

**MINUTES**

**MONTANA SENATE  
53rd LEGISLATURE - REGULAR SESSION**

**JOINT COMMITTEE ON STATE ADMINISTRATION**

**Call to Order:** By Senator Eleanor Vaughn, on January 26, 1993,  
at 10:00 a.m.

**ROLL CALL**

**Members Present:**

Sen. Eleanor Vaughn, Chair (D)  
Sen. Jeff Weldon, Vice Chair (D)  
Sen. Jim Burnett (R)  
Sen. Harry Fritz (D)  
Sen. John Hertel (R)  
Sen. Bob Hockett (D)  
Sen. Bob Pipinich (D)  
Sen. Bernie Swift (R)  
Sen. Henry McClernan (D)  
Sen. Larry Tveit (R)  
Rep. Simpkins (R)  
Rep. Spring (R)  
Rep. Barnhart (D)  
Rep. Galvin (D)  
Rep. Gervais (D)  
Rep. Hayne (R)  
Rep. Mason (R)  
Rep. Molnar (R)  
Rep. Rehbein (R)  
Rep. Rice, S. (D)  
Rep. Stovall (R)  
Rep. Wallin (R)

**Members Excused:** None.

**Members Absent:** Rep. Davis (D), Rep. Rose (R),  
Rep. Schwinden (D), Rep. Squires (D)

**Staff Present:** David Niss, Legislative Council  
Deborah Stanton, Committee Secretary

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

**Committee Business Summary:**

Hearing: HJR 5  
Executive Action: None.

HEARING ON HJR 5Opening Statement by Sponsor:

Rep. John Mercer, House District #50, co-sponsor with Sen. Van Valkenburg, presented the resolution. Representative Mercer told the Committee HJR 5 is the Legislature's response to the Montana Districting and Apportionment Commission. The resolution contains no recommendations because the Legislature is to present its recommendations. He explained whatever recommendations that the Committees put together, as well as the full House and Senate recommendations, should be responsible and complete. He stated the Legislature cannot simply say it wants a particular district changed. It has to be presented to the Commission how that would impact the rest of the state. He told the Committee it is not fair for the Legislature to ask for changes and not explain how that would impact all the other districts in the State of Montana. He continued that the other issue is time is short. He explained under the Constitution there are 30 days in which to respond; therefore there are 15 more days left.

Sen. Fred Van Valkenburg, Senate District #30, restated the need to expedite this matter. He explained when a proposal is made which has an obvious "ripple effect" into the rest of the state there ought to be some onus on those who are proposing that change to determine how to bring it all together in terms of its impact on the entire state; other than simply saying this solves a problem in a certain area but creates problems throughout the rest of the entire state. He told the Committee he did not believe the recommendations are credible to the Reapportionment Commission unless the Legislature can come back with a proposal to the Commission as to how it can be made to work throughout the state. He stated Rep. Mercer and himself agreed that a joint resolution should be introduced; and that every effort should be made to have that joint resolution adopted by both bodies of the Legislature. He told the Committee that did not occur in 1983. Because each house is controlled by separate political parties it would be difficult; and if it doesn't work out they are still prepared to have introduced and considered simple resolutions in the House or in the Senate.

Informational Testimony:

Sen. Vaughn asked Susan Fox to give an overview of the process used in drawing the lines and explaining problems that can be created by trying to change many of the lines.

Susan Fox, staff researcher for the Legislative Council, stated statutorily the Legislative Council is required to provide staff to the Districting and Apportionment Commission; and that since last January she has been working with the Commission. She explained she works for the Legislature and the Commission. Ms. Fox gave an overview of the mandatory guidelines and criteria. (Exhibit #1) She explained the districts must consist of compact

and contiguous territory; and when it gets down to specifics it is a hard to define but is in the Constitution. Population equality in all legislative districts must be as equal in population as is practicable. Relative population deviation from the ideal, which is 7,990 for an individual district, must not exceed plus or minus 5%. That is based on federal litigation which has given a 10% guideline in which a state would not have to justify these differences, though there has been allowed greater than 10% in a few cases.

Ms. Fox explained Population Base: The official final results of the 1990 federal decennial census, the database used for the districting and apportionment, does not include any adjusted figures. She pointed out people from the counties may remember that there was some adjustment made; but final figures were used, not the adjusted figures.

Ms. Fox explained Protection of Minority Rights: The redistricting plan may not dilute the voting strength of racial or language minorities and shall comply with Section 2 of the federal Voting Rights Act. She explained this means no district plan or proposal for a plan is acceptable if it affords members of a racial or a language minority group less opportunity than other members of the electorate to participate in a political process and to elect representatives of their choice. She explained there was also other criteria that the Commission attempted to follow if possible. Due to the use of census data and TIGER/line files, based on a geographic information system, some of this was not possible. The other criteria were: local governments boundaries, precincts, school districts, communities of interest, geographic boundaries, existing districts and political fairness. The Commission started on legislative redistricting with its first public hearing last April in Kalispell. The Commission held 12 regional public hearings across the state and one statutorily required final public hearing at the end of November in Helena. As the staff person for the Commission, Ms. Fox told the Committee she traveled around the state and visited with the county people, party people, tribal officials, and with anybody interested in the process. She then prepared alternate plans for the Commission that were presented at the public hearings. Testimony was taken from people and the Commission would take action and adopt one of those plans at a meeting prior to the public hearing. The Commission accepted written comments from people for 7 days after each public hearing. At the November 30 meeting (the public hearing on all 150 districts) the Commission adopted the senatorial pairings and amendments were offered and adopted. The plan adopted after the November 30 meeting (sometime in December) was presented to the Legislature on January 11. She told the Committee the Constitution gives the Legislature 30 days for review and comment. The Commission receives the plan back from the Legislature and has 30 days to make its final decision. The Commission is charged with making the final decision on this plan.

Proponents' Testimony:

Sen. Bob Pipinich, of old Senate District #33 which will be new Senate District #29 (Exhibit #2). Sen. Pipinich requested the line be drawn to accept his home. He explained this would be District #29 and would take House Districts #57 and #58 (Anaconda, Phillipsburg, Drummond, portions of Bonner and up to Condon, Montana).

Representative Simpkins asked the House State Administration Committee to keep the amendments as they are the working papers when they go into session.

Susan Fox stated the handout showed the districts and the population affected and they stay within the 5% criteria. Only the districts on the cover sheet are the ones affected by these amendments.

Rep. Brad Molnar, of old House District #85, new district #22. (Exhibit #3) Representative Molnar told the Committee the area in question is the northern part of old HD 85; it moved to pick up another small subdivision, the border of a dry creek bed. The area above has been subdivided into 5, 10, 20 and 40 acre lots. He explained those people's children will go to school in Laurel, the mail will come out of Laurel; they will see themselves as being from Laurel. He stated there is no real population change because no one is living there yet; and it also makes the highway from Billings to Laurel the border, which makes it very easy to know where the district begins and ends, as opposed to a meandering creek bed. He told the Committee that on a partisan basis, the area was served by Vern Keller, a Republican; and before Rep. Molnar's amendment, it was served by Sonny Hanson, a Republican. He explained, "I'm a Republican so there's not partisan gain or loss. It's just to pick up the people that will be moving there so they can be represented by people who represent their school districts."

Rep. Bea McCarthy, House District #66, appeared to ask for support for her amendment. (Exhibit #4) She explained the amendment makes Anaconda and Deer Lodge County whole for a Senate seat. She told the Committee when the Commission came to Anaconda the amendment was requested by county commissioners and the people who testified, as well as by the other county commissioners that were involved. Rep. McCarthy no longer has a House seat. She stated she is representing the community, and under the current House proposal, the community of Anaconda and the county, which is one unified government, is split by a line going east and west. She explained the road behind her home, which is a county road, under the current proposal, would be represented by a Senator from Missoula; but the street in front of her home, which is in another district, would be represented by a Senator from Helena. The county commissioners have endorsed this proposal and will be sending a resolution to it. She stated

Granite County which she currently represents, would be joined with Lewis and Clark County in the rural area. They have asked for this. They specifically requested it to be joined for this area because they have mining interests in common, they have the rural communities in common and would prefer to be represented by that kind of legislator. She told the Committee she would no longer be representing that area. She explained these are mainly readjustments drawn up by Susan Fox which show the ripple affect of this amendment. Rep. McCarthy said Ms. Fox has taken into consideration all of the movements that would be necessary. She stated this is a proposal that comes from the people; it is not a proposal from a legislator who wants to represent a district because Rep. McCarthy no longer has a district. She told the Committee she was not representing herself but that the community wants to be put back together because they have been split apart for the last ten years having a Senator from Butte and one from Missoula.

Sen. Bob Hockett, Senate District #7, stated the proposal Rep. Bachini and he put together that Susan Fox drew shows on the map, (Exhibit #5). He explained it would change the boundary of House Districts #90 and #92 from the line that wanders out through the countryside to Highway 87 as a boundary. He explained it would be much easier for the people to identify where they are. There are 107 people affected by the amendment. The previous district crossed Highway 87 to the Blaine County line. He told the Committee the affect on the town of Box Elder is something that needs attention because the town of Box Elder would be divided. He stated the reason for the division is the Native American population in Box Elder, all of whom are in House District #92 at the present time. As a result of this change, Native American population, on a percentage basis would increase in the new House District #92 because most of the people moving would not be Native American. Sen. Hockett told the Committee he had spoke with all legislators affected by this proposal and they have no objections to it.

Rep. David Ewer, House District #45, presented the amendment prepared at the request of Sen. Sue Bartlett. (Exhibit #6) He explained the amendment would affect one street currently in House District #45, LeGrande Cannon Blvd. The district boundary is LeGrande Cannon Blvd. and has all of Mount Helena to the south; and to the north it includes, what is now the district (HD 46) represented by Rep. Chase Hibbard. He explained the proposed amendment would simply move the boundary that is currently LeGrande and would make it more central. He told the Committee Sen. Bartlett and Rep. Hibbard and he agree this would take, what is now essentially a "narrow dog leg" and put it into Rep. Hibbard's district (HD 46). It would make Rep. Ewer's district (HD 45) more central.

Rep. Douglas T. Wagner, House District #8, proposed HD #83 (Exhibit #15). He explained that the deficit that is created by changing the boundaries in the amendment is about the same number

of people that live in that area they took away. He explained he asked Sen. John Harp, Sen. Bob Brown and Sen. Boharski if any of them had a problem with staying with the original boundaries. They did not.

Rep. Sayles, House District #61 (Exhibit #16) told the Committee he wanted the lines drawn so that he would be included in a district that he lived. The person across the street from him was in one district and he in another. The largest portion of his district is in the southern part. He asked if Susan Fox could encompass the small area to include his home. The northern part of the district would involve 1,000 people less than were in a district of 8,446. That's why he asked for this.

Sen. Pipinich asked how many this would add to his district. Rep. Sayles said it would add 300 people.

Sen. Jack Rea, Senate District #38, explained his amendment (Exhibit #17) would move the boundary of HD 33 eastward about one mile and incorporate about 281 people. He explained the number of people is within the deviation standards (4.8%). He told the Committee this is done on the request of his constituents. The original proposal actually incorporated the Town of Three Forks and took 1558 people. It went around the buildings in Three Fork and followed the railroad track, and a very primitive road. He stated the new boundary line is on Buffalo Jump Road and which is a well-traveled road. The upper Madison Road comes down by a state park and into the interstate, then follows the Gallatin River where the Gallatin meets the Missouri. He explained this is by request of the people because they would rather be in this area with Madison County than to be cut off from the people they have been associated with all of their life.

Sen. Pipinich asked how many people would be affected. Sen. Rea said 281 people.

Rep. Jim Elliott, House District #51, explained (Exhibit #19) the reason he asked for the amendment is to keep the majority of the people in this census district happy. He stated there is no controversy in this proposal.

Rep. Ed McCaffree, House District #27, explained (Exhibit #20) the proposed amendment will follow the county line. A second amendment was proposed regarding the boundary with HD #5.

Susan Fox explained the second amendment has not been prepared because it would take population out of the Native American House district #5 and it would then be over the -5% deviation. With the ripple effect, any amendments can be done, it would just require further changes in more than two districts.

Susan Fox handed out Senator Eck's proposal and Sen. Beck's proposal. (EXHIBIT #21, 22, and 23)

Sen. Pipinich asked Susan Fox about Sen. Beck's amendment. Susan Fox explained Sen. Beck's proposal is a Senatorial district proposal which is different from Rep. McCarthy's proposal for Senate districts. She explained it affects the same area of the state but his proposal is to bring Powell County back together which would be from Condon to Philipsburg with the City of Deer Lodge district. This would bring Powell County district back from the other side of the divide.

Sen. Pipinich asked Ms. Fox about Sen. Lynch's district. Ms. Fox said it affects all of the same areas of Sen. McCarthy's amendment as well; Lewis and Clark, Cascade, Meagher, Broadwater, Jefferson, Silver Bow, Deer Lodge, Granite, Missoula and Powell Counties. She stated it just affects the pairing of house districts into senate districts; and doesn't change any lines for the house districts. Sen. Beck's amendment would preclude Rep. McCarthy's amendment. Sen. Eck's amendment would preclude Sen. Rea's amendment.

#### Opponents' Testimony:

Clara Nomee, Chairperson of the Crow Nation from the Crow Reservation, gave written testimony (Exhibit #7). Rep. Russell will work with Ms. Nomee to draft the amendment.

Rep. Angela Russell, House District #99, representing the Crow Tribe and Big Horn County (Exhibit #8, #8(a), #8(b)) stated as citizens of Montana, Native Americans on the seven Indian reservations have watched closely and participated in the reapportionment process over the last year. Native Americans have sought the legal advice of the ACLU in ensuring that the Federal Voting Rights Act is complied with by the Reapportionment Commission. As early as December 13, 1991, ACLU legal director, Jeff Renz, in a letter to the Honorable L.C. Gulbranson, then chair of the Montana Reapportionment Commission said, "As the Reapportionment Commission's criteria indicates, if the Commission can draw a majority Indian legislative district, then the Voting Rights Act of 1965 as amended requires that it be created. The Voting Rights Act can also extend to minority influence districts in which a racial minority make up a substantial portion of the voting population, although not a majority. Moreover, the voting rights act creates a greater deviation from the ideal population. This is a deviation up to plus or minus 16%, if that is necessary to achieve a majority Indian district. The key is no plan may dilute the Indian vote by any means. Whether by dividing it and submerging the pieces in majority white districts, or by concentrating into an overwhelmingly Indian district." Representative Russell told the Committee there were three proposals that were not adopted by the Reapportionment Commission which she wanted to recommend. She stated they believe that the Legislature needs to take a look at these again and consider them favorably. One is a combined Flathead/Blackfeet Senate District and the Reapportionment Commission already has that within their materials (Exhibit

#8(a)). Secondly, a combined Rocky Boy/Fort Belknap and Fort Peck Senate District (Exhibit #8(b)). Thirdly, a Crow/Northern Cheyenne House District (Exhibit #8). She told the Committee as Native Americans, they believe the Voting Rights Act has to be strictly adhered to; the first Native American voting rights case in Montana in 1986 (the Windy Boy case) is a case which invalidated the at large system of elections for county commissioners in Big Horn County. She explained that case cost Big Horn County \$500,000. She told the Committee it needs to consider recommendations to readjust the plan versus court action. She stated that Pat Smith will represent the Confederated Salish and Kootenai Tribe, Bob Gervais from the Blackfeet Tribe and Kathleen Fleury, the State Indian Affairs Coordinator, will present some material on behalf of the Fort Belknap Tribe. In the future, when we have a Reapportionment Commission, it needs to look like us not only in terms of gender and racial parity, but intergenerational.

Pat Smith, Staff Attorney, Confederated Salish and Kootenai Tribe, told the Committee he was also co-counsel for one year in the Windy Boy v. Big Horn County lawsuit that was decided in 1986. He stated he was here today to convey the tribe's opposition to the redistricting plan affecting the Flathead and Blackfeet Reservations. He explained for reasons presented to the Commission many times, the Salish and Kootenai Tribe asserted that the proposed plan denies the Indian residents of the Flathead and Blackfeet Reservations fundamental voting rights under Section 2 of the federal Voting Rights Act. Blackfeet and Flathead have voiced opposition to the proposed redistricting plan throughout the entire process (Exhibit #9).

Kathleen Fleury, Coordinator for Indian Affairs, spoke on behalf of Indian tribes that were unable to be at the hearing. (Exhibit #10). She told the Committee the Fort Belknap Community Council passed a resolution concerning House District 142 (new HD #92), encompassing the Fort Belknap and Rocky Boy Reservation but would exclude Havre and Chinook. House district 142 (new HD #92) would total approximately 4,638 people. House district 142 (new HD #92) would have a voting age of 18 and older, population 54%. Their resolution supports the Montana plan 100 with the newly created House District 92. Ms. Fleury told the Committee the Northern Cheyenne submits testimony in opposition to the proposed redistricting plan (current HD 100/proposed new HD 154 (new HD #5)) (Exhibit #11). She stated the Assiniboine and Sioux tribes of the Fort Peck Reservation (Exhibit #12) urge the Committee to give full weight to the requirements of the Voting Rights Act in creating both House and Senate Districts. Ms. Fleury said this means creating a new House District on the Fort Peck Indian Reservation with sufficient population to provide a real opportunity to elect an Indian legislator and create an Indian majority senate seat that includes Fort Peck.

Sen. Hockett asked if there was a map that would indicate to the members of the Committee where the boundaries were. Susan Fox



said there were maps and all the information submitted by the different tribes can be shared. She will also be available for any questions.

Rep. Bob Gervais from the Blackfeet Tribe, House District #9, proposed #85, spoke in opposition to the Commission's recommendations and in support of the amendment that addresses the Blackfeet/Salish Kootenai District. Representative Gervais wanted to add the issue of the mountains to what Pat Smith said. He said the mountains have never been a barrier to the two tribes. He told the Committee that "a long time before 'what's his name' was discovered on our shores while we were here; if we weren't warring, we were powwowing together, stealing each other's women, and horses and and doing all this type of thing. So it's really never been a barrier and I don't know why this is an issue. We've always communicated. We have intertribal meetings, in fact, our community colleges have exchange students. In the last election, we were together on voting. Each tribe put up a buffalo to see who could get the most voters out from the tribes. We are always in contact with each other".

Jeffrey T. Renz, an attorney from Billings, former legal director of ACLU of Montana gave written testimony (Exhibit #13 and Exhibit #14).

Rep. Pat Galvin, House District #40, Cascade County, spoke in protest to the Reapportionment Commission's plan insofar as Cascade County is concerned. He explained this will take an adjustment of six or eight counties in North Central Montana including Cascade County. The counties affected will be Teton, Cascade, Lewis and Clark, Meagher, Judith Basin and Petroleum. He presented written testimony (Exhibit #24).

Don Ryan, a citizen of Cascade County, spoke in opposition to the Reapportionment Commission's recommendation. He stated that in 1980 Cascade County had 80,696 people. The ideal size for a district is 7,867 people. He stated Cascade County should have gotten  $10\frac{1}{4}$  representatives, or if they received the minimum number they would have gotten  $10\frac{3}{4}$ ; and if they received the maximum in every district Cascade County should have been allowed  $9\frac{3}{4}$  representatives. As it is, Cascade County only got 9. When the 1990 census came out the population dropped. He explained the ideal size showed Cascade County getting  $9\frac{3}{4}$  representatives. He stated if the minimum number is used it gets  $10\frac{1}{4}$ ; or  $9\frac{1}{4}$  if the maximum number is used. Many of the rural residents of Cascade County feel as urban residents of Cascade County they do not have a voice that can effectively represent them in the House of Representatives. He told the Committee there is a feeling from the rural population of Cascade County that they have a very small chance of being elected or if the representatives is doing the job they must express the opinion of the majority of their constituents which are urban. Malmstrom AFB, Black Eagle and the City of Great Falls have 61,952. Currently, Cascade County has a population of 77,691. That means

in rural Cascade County there are 15,739 people. That is enough for two rural representatives in Cascade County, but they don't even have one voice. He explained there is a disenfranchised feeling by those people, and they request this Committee to make an effort to rethink Cascade County and give them a voice for the next ten years.

Joe Tropila, Cascade County Clerk and Recorder, spoke in opposition to the plan (Exhibit #18). He told the Committee in the past two reapportionments, Cascade County has not been listened to. He explained the problem is rural people cannot vote or run for political office. While they can vote, they cannot vote for the people of their choosing. They can run for political office but they will not have enough voting power to gain political office.

Questions From Committee Members and Responses:


Rep. Wallin asked what the next step is in this process. Sen. Vaughn said it goes back to the House State Administration to review the amendments. It will be considered by the House State Administration at executive action to decide what they will do with the proposals. Then it will come to the Senate State Administration for that committee to take executive action.

Closing by Sponsor:

Sen. Van Valkenburg stated he was sorry if the ACLU and Cascade County and Rep. McCarthy and others think it is unfair to say a proposal ought to take into consideration the "ripple effect" of how this affects the State of Montana. He explained the Legislature cannot credibly make recommendations to the Reapportionment Commission without considering the "ripple effect". The Reapportionment Commission has to consider that. Sen. Van Valkenburg did recommend to the Commission that they adopt the Flathead/Blackfeet Tribe combination but that was not done. He explained that now we have a position of a "big rock in a small pond"; whether it's the ACLU proposal or Cascade County.

ADJOURNMENT

Adjournment: 12:00 a.m.

  
SENATOR ELEANOR VAUGHN, Chair

  
DEBORAH STANTON, Secretary

# ROLL CALL

SENATE COMMITTEE STATE ADMINISTRATION DATE Jan. 26, 1993

| NAME                 | PRESENT | ABSENT | EXCUSED |
|----------------------|---------|--------|---------|
| Sen. Eleanor Vaughn  | ✓       |        |         |
| Sen. Jeff Weldon     | ✓       |        |         |
| Sen. Jim Burnett     | ✓       |        |         |
| Sen. Harry Fritz     | ✓       |        |         |
| Sen. John Hertel     | ✓       |        |         |
| Sen. Bob Hockett     | ✓       |        |         |
| Sen. Henry McClernan | ✓       |        |         |
| Sen. Bob Pipinich    | ✓       |        |         |
| Sen. Bernie Swift    | ✓       |        |         |
| Sen. Larry Tveit     | ✓       |        |         |
| David Niss           | ✓       |        |         |
| Rep. Simpkins        | ✓       |        |         |
| Rep. Spring          | ✓       |        |         |
| Rep. Barnhart        | ✓       |        |         |
| Rep. Davis           |         | ✓      |         |
| Rep. Galvin          | ✓       |        |         |
| Rep. Gervais         | ✓       |        |         |
| Rep. Hayne           | ✓       |        |         |
| Rep. Mason           | ✓       |        |         |
| Rep. Molnar          | ✓       |        |         |
| Rep. Rehbein         | ✓       |        |         |

FC8

Attach to each day's minutes

# ROLL CALL

SENATE COMMITTEE

State Administration

DATE Jan. 26, 1993

| NAME                | PRESENT | ABSENT | EXCUSED |
|---------------------|---------|--------|---------|
| Rep. Rice           | ✓       |        |         |
| Rep. Rose           |         | /      |         |
| Rep. Schwinden      |         | /      |         |
| Rep. Squires        |         | /      |         |
| Rep. Stovall        | ✓       |        |         |
| Rep. Wallin         | ✓       |        |         |
| Sherri Heffelfinger | ✓       |        |         |
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FC8

Attach to each day's minutes

# GUIDELINES AND CRITERIA FOR LEGISLATIVE REDISTRICTING

Prepared for the Montana Districting  
and Apportionment Commission

By Tom Gomez  
Staff Researcher

Montana Legislative Council

October 1991

SENATE STATE ADMIN.  
EXHIBIT NO. 1  
DATE 1-26-93  
BILL NO. REAPPORTIONMENT

The following are the guidelines and criteria that will be used by the Districting and Apportionment Commission in developing the legislative redistricting plan for Montana.

## I. MANDATORY GUIDELINES AND CRITERIA

1. Compactness and contiguity. Each legislative district shall consist of compact and contiguous territory.
2. Population equality. All legislative districts must be as nearly equal in population as is practicable.
3. Maximum population deviation. The relative population deviation from the ideal population for an individual district may not exceed plus or minus 5%.
4. Population base. The official, final results of the 1990 federal decennial census are the exclusive, permissible data base for population that will be used in developing the state legislative redistricting plan.
5. Protection of minority rights. The redistricting plan may not dilute the voting strength of racial or language minorities and shall comply with §2 of the federal Voting Rights Act (42 U.S.C. §1973, as amended). No district plan or proposal for a plan is acceptable if it affords members of a racial or language minority group "less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice."

## II. OTHER CRITERIA AND POLICY CONSIDERATIONS

1. Local government boundaries. Consideration will be given to the boundary lines of existing local government units, including counties, cities, towns, and Indian reservations. The division of local government units into legislative districts should be avoided except as necessary to meet equal population requirements or to comply with the Voting Rights Act.
2. Precincts. District lines should follow voting precinct lines to the extent practical in order to minimize voter confusion and the cost of election administration.
3. School districts. School district lines should be considered whenever practical.
4. Communities of interest. Where possible, communities of interest should be preserved. Communities of interest shall include trade areas, areas linked by common communication and transportation systems, and areas that have similarities of interests, such as social, cultural, and economic interests common to the population of the area.
5. Geographical boundaries. Geographical boundaries will be respected to the extent possible.
6. Existing districts. Whenever practical, consideration will be given to existing legislative district lines.
7. Political fairness. Districts may not be drawn for the purpose of favoring a political party, nor to protect or defeat an incumbent legislator.

epg 1301tgxa.

Proposed Amendment to the Districting and Apportionment Plan  
For the Senate and House Committees on State Administration

Prepared by Susan B. Fox  
January 26, 1993

MISSOULA COUNTY  
Prepared at the request of Sen. Pipinich

1. This amendment would move a portion of the southern boundary of House District 69 from I-90 to north of Highway 200 east of East Missoula and follows the Clark Fork River to the adopted boundary.

| NEW # | OLD # | ADOPTED PLAN  | AMENDMENT     |
|-------|-------|---------------|---------------|
| 58    | 65    | 7981 (-0.13%) | 8238 (3.09%)  |
| 69    | 54    | 8157 (2.08%)  | 7900 (-1.14%) |

STATE STATE ADMIN.

LEGISL. NO. 2

DATE 1-26-93

BILL NO. RE Apportionment

MISSOULA COUNTY

Requested by Sen. Pipinich

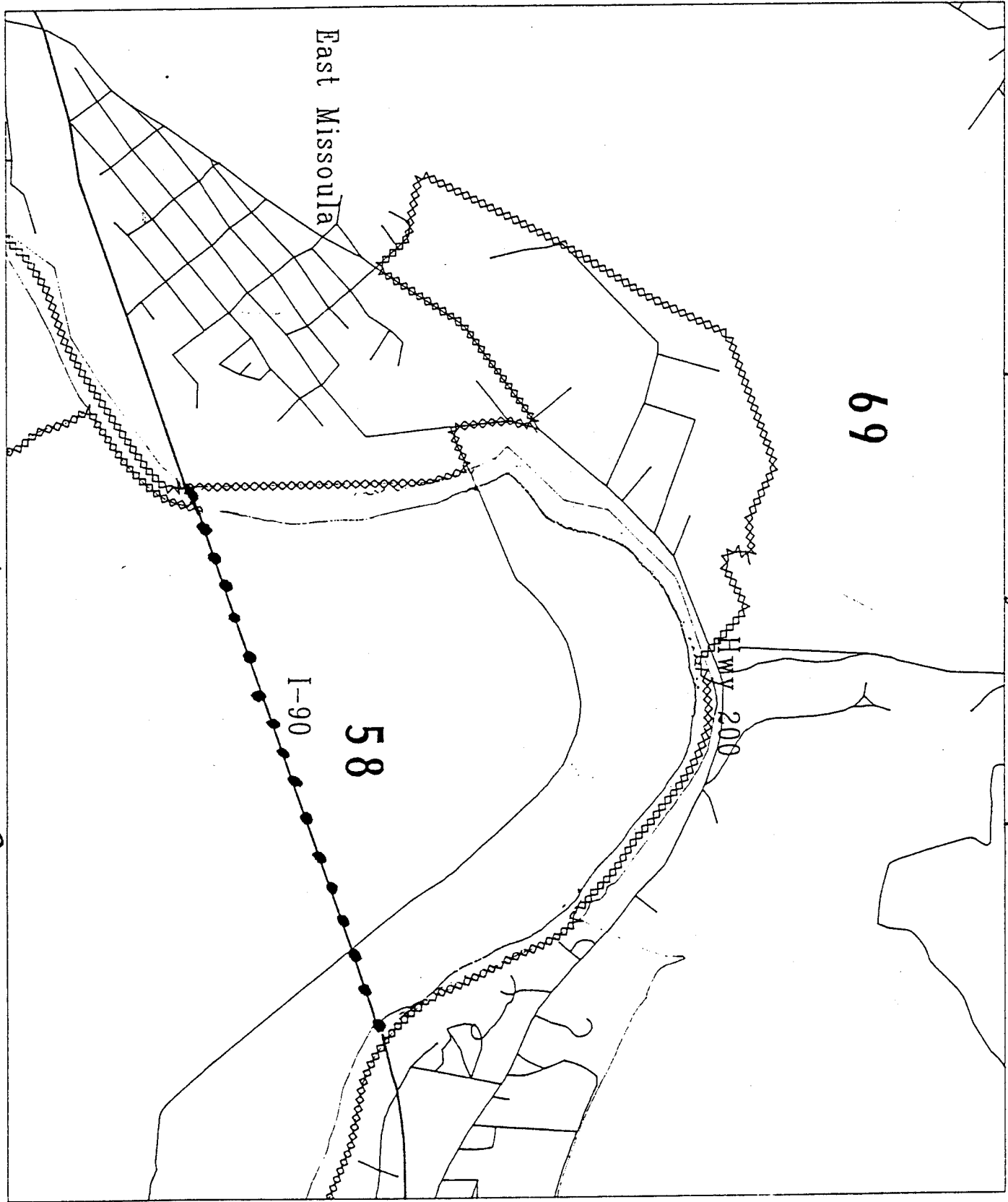
69

58

I-90

East Missoula

HWY 200



Prepared by Montana Legislative Council



Proposed Amendment to the Districting and Apportionment Plan  
For the Senate and House Committees on State Administration

Prepared by Susan B. Fox  
January 23, 1993

YELLOWSTONE COUNTY  
Prepared at the request of Rep. Molnar

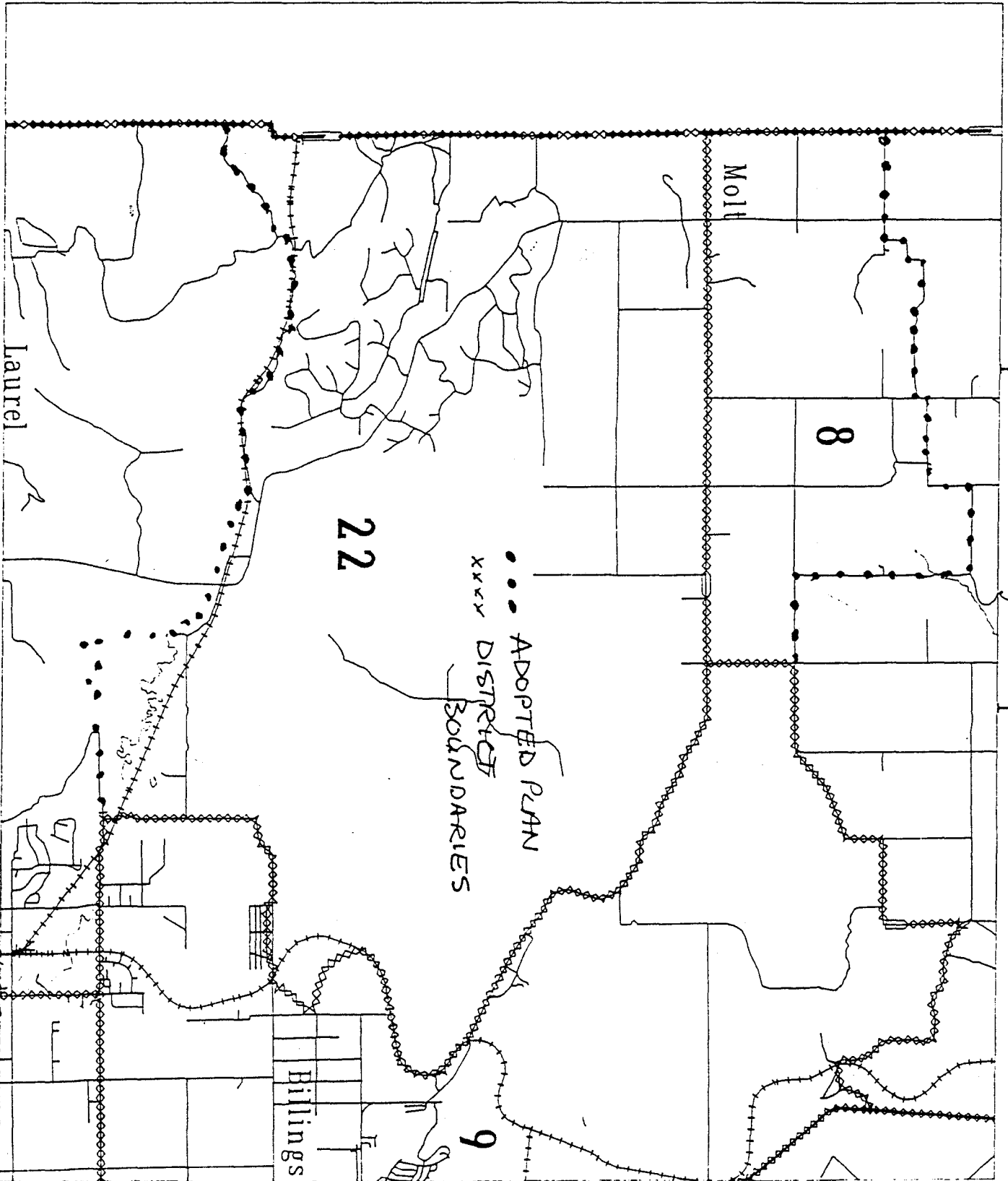
1. This amendment would move the northwest boundary of House District 22 from King Avenue and Canyon Creek to the Molt Road. This amendment also brings the southern boundary of House District 8 in Yellowstone County to the Molt Road. Both of these amendments move the western boundary of House District 9 east towards Billings.

| NEW # | OLD # | ADOPTED PLAN  | AMENDMENT     |
|-------|-------|---------------|---------------|
| 8     | 31    | 7628 (-4.54%) | 7651 (-4.25%) |
| 9     | 87    | 8220 (2.87%)  | 7952 (-0.49%) |
| 22    | 85    | 8084 (1.16%)  | 8329 (4.23%)  |

SENATE STAT. COMM.  
ENR. NO. 3  
DATE 1-26-93  
BILL NO. Reapportionment

# TELLAWSTONE COUNTY

Requested by Rep. Molnar



Prepared by Montana Legislative Council

Proposed Amendment to the Districting and Apportionment Plan  
For the Senate and House Committees on State Administration

Prepared by Susan B. Fox  
January 23, 1993

Senate District Combinations  
Requested by Rep. McCarthy and Rep. Menahan

1. Amend the House District pairings for Senate Districts as follows:

- 56 and 57 (former HDs 48 and 67, Reps. Smith and Menahan, Sens. Beck and Pipinich)
- 50 and 58 (former HDs 42 and 65, Reps. Cobb and Larson, Sens. Mesaros and Pipinich)
- 54 and 55 (former HDs 46 and 47, Reps. Hibbard and Grady, Sens. Bartlett and Beck)
- 52 and 53 (former HDs 44 and 45, Reps. Harper and Ewer, Sens. Waterman and Bartlett)
- 51 and 39 (former HDs 43 and 75, Reps. J. Rice and Grimes, Sens. Waterman and Rea)
- 40 and 41 (former HDs 32 and 33, Reps. Foster and Wiseman, Sens. Koehnke and Franklin)
- 42 and 43 (former HDs 34 and 37, Reps. Dolezal and Wyatt, Sens. Franklin and Wilson)
- 44 and 49 (former HDs 38 and 39, Reps. Ryan and Simpkins, Sens. Wilson and Mesaros)

SENATE STATE ADMIN.

