

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN BOB GILBERT**, on February 4, 1993, at 8:15 a.m.

ROLL CALL

Members Present:

Rep. Bob Gilbert, Chairman (R)
Rep. Mike Foster, Vice Chairman (R)
Rep. Dan Harrington, Minority Vice Chairman (D)
Rep. Shiell Anderson (R)
Rep. Ed Dolezal (D)
Rep. Jerry Driscoll (D)
Rep. Jim Elliott (D)
Rep. Gary Feland (R)
Rep. Marian Hanson (R)
Rep. Hal Harper (D)
Rep. Chase Hibbard (R)
Rep. Vern Keller (R)
Rep. Ed McCaffree (D)
Rep. Bea McCarthy (D)
Rep. Tom Nelson (R)
Rep. Scott Orr (R)
Rep. Bob Raney (D)
Rep. Bob Ream (D)
Rep. Rolph Tunby (R)

Members Excused: None

Members Absent: None

Staff Present: Lee Heiman, Legislative Council
Jill Rohyans, Committee Secretary
Claudia Johnson, Transcriber

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Testimony of John Fitzpatrick was recorded and transcribed verbatim.

Committee Business Summary:

Hearing: HB 330, HB 382, HB 378 and HB 388
Executive Action: None

HEARING ON HB 330Opening Statement by Sponsor:

REP. JOANN "JODY" BIRD, House District 52, Superior, said HB 330 was introduced at the request of the Department of Revenue (DOR) and is a housekeeping bill. It clarifies the statute of limitations for income tax assessments and refund claims. She said Bob Turner of the Department of Revenue Income Tax Division would further explain the bill.

Proponents' Testimony:

Robert Turner, Exam Bureau Chief, Income and Miscellaneous Tax Division, Department of Revenue (DOR), said there are two statutes that address filing of amended returns, one five years from the date of filing and one five years from the date of the return. He distributed a handout which illustrated the difference between the two. **EXHIBIT 1** He said the taxpayer would have almost a two-year extended statute of limitations because he/she filed delinquent. This bill clarifies the statute of limitations and allows the person who files a delinquent return to file an amended return five years from the due date of the return, not five years from the date that person filed the return. Current law essentially lets the taxpayer set the statute of limitations.

Opponents' Testimony: There were no opponents.

Questions From Committee Members and Responses:

REP. FOSTER asked if the bill would match up the timelines from a timely filing so if there is a late filed return the timeline would remain April 15, 1993.

Mr. Turner replied that was correct.

Closing Statement by Sponsor:

REP. BIRD closed on HB 330.

HEARING ON HB 382Opening Statement by Sponsor:

REP. MIKE FOSTER, House District 32, Townsend, said the bill was introduced to solve a problem for a good corporate citizen who has been providing a windfall for Broadwater County and the state for approximately 10 years. He said Continental Lime Company, which is located just west of Townsend, has proven to be a very

good citizen and employs about 55 people with a gross annual salary of \$2 million. **REP. FOSTER** said **Dennis burr** would explain the technical aspects of the bill.

Proponents' Testimony:

Dennis Burr, representing the Montana Taxpayers Association, said the bill is similar to one passed four years ago concerning talc, and one concerning vermiculite passed two years ago. He said the net proceeds tax is difficult both for the Department of Revenue (DOR) to administer and for companies to comply with. Mining has changed considerably but the net proceeds law has not kept pace. **Mr. Burr** said Continental Lime had called him because they were having problems maintaining their profitability and asked him to look at the net proceeds tax to see if it was being calculated properly. Limerock has a very low value unless the plant is built practicably on top of the deposit. He said the net proceeds law requires the starting value for limestone to be what it would sell for as it is brought out of the ground. Because of the way Continental Lime was filing, their value was quite high. From the gross value per ton they are allowed certain deductions which relate to the cost of mining. **Mr. Burr** submitted a list of the lime producers in Montana. The last column shows the value actually going on the tax rolls for each of those producers. The mill levy was applied to the \$6.05. **EXHIBIT 2** **Mr. Burr** referred to page 2, line 18 of the bill and said it sets the value for the application of the mill levy at 34 cents per ton. He said the companies also paid Resource Indemnity Trust Taxes (RITT). As a result, they raised the rate because of the reduction in value to 10% on limestone to get the same amount of money into the RITT. The fiscal note indicates the bill is revenue neutral re the RITT. There are some fairly large reductions in property taxes as a result of this bill, so there is a revenue impact. **Mr. Burr** believed Continental Lime had been improperly filing their net proceeds returns. He also distributed a copy of rules and regulations from DOR which list three methods for calculating the gross value. **EXHIBIT 3** Continental Lime is going to adjust their method of filing to correspond with other lime producers, thereby lowering their tax, whether or not the bill passes. A value of \$3.50 per ton would be more in line with what Continental Lime should have been paying over the past few years. This bill applies to limestone used for the production of quicklime, not that used in cement.

