paying property taxes on uncut timber for 20 or 30 years will all of a sudden have to pay a severance tax on the timed harvest. A credit could be provided for some of the property tax.

REP. COHEN has possibly gotten around the problem by imposing the severance tax on top of the property tax. But the two should be

viewed as alternatives. That is why the Montana Taxpayers Association opposes HB 476. It seems that imposing a severance tax on timber would discourage harvest and might run contrary to what REP. COHEN is trying to do. If the committee is enthusiastic about the severance tax concept, it may be better to have the Taxation Committee work on it.

Mr. Allen, Montana Wood Products Association, said the association supports expansion of the Forestry Extension Program but opposes HB 476 because of its method of financing. The bill goes against the objective of changing to a productivity tax, which the association supports in HB 340. HB 340 has low administrative costs. The fiscal note on HB 476 will be costly to the state and create additional administrative costs to the industry.

This is a new tax on mills that do not own timberlands. Many are already struggling. It would be a double tax on those that own timberland. For years they have paid tax on standing timber. All of a sudden they would have to pay a tax when the same timber is harvested. It would increase the cost of bidding on federal timber, which is already difficult to obtain, and result in less timber being harvested from federal lands. This could mean 25 percent less money for schools and roads.

Definitions of initial purchaser and seller are confusing. If the seller can be interpreted as the owner of standing timber who sells to a logger or contractor, there is a potential legal conflict. This would make the tax payable by the federal government and the state, since both sell a considerable volume of timber each year. If the initial purchaser can be interpreted as the logger or contractor who purchases the timber, those people must collect and pay the tax to the Department of Revenue. This conflicts with the title of the bill, which states the tax should be collected in a manner compatible with the collection of funds related to the Fire Hazard Reduction agreements and bonds provided for in Title 76.

It is clear in Montana's Constitution, Article 10, Section 11, and Montana's Enabling Act that all income derived from the school trust asset must go to support schools. He understands what the sponsor is trying to do, but he is not sure the bill allows it. On Page 3, Lines 24-25, the 10-day payment notice is too short, and there are no guidelines on how the money will be spent.

Lorna Frank, Montana Farm Bureau and Montana Cattle Women, opposed HB 476. EXHIBIT 5

Steve Marks, landowner, timber owner and mill operator, said HB 476 is a bad bill. It is bureaucratic paperwork that creates a selective sales tax. Landowners are paying a timber tax now on the stump. If it is sawed down and taken to the mill, landowners will pay another 20 cents. This takes more money out of mill

operators' and stump owners' pockets. Montana needs fewer bureaucratic laws.

Susan Brooke, Montana Stockgrowers Association and Montana Wool Growers Association, said many members own and rely upon timber stands to get through tough times. They pay property taxes on these stands. HB 476 imposes a double tax on timber. It is nothing more than a selective sales tax. The associations would support a uniform and fair sales tax across the board, not a selective sales tax.

F.H. Buck Boles, Montana Chamber of Commerce, said the Chamber has concerns about the competitive edge Montana has in its state operations. This is another negative factor that affects that competitive edge. While agreeing with the general mission of the bill, which is to improve use of Montana lands through the Extension Service, the Chamber opposes HB 476.

Questions from the Committee:

REP. MEASURE asked Mr. Allen if timber owners pay tax on the resource or property. Mr. Allen said they pay tax on the value of the standing timber. The Department of Revenue re-evaluates the value of the timber using a series of calculations and formulas, depending on the stand of timber, growth patterns, etc. The process sunsets this year. That is why the industry has worked for the last two years to develop a new approach, which is a productivity tax. The Revenue Subcommittee unanimously endorsed a productivity tax, which is in REP. REAM's bill, HB 340. HB 340 would tax the ability of the land to produce timber.

REP. MEASURE asked how long it will be until the new tax is in place. Mr. Allen said it would take two years to set the whole system in motion, assuming HB 340 passes. The University of Montana School of Forestry would develop productivity values. After that, the Legislature would decide the level of taxation.

REP. MEASURE asked if a property tax would be included in the tax. Mr. Allen said everything would change to a productivity tax. REP. MEASURE asked if it would be combined. Mr. Allen said yes.