EXHIBIT NO. 4

DATE 1-26-93

BILL NO. Reapportionment

Proposed Amendment to the Districting and Apportionment Plan  
For the Senate and House Committees on State Administration

Prepared by Susan B. Fox  
January 23, 1993

HILL COUNTY

Prepared at the request of Sen. Hockett and Rep. Bachini

1. This amendment would move the western boundary of House District 92 in Hill County from the current district boundary to Highway 87. The percentage of Native Americans in House District 92 improves slightly to 58.95% of total population and 52.51% of voting age population. This amendment does split the community of Box Elder using Highway 87.

| NEW # | OLD # | ADOPTED PLAN  | AMENDMENT     |
|-------|-------|---------------|---------------|
| 90    | 14    | 8145 (1.93%)  | 8252 (3.27%)  |
| 92    | 16    | 7960 (-0.39%) | 7853 (-1.73%) |

SENATE STATE ADMIN.

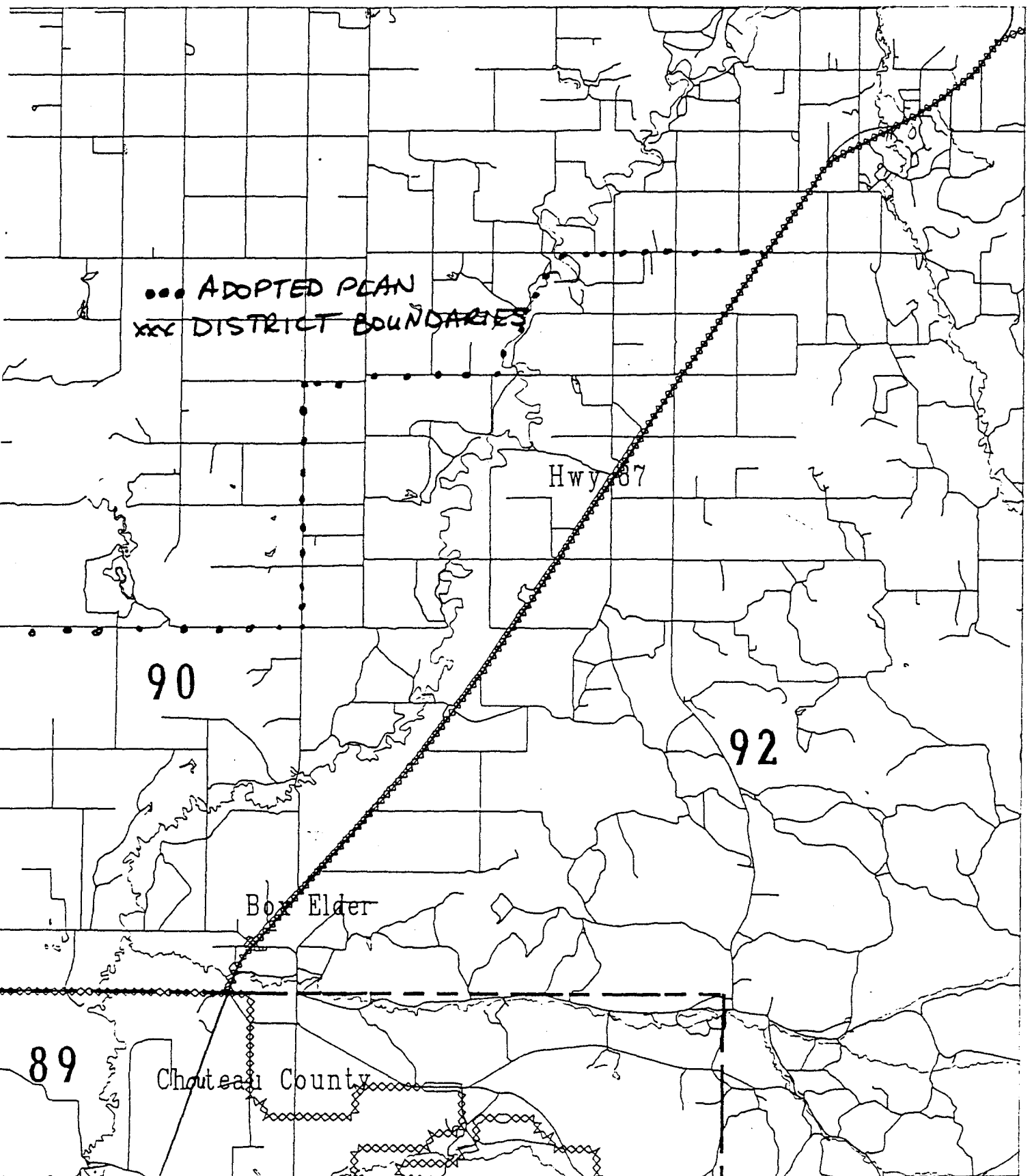
EXHIBIT NO. 5

DATE 1-26-93

BILL NO. Reapportionment

# HILL COUNTY

Requested by Sen. Hockett/Rep. Bachini



Prepared by Montana Legislative Council

Proposed Amendment to the Districting and Apportionment Plan  
For the Senate and House Committees on State Administration

Prepared by Susan B. Fox  
January 23, 1993

LEWIS AND CLARK COUNTY  
Prepared at the request of Sen. Bartlett

1. This amendment would move the southern boundary of House District 54 from La Grande Cannon Boulevard to a ridge line on Mount Helena.

| NEW # | OLD # | ADOPTED PLAN  | AMENDMENT     |
|-------|-------|---------------|---------------|
| 53    | 45    | 7978 (-0.16%) | 7919 (-0.90%) |
| 54    | 46    | 8298 (3.84%)  | 8357 (4.58%)  |

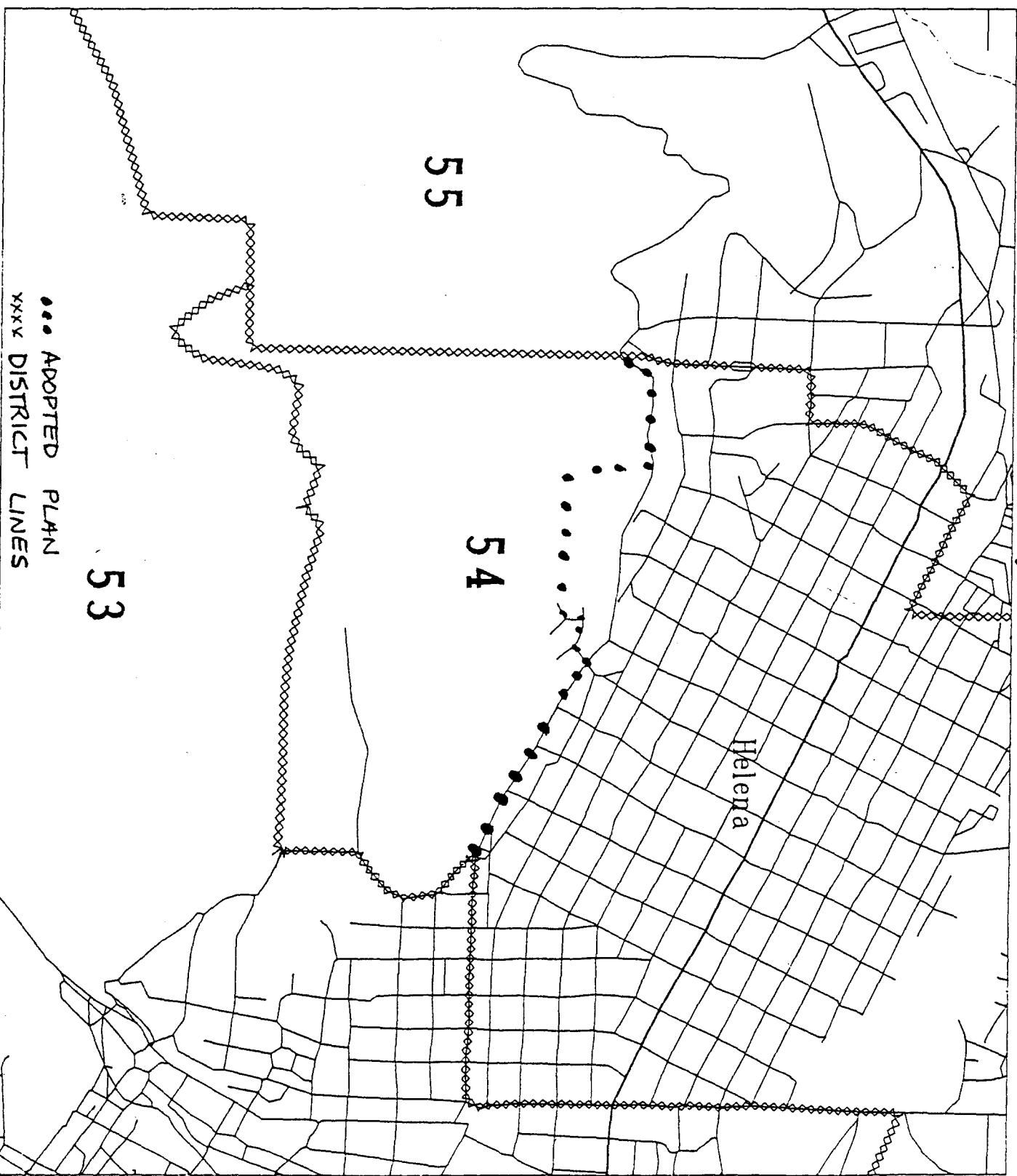
SENATE STATE ADMIN.

EXHIBIT NO. 6

DATE 1-26-93

BILL NO. Reapportionment

LEWIS & CLARK COUNTY  
Requested by Sen. Bartlett



53

55

54

Helena

ADOPTED PLAN  
DISTRICT LINES

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS CLARA NOME, MADAM CHAIRPERSON OF THE CROW NATION FROM THE CROW RESERVATION. IT IS CERTAINLY MY PLEASURE TO COME BEFORE YOU TODAY. HOWEVER, I AM HERE TO TESTIFY IN OPPOSITION OF THE PROPOSED DISTRICT LINES OFFERED BY THIS COMMITTEE IN REGARDS TO SENATE DISTRICT #50 AND HOUSE DISTRICT #99.

INITIALLY, THE IMPROVED DISTRICT LINES OF SENATE DISTRICT #50 AND HOUSE DISTRICT #99 THAT WERE DRAWN TEN YEARS AGO WERE PRESENTED TO BETTER SERVE THE CONSTITUENTS OF THE MENTIONED DISTRICTS, AND WHICH WERE , TO MY UNDERSTANDING, LATER REJECTED BY THIS COMMITTEE. RATHER, THIS COMMITTEE MADE A DETERMINATION, BY WHAT PROCESS I DO NOT KNOW, TO DRAW DISTRICT LINES OF YOUR OWN CHOOSING.

I AM DISAPPOINTED, FOR SUCH AN OFFER OR DESIRE AS THE NEED TO MODIFY THE DISTRICT LINES OF SENATE DISTRICT #50 AND HOUSE DISTRICT #99 SHOULD COME FROM ONLY THE PEOPLE WHO RESIDE IN THE DISTRICTS AND ARE DIRECTLY AFFECTED BY ANY SUCH MODIFICATION.

THE IMPROVED DISTRICT LINES DRAWN FROM TEN YEARS AGO AND PRESENTED WILL BETTER SERVE THE RESIDENT CONSTITUENTS.

I BELIEVE THAT THIS COMMITTEE IS ARBITRARILY IMPOSING THE DISTRICT LINES BASED ON ITS OWN ASSESSMENTS.

SENATE STATE ADMIN. ~~FILE~~  
EXHIBIT NO. 7  
DATE 1-26-93  
BILL NO. Reapportionment



IN 1982, AFTER AN AGREED PLAN OF DRAWING THE DISTRICT LINES, THE REAPPORTIONMENT COMMITTEE DEVELOPED YET ANOTHER PLAN OF ITS OWN WHICH DILUTED THE CROW INDIAN POPULATION IN THREE DIFFERENT WAYS, AND PROCEEDED TO APPROVE IT. THIS LED TO JANINE PEASE WINDY BOY et.al. vs REAPPORTIONMENT COMMITTEE AND THE STATE OF MONTANA AT THE FEDERAL COURT LEVEL, BASED ON VIOLATIONS OF THE CIVIL RIGHTS ACT AND EQUAL RIGHTS LAWS UNDER THE CONSTITUTION OF THE UNITED STATES. THE FEDERAL COURT JUDGE INSTRUCTED THIS REAPPORTIONMENT COMMITTEE TO ESTABLISH THE DISTRICT LINES AS WERE PRESENTED BY JANINE PEASE WINDY BOY.

THUS, I AM AT LIBERTY TO STATE, BEFORE THIS COMMITTEE AND THE LEGISLATURE AS A WHOLE HOW PROUD WE ARE OF HAVING OUR OWN CROW TRIBAL MEMBERS SERVING AS REPRESENTATIVES HERE IN HELENA...SENATOR BILL YELLOWTAIL, SENATE DISTRICT #50; REPRESENTATIVE ANGELA RUSSELL, HOUSE DISTRICT #99; AND REPRESENTATIVE JAY STOVALL IN HOUSE DISTRICT #98.

PRIOR TO 1982, THE CROW NATION WAS NOT IN THE POSITION TO VOICE ITS OWN NEEDS HERE AT THE CAPITOL AND IN FRONT OF THE LEGISLATURE, BECAUSE AT THAT TIME THE CONSTITUENTS OF THE CROW NATION WERE A MINORITY WITHIN THE BOUNDARIES OF THEIR OWN RESERVATION, DUE TO DISTRICT LINES FOR STATE ELECTIONS. WITH SUCH A CASE LAW AS PREVIOUSLY MENTIONED THE NEEDS AND VOICE OF THE CROW NATION ARE FINALLY BEING REPRESENTED.

Exhibit #7  
1-26-93  
Reapportionment

THIS GREAT STATE OF OURS IS ONE OF THE MOST UNIQUE OF ALL THE STATES OF THE UNION. WHEN ONE MENTIONS THE STATE OF MONTANA, PEOPLE ARE MINDFUL OF THE MOUNTAINS, HILLS, RIVERS, FARMING, RANCHING, BIG SKYS, CATTLE DRIVES OF THE OLD WEST, AND OF COURSE, INDIANS. ALL OF US, HERE AND ACROSS THE ENTIRE STATE SHARE THIS GREAT ATMOSPHERE AND NATIONALLY IMAGE OF MONTANA. IT IS WITH GOOD FEELINGS, IN OUR MINDS AND IN OUR HEARTS, THAT, WE, THE CROW NATION ARE REPRESENTED HERE IN HELENA BY OUR OWN TRIBAL PEOPLE AND THAT WE SHARE IN THIS GREAT ATMOSPHERE AND IMAGE THAT IS MONTANA. JUST AS YOU WHO TRY SO HARD TO ADDRESS THE CONCERNS OF YOUR CONSTITUENTS, AS WELL AS OTHER SENATORS AND REPRESENTATIVES, AND THE VARIOUS DEPARTMENTS OF STATE; LIKEWISE, WE, THE CONSTITUENTS OF THE CROW NATION ADDRESS OUR CONCERNS TO OUR OWN LEGISLATIVE DELEGATION, AS WELL AS OTHERS. ALL CONCERNS BROUGHT FORTH AND ADDRESSED BY THE LEGISLATURE ARE LATER FORMED TO ENHANCE MONTANA.

*With the help of God ~~and you~~ we will be able to continue this relationship*

I AM WITH THE UNDERSTANDING THAT OTHER TRIBES OF THE STATE OF MONTANA ARE ALSO WITH EFFORTS TO HAVE THEIR OWN REPRESENTATION. JUST AS THE CROW NATION AND THE BLACKFEET NATION, I FULLY SUPPORT THE OTHER TRIBES OF HAVING THEIR OWN REPRESENTATIVES. THEY TOO ARE PEOPLE THAT NEED REPRESENTATION.

2. { THEREFORE, IT IS MY INTENTION TO COME BEFORE THIS COMMITTEE, AND FOR THIS COMMITTEE TO ACCEPT THE PROPOSED DISTRICT LINES AS WERE INITIALLY PRESENTED WITHOUT THE INVOLVEMENT OF A FEDERAL DISTRICT COURT JUDGE IN SENATE DISTRICT #50 AND HOUSE DISTRICT #99. WITH THAT IN MIND ...THANK YOU FOR ALLOWING THE TIME TO COME BEFORE YOU TO PRESENT THIS NEED.

THANK YOU.

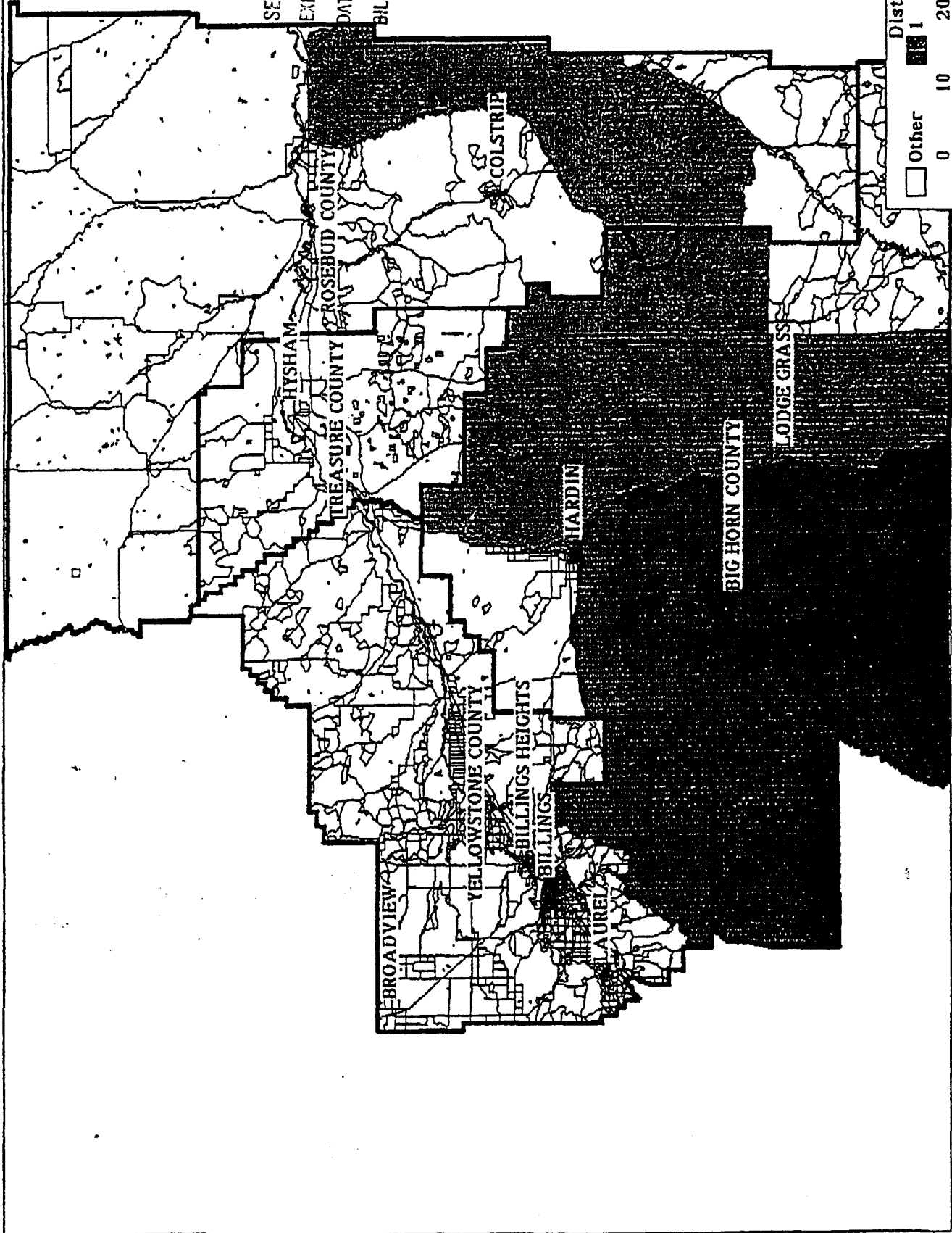
Draft House Districts for Crow and N. Cheyenne (7/2/92)

SENATE STATE ADMIN.

EXHIBIT NO. 8

DATE 1-26-93

BILL NO. *Reapportionment*

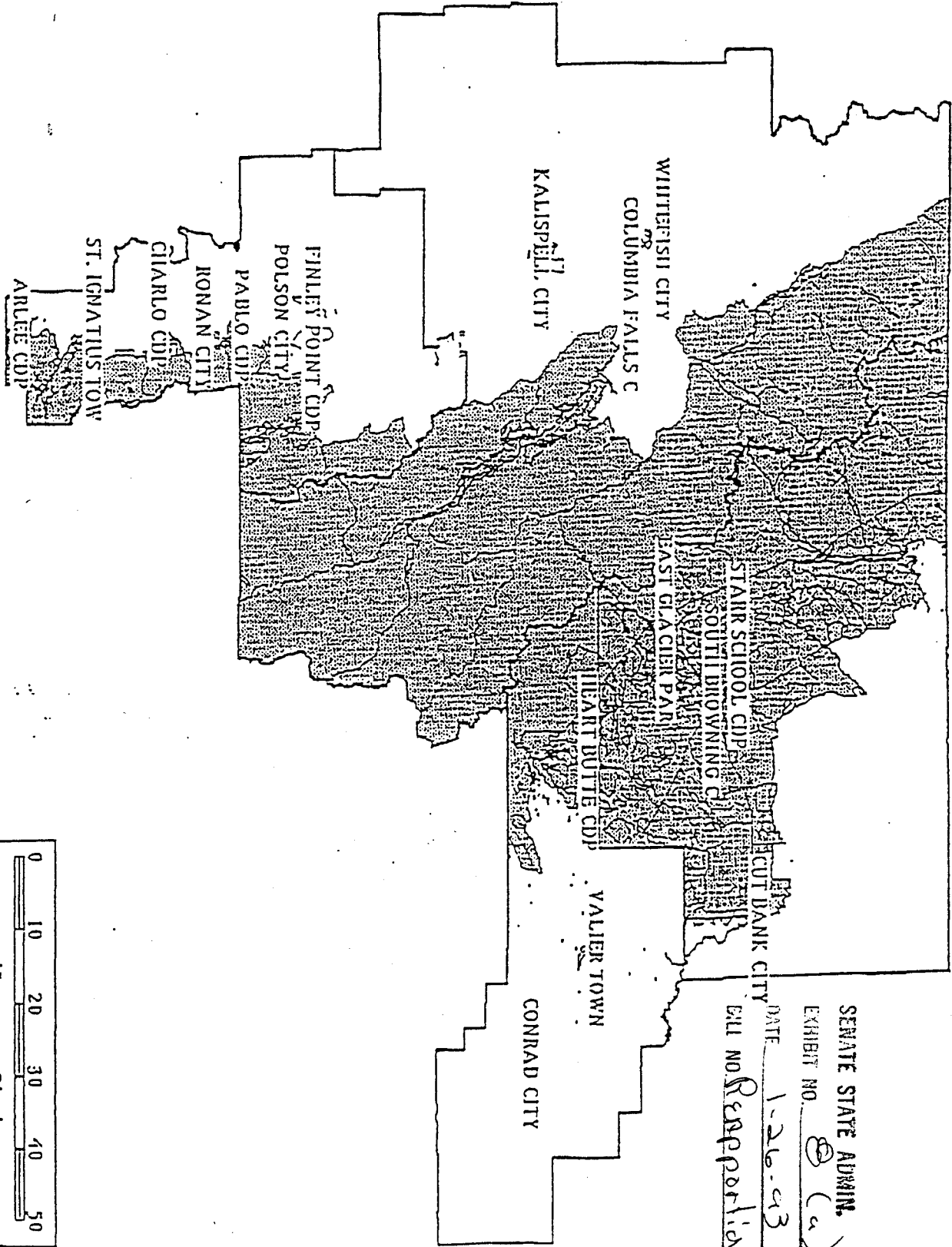


District

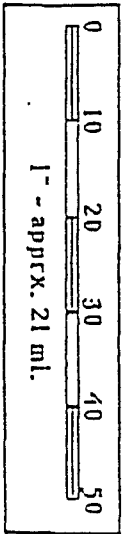
|   |            |
|---|------------|
| □ | Other      |
| ▨ | District 1 |
| ● | District 2 |

0 10 20 30 40

1" - approx. 19 mi.



SENATE STATE ADMIN.  
 EXHIBIT NO. 2 (a)  
 DATE 1-26-93  
 BILL NO. Responsible

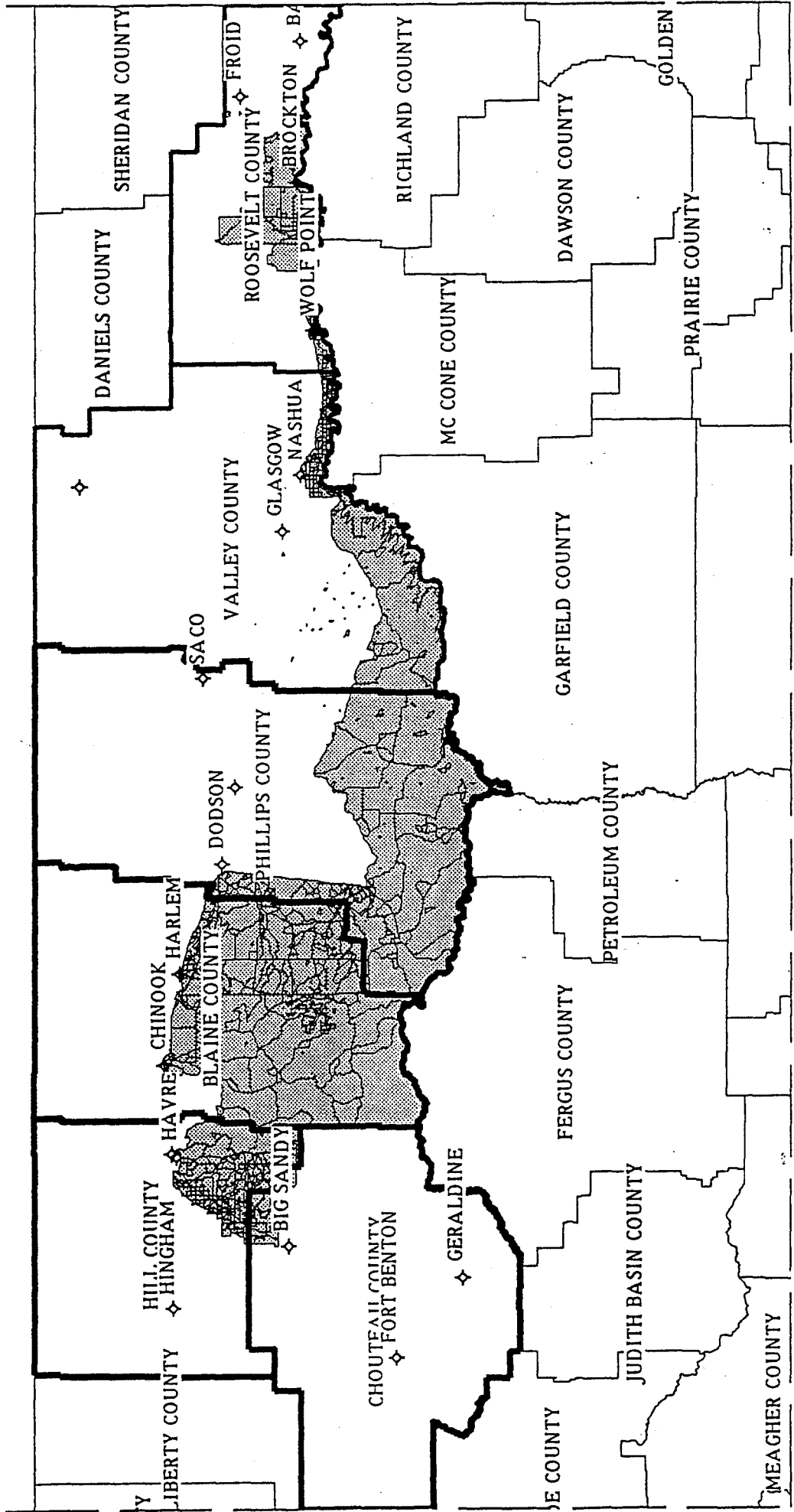


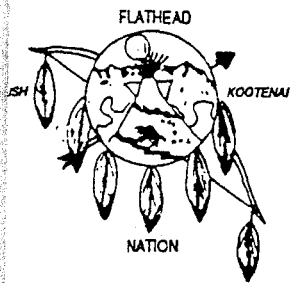
SENATE STATE ADDRESS

LEGISL. NO. 8 (b)

DATE 1-26-93

FILE NO. Reapportionment





THE CONFEDERATED SALISH AND KOOTENAI TRIBES  
OF THE FLATHEAD NATION

P.O. Box 278  
Pablo, Montana 59855  
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Vern L. Clairmont - Executive Treasurer  
Bernice Hewankom - Sergeant-at-Arms

TRIBAL COUNCIL MEMBERS:  
Michael T. "Mickey" Pablo - Chairman  
Laurence Kenmille - Vice Chairman  
Elmer "Sonny" Morigeau, Jr. - Secretary  
Antoine "Tony" Incashola - Treasurer  
Louis Adams  
Lloyd Irvine  
Patrick Lethand  
Henry "Hank" Baylor  
John "Chris" Lozeau  
D. Fred Matt

November 30, 1992

(Sent by facsimile)

Honorable Jean Fallon Barrett  
Chairperson  
Montana Districting and  
Apportionment Commission  
State Capitol - Room 138  
Helena, Montana 59620

SENATE STATE ADMIN.

EXHIBIT NO. 9

DATE 1-26-93

BILL NO. Reapportionment

Re: Legislative Redistricting on the Blackfeet and Flathead  
Indian Reservations-November 30, 1992 Comments

Dear Chairperson Barrett:

The Confederated Salish and Kootenai Tribes of the Flathead Nation submit the following written comments to the Commission at your November 30, 1992, hearing in Helena. We are unable to be present at the hearing today, but Representative Bob Gervais has kindly agreed to put in a word for us in his remarks.

On March 13, 1992, the Flathead Nation, the Blackfeet Nation, the Montana-Wyoming Tribal Chairmens Association, and the ACLU of Montana submitted to the Montana Districting and Apportionment Commission a redistricting proposal which combined portions of the Flathead Indian Reservation with the Blackfeet Indian Reservation (hereafter "tribal redistricting proposal"). The Flathead Nation, Blackfeet Nation, ACLU of Montana, and others provided testimony at the Commission's redistricting hearings held in Kalispell and Shelby in support of the tribal redistricting proposal.