Bill Dodge, Vice President of Continental Lime, Townsend, gave a brief background of Continental Lime which has operated in the state since the early 1980s. He said they got into the present situation because of their belief that it is in their best interests to be a good corporate citizen and avoid litigation. He said no one in the United States has paid this amount for the production of quicklime. The company has undergone a review in the last 12 months which involved looking at all the costs associated with running the plant and they determined this is one of the plant's highest costs. He said they felt they were

proposing legislation that would give the state a significantly higher revenue stream than under the current regulation. It isn't in the best interests of the industry or the state to operate under regulations that attract audits, litigation and conflict in the net proceeds tax.

Brent Palmer, employee of Continental Lime, Townsend, said competition in surrounding states dictated that they look at their operating costs in order to cut expenses wherever possible. In 1992, 9% of the operating budget was directly attributable to the \$3.38 per ton tax. He reviewed the material in **EXHIBIT 4**.

Jim Hohn, Broadwater County Commissioner, Townsend, submitted his written testimony. **EXHIBIT 5**

John Fitzpatrick, Director of Community and Governmental Affairs for Pegasus Gold Corporation, said they are a major customer of Continental Lime and are interested in any legislation that will enable them stay in business. Should Continental Lime face a situation where they may have to go out of business because of lack of profitability, Pegasus Gold would have to purchase lime out of state at a much higher cost. He also endorsed the concept of changing the tax rate from that based on the mine-mouth value of the rock. The hardrock industry faced similar problems until SB 410 was passed in 1989.

Gary Langley, Executive Director, Montana Mining Association, agreed with the previous testimony. He said this Committee supported similar legislation dealing with talc and vermiculite and should pass this bill.

Russ Ritter, Montana Rail Link, expressed support for the bill and said he hoped the legislation would receive a do pass recommendation.

Larry Richtmeyer, Chairman, Unified School District, Broadwater County, Townsend, emphasized he was appearing as an individual at this point because the Board of Trustees had not adopted this stance in resolution form. He was confident it would be adopted at their next meeting. He said they wanted the school to grow with the business community and said a letter of support would be forthcoming from the Board of Trustees.

Marcel Turcotte, Broadwater County Development Corporation, Townsend (BCDC), said they are a small non-profit organization that assists small business and industries. He said in 1980 when Continental Lime was ready to locate in the county BCDC and the County Commissioners assisted in the acquisition of industrial bonds. They have been a good neighbor, have provided high quality employment, and are one of the county's largest employers. The tax is inequitable and Continental Lime operations should not be jeopardized as a result.

Bill Duede, representing the workforce at Continental Lime, Townsend, said they support HB 382 and requested a do pass recommendation.

Opponents' Testimony: There were no opponents.

CHAIRMAN GILBERT RELINQUISHED THE CHAIR TO MINORITY VICE CHAIRMAN HARRINGTON.

Questions From Committee Members and Responses:

REP. McCAFFREE said the fiscal note indicates the county would take lose \$197,000 in actual tax dollars and asked how that applied to tax valuation.

Mr. Hohn said the county taxable value is slightly over \$50 million. This would change them to a Class 4 county from a Class 5 county.

REP. FELAND asked if the 34 cent tax would be on the finished product. Mr. Dodge replied it would be a flat tax with no deductions. The 34 cents would be indexed to inflation not to the price of lime. The price of lime has been rising more slowly than inflation. The tax is on the raw material, not the finished product.

REP. REAM asked DOR if Continental Lime could have filed under a different system.

Don Hoffman, DOR, said Mr. Burr correctly characterized the regulations for the valuation of limestone for Continental Lime and the other cement producers. EXHIBIT 3.

Closing Statement by Sponsor:

REP. FOSTER said this bill was a chance for the Legislature to make a positive impact on the state's economy and jobs.

HEARING ON HB 378

Opening Statement by Sponsor:

REP. ED McCAFFREE, House District 27, Forsyth, said the bill requires the Department of Revenue (DOR) to use the Green Guide as the official guide for valuing heavy equipment, i.e., construction and mining equipment. In 1991, the DOR issued a directive to County Assessors advising them to use the acquired cost/acquired year method as first choice, and the Green Guide as second choice.

Proponents' Testimony:

Marian Olson, representing the Montana Assessors Association, read her written testimony in support of the bill. **EXHIBIT 6**

Jeanne Barnard, Phillips County Assessor, submitted written testimony in support of HB 378. **EXHIBIT 7, 7a, 7b and 7c**

Donna Kennedy, Rosebud County Assessor, submitted written testimony which she read. **EXHIBIT 8**

Sharon Harlin, Big Horn County Assessor and also appearing on behalf of Rick Hartz, Beaverhead County Assessor, submitted written testimony. **EXHIBITS 9 and 10**

Don Bailey, Rosebud County Commissioner, presented written testimony. **EXHIBIT 11**

Gordon Morris, Executive Director, Montana Association of Counties (MACO), appeared in support of the bill and asked for a do pass consideration.

Opponents' Testimony:

Denis Adams, former Director of the Department of Revenue (DOR), submitted and read written testimony. **EXHIBIT 12**

John Alke, Helena attorney representing Montana-Dakota Utilities (MDU), said MDU reviewed their equipment purchases in light of the proposed bill. In every case, what the dealer would pay was lower than what the Green Guide had valued the property. The smallest difference was \$4,000 and the largest was \$8,000. On average, the Green Guide values are significantly higher than the actual Montana market value. He said the position of the Assessors is they have a vested right to maintain their tax base even in case of an error. If this bill passes, it would open the door for counties to come in every time they think changes in the assessment process adversely affect them and ask for legislation to set a tax formula to preserve their tax base. There are many difficult valuation questions in the 56 counties. He said this is a difficult area and if the Committee opens the door on this bill every county will come in to ask the Legislature to mandate that DOR choose an assessment methodology to preserve their tax base.

Jim Mockler, Executive Director, Montana Coal Council, said the valuation of equipment should be based on what the equipment is worth. That's what it should be taxed for. He said in a survey of his heavy equipment companies, he didn't find one that uses the Green Guide in valuing the machinery they take on trade-in or attempt to sell. He said the Green Guide does not represent the value of equipment in Montana.

Ken Williams, representing Montana Power Company, Entech, and Western Energy, opposed HB 378 for many of the reasons stated by previous opponents. He said the law should attempt to establish a fair market value for tax purposes and he did not believe the Green Guide did that. He said the Green Guide overstates the value.

Gary Langley, Executive Director, Montana Mining Association, opposed the bill for the reasons previously stated. He said we are talking about tax equity and when artificially high values are used, such as the Green Guide, that is not tax equity. He said the matter is in litigation and should be settled there.

Russ Ritter, lobbyist for Washington Corporation, and representing the Washington Contractors Group, Montana Resources, WestTran Transportation, Montana Rail Link and Modern Machinery, appeared in opposition to the bill for many of the reasons previously stated. He said they believe the Acquired Cost process works, is reasonable, and he opposed the use of the Green Guide.

Dennis Burr, representing the Montana Taxpayers Association, said they opposed the bill because almost all other business equipment, furniture, and fixtures are valued on acquired cost and heavy equipment value should be the same.

Questions From Committee Members and Responses:

REP. HIBBARD asked about the statewide fiscal impact of the bill. **Jeanne Bernard** said she could only speak for Phillips County but the valuation loss is significant. The Green Guides allow for regional depreciation. She referred to her testimony in EXHIBITS 7 through 7c.

REP. HARPER said the bill contained two issues, one being proper valuation, and secondly, violation of the law by **Mr. Adams** and **DOR**. He asked **Mr. Adams**, as Director, if he decided that this major change was not subject to the Montana Administrative Procedures Act. **Mr. Adams** replied it did go through the Montana Administrative Procedure Act (MAPA).

REP. HARPER said a letter went out to the Assessors which said that beginning January 1991 they were to use the acquired cost/acquired year method but the rules weren't noticed for adoption. The Act provides that the rules must first be noticed, and if there are any interested people that request a hearing, a hearing must be held. **Mr. Adams** said all of it was reviewed by the DOR attorney and they said this was the process to use. The public hearing was held before the rules were formally adopted and there was no attempt to violate any advice of the department attorneys.

REP. HARPER asked Mr. Adams if he had encouraged industry officials to support the rule change. Mr. Adams said following the rules hearing there was an article in the paper, after which he started receiving calls. He said he talked to those callers and supplied examples for them, which they requested. Other than that, they made their own decision.

REP. BOHLINGER said Mr. Adams had stated the reason for the change was to provide for efficiency, fiscal management, and tax fairness. REP. BOHLINGER said the Green Guides cost \$30,000 and asked Mr. Adams if every county was required to purchase them. Mr. Adams said the state is responsible for all property valuations so the state has to purchase them. A complete set for each county cost over \$90,000 per year.

Mr. Alke, in response to a question from REP. DOLEZAL, said he spoke to the dealers who said they didn't use the Green Guide because it is higher and said he believed they used the Blue Book as a guide.

Closing Statement by Sponsor:

REP. McCAFFREE said up until 1991 the Green Guide was the primary method and there were very few appeals. He said the Green Guide would be the fairest way to value heavy equipment.

CHAIRMAN GILBERT REASSUMED THE CHAIR.

HEARING ON HB 388

Opening Statement by Sponsor:

REP. BOB RANEY, House District 82, Livingston, said the bill would allow the Water Quality Bureau of the Department of Health and Environmental Sciences (DHES) to set fees to fund the Bureau to maintain the state's high water quality. Prior to this biennium, the state had received a large amount of money from the federal government to fund water quality. However, that has changed. He said the federal government not only tells us what to do, they also tell us we must fund it. If we don't set the fees to fund water quality, the federal government will do it for us, and the water quality will then be monitored and permitted by the federal government based on their fee structure. He said Montana would do a better job than the federal government.

REP. RANEY said the Montana Constitution and statutes state Montana will have quality water. HB 388 is about degradation of our water by pollution. The bill addresses those who use our surface and underground water for waste disposal. The bill states the Water Quality Bureau must prove they need the money, must spend the money exactly as directed, and provide an appeal process.

Proponents' Testimony:

Dan Fraser, Chief of the Water Quality Bureau, Department of Health and Environmental Sciences (DHES), spoke in favor of HB 388 which was introduced on behalf of DHES. **EXHIBIT 13**

Dennis Olson, representing the Northern Plains Resource Council (NPRC), said there are several hardrock mining projects producing, being explored, or permitted at this time. There have been five petitions for companies to be exempted from the non-degradation policy of the Water Quality Act. He said this boom has placed an emphasis on permitting at the expense of up-front baseline studies that would allow citizens and the DHES to know what the impact and mitigation procedures and at the expense of adequate enforcement. In 1990, NPRC found the state had assessed hardrock mining companies \$600,000 worth of violations during the last decade. As of October 1990, the state had only collected \$66,000 of those fines. He said it is in the best interests of the state and the citizens to find out at the beginning what is going on with the water quality, but it is not in the best interests of the mining industry, or business in Montana, to shut down the mines because adequate up-front work was not done. He said they would rather have the state administer the program. **Mr. Olson** said NPRC had always believed in local control and said they didn't want to have to deal with EPA out of Denver or Washington, D.C. However, if the state doesn't fund these programs for adequate monitoring to protect the water quality, that may be the result.

Jim Jensen, Executive Director, Montana Environmental Center (MEIC), said he characterized the legislation somewhat differently than **Mr. Olson**. He said we are talking about protecting the basic public health of Montanans, and there will always be arguments between industrial producers, developers and environmentalists over whether the agency is doing a good or bad job. We must have a basic program in the state that would look at all of the risks of pollution to protect the quality of water for the citizens of Montana. He said the bill had a number of important provisions built in to ensure it would not be a bureaucracy out of control because the Legislature would limit that through the appropriations process. This is important basic public health safety legislation and he said it could be done better at the state level. He urged the Committee to give the bill a do pass.

Bill Engle, Montana Office of the Environmental Protection Agency (EPA), Helena, said he wanted to add to what **Mr. Fraser** said about the future possibility of federal requirements for fees for discharge permits. He said the Clean Water Reauthorization Act, sponsored by Sen. Baucus, did include the provision that states would be required to assess fees. At the same time they had

regulations being drafted that would require federal fees for permits to be collected prior to reauthorization of the Act. He said there is a good chance the federal government will establish the fees if the state does not.

Opponents' Testimony:

**VERBATIM TRANSCRIPT OF TESTIMONY BY JOHN FITZPATRICK, OPPONENT,
HB 388, THURSDAY, FEB. 4, 1993**

Thank you, Mr. Chairman, Members of the Committee. I'm John Fitzpatrick, Director of Community and Governmental Affairs for Pegasus Gold Corporation. I rise in opposition to HB 388 (before the) committee.

My testimony today will be divided into two basic parts. First, I'd like to make just some general comments about the bill and then I'd like to talk about some specific provisions within it.

I think this bill is inappropriately titled. I think a far more accurate title would be something like, "The Water Quality Bureau Bureaucracy Blank Check Act of 1993".

This bill is probably as open ended a feed bill as I have ever seen in this legislature and I've been coming here since 1975. And I've included in that period of time a period of experience when I served as Deputy Budget Director for the state of Montana.

Imagine your personal circumstances...if you were raising a child, 15 or 16 year old, and that individual had access to a checkbook or a credit card and they could go out and spend money at will with the only limitation being the credit limitation. But you've got to replenish the account every time it was (empty or overdrawn - someone coughed and covered the word). That's basically the situation our friends at the Water Quality Bureau here are asking for.

You know, our personal lives, our economic activity is guided by the revenues we bring into our household. That's also true of businesses. But that's not true of government. Government is expenditure driven. And every time they use up all the expenditure authority they have, they come back here to Uncle Sugar and ask for another little hit on top. When I worked in the Budget Office, Dave Lewis was the Deputy Budget Director for Budget. I was on the planning side, initially. He coined a law called, "Lewis' First Law of Budgeting". And it was "They'll spend every dime available". He applied it to the executive branch as well as to the legislative branch.

You have a \$200 million problem facing the state of Montana. And the reason you have that problem is because you cannot print enough money to satisfy the appetite of the executive branch

agencies. And it's only been in recent legislatures that you're beginning to learn how to say "no". And that is what you need to say - "No".

This bill isn't really what it purports to do. It's not a bill that really wants to raise fees just to raise the MPDS issue, or to deal with state primacy. This is a bill to allow the Bureau to supplant its general fund with fees, stash it away in an earmarked revenue account, so it's got its own little kitty available to bring in here and be reappropriated. That's the essence of this bill.

This bill is a fraud. The statements in the front - all the whereases - refer to the MPDS program. When you start looking at the guts of this bill, it's a lot broader than the MPDS program and the simple issue of primacy. And that theme of fraud runs all the way through it. And I'd just like to run through a few of them.

I love the Whereas on page 2, lines 19 - 21. "Whereas the annual fee system may be an incentive to the regulated community to design activities that reduce the amount of pollutants discharged to state waters or otherwise lower the potential for harm to state waters." You know what really happened? If we went out there as an industry, or all the industries in the state, and reduced by 50% the amount of water that was being discharged to state waters, they'd come back in here and raise the fee 50%.

Over on page 6. You heard Mr. Fraser stand up here and say, "This is a fee for the discharge to state water". This bill is a lot more than a fee for the discharge to state water. Take a look down at lines 10 to about 12. It talks about discharge to state waters, but it also talks about the volume and concentration of process waste - "process materials or waste placed in an impoundment or other containment facility subject to the permit requirements of this chapter". To a company like ours that means we're going to have a fee or a tax, whatever you want to call it, on ore on our leach pads, on tailings in our tailings facilities, and waste rock in waste rock depositories. It is, potentially, a fee on garbage in landfills. It's a fee, potentially, on water that runs off of the railroad yards.

This bill is unending. It's open-ended. Rep. Raney and Mr. