

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON NATURAL RESOURCES**

**Call to Order:** By **CHAIRMAN DICK KNOX**, on January 15, 1993, at 3:00 p.m.

#### **ROLL CALL**

##### **Members Present:**

Rep. Dick Knox, Chairman (R)  
Rep. Rolph Tunby, Vice Chairman (R)  
Rep. Jody Bird (D)  
Rep. Vivian Brooke (D)  
Rep. Russ Fagg (R)  
Rep. Gary Feland (R)  
Rep. Mike Foster (R)  
Rep. Bob Gilbert (R)  
Rep. Hal Harper (D)  
Rep. Scott Orr (R)  
Rep. Bob Raney (D)  
Rep. Dore Schwinden (D)  
Rep. Jay Stovall (R)  
Rep. Emily Swanson (D)  
Rep. Howard Toole (D)  
Rep. Doug Wagner (R)

**Members Excused:** None

**Members Absent:** None

**Staff Present:** Todd Everts, Environmental Quality Council  
Michael Kakuk, Environmental Quality Council  
Roberta Opel, Committee Secretary

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

##### **Committee Business Summary:**

Hearing: HB 30  
Executive Action: None

#### **HEARING ON HB 30**

##### **Opening Statement by Sponsor:**

**REP. JERRY DRISCOLL, HD 92, Billings,** told the committee he appreciated the opportunity to re-open the hearing on HB 30. (The bill was originally heard January 8, 1993). **EXHIBIT 1**

**Proponents' Testimony:**

REP. DON LARSON, HD 75, Seeley Lake, testified on his own behalf in favor of HB 30. EXHIBITS 1a and 1b He submitted amendments to HB 30 on behalf of REP. JOHN MERCER. EXHIBIT 2

Jerry Sorensen, Planning Director, Lake County Land Services, submitted testimony in support of HB 30. EXHIBIT 3

Dick Wollin, President, Flathead Lakers, Inc., appeared in support of HB 30. EXHIBIT 4

Mona Jamison, Citizen Appointed Member, Environmental Quality Council, told the committee that HB 30 does not preclude development on lake shores. Ms. Jamison stressed the need to pass HB 30 now so that in 15 years lake shore residents would not be appearing before the natural resources committee requesting money for lake shore cleanup.

Brian McNitt, Montana Environmental Information Center, (MEIC), stated strong support for HB 30.

Sanna Kiesling, Helena, appeared in support of HB 30. EXHIBIT 5

Stephen R. McGee, Helena attorney, told the committee he supported HB 30.

Janet Ellis, Montana Audobon Legislative Fund, stated the 50 foot setback requirement represents a minimum distance for lake shore protection.

Elna Darrow, Flathead Basin Commission, submitted testimony in support of HB 30. EXHIBIT 5a

Mike Hutchin, Jerry Newgard and Dave Stipe, Lake County, submitted testimony in support of HB 30. EXHIBIT 5b

**Opponents' Testimony:**

Mike Pichette, Montana Power Company, testified in opposition to HB 30 and submitted amendments to the bill. EXHIBIT 6

REP. MARJORIE FISHER, HD 3, Whitefish, appeared in opposition to HB 30.

Steve Turkiewicz, Canyon Ferry Recreation Association, asked the committee if the Bureau of Reclamation had supremacy in lake shore issues.

Ron Clark, Lakeside, on behalf of Flathead Lake residents, submitted statements from property owners and realtors opposed to HB 30. EXHIBIT 7 Mr. Clark thanked the committee for re-opening the hearing and noted that Flathead Lake residents felt their lake was the crown jewel of water in Montana. He noted there did

not appear to be any public outcry to change the setback footage.

REP. WILLIAM WISEMAN, HD 33, Great Falls, told the committee that his constituents had never heard of the 20 foot setback and therefore believed the requirement applicable only to Flathead Lake residents.

Russ Ritter, on behalf of Inland Properties, stated opposition to the bill as written.

Robert Holding, Thompson Lakes Homeowners Association, told the committee he did not see a need for the 50 foot setback requirement.

Dan L. Averill, Flathead Lake homeowner, stated he felt the deterioration of Flathead Lake was not from construction on the lake. He suggested a minimal deterioration came from septic tanks.

REP. DOUG WAGNER, HD 8, Hungry Horse, questioned whether HB 30 would protect water and noted said he felt the legislation would not save water quality.

Roger Somerville, Flathead Homeowner Association, stated he did not feel HB 30 solved the water clarification problem.

Lowell Fisher, Flathead Lake Association, suggested the setback should remain at 20 feet.

Betsy Allen, representing Walter and Katherine Titus, Seeley Lake, submitted testimony opposing HB 30. EXHIBIT 8

Harry Farrington, Flathead Lake property owner, stated he felt a 50 ft. setback would be excessive.

Bob Scott, Lakeside, opposed HB 30.

The following individuals submitted testimony opposing HB 30:

Virginia D. Hull, Lakeside EXHIBIT 9  
Greg Barkus EXHIBIT 10  
Martin Schrepfer, Lakeside EXHIBIT 11  
Lois Sampson, Kalispell EXHIBIT 12  
Constance Shrepfer, Lakeside EXHIBIT 13  
Charles C. Prindle, Lakeside EXHIBIT 14  
Art Burdi, Lakeside EXHIBIT 15  
Fran and Howard Ruby, Somers EXHIBIT 16  
Dorothy Oftedal, Lakeside EXHIBIT 17  
M. and Ann Hoagland, Somers EXHIBIT 18  
Helen Greve, Somers EXHIBIT 19  
Kathryn Forman, Lakeside EXHIBIT 20  
Nancy Cherot, Kalispell EXHIBIT 21  
Sandra Cherot, Kalispell EXHIBIT 22  
Robert Cherot, Kalispell EXHIBIT 23

Wilmer and Iris Butler, Marina del Rey, CA. EXHIBIT 24  
David and Cheryl McGill, Lakeside EXHIBIT 25  
Robert E. Ivy, Hamilton EXHIBIT 26  
Don Baker, Somers EXHIBIT 27  
Carol Stanley, Kalispell EXHIBIT 28  
Roy Stanley, Kalispell EXHIBIT 29  
Bob Anderson, Flathead Lake homeowner EXHIBIT 30  
Peter Dale, Flathead Lake homeowner EXHIBIT 31  
John L. Greene, Lakeside EXHIBIT 32  
James M. Lavin, Somers EXHIBIT 33  
Christine Palmer, Lakeside EXHIBIT 34  
Stella Mae Lilienthal, Somers EXHIBIT 35  
Raymond and Lois Thom, Kalispell EXHIBIT 36  
Robert J. Scott, Lakeside EXHIBIT 37  
Dennis O. Wright, Butte EXHIBIT 38  
Jerry and Theresa Krier, Lakeside EXHIBIT 39  
Van Kirke Nelson, Kalispell EXHIBIT 40  
Orville S. Solberg, Kalispell EXHIBIT 41  
Greg Greene, Ashley Lake Property Owners Association, Kalispell EXHIBIT 42  
Bruce A. Young, RE/MAX Realty, Lakeside EXHIBIT 43  
John Jellar, Kalispell EXHIBIT 44  
William T. Lincoln, Lakeside EXHIBIT 45

Questions From Committee Members and Responses:

REP. JAY STOVALL asked Mr. Sorensen why there was a need for an additional 30 foot setback. Mr. Sorensen explained that construction of larger boathouses and homes warranted this additional setback footage. He emphasized that 20 feet is not considered a setback zone.

REP. HOWARD TOOLE asked Mr. Sorensen to explain the Lake County rules in relation to development. Mr. Sorensen noted that if the 50 foot setback is adopted, local regulations would have to be amended.

REP. WAGNER asked if the local planning boards had given their approval for this additional setback. Mr. Sorensen replied that the Lake County planning board had lent its approval. He said the Board discouraged golf course construction but encouraged the planting of native grasses.

Closing by Sponsor:

REP. DRISCOLL told the committee he believed the water quality in Flathead Lake is deteriorating. His fear is that, if the water quality problem is not addressed now, when Flathead Lake residents appear before the legislature in years to come, they will not be granted any funding to improve the quality of Flathead Lake.

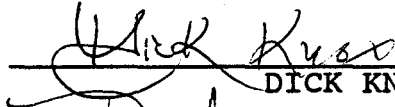
HOUSE NATURAL RESOURCES COMMITTEE

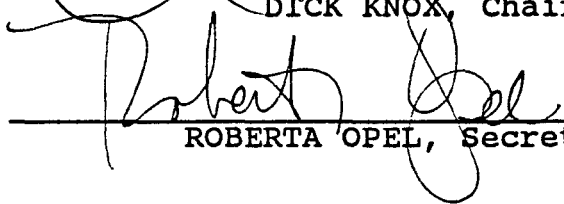
January 15, 1993

Page 5 of 5

ADJOURNMENT

Adjournment: 5:30 p.m.

  
\_\_\_\_\_  
DICK KNOX, Chairman

  
\_\_\_\_\_  
ROBERTA OPEL, Secretary

DK/ro

# HOUSE OF REPRESENTATIVES

Natural Resources

COMMITTEE

## ROLL CALL

DATE 1/15/93 BILL NO. HR 30 NUMBER       

MOTION: Roll call

NAME	AYE	NO
Jody Bird	X	
Vivian Brooke	X	
Russ Fagg	X	
Gary Feland	X	
Mike Foster	X	
Bob Gilbert	X	
Hal Harper	X	
Scott Orr	X	
Bob Raney	X	
Dore Schwinden	X	
Jay Stovall	X	
Emily Swanson	X	
Howard Toole	X	
Doug Wagner	X	
Rolph Tunby, Vice Chairman	X	
Dick Knox, Chairman	X	

(2)



STATE OF MONTANA  
ENVIRONMENTAL QUALITY COUNCIL

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

EXHIBIT #1  
DATE 1-15-93  
HB 30

Deborah B. Schmidt, Executive Director

GOV. STAN STEPHENS  
Designated Representative  
Art Wittich

HOUSE MEMBERS  
Jerry Driscoll, Chairman  
Ed Grady  
David Hoffman  
Bob Raney

SENATE MEMBERS  
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Steve Doherty  
Dave Rye  
Bill Yellowtail

PUBLIC MEMBERS  
Doug Crandall  
John Fitzpatrick  
Mona Jamison  
Helen Waller

January 13, 1993

To: Representative Jerry Driscoll, Chairman  
From: Paul Sihler, EQC Staff *PLS*  
RE: Public Participation in HJR 17 Study

This memo is in response to your request for a summary of how the public contributed to and participated in the Environmental Quality Council's HJR 17 Lakeshore Development study. The study, mandated by the 1991 Legislature through House Joint Resolution 17, requested that the EQC examine "the need for and the nature of uniform state standards regarding the protection and appropriate development of lakeshores." In doing so, the EQC was to consult with "federal, state, tribal and local government officials; industries; citizens; and other persons or groups with expertise in the regulation and development of lakeshores."

<u>DATE</u>	<u>ACTIVITY</u>
Aug. 1991	Staff travels to Flathead area to meet with Board of Directors of Flathead Lakers, Lake and Flathead County planners, owner of Holland Lake Lodge, Seeley Lake Ranger District (USFS), Rep. Don Larson, and Salish and Kootenai Tribe.
Sept. 13, 1991	EQC meeting in Helena. Lakeshore study plan adopted that calls for public hearings and surveys. Meeting agenda sent to 289 people on EQC mailing list. Public testimony solicited.

<u>DATE</u>	<u>ACTIVITY</u>
Oct. 1991	Local governing body survey mailed to each county in the state to determine which counties have adopted lakeshore regulations and management issues and problems that confront them. 35 counties respond.
Nov. 1, 1991	EQC meeting in Helena. Lakeshore panel with Dick Wollin, President of Flathead Lakers; Scott Hollinger, RE/MAX of Bigfork; Forrest Sanderson, Lake Co. Planner; and Loren Bahls, DHES. Meeting agenda sent to 289 people on EQC mailing list. Public testimony solicited.
Nov. 1991	Citizen survey mailed to 220 individuals in Northwestern Montana to identify concerns about lakeshores. Survey list included realtors, chambers of commerce, conservation districts, legislators, and members of the Flathead Lakers.
Feb. 18, 1992	EQC meeting in Helena. Meeting agenda sent to 289 people on EQC mailing list. Public testimony solicited.
Apr. 1, 1992	Lakeshore subcommittee conducts public hearing at 7:30 p.m. in Kalispell. Attended by 70 people. Announcements sent to 400 people on EQC and lakeshore mailing lists. Press releases sent to: Lake County Leader, Whitefish Pilot, Kalispell News, Bigfork Eagle, Hungry Horse News, Char-Koosta News, Daily Interlake, and KOFI and KJRR radio.
Apr. 2, 1992	Lakeshore subcommittee meets in Polson with Mayor of Polson; representatives from Lake County Commission, Polson City Council, and Salish and Kootenai Tribe; Rep. John Mercer; and interested citizens.
Apr. 2, 1992	Lakeshore subcommittee conducts public hearing at 7:30 p.m. in Helena. Attended by a dozen people.
Apr. 3, 1992	EQC meeting in Helena. Meeting agenda sent to 289 people on EQC mailing list. Public testimony solicited.
May 4, 1992	Informational mailing on status of study sent to 160 people on lakeshore study mailing list.



<u>DATE</u>	<u>ACTIVITY</u>
May 14, 1992	EQC tours Lindbergh Lake and meets with representatives of homeowners group.
May 15, 1992	EQC meeting in Bigfork. Focus of meeting is lakeshore study. Meeting agenda sent to 289 people on EQC mailing list and Flathead area newspapers. Public testimony solicited.
Aug. 25, 1992	EQC meeting in Helena. Meeting agenda sent to 289 people on EQC mailing list. Public testimony solicited.
Sept. 1, 1992	EQC mails out summary of draft HJR 17 study recommendations to 160 people on the lakeshore study mailing list for review and comment. 31 responses received.
Sept. 11, 1992	Staff meets with Fish, Wildlife, and Park Comm.
Sept. 23, 1992	Staff meets with subcommittee of Flathead Basin Commission in Kalispell.
Oct. 6, 1992	EQC meeting in Helena. Meeting agenda sent to 289 people on EQC mailing list. Press release sent to: Lake County Leader, Whitefish Pilot, Kalispell News, Bigfork Eagle, Hungry Horse News, Char-Koosta News, Daily Interlake, and KOFI and KJRR radio. EQC reviews and considers responses from September 1st mailing. Public testimony solicited.
Nov. 18-19, 1992	EQC meeting in Helena. Meeting agenda sent to 289 people on EQC mailing list. EQC finalizes HJR 17 lakeshore study recommendations. Public testimony solicited.

In addition, articles on the study periodically have appeared in newspapers around the state, primarily in the Flathead area. Copies of several stories are attached.

Also, the Flathead Lakers newsletter, the Flathead Lake Monitor, carried stories on the status of the HJR 17 study in four out of the five issues published since January 1992. The newsletter has a circulation of 700 people. Copies of two articles are attached.



STATE OF MONTANA  
**ENVIRONMENTAL QUALITY COUNCIL**

STATE CAPITOL  
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(406) 444-3742

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Mona Jamison  
Helen Waller

FOR IMMEDIATE RELEASE  
MARCH 17, 1992

CONTACT: PAUL SIHLER  
444-3742

Montana citizens will have an opportunity to express their views to several members of the Environmental Quality Council on how to appropriately protect and develop Montana's lakeshores during public hearings in Kalispell and Helena. The Kalispell hearing will be on Wednesday, April 1, 7:30 p.m., at the Courthouse East conference room #1, 725 Fifth Avenue East. The hearing in Helena will be on Thursday, April 2, 7:30 p.m., in room 104 of the State Capitol Building.

The purpose of the hearings is to solicit public comment on whether current lakeshore regulations achieve a balance between the protection of private property rights and the need to maintain water quality and other attributes of Montana's lakes. The hearings are part of a one and one-half year Environmental Quality Council study of lakeshore development. The Council will present its findings and recommendations to the legislature in January, 1993.

Thirteen Montana citizens make up the bipartisan Environmental Quality Council, a committee of the state legislature. Four are state senators; four are state representatives; four are members of the public; and one, a non-voting member, represents the governor.

### END ###



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March 17, 1992

Dear Interested Person:

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If you would like additional information about the public hearings or have any questions about the EQC's lakeshore development study, please contact Paul Sihler at 444-3742.

EXHIBIT 1  
DATE 1-15-93  
HB 30



STATE OF MONTANA  
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Helen Waller

**FOR IMMEDIATE RELEASE**  
**SEPTEMBER 28, 1992**

**CONTACT: PAUL SIHLER**  
**444-3742**

**EQC Lakeshore Development Study Continues** -- The Montana Environmental Quality Council will be meeting on Tuesday, October 6, 1992 in Room 317 of the State Capitol, Helena. The EQC will be considering public comments that have been received on the Council's draft lakeshore legislation, including a proposal to expand the width of the lakeshore protection zone from 20 feet to 50 feet. The EQC will also review comments received on draft options for the abatement of noise from motorboats and jet skis.

The draft legislation and draft noise abatement options are components of a one and one-half year Environmental Quality Council study of lakeshore development. The Council's findings and recommendations will be presented to the legislature in January, 1993.

Thirteen Montana citizens make up the bipartisan Environmental Quality Council, a committee of the state legislature. Four are state senators; four are state representatives; four are members of the public; and one, a non-voting member, represents the governor.

### END ###

(Fri 7:30)  
MAR 27 1992

SUPERIOR CLIPPING SERVICE  
Billings, MT 59105-0789

## EQC To Hear Local Views

Flathead area residents will have an opportunity to express their views to several members of the Environmental Quality Council on how to appropriately protect and develop Montana's lakeshores during a public hearing in Kalispell. The hearing will be on Wednesday, April 1, 7:30 p.m., at the Courthouse East conference room #1, 725 Fifth Avenue East.

The purpose of the hearing is to solicit public comment on whether current lakeshore regulations achieve a balance between the protection of private property rights and the need to maintain water quality and other attributes of Montana's lakes. The hearing is part of a one and one-half year Environmental Quality Council study of lakeshore development. The council will present its findings and recommendations to the legislature in January, 1993.

Thirteen Montana citizens make up the bipartisan Environmental Quality Council, a committee of the state legislature. Four are state senators; four are state representatives; four are members of the public; and one, a non-voting member, represents the governor.

BIG FORK EAGLE  
Big Fork, MT 59911  
(Wed. 1,950)

MAR 25 1992

SUPERIOR CLIPPING SERVICE  
BILLINGS, MT 59105-0789

MAR 26 1992

SUPERIOR CLIPPING SERVICE  
Billings, MT 59105-0789

## Lakeshore hearing set

KALISPELL - Flathead residents will have an opportunity to express their views to several members of the Environmental Quality Council on how to appropriately protect and develop Montana's lakeshores at a scheduled public hearing in Kalispell. The hearing will be on Wednesday, April 1, at 7:30 p.m., at the Courthouse East conference room #1, 725 Fifth Avenue East.

The hearing is being held to solicit public comment on whether current lakeshore regulations achieve a balance between the protection of private property rights and the need to maintain water quality and other attributes of Montana's lakes. The hearing is part of a one and one-half year Environmental Quality Council study of lakeshore development. The Council will present its findings and recommendations to the legislature next January.

HUNGRY HORSE NEWS  
Columbia Falls, MT 59912  
(Thursday 7,400)

MAR 26 1992  
SUPERIOR CLIPPING SERVICE  
Billings, MT 59105-0789

## Water meeting Wednesday in Kalispell

KALISPELL - A meeting next Wednesday in the Courthouse East conference room 1. The purpose is to gather input on whether the current law achieves a balance between protection of private property rights and the need to maintain water quality. The forum is an Environmental Quality Council meeting at 7:30 p.m.

## Lakeshore meeting slated April 1

The public will have an opportunity to state its views to several members of the Environmental Quality Council on how to appropriately protect and develop Montana's lakeshores during a public hearing in Kalispell.

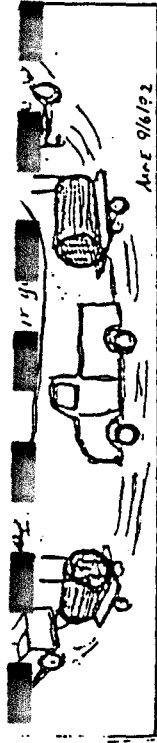
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The purpose of the hearing is to solicit public comment on whether current lakeshore regulations achieve a balance between the protection of private property rights and the need to maintain water quality and other attributes of Montana's lakes.

The hearing is part of a one and one-half year Environmental Quality Council study of lakeshore development.

The Council will present its findings and recommendations to the legislature in January, 1993.

EX-151  
DATE 1-15-93  
4330



Art 9/8/92



Gary Noland, Editor  
Millie Jette, Advertising  
PUBLISHER'S NOTICE

Annual Winning Newspaper  
MONTANA  
1988

Seeley/Swan Pathfinder (ISSN 0009-9197) is published every Thursday by Pathfinder Press, Inc., Chamber of Commerce Building, Highway 83, Seeley Lake, MT 59868 (Ph. 406/677-2022). Area served is Seeley Lake and neighboring communities. Distribution is by mail subscription (\$16 per year in Montana; \$18 per year elsewhere in U.S.) and by newsstand sales. Ad deadline is 4:00 p.m. on Friday prior to publication. News deadline is noon Monday prior to publication. Second-class postage paid at Seeley Lake, MT. Postmaster: Send address changes to: Seeley/Swan Pathfinder, P.O. Box 702, Seeley Lake, MT 59868-0702.

## COMMUNITY CALENDAR

Community members are invited to submit dates, times and locations of events, meetings and other happenings. Submission deadline is Friday, 5 p.m.; call 677-2022.

### EVENTS:

St. Jude Bike-a-Thon, 9/19.

### PUBLIC MEETINGS:

S.L. GRU, 3rd Wed, 7:30pm, fire hall  
Condon Comm. Club, 3rd Thur, 8pm  
S.L. Chamber of Commerce, 3rd Thur, 7am, Filling Station  
Swan Valley Comm. Club, 4th Mon, 7:30pm, Comm. Hall  
S.L. Water Bd., 4th Wed, 7pm, REA Bldg.  
S.L. Refuse Bd., 4th Tues, 7pm, Filling Station  
Lions Club, 4th Wed, S.L. Comm. Hall  
S.L. Sewer Dist., 4th Tues, 7pm, REA Bldg.  
Winefest mtg., 9/23, noon, D.F. Chicken, Everyone welcome

### WEEKLY MEETINGS:

**Alcoholics Anonymous** (help for those with a suspected drinking problem)  
• Condon: Every Thurs, Swan Valley School, 7:30pm.  
• Seeley Lake: Every Sun. & Wed 7-8pm; 449 Grizzly Rd, Seeley Lake. For info: 677-2258 or 677-2902. 1st & 3rd Sat each month-candlelight mtgs. at 9pm • Polomoc: 244-5204  
**Alateen** (help for the tagers of alcoholic families) Hotline 677-2536 • **Alanon** (help for family or friends of an alcoholic)  
• Seeley Lake: every Monday 8-9:30 pm, 449 Grizzly Drive. For info: 677-2817 or 677-2892. In Polomoc, call 244-5458.  
Pinchle, every Mon, S.L. Comm Hall.

Missoula County Commissioners  
Public Mtg. every Weds, Courthouse Annex, Room 201, Missoula, 1:30pm.  
Seeley Lake Women's Club - Mtg. every Tues, S.L. Comm. Hall, 1:30pm.  
I.O.P.S. Mtg. every Thurs, Duck Inn office, Seeley Lake, 10am.  
Killing Group, Wed, 1 pm, weekly, Seta Sencil Bldg.  
Cards, Mon, weekly, 1pm, Seta Sencil Bldg.

### REFUSE DISPOSAL SITE:

Summer hours - Wed, Sat & Sun: 9am-5pm

### LIBRARIES:

Seeley Lake Public Library  
(Seeley/Swan High School)  
Monday-Friday, 10-3 pm (Lunch 11:30-12:00)  
Wednesdays 10-8 p.m.  
Saturdays 10-3 p.m.  
Swan Lake Library (Swan Lake)  
Weds: 10am-6pm; Sat: 10am-3pm.  
Swan Valley Library (Condon)  
Weds: 10am-6pm; Sat: 10am-3pm.  
Blood Pressure clinic, 2nd Wed, 2-4, open to everyone

Genealogy Library LDS Church Weds: 10am-7pm. Public welcome

### EMERGENCY: Dial 911

If you live in Seeley Lake, Condon, Greenough or Ovando.  
Swan Lake residence.  
866-2324 (Fire, GRU or Search & Rescue) or 1-752-6161 for Sheriff

From previous FW&P releases, we've learned that mountain lions, also called "cougars," weigh between 80 and 180 pounds, depending on sex and age, but are able to take down prey as much as five times their size. "It is not unusual for an adult cougar to take down a mature elk weighing 500 pounds or more," they say.

For the record, we plan to co-exist along with a black bear and a cinnamon colored bear that we've seen in our driveway in the past couple weeks. After all, they were here first. We do hope they share the same thoughts.

—Gary Noland

## Public comments sought on watercraft noise law

by H.D. 65 Representative  
Don Larson

The Environmental Quality Control (EQC) Commission is currently reviewing recommendations to the 1993 Legislature for changes in state law to control noise from watercraft operating on Montana's lakes. If you are concerned about noise from boats and other watercraft, or if you believe additional regulation is unwarranted to control noise, the EQC needs to hear from you.

The options under consideration by the EQC are three: (1) to clarify the authority of the Fish, Wildlife and Parks Commission to both regulate motor-

propelled water craft and close cer wats to those craft; (2) to provide special regulations for the operation personal watercraft (jet skis); and (3) provide for local options for noise abatement based on the configuration of the local water body.

"If local people wish to comment they can get detailed copies of the options being considered by the EQC from me," Larson said. If they wish comment directly, they may write to Environmental Quality Control, Capitol Station, Helena, MT 59620. They may also comment by telephone to 1-800-333-3333. Sincerely, E.Q.C. staff person, at 444-3 during regular office hours. Deadline comment is September 23.

### High School Scenes

## Public supports hot lunch

by Addriene Marx

Also, the school board has voiced strong commitment to the hot lunch program at Seeley Swan. As chairperson Karen Ward stated, "We all know the program at Seeley is one of the prides in the state and that it is a source of pride for our school system." With a pride of \$80/day in this high school, it is likely that MCHS support will continue if all avenues of budget trimming were not pursued a building level. The hot lunch bud-

Monday, September 14th was the annual school board meeting held in Seeley Lake. Over 80 people turned out to show their support of the hot lunch program and concern that activities and bus transportation were not changing.

Concerns over any changes that would come from the study of 7th period as an activity period and checking

## EQC Studying Lakeshore Development

### President's Corner

*Continued from page 1*

Is there a role for the Lakers to play in monitoring lake waters? Most certainly. Supporting research and education through a "Futures Fund" is one idea.

### Key words:

Flathead

Ecosystem

Are Montana's lakes being appropriately protected and developed? Is the high quality of our water being maintained? Are current laws that regulate lakeshores consistent from one administrative jurisdiction to another? Are they effective? The 1991 Legislature charged the Montana Environmental Quality Council (EQC) with the responsibility of studying these and other issues related to lakeshore development and management. The Council will make its recommendations for any policy or legislative changes to the Legislature in January, 1993.

Thirteen Montana citizens make up the bipartisan EQC. Four are state senators; four are state representatives; four are members of the public; and one, a non-voting member, represents the governor.

The Flathead Lakers have been actively following and involved in the EQC study. The Board met with an EQC staff member to express its concerns about lakeshore development, and President Dick Wollin later represented the Flathead Lakers on a panel discussion at an EQC meeting

### Survey: Water Quality Perceived to be a Problem

To determine what concerns the public has with lakeshore management and regulation, the EQC recently completed a survey of 124 people, residing primarily in northwestern Montana. The results indicate that respondents believe water quality is the biggest issue facing Montana's lakes. Eighty-eight percent of the respondents said water quality was a problem, and nearly 60% thought water quality in the lakes they use most frequently had declined over the last five years. Sewer and septic disposal was mentioned most frequently as the issue the Council should address in its study. Other issues of concern identified include noise from motor boats and jet skis, land use controls, rate of development, and erosion.

Survey respondents also expressed dissatisfaction with current lakeshore management and regulation. When asked if Montana's lakeshores are being properly developed and managed, 60% responded "no." Slightly more than half of all respondents believe that current statutes and regulations inadequately regulate development (in contrast, only 6% think development is overregulated).

### EQC Seeks Public Input

The EQC will be holding two public hearings—one in Kalispell and the other in Helena—to solicit public involvement in its lakeshore study. The EQC wants to know what you think should be done to improve the management and regulation of Montana's lakes and lakeshores. The Kalispell hearing will be held on Wednesday, April 1 at 7:30 p.m. in Courthouse East, conference room #1. The Helena hearing will be held on Thursday, April 2 at 7:30 p.m. in the Capitol Building, room 104. Please mark your calendars!

To have your name placed on the EQC's lakeshore mailing list, for copies of the survey results, or for additional information on the public hearings, please contact Paul Sihler, Environmental Quality Council, State Capitol, Helena, MT 59620, or call 444-3742.

**GO!**

Maintaining our emphasis on the need to focus on the Flathead ecosystem is crucial—we are part of an interdependent ecosystem where changes in one part of the system affect other parts in unexpected ways. Supporting the development of other lake associations and monitoring programs in the basin and on a state-wide basis would be appropriate. And whether or not the Lakers adopt a structured program, perhaps an Adopt a Beach or Lakewatch, all of us have a role to play in using best management practices in daily use of the lake and the land around it.

The Lakers board acts as a policy making body, governing the organization on behalf of its members and serves as an advocate in your behalf. The Board has the responsibility (keeping in mind it is a citizen board) of providing information to help you understand your stewardship roles in protecting the lake. At the same time, we need to know your ideas and concerns. Let us hear from you. And mark the weekend of July 11 on your calendar—the date of the Laker annual meeting!



Nearly 4,000  
years ago in  
China,  
Emperor Ta-Yu  
recognized the  
importance of  
a conservation  
practice that  
modern  
scientists  
call the "top-  
down" or  
watershed  
approach.  
To protect  
your rivers, the  
emperor said,  
  
first  
protect  
your  
mountains.

Northwest Energy  
News

May/June 1992

## Rocky Mountain Environmental Directory

Need to know the name of the secretary of the Clark Fork-Pend Oreille Coalition? Whether people from other states can join a river-using club in Wyoming? How long the Flathead Lakers has been organized? The Lakers office now has a copy of the *Rocky Mountain Environmental Directory*. This directory contains listings of citizen groups, government agencies and others concerned with environmental education and environmental action in the states of Colorado, Idaho, Utah, Wyoming and Montana. Each listing contains the organization's name and address, a description of its purpose and activities, the year when it was formed, whether its focus is local, regional or national, its sources of funding, whether it offers memberships and their rates, the number of paid staff, the name and frequency of publication of newsletters, etc. When you have an opportunity to use any information from this directory, call Robin Steinkraus at 982-3577. Yes, of course the Flathead Lakers is included in this very complete directory.



## EQC Recommendations--Amendments Needed

Montana Environmental Quality Council spent the last two years engaged in a study of existing lakeshore statutes, to check their adequacy in action and propose corrective legislation if necessary. Lakers were involved in several levels of the study. Results have just been published and are available from the EQC office in Helena. Call Paul Sihler at 444-3742 or write EQC, State Capitol, Helena, MT 59620. Ask for EQC HJR 17 Lakeshore Study Final Report.

Here is a partial summary of the recommendations:

### Lakeshore Development Statute

Provide a local option for extending lakeshore regulations to reservoirs and constructed impoundments.

Amend the lakeshore statute to provide authority for a local governing body to establish a lake-specific advisory committee for the purpose of assisting with the administration of the lakeshore statute.

Clarify that restoration may be required for unauthorized work on a lakeshore

Motorized Watercraft No change should be made to current regulations for motorboat noise abatement unless the change is initiated by legislators

from northwest Montana.

Water Quality The width of the lakeshore protection zone should be expanded from 20 feet to 50 feet.

Federal funding should be sought for the US Bureau of Reclamation to install a selective water withdrawal device at Hungry Horse Dam.

The Water Quality Bureau's request for Resource Indemnity Trust funding to establish a statewide lakes management and volunteer monitoring program should receive thorough consideration by the Legislature.

A process should be convened to develop a strategic, comprehensive statewide monitoring plan that identifies monitoring priorities, data gaps, and mechanisms for administrative coordination for water quality and water quantity monitoring of Montana's lakes, streams and groundwater. The process should involve federal and state agencies, Montana's University system, FBC and others, and take place during the 1993-95 interim.

Shoreline Erosion To successfully carry out their responsibilities for erosion prevention and abatement, conservation districts may require more \$\$.

EQC recommended a search for additional mechanisms to fund these responsibilities.





# EQC hears an earful about boat noise

By DON SCHWENNESEN  
of the Missoulian

5/19

**BIGFORK** — The Montana Environmental Quality Council waded into lake-shore regulation issues on Friday, eying potential recommendations that could affect boat noise, shoreline construction, jet-boat tours on rivers and shoreline erosion.

Meeting in Bigfork, on the edge of Flathead Lake, the council heard calls for tougher laws from residents still fuming over noise from jet skis and a recent proposal for jet-boat tours on the upper Flathead River.

New boat-noise limits went into effect last summer on Flathead, Echo and Swan lakes, but some said the limits are needed on other lakes, too.

Fish, Wildlife and Parks Warden Capt. Ed Kelly of Kalispell said compliance with the new noise rules was good last year, and most boat-ers were eager to comply once the rules were explained.

But Ken Reick of the Echo Lake Home Owners said more needs to be done to advise boaters and jet skiers about the new rules, under which violators can be charged with disorderly conduct for creating a public nuisance.

Reick said vacationers renting homes on Echo Lake had demanded refunds and left because of the noise.

"This is not a public nuisance," he said. "When your home is no longer a sanctuary" due to shoreline noise, "this is assault with a capital A."

But later, reviewing criminal penalties for violations of the state stream protection law, the council's staff suggested civil or administrative penalties instead.

State Sen. Steve Doherty, D-Great Falls, said he had successfully defended two accused stream violators because the prosecution couldn't prove criminal intent.

Bonnie Ellis, a Yellow Bay resident who helped lead the campaign for noise limits, said home owners from Georgetown, Inez, Seeley and other lakes were angry at not being included in the 1991 noise legislation.

## Council seeks funds for dam upgrade

By DON SCHWENNESEN  
of the Missoulian

**BIGFORK** — The state Environmental Quality Council voted on Friday to ask for congressional help in restoring funding to upgrade Hungry Horse Dam so its operators can control the temperature of water spilled from the dam.

Newer Libby Dam was built with that capability, and the Kootenai River below it is now producing world-class record trout.

Hungry Horse, two decades older than Libby, was built without "selective withdrawal," which allows dam operators to draw water from different depths of the reservoir and match temperatures to those needed for the downstream fishery.

A Kalispell regional fisheries official reported last week that \$12.5 million budgeted for selective withdrawal at Hungry Horse by the U.S. Bureau of Reclamation this year was scratched at bureau

headquarters due to lack of support.

Many Flathead residents were unaware that the budget process had begun for the dam modification.

Brian Maroltz, fisheries program officer for the Department of Fish, Wildlife and Parks' Kalispell region, told a public meeting on Hungry Horse operations last week that the Flathead River fishery below the dam means roughly \$1.4 million annually to the Flathead economy.

Selective withdrawal could boost the fishery two to five times, he said.

The council voted on Friday to direct its staff to look into the situation and send letters to the congressional delegation asking for their help in securing funding for the dam work.

Dick Wollin, president of the Flathead Lakers, said later that he understood Sen. Conrad Burns, R-Mont., had already indicated willingness to take the lead.

Rep. Jerry Driscoll, D-Billings, council chairman, directed the staff to draft recommendations for extending boat-noise limits and operating rules to rivers and other lakes; providing options for local regulation; and limiting motor sizes or boat speeds on small lakes or close to shore.

The EQC was also favorable toward extending local lake-shore development jurisdiction to 50 feet from shore, instead of the current 20 feet.

In another matter, Doug Averill of Flathead Lake Lodge recommended boat motor modifications to prevent fuel spillage from vent valves, and he asked the council to examine new federal rules requiring bulk fuel tanks at marinas to be buried on shore, where underground leaks would go undetected.

"It makes absolutely no sense to me," he said.

**Columbia Falls** resident Loren Kreck urged noise limits on rivers as well, including the upper Flathead, where a jet-boat tour service proposed earlier this year drew protests over potential noise, bank erosion and wildlife disturbance.

"It's going to be the only protection we have on these rivers," he said.

Hank and Sue Schlueter, Sunset Bay residents on Flathead Lake, urged a no-wake speed zone around the entire lake, within 100 to 200 feet of the shore, to protect swimmers and nesting waterfowl.

"It's not safe to go out swimming in front of our place because these boats come so close to shore," she said.

Though stopping short of ordering draft legislation, the EQC asked for detailed staff proposals that could lead to a bill or bills in several areas.

# Residents spill lake concerns

By DON SCHWENNESEN  
of the Missoulian 4/2

KALISPELL — Shoreline erosion, jet boats, noise pollution, boaters who harass waterfowl and parks without bathrooms are among threats to Montana lakes and rivers, Flathead Valley residents told a legislative panel Wednesday night.

Several said state laws should be broadened to protect the shorelines of reservoirs and rivers along with lakes.

More than 50 people, including six state legislators, attended one of two hearings held by the state Environmental Quality Council and conducted by a panel of three legislators.

The EQC is reviewing how state lake pro-

tection laws are working and will make recommendations to the next legislature.

Whitefish Lake resident Jim Stack said a new noise-control law for Flathead, Swan and Echo lakes isn't working and should be replaced by requirements that fast or noisy boats maintain minimum distance from shore.

Real estate broker Elsa Putzier described jet skiers racing through Flathead River waterfowl nesting areas, and she warned of further damage from planned commercial jet boat tours on the river.

"It appears nobody is in a position to say no to this jet boat," she said. "There must be some way we can put someone in control of the Flathead River shores."

Similar warnings came from a resident

who said a jet ski recently came dangerously close while he and his wife were kayaking, and the operator declared there was no law against it. "I'm for development," he said. "(But) the very reason I'm here will be lost within a very few years unless it's controlled."

"I've been impressed by the intelligence of the people in this state," said a former Pittsburgh woman married to a Montanan. "I can't believe the people in this room aren't intelligent enough to protect the things they care about."

But Foy's Lake resident and Kalispell businessman Frank Thomas said more law won't help if existing ones aren't enforced. He complained about sanitation problems at a county park on Foy's Lake that has no bathrooms in spite of the large crowds it draws.

(Thursday 7:40)  
APR 02 1992

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environmental  
Protection

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# Opponents aim to torpedo jet boat plan

By LYNNETTE HINTZE  
Staff Writer

A wave of protest over proposed jet boat tours on the Flathead River was expected at a state Environmental Quality Council meeting called Wednesday night in Kalispell to discuss lakeshore development.

Meanwhile, the Oregon man who wants to operate the 12-passenger excursion boat is miffed at the growing opposition against his venture.

"I can't understand the amount of concern over such a small proposal," said Tim Arntzen, a 31-year-old lawyer from Wedderburn, Ore., who has already purchased the boat and is working toward approval from governing agencies.

"My intention has never been to run roughshod over the people," Arntzen said.

Local opponents cite potential noise pollution, soil erosion and disturbance to waterfowl breeding grounds as their main objections to the jet boat.

"What about the noise impact?" questioned Dr. Loren Kreck, who lives along Flathead River in Columbia Falls. "There should be limitations on how much noise people should have to put up with."

Arntzen said his boat will operate below state noise regulations, which allow up to 90 decibels when the boat motor is measured at an idle. "I presume I could come around 85 (decibels) quite easily," he said.

lakeshore development.

"I have a hard time differentiating between issues of lakes and issues of rivers," Sihler said.

Putzier worries about how the jet boat will affect birds that nest along the Flathead River. A Department of Fish, Wildlife and Parks biologist believes, however, that impact to waterfowl would be minimal.

FWP inventory of wildlife along the stretch of river in question shows a "fairly low" density of Canadian geese, said biologist Dan Casey, and nesting is over by early May.

"Generally, if they're not flushed off the nest, it's not a problem," Casey said.

Casey is concerned about a bald eagle nest in the proposed boating area. Eagles would be susceptible to the disturbance a jet boat could cause, and they nest until the first week in July.

Arntzen said while he was boating on the Flathead River last October, he was able to come within 20 to 30 feet of the eagle.

Enough, what I've found here is that power

Arntzen plans to run one excursion a day round-trip from Spruce Park at Evergreen to Badrock Canyon near Hungry Horse during the off-season months, and twice daily during the summer tourist season. He wants to find a place to stop at Columbia Falls during the four-hour tour, to allow passengers a snack and restroom break.

Arntzen said he has been in contact with Polson developer C.D. Peterson, who plans to build a 150-unit recreational vehicle park along Flathead River at Columbia Falls, and has discussed the possibility of stopping there.

"My goal is scenic, relaxing tours for my customers," Arntzen said. "If I go speeding up the river, my tours won't be successful."

The average speed of his boat will be 15 to 18 miles per hour, Arntzen said. The 22-foot boat would also be painted neutral colors to blend in with the environment.

Elza Putzier, a local Realtor who lives along the river said she wants to find out who is in charge of protecting the river shores and waterfowl breeding grounds. She spearheaded an effort to get area residents to voice their concerns at last night's EQC meeting.

"This is not a war," Putzier stressed. "It's more protection and concern. I feel we need awareness and laws."

EQC Resource Scientist Paul Sihler said residents' comments would be taken into consideration as relevant concerns for a study the state agency is doing on

**Please see Page 11**

boats allow us to come in fairly close to wildlife," he said.

Arntzen, who grew up in the resort business, works summers for a commercial excursion boat tour company on the Rogue River in Oregon, similar to what he's proposing for the Flathead River.

"I work every day with canoeists, rafters, drifters," said Arntzen, adding he believes all can coexist on the river. "And I've operated with a perfect record. I can verify that."

Soil erosion is another issue surrounding the project. The Flathead Conservation District recently denied Arntzen's plan for a 140-foot dock at Spruce Park and told him he'll need a modified design. Farmers, particularly south of Kalispell near Flathead Lake, say their river banks are already washing away, and such a boat would make matters worse. The jet boat would travel to Flathead Lake to obtain fuel.

"A lot of people don't realize what the wake is doing," said farmer Harry Woll.

Arntzen considers the approximate two-foot high wake his boat would create "quite high."

If I go speeding up the river, my tours won't be successful.  
—Tim Arntzen

1-15-93

HB 30

EXHIBIT 1A  
DATE 1-15-93  
HB HB 30

Testimony of Don Larson before the House Natural Resources Committee on HB 30

For the Record my Name is Don Larson, House District 65, which includes Seeley Lake in Missoula County.

I appear on my own behalf as a strong proponent of this legislation. I can cite first-hand accounts of the effects of poor lakeshore development. I have lived near Seeley Lake for the past 15 years, and I build docks in the area lakes up there, so I can show you dozens of instances where poor development practices are causing water pollution and shoreline erosion.

It is interesting to me that this legislation, the result of a two-year study, emerges just weeks after a report detailing the deterioration of Flathead Lake water quality appeared in the newspapers. The legislation is important and timely.

It is when the public fails in its responsibility to protect our natural resources the government must step in and assume management responsibilities. This is such an instance. House Bill 30 merely gives local government authority management control over our shorelines. It empowers them to permit building activities which may adversely affect shorelines and water quality. It is not an onerous bill. It is a rational response to what the Environmental Quality Council saw in its study of Montana's lakeshores--a consistent deterioration in lakeshore and water quality as a result of poorly-managed development activity.

If you think this management activity is too costly, think ahead, please, to the cost of retrofitting houses with state-of-the-art septic disposal systems, of cleaning up the pollution caused by poorly-designed and poorly-planned construction.

This is an ounce of prevention, and I strongly urge that you stay with your original do pass recommendation. Thank You.



*The Big Sky Country*

EXHIBIT 12  
DATE 1-15-93  
HB 30

## MONTANA HOUSE OF REPRESENTATIVES

REPRESENTATIVE DON LARSON

HELENA ADDRESS:  
936 CANNON  
HELENA, MONTANA 59620  
(406) 442-9734

HOME ADDRESS:  
P.O. BOX 285  
SEELEY LAKE, MONTANA 59868  
(406) 677-2570

COMMITTEES:  
AGRICULTURE  
BUSINESS & INDUSTRY  
HIGHWAYS & TRANSPORTATION

### MEMORANDUM

TO: Members, House Natural Resource Committee  
FROM: Representative Don Larson  
RE: House Bill 30  
DATE: January 18, 1993

Article IX of the Montana Constitution states, in Section 1:  
"Environment and Natural Resources... (1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations. (2) The legislature shall provide for the administration and enforcement of this duty."

Ask yourself, is House Bill 30 so onerous it adversely affects personal property rights? I do not believe it is. I believe persons fortunate enough to be able to afford lakeshore property have an obligation even greater than most Montana citizens to be caretakers of that property.

You have a duty to ensure that obligation is fulfilled. I hope you consider that when you recommend passage of this bill to the 53rd Montana Legislature.

DL:vn

Amendments to House Bill No. 30  
First Reading Copy

Requested by Rep. Mercer  
For the Committee on Natural Resources

Prepared by Paul Sihler  
January 15, 1993

1. Page 1.  
Following: Line 12  
Insert:

"STATEMENT OF INTENT

In providing governing bodies with a local option to change the definition of a lakeshore from 20 feet to a maximum of 50 feet above the high-water elevation, it is the intent of the legislature that the governing body not automatically exclude all development within this zone. Rather, the lakeshore is intended to be a zone of closely managed activity where proposed development is reviewed and approved by the governing body pursuant to local regulations adopted under Title 75, chapter 7, part 2."

2. Page 1, line 17.  
Following: "75-7-203"  
Insert: "and [section 8]"

3. Page 2, line 5.  
Following: "~~20~~"  
Strike: "50"  
Insert: "20"

4. Page 5.  
Following: Line 25.  
Insert:

"NEW SECTION. Section 8. Change in width of lakeshore zone -- local option. (1) A governing body may, through the procedures in subsection (2), change the definition of a lakeshore in 75-7-202 from 20 horizontal feet to a maximum of 50 horizontal feet from the high-water elevation.

(2) When changing the definition of a lakeshore under subsection (1), a governing body shall:

(a) provide public notice pursuant to 7-1-4128 for a municipality or 7-1-2121 for a county;

(b) conduct a public hearing according to the procedures in 7-1-4131; and

# LAKE COUNTY LAND SERVICES

## PLANNING AND SANITATION

106 Fourth Avenue East  
Polson, Montana 59860-2175  
Telephone (406) 883-6211

EXHIBIT 3  
DATE 1-15-93  
HB 50

January 14, 1993

Chairman Dick Knox  
House Natural Resources Committee  
State Capitol  
Helena, Montana 59620

Re: House Bill 30

Dear Chairman Knox:

I testified in favor of this bill on January 8, 1993 because it is a positive approach to lakeshore protection. Since that time, I have been made aware of what appears to be substantial opposition to the proposed legislation, especially the provision to change the definition of lakeshore from 20 to 50 feet. Since I have been involved in administering the existing lakeshore statute on Flathead Lake for many years, my Representatives, Mr. Mercer and Mr. Brandewie, have referred a number of people who have concerns about the bill to me. I want to highlite some comments I've heard over the last few days and offer a response for your consideration.

1. This bill will require removal of homes in the lakeshore.

The present regulations do not require removal of existing homes within the present lakeshore. In many cases, people have been granted permits to expand these existing homes. The same policy will apply under H.B. 30 if it becomes law.

2. This bill will require an owner with a house in the lakeshore to go through the burden of obtaining a permit to paint, re-roof, change windows, or re-side his home.

The present regulations exempt maintenance of existing structures from having to obtain a permit. As such, the above activities could be done without a permit.

3. This bill will increase cost for administration and the local taxpayer will have to carry the burden.

It is true that the \$25 permit fee does not cover the cost of administering lakeshore regulations. We figure the average cost to be \$50. At present, we issue approximately

150 permits a year. As such, the planning budget which is funded by a countywide mill levy must fund about \$3800 for lakeshore protection. I estimate that HB 30 will increase the number of permits by about 100 per year and add \$2500. Although this additional cost is significant I believe that managing the lakeshore on Flathead is important enough to all citizens in our area that this does not represent too great of a financial burden.

**4. There is no evidence that work done in the area within 50 feet of the lake affects water quality.**

The causes of lake degradation are many. The scientists at the Flathead Lake Biological Station state that construction activities done near a lake have the potential to cause water quality problems due to soil disturbance and erosion. This is a significant problem at Lake Tahoe which manages a lakeshore zone of 200 feet back from highwater. Similarly, most lakes in the state of Washington have shore zones which are regulated for 200 feet. The lakeshore management zones in Minnesota and Wisconsin are 150 feet.

Although we do not have data which quantifies lakeshore impacts, it is reasonable to assume that work done near a lake can impact water. This was the rationale for the Legislature in 1991 to establish a 50 foot management zone for logging near a lake or stream. Residential construction can have similar impacts to logging in respect to soil disturbance and vegetation removal. H.B. 30 would bring consistency to how we deal with construction activities near a lake.

**5. H.B. 30 is an infringement on property rights and constitutes a taking.**

The current regulations do not prohibit use or development in the lakeshore. Many permits are issued for structures such as boathouses, storage sheds, walkways, decks, boat ramps, and gazebos in the lakeshore area, as well as prudent removal of vegetation. These types of lake related structures would certainly be allowed in an expanded lakeshore. Lake County currently has a policy in our county plan that new residential dwellings should not be located closer than 50 feet to the lake. In respect to an expanded lakeshore, we would try to implement this policy. However, in cases where it may not be possible to be 50 feet back with a new home due to steep slopes, we would allow a variance. I believe this situation would occur very infrequently, but in no case would we preclude someone from building a home on their property.



January 14, 1993  
Page 3

EXHIBIT 3  
DATE 1-15-93  
HB 30

**6. The creation of lake advisory committees will add to bureaucracy and further burden the permitting process.**

We currently form citizen advisory committees for many planning issues, and I'm not sure statutory authority is needed to accomplish this provision. However, it does clearly give a lake advisory committee legal status. I would utilize such a committee for policy discussions and see no reason why they would be involved in the actual permitting process, except possibly in cases where a major variance were being considered (example: a marina project to dredge or channel to create an inland lagoon).

In closing, I believe this legislation is a part of what needs to be a comprehensive approach to lake management. In the Flathead, folks have worked hard to protect water quality by implementing a monitoring plan, a phosphorous ban, upgrading sewage treatment plants, sewerage critical areas around the lake, encouraging Best Management Practices for logging activities, and working with British Columbia to disapprove mine development in our headwaters. Unfortunately, much remains to be done in the light of the recent report by the Flathead Lake Biological Station that water quality is deteriorating. Also, the State Department of Health has recently issued a report that 68% of the lakes in Montana have water quality problems. I believe we need to do whatever we can to reverse these trends. This bill is certainly not a cure-all for water quality problems but is a good step in the right direction.

Thank you for the opportunity to comment.

Sincerely,



Jerry Sorensen  
Planning Director

# FLATHEAD LAKERS INC.

— A Non-Profit Corporation of Flathead Lake Residents —

P.O. Box 290, Polson, Montana 59860

EXHIBIT <sup>4</sup>

DATE 1-15-93

HB 30

January 14, 1992

Mr. Richard Knox, Chairman  
House Committee on Natural Resources  
Montana State Capitol  
Helena, MT 59620

Re: House Bill 30

Dear Chairman Knox:

I submitted a letter to you on January 5 indicating support of House Bill 30 by the Board of Directors of the Flathead Lakers. I appreciate the opportunity to offer several additional comments at this time.

Several weeks ago a report from the University of Montana Biological Station, Yellow Bay, documented an oxygen shortage in one of the bays in Flathead Lake - for the first time since studies began in 1977. Headlines of stories in local newspapers describing the study illustrate the problem: "Warning sounded on fate of lake"; "Flathead lake oxygen content declines"; "Tests show alarming stagnation in Flathead Lake"; and "Pollution erodes lake's water quality".

Scientific research has clearly demonstrated that Flathead Lake has approached a threshold where increased nutrient inputs from culturally related sources around the lake and in the upper basin could result in a rapid deterioration in the lake's water quality. Research has also shown that nearshore waters, lake shore wetlands, and shoreline areas have been significantly altered by lake level regulation and shoreline development. All these factors contribute to cumulative effects degrading the pristine character of Flathead Lake waters and the natural aesthetic beauty of the area.

It is our understanding that HB 30 is enabling legislation, as was the phosphorus ban bill. We support the amendment offered by Representative Mercer that provides for local options in defining distance in the lakeshore definition and with the requirement for thorough public participation in that definition.


We have further requested that language be inserted in the bill to indicate that "it is not intended that this law prohibit appropriate construction in the 50 foot mangement zone but that all proposed construction in the defined zone be subject to environmental review and be approved by the local governing body."

We need to continue to urge high standards of stewardship on the part of property owners around the lake and others who use it. However, as unfortunate as it may be, lakeshore protection regulations have been shown to be a necessary part of all lake mangement planning. It is my experience that lake management plans- wherever they are found, will point to the need for management zones and will define distances in different ways; i.e., 200 feet in Washington and at Lake Tahoe, 150 feet in Wisconsin and Minnesota. Montana specifies 50 feet for a buffer zone adjacent to water for logging activities. The same standard should apply to lakeshore activities.

Dedicated to the Protection of Beautiful Flathead Lake!

House Bill 30 is not a cure all for all problems. It can serve to help curb a problem - lakeshore pollution - that will only increase with time.

Sincerely,

A handwritten signature in cursive script, appearing to read "D. L. Wallin".

Dick Wallin  
President

EXHIBIT 5

DATE 1-15-93

HB 30

January 15, 1993

TO: Chairman Dick Knox and Members of the House Natural Resources Committee

FROM: *Sanna Kiesling*  
Sanna Kiesling, 127 Jefferson, Helena, MT

RE: House Bill 30

As a Montana citizen concerned about water quality, I am writing in support of House Bill 30.

As Montana continues to be "discovered," our lakes face more and more development pressure. Recent news of the rapidly deteriorating water quality in Flathead Lake--due in part to lakeshore development--sends us a clear warning signal: We must take every measure to protect the water quality in our lakes.

→ House Bill 30 does not prohibit lakeshore development or construction. It merely requires CAREFUL construction so as to minimize impact to water quality. I cannot honestly understand why anyone would oppose this bill unless that person willfully planned a construction project that would harm water quality. In such a case, an act such as House Bill 30 is absolutely critical in order to protect our lakes.

↘  
→ It seems to me that anyone who cares about Montana's lakes would want to take every measure to protect them. By requiring a permit for construction, HB 30 allows the county a chance to work with the homeowner to minimize impacts on the lake. That makes sense to me. My family <sup>has</sup> <sup>ed</sup> ~~owns~~ property on a lake in the Swan Valley <sup>for 35 years.</sup> If we undertook a construction project, we would welcome assistance from the county so we could avoid harming the lake.

I strongly urge a DO-PASS motion on House Bill 30.

# FLATHEAD BASIN COMMISSION

EXHIBIT

DATE

HB

59

1-15-93

30

EXECUTIVE DIRECTOR  
OFFICE OF THE GOVERNOR  
CAPITOL STATION  
HELENA, MT 59620  
(406)444-3111

723 FIFTH AVENUE EAST  
KALISPELL, MT 59901

(406)752-0081

January 15, 1993

Mr. Richard Knox, Chairman  
House Committee on Natural Resources  
Montana State Capitol  
Helena, MT 59620

Dear Chairman Knox:

The Flathead Basin Commission is a non-regulatory entity created by the Montana Legislature in 1983 to provide cooperative protection for the water quality, natural resources and environment of the Flathead Basin. The work of the Commission involves high level representatives of 14 federal, state and county agencies and 6 members of the general public. A high level appointee from the government of British Columbia provides liaison with that government. Decisions and recommendations are made by consensus. We appreciate this opportunity to comment on House Bill 30, the bill introduced at the request of the Environmental Quality Council to revise laws regarding lakeshore development. The bill comes out of an interim study ordered by the 1991 Legislature, which has had extensive public participation. The Flathead Basin Commission has been involved in it from almost the beginning.

Water quality is the principal component of the environmental quality which has become the engine that drives the economy of the Flathead.

Flathead and Lake Counties are currently engaged in land use planning activities to help guide the directions development takes, both near the water and away from it.

Lakeshore regulation in both counties and in concert with the Confederated Salish and Kootenai Tribes on Flathead Lake has been largely successful. State-of-the-art sewage treatment plants in place at Bigfork and other areas around Flathead Lake and those in late stages of planning and construction at Kalispell, Evergreen and Somers make a measurable difference in our water: witness our mostly still-clean lakes. Subdivision review, zoning and lakeshore regulations together bear the remaining brunt of maintaining Montana's special resources.

We have recommended that current lakeshore law be expanded to regulate development around large reservoirs. HB 30 does that. Any land use around any water has the potential to pollute, degrade, erode or otherwise impair water quality values and should be under the guidance of local governing bodies.

We have recommended that lakeshore protection extend to 50 feet horizontal distance from mean annual high-water elevation. We recommend that HB 30 be amended to provide for local option to define the distance, with a requirement for thorough public participation in the definition.

The Flathead Basin Commission urges passage of HB 30, with this one suggested change. We can't afford to risk losing something we can't get back.

Sincerely,

*Elna Darrow*

Elna Darrow, FBC Committee Chair

COUNTY COMMISSIONERS

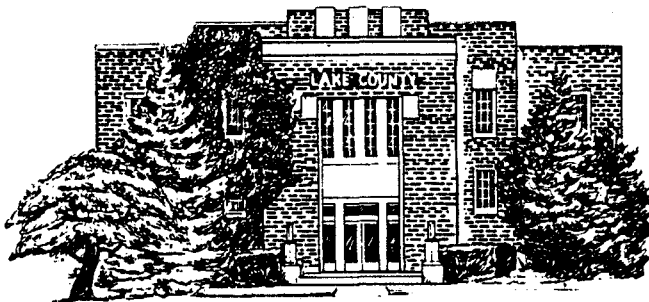
MIKE W. HUTCHIN  
District One

RAY HARBIN  
District Two

GERALD L. NEWGARD  
District Three

TREASURER  
PATRICIA J. COOK

CLERK AND RECORDER  
SURVEYOR  
RUTH E. HODGES



ASSESSOR  
LENORE A. ROAT

SHERIFF AND CORONER  
JOE GELDRICH

CLERK OF COURT  
KATHERINE E. PEDERSEN

SUPERINTENDENT OF SCHOOLS  
JOYCE DECKER WEGNER

COUNTY ATTORNEY  
LARRY J. NISTLER

JUSTICE OF THE PEACE  
CHUCK WHITSON

# LAKE COUNTY

PHONE 406/883-6211 • 106 FOURTH AVENUE EAST • POLSON, MONTANA 59860

January 12, 1993.

EXHIBIT 56  
DATE 1-15-93  
HB 30

Chairman, Dick Knox  
House Natural Resources Committee  
State Capitol  
Helena, Montana 59620

Re: House Bill 30

Dear Chairman Knox:

The Board of Lake County Commissioners has reviewed House Bill 30 and support the revisions to the Lakeshore Statute. Lake County has administered this law since 1977 and believe it has general acceptance of lakeshore owners on Flathead Lake, Swan Lake, and Lake Mary Ronan in our county.

The change in definition of lakeshore from 20 feet to 50 feet from highwater will provide a mechanism so that construction activities done near our lakes will not affect water quality due to increased erosion or run-off. We have a good record working with lakeshore owners and believe they will support this revision.


Flathead Lake is the most valuable natural resource in our county and we will continue to strive to be good public stewards to maintain its outstanding water quality. This bill is one of many means to sustain that objective. Thank you for your consideration.

Sincerely,

Board of Lake County Commissioners

  
Mike Hutchin, Chairman

  
Jerry Newgard, Member

  
Dave Stipe, Member

January 15, 1993

EXHIBIT 6

DATE 1-15-93

HB 30

## HOUSE BILL No. 30

If passed in its present form, House Bill No. 30 would authorize local governing bodies to "change the definition of a lake so that this part applies to a reservoir..." See Section 2, proposed amendment to Section 75-7-203 (2). On its face, this proposed legislation would encompass reservoirs associated with hydroelectric facilities which are currently regulated by the Federal Energy Regulatory Commission (FERC) pursuant to the Federal Power Act. Indeed, under the Federal Power Act, FERC has exclusive jurisdiction over such reservoirs.

In relation to hydroelectric projects, FERC's jurisdiction over reservoirs extends to the "project boundaries." These "project boundaries" would encompass the area defined as "Lakeshore" in HB No. 30. Accordingly, the proposed legislation directly conflicts with federal regulation of certain reservoirs.

To eliminate this conflict, MPC proposes the following amendment:

Page 3, line 9, following "purposes" insert ";"; delete "or";

Line 11, following 82 insert "; or"; delete "." and add: "(c) regulated by the Federal Energy Regulatory Commission."

Proposed by Montana Power Company

## SERVATION Ch. 12

appoint such other officers as are necessary in the execution and fix their salaries, and detail of officers from the same, or other branches of the service, to serve the commission, or in any other capacity, in the seat of government, assignment or transfer to the interior or Agriculture for the seat of government for the purpose of the commission to appoint the secretary at a salary of \$10,000 per annum, and prescribe his duties, and detail of an officer from the Engineer Corps to serve the interior officer; and added to the commission to perform the duties necessary in the execution, and allowing the same upon the presentation of the officers approved by the

Act, 28, 1949, c. 782, 1972, cited as a credit to the commission (subject to a savings clause), 554, Sept. 6, 1966, § 8,

ons. The Federal Power Commission and its functions, funds, etc., were transferred to the Federal Energy (except for the functions which were transferred to the Federal Energy Regulatory Commission) 7171(a), 7172(a), 7291, The Public Health and

administrative functions of the Commission were, with the exception of the functions transferred to the Chairperson, with authority to prescribe their performance, or administrative functions, by Reorg. Plan No. 1, eff. May 24, 1950, 15 Stat. 165, set out as a note to this title.

For legislative history, see Act, 28, 1949, see 1949 Act, p. 2363. See, also, U.S. Code Cong. and

general mandate under the Commission to do as are necessary to

## Federal Power Act

16 U.S.C. § 791, et seq

16 § 796

## Ch. 12 REGULATION OF POWER

execute its functions. *Greene County Planning Bd. v. Federal Power Commission*,

C.A.2, 1976, 559 F.2d 1227, certiorari denied 98 S.Ct. 1280, 434 U.S. 1086, 55 L.Ed.2d 791.

§ 793a. Repealed. Pub.L. 87-367, Title I, § 103(5), Oct. 4, 1961, 75 Stat. 787

## Historical Note

Section, Pub.L. 86-626, Title I, § 101, July 12, 1960, 74 Stat. 430, authorized the Federal Power Commission to place four additional

positions in grade 18, one in grade 17 and one in grade 16 of the General Schedule of the Classification Act of 1949.

§§ 794, 795. Omitted

## Historical Note

Codification. Section 794, which required the work of the commission to be performed by and through the Departments of War, Interior, and Agriculture and their personnel, consisted of the second paragraph of section 2 of Act June 10, 1920, c. 285, 41 Stat. 1063, which was omitted in the revision of said section 2 by Act June 23, 1930, c. 572, § 1, 46 Stat. 798. The first and third paragraphs of said section 2 were formerly classified to sections 793 and 795 of this title.

Section 795, which related to expenses of the commission generally, consisted of the third paragraph of section 2 of Act June 10, 1920, c. 285, 41 Stat. 1063. Such section 2 was amended generally by Act June 23, 1930, c. 572, § 1, 46 Stat. 798, and is classified to section 793 of this title. The first and second paragraphs of said section 2 were formerly classified to sections 793 and 794 of this title.

## § 796. Definitions

The words defined in this section shall have the following meanings for purposes of this chapter, to wit:

(1) "public lands" means such lands and interest in lands owned by the United States as are subject to private appropriation and disposal under public land laws. It shall not include "reservations", as hereinafter defined;

(2) "reservations" means national forests, tribal lands embraced within Indian reservations, military reservations, and other lands and interests in lands owned by the United States, and withdrawn, reserved, or withheld from private appropriation and disposal under the public land laws; also lands and interests in lands acquired and held for any public purposes; but shall not include national monuments or national parks;

(3) "corporation" means any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, or a receiver or receivers, trustee or trustees of any of the foregoing. It shall not include "municipalities" as hereinafter defined;

(4) "person" means an individual or a corporation;

(5) "licensee" means any person, State, or municipality licensed under the provisions of section 797 of this title, and any assignee or successor in interest thereof;



## 16 § 796

## CONSERVATION Ch. 12

(6) "State" means a State admitted to the Union, the District of Columbia, and any organized Territory of the United States;

(7) "municipality" means a city, county, irrigation district, drainage district, or other political subdivision or agency of a State competent under the laws thereof to carry on the business of developing, transmitting, utilizing, or distributing power;

(8) "navigable waters" means those parts of streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States, and which either in their natural or improved condition notwithstanding interruptions between the navigable parts of such streams or waters by falls, shallows, or rapids compelling land carriage, are used or suitable for use for the transportation of persons or property in interstate or foreign commerce, including therein all such interrupting falls, shallows, or rapids, together with such other parts of streams as shall have been authorized by Congress for improvement by the United States or shall have been recommended to Congress for such improvement after investigation under its authority;

(9) "municipal purposes" means and includes all purposes within municipal powers as defined by the constitution or laws of the State or by the charter of the municipality;

(10) "Government dam" means a dam or other work constructed or owned by the United States for Government purposes with or without contribution from others;

(11) "project" means complete unit of improvement or development, consisting of a power house, all water conduits, all dams and appurtenant works and structures (including navigation structures) which are a part of said unit, and all storage, diverting, or forebay reservoirs directly connected therewith, the primary line or lines transmitting power therefrom to the point of junction with the distribution system or with the interconnected primary transmission system, all miscellaneous structures used and useful in connection with said unit or any part thereof, and all water-rights, rights-of-way, ditches, dams, reservoirs, lands, or interest in lands the use and occupancy of which are necessary or appropriate in the maintenance and operation of such unit;

(12) "project works" means the physical structures of a project;

(13) "net investment" in a project means the actual legitimate original cost thereof as defined and interpreted in the "classification of investment in road and equipment of steam roads, issue of 1914, Interstate Commerce Commission", plus similar costs of additions thereto and betterments thereof, minus the sum of the following items properly allocated thereto, if and to the extent that such items have been accumulated during the period of the license from earnings in excess of a fair return on such investment: (a) Unappropriated surplus, (b) aggregate credit balances of current depreciation accounts, and (c) aggregate appropriations of surplus or income held in amortization, sinking fund, or similar reserves, or expended for additions or betterments or used for the purposes for which such reserves were created. The term "cost" shall include, insofar as applicable, the elements

## Ch. 12 REGULATION

thereof prescribed in the rules and regulations of the Interstate Commerce Commission;

(14) "Commission" means the Interstate Commerce Commission, and a

(15) "State commission" means a municipality having the right of sale of electric energy;

(16) "security" means a certificate of title, or other evidence of title, subject to the provisions of the Interstate Commerce Commission;

(17) (A) "small power project" means

(i) produces electric energy from a renewable energy source, or a

(ii) has a peak capacity of less than 10 megawatts (other facilities as determined by the Interstate Commerce Commission);

(B) "primary energy source" means the generation of electric energy determined under the provisions of the Interstate Commerce Commission with the Secretary of the Interior;

(i) the minimum capacity of the project, as determined by testing, flame

(ii) the minimum capacity of the project, as determined by testing, flame

(i) the minimum capacity of the project, as determined by testing, flame

(ii) the minimum capacity of the project, as determined by testing, flame

(C) "qualifying power production" means

(i) which requires no new investment, and

(ii) which requires no new investment, and

(D) "qualifying power production" means

(18) (A) "cogeneration" means

(i) electric energy

EXHIBIT

6

74

DATE

1-15-93

43 80

## 16 § 796

## Note 19

Gulf States Utilities Co. v. F.E.R.C.,  
C.A.D.C.1991, 922 F.2d 873.

The Federal Energy Regulatory Commission's determination that a corporation's pharmaceutical plant and a second corporation's cogeneration equipment were so closely related that they made up a single qualifying cogeneration facility entitled

to backup power under a provision of the Public Utility Regulatory Policies Act was reasonable in light of Congress' failure to supply an unambiguous answer to the question and in light of the Congressional goal of encouraging cogeneration. *Puerto Rico Elec. Power Authority v. F.E.R.C.*, 1982, 845 F.2d 243, 270 U.S.App.D.C. 186.

## CONSERVATION

## § 797. General powers of Commission

[See main volume for text of (a) to (d)]

(e) Issue of licenses for construction, etc., of dams, conduits, reservoirs, etc.

To issue licenses to citizens of the United States, or to any association of such citizens, or to any corporation organized under the laws of the United States or any State thereof, or to any State or municipality for the purpose of constructing, operating, and maintaining dams, water conduits, reservoirs, power houses, transmission lines, or other project works necessary or convenient for the development and improvement of navigation and for the development, transmission, and utilization of power across, along, from, or in any of the streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States, or upon any part of the public lands and reservations of the United States (including the Territories), or for the purpose of utilizing the surplus water or water power from any Government dam, except as herein provided: *Provided*, That licenses shall be issued within any reservation only after a finding by the Commission that the license will not interfere or be inconsistent with the purpose for which such reservation was created or acquired, and shall be subject to and contain such conditions as the Secretary of the department under whose supervision such reservation falls shall deem necessary for the adequate protection and utilization of such reservation: *Provided further*, That no license affecting the navigable capacity of any navigable waters of the United States shall be issued until the plans of the dam or other structures affecting the navigation have been approved by the Chief of Engineers and the Secretary of the Army. Whenever the contemplated improvement is, in the judgment of the Commission, desirable and justified in the public interest for the purpose of improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, a finding to that effect shall be made by the Commission and shall become a part of the records of the Commission: *Provided further*, That in case the Commission shall find that any Government dam may be advantageously used by the United States for public purposes in addition to navigation, no license therefor shall be issued until two years after it shall have reported to Congress the facts and conditions relating thereto, except that this provision shall not apply to any Government dam constructed prior to June 10, 1920: *And provided further*, that upon the filing of any application for a license which has not been preceded by a preliminary permit under subsection (f) of this section, notice shall be given and published as required by the proviso of said subsection. In deciding whether to issue any license under this Part for any project, the Commission, in addition to the power and development purposes for which licenses are issued, shall give equal consideration to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of, fish and wildlife (including related spawning grounds and habitat), the protection of recreational opportunities, and the preservation of other aspects of environmental quality.

[See main volume for text of (f) and (g)]

(As amended Oct. 16, 1986, Pub.L. 99-495, § 3(a), 100 Stat. 1248.)

## HISTORICAL AND STATUTORY NOTES

## 1986 Amendment

Subsec. (e). Pub.L. 99-495, § 3(a), added provisions that in deciding whether to issue any license under this subchapter, the Commission, in addition to power and development purposes, is required to give equal consideration to purposes of energy conservation, protection, mitigation of damage to, and enhancement of, fish and wildlife,

the protection of recreational opportunities, and the preservation of environmental quality.

## Effective Date of 1986 Amendment

Section 18 of Pub.L. 99-495 provided that: "Except as otherwise provided in this Act, the amendments made by this Act [enacting section 797b of this title, amending sections 797, 800, 802,

## CONSERVATION

803, 807, 808, 823a, 824a-3, and 824j of this title, and enacting provisions set out as notes under sections 791a, 797, 803, 823a, 824a-3, and 825b of this title] shall take effect with respect to each license, permit, or exemption issued under the Federal Power Act after the enactment of this Act [Oct. 16, 1986]. The amendments made by sections 6 [enacting section 823b of this title] and 12 [amending section 817 of this title] of this Act shall apply to licenses, permits, and exemptions without regard to when issued."

## Savings Provisions

Section 17(a) of Pub.L. 99-495 provided that: "Nothing in this Act [see Effective Date of 1986 Amendment note set out under this section] shall be construed as authorizing the appropriation of water by any Federal, State, or local agency, Indian tribe, or any other entity or individual. Nor shall any provision of this Act—

"(1) affect the rights or jurisdiction of the United States, the States, Indian tribes, or other entities over waters of any river or stream or over any ground water resource;

"(2) alter, amend, or be in conflict with made by the States;

"(3) alter or establish the United States, the United States person with respect related right;

"(4) affect, expand transmission facilities Government;

"(5) alter, amend or be in conflict with rights of any Indian

"(6) permit the filing of any notice for filing a case before the enactment or

"(7) modify, sup Northwest Electric servation Act [16

## Legislative History

For legislative history 99-495, see 1986 U.S. p. 2496.

## LAW REVIEW COMMENTARIES

A proposal for extension of the Occupational Safety and Health Act to Indian-owned businesses on reservations. 18 U.Mich.J.L.Rev. 473 (1985).

Small hydroelectric rights. 18 Pacific L

## NOTES OF DECISIONS

Retrospective effect 4a

## 2. Construction

To determine whether Federal Energy Regulatory Commission exceeded its authority under Federal Power Act, Court of Appeals had to look to language and history of Act, respectively, to determine Congress' intent, if possible, regarding agency's conditional licensing authority. *South Carolina Public Service Authority v. F.E.R.C.*, 1988, 850 F.2d 788, 271 U.S.App.D.C. 95.

## 3. Construction with other laws

*Escondido Mut. Water Co. v. F.E.R.C.*, 692 F.2d 1213 [main volume] affirmed in part, reversed in part 104 S.Ct. 2103, 466 U.S. 765, 80 L.Ed.2d 753, rehearing denied 104 S.Ct. 3562, 467 U.S. 1267, 82 L.Ed.2d 864, on remand 743 F.2d 1321.

Both licenses from Federal Energy Regulatory Commission for construction and operation of hydroelectric power plant and Army Corps of Engineers dredge-and-fill permit constitute "Federal license or permit" subject to requirement under Clean Water Act that state must first certify that project will meet state water quality standards. *Keating v. F.E.R.C.*, C.A.D.C.1991, 927 F.2d 616.

## 4a. Retrospective effect

Electric Consumers Protection Act did not apply to license issued for dam project almost two months before its date of enactment. *Com. of Pa., Dept. of Environmental Resources v. F.E.R.C.*, C.A.3, 1989, 868 F.2d 592.

## 7. State regulation

County ordinance for construction of without regard to Federal Energy R jurisdiction or w issued is preempted attempt by county on federally licens v. Shasta County.

## 9. Discretion of

*Escondido Mut. San Pasqual, Pa Indians*, 104 S.Ct. 765, 80 L.Ed.2d 3562, 467 U.S. 1743 F.2d 1321.

## 10. Licensing

Federal Energy have authority own rules of license and thus license for state operator's non feasible project induced dam f vice Authority 271 U.S.App.1

Although a gave Federal power to requ istic projects nothing in Commission cons to open prior to 193

## CONSERVATION

sup power under a provision of the Public Regulatory Policies Act was reasonable in Congress' failure to supply an unambiguous answer to the question and in light of the national goal of encouraging cogeneration. *Reco Elec. Power Authority v. F.E.R.C.*, 848 F.2d 243, 270 U.S.App.D.C. (186).

of (a) to (d))

conduits, reservoirs, etc.

tates, or to any association of such the laws of the United States or any y for the purpose of constructing, its, reservoirs, power houses, trans- y or convenient for the development velopment, transmission, and utilize- the streams or other bodies of water authority to regulate commerce with or upon any part of the public lands g the Territories), or for the purpose from any Government dam, except as be issued within any reservation only use will not interfere or be inconsis- use was created or acquired, and shall as Secretary of the department under ll deem necessary for the adequate . Provided further, That no license ble waters of the United States shall r structures affecting the navigation ers and the Secretary of the Army. in the judgment of the Commission, t for the purpose of improving or use or benefit of interstate or foreign made by the Commission and shall n: Provided further, That in case the n may be advantageously used by the o navigation, no license therefor shall reported to Congress the facts and vision shall not apply to any Govern- And provided further, that upon the s not been preceded by a preliminary tice shall be given and published as deciding whether to issue any license ssion, in addition to the power and used, shall give equal consideration to section, mitigation of damage to, and ated spawning grounds and habitat), f the preservation of other aspects of

of (f) and (g))

Stat. 1242.)

## TUTORY NOTES

protection of recreational opportunities, and preservation of environmental quality.

Effective Date of 1986 Amendment

Section 18 of Pub.L. 99-493 provided that: except as otherwise provided in this Act, the amendments made by this Act (enacting sections of this title, amending sections 797, 800, 802,

## CONSERVATION

803, 807, 808, 823a, 824a-3, and 824) of this title, and enacting provisions set out as notes under sections 791a, 797, 803, 823a, 824a-3, and 825h of this title) shall take effect with respect to each license, permit, or exemption issued under the Federal Power Act after the enactment of this Act [Oct. 16, 1986]. The amendments made by sections 6 (enacting section 823b of this title) and 12 (amending section 817 of this title) of this Act shall apply to licenses, permits, and exemptions without regard to when issued."

## Savings Provisions

Section 17(a) of Pub.L. 99-493 provided that: "Nothing in this Act [see Effective Date of 1986 Amendment note set out under this section] shall be construed as authorizing the appropriation of water by any Federal, State, or local agency, Indian tribe, or any other entity or individual. Nor shall any provision of this Act—

"(1) affect the rights or jurisdiction of the United States, the States, Indian tribes, or other entities over waters of any river or stream or over any ground water resource;

A proposal for extension of the Occupational Safety and Health Act to Indian-owned businesses on reservations. 18 U.Mich.J.L.Ref. 473 (1985).

## Retroactive effect 4a

## 1. Construction

To determine whether Federal Energy Regulatory Commission exceeded its authority under Federal Power Act, Court of Appeals had to look to language and history of Act, respectively, to determine Congress' intent, if possible, regarding agency's conditional licensing authority. *South Carolina Public Service Authority v. F.E.R.C.*, 1988, 850 F.2d 788, 271 U.S.App.D.C. 95.

## 1. Construction with other laws

*Escondido Mut. Water Co. v. F.E.R.C.*, 692 F.2d 1223 (main volume) affirmed in part, reversed in part 104 S.Ct. 2103, 466 U.S. 763, 80 L.Ed.2d 753, rehearing denied 104 S.Ct. 3562, 467 U.S. 1267, 82 L.Ed.2d 864, on remand 743 F.2d 1321.

Both license from Federal Energy Regulatory Commission for construction and operation of hydroelectric power plant and Army Corps of Engineers dredge-and-fill permit constitute "Federal license or permit" subject to requirement under Clean Water Act that state must first certify that project will meet state water quality standards. *Keating v. F.E.R.C.*, C.A.D.C.1991, 927 F.2d 616.

## 4a. Retroactive effect

Electric Consumers Protection Act did not apply to licenses issued for dam project almost two months before its date of enactment. *Com. of Pa. Dept. of Environmental Resources v. F.E.R.C.*, C.A.J. 1989, 868 F.2d 592.

16 §797  
Note 10

"(2) alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by the States;

"(3) alter or establish the respective rights of States, the United States, Indian tribes, or any person with respect to any water or water-related right;

"(4) affect, expand, or create rights to use transmission facilities owned by the Federal Government;

"(5) alter, amend, repeal, interpret, modify, or be in conflict with, the Treaty rights or other rights of any Indian tribe;

"(6) permit the filing of any competing application in any relicensing proceeding where the time for filing a competing application expired before the enactment of this Act [Oct. 16, 1986]; or

"(7) modify, supersede, or affect the Pacific Northwest Electric Power Planning and Conservation Act [16 U.S.C.A. § 839 et seq.]."

## Legislative History

For legislative history and purpose of Pub.L. 99-493, see 1986 U.S.Code Cong. and Adm.News, p. 2496.

## LAW REVIEW COMMENTARIES

Small hydroelectric projects and state water rights. 18 Pacific L.J. 1225 (1987).

## NOTES OF DECISIONS

## 7. State regulation or control

County ordinance imposing permit requirement for construction of any small hydropower project without regard to whether project is exempt from Federal Energy Regulatory Commission licensing jurisdiction or whether FERC license has been issued is preempted by the Federal Power Act as attempt by county to impose permit requirement on federally licensed projects. *Mega Renewables v. Shasta County*, E.D.Cal.1986, 644 F.Supp. 491.

## 9. Discretion of Commission

*Escondido Mut. Water Co. v. La Jolla, Rincon, San Pasqual, Puma, and Pala Bands of Mission Indians*, 104 S.Ct. 2103 (main volume) 466 U.S. 763, 80 L.Ed.2d 753, rehearing denied 104 S.Ct. 3562, 467 U.S. 1267, 82 L.Ed.2d 753, on remand 743 F.2d 1321.

## 10. Licensing authority of Commission

Federal Energy Regulatory Commission did not have authority to displace state tort law with its own rules of liability for damages caused by licensees and thus could not condition renewal of license for state hydroelectric project on state operator's acceptance of strict liability for all foreseeable property damage caused by any seismically induced dam failure. *South Carolina Public Service Authority v. F.E.R.C.*, 1988, 850 F.2d 788, 271 U.S.App.D.C. 95.

Although amendments to Federal Power Act gave Federal Energy Regulatory Commission power to require licenses for post-1933 hydroelectric projects constructed on nonnavigable waters, nothing in amendment removed authority of Commission to issue licenses to voluntary applicants to operate hydroelectric plants constructed prior to 1933 on certain nonnavigable streams.

January 13, 1993

EXHIBIT 7

DATE 1-15-93

HB 30

We the undersigned lake property owners wish to go on record with the Montana State Legislature as being opposed to House Bill 30.

Most specifically we oppose the changes Section 1 (2) would make in the horizontal set-back from 20 feet to 50 feet. We also oppose Section 6 dealing with civil penalties of \$500 per day and Section 7 creating an additional lake advisory committee for each particular lake.

NAME	ADDRESS	PHONE #
<u>M. Aden Hoagland</u>	<u>1053 N. Juniper Bay Rd</u>	<u>857-3804</u>
<u>Steve Necker</u>	<u>321 <sup>Somers 54932</sup> PAINT CORCHILL RD</u>	<u>844-3344</u>
<u>Larry Fenster</u>	<u>307 Harmony Rd</u>	<u>757-2624</u>
<u>[Signature]</u>	<u>169 Old 93</u>	<u>862 5041</u>
<u>Ruth H. [Signature]</u>	<u>3656 E. LAKE SHORE <sup>WILKINS</sup></u>	<u>862-6256</u>
<u>Marey Holman</u>	<u>3656 E. Lakeshore <sup>Wish</sup></u>	<u>862-6296</u>
<u>Nikki Sliter</u>	<u>604 5th Ave E Kal</u>	<u>257-2590</u>
<u>Everett Sliter</u>	<u>604 5th Ave E Kaligell</u>	<u>257-2590</u>
<u>Ingrid Dasyg</u>	<u>1095 Angel Pt Rd. Lakeside</u>	<u>844-3271</u>
<u>[Signature]</u>	<u>1095 Angel Pt Rd Lakeside</u>	<u>844-3271</u>
<u>Gregory S. Harman</u>	<u>1020 Angel Pt Rd Lakeside</u>	<u>844-3605</u>
<u>Michael [Signature]</u>	<u>760 1st Ave E. NI KANSER</u>	<u>257-3734</u>
<u>Bob [Signature]</u>	<u>400 [Signature] Road Kasper</u>	<u>752-2437</u>
<u>Tim [Signature]</u>	<u>450 [Signature] (Kasper)</u>	<u>752-4885</u>

This document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

EXHIBIT 8  
DATE 1-15-93  
HB HB 30

HB #30

Hearing  
January 15, 1993  
3:00 p.m. - Rm #437

Betsy Allen representing  
Walter & Katherine Titus,  
home-owners on Seeley Lake, MT

1. Why was this bill brought up? What would it do for generating revenues?
2. Who is lobbying this bill?
3. What will 50 feet back from the natural high water mark do, that 20 feet back has not done?
4. What happens if 50 feet back includes the original building in the area? What happens if the building should burn, what about replacement?
5. Will this bill apply to all lakes in Montana, natural or otherwise?
6. Who pays the taxes on the 50 feet? Land owners have deeds that state they own that property now. If the state has an easement on the property (20 or 50 feet) shouldn't they pay the taxes and maintain the property.

Jan 14, 1993

I feel it would not be fair  
to people who have homes on the lakes  
that may not be able to rebuild in  
the future. Therefore I am against  
House Bill 30.

Virginia D. Hull  
155 Peaceful Bay  
Lakeside, Mt.  
5992

EXHIBIT 9  
DATE 1-15-93  
HB 30

EXHIBIT

10

DATE

1-15-93

HB

30

January 15, 1993

TO: MEMBERS OF MONTANA HOUSE OF REPRESENTATIVES NATURAL RESOURCES  
COMMITTEE

FROM: GREG BARKUS

SUBJECT: HB 30

As a lifelong resident of Montana and a homeowner on Flathead Lake, I strongly urge you to kill HB 30 in committee. Extension of the shoreline protection area from 20 to 50 feet is an extremist move to limit development and increase government control. A statewide setback of 50 feet is too much and the administrative costs for this increase regulation and permitting are excessive and an additional burden to an already over regulated and taxed citizen.

Kill this bill and allow the local authorities to regulate according to their needs.

Thank you,



Greg Barkus

1/14/93

To Whom it may concern!

I am strongly opposed to  
House Bill 30 as it is written

EXHIBIT 11  
DATE 1-15-93  
HB 30

Martin Schaffer  
BX 698  
Lakeside MT.





Jun 14, 1993  
835 7th Ave E.  
Kalispell, Mt.

Jack Herron  
State Capitol - House of Rep  
Helena, Mt.

EXHIBIT 12  
DATE 6-15-93  
HB 30

Dear Mr Herron:

Am adamantly opposed to House Bill  
#30 and urge every effort to defeat  
this measure. It is very discriminatory  
and unenforceable. Thank you.

Sincerely

Lois M. Sampson

To whom it may concern:  
I wish to make it  
known to you that  
I strongly oppose  
House Bill # 30!

EXHIBIT

13

DATE

1-15-93

HB

30

Constance Schrepfer

EXHIBIT 14  
DATE 1-15-93  
HB 30

Charles C. Prindle  
Marjorie A. Prindle  
1110 Angel Point Road  
P.O. Box 413  
Lakeside, Mt. 59922

Flathead County Delegation  
Montana State Legislature

January 14, 1993

Re: House Bill 30  
Introduced at the Request of the  
Environmental Quality Council.

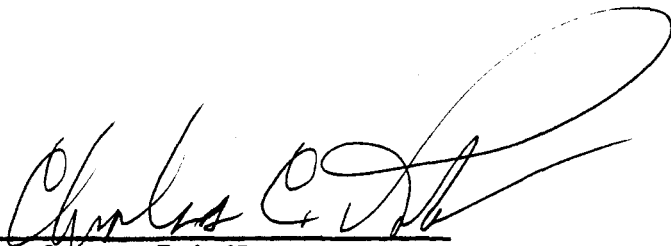
Gentlemen:

My wife and I are now on record as being strongly opposed  
to the passage of the above legislation.

We are also in full agreement with the presentation to be given  
before your group by our spokesman, Ron Clark, in opposition  
to the passage of this Bill.

Please use your vote and influence to see that it does not  
pass.

Concerned residents.

  
Charles C. Prindle

  
Marjorie A. Prindle

January 13, 1993

EXHIBIT

15

DATE

1-15-93

HB

30

to whom it may concern —

I am strongly opposed to  
passage of House Bill 30 which  
I understand will <sup>put</sup> limitations  
on construction on lake shore  
to more than 50'

Art Burd  
286 Pt. Cardin Road  
Lakeside, Montana

EXHIBIT 16  
DATE 1-15-93  
HB 30

HOWARD AND FRAN RUBY  
85 SPRINGCREEK ROAD  
SOMERS, MONTANA 59932  
406-857-3801

JANUARY 13, 1993

DICK KNOX

AS FLATHEAD LAKE PROPERTY OWNERS, WE WANT TO GO ON RECORD  
OPPOSING HB-30 GENERAL REVISION OF LAKESHORE STATUTE, 75-7-201-MCA.

HOWARD AND FRAN RUBY

Howard Ruby  
Fran Ruby

EXHIBIT 17  
DATE 1-15-93  
HB 30

Jan 14, 1993

Natl Resources Dept -  
Helena MT

Gentlemen -

Please vote "No" on  
House Bill #30.

We need to be more  
careful but their carrier  
things too far!

Sincerely

Ronny Gftedal  
Box 301  
Lakeview MT 59922

EXHIBIT

18

DATE

1-15-93

HB

30

1/14/93

John Mercer, Spkr. of House

Dear Sir,

My wife and myself are  
firmly opposed to the passage  
of H. B. - 30

Sincerely,

M. Aden Hoagland  
Ann J. Hoagland

693 W. Juniper Bay Rd  
Somers, Nt. 09932  
857-3804

EXHIBIT 19  
DATE 1-15-93  
HB 30

1-14-93

Dick Knap

Committee chs. and all  
members of the Committee  
of House Bill 30

I firmly apprise to the  
passage of H.B. 30

Sincerely  
Nelen Greve  
685 N Juniper Bay  
Sumner Mt 59932  
857-3688



EXHIBIT 20 ✓  
DATE 1-15-93  
HB 30

**Kathryn Forman**  
1034 Angel Point Road  
Lakeside, Montana 59922

January 12, 1993

The Natural Resource Commission  
The Capitol  
Helena, Montana

RE: House Bill 30

To Whom It May Concern,

This letter is my expression of strong opposition to House Bill 30 (HB 30) which will affect the ownership rights of my property, negatively impact its value, its highest and best use as well as its marketability.

It is my opinion that passing this bill will not only conflict with the covenants of quiet and peaceful enjoyment but also restrict my free rights as a property owner, community member and law abiding citizen.

Again, I strongly oppose HB 30 and urge you to vote NO.

Sincerely,

  
Kathryn Forman

KF/tc

EXHIBIT 21  
DATE 1-15-93  
HB 30

Natural Resource Committee  
Dick Knox, Chairman  
Capital Station  
Helena, MT 59620

January 13, 1992

**RE: House Bill NO. 30**

By FAX 444-4802

Dear Mr. Knox,

I want to go on record as saying I **vehemently oppose House Bill No. 30** introduced by Driscoll by request of the Environmental Quality Council.

Our lakeshore property on Flathead Lake is an island. A 50' setback requirement would render it virtually worthless for anything other than a "picnic site". We have paid too much for the property and too much in property taxes for too long to have it taken away by a redundant piece of legislation.

Respectfully submitted,



Nancy Cherot  
400 Orchard Ridge Road  
Kalispell, MT 59901

EXHIBIT 22  
DATE 1-15-93  
HB 30

Natural Resource Committee  
Dick Knox, Chairman  
Capital Station  
Helena, MT 59620

January 13, 1992

**RE: House Bill NO. 30**

By FAX 444-4802

Dear Mr. Knox,

I want to go on record as saying I **vehemently oppose House Bill No. 30** introduced by Driscoll by request of the Environmental Quality Council.

Our lakeshore property on Flathead Lake is an island. A 50' setback requirement would render it virtually worthless for anything other than a "picnic site". We have paid too much for the property and too much in property taxes for too long to have it taken away by a redundant piece of legislation.

Respectfully submitted,

*Sandra Cherot*

Sandra J. Cherot  
400 Orchard Ridge Road  
Kalispell, MT 59901

EXHIBIT 23  
DATE 1-15-93  
HB 30

Natural Resource Committee  
Dick Knox, Chairman  
Capital Station  
Helena, MT 59620

January 13, 1992

RE: House Bill NO. 30

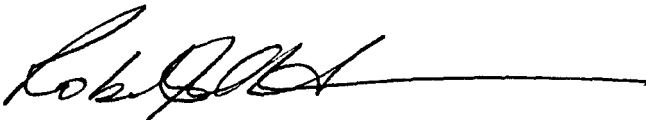
By FAX 444-4802

Dear Mr. Knox,

I want to go on record as saying I vehemently oppose House Bill No. 30 introduced by Driscoll by request of the Environmental Quality Council.

Our lakeshore property on Flathead Lake is an island. A 50' setback requirement would render it virtually worthless for anything other than a "picnic site". We have paid too much for the property and too much in property taxes for too long to have it taken away by a redundant piece of legislation.

Respectfully submitted,



Robert J. Cherot  
400 Orchard Ridge Road  
Kalispell, MT 59901

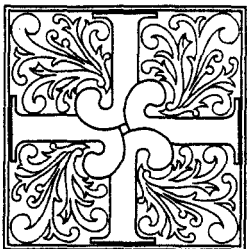


EXHIBIT 24  
DATE 1-15-93  
HB 30

*4-J Productions, Inc.*  
*4050 Via Dolce · Suite 140*  
*Marina del Rey, California 90292*  
*213-821-5161*

January 12, 1993

MONTANA LEGISLATURE  
NATURAL RESOURCES COMMITTEE

RE: OPPOSITION TO HOUSE BILL 30

Dear Committee:

This letter shall serve to voice our vehement opposition to House Bill 30 currently before the Committee.

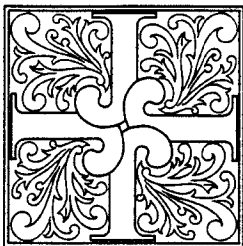
We are owners of waterfront property on Flathead Lake at Angel Point. Our holdings comprise two lots equalling approximately one acre of lakefront. We are in the process of finalizing our house plans for construction to begin in the Spring of 1993 as soon as the ground thaws. We have owned the property since 1988 and have begun other construction on our land.

The reason we have not begun the lakefront construction is because we have been very careful in designing our house around the trees. Our intention is to remove as few trees as possible.

The potential increase in the setback requirement of an additional thirty feet (30') would require removal of almost all of the trees on the parcel in addition to destroying the septic site plan and most of the existing wildlife.

It is our view the new setback requirement would in effect be a taking of land under the 6th Amendment of the U.S. Constitution. The environmental impact to the land and to the existing wildlife which we are trying to be careful in leaving intact would be devastating. House bill 30 would otherwise render the land completely useless for building. This would be tantamount to fraud on the part of the state of Montana.

EXHIBIT 24  
DATE 1-15-93  
HB 30



*4-J Productions, Inc.*  
*4050 Via Dolce • Suite 140*  
*Marina del Rey, California 90292*  
*213-821-5161*

Page 2

House Bill 30 serves no protective purpose to the waterfront properties it purports to protect environmentally. The results would a dotted swiss coastline as the existing houses and waterfront structures would not be required to conform to the new setback requirements. Moreover much of our lake in particular is owned by an Indian Tribe which would prejudice negatively those of us who chose not to purchase lakefront property on Indian Reservation Land. Therefore House Bill 30 cannot be consistently or fairly enforced.

House Bill 30 serves no beneficial purpose except to justify the existence of the Environmental & Natural Resources Council.

House Bill 30 serves only to burden landowners with increased regulations. It will not reduce the number of homes on our waterfronts. Nor will it serve to protect the environment as it purports.

The people who have chosen to live on lakefronts are not unaware of the ecology. In fact they are more aware.

To make a blanket regulation such as House Bill 30 will only serve to destroy more trees and wildlife. People will not be able to choose the optimum sites for their homes having the least damaging impact on the environment and existing ecology.

We strongly urge you not to permit House Bill 30 to become law as it is a frivolous law and would not serve any justifiable purpose.

Thank you for reading this.

Very truly yours,

WILMER C. BUTLER

IRIS A. BUTLER

OWNERS AND TAXPAYERS OF LOTS 9&10 ANGELPOINT ACREAGE AT  
LAKESIDE MONTANA

EXHIBIT 25  
DATE 1-15-93  
HB 30

Dick Knox, Chairman  
Natural Resource Committee  
Montana State Legislature  
Helena, MT 59620

RE: HOUSE BILL 30

We are property owners on Flathead Lake and are OPPOSED to House Bill 30 in which the State of Montana intends to confiscate 50 feet of our property.

The current rules regulating what we do with the first 20 feet from the water line are in place and NOT enforced. If the State has money to spend, ENFORCE WHAT REGULATIONS ARE ALREADY ON THE BOOKS.

It has been our experience that you do not now take steps to eliminate the boot-leg septic systems that exist, or ensure that all that are able are hooked to the sewer system. Take care of these problems before you make more arbitrary rules.

We care about the quality of Flathead Lake, do you? If you are going to keep it clean do it right, not through taking property from the citizens of Montana.

Sincerely,

*David T. McGill*  
*Cheryl G. McGill*

David T. McGill  
Cheryl G. McGill  
P.O.Box 178-293 Woodyard Rd.,  
Lakeside, MT 59922  
(406) 844-3039 or 844-3286

EXHIBIT 26DATE 1-15-93HB 30

553 OLD CORVALLIS ROAD  
HAMILTON, MONTANA  
59840 USA  
(406) 363-6214  
FAX (406) 363-6129

**FAX TRANSMITTAL**

DATE: January 14, 1993

TO: Ron Clark  
FAX #: 1-844-2031

FROM: Robert E. Ivy

Dear Ron,

I hereby appoint you my spokesman to testify on my behalf regarding House Bill 30. I fully support the testimony you will be giving on any occasions including the hearing on January 15, 1993, regarding HB 30 and the positions you take against HB 30.

I specifically oppose HB 30 since it provides no direction to the counties regarding how permitting will be allowed within the 50-foot restricted setback. It is my understanding that when the first bill was passed in 1975, counties were required to establish permitting regulations. It is further my understanding that only five counties have complied. What I do know is that Flathead County has created exceptionally restrictive and onerous regulations which could well render the owner's land useless. Without consistent regulations from county to county, I find HB 30 to be discriminatory and possibly unconstitutional.

Thank you, Mr. Clark, for assisting me in making my wishes known. Once again, I fully support all testimony you give as my spokesperson in opposition to HB 30.

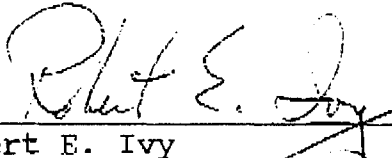
  
\_\_\_\_\_  
Robert E. Ivy



EXHIBIT 27  
DATE 1-15-93  
HB 30

January 14, 1992

Mr. Dick Knox, Chairman  
Natural Resources Committee  
Capitol Station  
Helena, mt. 59620

Dear Mr. Knox.

I am the current and Long Time owner of a home on Flathead Lake. I understand that Bill #30 is being presented to your Committee. I understand that this bill would increase control of Lake Shore property from 20 feet to 50 feet.

I would like to indicate my concern over this Bill and request that your Committee kill it prior to going to the House for vote.

Thank you for your consideration.

Sincerely,  
Don Baker

EXHIBIT 28  
DATE 1-15-93  
HB 30

Jan. 14, 1993

To Whom it May Concern:

I am apposed to the  
passing of house bill 30

Sincerely,  
Carol Stanley  
Carol Stanley  
520 Three Mile Dr.  
Kalispell, MT 59901

EXHIBIT 29  
DATE 1-15-93  
HB 30

Jan 14, 1993

To Whom it may concern:

I am apposed to the passing  
of house bill 30.


Sincerely  
  
Roy Stanley  
P.O. Box 8870  
Kalispell, MT 59904

EXHIBIT 30  
DATE 1-15-93  
HB 30

1/13/93

To whom it may concern:

I object to House Bill 30, specifically changing the set back for buildings from 20 feet to 50 feet and the unreasonable fines for such violation.

This is in my view over regulation, you are taking away the rights of lake shore owners. Some lots are so small that taking away 50 feet might inhibit there ability to develope. Please do not pass this bill.



Bob Anderson

Lake Shore Owner

\*\*\*\*\*  
FAX TRANSMITTAL MEMOTO: Scott Hollinger

DEPT: \_\_\_\_\_

FAX #: 837-5169FROM: Bob Anderson

PHONE: \_\_\_\_\_

CO: \_\_\_\_\_

FAX #: 542-2436

Post-it brand fax transmittal memo 7671

NO. OF  
PAGES

1



EXHIBIT 31  
DATE 1-15-93  
HB 30

To Whom It May Concern,

January 1, 1993

I am writing to inform you that I object strongly to House Bill 30. My family and I view ourselves as caretakers of the land, the lake and its shoreline. We would never do anything that was inconsistent with the integrity and beauty of the lake. We do object however to a bill created by governmental bureaucracy that dictates what can and cannot be done with the future of our shoreline.

Respectfully,

Peter Dale

EXHIBIT 32  
DATE 1-15-93  
HB 30

Dear Legislator:

As a property owner on  
Flathead Lake I want you  
to know that I am opposed  
to House Bill #30.

Sincerely

John L. Greene

John L. Greene

545 Hughes Bay Rd.

Lakeside, MT.  
59922

EXHIBIT 33  
DATE 1-15-93  
HB 30

January 14, 1993

Dick Knox, Chairman

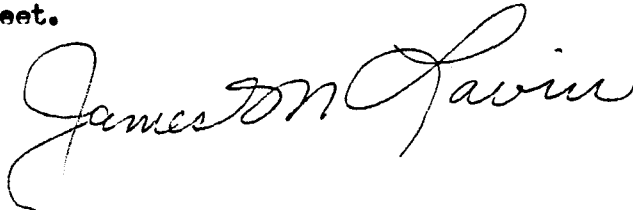
House Natural Resources Committee

Re: H B - 30

Dear Chairman Knox;

As a tax paying home owner on Flathead Lake, I am opposed to H B 30 as it is now written.

I am adamantly opposed to changing the County control from twenty (20) to fifty (50) feet.



James M. Lavin  
5615 Hwy 93 South  
Somers, MT. 59932

Fax #444-4802

EXHIBIT 34  
DATE 1-15-92  
HB 30

Jack & Christine Palmer  
648 Lakeside Blvd.  
P.O. Box 251  
Lakeside, MT 59922-0251

January 14, 1992

Natural Resources Committee  
Montana State Capitol  
Helena, MT 59601

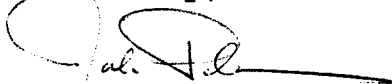
Re: House Bill 30

Gentlemen:

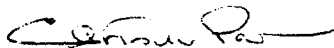
The purpose of this letter is to inform you our family is absolutely in opposition to passage of House Bill 30.

Passage would be an infringement upon our rights as property owners, place additional burdens on lakeshore property owners and increase government and government spending.

Sincerely,



Jack Palmer



Christine Palmer



EXHIBIT

35

DATE

1-15-93

HB

30

Dick Knot, Chairman  
House Natural Resource Committee  
Capitol Station  
Helena MT

Dear Chairman Knot:

I writing to let you know I am opposed the  
H.B. 30. As a resident of Flathead Lake, the  
new 50' set back is unacceptable to me.  
I would ask to you to vote against this  
bill. Thank you for your consideration

Sincerely,

Stella Mae Liliintal  
211 Marco Bay  
Jorners MT 59932

857-3241

EXHIBIT 36  
DATE 1-15-93  
HB 30

TAYLOR, THON, & ASSOCIATES  
ARCHITECTS — ENGINEERS — PLANNERS

RICHARD L. TAYLOR, AIA  
RAYMOND A. THON, AIA  
JAMES J. THOMPSON, AIA  
JOHN W. PETERSON, AIA

MEMBERS  
OF  
AMERICAN  
INSTITUTE  
OF  
ARCHITECTS

TO: House Committee on Natural Resources  
Helena, Montana  
FROM: Raymond A. Thon, AIA, PE  
Re: HB 30

Having read referenced bill, and analyzed its implications, we, the undersigned, wish to go on record as strongly opposing said measure. As property owners we are very concerned about maintaining the quality of our lakes, and are doing it as responsible citizens. We fear that further encroachment of government in this matter will lead to eventual condemnation of property we have paid dearly for. Present regulations are adequate to protect our private and public environment. Please kill this bill in committee.

Raymond A. Thon, AIA, PE  
Lars Gunn Thon

EXHIBIT

37

DATE

1-15-93

HB

30

January 14, 1992

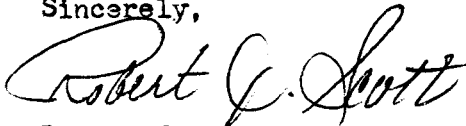
Dick Knox, Chairman, Natural Resources  
State of Montana Legislature  
Helena, Montana

Dear Chairman Knox:

Let the record show I am opposed to HOUSE BILL #30 as introduced by  
DRISCOLL, by request of the ENVIRONMENTAL COUNCIL.

Thank you for your acknowledgment of my opposition to HOUSE BILL #30.

Sincerely,



Robert J. Scott

Box 114

Lakeside, MT

(406) 844 3883

EXHIBIT 38  
DATE 1-15-93  
HB 30

11 Jan., 1993

Rep. Driscoll  
Montana House of Rep.  
Helena, Mt.

Dear Rep. Driscoll,

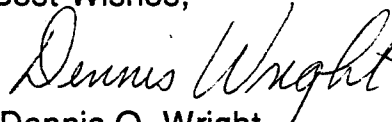
I am writing to **oppose House bill 30**. The present 20 foot setback for buildings is a good compromise for the landowner and the public.

A 50 foot requirement would place a hardship on many landowners who have spent large amounts of Montana hard earned money for their retirement or dream house on Montana's water ways. This would completely eliminate many properties from the possibility of completing plans for development. This may sound good to some, but for thoses who hold property, or hope to in the future, if this bill passes, there will be a large number of unset Montana people.

We pay a large amount of taxes on these properties. The evaluation will have to go down on many places. The only people that will be effected will be the Montana people who can only afford smaller parcels. This will eliminate Montanans . The only people who will beable to afford property will be out of staters. They will acquire the larger places that can meet the 50 foot requirement.

**THE PRESENT LAW IS GOOD!** Why fix something that is not broke.

Best Wishes,



Dennis O. Wright  
11 Cedar Lake Dr. and  
Butte, Montana

[Flathead lake]  
333 Woodyard  
Lakeside, MT.

January 12, 1993

EXHIBIT 39  
DATE 1-15-93  
HB 30

Jerry & Theresa Krie  
309 Woodyard Road  
Lakeside, Mt. 59922

To Whom it may concern: -

We have heard of House Bill #30 affecting the shores of Flathead Lake. As lake residents we are in agreement with the Angel Point group who is in Helena to represent those of us unable to attend. It is an important bill for us to appose. The restraints will greatly affect land development for our family and all who own lake frontage. In our opinion the current twenty foot protection is sufficient. Our hopes are that Bill #30 will be defeated.

Sincerely,

*Jerry Krie*  
*Theresa Krie*

# Kalispell Ob-Gyn Associates, P.C.

OBSTETRICS GYNECOLOGY INFERTILITY

VAN KIRKE NELSON, M.D.  
JOHN L. HEINE, M.D.  
ELLIS M. SOWELL, M.D.

DIPLOMATS OF THE AMERICAN  
COLLEGE OF OBSTETRICS AND  
GYNECOLOGY

EXHIBIT 40  
DATE 1-15-93  
HB 30

January 15, 1993

Chairman Dick Knox  
Natural Resources Committee  
Montana House of Representatives  
Helena, Montana 59604

Subject: House Bill #30, General  
revision of Lakeshore statutes.

Dear Representative Knox and members of the Natural Resource Committee:

I write this letter not only out of self interest, but also concern of abridgement of property owner rights.

In 1962 I purchased a small parcel of land on Flathead Lake, subsequently gifting ownership to my five children, all of whom are residents of Montana. In 1990 a sunporch and eating area was constructed within existing guidelines/laws with the ultimate plan, when funds available to build a more permanent year round structure of logs to blend in with the existing landscape.

My Concerns:

1. Changing of Codes/Rules that are adverse to existing land owner rights.
  - a. Devaluation of property
  - b. Inability to build because terrain may not accommodate under new proposed codes.
  - c. Inability to go forward with existing long term plans.
2. Loss of tax base to counties because of devaluation of properties affected.

I believe that the value of property on such lakes as Flathead Lake, precludes environmental hazards so long as septic system requirements remain strong and enforced.

Personal property rights should be protected, not altered after the fact.

Thank you for your consideration.

  
Van Kirke Nelson, M.D.

VKN/kc

EXHIBIT

41

DATE

1-15-93

HB

30

# SOLBERG TRUCKING, INC.

3560 Hwy 93 South  
Kalispell, Mt. 59901  
406-752-1536

HOUSE NATURAL RESOURCE COMMITTEE

OPPOSE HOUSE BILL #30, BECAUSE IT WILL COST THE STATE OF MONTANA MONEY THAT IT DOES NOT HAVE, AND IT WILL CAUSE AN INCONVENIENCE TO THE PROPERTY OWNERS ON THE LAKE.

*Erville S. Solberg*  
ERVILLE S. SOLBERG

# A

## ASHLEY LAKE PROPERTY OWNERS ASSOCIATION

Box 2240  
Kalispell, MT 59901

or

409 Crestview Road  
Kalispell, MT 59901

January 13, 1993

EXHIBIT 42  
DATE 1-15-93  
HB 30

Natural Resource Committee  
ATTN: Dick Knox

Dear Sirs:

We, the Board of Directors of the Ashley Lake Property Owners Association, represent 140 active members, who are predominately residents of Flathead valley. We feel that House Bill 30 is not in the best interests of the property owners of lake frontage on Ashley Lake.

Our main concern is the setback rule outlined in Section 75-7-202 which should read 20 horizontal feet rather than 50 horizontal feet. We believe that in some areas of lake frontage this rule would eliminate property owners from building or developing their property. Most property owners are concerned about water quality; but if the government chooses to dictate how it will be regulated, the owners will no longer have control of their own land.

Regulations for the property owner is not the sole answer, but rather that spring runoff and other natural occurrences beyond our control affect water quality and should be considered. We strongly feel that Section 6 and Section 7 of House Bill 30 should be omitted.

Please call me at 756-1154 if you have any questions.

Sincerely,



Greg Greene  
Chairman

Greg Greene, Chairman  
Fred Zauner, Co-Chairman  
Lane Bennett, Legal Advisor  
Larry Fenster  
Barbara Bennett

756-1154  
257-2862  
752-6804  
752-2624  
756-1431

### Board Members

Doug Gamma  
Ron Buenteimer  
Fred Posey  
John DeReu  
John Brenden

257-0223  
862-3897  
257-3235  
752-1054  
783-5394





EXHIBIT 43  
DATE 1-15-93  
HB 30



January 13, 1993

Re: House Bill 30

Dear Natural Resource Committee and Legislators:

My name is Bruce Young. I am a 46 year resident of Flathead Lake. I am Broker/Owner of Re/Max Land & Lake Realty in Kalispell and Lakeside, Mt. I have been involved in water quality issues for approximately 15 years and I have sought to protect the water in the Flathead Basin.

I am concerned about the fairness of implementing a 50' set back from the high water mark. We already have many existing homes on the waters edge and many 20' from the waters edge. It seems to me that the people who have not built their homes on vacant land will now be penalized for not building and those land owners will not now be able to build on an even plain with their neighbors. They would then have to view their neighbors homes from their lake front windows. It seems to me that perhaps the fair way to approach this would be to implement a bill that addresses storm drainage for any new homes rather than creating further inequities between the neighbors and neighborhoods.

While the intent is good, the method that HB30 takes is unfair to the vacant property owners. If you could have installed this bill 100 years ago it would have been equal and fair to all. I recommend you pursue this matter by addressing storm drainage and run off and that you leave the set back at its current level.

Thank you for your considerations. If you should have any questions please call me.

Sincerely,

*Bruce A. Young*

Bruce A. Young  
Broker/Owner  
RE/MAX Land & Lake Realty

**RE/MAX**

land & lake realty, Inc.  
p.o. box 582,  
lakeside, montana 59922  
phone (406) 844-3500 fax (406) 844-3500

an independent member broker

EXHIBIT 44  
DATE 1-18-93  
HB 30

To: MONTANA STATE LEGISLATURE  
From: JOHN JELLAR  
Date: January 14, 1993  
Subject: HOUSE BILL #30

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I AM WRITING THIS LETTER TO OPPOSE H.B. 30. AS A  
WATERSIDE RESIDENT I BELIEVE OUR CURRENT  
RESTRICTIONS ARE SUFFICIENT AND APPROPRIATE.

SINCERELY YOURS,

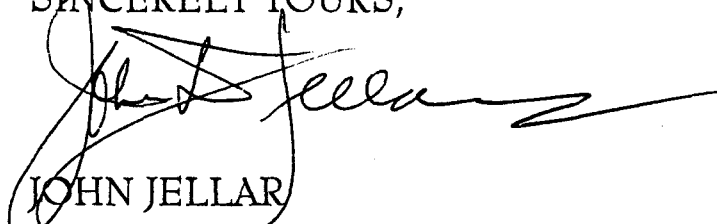
  
JOHN JELLAR  
203 LAKESHORE DRIVE  
KALISPELL, MONTANA 59901

EXHIBIT 45  
DATE 1-18-93  
HB 30

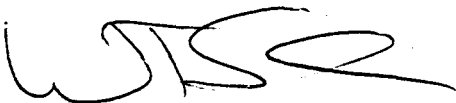
**To: MONTANA STATE LEGISLATURE**  
**From: WILLIAM T. LINCOLN**  
**Date: January 14, 1993**  
**Subject: HOUSE BILL #30**

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**I AM WRITING THIS LETTER TO EXPRESS MY  
OPPOSITION TO H.B. 30. I BELIEVE THIS IS AN  
OVERZEALOUS RESTRICION THAT WILL CREATE  
A HARDSHIP FOR ALL PROPERTY OWNERS ON  
THE LAKES AND RIVERS.**

**I AM:**

**SINCERELY YOURS,**



**WILLIAM T. LINCOLN  
203 LAKESHORE DRIVE  
LAKESIDE, MONTANA 59922**

HOUSE OF REPRESENTATIVES  
VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. HB 30  
DATE 1/15/93 SPONSOR(S) REP. DRISCOLL  
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<del>Robert Leon</del> Box 114 Lakelse Mtn 59922	—		✓
<del>Robert</del>			
Betsy Allen, 3880 Kismet Helena, MT 59601	Walter & Katherine Titus home/land owners		✓
Dick Wollin 466 N. Finley Pt Rd Polka	Flathead Lakers	✓	
Bruce Loble Rozzoman	MT. WATER COURT		
Steve Manderville	Self		
Ron Clark	Self & Flathead Homeowner		✓
<del>Lowell E. Fisher</del>	<del>Self &amp; Flathead Lk.</del>		✓
ROGER J. SOMERVILLE	SELF & FLATHEAD HOMEOWNER		✓
Dan L. Averill	Self & Flathead Homeowner		✓
Constance Schaffer	Self " "		✓
Martin Schaffer	" F. " "		✓
Martin HAYE	SELF-Whitefish LAK		✓
TED SOLEM	SELF		✓

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

Jerry Sorenson

Lake County

✓

HOUSE OF REPRESENTATIVES  
VISITOR'S REGISTER

Natural Resources

COMMITTEE

BILL NO.

HB 30

DATE 1/15/93

SPONSOR(S)

REP. DRISCOLL

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
STEVE NICKOL	SELF		X
HARRY FARRINGTON	SELF		X
ROBERT N. HELDING	THOMPSON LAKES HOMEOWNERS ASSOC.		X
Sanna Kiesling	self	X	
PAUL SLITER	SELF		X
Don Sterhan	self		✓
William in Lister			✓
FRED STERHAN			✓
Bob Skinner	self		✓
Mike Pichette	MT. Power Co		Amend
Russ Ritter	Inland Properties		✓
Doug Wagner	District Constituents		✓
Marge Fisher	Rep		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. HB 30  
DATE 1/15/93 SPONSOR(S) RGP DRISCOLL

**PLEASE PRINT**

**PLEASE PRINT**

[illegible]

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