The Commission rejected our proposal at its April 29, 1992 meeting. At the hearing in Shelby, tribal attorney Pat Smith testified and requested that the Commission reconsider its action. The Commission rejected our request for reconsideration. Once again, the Flathead Nation respectfully requests the Commission to reconsider its actions and endorse the tribal redistricting proposal. We

Honorable Jean Fallon Barrett

Page 2

November 30, 1992

reiterate this request because the configuration of the districts that the Commission proposes for the Flathead and Blackfeet Reservations do not comport with the requirements of Section 2 of the Federal Voting Rights Act. In fact, the redistricting alternative the Commission has selected for the Flathead Reservation--Alternative 100A--is the alternative that most dilutes the Indian vote.<sup>1</sup>

The tribal redistricting proposal remedies this defect. It complies with the Federal Voting Rights Act and ensures that the Indian people on our Reservations have an opportunity to elect legislators of their choice. It ensures that the voting power of the Indian communities on our reservations are not diluted or fractured through redistricting.

Computer analysis of the 1990 census data reveals that two Indian majority house districts can be drawn which are "reasonably compact and contiguous." Both house districts would have 60% or greater Indian population. By combining these two districts, an Indian majority Senate district with greater than 60% Indian population is also possible. (See map enclosed in our March 13, 1992, letter to the Commission.)<sup>2</sup>

### The Federal Voting Rights Act Requirements . . .

Under Section 2 of the Voting Rights Act of 1965 (42 U.S.C. § 1973), a legislative redistricting plan is unlawful, without regard to racial motive, if it "results" in discrimination. In City of Mobile, Alabama v. Bolden, 446 U.S. 55, 60-61 (1980), the U.S. Supreme Court ruled that a plaintiff must show discriminatory intent to prevail in a voting rights case. Congress responded in 1982 by expressly overriding the Bolden holding by amending Section 2 of the Voting Rights Act "to make clear that plaintiffs need not prove a discriminatory purpose in order to establish a violation." S. Rep. No. 97-417, p. 27, U.S. Code Cong. & Admin. News (1982).

<sup>1</sup> The Tribes also believe that Commissioner Pinsoneault's failure to abstain on voting on the configuration of the boundaries of the Senate District held by his brother constitutes--at the very least--a glaring appearance of impropriety.

<sup>2</sup> At present, there is only one Indian majority house district in the western Congressional district, which is based on the Blackfeet Reservation.

Honorable Jean Fallon Barrett  
Page 3  
November 30, 1992

In 1982 Congress re-wrote § 2 to make clear that a violation could be proved by showing discriminatory effect alone and to establish as the relevant legal standard the "results test." Thornburg v. Gingles, 478 U.S. 30, 35 (1985).

As explained below, the Commission is required under Section 2 of the Federal Voting Rights Act to draw legislative districts which do not dilute or fracture the voting strength of the Indian population on the Blackfeet and Flathead Reservations. Our analysis plainly demonstrates that it is possible to draw two house districts with a majority Indian population in excess of 60%. To not do so would, in our view, have a discriminatory "effect" and deny Indian people their right "to participate in the political processes and to elect representatives of their choice" under Section 2.

There is no question that Section 2 applies to Indian country. Windy Boy v. County of Big Horn, 647 F.Supp. 1002 (D. Mont. 1986). Like in Big Horn County, racially polarized voting is evident in Glacier County and Lake County. Where voting is racially polarized, Section 2 requires a jurisdiction to create minority controlled districts where it is possible to do so. Thornburg v. Gingles, 478 U.S. 30 (1986); Jeffers v. Clinton, 730 F.Supp. 196 (E.D. Ark. 1989), aff'd mem., 59 U.S.L.W. (1991). The Indian population on our respective reservations is sufficiently large and geographically compact enough to constitute a 60% majority in both District 1 and District 2. See Thornburg, 478 U.S. at 50; Jeffers v. Clinton, 730 F.Supp. 205.

### The Natural Features Factor

The Blackfeet and Flathead Nations are aware that the continental divide lies between our two Reservations. This mountain range has never prevented interaction between our two Tribes. In this century, motor vehicles and highways have greatly facilitated this interaction. While the mountain terrain may have some impact on campaigning and the political process, this is already the case with other Montana counties and legislative districts.<sup>3</sup> The Flathead

<sup>3</sup> For example, Senate District 33 stretches over 200 miles from Condon in the north to the Big Hole in the south, crossing the Continental Divide. Senate Districts 24 and 36 also straddle the Continental Divide. Lewis and Clark County straddles the Continental Divide. SD 14, between Mosby and Glendive, covers 214 road miles. SD 7, between Inverness and Geraldine covers



Honorable Jean Fallon Barrett

Page 4

November 30, 1992

Nation submits that the Commission creates a double standard when it rejects the tribal redistricting proposal on the grounds of natural feature considerations--yet the State has in numerous other instances ignored these same considerations in its redistricting plans. (See footnote 2).

In Jeffers v. Clinton, 730 F.Supp. at 214-15, the court held that a State can not argue that natural barriers justify failure to comply with Section 2 when existing State districts already cross natural barriers. The one-person, one-vote rule inevitably requires that county lines and natural barriers be crossed at times. Id. at 207. The mountains do not provide a sufficient basis to excuse compliance with the Voting Rights Act.

While some of the district lines we propose may appear unusual, the Supreme Court has never rejected a reapportionment plan solely because it had strangely shaped districts. Lawful redistricting can often result in some "oddly shaped" districts. "But compactness or attractiveness has never been held to constitute an independent federal constitutional requirement for state legislative districts." Gaffney v. Cummings, 412 U.S. 735, 752 n. 18 (1973). See also Jeffers v. Clinton, 730 F.Supp. at 207 (districts not improper because they "look rather strange"). Where districting decision-makers are attempting in good faith to comport with standards of racial fairness, plans are afforded wide latitude with respect to shapes of districts. See Cook v. Lockett, 735 F.2d 912, 915 (5th Cir. 1984).

### Community of Interest

The Commission has identified "communities of interest" as one of its non-mandatory redistricting criteria. The Blackfeet and the Salish-Kootenai people share a "community of interest"--as do all Montana Indians. Our cultures, traditions, history, and treaties may differ in certain respects, but we are of one race and share a common commitment and bond to Indian culture and tribal sovereignty. We share a common and unique appreciation of the contributions, concerns, and needs of Indian people. We have a common understanding of Indian people and Indian country.

We are a "cohesive minority voting community." See Robinson v. Commissioner's Court, 505 F.2d 674, 679 (5th Cir.

153 road miles and straddles the Missouri. In SD 37 one must drive 206 miles from Wisdom to West Yellowstone. In SD 16, the distance is 233 miles, across King's Hill, from Belt to Melstone, and 117 miles (down Deep Creek Canyon) from Belt to Townsend. In SD 12, the distance is 266 miles from Glendive to Alzada (unless you take the poor gravel roads.)

Honorable Jean Fallon Barrett  
Page 5  
November 30, 1992

1974). Communities of interest have been generally discounted by the courts except where they have defined concentrations of protected racial minorities. Where avoidance of abridging a minority's voting rights is the purpose, the courts permit the use of racial criteria. The permitted use of "racial criteria is not confined to eliminating the effects of past discriminatory districting or apportionment." United Jewish Organizations v. Carey, 430 U.S. 144, 161 (1976).

The Commission's position that no community of interest exists between the Indian communities of the Flathead and Blackfeet Reservations is erroneous. Your discussion of this issue in your April 29, 1992, conference call reflects a lack of understanding of the Montana Indian community, and the common interests that bond this community. Just as the Indian communities of the Fort Belknap and Rocky Boy Reservations share a community of interest, so does the Flathead and the Blackfeet. One of the most obvious areas of shared interests is legislative issues that come up at the Montana Legislature.

Under "Section 2, it is the status of the candidate as the chosen representative of a particular racial group, not the race of the candidate, that is important." Thornburg, 478 U.S. at 68 (emphasis in original). The Federal Voting Rights Act safeguards a realistic opportunity for minorities to elect candidates of their choice--which may or may not be someone of their race. Armour v. State of Ohio, 775 F.Supp. 1044, 1059 (N.D. Ohio 1991); Ketchum v. Byrne, 740 F.2d 1398, 1410 (7th Cir. 1984). The Voting Rights Act disallows a State's interest in protecting incumbents to override the need to comply with the Voting Rights Act. See Ketchum v. Byrne, 740 F.2d at 1408.

In closing, we appreciate the reiterate our position. If you have any specific questions on the tribal redistricting proposal, tribal attorney Pat Smith and Bill Cooper of the ACLU's Virginia office will be happy to respond to your inquiries. Mr. Smith can be reached at the tribal office phone number, and Mr. Cooper can be reached at (804) 644-8022.

We strongly urge you to reconsider your action. The Tribes reserve our right to enforce our voting rights through the federal courts.

1-26-93  
Reapportionment

Honorable Jean Fallon Barrett  
Page 6  
November 30, 1992

Sincerely,



Michael T. Pablo  
Chairman of the Tribal Council

cc: Blackfeet Nation  
Montana ACLU

Testimony of Laurence Kenmille  
Vice-Chairman of the Confederated Salish & Kootenai  
Tribes  
of the Flathead Nation

Montana Districting and Apportionment Commission  
Hearing

Kalispell - April 3, 1992

Good evening. On behalf of the Confederated Salish and Kootenai Tribes of the Flathead Nation, I extend you a warm welcome to the Flathead.

The Kootenai people were living in this valley long before Christopher Columbus got lost. It has always been our home. We ceded this valley to the United States Government in 1855. In return, we reserved the Flathead Indian Reservation. Our treaty rights, like our voting rights, are protected by federal law. This federal law is the "supreme law of the land." It takes precedence over state laws and the Montana Constitution.

The tribal governments of this state have unanimously spoken on the redistricting issue before the Commission. The Flathead Nation, the Blackfeet Nation, and the Montana-Wyoming Tribal Chairman's Association have passed resolutions supporting the redistricting plan jointly submitted by the Flathead and Blackfeet Nations. This plan was drawn with the assistance of the Atlanta, Virginia, and Montana offices of the ACLU. It is the only plan being considered tonight that complies with Section 2 of the Federal Voting Rights Act. All of the other plans being considered for the Flathead Reservation dilute or fracture the Indian population.

Although I am Vice-Chairman of the Confederated Salish and Kootenai Tribes, I speak not so much for Tribal Government as I do for the Indian people who reside on the Flathead Reservation. These people have historically been disenfranchised. In some cases, this was a matter of deliberate policy. In some cases, this was a result of not taking the interests of American Indians seriously. We have had less opportunity than other American citizens to elect representatives of our choice.

When I say representatives of our choice, I do not necessarily mean Indian representatives. It is our right as voters, just as it is the right of every American, to expect our representatives to present our interests in the Legislature. This has not been done.

The plan that we present to you is fair. It ensures that the voices and the interests of American Indians are not submerged in a white majority where they are either ignored or not heard. This plan provides American Indians the equal opportunity, now enjoyed by non-Indians, to participate in the political processes. No other plan does this.

We know that the Commission will do what is right. Our plan helps you to do what is right, because it is also required by federal law.

I will leave it to Mr. Laughlin McDonald of the American Civil Liberties Union's Southern Regional Office, and one of the country's leading experts on the Voting Rights Act of 1965, to explain the law to you. I would like to make some observations.

When we proposed this plan, the first thing that happened is that the Lake County Democratic and Republican parties got together and cooked up arguments to oppose it. I can see why the Republicans feel this way, since we Indians vote overwhelmingly Democratic. But why would the Lake County Democratic Party oppose this? I think that they have never counted us among them, but only count upon us to vote for their candidates.

There is substantial evidence of racial polarization in Lake County politics. In 1982, Dr. Joe McDonald ran for the Legislature. He would have been a fine legislator. However, there was a large crossover in the general election. Dr. McDonald won in the Indian precincts but lost overwhelmingly in non-Indian precincts. And this was in a district that was generally viewed as a Democratic district. Other examples of racially polarized voting include Tribal member Fred Houle's 1988 race for Lake county Commissioner and Tribal member Frank Webster's and Chris Lozeau's 1975 race for the Ronan school board.

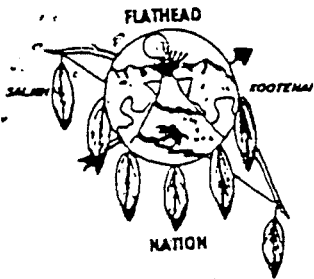
Second, Montana now has legislative districts that are bisected by the Continental Divide and which overlap more than one mountain range. Senate District 33 extends from the upper Swan Valley, southeast of here, 110 miles south to the Big Hole River. If such a district is good enough for those white voters, why should not the plan we propose be good enough for us? After all, who shares a more of a community of interest: the voters of Heart Butte and Arlee, or the voters of Swan Lake and the Big Hole?

Third, we have heard that the Blackfeet and the Flathead

are historic enemies. What nonsense. The Crow and Northern Cheyenne fought against each other at the Little Big Horn. That did not stop a federal judge from ordering a change in Big Horn County's elections. The fights between our peoples were things of the Nineteenth Century. You are drawing this plan for the Twenty-first Century. One only has to observe Blackfeet and Flathead people interacting at pow-wows or testifying together in support of Indian legislation in Helena to rebut the myth that the Blackfeet and Flathead are enemies today. The Indians on our two reservations are all part of the Montana Indian community.

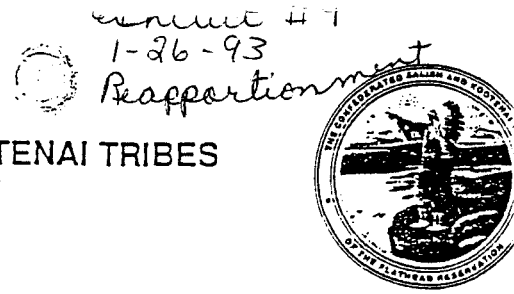
This plan we propose create contiguous and compact districts. The districts we have drawn are over 60% Native American. We hope that the Commission looks at the Twenty-first Century and adopts our proposal.

Thank you.



THE CONFEDERATED SALISH AND KOOTENAI TRIBES  
OF THE FLATHEAD NATION

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Vern L. Clairmont - Executive Treasurer  
Bernice Hewankorn - Sergeant-at-Arms

TRIBAL COUNCIL MEMBERS:  
Michael T. "Mickey" Pablo - Chairman  
Laurence Kenmille - Vice Chairman  
Elmer "Sonny" Morigeau, Jr. - Secy  
Antoine "Tony" Incasola - Treasurer  
Louis Adams  
Lloyd Irvine  
Patrick Letthard  
Henry "Hank" Saylor  
John "Chris" Lozeau  
D. Fred Matt

March 13, 1992

Honorable Jean Fallon Barrett  
Chairperson  
Montana Districting and  
Apportionment Commission  
State Capitol - Room 138  
Helena, Montana 59620

Re: Legislative Redistricting on the Blackfeet and Flathead  
Indian Reservations

Dear Chairperson Barrett:

On behalf of the Blackfeet Nation and the Flathead Nation, we submit the enclosed redistricting proposal. The two proposed districts comply with the Federal Voting Rights Act and ensure that the Indian people on our Reservations have an opportunity to elect legislators of their choice. It ensures that the voting power of the Indian communities on our reservations are not diluted or fractured through redistricting.

To date, this proposal is endorsed by the Flathead Nation, the Blackfeet Nation, the Montana-Wyoming Tribal Chairmens Association, and the ACLU of Montana (resolutions enclosed).

The American Civil Liberties Union directly assisted in preparing the enclosed redistricting plan, with participation from the ACLU's Atlanta, Virginia, and Montana offices. Though the Flathead Nation will soon have redistricting computer capabilities that are compatible with the Commission's computers, we relied heavily on the redistricting computer resources and expertise supplied by the ACLU's Virginia office in drawing the proposed districts.



Honorable Jean Fallon Barrett

Page 2

March 13, 1992

Computer analysis of the 1990 census data reveals that two Indian majority house districts can be drawn which are "reasonably compact and contiguous." Both house districts would have 60% or greater Indian population. By combining these two districts, an Indian majority Senate district with greater than 60% Indian population is also possible. At present, there is only one Indian majority house district in the western Congressional district, which is based on the Blackfeet Reservation. For convenience we have referred to our proposed districts as District 1 and District 2. (See enclosed map.)

Under Section 2 of the Voting Rights Act of 1965 (42 U.S.C. § 1973), a legislative redistricting plan is unlawful, without regard to racial motive, if it "results" in discrimination. In City of Mobile, Alabama v. Bolden, 446 U.S. 55, 60-61 (1980), the U.S. Supreme Court ruled that a plaintiff must show discriminatory intent to prevail in a voting rights case. Congress responded in 1982 by expressly overriding the Bolden holding by amending Section 2 of the Voting Rights Act "to make clear that plaintiffs need not prove a discriminatory purpose in order to establish a violation." S. Rep. No. 97-417, p. 27, U.S. Code Cong. & Admin. News (1982).

In 1982 Congress re-wrote § 2 to make clear that a violation could be proved by showing discriminatory effect alone and to establish as the relevant legal standard the "results test." Thornburg v. Gingles, 478 U.S. 30, 35 (1985).

As explained below, the Commission is required under Section 2 of the Federal Voting Rights Act to draw legislative districts which do not dilute or fracture the voting strength of the Indian population on the Blackfeet and Flathead Reservations. Our analysis plainly demonstrates that it is possible to draw two house districts with a majority Indian population in excess of 60%. To not do so would, in our view, have a discriminatory "effect" and deny Indian people their right "to participate in the political processes and to elect representatives of their choice" under Section 2.

There is no question that Section 2 applies to Indian country. Windy Boy v. County of Big Horn, 647 F.Supp. 1002 (D. Mont. 1986). Like in Big Horn County, racially polarized voting is evident in Glacier County and Lake County. Where

Honorable Jean Fallon Barrett  
Page 3  
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voting is racially polarized, Section 2 requires a jurisdiction to create minority controlled districts where it is possible to do so. Thornburg v. Gingles, 478 U.S. 30 (1986); Jeffers v. Clinton, 730 F.Supp. 196 (E.D. Ark. 1989), aff'd mem., 59 U.S.L.W. (1991). The Indian population on our respective reservations is sufficiently large and geographically compact enough to constitute a 60% majority in both District 1 and District 2. See Thornburg, 478 U.S. at 50; Jeffers v. Clinton, 730 F.Supp. 205.

The Blackfeet and Flathead Nations are aware that the continental divide lies between our two Reservations. This mountain range has never prevented interaction between our two Tribes. In this century, motor vehicles and highways have greatly facilitated this interaction. While the mountain terrain may have some impact on campaigning and the political process, this is already the case with other Montana counties and legislative districts. For example, Senate District 33 is approximately 110 miles in length, crosses the Continental divide, includes several mountain ranges and extends from the Swan Valley to the Big Hole River. Senate Districts 24 and 36 also straddle the Continental Divide. Lewis and Clark County straddles the Continental Divide.

In Jeffers v. Clinton, 730 F.Supp. at 214-15, the court held that a State can not argue that natural barriers justify failure to comply with Section 2 when existing State districts already cross natural barriers. The one-person, one-vote rule inevitably requires that county lines and natural barriers be crossed at times. Id. at 207. The mountains do not provide a sufficient basis to excuse compliance with the Voting Rights Act.

While some of the district lines we propose may appear unusual, the Supreme Court has never rejected a reapportionment plan solely because it had strangely shaped districts. Lawful redistricting can often result in some "oddly shaped" districts. "But compactness or attractiveness has never been held to constitute an independent federal constitutional requirement for state legislative districts." Gaffney v. Cummings, 412 U.S. 735, 752 n. 18 (1973). See also Jeffers v. Clinton, 730 F.Supp. at 207 (districts not improper because they "look rather strange"). Where districting decision-makers are attempting in good faith to comport with standards of racial fairness, plans are afforded

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wide latitude with respect to shapes of districts. See Cook v. Lockett, 735 F.2d 912, 915 (5th Cir. 1984).

One of the leading civil/voting rights litigators in the nation reviewed the boundaries of the proposed districts and finds that the boundaries look "perfectly fine." (See attached letter from Laughlin McDonald, Director of the the ACLU's Southern Regional Office and attorney for the Indian plaintiffs in Windv Bov v. County of Big Horn.)

The Commission has identified "communities of interest" as one of its non-mandatory redistricting criteria. The Blackfeet and the Salish-Kootenai people share a "community of interest"--as do all Montana Indians. Our cultures, traditions, history, and treaties may differ in certain respects, but we are of one race and share a common commitment and bond to Indian culture and tribal sovereignty. We share a common and unique appreciation of the contributions, concerns, and needs of Indian people. We have a common understanding of Indian people and Indian country.

We are a "cohesive minority voting community." See Robinson v. Commissioner's Court, 505 F.2d 674, 679 (5th Cir. 1974). Communities of interest have been generally discounted by the courts except where they have defined concentrations of protected racial minorities. Where avoidance of abridging a minority's voting rights is the purpose, the courts permit the use of racial criteria. The permitted use of "racial criteria is not confined to eliminating the effects of past discriminatory districting or apportionment." United Jewish Organizations v. Carey, 430 U.S. 144, 161 (1976).

Under "Section 2, it is the status of the candidate as the chosen representative of a particular racial group, not the race of the candidate, that is important." Thornburg, 478 U.S. at 68 (emphasis in original). The Federal Voting Rights Act safeguards a realistic opportunity for minorities to elect candidates of their choice--which may or may not be someone of their race. Armour v. State of Ohio, 775 F.Supp. 1044, 1059 (N.D. Ohio 1991); Ketchum v. Byrne, 740 F.2d 1398, 1410 (7th Cir. 1984). The Voting Rights Act disallows a State's interest in protecting incumbents to override the need to comply with the Voting Rights Act. See Ketchum v. Byrne, 740 F.2d at 1408.

Honorable Jean Fallon Barrett  
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In closing, we appreciate the opportunity to present this redistricting proposal to the Commission. Mr. Bill Cooper of the ACLU's Virginia office will be happy to respond to any inquiries on the boundaries of the proposed districts. He can be reached at (804) 644-8022. Please let us know when the Commission will be holding public hearings on this issue so that we may again present our views on the need to comply with Section 2 of the Federal Voting Rights Act.

Sincerely,



Michael T. Pablo  
Chairman of the Tribal Council

cc: Blackfeet Nation  
Montana ACLU

Enclosures



SOUTHERN REGIONAL OFFICE

44 Forsyth Street, NW  
Suite 202  
Atlanta, GA 30303  
(404) 523-2721

Laughlin McDonald  
DIRECTOR

Neil Bradley  
ASSOCIATE DIRECTOR

Kathleen L. Wilde  
STAFF COUNSEL

Mary E. Wyckoff  
PALMER WEBER COUNSEL

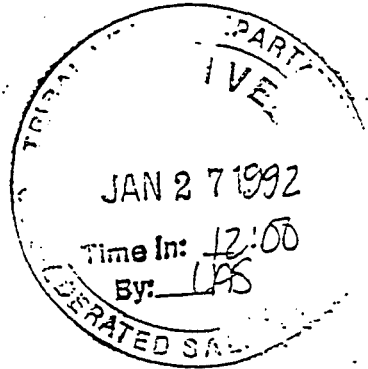
Jim Grant  
PARALEGAL

National Headquarters  
132 West 43 Street  
New York, NY 10036  
(212) 944-9800

Nadine Strossen  
PRESIDENT

Ira Glasser  
EXECUTIVE DIRECTOR

January 23, 1992



Pat Smith  
Flathead Nation  
P. O. Box 278  
Pablo, Montana 59855

Re: Montana Redistricting

Dear Pat:

I have looked over the map and other material you sent. The actual lines look perfectly fine to me. In any event, compactness is a "second tier" state interest and doesn't trump federal law.

The mountains pose a different problem, but I don't think they provide a sufficient basis for excusing compliance with the Voting Rights Act, provided they do not make campaigning and participation in the political process virtually impossible or too burdensome. I suspect there are other political subdivisions in the state (counties, for example) with mountain ranges running through them.

You can throw cold water on any plan, but the proposed districts affecting the Flathead and Blackfeet Reservations look "reasonably compact and contiguous," and I think that is all that is required.

Best wishes.

Sincerely,

Laughlin McDonald

Exhibit #7  
1-26-93  
Reapportionment

# ACLU OF MONTANA

AMERICAN CIVIL LIBERTIES UNION

P. O. BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1081

## RESOLUTION OF THE BOARD

WHEREAS, the Confederated Salish and Kootenai Tribes and the Blackfeet Tribe of Indians have proposed and adopted a plan for legislative reapportionment; and

WHEREAS, this reapportionment plan provides for two House Districts and one Senate District each of which has a Native American population in excess of sixty per cent; and

WHEREAS, this reapportionment plan satisfies the interests of Native American voters in the region and carries out the requirements of the Voting Rights Act of 1965,

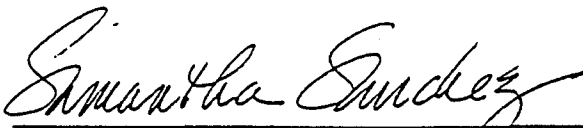
IT IS HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF THE AMERICAN CIVIL LIBERTIES UNION OF MONTANA:

The American Civil Liberties of Montana supports the proposed plan for legislative reapportionment and will support the proposed plan in hearings before the Montana Reapportionment Commission and, if necessary, in any court proceedings.

UNANIMOUSLY ADOPTED this 19 day of February, 1992.

  
\_\_\_\_\_  
CARL DONOVAN, PRESIDENT

Attest:

  
\_\_\_\_\_  
SAMANTHA SANCHEZ, Secretary

RESOLUTION  
OF THE GOVERNING BODY OF  
THE CONFEDERATED SALISH AND KOOTENAI TRIBES  
OF THE FLATHEAD NATION, MONTANA

BE IT RESOLVED BY THE COUNCIL OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES THAT:

WHEREAS, the Tribal Council of the Confederated Salish and Kootenai Tribes is the duly constituted governing body of the Flathead Nation; and

WHEREAS, every ten years the Montana Districting and Apportionment Commission develops a legislative redistricting plan for the State's 100 house districts; and

WHEREAS, this Commission is required to comply with Section 2 of the federal Voting Rights Act (42 U.S.C. § 1973) which requires the Commission to create minority controlled districts where it is reasonably possible to do so. See Thornburg v. Gingles, 478 U.S. 30 (1986); and

WHEREAS, in Windvbov v. Big Horn County, 647 F.Supp. 1002 (D. Mont. 1986), state-sponsored voting schemes in Montana were struck down by the federal court as violative of the voting rights of Montana Indian people under Section 2 of the federal Voting Rights Act; and

WHEREAS, all of Montana's Indian citizens share a "community of interest" and have similar needs, concerns, and identity-- as Indian people; and

WHEREAS, a minority's "community of interest" is a legitimate and rational factor, recognized by the federal courts, that must be fully considered by the Commission in redistricting the state; and

WHEREAS, analysis of the 1990 census data has confirmed that, by combining the Blackfeet Reservation with portions of the Flathead Reservation, it is possible to create three Indian majority legislative districts in the Montana Legislature (two house districts and one Senate district); and

WHEREAS, these districts would be "reasonably compact and contiguous" and would have 60% or greater Indian population; and

WHEREAS, though one of the house district would overlap the two reservations and cross the continental divide posing additional problems in campaigning and participation in the

political process in the district, these mountains do not provide sufficient basis for excusing compliance with the federal Voting Rights Act and ignoring the Indian community of interest; and

WHEREAS, these mountains--today and throughout history--have never presented a serious obstacle to the interactions and dealings between the Indian communities on the Blackfeet and Flathead Reservations.

NOW, THEREFORE, BE IT RESOLVED:

1. That the Confederated Salish and Kootenai Tribes of the Flathead Nation joins with the Blackfeet Nation of the Blackfeet Indian Reservation to support a redistricting plan for our Reservations that does not divide and dilute the community of interest that exists between the Indian people of our reservations (and all Montana Indians).

2. That the Flathead Nation will work with the Blackfeet Nation and the American Civil Liberties Union Voting Project to propose legislative districts that avoid the dilution and splintering of the Indian community vote, and to submit these proposed districts to the Montana Districting and Apportionment Commission.

C E R T I F I C A T I O N

The foregoing Resolution was adopted by the Tribal Council on the 7th day of February, 1992, with a vote of 9 for, 0 opposed, and 0 not voting, pursuant to authority vested in it by Article VI, Section 1(a), (h) and (u) of the Tribes' Constitution and Bylaws; said Constitution adopted and approved under Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended.

*Lanny M. ...*  
Chairman, Tribal Council

ATTEST:

*[Signature]*  
Executive Secretary



# BLACKFEET NATION

P.O. BOX 850

BROWNING, MONTANA 59417

(406) 338-7179

EXECUTIVE COMMITTEE

BLACKFEET TRIBAL BUSINESS COUNCIL

EARL OLD PERSON, CHAIRMAN  
ARCHIE ST. GODDARD, VICE-CHAIRMAN  
AL POTTS, SECRETARY  
ELAINE GUAROIFEE, TREASURER

EARL OLD PER.  
ARCHIE ST. GODD.  
AL PC  
BOB GER.  
DAN BOE  
CHARLES CONNE  
GEORGE KICKING WOI.  
TED WILLIAMS  
JESS BLACKWEA

## RESOLUTION

NUMBER: 119-92

WHEREAS, the Blackfeet Tribal Business Council is the duly constituted governing body within the exterior boundaries of the Blackfeet Indian Reservation; and

WHEREAS, the Blackfeet Tribal Business Council has been organized to represent, develop, protect, and advance the views, interests, education and resources of the Blackfeet Indian Reservation; and

WHEREAS, every ten years the Montana Districting and Apportionment Commission develops a legislative redistricting plan for the State's 100 house districts; and

WHEREAS, this Commission is required to comply with Section 2 of the federal Voting Rights Act (42 U.S.C. § 1973) which requires the Commission to create minority controlled districts where it is reasonably possible to do so. See Thorburg v. Gingles, 478 U.S. 30 (1986); and

WHEREAS, in Winduybov v. Big Horn County, 647 F. Supp. 1002 (D. Mont. 1986), state-sponsored voting schemes in Montana were struck down by the federal court as violative of the voting rights of Montana Indian people under Section 2 of the federal Voting Rights Act; and

WHEREAS, all of Montana's Indian citizens share a "community of interest" and have similar needs, concerns, and identity--as Indian people; and

WHEREAS, a minority's "community of interest" is a legitimate and rational factor, recognized by the federal courts, that must be fully considered by the Commission in redistricting the state; and

WHEREAS, analysis of the 1990 census data has confirmed that, by combining the Blackfeet Reservation with portions of the Flathead Reservation, it is possible to create three Indian majority legislative districts in the Montana Legislature (two house districts and one Senate district); and

WHEREAS, these districts would be "reasonably compact and contiguous" and would have 60% or greater Indian population; and

WHEREAS, though one of the house district would overlap the two reservations and cross the continental divide posing additional problems in campaigning and participation in the

Exhibit # 7  
1-26-93  
Reapportionment

political process in the district; these mountains do not provide sufficient basis for excusing compliance with the federal Voting Rights Act and ignoring the Indian community of interest; and

WHEREAS, these mountains--today and throughout history--have never presented a serious obstacle to the interactions and dealings between the Indian communities on the Blackfeet and Flathead Reservations.

NOW, THEREFORE, BE IT RESOLVED:

1. That the Blackfeet Nation joins with the Confederated Salish and Kootenai Tribes of the Flathead Nation to support a redistricting plan for our Reservations that does not divide and dilute the community of interest that exists between the Indian people of our reservations (and all Montana Indians).

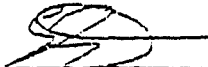
2. That the Blackfeet Nation will work with the Flathead Nation and the American Civil Liberties Union Voting Project to propose legislative districts that avoid the dilution and splintering of the Indian community vote, and to submit these proposed districts to the Montana Districting and Apportionment Commission.

ATTEST:

THE BLACKFEET TRIBE OF THE  
BLACKFEET INDIAN RESERVATION



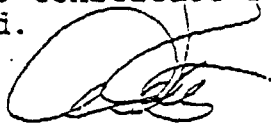
Al Potts, Secretary



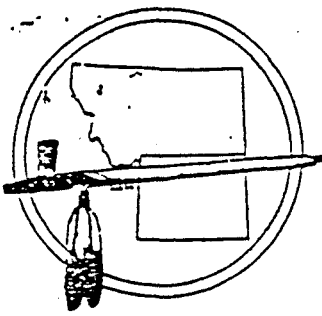
Earl Old Person, Chairman

CERTIFICATION

I hereby certify that the foregoing Resolution was adopted by the Blackfeet Tribal Business Council during a duly called, noticed, and convened Session held the 6th day of February, 1992, with members present to constitute a quorum, and by a vote 9 For and 0 Opposed.



Al Potts, Secretary  
Blackfeet Tribal Business Council



# Montana - Wyoming

---

## Tribal Chairmen Association

Resolution No. 92-02

ARAPAHOE BUSINESS COUNCIL  
P.O. Box 396  
Fort Washakie, WY 82514  
(307) 332-5006  
FAX: 332-7543

BLACKFEET TRIBAL BUSINESS COUNCIL  
P.O. Box 350  
Browning, MT 59417  
(406) 333-7276  
FAX: 333-7530

CHIPPEWA CREE BUSINESS COMMITTEE  
Rocky Boy Route, Box 544  
Box Elder, MT 59521  
(406) 395-4232  
FAX: 395-4497

CONFEDERATED SALISH & KOOTENAI TRIBES  
P.O. Box 278  
Pablo, MT 59855  
(406) 675-2700  
FAX: 675-2306

CROW TRIBAL COUNCIL  
Box 159  
Crow Agency, MT 59022  
(406) 633-2501  
FAX: 633-7233

FORT BELKNAP COMMUNITY COUNCIL  
Box 249  
Harlem, MT 59526  
(406) 353-2205  
FAX: 353-2979

FORT PECK EXECUTIVE BOARD  
P.O. Box 1027  
Poplar, MT 59255  
(406) 768-5155  
FAX: 768-5473

LITTLE SHELL TRIBE  
P.O. Box 347  
Havre, MT 59501  
(406) 265-2741  
FAX: 265-2741

NORTHERN CHEYENNE TRIBAL COUNCIL  
Box 123  
Lime Deer, MT 59043  
(406) 477-6234  
FAX: 477-6210

SHOSHONE BUSINESS COUNCIL  
P.O. Box 538  
Fort Washakie, WY 82514  
(307) 332-3532  
FAX: 332-3055

### RESOLUTION OF THE MONTANA-WYOMING TRIBAL CHAIRMEN ASSOCIATION

SUPPORTING COMPLIANCE WITH SECTION 2 OF THE  
FEDERAL VOTING RIGHTS ACT IN REDISTRICTING  
AND SUPPORTING THE FLATHEAD NATION'S AND  
THE BLACKFEET NATION'S PROPOSED LEGISLATIVE  
DISTRICTS

BE IT RESOLVED BY THE MONTANA-WYOMING  
TRIBAL CHAIRMEN ASSOCIATION THAT:

WHEREAS, every ten years the Montana Districting  
and Apportionment Commission develops a legis-  
lative redistricting plan for the State's 100  
house districts; and

WHEREAS, this Commission is required to comply  
with Section 2 of the federal Voting Rights Act  
(42 U.S.C. § 1973) which requires the Commission  
to create minority controlled districts where it  
is reasonably possible to do so. See Thornburg v.  
Gingles, 478 U.S. 30 (1986); and

WHEREAS, in Windvbov v. Big Horn County, 647  
F.Supp. 1002 (D. Mont. 1986), state-sponsored  
voting schemes in Montana were struck down by the  
federal court as violative of the voting rights of  
Montana Indian people under Section 2 of the  
federal Voting Rights Act; and

WHEREAS, all of Montana's Indian citizens share a  
"community of interest" and have similar needs,  
concerns, and identity--as Indian people; and

WHEREAS, a minority's "community of interest" is  
a legitimate and rational factor, recognized by  
the federal courts, that must be fully considered  
by the Commission in redistricting the state; and

WHEREAS, analysis of the 1990 census data has confirmed that, by combining the Blackfeet Reservation with portions of the Flathead Reservation, it is possible to create three Indian majority legislative districts in the Montana Legislature (two House districts and one Senate district); and

WHEREAS, these districts would be "reasonably compact and contiguous" and would have 60% or greater Indian population; and

WHEREAS, though one of the house districts would overlap the two reservations and cross the continental divide posing additional problems in campaigning and participation in the political process in the district, these mountains do not provide sufficient basis for excusing compliance with the federal Voting Rights Act and ignoring the Indian community of interest; and

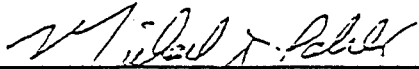
WHEREAS, Montana's seven Indian reservations contain the highest concentration of minority voters in the state of Montana and the Montana redistricting schedule should redistrict these seven reservations first to ensure that such schedule is not prejudicial to the minority voters residing on these Reservations or their rights under Section 2 of the federal Voting Rights Act.

NOW, THEREFORE, BE IT RESOLVED:

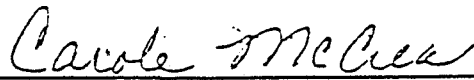
1. That the Montana-Wyoming Tribal Chairmen Association supports the Flathead Nation's and the Blackfeet Nation's efforts in proposing a redistricting plan for their Reservations that does not divide and dilute the community of interest that exists between the Indian people of our reservations (and all Montana Indians).
2. That the Montana Districting and Apportionment Commission revise its schedule so that the areas of the state with the highest concentration of minority voters--its seven Indian reservations--are redistricted first.
3. That the Montana Districting and Apportionment Commission fully comply with Section 2 of the federal Voting Rights Act in redistricting on Montana's Indian reservations.

C E R T I F I C A T I O N

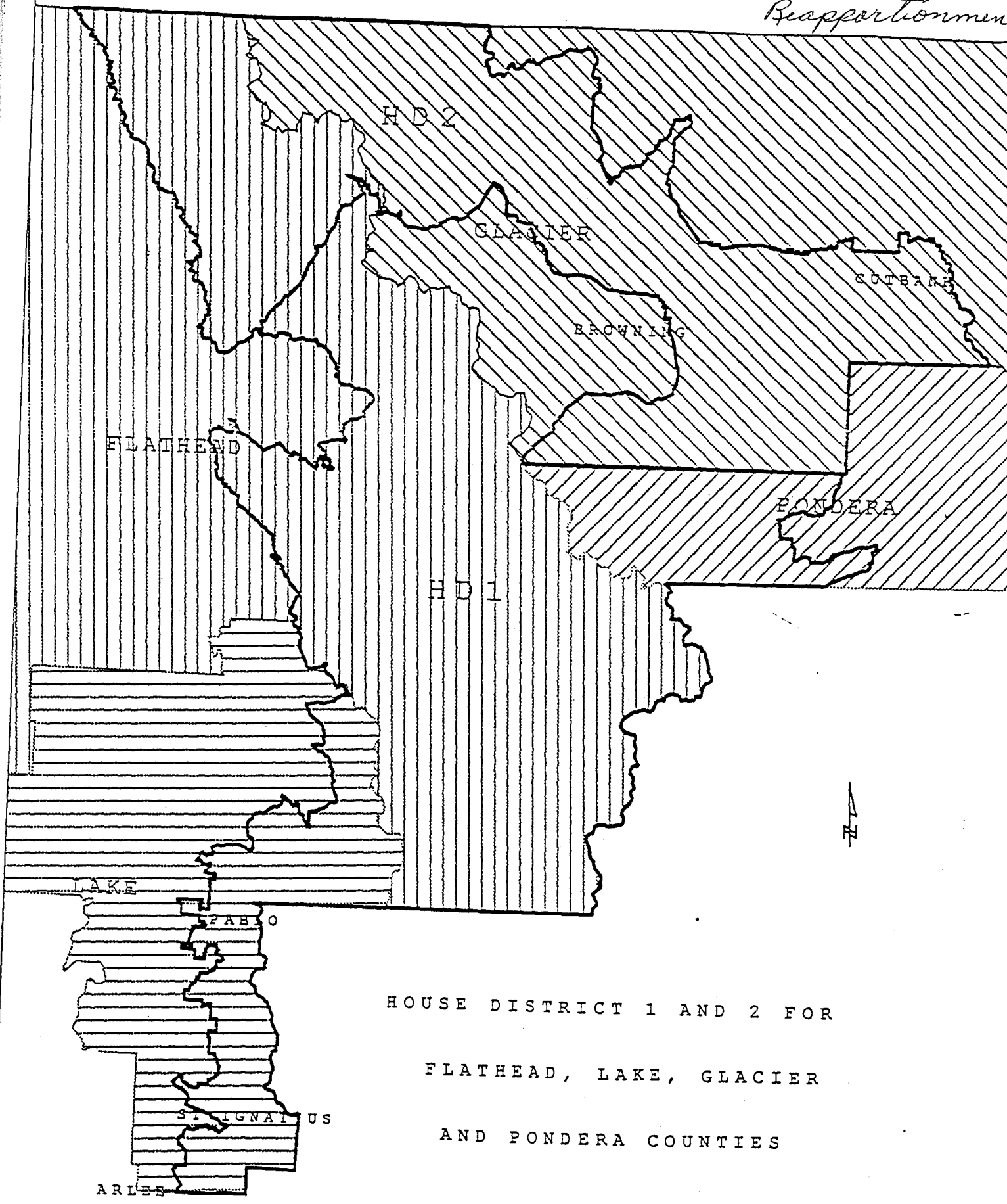
I, the undersigned, as Secretary of the Montana-Wyoming Tribal Chairmen Association certify that the foregoing resolution was duly presented and passed by a vote of 9 for and 0 against and 0 not voting at a regular called and convened meeting of the Association held this 12th day of February, 1992.

  
\_\_\_\_\_  
Chairman Montana/Wyoming  
Tribal Chairmen Association

ATTEST:

  
\_\_\_\_\_  
Secretary

*Exhibit #9  
1-26-93  
Beapportionmen*



HOUSE DISTRICT 1 AND 2 FOR  
FLATHEAD, LAKE, GLACIER  
AND PONDERA COUNTIES

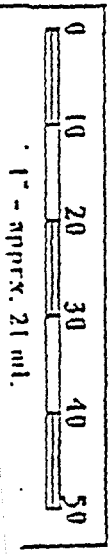
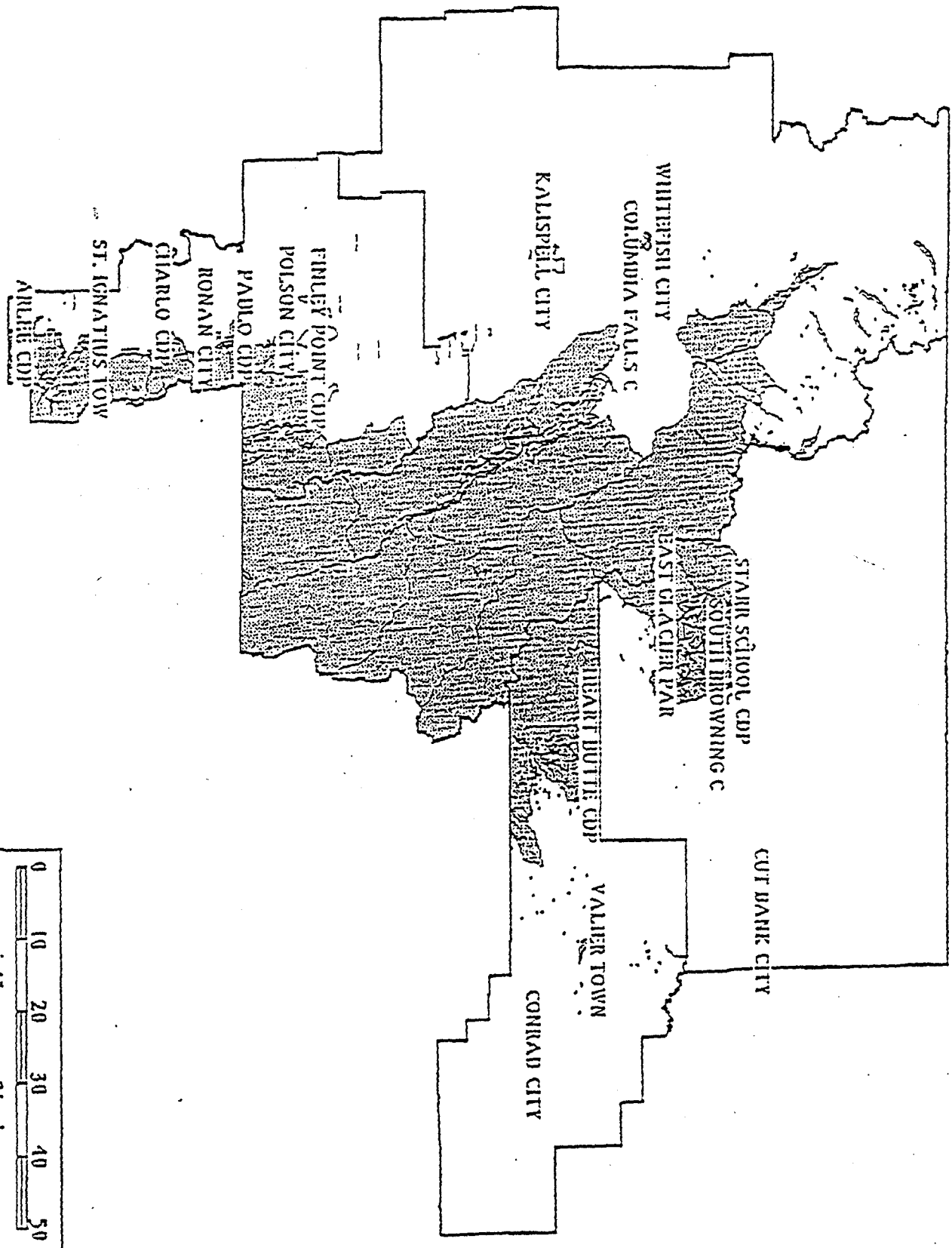
(12/16/91) Draft Native American House District #1:

|       | All Persons | N. Amer. | Flathead | Blackfeet | %N. Amer. of All | %Flathead of N. Amer. | %Blackfeet of All | %Blackfeet of N. Amer. |
|-------|-------------|----------|----------|-----------|------------------|-----------------------|-------------------|------------------------|
| Total | 7078        | 4035     | 2553     | 2202      | 61.37%           | 32.41%                | 52.00%            | 20.97%                 |
| VAP   | 4780        | 2776     | 1499     | 1277      | 58.08%           | 31.36%                | 54.00%            | 26.72%                 |
|       |             |          |          |           |                  |                       |                   | 47.20%                 |
|       |             |          |          |           |                  |                       |                   | 46.00%                 |

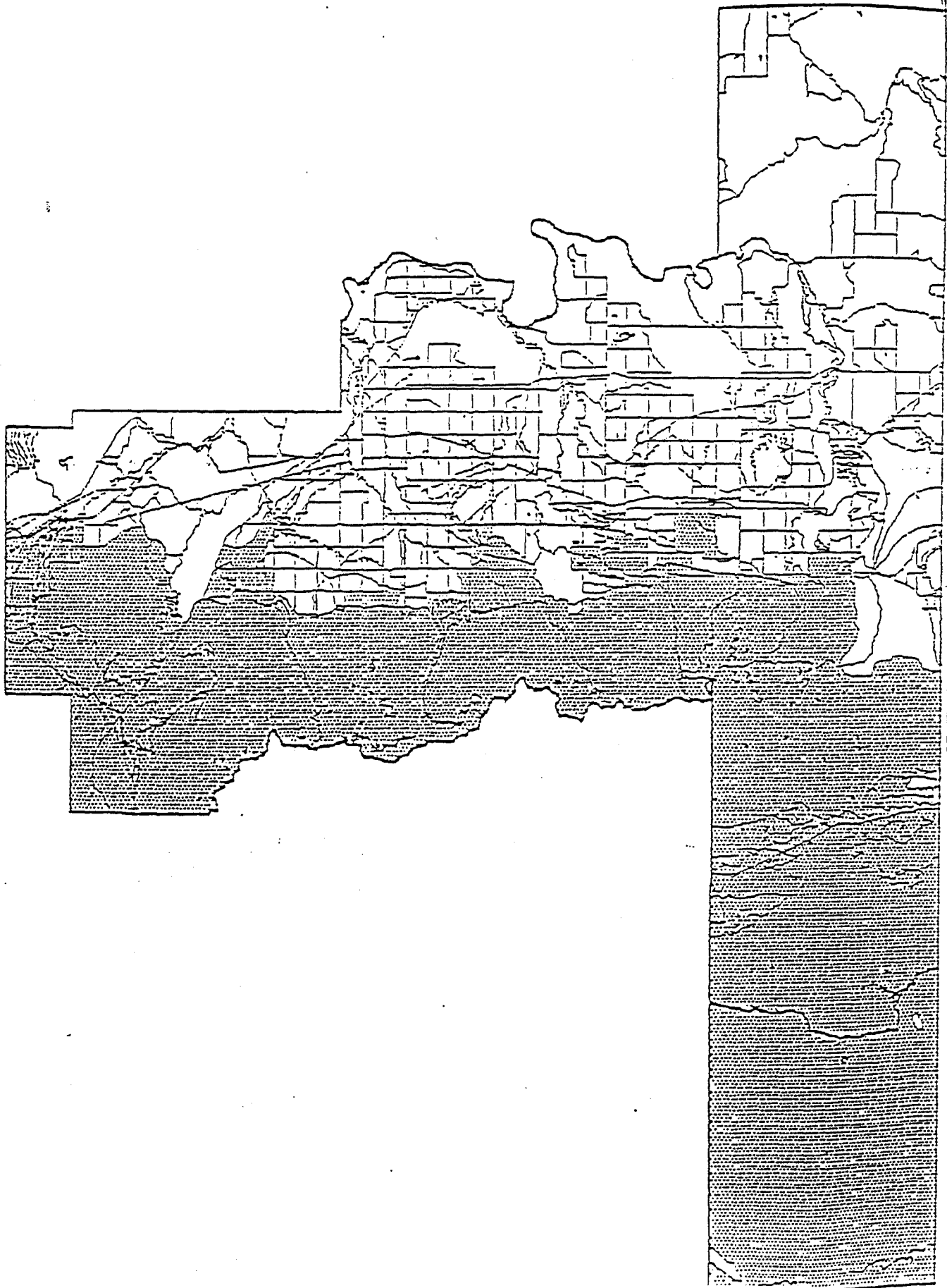
\*Calculations Assume all Native Americans in Lake County are Flathead

1-26-93  
Reapportionment

12/16/91 Draft Native American House District #1

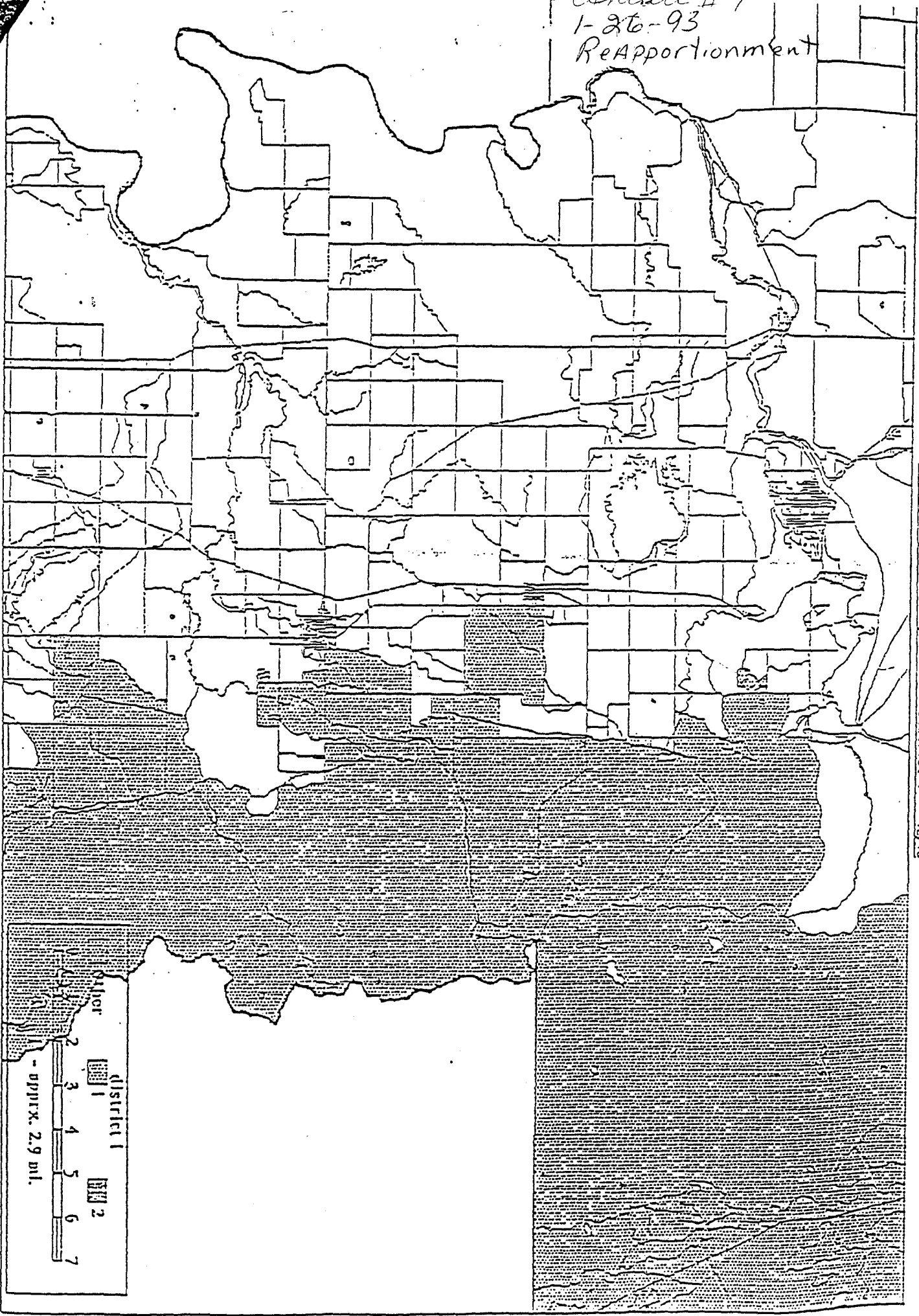






Inke County northern portion of District 1 -- 12/16

Chart II -  
1-26-93  
ReApportionment



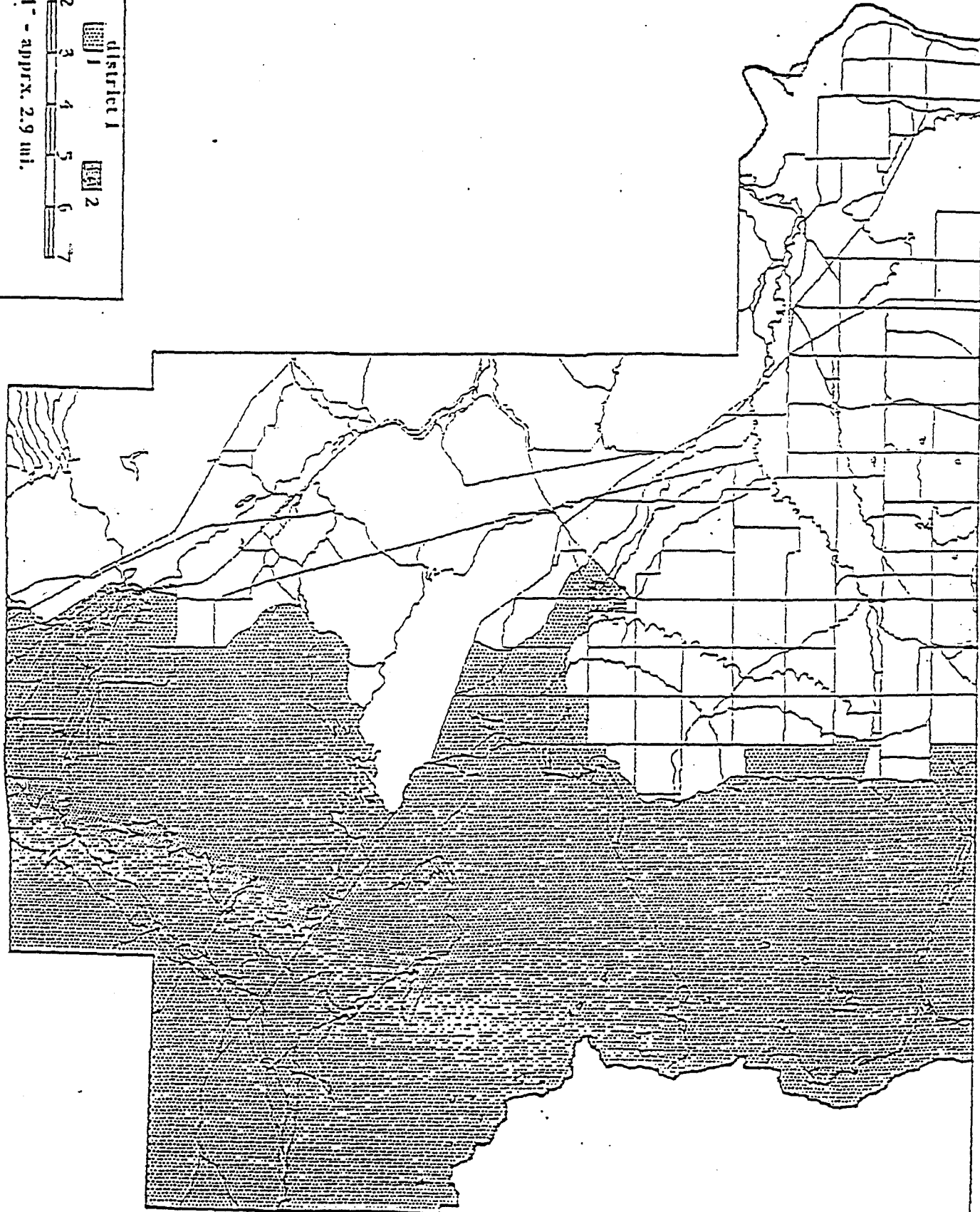
Luke County -- North portion of District 1 -- 12/16

district 1

district 2

1 2 3 4 5 6 7

- approx. 2.9 mi.



District 1

Other

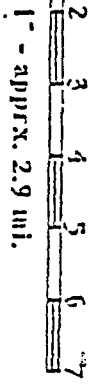
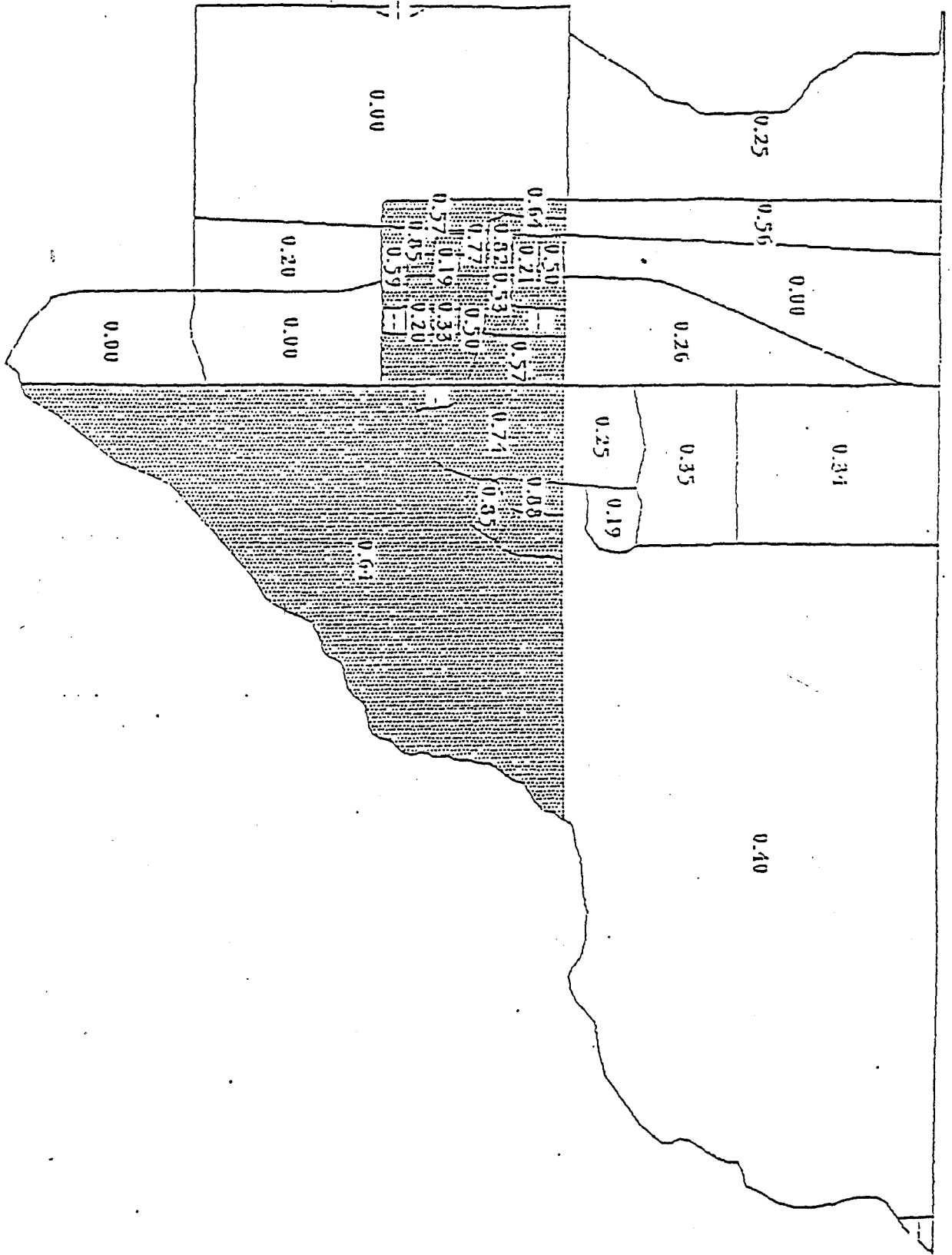


Exhibit # 7  
 11-26-93  
 Reapportionment



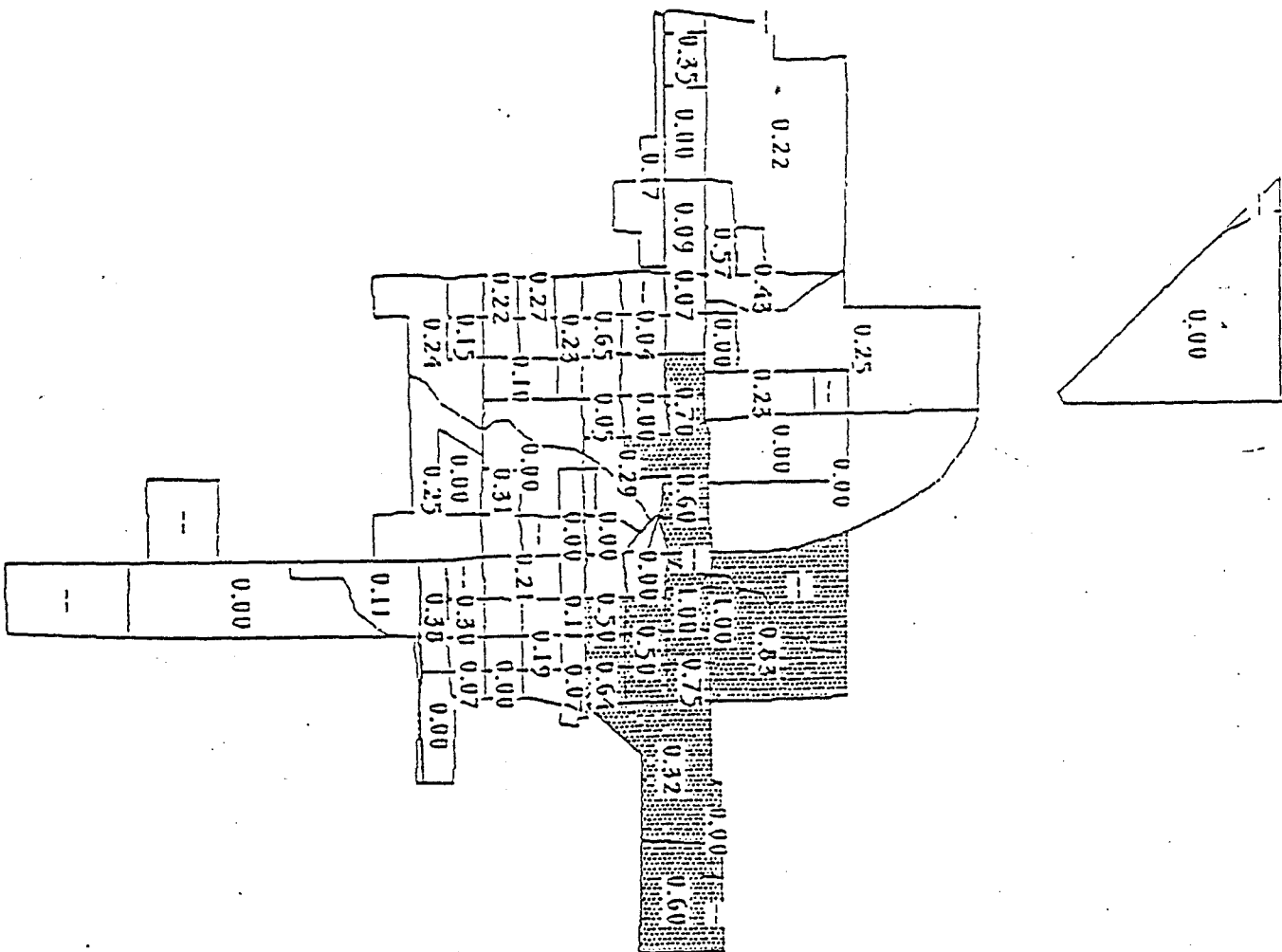
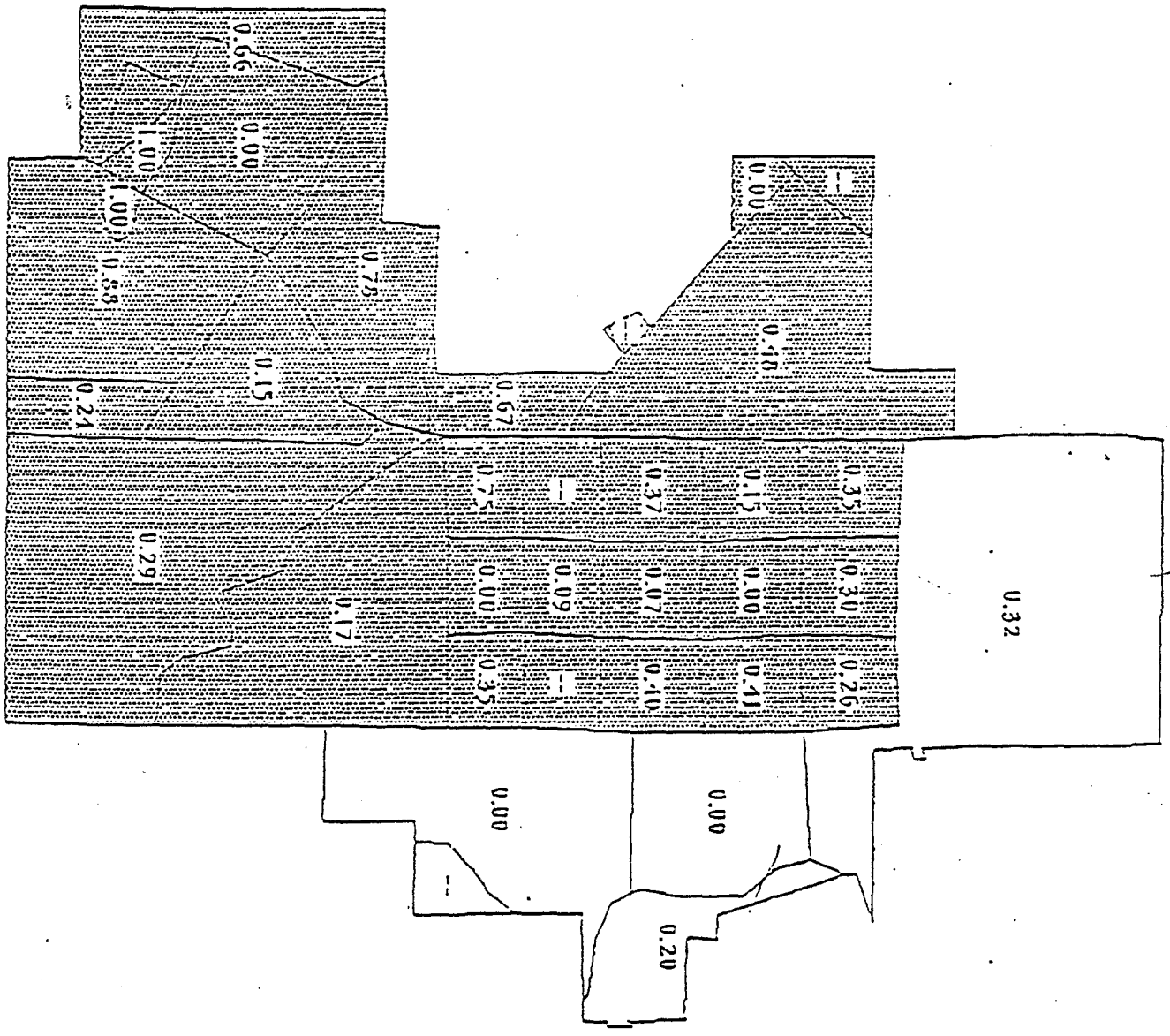


exhibit #1  
1-26-93  
Reapportionment



Leg. Budget 1993-94 - 35th Legislative Session - House Bill 1001 - 1/26/93

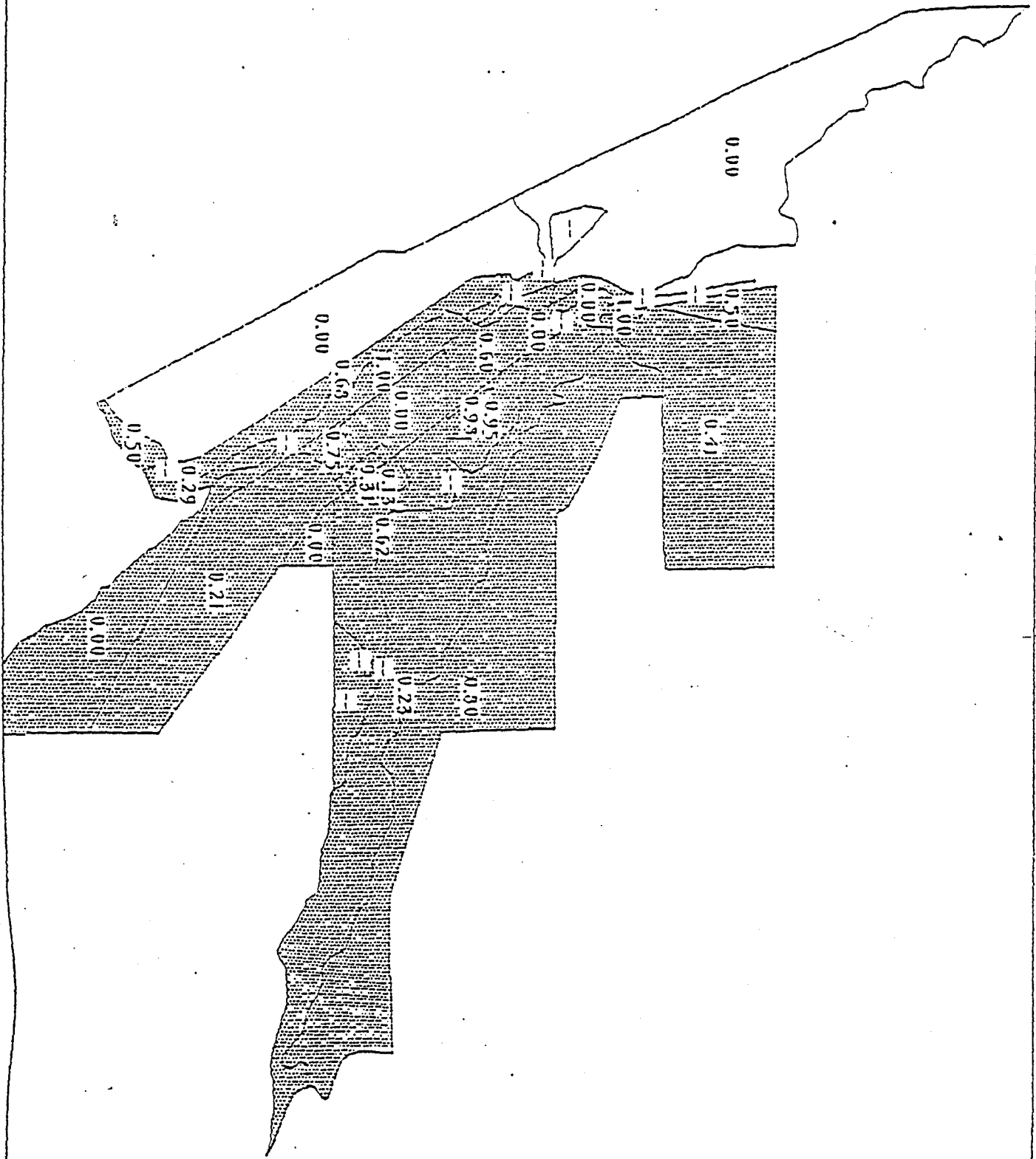


Exhibit # 7  
 1-26-93  
 Reapportionment

(12/16/91) Draft Native American House District #2:

|       | All Persons | N. Amer. | Flathead | Blackfeet | %N. Amer. of All | %Flathead of N. Amer. | %Blackfeet of All | %Blackfeet of N. Amer. |
|-------|-------------|----------|----------|-----------|------------------|-----------------------|-------------------|------------------------|
| Total | 7908        | 4920     | 0        | 4920      | 61.75%           | 0.00%                 | 61.75%            | 100.00%                |
| VAP   | 5051        | 2871     | 0        | 2871      | 56.84%           | 0.00%                 | 56.84%            | 100.00%                |

\*Calculations Assume all Native Americans in House District #2 are Blackfeet



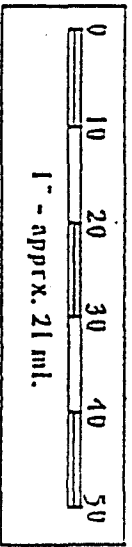
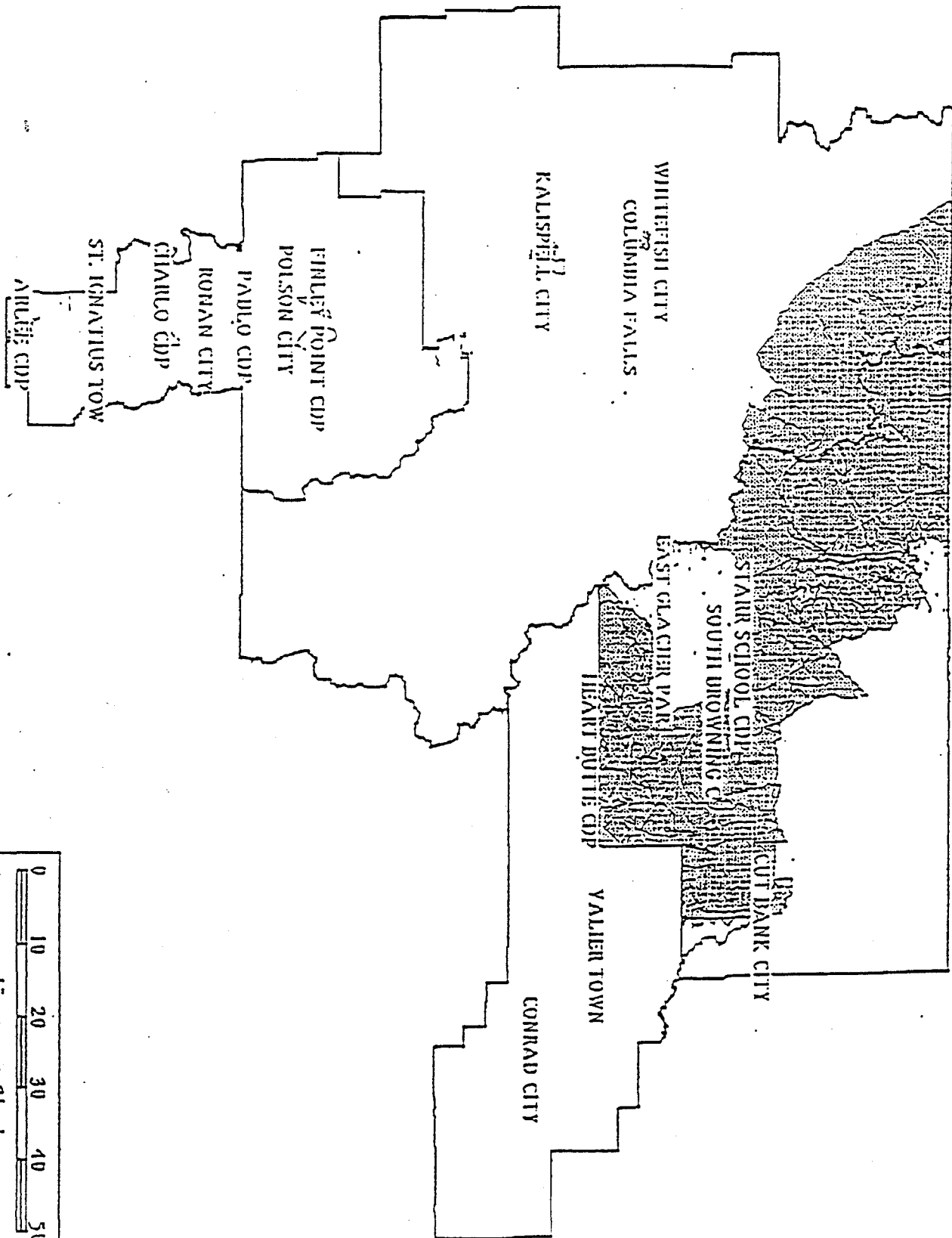


Exhibit # 7  
1-26-93  
Reapportionment

House District 1-Unshaded  
House District 2-Shaded

1

SOUTH BROWNING CDP

BROWNING TOWN

NORTH BROWNING CDP

Detail of Browning Area

0 1 2 3 4 5 6 7 8 9  
10 11 12 13 14 15 16 17 18 19  
20 21 22 23 24 25 26 27 28 29  
30 31 32 33 34 35 36 37 38 39  
40 41 42 43 44 45 46 47 48 49  
50 51 52 53 54 55 56 57 58 59  
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80 81 82 83 84 85 86 87 88 89  
90 91 92 93 94 95 96 97 98 99

CUT BANK CITY

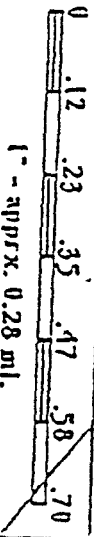
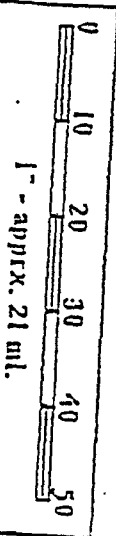
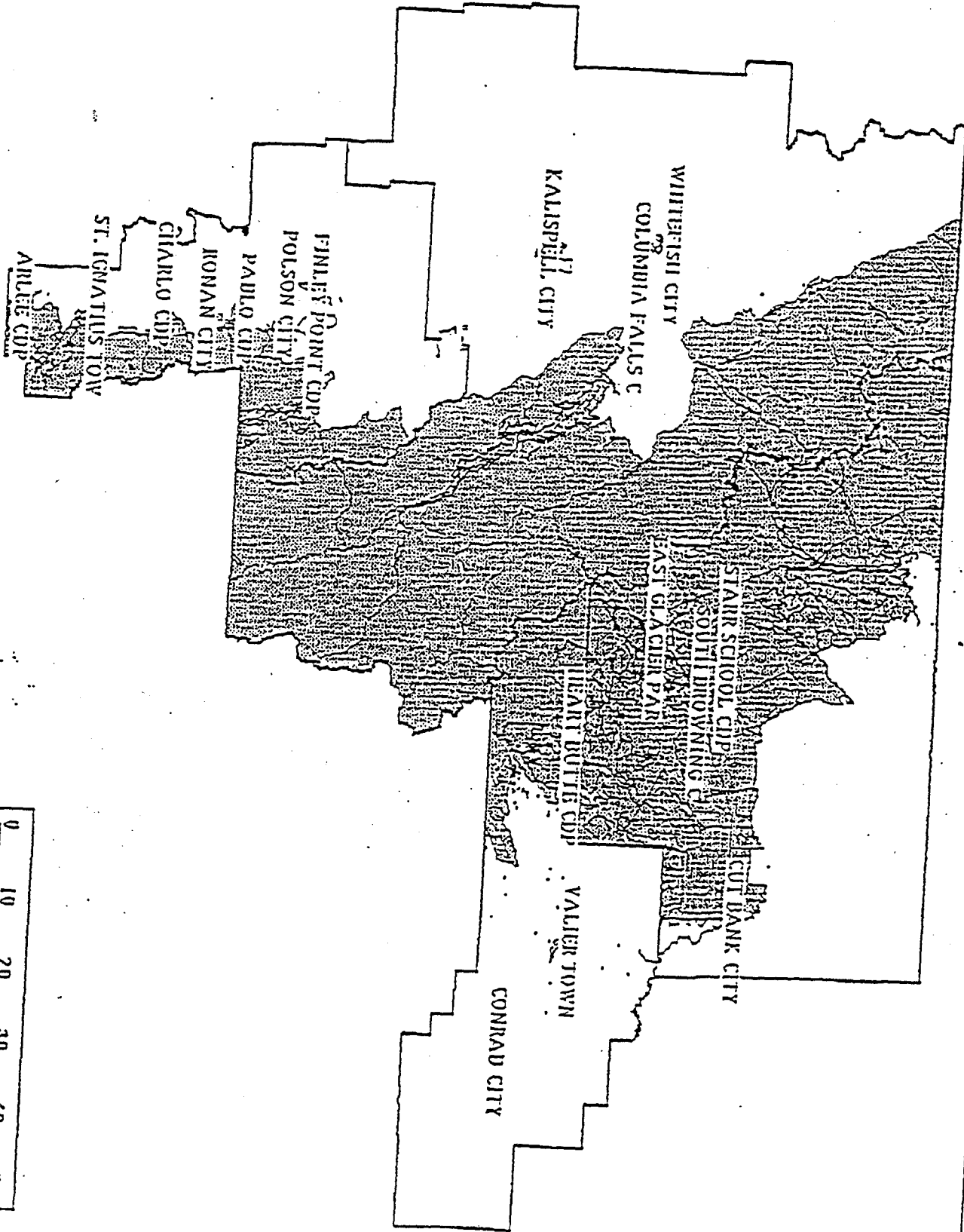


Exhibit II 7  
 1-26-93  
 Reapportionment

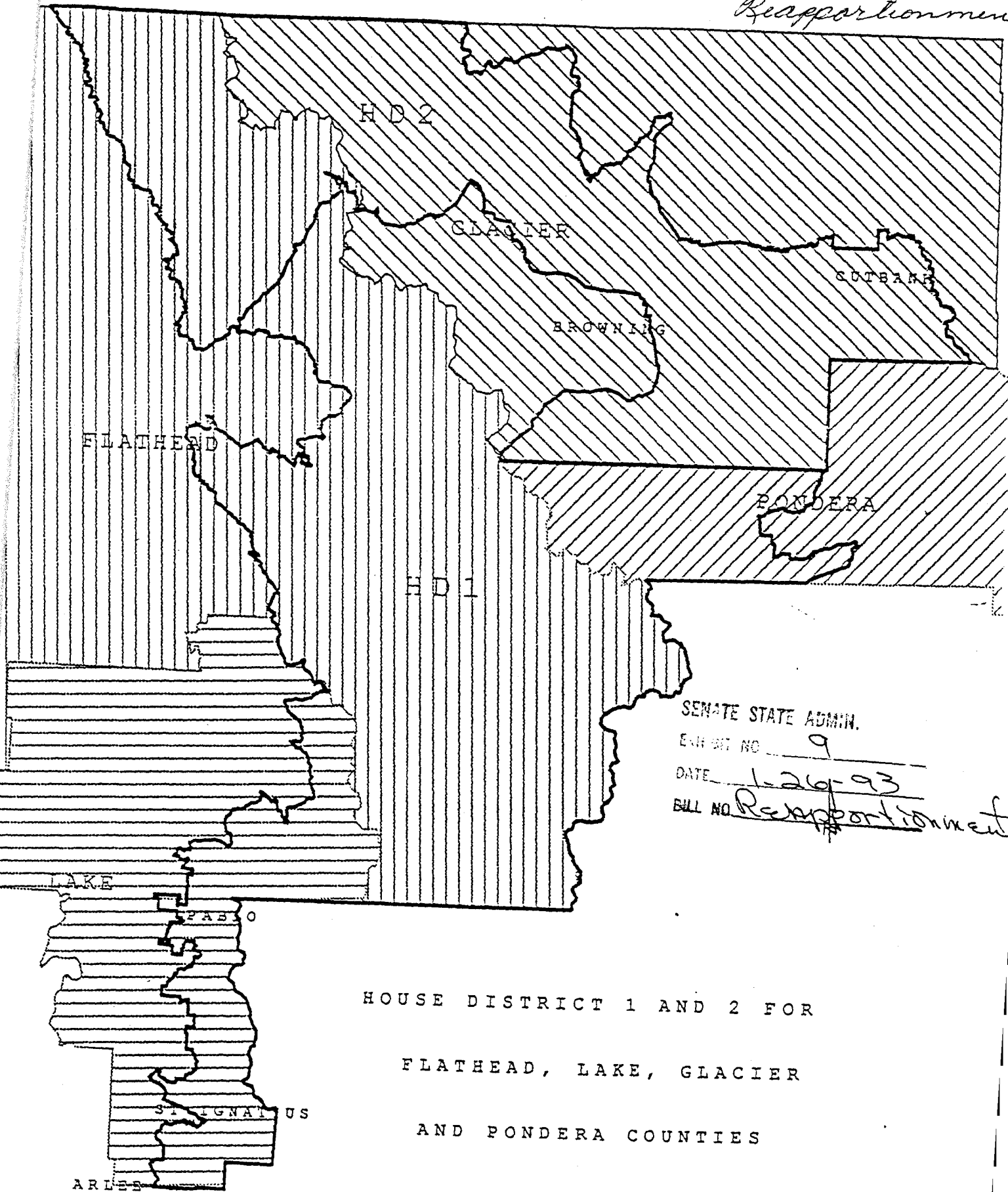
(12/16/91) Draft Native American Senate District #:

|       | All<br>Persons | N. Amer. | Flathead | Blackfoot | %N. Amer.<br>of All | %Flathead<br>of N. Amer. | %Blackfoot<br>of All | %Blackfoot<br>of N. Amer. |
|-------|----------------|----------|----------|-----------|---------------------|--------------------------|----------------------|---------------------------|
| Total | 15796          | 9755     | 2553     | 7202      | 61.76%              | 16.10%                   | 26.17%               | 45.59%                    |
| VAP   | 9831           | 5647     | 1499     | 4148      | 57.44%              | 15.25%                   | 26.55%               | 42.19%                    |
|       |                |          |          |           |                     |                          |                      | 73.45%                    |

\*Calculations Assume all Native Americans in Lake County are Flathead



Bill #9  
1-26-93  
Reapportionment



SENATE STATE ADMIN.  
ENR BIT NO. 9  
DATE 1-26-93  
BILL NO. Reapportionment

HOUSE DISTRICT 1 AND 2 FOR  
FLATHEAD, LAKE, GLACIER  
AND PONDERA COUNTIES

Circular #7  
1-26-93  
Reapportionment

January 27, 1993

TO: Rep. Simpkins

FROM: John MacMaster

The attached memo takes the position that part of the Crow Tribe should not be placed in a district with Cheyennes (in 1982). One of the main arguments is the differences between the Crow and Cheyenne Indians.

The current issue is different: should the Blackfeet and Salish-Kootenai Tribes be combined into a district?

The argument as to tribal differences being so great the Crow and Cheyenne are too incompatible, or too different from each other, to put them in the same district and thereby say you have protected the minority of the Indian race as a whole can also be used to say that the Blackfeet and Salish-Kootenai are so incompatible or so different from each other that they are not entitled to be lumped together in a district in which they can combine to give Indians a majority of the district population. In other words, the argument works ways. You cannot say the differences matter for one purpose and should be ignored for the other.

In addition, the fact is that proposed district 12 in 1982 would have combined Crows and Cheyennes, and the Crow did not want that and said that they and the Cheyenne were too different.

*Fredericks & Pelcyger*

ATTORNEYS AT LAW  
1007 PEARL STREET, SUITE 240  
BOULDER, COLORADO 80302

THOMAS R. ACEVEDO\*  
TOM W. ECHOHAWK\*\*  
THOMAS W. FREDERICKS  
ROBERT S. PELCYGER\*\*\*

(303) 443-1683

13 September 1982

\* ADMITTED ONLY IN VIRGINIA  
\*\* ADMITTED ONLY IN UTAH  
\*\*\* ADMITTED ONLY IN CALIFORNIA AND NEW YORK

John MacMaster  
Office of the Legislative Council  
Room 138  
State Capitol Building  
Helena, MT 59620

Dear Mr. MacMaster:

I am sending you the enclosed memorandum as a response to a question raised by the Montana Districting and Apportionment Commission, concerning the constitutionality of division of the vote of Crow tribal members. One of the Commissioners asked whether such division was impermissible where the districting scheme divided the Crow Reservation, but combined a portion of that reservation with another Indian tribe: the Northern Cheyennes. The basis for the inquiry was the contention that there is no division of a racial vote when Indians share a district with other Indians. My memorandum addresses this contention, and concludes that the U.S. Supreme Court opinions invalidating districting schemes under the Fifteenth Amendment support invalidation of the proposed Montana scheme, considering the unique characteristics of Indian Tribes.

I hope that this information can aid your own preparation of a legal memorandum for the Commission. I am enclosing extra copies and I would appreciate your distributing them to the Commissioners.

Sincerely,

*Barbara Lavender*

Barbara Lavender

BL:al  
enclosures



Exhibit # 4  
1-26-93  
Reapportionment

MEMORANDUM

TO: John MacMaster, Montana Districting & Apportionment  
Committee

FROM: Barbara Lavender

DATE: September 13, 1982

RE: Constitutionality of proposed districting scheme for  
Big Horn County, Montana

Two of districting schemes proposed for Big Horn County would divide the Crow Indian Reservation into two districts. In District 11, the Crows would be combined with a non-Indian population. In District 12, the Crows would be combined with non-Indians and with the Northern Cheyenne Reservation. These schemes constitute an unconstitutional division of the vote of Crow Tribal members and consequently of the Indian vote, in spite of the fact that part of the Crow Reservation is being combined with another Indian reservation.

I. Section 2 of the Voting Rights Act of 1965 is applicable to Montana Redistricting.

Section 2, as amended by P.L. 97-205, June 29, 1982, 96 Stat. 131-135, states that:

No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any state or political subdivision in a manner which results in a denial or abridgement of the right of any citizen....

The clear meaning of this language is that any voting practice or procedure which has the prohibited effect is invalid. The Section in no way limits its application to voting practices in areas which are subject to sections 4 and 5 of the Voting Rights Act of 1965. The Supreme Court has confirmed this

interpretation of Section 2. In South Carolina v. Katzenbach, 383 U.S. 301 (1966), the Court defined the parameters of the Voting Rights Act of 1965. Sections 4, 5, 6(b), 7, 9, and 13(a) were said to constitute "a complex scheme of stringent remedies aimed at areas where voting discrimination has been most flagrant." 383 U.S. at 315. Other sections, 8, 10(d) and 12(e), "prescribe subsidiary cures for persistent voting discrimination." 383 U.S. at 316. However, "the remaining remedial portions of the Act are aimed at voting discrimination in any area of the country where it may occur. Section 2 broadly prohibits the use of voting rules to abridge exercise of the franchise on racial grounds." 383 U.S. at 316.

The U.S. Justice Department has repeatedly relied on this interpretation of Section 2 in its challenges to voting schemes in jurisdictions which are not subject to Section 5. The most recent case is U.S. v. King, Civil No. 82-67-M, which has been argued and is awaiting judgment by the U.S. District Court for the District of New Mexico. In that case, the U.S. has challenged the validity of legislative districts within certain New Mexico counties which are not subject to Section 5. The allegation is that the districts violate Section 2 of the Voting Rights Act of 1965, the equal protection provision of the Fourteenth Amendment and the Fifteenth Amendment because they were drawn in such a way as to split or fracture the Indian community.

Further support for applicability of Section 2 is found in the legislative history of the recent amendment. The Senate Judiciary Committee report states at p. 2 that the purpose of

the amendment is "to prohibit any voting practice or procedure [which] results in discrimination"<sup>1</sup> (emphasis added). At p. 41, the committee notes that:

[A] question raised by several witnesses in the subcommittee hearings is whether Congressional authority to enact the amendment to Section 2 is contingent upon a detailed showing of voting rights discrimination throughout the country. They suggest an analogy to the record of abuse in covered jurisdictions that the Supreme Court emphasized in South Carolina v. Kalzenbach, as one basis for upholding the importance of preclearance on those jurisdictions. The committee finds this concern... without merit because the analogy to Section 5 is fatally flawed for several reasons.

First, the analogy overlooks the fundamental difference in the degree of jurisdiction needed to sustain the extraordinary nature of preclearance, on the one hand, and the use of a particular legal standard to prove discrimination in court suits on the other. It is erroneous to assume that Congress is required for this amendment to put forth a record of discrimination analogous to the one relied on by the Court in South Carolina when it upheld Section 5.

The report quotes the testimony of Professor Dorsen as support for their conclusion:

While nationwide racial discrimination in voting might be necessary to justify or make "appropriate" extending Section 5 to the entire country, such finding would be unnecessary to justify amending Section 2 because it is less intrusive on state functions.... [A]mended Section 2 does not require federal preclearance of anything: it merely prohibits practices that can be proven in a court of law to have discriminatory results.

---

<sup>1</sup>Voting Rights Act Extension, Report of the Committee of the Judiciary, U.S. Senate, No. 97-417, May 25, 1982.

Norman Dorsen, prepared statement, p. 5.

These statements clearly establish the authority of Section 2 as being separate from that of Section 5. Where, in addition, the clear and literal meaning of Section 2 has been affirmed by the Supreme Court and consistently applied by the U.S. Justice Department, there remains no basis for contending that an alternative, non-literal interpretation should be adopted. The Montana Districting and Apportionment Committee must therefore follow the mandates of Section 2 of the Voting Rights Act of 1965.

II. The proposed scheme dividing the Crow Reservation violates Section 2 of the Voting Rights Act of 1965 and the Fifteenth Amendment by dividing and diluting the Indian vote.

A districting scheme is unconstitutional if it prevents a particular class of citizens from having <sup>the opportunity to gain</sup> fair representation and meaningful participation in the political process. Rogers v. Lodge, 50 L.W. 5041 (1982), Gomillion v. Lightfoot, 364 U.S. 339 (1960), White v. Regester, 412 U.S. 755 (1973), City of Mobile v. Bolden, 446 U.S. 55 (1980). Under the newly amended version of Section 2 of the Voting Rights Act of 1965, such a scheme is invalid if it has a discriminatory effect, even if it was not enacted for a discriminatory purpose. In discussing what is necessary to meet the plaintiff's burden of proof, the Senate Judiciary Report states at p. 28:

If, as a result of the challenged practice or structure plaintiffs do not have an equal opportunity to participate in the political processes and elect candidates of their choice, there is a violation of this section. To establish a violation, plaintiffs could show a variety of factors, depending on the kind of rule, practice or procedure called into question.

The Committee Report goes on to set out in some detail the so-called Zimmer factors, which courts have recognized as evidence of discriminatory effect.

In my previous memorandum to the Montana Districting and Apportionment Committee, I demonstrated that these factors are present in the districting scheme proposed for Big Horn County, and that they combine to invalidate any scheme which divides the Crow Reservation. This conclusion is not altered by the fact that a scheme includes part of the Crow Reservation in a district which also contains the Northern Cheyenne Tribe. The effect of such a scheme is discriminatory, in that it has the effect of diluting the Indian vote, as well as of dividing the Crow tribal vote. The population of the Crow Tribe is much larger than that of the Northern Cheyennes and the Crows have recently organized a political mobilization which could increase the political participation and influence of Crow tribal members. The effectiveness of this political organization depends on a unified structure. When the Crow vote is divided, the tribe is unable to use the tribal structure to facilitate the organizational process. As a result, those interests common to all Indians in Big Horn County will be under-represented, as well as the interests which are unique to the Crow Tribe. Because of the cultural and language differences between the two tribes, it would be difficult to organize a consolidated Indian political effort within a district which includes part of the Crow reservation and the Northern Cheyennes. Common Indian goals can most readily be reached if the two tribes are permitted to use their structural and cultural integrity to organize

political participation by tribal members.

III. The proposed scheme dividing the Crow Reservation violates Section 2 of the Voting Rights Act of 1965 and the Fifteenth Amendment by dividing and diluting the vote of the Crow Indians.

In addition to its effect on the voting rights of all Indians in Big Horn County, the scheme dividing the Crow Reservation has an impermissible effect on the voting rights of Crow Indians. The logic and analysis in the judicial opinions regarding the voting rights of racial minorities is consistent with characterization of individual Indian tribes as minority groups which are entitled to representation of their unique interests.

The Supreme Court's description of unconstitutional districting systems frequently refers to impermissible effects on groups which are defined by characteristics other than race. Thus, in Rogers v. Lodge, supra, the Court invalidated a system in which "a distinct minority, whether it be a racial, ethnic, economic or political group, may be unable to elect any representatives." 50 L.W. p. 3. In Wallace v. House, 515 F.2d 619 (1975), the Fifth Circuit Court of Appeals stated that "in order for there to be substantial, and therefore illegal impairment of minority voting rights, there must be some fundamental unfairness in the election system, some denial of fair representation to a particular class," 515 F.2d at 633. Similarly, the Supreme Court noted in Fortson v. Dorsey, 379 U.S. 433 (1965) that the constitutionality of a scheme is suspect if it "would operate to minimize or cancel out the voting strength of racial or political elements of the voting population," 379 U.S. at 439. Since these cases did involve

racial groups, the statements quoted are dicta, but they demonstrate that the protection afforded by the Fifteen Amendment and the Voting Rights Act extends to minorities which are distinguishable on the basis of characteristics other than race. Therefore, the Fifteen Amendment guarantees fair representation to the Crow Tribal members, as a particular, discrete class of citizens, although those citizens are not technically of a different race from the Northern Cheyennes.

The factors upon which the courts have relied in determining that a particular scheme is unconstitutional are equally applicable to the situation in Big Horn County. One of these factors is the finding of a cultural and language barrier, making full participation in community processes difficult, White v. Regester, supra. This kind of barrier exists between tribes as well as between the individual tribes and the non-Indian population. The first language among the Crows is Crow and the second language is English. Similarly, the first language of the Cheyennes is Cheyenne and the second is English. Therefore, communication between Crows and Cheyennes is difficult. The two tribes have different interests which they seek to bring to the attention of their government. These interests can be best represented by a system in which each of the two tribes is consolidated.

Another important factor is the past failure of a member of the minority group to be elected in fair proportion to their representation in the population, City of Mobile, Ala. v. Bolden, supra, White v. Regester, supra. No Crow or Cheyenne has ever been elected to the state legislature. This fact is more

significant regarding the Crow Tribe, because the Crows constitute a much larger percentage of the state population than do the Cheyennes. The greatest opportunity for an Indian of either tribe to be elected is provided by a districting system which consolidates the votes of the individual tribes, so that they can work within their cultural frameworks to achieve common goals.

Indian tribes are unique entities - semi-sovereign states, each possessing its own political system for governing internal affairs. This factor, combined with the individuality of tribal languages and cultures, creates differences and barriers between tribes which are greater than those between many racial groups. The tribal political systems also provide a mechanism for effective coordination of political mobilization within the tribe, for representation of common interests. Division of the reservation prevents such mobilization and consequently prevents representation of tribal interests.

In one case dealing specifically with a reapportionment plan which divided an Indian reservation, the District Court for Arizona held that such a plan was unconstitutional. Klahr v. Williams, 339 F.Supp. 922 (1972). The Court found no evidence of an adequate state purpose for dividing the Navajo reservation among three legislative districts and concluded that the plan must have been adopted "in order to destroy the possibility that the Navajo, if kept within a single legislative district, might be successful in electing one or more of their own choices to the legislature." 339 F.Supp. at 927. Finding this to be an "invidious purpose", the court held that the plan was unconstitutional.



In March, 1982, the U.S. Department of Justice, Civil Rights Division, refused to preclear House Bill 2001, which provided for the reapportionment of the Arizona Legislature. The Arizona state government is subject to Section 5 of the Voting Rights Act, which requires preclearance of any reapportionment plan. Under Section 5, the state had the burden of proving the absence of both discriminatory purpose and effect in a newly devised legislative reapportionment plan. City of Rome v. United States, 446 U.S. 156, 183 n.18 (1980), Beer v. United States, 425 U.S. 130, 140-41 (1976). The submitted plan would have divided the population of the San Carlos Indian Reservation into three legislative districts. One district would have included a small portion of the San Carlos Reservation as well as the Papago Reservation. A second district combined a larger area of the San Carlos Reservation with a large non-Indian population. The third section of the San Carlos Reservation was included in a district with the Ft. Apache Reservation. This plan was rejected as violating the Voting Rights Act of 1965 by dividing the vote of the San Carlos Indians. The fact that the San Carlos were placed in districts with other tribes did not prevent the Justice Department from concluding that the legislative plan had a discriminatory effect. The Department noted that the state had offered no satisfactory explanation for, or governmental interest in, the division of the San Carlos Reservation, and that a reasonable alternative plan could be drawn which would avoid the fragmentation.

An alternative plan is also available in Big Horn County, and would avoid impermissible fragmentation of the Crow Tribe.

Although the San Carlos case was analyzed under Section 5 of the Voting Rights Act of 1965, which has its own "discriminatory purpose or effect" standard, application of the Section 2 standard to the division of the Crow Reservation would yield the same conclusion of invalidity.

# Fort Belknop Community Council

## FORT BELKNAP EDUCATION DEPARTMENT

(406)353-2205  
R.R. 1 Box 66  
Fort Belknop Agency  
Harlem, Montana 59526

Fort Belknop Indian Community  
(Tribal Govt.)  
Fort Belknop Indian Community  
(Elected to administer the affairs of the community and  
to represent the Assiniboine and the Gros Ventre  
Tribes of the Fort Belknop Indian Reservation)

January 25, 1993

DATE



Joint Committee on State Administration  
Montana State Legislature  
Capitol Station  
Helena, Montana 59620

SENATE STATE ADMIN.  
EXHIBIT NO. 10  
DATE 1-26-93  
BILL NO. Reapportionment

Dear Committee Members:

It is with deep regret that we are unable to be with you today to share our views on the with you in regards to the Districting and Reapportionment Plan for the State of Montana. At Fort Belknop we have experienced an unfortunate tragedy that has claimed the life of one of our student athletes from Harlem High School. He was a dear friend to our sons and daughters and in our Indian way of life, we must stay to help them through this very emotional and confusing time of their lives. I hope you can understand.

Over the past year we at Fort Belknop have been very active participants in the districting and reapportionment planning process. We have attended every meeting and hearing held across northcentral Montana. In June we went to the Shelby hearing, we traveled to Wolf Point, on to Great Falls and finally presented our views at final hearing in Helena. At each hearing and meeting our testimony and presentations were presented in a very positive manner to the commission. Our stand has always been the same. **FORT BELKNAP IS IN SUPPORT OF PLAN 100b, WHICH WOULD CREATE HOUSE DISTRICT NO. 142.**

Throughout our testimony our presentations have given statistics and facts that document our voting turnout and voting patterns that support our request for the new district. Our voting populations speak for themselves. Meetings have been held with the Council of Rocky Boy that share our concern and they support our plan. We have many concerns of common cause with the residents of Rocky Boy and are very excited about the possibility of sharing a legislative district with one another. But, having a common legislative district with one another does not necessarily guarantee an Indian person will be elected. It only gives Indian people the opportunity to serve. We still must involve our Indian people of the importance of state government and have them exhibit their true citizenship of the State of Montana. We are citizens of the State

of Montana and want to play an active role into the development of laws and programs that make our state a better place to live.

We strongly believe that given the experience of living on Indian reservations we have gained the experience necessary that our input into state government would be invaluable. Given the opportunity we can all work together, as we must live together, and make our homes and our futures better for generations to come.

Sincerely,



Loren 'Bum' Stiffarm, Director  
Fort Belknap Education Department

Exhibit #10  
1-26-93  
Reapportionment 004

TESTIMONY

TO THE

MONTANA DISTRICTING AND APPORTIONMENT COMMISSION

IT IS INDEED A PLEASURE TO HAVE THE OPPORTUNITY TO TESTIFY BEFORE YOU THIS EVENING TO PRESENT OUR VIEWS ON THE ALTERNATE PLANS FOR THE LEGISLATIVE DISTRICTS HERE IN MONTANA.

MY NAME IS LOREN 'BUM' STIFFARM AND I CURRENTLY AM THE DIRECTOR OF TRIBAL EDUCATION PROGRAMS UNDER THE ADMINISTRATION OF THE FORT BELKNAP COMMUNITY COUNCIL, HARLEM, MONTANA. I ALSO SERVE AS THE PRESIDENT OF THE NATIONAL INDIAN EDUCATION ASSOCIATION WITH OUR OFFICES LOCATED IN WASHINGTON, D.C. OUR RESERVATION CURRENTLY EXISTS IN ALMOST ALL PORTIONS OF HOUSE DISTRICT NO. 16 FROM THE BLAINE COUNTY PORTION.

MY TESTIMONY WILL BE IN SUPPORT OF MONTANA 'PLAN 100'. THAT BEING WHICH WOULD CREATE A NEW HOUSE DISTRICT NO. 142. AS YOU CAN SEE ON THE MAP THIS NEW DISTRICT WOULD ENCOMPASS THE ENTIRE FORT BELKNAP INDIAN RESERVATION THUS ENABLING ALL RESERVATION RESIDENTS THE OPPORTUNITY TO VOTE AS THE FULL MEMBERS OF THE SAME DISTRICT. CURRENTLY OUR RESERVATION IS SPLIT IN THAT A MAJORITY OF OUR MEMBERS CURRENTLY SIT IN HOUSE DISTRICT NO. 16 AND OTHERS SIT IN HOUSE DISTRICT 17.

THE NEW HOUSE DISTRICT NO. 142 WOULD ALSO ENCOMPASS THE FORT

BELKNAP INDIAN RESERVATION AND THE ROCKY BOY INDIAN RESERVATION. BUT WOULD EXCLUDE THE TOWNS OF HAVRE AND CHINOOK. IN DOING SO THE NATIVE AMERICAN POPULATION IN THIS NEWLY CREATED DISTRICT WOULD TOTAL 4,638 PEOPLE, OR A PERCENTAGE OF THE TOTAL POPULATION OF AROUND 60%. THE PERCENTGE OF THE 18 YEARS AND OLDER POPULATION IN THIS NEW DISTRICT IS RIGHT AROUND 54%.

OUR RESERVATION HAS AN EXCELLENT RAPPORT WITH THE ROCKY BOY RESERVATION AS WE HAVE SHARED NUMEROUS PROGRAMS BOTH ECONOMICAL VENTURES AND EDUCATIONAL PROGRAMS THAT PROMOTE THE WELL BEING OF MEMBERS OF BOTH RESERVATIONS. MY DEPARTMENT ALONE HAS TWO PROGRAMS, THE NORTHCENTRAL MONTANA UPWARD BOUND AND TALENT SEARCH PROGRAMS THAT HAVE STUDENTS FROM EACH RESERVATIONS PARTICIPATING ON AN EQUAL BASIS IN ACHIEVING EDUCATIONAL BENIFITS FROM BOTH PROGRAMS. THE STONE CHILD COLLEGE AND FORT BELKNAP COLLEGE HAVE INTERMINGLING PROGRAMS THAT SHARE COUNSELORS AND OTHER PROFESSIONAL STAFF THAT ASSIST EACH OTHER IN ACHIEVING EDUCATION GOALS. WE JUST WANTED TO DEMONSTRATE OUR WORKING RELATIONSHIPS THAT CURRENTLY EXIST BETWEEN OUR TWO RESERVATIONS.

THE REASONS THAT WE SUPPORT THIS NEW DISTRICT CALLED "142" IS THAT CURRENTLY THERE EXISTS A POLARIZATION OF VOTING BETWEEN INDIANS AND NON-INDIANS. IF I COULD USE MY PAST ELECTION PRIMARY RACE AS AN EXAMPLE I CAN OUTLINE THIS VERY ELEMENT.

DURING THE PAST PRIMARY IN HOUSE DISTRICT NO. 16, I RAN IN A DEMOCRATIC PRIMARY AGAINST MR. FRANCIS BARDANOUE. WHILE OUR RACE

GAINED BOTH STATE AND NATIONAL ATTENTION VOTING OUTCOMES BASICALLY DEMONSTRATED A VERY POLARIZED TRAIT.

FOR INSTANCE, IN OUR PRELIMINARY FIGURES MR. BARDANOUE GARNERED A TOTAL OF 865 VOTES AND I RECEIVED 565 VOTES. TO THE UNINFORMED PERSON IT LOOKS LIKE IT WAS A TIGHT RACE. I FEEL GOOD ABOUT IT EVEN THOUGH UNSUCCESSFUL. BUT IT DOES NOT TELL THE WHOLE STORY.

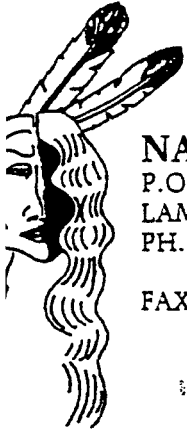
LET ME TELL YOU THE VOTER BREAKDOWN IN THIS PARTICULAR DISTRICT. IN CHINOOK, MR. BARDANOUE RECEIVED 373, STIFFARM 87. MR. BARDANOUE RECEIVED 81% OF THE VOTE. IN HARLEM, MR. BARDANOUE RECEIVED 203 VOTES, STIFFARM 47. AGAIN MR. BARDANOUE RECEIVED 81% OF THE VOTES. THE TOWNS OF CHINOOK AND HARLEM ARE PREDOMINANTLY WHITE COMMUNITIES.

ON THE FORT BELKNAP INDIAN RESERVATION STIFFARM RECEIVED 397 VOTES AND BARDANOUE RECEIVED 93 VOTES. I RECEIVED 81% OF THE VOTES.

COINCIDENCE? NOT HARDLY. THIS ONLY DIRECTLY DEMONSTRATED THE POLARIZATION OF VOTERS WHEN A NON-INDIAN IS IN A RACE AGAINST AN INDIAN PERSON.

WHILE I MAY NOT HAVE BEEN THE BEST CANDIDATE THAT WOULD COME FROM FORT BELKNAP, THIS VOTE COUNT CLEARLY DEMONSTRATES THE VOTING HISTORY OF THE TOWNS ON AND NEAR OUR RESERVATIONS. IT SHOULD ALSO DEMONSTRATE THERE WILL NEVER BE AN INDIAN PERSON TO WIN A CONGRESSIONAL RACE AS HOUSE DISTRICT NO. 16 EXISTS TO DATE. ALL

DEC 04 1992



**NATIVE ACTION**

P.O. BOX 316  
LAME DEER, MT 59043  
PH. (406) 477-6390  
(406) 477-6537  
FAX (406) 477-6421

November 30, 1992

SENATE STATE ADMIN.

EXHIBIT NO. 11

DATE 1-26-93

~~BILL NO~~ Re Apportionment

Jean Fallan Barrett, Chairman  
Montana Districting and Apportionment Commission  
Room 138 State Capitol  
Helena, MT 59620-1706

RE: WRITTEN TESTIMONY IN OPPOSITION TO PROPOSED REDISTRICTING PLAN  
(Current HD 100/Proposed New HD 154)

Dear Chairman Barrett:

On behalf of Native Action, Inc., a non-profit organization representing Native American constituents residing on the Northern Cheyenne Reservation, I hereby request that this testimony in opposition to the proposed redistricting plan as it concerns current HD 100/Proposed New HD 154 be received into the record. Unfortunately no one from our organization is able to attend the final hearing scheduled today in Helena.

We believe that the proposed plan (HD 154) does not represent the most reasonable alternative for maximizing minority representation and voting strength in current HD 100. Although proposed HD 154 is an improvement, it falls well short of the full potential for redistricting this house district so as to provide a meaningful opportunity for political participation by the racial minority voters in said area, namely members of the Northern Cheyenne and Crow Tribes.

We commend the Commission for moving in the right direction. However, the opportunity to redistrict comes only once every decade and is too precious to waste on half-measures. Proposed plan HD 454, submitted at the public hearing in Hardin, MT, on July 24, 1992, is the best designed plan for purposes of preserving minority voting strength and fulfilling the federal mandate of the Voting Rights Act.

In rejecting proposed HD 454, the Commission places too much emphasis on two aspects: 1. Division of Rosebud County into four house districts (proposed HD 454 actually only tri-sects Rosebud County); and 2. Deviation of -10% from the ideal population.





November 30, 1992

Letter to Jean Fallan Barrett, Chairman  
Montana Districting and Apportionment Commission

Page 2

With regard to the first concern, there is no legal mandate for consolidation of county residents for purposes of state representation. While such a result may be desirable, it cannot be an overriding concern, and clearly pales in comparison to the federal mandate for consolidation and non-dilution of a racial minority's voting strength.

Secondly, the proposed deviation under HD 454 (approximately -10%) does not violate the Equal Protection Clause limitation of a 16% deviation between the largest and smallest districts. This is largely the result of the Commission's statewide implementation of its goal of +5% deviation. The Commission's success in meeting the +5% goal in the majority of the proposed new districts, allow it a comfortable margin to commit to a higher deviation in current HD 100, without compromising constitutional standards.

We encourage the Commission to recommend HD 454 for our area. We appreciate this opportunity to express our concerns and look forward to the Commission's response.

Sincerely,



Ms. Gail Small  
Executive Director  
Native Action, Inc.

cc: Northern Cheyenne Tribal President  
Sen. Bill Yellowtail  
Rep. Angela Russell  
Janine Pease Windy Boy  
Jeff Renz ✓  
Laughlin McDonald  
Pat Smith

SENATE STATE ADMIN.  
EXHIBIT NO. 12  
DATE 1-26-92  
BILL NO. Reapportionment

Statement of Merle Lucas  
on behalf of  
Assiniboine and Sioux Tribes  
of the Fort Peck Reservation  
before  
the Montana Districting and Reapportionment Commission  
July 22, 1992

Statement of Merle Lucas, Council Member,  
Assiniboine and Sioux Tribes  
of the Fort Peck Indian Reservation  
Before the Montana Districting and Apportionment Committee  
July 22, 1992 at Wolf Point, Montana

My name is Merle Lucas and I am a member of the Executive Board of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation. I welcome this opportunity to present the views of the Fort Peck Tribes on the proposed redistricting plans for the area of the State encompassed by the Fort Peck Reservation.

Background

In commenting on the Commission's proposals, it is important to understand some of the history of our Indian people. The Assiniboine and Sioux Indians have resided in the Montana and North Dakota area for generations, since at least as early as the written accounts of the first European explorers. In 1874 a large reservation was set aside for our people, together with other Indian tribes, and covering what later became the northern third of the State of Montana. In 1888 Congress carved out three smaller reservations for individual tribes, and in doing so set aside the Fort Peck Reservation as the permanent homeland for the Assiniboine and Sioux tribes. One year later Montana was established as a state and, in due course, the State established counties for its own purposes. In this way the Fort Peck Reservation, comprising some 2 million acres, came to be included

in parts of four counties: Roosevelt, Daniels, Sheridan and Valley.

The southern border of the Fort Peck Reservation lies along the Missouri River. Since this border area contains the best and most irrigable agricultural land, most of the people on the Reservation have traditionally lived within a narrow margin along the Missouri River. Among the more populous communities that have grown up in this area are Frazer, Wolf Point, Poplar and Brockton, stretching from the western Reservation border in Valley County to the eastern Reservation border in Roosevelt County.

Today, there are approximately 6,500 Indians residing on the Reservation. The vast majority of these reside in a thin strip along the Missouri River. Thus, any legislative district that is drawn to combine Fort Peck Indians together will necessarily have a thin, narrow shape, reflecting the population pattern of the Indian residence along the River.

History has not spoken well for the effectiveness of the Indian vote at Fort Peck. In the past our Indian people have been effectively cut out of the State's political process. In past redistricting plans of the Reservation area, we have never had a majority Indian voting age population in any of the districts encompassing the Reservation. Among the scores of

elective offices for city, county and state positions in this area of the State, in nearly 75 years the Tribes have only succeeded in electing a small handful of representatives to any elective post. And Indians have virtually never been appointed to important non-elective positions in the local city and county governments. This is why we believe it is vitally important that the state legislative districting plan under consideration be drawn to maximize the effective political participation of the Indians on the Fort Peck Reservation.

There is another reason as well. Since the last state legislative districting plan was adopted in 1982, the federal Voting Rights Act has been enormously strengthened, both by Congress and the courts. Section 2 of the Act was amended by Congress in 1982 to guarantee to any member of a protected minority group — including the Indians at Fort Peck -- that our right to vote will not be denied or abridged. The Act is violated if a redistricting plan deprives the Indians in this State of an equal right to participate in the political process and to elect representatives of our choice.

The 1982 amendments to the Voting Rights Act have been generously interpreted by the federal courts to provide minority voters with the right to an effective vote. In the context of redistricting, the courts have held over and over that where there is racially polarized voting, and where it is possible to

draw a district in which the minority group can form an effective majority of the voters, the state must do so.

What we ask from this Commission is that you respect the rights granted to us by the Voting Rights Act. What we ask is that you create districts -- for both the House and the Senate -- in which Indian voters have a fair and effective opportunity to elect representatives of their choice. Anything less will deprive our tribal members of rights secured to them under federal law. We hope and intend to work with the Commission to ensure that our rights are respected in the districting plan adopted by the State. We remain aware, however, that all too often relief must be sought from the federal courts to ensure that the protections of the Voting Rights Act are fully secured.

It is unfortunately all too true in our area of the State that the lingering effects of prejudice and discrimination still taint the political process. All too often, white voters will refuse to support Indian candidates, and voting patterns break down along racial lines. This is the basic reason so few Indians have been elected to state or local office, and because of that, so few now even bother to run.

Precisely because of this racial polarization in voting, districts must be created that will ensure the Indian vote is strong enough to provide a fair and effective opportunity

for our tribal members to elect a representative of their choice. This means creating districts not only with a majority of Indian voters, but with a sufficient majority to provide the opportunity to elect a legislator of their choice.

With these general principles in mind, I turn to our specific comments on the alternatives proposed by the Commission.

#### A Fort Peck House District

First, in relation to districting of the House, the four proposals submitted by the Commission all provide for an Indian majority House district in Roosevelt County. The Tribes support of creation of an Indian majority House district in Roosevelt County and applaud the Commission for acknowledging the necessity, under the Voting Rights Act, of creating such a district.

However, the House districts proposed by the Commission all provide for an Indian concentration of 56 to 57 percent of the total population of the district, with none of the proposed House districts having more than the barest majority -- 50 or 51 percent -- of the voting age population of the district. Because only those over 18 years old can vote, the courts have recognized that it is the percentage of voting age population which is the critical factor in assessing whether a district will truly provide effective representation for a minority group.

Exhibit #12  
1-26-93  
Reapportionment

We have grave doubts that the four versions of the Indian majority district proposed by the Commission -- each with an Indian voting age population of 51 percent or less -- will be adequate to meet the legal requirement to provide our Tribal members with a fair and effective opportunity to elect a representative of their choice. Although Indians do form a bare majority of the voting age population in the proposed district, the law requires that you also consider the fact that, because of past discrimination, Indian residents may register and turn out to vote at rates lower than white residents. Thus, Indians may constitute far less than a majority of the voters who actually turn out to vote in this area. The law requires you to consider registration and turn out data, as well as voting age data, in drawing majority Indian districts, in order to ensure that the Indian control of the district is not illusory.

Importantly, it is clearly possible to draw a House district on the Fort Peck Reservation with a significantly higher percentage of Indian population. As I noted above, there are approximately 6500 Indian residents on the Fort Peck Reservation, which is over 80 percent of an ideal House district. We attach as Exhibits A, B and C three different proposals for a House district on the Fort Peck Reservation drawn by the ACLU. These proposed districts range in Indian concentration from 66 percent to 70 percent. Significantly, these districts have an Indian voting age population of 62.6 percent (Exhibit A), 64.4 percent



(Exhibit B) and 60.3 percent (Exhibit C). We believe that taking into account -- as you must -- the lower rates of Indian registration and turnout, an Indian voting age population of 60 percent or greater is much more likely to provide for effective Indian representation than the bare majority of voting age population provided in the Commission alternatives.

#### A Fort Peck Senate District

I turn now to the districting of the Senate. Because Senate districts are created by combining two House districts, the issue of House and Senate districting cannot be separated. The House districts are the building blocks of the Senate districts, and so they must be designed to ensure effective representation in both the House and the Senate.

In addition to not providing for a high enough Indian voting age population for the House seat, the Indian majority districts proposed by the Commission do not appear to permit the creation of any Indian majority Senate seat that includes the Fort Peck Reservation.

By contrast, the ACLU has developed a proposal that links a Roosevelt/Valley Counties House seat (Exhibit A) which has a 68 percent Indian population, with a Rocky Boy/Fort Belknap House seat (Exhibit D), which has a 61 percent Indian population. This combination creates a solid Indian majority Senate seat that

has a 65 percent Indian population and a 59 percent Indian voting age population. We attach as Exhibit E the ACLU proposal for this Indian-majority Senate seat.

We strongly urge the Commission to give the most serious consideration to this proposed Indian Senate seat. An increase in the Indian representation in the Montana Senate would greatly contribute to the political effectiveness of the Indian citizens of Montana.

Further, we believe that the creation of this Indian majority Senate seat may well be required by the Voting Rights Act. As I noted above, where there is racially polarized voting and it is reasonably possible to create a district with a majority of Indian residents, the Voting Rights Act requires the State to do so. We believe these conditions are met here.

We recognize that this Senate seat -- as well as the configuration of the Fort Peck House seat necessary to make it up -- are arguably not compact. However, it is clear that the mandates of the Voting Rights Act supersede any contrary state law policy favoring compact districts. Districts far less compact than this have been drawn throughout the country in order to provide effective representation to minority group members. The lack of compactness of the proposed Indian Senate seat does

not constitute a legally adequate justification for rejecting the proposal.

#### Conclusion

In conclusion, the Fort Peck Tribes urge you to give full weight to the requirements of the Voting Rights Act in creating both House and Senate districts. This means creating a House seat on the Fort Peck Reservation with sufficient population to provide a real -- not an illusory -- opportunity to elect an Indian legislator, and creating an Indian majority Senate seat that includes Fort Peck because it is plainly possible to do so. We ask the Commission to do this because it is the right and just thing to do. And it is also, in our view, required by the Voting Rights Act, a law the Tribes will have no hesitance in asking the federal courts to fully enforce if necessary.

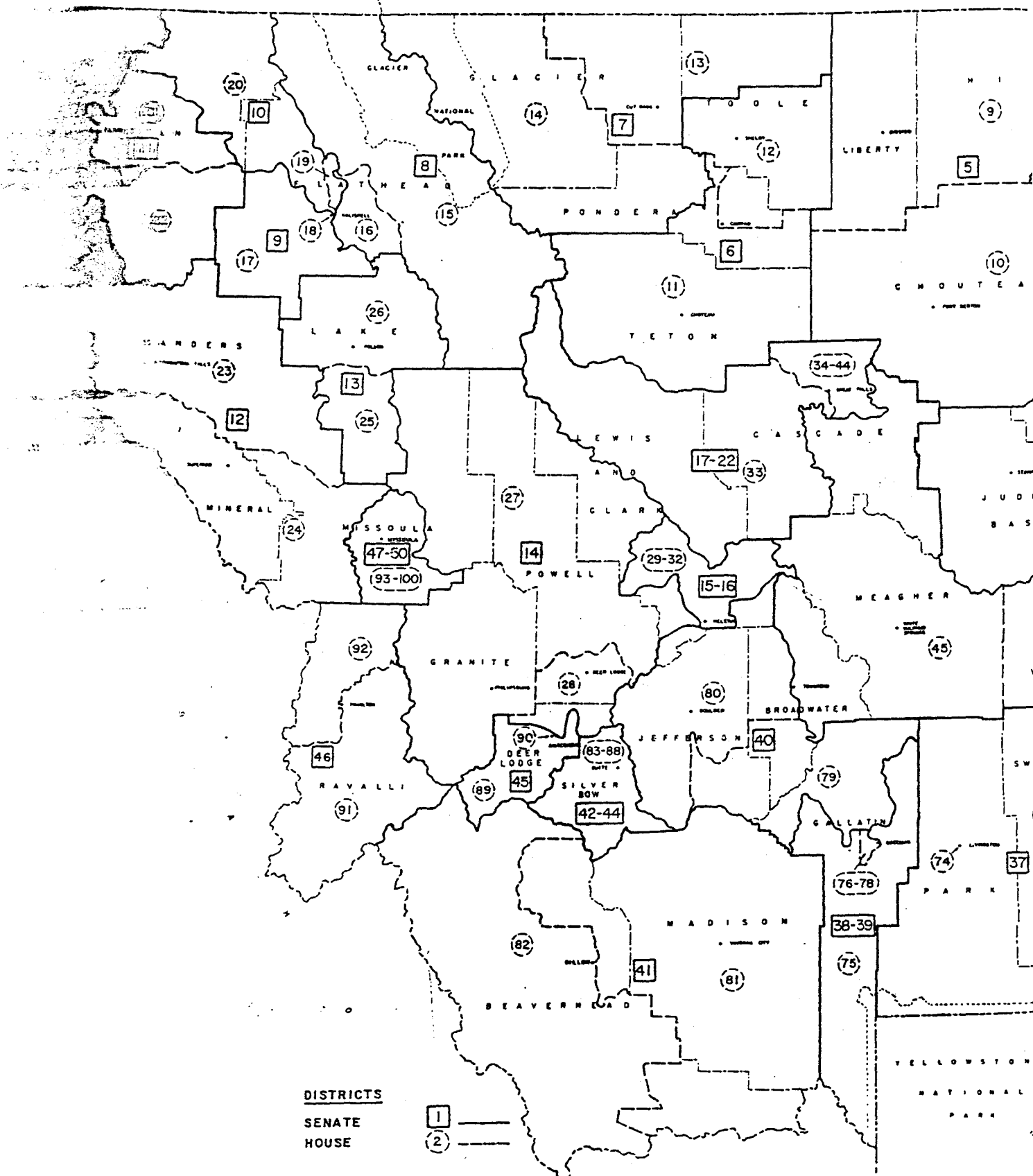
\*

We welcome the opportunity to present our views to the Commission and we look forward to working closely with you and your staff on these matters of great importance to the Tribes.

\* Plan 400 - not much different than present District -- falls way short of being adequate and certainly ~~that~~ does not meet the mandate of the Voting Rights Act.

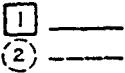
TESTIMONY OF JEFFREY T. RENZ  
MONTANA LEGISLATIVE REAPPORTIONMENT PLAN

- I. Voting Rights Act Requirements are Paramount.
- II. The State Loses If State Interests Are Offered As Reasons For Refusing To Create Majority Indian Districts.
  - A. "The Proposed Indian Districts Are Too Large."
    1. SD 25 (1972-82) is larger than any District we proposed. (290 miles from Birney to Vida.)
  - B. "The Proposed Districts Are Not Compact And Are Hard To Travel."
    1. To Travel Sen. Kohnke's District (formerly Sen. Galt's), one crosses the Deep Creek Divide, King's Hill, and the divide between White Sulphur and Two Dot. (It's 233 miles from Belt to Melstone.)
    2. The Marias Pass, between Flathead and Blackfeet, is the lowest on the Continental Divide.
    3. Aesthetic compactness is a State interest.
- III. Evidence Supports A Successful Challenge To The State Plan.
  - A. Windy Boy v. Big Horn County found a long history of official discrimination against Indians.
  - B. In Each Proposed District We Found Strong Evidence Of Racially Polarized Voting.
  - C. Numerosity and Geographical Compactness
    1. If you can draw a majority-Indian District (and we have), this criterion is satisfied.
  - D. Political Cohesiveness
    1. Indians tend to vote Democratic, which satisfies this criterion.
- IV. The Choice
  - A. The Reapportionment Commission has heard the concerns and interests of Montanans over the past 10 months, and can redraw the lines in a way that considers everyone's interests.
  - B. A federal judge can redraw the lines, without consideration of any State interests.



**DISTRICTS**

SENATE  
HOUSE



Proposed Amendment to the Districting and Apportionment Plan  
For the Senate and House Committees on State Administration

Prepared by Susan B. Fox  
January 23, 1993

FLATHEAD COUNTY  
Prepared at the request of Rep. Wagner

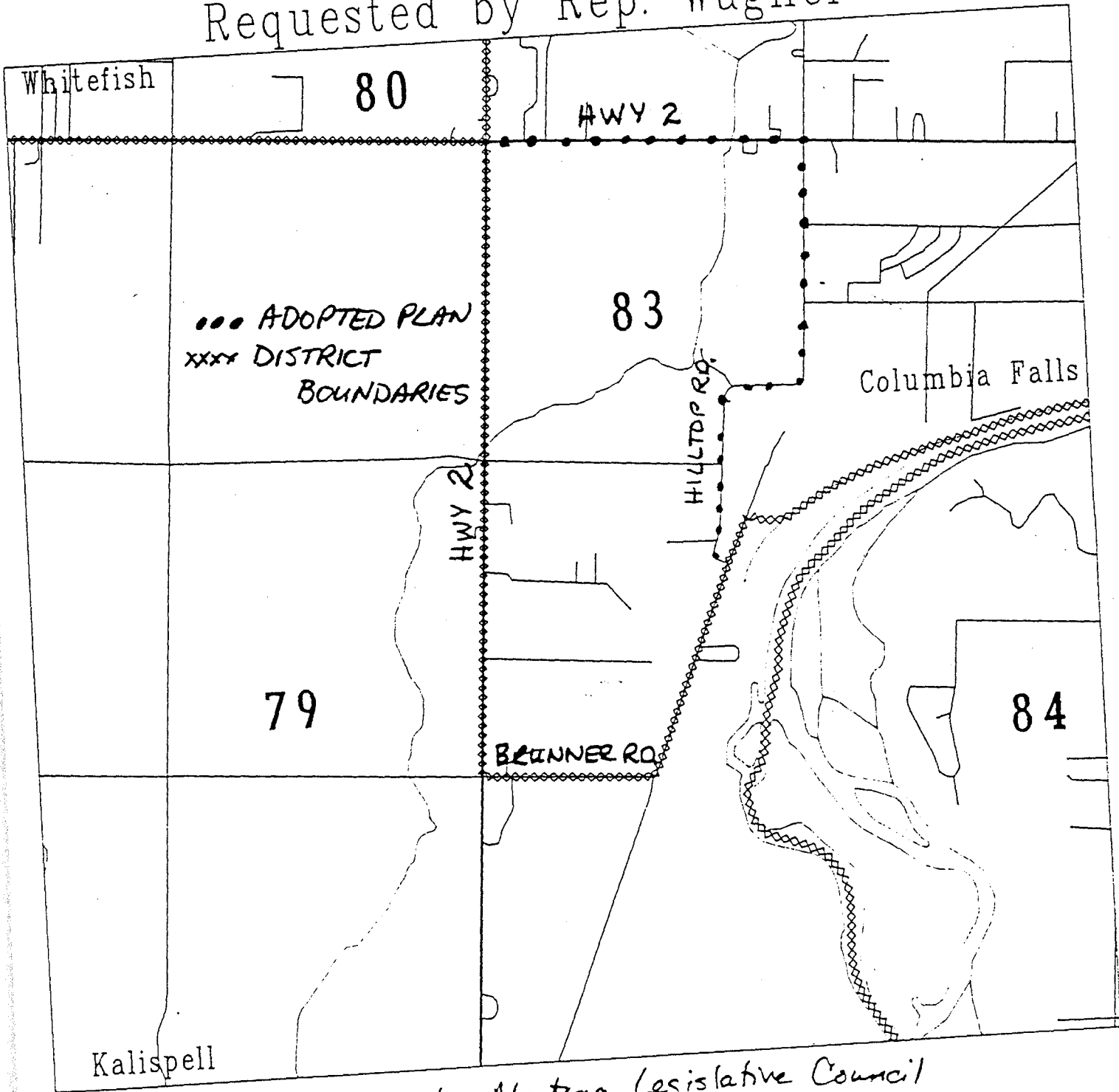
1. This amendment would move the southwest boundary of House District 83 from Highway 2 (east/west) and Hilltop Road to Highway 2 (north/south) and Brunner Road.

| NEW # | OLD # | ADOPTED PLAN  | AMENDMENT     |
|-------|-------|---------------|---------------|
| 79    | 4     | 7933 (-0.73%) | 7750 (-3.02%) |
| 83    | 8     | 7875 (-1.45%) | 8058 (0.84%)  |

SENATE STATE ADMIN.  
EXHIBIT NO 15  
DATE 1-26-93  
BILL NO Reapportionment

# FLATHEAD COUNTY

Requested by Rep. Wagner



Proposed Amendment to the Districting and Apportionment Plan  
For the Senate and House Committees on State Administration

Prepared by Susan B. Fox  
January 23, 1993

MISSOULA COUNTY  
Prepared at the request of Rep. Sayles

1. This amendment would move the northern boundary of House District 62 from the South Ave to North Ave and Edwards Ave.

| NEW # | OLD # | ADOPTED PLAN  | AMENDMENT     |
|-------|-------|---------------|---------------|
| 62    | 61    | 7672 (-3.99%) | 7972 (-0.24%) |
| 70    | new   | 7973 (-0.23%) | 7673 (-3.98%) |

SENATE STATE ADMIN.

EXHIBIT NO. 16

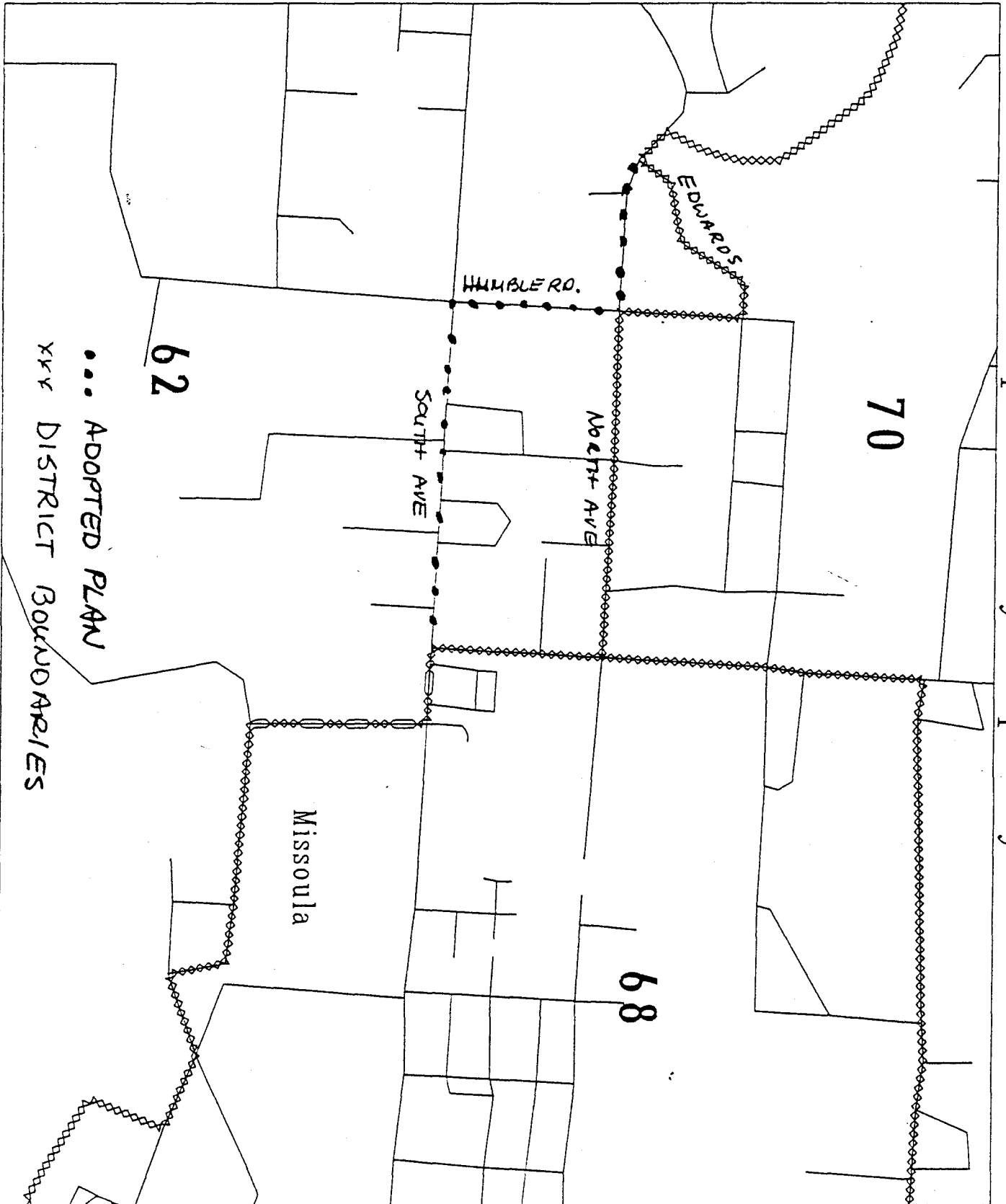
DATE 1-26-93

BILL NO. Re Apportionment



# MISSOULA COUNTY

Requested by Rep. Sayles



ADOPTED PLAN  
DISTRICT BOUNDARIES

Prepared for the Montana Legislative Council

Proposed Amendment to the Districting and Apportionment Plan  
For the Senate and House Committees on State Administration

Prepared by Susan B. Fox  
January 23, 1993

GALLATIN COUNTY  
Prepared at the request of Sen. Rea

1. This amendment would move the eastern boundary of House District 33 in Gallatin County from Bench Road and Table Mountain Road to the other side of the Madison River using the Buffalo Jump Road north to Logan, skirting Logan on the southwest and following the Gallatin River to the headwaters of the Missouri River.

| NEW # | OLD # | ADOPTED PLAN | AMENDMENT     |
|-------|-------|--------------|---------------|
| 33    | 74    | 8100 (1.36%) | 8381 (4.88%)  |
| 32    | 76    | 8119 (1.60%) | 7838 (-1.91%) |

SENATE STATE ADMIN.

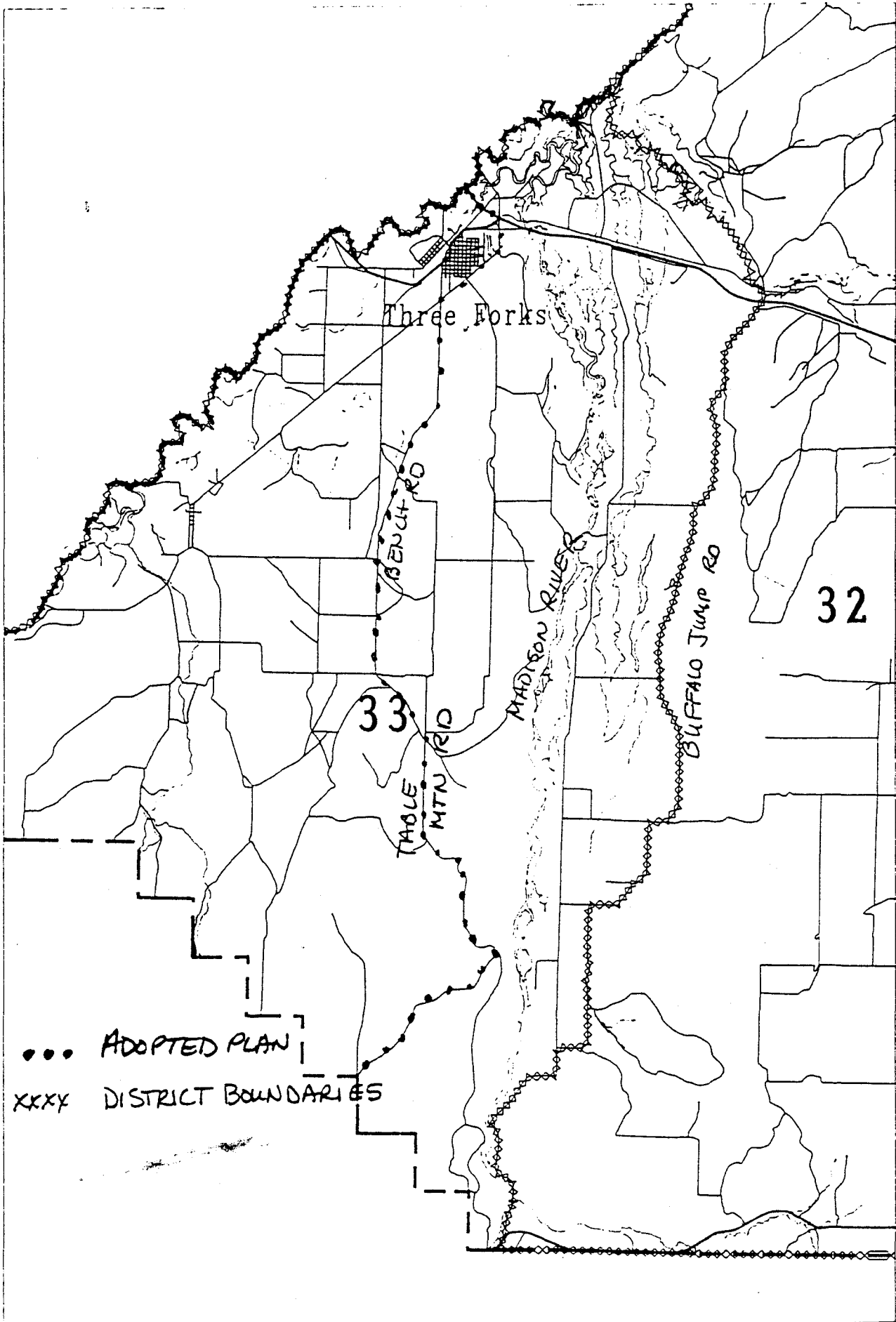
EXHIBIT NO. 17

DATE 1-26-93

BILL NO. Reapportionment

# GALLATIN COUNTY

Requested by Sen. Rea



# Cascade County Gateway to the North Visit Russell Country

Courthouse Annex, Room 111  
Great Falls, Montana 59401  
Tel. (406) 761-6700, ext. 250  
Fax: (406) 452-7838

January 25, 1993

Legislative Committee on Apportionment  
Room 138, Capitol Building  
Helena, Montana 59620

RE: Cascade County Apportionment 1992

Dear Committee:

It has been brought to our attention that residents of rural Cascade County may not have been properly considered in terms of representation in the State Legislature.

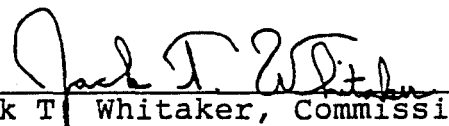
Please reconsider the needs and important differences that the rural population of this county have when evaluating fair representation at the State level.


In our opinion the 1982 Apportionment Plan unfairly limited the "voice" of rural residents of this county. The 1992 plan appears to duplicate and enhance these inequities. Your efforts to rectify this problem would be appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
OF CASCADE COUNTY

  
Harry B. Mitchell, Chairman

  
Jack T. Whitaker, Commissioner

  
Roy M. Aafedt, Commissioner

SENATE STATE ADMIN.  
EXHIBIT NO. 18  
DATE 1-26-93  
BILL NO. Reapportionment

encl 10  
1-26-93  
Reapportionment

January 28, 1993

TO: SENATE STATE ADMINISTRATION COMMITTEE

FROM: Dorothy Poulsen, Committee Secretary  
House State Administration Committee

SUBJECT: Summary of comments - John MacMaster

The following notes are in response to your request for a summary of John MacMaster's comments on Thursday, January 27, 1993. Additionally, I have attached a memo from Mr. MacMaster to Rep. Simpkins. (Please note that Gregg Petesch did not attend the House State Administration committee meeting on January 28, 1993, as was expected.)

1. Mr. MacMaster stated that, in his opinion, Cascade County would have no legal case in opposing the Reapportionment Plan. The redistricting of Cascade County was done to meet the primary goal of equalizing population in districts.
2. Mr. MacMaster stated that, in his opinion, the Native Americans could have a more viable challenge of the Reapportionment Plan. He then described two sections of the Voting Rights Act: Section 2 and Section 5.

Section 2 prohibits drawing district lines in order to keep a minority group without representation. Mr. MacMaster read a portion of Section 2, however, that specifically states that this "section does not give a protected class a right to have members of the class elected to the Legislature in numbers equal to the class's proportion of the population."

Section 5 requires a state to have its reapportionment plan cleared with a federal authority. This section applies only if the state has been previously adjudicated for discrimination. Mr. MacMaster said that Section 5 does not apply to Montana because the state has never been adjudicated for discrimination.

Mr. MacMaster noted that the criteria of compactness is ignored for Section 5 cases but not Section 2. The Montana Constitution states that districts must be compact.

3. Mr. MacMaster described the tests for violation of Section 2. Protected classes must show:
  - (1) that the protected class could be a majority in a district;
  - (2) that the area must be geographically compact;
  - (3) that the protected classes represent a politically cohesive group;

1-26-93

Reapportionment

(4) that each different group in the district votes as a block.

4. Mr. MacMaster stated that "equal population" included a +/- 5% deviation. If the deviation is greater than 5%, then the state must prove its rationale. If the deviation is greater than 10%, then the state has a difficult time proving a reasonable rationale.

5. Mr. MacMaster was unwilling to give the State Administration committee legal advice pertaining to the Reapportionment Plan because, as the attorney for the Commission, such advice would be a conflict of interest for him.

Proposed Amendment to the Districting and Apportionment Plan  
For the Senate and House Committees on State Administration

Prepared by Susan B. Fox  
January 23, 1993

SANDERS COUNTY  
Prepared at the request of Rep. Elliott

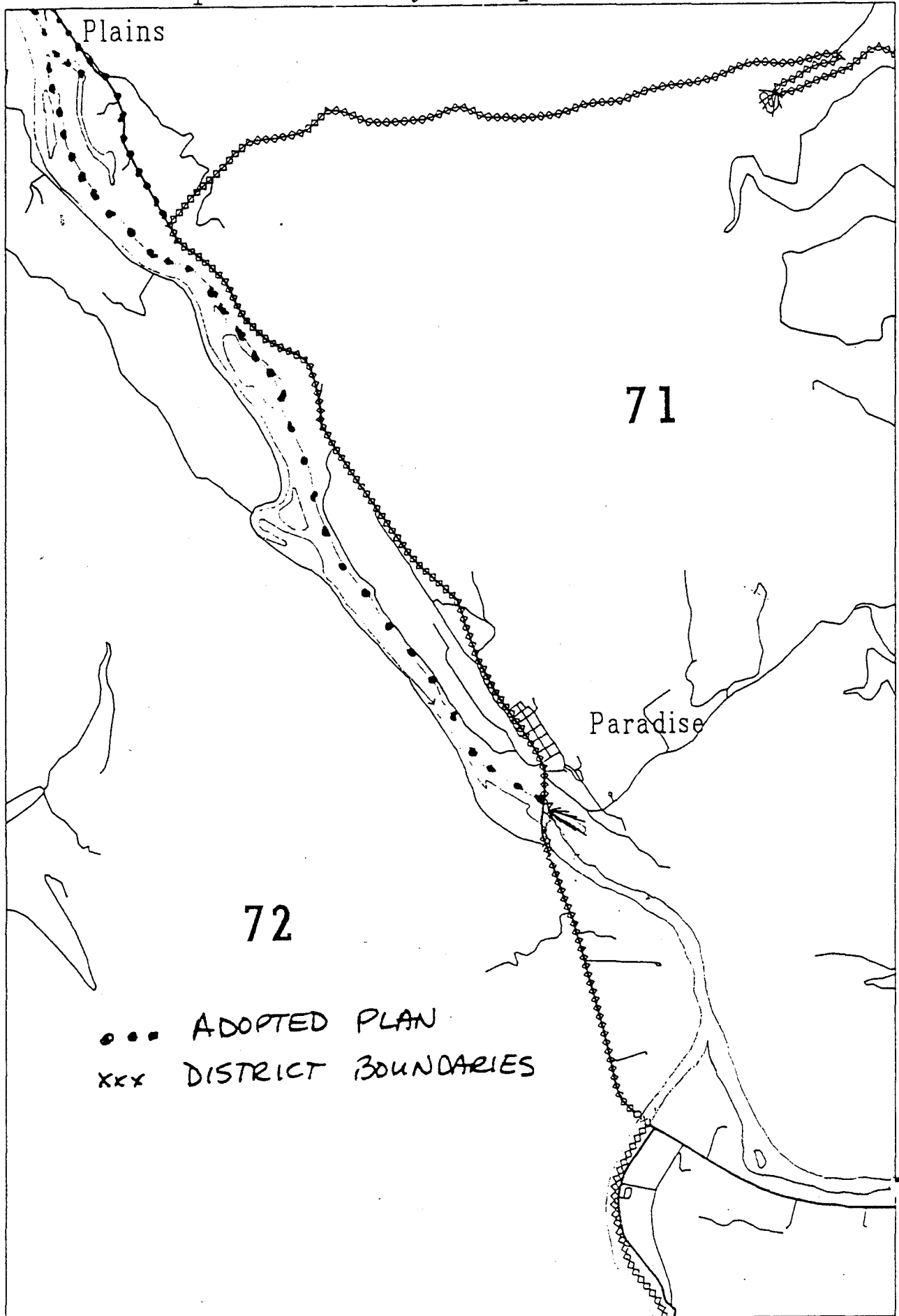
1. This amendment would move the boundary south of Plains from the Clark Fork River to follow Hwy 200 past Paradise and where it intersects the Clark Fork River, it follows the river south.

| NEW # | OLD # | ADOPTED PLAN | AMENDMENT    |
|-------|-------|--------------|--------------|
| 71    | 52    | 8064 (0.91%) | 8032 (0.51%) |
| 72    | 51    | 8169 (2.23%) | 8201 (2.63%) |

SENATE STATE ADMIN.  
EXHIBIT NO. 19  
DATE 1-26-93  
BILL AND REAPPORTIONMENT

# SANDERS COUNTY

Requested by Rep. Elliott



Plains

71

Paradise

72

... ADOPTED PLAN  
xxx DISTRICT BOUNDARIES



Proposed Amendment to the Districting and Apportionment Plan  
For the Senate and House Committees on State Administration

Prepared by Susan B. Fox  
January 23, 1993

ROSEBUD COUNTY  
Prepared at the request of Rep. McCaffree

1. This amendment would move the western boundary of House District 3 to the Yellowstone River west of Forsyth, from Highway 14 and the road north the Vananda. This returns it to the plan prior to the November 30, 1992 amendment.

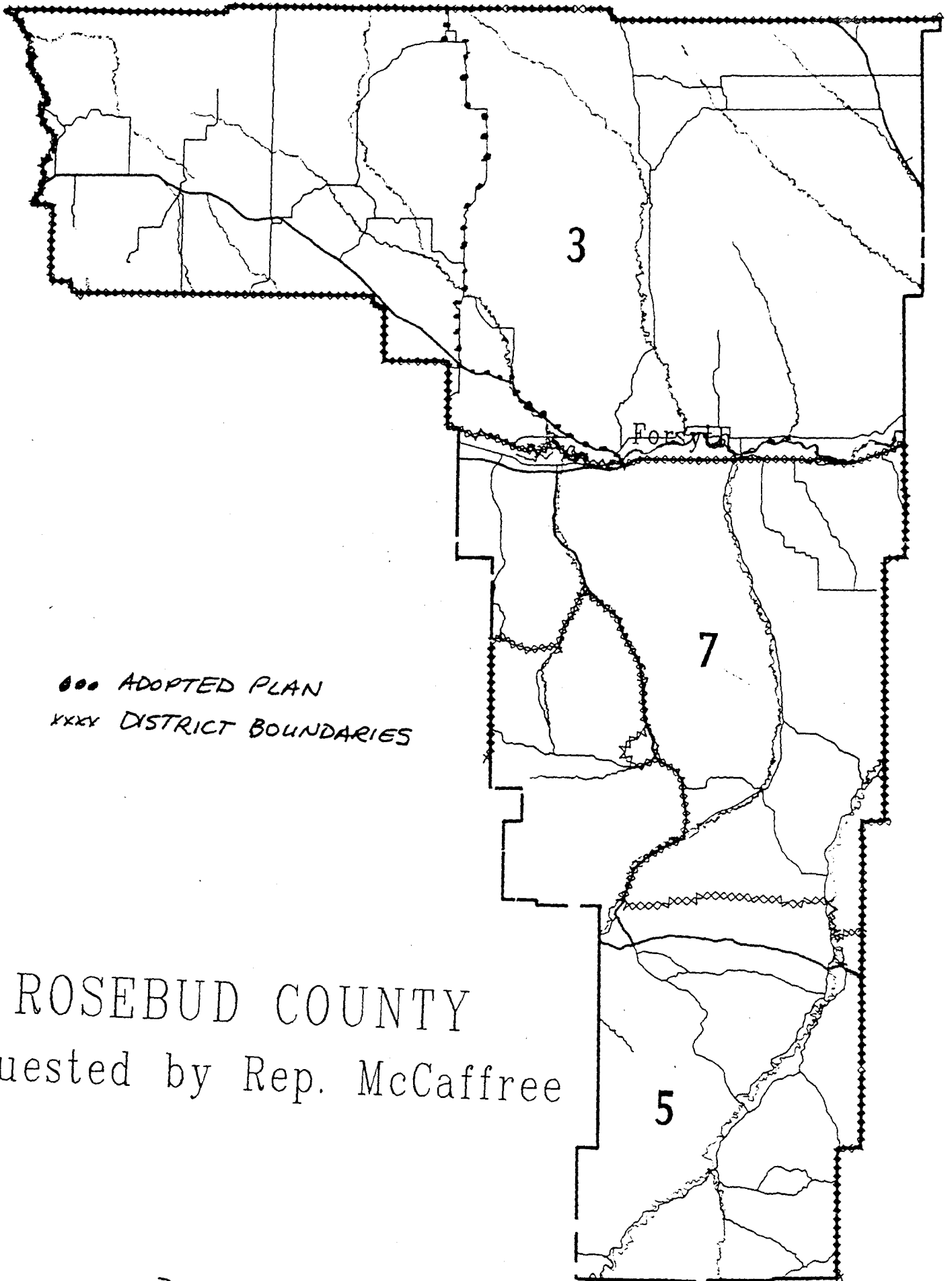
| NEW # | OLD # | ADOPTED PLAN  | AMENDMENT     |
|-------|-------|---------------|---------------|
| 3     | 25    | 7979 (-0.15%) | 8238 (3.09%)  |
| 7     | 27    | 7893 (-1.23%) | 7634 (-4.47%) |

SENATE STATE ADMIN.

EXHIBIT NO. 20

DATE 1-26-93

BILL NO. Reapportionment



••• ADOPTED PLAN  
- - - DISTRICT BOUNDARIES

# ROSEBUD COUNTY

Requested by Rep. McCaffree

Prepared by Montana Legislative Council

Proposed Amendment to the Districting and Apportionment Plan  
For the Senate and House Committees on State Administration

Prepared by Susan B. Fox  
January 23, 1993

GALLATIN COUNTY  
Prepared at the request of Sen. Eck

1. This amendment is from Amended Plan 300 for Gallatin County, proposed by Sen. Dorothy Eck. House District 33, the one which is shared with Madison County includes Willow Creek, does not include Three Forks, but skirts it south along the city limits. The boundary is south of Amsterdam and Churchill and adds a portion to House District 33 from House District 31 east of the Gallatin River to Thorpe Rd.

| NEW # | OLD # | ADOPTED PLAN | AMENDMENT    |
|-------|-------|--------------|--------------|
| 31    | new   | 8235 (3.05%) | 8029 (0.48%) |
| 32    | 76    | 8119 (1.60%) | 8369 (4.73%) |
| 33    | 74    | 8100 (1.36%) | 8056 (0.81%) |

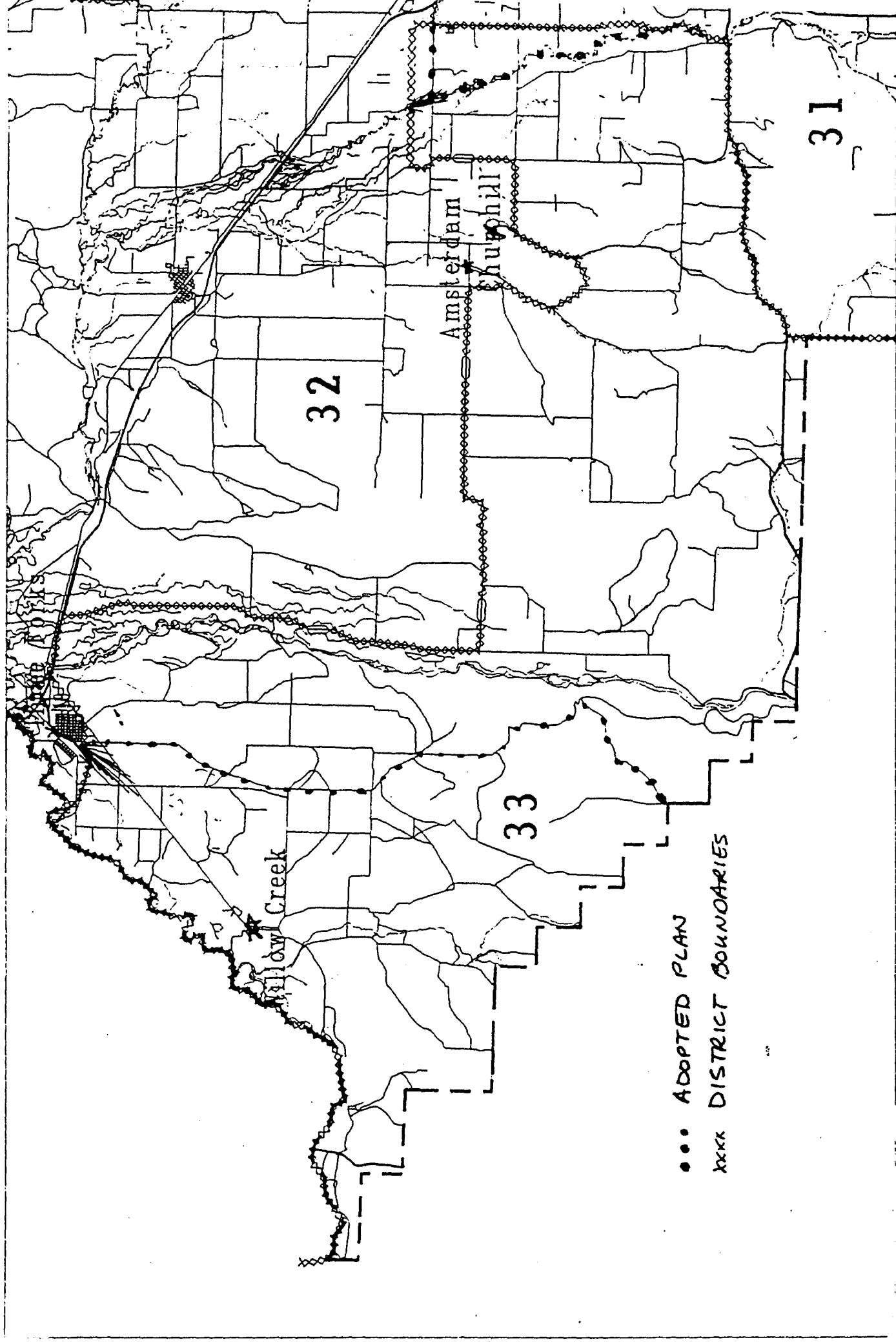
SENATE STATE ADMIN.

EXHIBIT NO. 21

DATE 1-26-93

BILL NO. Reapportionment

GALLATIN COUNTY - Amended Plan 300 - Requested by Sen. E.C.



... ADOPTED PLAN  
----- DISTRICT BOUNDARIES

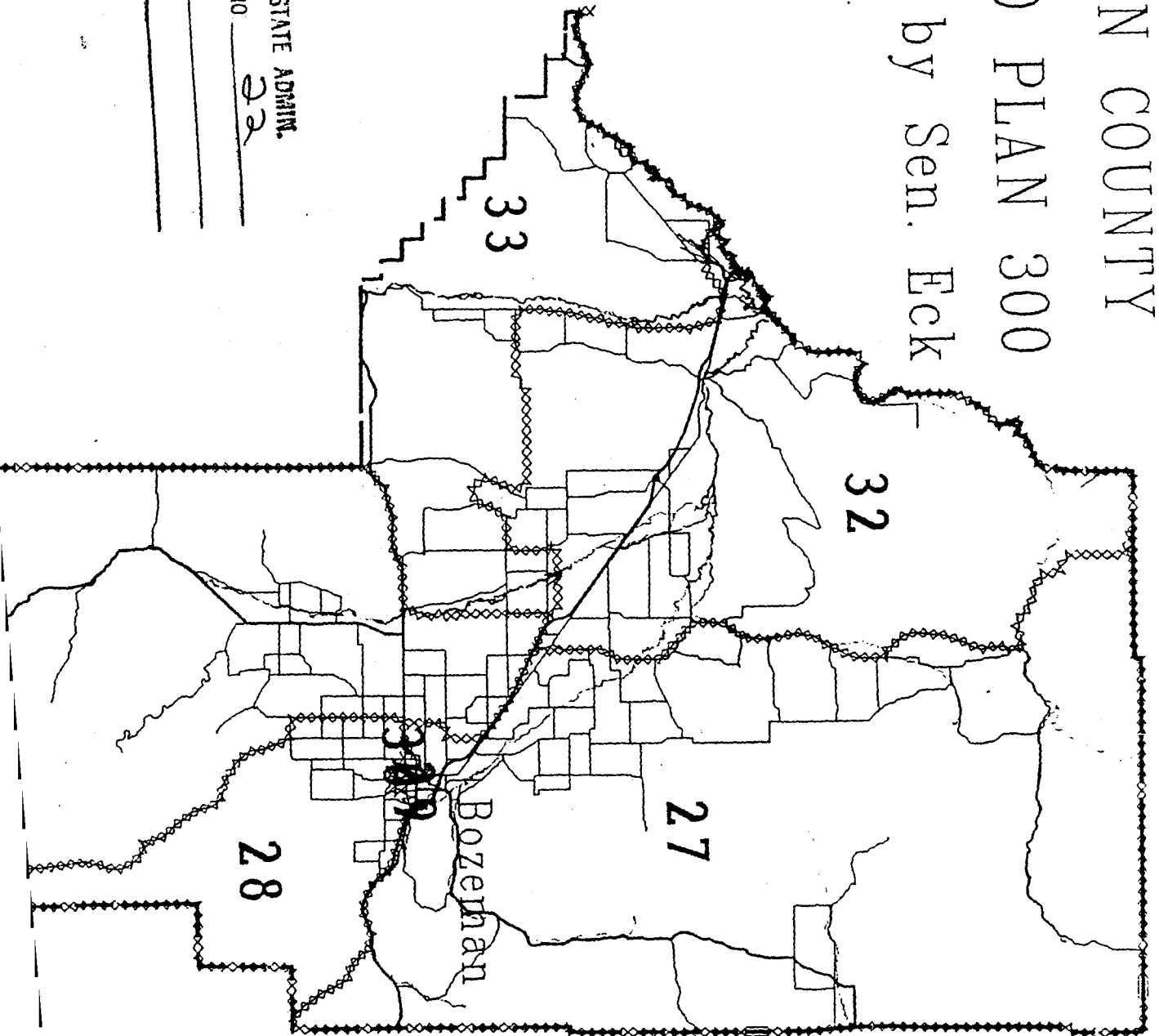
Prepared by ...

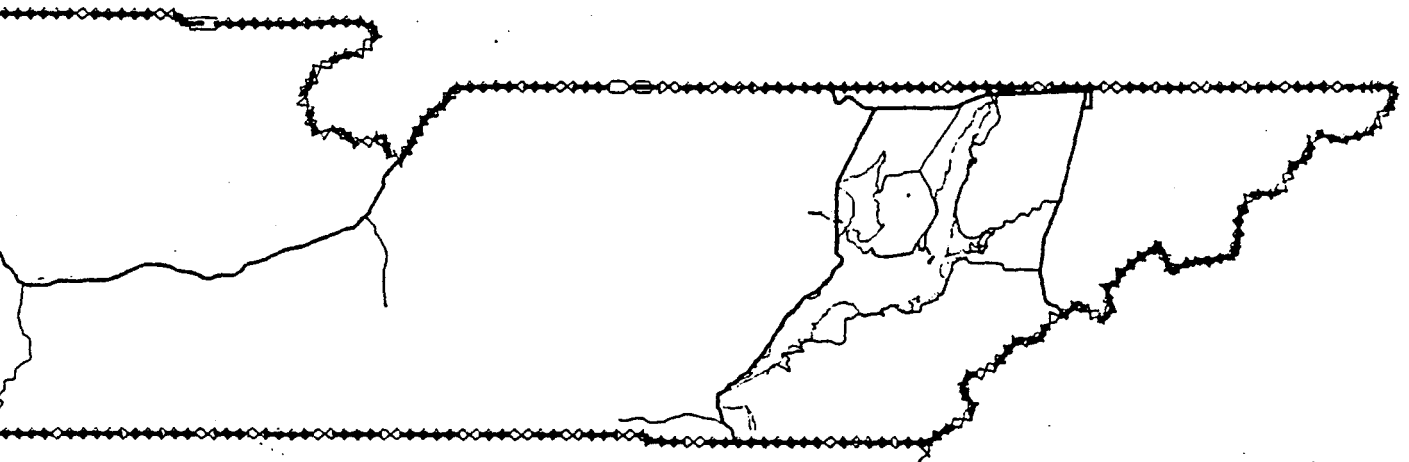
GALLATIN COUNTY

AMENDED PLAN 300

Requested by Sen. Eck

SENATE STATE ADMIN.  
EXHIBIT NO. 22  
DATE \_\_\_\_\_  
BILL NO. \_\_\_\_\_





On 1-13-93 at the Capital I was chastised for wanting cascade county to be represented by 16 representatives in the minus category - Please refer to my letter to the commission of 8/29/92 pp 2 first paragraph.