REP. SOUTHWORTH said he likes severance taxes. He asked REP. COHEN about the amount of money to be appropriated in HB 906. REP. COHEN said \$121,000 was the state appropriation figure. REP. SOUTHWORTH said that with the bare budget the state has now, it doesn't seem likely the money will be available. REP. COHEN agreed. He said he is concerned about finding the \$908,000 to fund HB 340. That money was not included in the budget. The sunset occurred Jan. 1, 1991. Private timberland rates are going to increase from 3.84 percent to 30 percent of value, which is a nine-fold increase in taxes. Money is needed in a lot of places and it appears the state is already in the hole about \$100 million for the biennium.

REP. MEASURE said it seems unusual to tax property and extraction in the mining industry. He asked why it would be different for timber. Mr. Burr said that when the constitution set up net proceeds on metal mines and oil and gas, it stated that it would be "in lieu of taxes" on minerals in place. The same concept has been considered for timber to encourage conservation instead of exploitation of resources. REP. MEASURE asked if it is unusual to have an extraction tax and a property tax. Mr. Burr said no.

Closing by Sponsor:

REP. COHEN said states west of Montana have severance taxes, yield taxes and property taxes on timberlands. HB 906 talks about increasing fees and HB 476 talks about taxes. If the committee wants to call the tax a fee, call it a fee. If the committee wants to be honest, it should change the word fee to tax everywhere it appears in the codes. It seems to be more popular to have fees, not new taxes.

The main difference between HB 906 and HB 476 is not the 5 cents per 1,000 board-feet, but where the money will come from. HB 906 will raise money from timber harvested on private land. HB 476 will raise money from all harvested timber. HB 476 will provide \$240,000 per year for the Extension Forestry Program to put people in the field. These people will give advice and teach timber owners how to properly manage their land. It isn't important which of the two bills passes. It is important for the state to do something to expand the Extension Forestry Program. The tax issue is complicated and will be brought up in the Taxation Committee.

EXECUTIVE ACTION ON SJR 10

Motion/Vote: REP. WANZENRIED MOVED SJR 10 BE CONCURRED IN. Motion carried unanimously.

EXECUTIVE ACTION ON SJR 6

Motion: REP. COHEN MOVED SJR 6 BE CONCURRED IN.

Discussion: REP. COHEN said there was a hearing in the appropriations subcommittee on funding. SEN. MIKE HALLIGAN and he testified in favor of it. Goals and objectives of the task force have been expanded in a direction they thought was positive.

REP. SOUTHWORTH said the last time this issue was discussed, it was thought to be a waste of time. REP. COHEN said he was upset about the scheduling of the hearing. It was during the Democrats' caucuses, making it impossible for them to attend. There are new members and a broader vision of forestry. The Northwest Policy Council has been working with the Western States Legislative Forestry Task Force. Both groups could be used to coordinate the regulatory environment in which forest practices take place so

that states don't compete with each other.

REP. SOUTHWORTH asked REP. COHEN if he thinks it will work. REP. COHEN said it can work. The focus in the past had been to encourage the U.S. Forest Service to sell more timber. There is a whole different direction for the task force.

REP. WANZENRIED asked if the task force is privately funded. REP. COHEN said it is funded with dues from various member states. Montana has never paid its dues.

REP. WANZENRIED asked if it is totally funded with public money. REP. COHEN said all of the funding comes from public sources. Activities such as banquets are financed by other sources.

REP. MEASURE said he is concerned about funding. He never heard of the group during his 15 years of work in the forest industry. He asked REP. COHEN what caused him to change his opinion of the group so quickly. REP. COHEN said it would help everyone understand if he could present copies of the minutes of the group's last meeting. He asked if action on the resolution could be postponed. REP. O'KEEFE said there is a motion on the table. REP. COHEN withdrew his motion.

HEARING ON SB 165

SEN. JOHN HARP, SD 4 - Kalispell, said SB 165 was requested by the Department of State Lands (DSL) and stems from last session, when it became apparent to DSL and the Appropriations Committee that the rate structure for fire protection for forest lands and fire-protection districts, particularly in western Montana, needed review.

Under current law, there is a minimum assessment of \$14 per owner or 17 cents per acre, whichever is greater. SB 165 establishes a minimum assessment for properties under 20 acres at \$30. Although it says \$30 on Line 21 of the bill, \$22 will be assessed for tracts under 20 acres. The bill establishes the \$30 figure because DSL doesn't want to have to come back to the Legislature to add dollars later. DSL wants flexibility.

The committee can choose to review the amount in later sessions. The bill states that an additional 20 cents per acre would be assessed for tracts over 20 acres. In reality, under the appropriations process, the amount would actually be 17 cents.

The retroactive section of the bill, Section 2, makes it sound like taxes would be assessed retroactively. In reality, assessments go out in 1990 and tax bills go out in 1991.

Fire protection is drafted so that no more than one-third of the cost of protecting forest lands would come from private owners. The other two-thirds comes from state and federal lands. The assessment structure shows a lot of money is spent by DSL to

fight fires on small tracts, particularly those under 20 acres that have improvements on them, such as small ranches or expensive homes.

The people who are the most vocal about needing fire protection are those in under 20-acre areas where residents are concerned about their structures. DSL is trying to address that. If nothing is done with this bill, the General Fund will have to supplement the amount that would come from private landowners. It would cost \$762,000 for the biennium.

Proponents' Testimony:

Tim Murphy, DSL Fire Management Bureau Chief, Missoula, said the main intent of the bill is to shift funding from the General Fund to private landowners. He reviewed written testimony. **EXHIBIT 6**

He reviewed charts that showed landowners of tracts of 20 acres or less represent 76 percent of the people DSL protects. They own 4 percent of the ground. Landowners of tracts of more than 20 acres represent 24 percent of the owners and 96 percent of the ground.

For a three-year average, small landowners experienced 9 percent of the lightning-caused fires; large landowners had 91 percent. Small landowners experienced 30 percent of the human-caused fires; large landowners had 70 percent.

Opponents' Testimony:

Mr. Marks, landowner, volunteer fireman from Clancy, said the bill has good and bad parts. At 17 cents per acre, he pays \$1,220 per year for the fire protection district under the DSL plan. If it is raised to 20 cents per acre, the cost will increase to \$1,435, or an additional \$220. If he has to pay 1990 tax again, it will cost \$430. In nearly every case, fires are extinguished in the State Lands Fire District area in Clancy before DSL arrives. Large landowners shouldn't have to pay 20 cents, let alone 17 cents.

Local control is better than state control. DSL cannot extinguish a fire as fast as local people can. The retroactive clause should be deleted from the bill and landowners should be able to get out of state land districts. He tried but couldn't. Landowners in the Clancy area do not feel they are getting the fire protection they should. It can't be done for 20 cents per acre and should be up to private landowners to decide if they want state fire protection. He doesn't want it.

Ms. Brooke, Montana Stockgrowers Association, said the association does not oppose the bill. Members believe it is fair and just for private landowners to pay one-third of the program cost. However, they have a problem with the fiscal note, which says DSL will set fees at \$21 or \$22 per landowner and 17 cents

per acre for each acre over 20. Association members agree they should pay for the program, but they do not support padding DSL's budget so that the agency doesn't have to come back in two years for an increase. No compelling evidence was presented to show why it would increase. She urged the committee to refer SB 165 to a subcommittee where something more reasonable can be worked out.

Questions from the Committee:

REP. MEASURE asked **Mr. Murphy** if the bill represents a reduction, an increase or the same assessment for large landowners. **Mr. Murphy** said a landowner who owns one acre pays \$14. Under the DSL proposal, they would pay \$22. A landowner who owns 20 acres pays \$14; the cost would increase to \$22. A landowner who owns 21 acres pays \$14; the cost would increase to \$22.17. A landowner who owns 1,000 acres pays \$170; they would pay \$188.66. A landowner who owns 10,000 pays \$1,700; the cost would rise to \$1718.60.

REP. HOFFMAN asked if this dealt with fiscal year (FY) 90. **Mr. Murphy** said the assessment is a fee for services rendered. Because of the complexity of calendar years and fiscal years, a landowner is protected in 1990 and pays the fee in 1991. Part of calendar year 1991 is in FY 92, which begins July 1, 1991.

REP. HOFFMAN said the bill goes back another six months, to the beginning of 1990, which takes in the last half of the fiscal year that has already been paid for. **Mr. Murphy** said landowners would only be paying half their taxes. Because there are problems with people paying taxes in the first and second half of the year, this would have to be done on a calendar year basis. This is to fund the FY 92 budget.

REP. HOFFMAN said he is concerned landowners will be assessed for calendar year 1990 and 1991 in November 1991. **Mr. Murphy** said that won't happen. It is just for the one year to fund the FY 92 budget.

REP. HOFFMAN asked how fire protection districts are formed. **Mr. Murphy** said at least 51 percent of the landowners who represent at least 51 percent of the land area must sign a petition, which is presented to the State Land Board. Boundaries are drawn up on a map based on landowner information. Fire districts also may be set up by a protection agency. **REP. HOFFMAN** asked **Mr. Murphy** if he were saying that protection districts discussed in SB 165 are determined by State Lands but voted upon by owners of timberlands. **Mr. Murphy** said yes.

REP. ELLISON asked how much more it costs to fight fires on small tracts versus larger ones. **Mr. Murphy** said a study showed it costs twice as much to respond to a fire in a 20-acre tract or subdivision area, compared to a larger tract.

REP. ELLISON asked if DSL enters cooperative agreements with fire

departments. Mr. Murphy said yes. DSL has cooperative agreements with 49 counties, and tries to work with fire councils, which represent local fire departments, to find the closest resources and the best response.

REP. ELLISON asked what kind of financial arrangement is made and if payments are based on a percentage. Mr. Murphy said Montana has approximately 400 fire departments. DSL has various agreements with either counties or individual fire departments. Financial negotiations are on a case-by-case basis. If there is a mutual-aid agreement set up, that means each agency absorbs its own costs. If a fire becomes the primary responsibility of a governmental agency, the agency will put local fire departments on the payroll.

REP. MEASURE said stock growers are concerned about the bill because it authorizes higher rates than what will be charged. He asked SEN. HARP if he considered putting a statement of intent in the bill that would address that. SEN. HARP said the committee must recognize that DSL cannot spend any money that is not authorized by the committee. The statute may show a higher rate, but the agency cannot spend money that isn't approved by the committee. DSL is a fiscally conservative agency. The rate structure is aimed at where costs are, and that is the small landowner. Large landowners are being treated very fairly in this bill. He doesn't understand the fear.

Mr. Marks said volunteer fire departments are disappearing. Landowners in the Clancy area have gone to a fee system. They each pay \$35. The state puts \$22 on top of that and the local fire department is taking care of almost all of the small fires. DSL doesn't get there until it is over. Landowners are being assessed twice. There needs to be clarification on whether this addresses rangeland or timberland. If the money is put in there, it will be spent.

REP. HOFFMAN said existing law says that if the owner does not provide for fire protection and suppression, the Department may assess a fee. A landowner like Mr. Marks, who is already in a rural fire district that apparently is being protected adequately, still has to pay the fee. The existing law mandated anyone within a fire protection district to pay \$14. That language has been eliminated. It is all permissive now. He asked if Mr. Marks will still have to pay the fee if he is adequately covered. Mr. Marks said yes. Approximately 10 years ago, 51 percent of the landowners in Mr. Marks' forest fire protection district who owned at least 51 percent of the land signed a petition requesting fire protection and to set up a fire district.

REP. HOFFMAN asked if those landowners would no longer have to pay the fee if they signed a petition rejecting the district and were adequately covered by the rural fire department. Mr. Murphy said DSL's attorney said the only way to dissolve a forest fire

district is for 51 percent of the landowners representing 51 percent of the land to vote to dissolve the district.

REP. HOFFMAN asked if they would get out of paying the fee under this statute if that happened. Mr. Murphy said yes.

Closing by Sponsor:

SEN. HARP urged support.

EXECUTIVE SESSION

REP. O'KEEFE asked REP. COHEN if he wanted to refer HB 906 and HB 476 to the Taxation Committee. REP. COHEN said he can't answer that, but the committee usually doesn't take executive action on bills the same day they are heard. He asked if REP. O'KEEFE wanted to take action. REP. O'KEEFE said his note from REP. RANEY says the committee should take action if it is comfortable doing so. He feels the committee is not comfortable taking action now so he will postpone it. He asked if the committee is comfortable taking action with SB 165. REP. GILBERT said he would prefer to wait a day to allow DSL and livestock people to work on the bill.

ADJOURNMENT

Adjournment: 7 p.m.



REP. BOB RANEY, Chairman



LISA FAIRMAN, Secretary

BR/lf

HOUSE OF REPRESENTATIVES
NATURAL RESOURCES COMMITTEE

ROLL CALL

DATE 3-6-91

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	✓		

HOUSE STANDING COMMITTEE REPORT

2/17/91
1:23 PM
S.H.
March 7, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report
that Senate Joint Resolution 10 (third reading copy -- blue)
be concurred in and be placed on consent calendar .

Signed: _____
Bob Raney, Chairman

FORT PECK TRIBES

Assiniboine & Sioux

EXHIBIT 1
DATE 3-6-91
SJE
RB 10

**TESTIMONY OF
LAWRENCE D. WETSIT**

**CHAIRMAN
ASSINIBOINE & SIOUX TRIBE OF THE
FORT PECK INDIAN RESERVATION, MONTANA**

**Before the
Montana State Senate
Committee on Natural Resources**

February 13, 1991

Mr. Chairman and members of the Committee, my name is Larry Wetsit and I am the Chairman of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation. Our Reservation contains over 2 million acres of land in northeastern Montana. Over 5,000 Indians reside upon it. I am pleased to appear before you today in support of a Resolution reaffirming Montana's commitment to the Fort-Peck-Montana Compact and the State's petition to Congress asking that it take necessary action to implement the Compact.

Water is the life blood of our Reservation. It is necessary to secure water if our Tribes are to make progress toward economic self-sufficiency. Because of the great importance of water to my Tribes, we entered into a Compact in 1985 with the State of Montana to settle pending water rights litigation. The Montana Legislature (in S.B. 467) and Tribal Executive Board both ratified this Compact in 1985. The Compact has been approved by the Secretary of the Interior and the United States Attorney General as well.

This Compact quantifies finally and forever the reserved rights of the Assiniboine and Sioux Tribes at 1,050,000 acre feet per year. The Compact also protects certain non-Indian water uses in the tributaries and to groundwater that were in existence in 1985. It establishes a joint tribal-state board to resolve disputes between the Tribes and the State, and between Indian and

non-Indian water users.

The Compact authorizes the Tribes to establish a schedule of instream flows. This past spring, we established minimum instream flows on all major tributary streams on our Reservation. These total a maximum of 58,503 acre feet per year. The Tribes took this step to ensure preservation of fisheries and wetland habitat for wildlife on our Reservation for ourselves and our posterity.

Finally, the Compact authorizes the Tribes to market water outside our Reservation subject to certain conditions. Because the Indian Non Intercourse Act (25 U.S.C. 177) may bar leases and other conveyances of the tribal water rights, the Montana Legislature formally petitioned Congress to enact legislation authorizing tribal water marketing when it ratified the Compact in 1985. The Tribes have joined in this request.

The legislation we have jointly requested Congress to enact would allow the Tribes to lease, market or otherwise exchange portions of the tribal water right confirmed in the Compact for periods of not to exceed fifty years (including all renewal periods). No sales would be allowed. Any tribal lease, contract or other marketing agreement must be approved by the Secretary of the Interior. This protects against any arrangement that could be for less than fair value.

The legislation also provides that any agreement must be subject to all terms and conditions of the Fort Peck-Montana Compact. Under the Compact, the Tribes can divert whatever water they wish on the Reservation for marketing on the Reservation. Otherwise, the Tribes may divert water for marketing off the Reservation only from Fort Peck Reservoir or the mainstem of the Missouri downstream from Fort Peck Dam to the North Dakota state border.

The Compact provides that the Tribes and the State must each give the other at least 180 days advance written notice of any intent to transfer water diverted from Fort Peck Reservoir or from the Missouri River downstream of Fort Peck Dam, and give the other an opportunity to participate in the water marketing venture as a substantially equal partner. This is an unique provision, authorizing the State and Tribes to cooperate on a government-to-government basis, sharing the benefits of water development.

There are fairly complicated quantity limitations on the amount of water that may be marketed by the Tribes. The Tribes will always be authorized to market at least 50,000 acre feet of water per year. If the State allows the marketing of more than 200,000 acre feet per year statewide, the amount which the Tribes can market increases. There is a ceiling, however. The Tribes may divert only 40,000 acre feet per month from the Missouri River, so

year round the Tribes could divert a maximum of 480,000 acre feet for marketing.

When marketing water, the Tribes must also comply with some state laws. Their marketing of water outside the Reservation must be for a beneficial purpose as that term is defined by valid state law. Also, the Tribes or any diverter or user of water marketed by the Tribes off the Reservation must comply with valid state laws regulating the siting, construction, operation or use of any industrial facility, pipeline or other transportation facility. In addition, the Tribes must comply with any valid state laws prohibiting or regulating export of water outside of the State.

While the Tribes do not have to comply with other state law regulatory or administrative requirements, they must give the State notice showing that: (1) any off-reservation use of water will be beneficial as defined by valid state law; (2) the means of diversion, construction and operation of any diversion works outside the reservation are adequate; (3) the diversion will not adversely affect any federal or state water right actually in use at the time notice is given (unless the owner has consented); and (4) the purpose use will not cause any unreasonable significant environmental impact. Finally, tribal diversions for marketing in excess of 4,000 acre feet per year must not: (1) substantially impair the quality of the water in the Missouri River; (2) create

3-6-91

5JR10

or substantially contribute to saline seep; (3) substantially injure fish and wildlife populations in the Missouri River; or (4) be made where lower quality water can economically and legally be used by the Tribes.

Mr. Chairman and members of the Committee, that concludes my testimony. Again, our Tribes appreciate the vigorous and enthusiastic support the State of Montana has given to the Fort Peck-Montana Compact, and strongly support the Resolution. I should be pleased to answer any questions you may have.

Montana

DRAFT

Forestry BMP's

Best Management Practices

DRAFT

EXHIBIT 2
DATE 3-6-91
HB 906

House Natural
Resources
Committee
p. 1 of 35



Stewardship Guidelines for Water Quality

FOREST
Stewardship
MONTANA

EXHIBIT 3
DATE 3-6-91
HB 906

House Natural
Resources Comm.

Workshop FOR FOREST LANDOWNERS





STATE OF MONTANA
ENVIRONMENTAL QUALITY COUNCIL

STATE CAPITOL
HELENA, MONTANA 59620
(406) 444-3742

EXHIBIT 4
DATE 3-6-91
HB 906

Deborah B. Schmidt, Executive Director

GOV. STAN STEPHENS
Designated Representative
Art Wittich

HOUSE MEMBERS
Bob Gilbert, Chairman
Jerry Driscoll
Ed Grady
Bob Raney

SENATE MEMBERS
Cecil Weeding, Vice Chairman
Tom Beck
John G. Harp
Bill Yellowtail

PUBLIC MEMBERS
Doug Crandall
Thomas M. France
Tom Roy
Everett E. Shuey

March 4, 1991

The Honorable Stan Stephens
Governor of the State of Montana
Capitol Station
Helena, MT 59620

Dear Governor Stephens:

On behalf of the Environmental Quality Council, I am writing to ask that you reaffirm the commitment you made last fall at the Montana Wood Products Association annual meeting to seek additional staffing for the MSU Forestry Extension program. While establishing funding for this program clearly is a legislative decision, your renewed efforts to assist with the development of an acceptable and fair funding method would significantly contribute to a sound and unanimously supported policy.

The members of the Environmental Quality Council share your belief that if proper forest management and the integrity and quality of the state's forested watersheds are to be insured through best management practices, it is critical that at least one additional extension forester position be funded. The current staffing level of a single forester is simply not adequate to provide needed assistance to the state's commercial and 11,000 nonindustrial private forest landowners. Accordingly, at its December 8th meeting, after reviewing and discussing the results of the 1990 BMP audits, the Council endorsed in concept your proposal to seek additional funding for forestry extension.

Transmittal has passed and the time has come to put concept into action. In the upcoming weeks, at least three bills that provide additional funding for extension forestry will be considered by

Ex. 4
3-6-91
HB 906

The Honorable Stan Stephens
March 4, 1991
Page 2

the Legislature, HB 476 (Cohen), HB 906 (Connelly) and HB 971 (Cohen). In addition, there may be other viable funding options that have yet to be explored. As the Legislature considers these bills and funding for the extension forestry program generally, I trust that you and your staff will stand ready to work with the Legislature, the bill sponsors, and the affected parties to insure that a funding mechanism everyone can support is passed this session.

Sincerely,



Rep. Bob Gilbert
Chairman

cc: Max Amberson, Acting Dean, MSU Extension Service
Keith Olson, Montana Logging Association
Don Allen, Montana Wood Products Association
Members, House Natural Resources Committee
Gary Brown, DSL



MONTANA FARM BUREAU FEDERATION

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

EXHIBIT 5
DATE 3-6-91
HB 476

BILL # HB-476; TESTIMONY BY: Lorna Frank
DATE 3/6/91; SUPPORT _____; OPPOSE Oppose

Mr. Chairman, members of the committee, for the record I am Lorna Frank representing Montana Farm Bureau.

We are opposed to HB-476, we believe its important for the state to look at what is happening to the logging industry in the state and feel that this bill, while aimed at Champion International, Plumb Creed and other large conglomerate, this bill would hurt the small independent mills.

The paper work required in Section 4, page 3 would be a bookkeeping nightmare, by requiring the purchaser to keep monthly reports and submitting them quarterly. Line 19 on page 3 includes purchases outside the state. How can Montana put a tax on timber purchased outside the state?

The tax is attached at the time of purchase, what happens if it is not harvested for 5 years and in the mean time a fire destroys the timber, who is going to reimburse the purchaser for lost taxes already paid.

The logging industry is just barely existing now, and we feel everyone should pay ~~this severance tax~~ to fund the forestry extension service for the Montana university system, not just a small portion of *on* ~~the~~ industry.

For these reasons we oppose this bill and urge this committee to do not pass HB-476 as it is written.

SIGNED: Lorna Frank

TESTIMONY
DEPARTMENT OF STATE LANDS

PRIVATE LANDOWNER FOREST FIRE ASSESSMENTS

Introduction: The joint appropriations sub-committee during the 1989 legislative session requested that the Department of State Lands present a proposal for an increase in private landowner fees for forest fire protection. In accordance with §76-13-201, Montana Code Annotated (MCA) the current structure allows for a minimum assessment of \$14.00 per owner per protection district or \$0.17 per acre. State law (§76-13-207, MCA) requires the Department to assess the private landowner no greater than one-third of the total fire appropriation. The remaining two-thirds is funded by state and federal funds.

Background: Prior to 1977 all forest landowners were charged a flat rate per acre for 2 classes of acreage. Since it was not economical to send a bill for forest fire assessments to small landowners, many were not assessed although they received fire protection. A minimum fee to small landowners was subsequently established in 1977. The 1985 legislature approved raising the assessments of \$0.16 per acre and \$6.00 minimum to the current \$0.17 per acre \$14.00 minimum. In 1988 and 1989 the Department assessed private landowners the maximum allowed by current statute. The one-third of the appropriation requirement was not met under the present rate structure these years.

Under the present rate structure the private landowner proportion of the fire appropriation is less than one-third of the base fire appropriation by \$229,000 for FY 92 and \$218,000 for FY 93. The Department has also submitted modification to the FY 92 and FY 93 budgets. If all these modifications are approved the shortfall will be \$385,000 for FY 92 and \$376,000 for FY 93.

Proposal: The Department of State Lands proposes to the legislature that the minimum fee be raised to \$30 dollars from the current minimum of \$14.00 and that the per acre assessment rate be increased from the current \$0.17 maximum per acre rate to a \$0.20 maximum per acre rate. The Department is also proposing that the minimum fee ownership be established at 20 acres. All parcels of forested land subject to forest fire assessments fees should be charged the minimum assessment and all additional acreage over 20 be charged the per acre rate. The Department recommends any increased assessments be placed on small landowners for the following reasons.

1. Subdivision laws in the State of Montana require that all subdivisions of land comply with the Montana Subdivision and Platting Act. This act applies to parcels of land less than 20 acres. This proposal defines 20 acres as the acreage limit between minimum and per acre fees.
2. Urban development is increasing in areas threatened by wildfires. Fire occurrence surrounding these areas can be attributed to human

EX. 6
3-6-91
SB 165

activity. This proposal shows that fire activity increases as a result of urban and residential development in forested areas.

3. Wildfire occurrence on properties of 20 acres or less represent a significantly higher proportion than acreage protected in those areas.
4. Value per acre of small parcels is considerably higher than value per acre on larger tracts. Small subdivided parcels usually have buildings and other improvements that increase property value. Increased residential development significantly increases the risks to human life and property.
5. In addition to assessments fees, large landowners provide assistance in suppressing wildfires. This assistance includes manpower, equipment, detection, development of water supplies, roads, etc.

The following table shows the total amount required to achieve one-third of the fire budget from private landowners:

	<u>Assessment Proportion</u>	
	<u>FY 92</u>	<u>FY 93</u>
One-third Base Level	\$1,441,648	\$1,441,290
Block 5 & Philipsburg Fire	\$ 34,426	\$ 35,170
State/County Coop Fire	\$ 21,673	\$ 21,684
Capital Equipment	\$ 42,117	\$ 42,117
Structural Fire	\$ 58,500	\$ 58,500
TOTAL	<u>\$1,598,364</u>	<u>\$1,598,761</u>

Provided each modification of the budget is approved, approximately 1.6 million dollar will be assessed private landowners. Current level budgets will not require an immediate increase to the proposed maximum allowable rates. The Department plans on a combination of a \$22.00 minimum and maintaining the 17 cents per acre the Department to generate the necessary revenue. The proposed rate structure of a \$30.00 minimum and 20 cents per acre would allow the department flexibility to fund the fire program without changing the law each legislative session.

**HOUSE OF REPRESENTATIVES
VISITOR REGISTER**

Natural Resources COMMITTEE BILL NO. SJR10
DATE 3-6-91 SPONSOR(S) Mazurck Furt Peck compact

PLEASE PRINT

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PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Susan Cottingham	Reserved Water Rts Comm.	✓	
Jim Jensen	ME7C	✗	

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. HB 906
 DATE 3-6-91 SPONSOR(S) Connelly forestry ext. service

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Stan Brashaw	MTU	✓	
Janet Ellis	MT Audubon	✓	
Max J. Anderson	Montana State University	✓	
Bud Chiril	MT. LOGGING Assoc	✓	
GORDON SANDERS	CHAMPION INTERNATIONAL	✓	
DON SCHILTZ	Bigfork Private Landowner	✓	
Jim Jensen	MEIC	X	
Don Allen	MT Wood Products Assoc	✓	

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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Natural Resources

COMMITTEE

BILL NO. HB 476

DATE 3-6-91

SPONSOR(S) Cohen

Timber Sev. Tax

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PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Stan Bradshaw	NTU	✓	
Eric Fehlig	DOR		
Janet Ellis	MT Audubon	✓	
CAROL MOSHER	MT. CATTLEWOMEN		X
Lorna Frank	MT. Farm Bureau		X
Janet Frank	MSA / MINGA		X
Jimi Jensen	MEIC	X	
KEITH OLSON	MT Logging Assn		✓
Don Allen	MT. Wood Products Assn		✓
SH Buck Bales	MT Timber & Commerce		✓
Dennis Burn	Net to payers Assoc		✓

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**HOUSE OF REPRESENTATIVES
VISITOR REGISTER**

Natural Resources COMMITTEE BILL NO. SB 165
 wild fire protection
 DATE 3-6-91 SPONSOR(S) Harp

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Tim Murphy	DSL	✓	
Steve MARKS	self		✓
Mike Kopitzke	DSL	✓	
Dennis Casey	DSL	✓	
AMON BROOK	MSGA/MWGA	initials	X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.