I propose an amendment to see that Cascade County has a total of ten representatives

SENATE STATE ADMIN.

EXHIBIT NO. 24

DATE: 1-26-93

BILL NO. Reapportionment

Proposed Amendment to the Districting and Apportionment Plan  
For the Senate and House Committees on State Administration

Prepared by Susan B. Fox  
January 23, 1993

Senate District Combinations  
Requested by Sen. Beck

1. Amend the House District pairings for Senate Districts as follows:

- 56 and 58 (former HDs 48 and 65, Reps. Smith and Larson,  
Sens. Pipinich and Beck)
- 37 and 57 (former HDs 70 and 67, Reps. Pavlovich and Menahan,  
Sens. Lynch and Pipinich)
- 36 and 38 (former HDs 71 and 68, Reps. Quilici and Harrington,  
Sens. Jacobson and Lynch)
- 35 and 39 (former HDs 72 and 75, Reps. Brown and Grimes,  
Sens. Jacobson and Rea)
- 40 and 41 (former HDs 32 and 33, Reps. Foster and Wiseman,  
Sens. Koehnke and Franklin)
- 42 and 43 (former HDs 34 and 37, Reps. Dolezal and Wyatt,  
Sens. Franklin and Wilson)
- 44 and 49 (former HDs 38 and 39, Reps. Ryan and Simpkins,  
Sens. Wilson and Mesaros)
- 50 and 55 (former HDs 42 and 47, Reps. Cobb and Grady,  
Sens. Mesaros and Beck)

SENATE STATE ADMIN.

EXHIBIT NO. 23

DATE 1-26-93

BILL NO. Reapportionment



*Exhibit 20*  
*1-26-93*  
*Beaappartiment*

Great Falls Tribune 8A  
Sunday, January 24, 1993

## Places to go, things to do

### ★ Main event ★

"The Farmer Comes First," an appreciation of the role of the farmer and agriculture, based on the teachings of the Baha'i faith, at 2 p.m. in the Great Falls Public Library. For details, call 727-6878.



### ■ TODAY'S EVENTS

**Simulcast horse racing** in the Paddock Club at the fairgrounds. Doors open at noon; post time 1 p.m.

### ■ AROUND TOWN

**Ice skating** on the Gibson Park pond until 10 p.m. daily. Posted when ice is considered unsafe for skating.

**Low-income homeowners** may be eligible for 10 to 90 percent reductions in their property taxes, but must apply with the county assessor by March 1. For more information call the assessor's office at 761-6700, or drop by at room 201 of the courthouse.

### ■ ON THE ROAD

**Trans-Montana snowmobile ride** from Ennis to Eureka Jan. 22-29. Contact Harry or Vicki Liss, Ennis, 682-7335.

### ■ REGULARS

**Public skating** at Four Seasons Arena canceled through Jan. 29 because of the rodeo and agricultural exposition.

**Public swimming** at Great Falls High School pool open on school days 6-7:30 a.m. Monday through Friday for lap swim; public swim 7-9 p.m. Mondays and Wednesdays; admission \$1 for adults, 50 cents for students. Open swimming at McLaughlin Center at the College of Great Falls 1-3 p.m. and 7-8:45 p.m. Monday through Friday, 1-5 p.m. and 6-8:45 p.m. Saturday and 1-5 p.m. Sunday. Open swim at Morony Natatorium 8-9:30 p.m. Friday and noon-5 p.m. Saturday. admis

January 19, 1993

Honorable Fred Van Valkenberg- Senate President  
Honorable John Mercer- Speaker of the House

RE: Apportionment- Cascade County

Gentlemen:

I am writing this communication to you to once again try to understand just exactly what is the purpose of the "Apportionment Commission".

My understanding has been that the Commission is a politically non-biased group charged with apportioning the various legislative districts under the "Guidelines and Criteria for Legislative Redistricting" set by the Montana Legislative Council- October 1991, consisting of "Mandatory Criteria" and something called "Consideration".

It has been my assignment by the Cascade County Democratic legislative delegation and Cascade County Democratic Party to be the spokesman for them on the question of re-apportionment since August 26, 1992. The day of the Commissions hearing at the Cascade County Court House in Great Falls.

As the enclosed copies of correspondence indicate, Cascade County singularly, is entitled to ten representatives. The criteria the Commission is charged to adhere to is plain on the question.

One of the most obvious dispositions of the commission from the outset is that their opinion and only their opinion is dictatorial without regard to any other. I have always been taught that in these United States including Montana that other facts and opinions are to be a part of all governing bodies decisions. Such consideration has not been given to Cascade County on the apportionment question. I cannot accept that any political body has dictatorial power anywhere in this republic.

-2-

As you can readily ascertain from the enclosed, the commission has set itself above and beyond any criticism or disagreement to or of them. Once again I claim we of Cascade County have that right and have been denied by the commission from the outset.

The question here, of course is; should rural Cascade County be entitled to representation by a Cascade County resident? i.e. one of their own. The commission's answer is a flat "no". Their opinion is that they can fragmentize Cascade County to the benefit of bordering and other counties regardless of the redistricting criteria.

The net result of the Commission's decision is 10% of Cascade Counties residents- mostly rural- are represented by legislators who are not a part of Cascade County concerns. This situation is not to be tolerated any longer.

One of the most repeated questions put to me during these discussions was "where were you ten years ago? Twenty years ago?". This has been done to Cascade County for two decades. Once again, the imperialistic viewpoint of the Commission is manifested.

Most recently the Hon. Marc Racicot, now governor, at the time Attorney General, traveled to Washington, D.C. and appeared before the United States Supreme Court to plead for the State of Montana to keep two Congressmen in the U.S. Congress. Mr. Racicot and Montana were denied. Nowhere was it considered that Montana be given additional population from any bordering state or Province in order to be made whole and retain its second congressman. In so doing the U.S. Supreme Court has set the precedent on Cascade Counties disagreement with the commission.

Let us turn to the report of the Redistricting and Apportionment Commission of December 1992 to the 53rd Legislature. Page 17- Computer Use- excellent idea- one must also realize a computer returns only that information given it. Page 18- Lack of conformity led to difficulty in following precinct and school district lines. Is this an excuse to disregard county lines- it leaves out any reference to fragmentation, why? It also points out that Cascade County was entitled to 10.13 representatives (ideally) in the 1980's. At that time the commission saw fit to divide rural Cascade County into two bi-county districts- why? Also on page 17-18 it refers to voter tabulation- one knows such information is available at the county Court House and it can be readily placed into any computer- why was the reference made in the first place?

Now we come to the presentation by the Commission of their study to the 53rd Legislature January 13, 1993 at 4:00 p.m. "Old Supreme Court" room at the capitol.

Not only did some members of the Commission berate the Cascade County legislators in their comments, they berated, chastised, and ridiculed this representative for doing what his constituents elected him to do. Represent them. I feel that although I represent House District 40 in Cascade County, I represent the County and the State as well. In that capacity my intelligence and office should not be impugned by anyone regardless of their office. I will weigh my service to this nation and state with anyone else's.

In conclusion, I ask you gentlemen and your respective Houses to throw-out the Commissions recommendations insofar as Cascade County is concerned and reconsider their actions.

Respectfully,

Patrick G. Galvin  
Representative, HD 40- Cascade County

PG:ag  
Enclosure

cc: Hon. Marc Racicot, Governor  
Senator Franklin  
Senator Doherty  
Senator Mesaros  
Senator Christiaens  
Senator Wilson  
Apportionment Commission-  
Capitol- Room #138  
John Murphy- Cascade County  
Democrats

Rep. Dolezal  
Rep. Sheila Rice  
Rep. Ryan  
Rep. Simpkins  
Rep. Strizich  
Rep. Tuss  
Rep. Wiseman  
Rep. Wyatt  
Steve Hudspeth-  
Esquire Great Falls

1-26-92  
Reapportionment

8/26/92

Comments by Representative Galvin, House District 40

I would like to express my appreciation to the Commission and especially to Ms. Susan Fox who has worked so diligently on this project. Cascade County has a population, according to the information I have received, of 77,691. Dividing that figure by the "ideal" of 7991, we come up with 9.6 representatives by dividing it by 7590, the mean figure, we come up with 10.25 representatives. Dividing by 8390, the extreme figure, we come up with 9.13 representatives. Using the mandatory and discretionary criteria for redistricting proposed by the Montana Legislative Council in November 1990, I feel Cascade County alone should be entitled to 10 representatives.

1. "The commission should apply the same mandatory and discretionary criteria to each district." (General Instructions pp 1) *Have you split ANY other county five ways?*
2. "If the commission were to follow county lines when possible but not do so in one county although it was possible to do so, a court may well hold this action to be unconstitutional." (pp 2 para 1) i.e. Jefferson County.
3. With the division, as set up in the current plans, one can readily see and claim "fracturing" of Cascade County (pp 5 para 3)
4. "Each district shall consist of compact and contiguous territory." (pp 6 para 3)
5. "A court would almost certainly not consider a district shaped like an hour glass to be compact." (pp 7 para 1 - HD 40)
6. Criteria
  - a) Following the lines of political units Districts are often drawn to follow, to the extent possible, the boundary lines of cities, towns, school district, Indian Reservations and the government units.
7. Communities of Interest
  - a) Communities of interest can be based on such things as trade areas, communication and transportation networks and prevalent occupations and lifestyles. (pp 8 para 1 and 3) Great Falls is in the center of Cascade County - not Lewistown, Helena, or Townsend.

In my opinion, Cascade County has been shortchanged in the legislature for the past decade. I feel the county has been fractured long enough to the advantage of other communities and I feel corrective measures should be taken to make Cascade County whole.

Thank you



*The Big Sky Country*

# MONTANA HOUSE OF REPRESENTATIVES

RECEIVED  
SEP 01 1992  
MONTANA LEGISLATIVE  
COUNCIL'S

REPRESENTATIVE PATRICK G. GALVIN

HOUSE DISTRICT 40

HELENA ADDRESS:  
CAPITOL STATION  
HELENA, MONTANA 59620

HOME ADDRESS:  
105 29TH AVE., NW  
GREAT FALLS, MONTANA 59404

COMMITTEES:  
HIGHWAYS & TRANSPORTATION  
HUMAN SERVICES & AGING  
STATE ADMINISTRATION

Aug. 29, 1992

Montana Districting and Apportionment Commission  
Room 138 State Capitol  
Helena, Mt. 59620-1706

Re; Cascade County

Dear Commissioners;

In response to your invitation, at the close of the Aug. 26th. meeting in Great Falls, I am submitting some suggestions. First, let me re-state that I feel Cascade County solely is entitled, by virtue of the census and the prevailing current law, to ten representatives in the Montana state legislature. With this in mind please review what transpired at the Aug. 26th. meeting; Rep. John Cobb H.D. 42 desires to relinquish from Great Falls, Sun Prairie Village, Vaughn, Ulm, Cascade, Sun River and Fort Shaw. I feel H.D. 42 should be out of Cascade County entirely. I believe Mr. Cobb's only reason to retain Simms is to retain a bi-county district.

Although I do not have a copy of Rep. Mike Foster's letter to you, I have had personal conversation with him and he described how he was not accepted by Cascade County voters and was asked to leave their property. He was told that he did not represent them when he campaigned in the Belt-Stockert-SandCoulee area. I do not blame him a bit for wanting out of Cascade County.

With respect to H.D. 11, Mrs. DeBruycker too, expresses a bit of dubiousness about campaigning in Cascade County. As I have stated in my Aug. 26th. remarks, insofar as H.D. 29 is concerned, Cascade County has very little in common with Lewistown. To wit: Cascade County is not represented by its own people, but by others whose interests do not include Cascade County. Bear in mind also the remarks of Co. Commissioner Harry Mitchell and County Clerk and Recorder Joe Tropila to the effect that Cascade County voters want to be represented by Cascade County legislators. My own conversations with people in the Stockert-Sand Coulee-Tracy-Giffen area denotes no interest in voting for a legislator from outside of the area.

I would probably agree, in general, with the 200 plan with revisions. I would take the crescent shape described by Rep. Sheila Rice, including in that area the area east, south and west of Great Falls, Belt from the Highwood mountains, Monarch, Neihart, Eden, Giffen, Stockert, Sand Coulee, Tracy, Fife, Ulm, Cascade, Vaughn, Sun River and Gordon, all of which are foothills farmers and ranchers.

*Exhibit 34*

*1-26-93*

*Reapportionment*

Because of the already made decision on Teton and Liberty Counties, I concede Simms-Fort Shaw to H.D. 11. If the new district doesn't have sufficient population, after revisions, to meet the mean population figure of 7590, then consider part or all of Meagher County or part or all of Judith Basin County. I realize this still makes two bi-county districts in Cascade County. Perhaps an earlier notification of the plan for Cascade County might have enlightened the Commission of the thoughts of Cascade County residents. Looking to the future, Great Falls and Cascade County finally seem to be moving toward increased population. The fact that much new construction is underway at this time. Three new sorely needed motels are under construction. McLaughlin Center is well underway, as is Sam's Club, the new juvenile detention center and of course the ethanol plant. Most of the new home construction at the present is in House Districts 39, 40, 41 and with the installation of water and sewer lines in the "Lower Sun River" area of H.D. 40 we envision much new home construction in that area. Once again, I offer my congratulations to you for taking on a very difficult task, many would have thrown up their hands long ago. Please consider my suggestions as constructive. I hold Cascade County foremost.

Sincerely,



Patrick G. Galvin

cc; file

Jean F. Barrett, Cperson

S.S. Frisbee

J.J. Pasma

H.J. Pineseault

J. D. Rehberg

Susan Fox, staff

*Enclosure (1)*



*The Big Sky Country*

RECEIVED

SEP 21 1992

MONTANA LEGISLATIVE  
COUNCIL  
MONTANA HOUSE OF REPRESENTATIVES

REPRESENTATIVE PATRICK G. GALVIN

HOUSE DISTRICT 40

HELENA ADDRESS:  
CAPITOL STATION  
HELENA, MONTANA 59620

HOME ADDRESS:  
105 29TH AVE., NW  
GREAT FALLS, MONTANA 59404

COMMITTEES:  
HIGHWAYS & TRANSPORTATION  
HUMAN SERVICES & AGING  
STATE ADMINISTRATION

Sept. 15. 1992

Montana Districting and Apportionment Commission  
Room 138 State Capitol  
Helena, Mt. 59620-1706

Re: Cascade County

Ladies and Gentlemen:

I am in receipt of your Sept. 9, 1992 plans 400 and 500, they, like your plans 100 and 300, are entirely unacceptable. Please bear in mind that Cascade County is entitled to ten representatives. I cannot accept anything short of that. There is no alternative.

Respectfully,

Patrick G. Galvin

cc: file  
BE - Susan Fox, Staff person



1-26-93  
Reapportionment



The Big Sky Country

MONTANA HOUSE OF REPRESENTATIVES

RECEIVED  
OCT 18 1992  
MONTANA LEGISLATIVE  
COUNCIL

REPRESENTATIVE PATRICK G. GALVIN  
HOUSE DISTRICT 40  
HELENA ADDRESS:  
CAPITOL STATION  
HELENA, MONTANA 59820  
HOME ADDRESS:  
105 29TH AVE., NW  
GREAT FALLS, MONTANA 59404

COMMITTEES:  
HIGHWAYS & TRANSPORTATION  
HUMAN SERVICES & AGING  
STATE ADMINISTRATION

Oct. 12, 1992

Montana Districting and Apportionment Comm.  
Room 138-State Capitol  
Helena, Mt. 59620-1706

Re: Cascade County

Ladies and Gentlemen;

I am in receipt of your notice of Oct. 2, 1992. Thank you. May I make one more effort to ask you to please adhere to the "Mandatory and Discretionary Criteria for Redistricting" prepared by the Montana Legislative Council--November 1990 insofar as Cascade County is concerned. I ask you to please refer to my remarks and correspondence to you of July 26, 1992-July 29, 1992 and September 15, 1992. My understanding as to the makeup of your commission is that it is and should be non-partisan. Are you non-partisan? Let me say one more time: Have you split any other county five different ways? Do you follow county lines? Are you fracturing Cascade County? Are Cascade County's districts compact and contiguous? Have you taken into consideration communities of interest? Are you gerrymandering Cascade County for some others interest and/or gain? Will you advise me as to which type of attorney I should contact if I deem it necessary on this question?

Thank you  
*Patrick G. Galvin*  
Patrick G. Galvin

cc: file



*The Big Sky Country*

RECEIVED

MONTANA HOUSE OF REPRESENTATIVES

MONTANA LEGISLATIVE  
COUNCIL

REPRESENTATIVE PATRICK G. GALVIN

HOUSE DISTRICT 40

HELENA ADDRESS:  
CAPITOL STATION  
HELENA, MONTANA 59620

HOME ADDRESS:  
105 29TH AVE., NW  
GREAT FALLS, MONTANA 59404

COMMITTEES:  
HIGHWAYS & TRANSPORTATION  
HUMAN SERVICES & AGING  
STATE ADMINISTRATION

Oct. 13, 1992

Montana Districting and Apportionment Commission  
Room 138 State Capitol  
Helena, Mt. 59620-1706

Re: Cascade County

Ladies and Gentlemen;

I am in receipt of your Oct. 5, 1992 letter to "Interested Persons". Thank you. I am an interested person. I am sorry that the enclosed Great Falls Tribune article is so tardy in being published. It could have saved my Oct. 12, 1992 letter to you. I am sending it to you in the hope that you too can now see how you are using Cascade County to the benefit of others and in so doing are denying Cascade County residents their rightful representation. It also proves that I am not singular with my opinion. One can readily see why Mr. Roskie would be jumping for joy at your decision, were I in his shoes I too would be "laughing up my sleeve". Just think, by your action how you have turned a six to three majority in Cascade County into a seven to six minority! I would like to participate in your November thirtieth hearing, but all indications at this time are against my being able to attend. Therefore, I desire that in case I cannot attend personally, that you read into the record all of my correspondence to you. (Dated 7/26; 7/29; 9/15; 10/12, 1992).

Also, although it means little to nothing, as Susan Fox and I have verbally discussed, I would like the boundaries of new district 558 to be extended east to the Missouri river on the "frontage road" then south (upstream) to meet the former line of HD 40. Also, on the extension west, where the frontage road and I-15 meet (34th. St, N.W.) use Interstate 15 as the northern border instead of the frontage road to wherever "between Manchester and Sun Prairie Village" is.

Sincerely,

A handwritten signature in cursive script that reads "Patrick G. Galvin".

Patrick G. Galvin

cc: file



# Montana Districting and Apportionment Commission

*1-26-93*  
*Reapportionment*

Room 138 State Capitol  
Helena, MT 59620-1708  
(406) 444-3064  
FAX (406) 444-3036

Commission members:  
John Fallon Barrett  
Chairman  
2042 Gold Rush Avenue  
Helena, MT 59601

Selden S. Fribebe  
13 East Main  
Cut Bank, MT 59427

James J. Pasma  
5 Curve Drive  
Havre, MT 59501

H.J. "Jack" Pineseault  
215 West Broadway  
Missoula, MT 59802

Jack D. Rehberg  
2922 Glenwood Lane  
Billings, MT 59102

Staff:  
Susan Fox  
Tom Gomez  
Researchers  
John MacMaster  
Attorney  
Ellen Garrity  
Secretary

*John*

October 16, 1992

Representative Patrick Galvin  
105 29th Ave., NW  
Great Falls, Montana 59404

Dear Rep. Galvin:

I am writing in response to your October 12 letter to the Commission.

Much of your letter can be answered by the letter I wrote earlier today to Rep. Strizich. A copy of that letter is enclosed.

You request that the Commission adhere to the redistricting criteria that it adopted. A copy of those criteria is also enclosed. The Commission has adhered to those criteria. Please note that criteria II, 1, states that "Consideration will be given to the boundary lines of existing local government units, including counties." (emphasis added) As I pointed out in my letter to Rep. Strizich, there is no law that requires a county to be given as many districts as possible completely within the county or that even requires consideration of county lines for any purpose. The Commission could have chosen to completely ignore county lines, and there would be no legal remedy against the Commission or its redistricting plan.

As to the Commission's nonpartisanship, I have attended every meeting but one of the Commission and can assure you that it is definitely nonpartisan. Most of its votes have been unanimous. I have seen the Republican members speak and vote against what Republicans wanted and Democratic members speak and vote against what Democrats wanted. The Commission has not gerrymandered any county or area to favor any party, legislator, candidate, person, political subdivision, entity, group, or area. I believe that the minutes and record of the Commission's public meetings demonstrate that there has been no gerrymandering, and I am certain that a poll of people attending the public meetings would show that a vast majority of them saw no partisanship.

The Cascade County districts are compact, and they are clearly and obviously contiguous.

The simple fact is that Cascade County's population declined by 3005 persons between

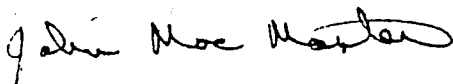
Rep. Galvin  
October 16, 1992  
page 2

1980 and 1990. Despite this decline, the Commission has tentatively adopted a plan that gives the county nine house seats completely within the county, the same number it now has.

Since your letter implies the possibility of legal action, it would not be proper for me or the Commission to recommend an attorney to you. However, in view of my opinion that there is no legal basis whatever for a suit, I recommend that you get the best attorney you can find, although I also believe that any attorney well-versed in redistricting law will tell you that you have no basis for a suit.

I was the staff attorney for the last Redistricting Commission, 10 years ago, and have during that time kept current on redistricting cases nationwide. No state in the union has had fewer cases brought against its redistricting plans than Montana has in the 20 years since the 1972 Montana Constitution mandated redistricting by Commission, and the state has won every one of those few cases. This is a record to be proud of and is testimony to the quality and fairness of the Commission plans.

Sincerely yours,



John MacMaster

enclosures

ppe 2290jmx.b.



# Montana Districting and Apportionment Commission

1-26-93  
*Repartitionment*

Room 138 State Capitol  
Helena, MT 59620-1706  
(406) 444-3084  
FAX (406) 444-3038

**Commission members:**

Jan Fallon Barrett  
Chairman  
2042 Gold Rush Avenue  
Helena, MT 59601

Selden S. Frisbee  
13 East Main  
Cut Bank, MT 59427

James J. Pasma  
5 Curve Drive  
Havre, MT 59501

H.J. "Jack" Pineseault  
215 West Broadway  
Missoula, MT 59802

Jack D. Rehberg  
2922 Glenwood Lane  
Billings, MT 59102

**Staff:**

Susan Fox  
Tom Gomez  
Researchers  
John MacMaster  
Attorney  
Ellen Garrity  
Secretary

October 16, 1992

Rep. Bill Strizich  
736 27th Ave. N.E.  
Great Falls, Montana 59404

Dear Representative Strizich:

At its September 30 meeting in Billings, the Commission voted to have me respond by letter to the last point raised in the letter that the Commission received from you on September 24.

The last part of your letter raises the possibility of legal action by one or more Great Falls and/or Cascade County persons or entities if the Commission does not adopt for that area a plan that gives the county a rural district completely within the county. As you noted, the Commission currently contemplates a plan that provides parts of four rural districts, none of which will be entirely within the county. The plan also provides for nine house districts that are urban, urban-suburban, or urban-suburban-rural and that are completely within the county.

There is no federal or Montana constitutional, statutory, or case law that requires that legislative districts be drawn so as to place as many as possible in each county, nor is there any law requiring the Commission to even consider county lines.

The Commission may, if it wishes, choose a discretionary standard such as following county lines to the extent possible or giving consideration to county lines. It could also set a priority on such a standard with respect to how the standard fits in with other discretionary standards. Any discretionary standard would have to give way if its application conflicted with one or more of the mandatory standards of population equality, compactness and contiguity, and nondilution of the Native American vote.

One discretionary standard chosen by the Commission is that "Consideration will be given to the boundary lines of existing local government units, including counties." In addition to this discretionary standard and the mandatory standards noted above, the Commission adopted six other discretionary standards that it must consider and did not give a priority to any of the discretionary standards. The other discretionary standards are that the Commission will consider voting precinct lines, school district lines, communities of interest, geographical boundaries, and existing legislative district lines and that it will not draw lines to favor a political party or protect or defeat an incumbent legislator. To the extent that one or more of these discretionary standards are important to the people and officials in any given part of the state, the Commission has attempted to fulfill them to the extent possible, always bearing in mind that the mandatory standards take precedence

Rep. Strizich  
October 16, 1992  
page 2

and that each discretionary standard must be balanced against the other discretionary standards for a given county or area and against all standards, mandatory and discretionary, for surrounding counties and areas and for the state as a whole.

In McBride v. Mahoney, 573 F. Supp. 913 (D.C. Mont. 1983), the court stated:

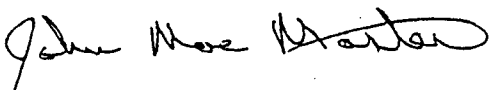
We now turn to the contention that the Commission did not follow its own criteria. It is apparent, however, that the criteria were not inflexible. It is clear from the wording of the criteria and the Commission discussions that they were considerations only and that the conflicts between the criteria as they existed within a district and as they existed between districts had to be balanced in arriving at a plan embracing the entire State.

The "Commission" referred to in the court's statement is the 1979 Montana Districting and Apportionment Commission, whose discretionary standards were almost identical to those of the 1989 Commission.

Your letter states that Great Falls will always be unfairly pulled apart to compensate for population shifts from east to west. The Commission's census data shows that Great Falls itself lost population. It is this factor, not the east-to-west population shift in the 1980s, that accounts for any perceived pulling apart of Great Falls and Cascade County. Despite this population loss, under the plan tentatively adopted by the Commission for the Cascade County area, the county retains nine house districts wholly within the county. The Commission thus feels that it has been more than fair to the city and county.

Section 5-1-108, MCA, requires only one public hearing, in Helena, on the legislative redistricting plan, when the plan for all house and senate districts is completed. In an effort to give all who are interested in redistricting a maximum chance for input, the Commission decided to also hold 12 public meetings in the various regions of the state, each meeting limited to that region. I attended all but one of these meetings and all of the organizational meetings and teleconferences at which the Commission discussed testimony at the public meetings and materials submitted by mail and chose tentative plans for the various regions. I can personally assure you that the Commission made every effort to take into account the interests of counties. It was, however, impossible for each person and entity interested in each of the seven discretionary criteria (many of which are composed of subcriteria) to be given everything the person or entity wished.

Sincerely yours,



John MacMaster

1-26-93  
Reapportionment

*The Big Sky Country*

RECEIVED  
OCT 26 1992  
MONTANA LEGISLATIVE  
COUNCIL



MONTANA HOUSE OF REPRESENTATIVES

REPRESENTATIVE PATRICK G. GALVIN

HOUSE DISTRICT 40

HELENA ADDRESS:  
CAPITOL STATION  
HELENA, MONTANA 59620

HOME ADDRESS:  
105 29TH AVE., NW  
GREAT FALLS, MONTANA 59404

COMMITTEES:  
HIGHWAYS & TRANSPORTATION  
HUMAN SERVICES & AGING  
STATE ADMINISTRATION

Oct. 21, 1992

Montana Districting and Apportionment Commission  
Room 138-State Capitol  
Helena, Mt. 59620-1706

Re; Cascade County

Ladies and Gentlemen;

I am in receipt of a letter (with enclosures) dated Oct. 16, 1992 over the signature of John MacMaster, who is listed on your letterhead as a researcher. He sends me no surprises. In the third paragraph he emphasizes the word "consideration". That is exactly the manner which this state is being governed by the current administration. To wit: find a loophole and circumvent the intent of the law to the administrations benefit. I fully realize the redistricting criteria is just that, and is not law. My experience for twenty-two years as a union representative taught me that lesson--if the question is not specifically set down in black and white and signed by the parties involved the question is of course moot. This is a prime example of a law containing the word "may" instead of "shall". However, I find it strange that the committee will apply the criteria in one manner when it pertains to our Indian nations and another application when it applies to Cascade County. You apply it one way when it pertains to Jefferson County but another manner when it pertains to Cascade County. I feel the whole difficulty here is about the abuse of power and betrayal of trust. Not gerrymandering? Why then is Cascade County fractured to the benefit of counties which do not have sufficient population to maintain a representative? Cascade County has lost 3005 persons? If so, how many representatives was Cascade County entitled ten years ago? The criterias main reason for existance is to guarantee the one man one vote concept. (voting rights act of 1965) I feel by shattering Cascade County-as you have, you are again "voting livestock". Am I wrong, when I believe the A.C.L.U. brought suit in the name of the Salish-Kootenai or some other Indian nation against you and won? If not, why then did you bow to the Rocky Boy and Fort Belknap group on their demands?

In closing, please enlighten me to this: If the Guidelines and Criteria for Legislative Redistricting are merely to be treated with "consideration" of what value are they and for that matter, the commission itself? Please read this into the minutes of

Your 11/30/92 meeting.

*Patrick G. Galvin*



*The Big Sky Country*

**MONTANA HOUSE OF REPRESENTATIVES**

**RECEIVED**

**JAN 11 1993**

**MONTANA LEGISLATIVE  
COUNCIL**

January 11, 1993

Montana Apportionment Commission  
Ms. Susan Fox  
Room 138  
Capitol Station  
Helena, MT 59620

RE: Cascade County

Please accept this as my protest to your shattering of Cascade County. As a representative of all of Cascade County and the state of Montana, I cannot, for any reason, understand your obstinacy on the question.

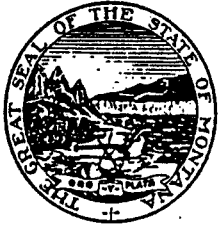
Sincerely,

*Patrick G. Galvin*

Rep. Patrick G. Galvin  
House District # 40

PGG:sh





*The Big Sky Country*

encl # 27  
1-26-93  
Reapportionment

RECEIVED

JAN 11 1993

MONTANA HOUSE OF REPRESENTATIVES  
LEGISLATIVE COUNCIL

Montana Districting and Apportionment Commission  
Room 138 State Capitol  
Helena, MT

Dear Commission Members:

I only wish to reiterate my ardent objection to the impact your proposed "final plan" would have on the citizens of my home county. The district I represent would be largely without much change, but overall I must continue to take exception with the impact the plan has on the rural extremities of the county which are being amputated from our community under your plans.

I believe the Commission has chosen to ignore the central community of interest, Great Falls which is clearly the cultural and market center of Cascade County. Voters in these outlying portions of the County, whose votes are being distributed to Lewis and Clark, Teton and Fergus counties are being effectively disenfranchised from the political process. Because of the shift of influence to population centers outside Cascade County it is highly unlikely that folks in many of our effected rural communities will have an opportunity to serve in the legislature or elect representatives who adequately represent their needs in terms of tax policy and all other major issues affecting their lives and businesses.

Please re-consider your course of action which I feel is unfair to the rural citizens of Cascade County and will ultimately be irrevocable for the next decade.

Respectfully Yours,

A handwritten signature in black ink, appearing to read "Bill Strizich", written over a horizontal line.

Bill Strizich

DATE 1-26-93 Joint  
 SENATE COMMITTEE ON State Administration  
 BILLS BEING HEARD TODAY: Reapportionment

| Name            | Representing            | Bill No. | Check One |        |
|-----------------|-------------------------|----------|-----------|--------|
|                 |                         |          | Support   | Oppose |
| Chana Nancee    | Crow Tribe              |          |           |        |
| Bob Gowen       | H.D. 9                  |          |           |        |
| Joe Tropila     | CASCADE Co. & MAKR      |          |           |        |
| JEFFREY RENZ    | ACLU of M.              |          |           |        |
| Judy Jacobson   |                         |          |           |        |
| Don Ryan        | CASCADE County          |          |           |        |
| Eve Franklin    | SD 17 CASCADIA          |          |           |        |
| Bea McCarthy    | House Dist 66           |          |           |        |
| Wm Ryan         | HD # 38                 |          |           |        |
| Scott Anette    | ACLU/NOT                |          |           |        |
| GEORGE OCHENSKI | CONFED. SALISH-KOOTENAI | HJS      | AMEND     |        |
| Pat Smith       | Salish-Kootenai Tribes  | HJS      | Amend     |        |
|                 |                         |          |           |        |
|                 |                         |          |           |        |
|                 |                         |          |           |        |

**VISITOR REGISTER**

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY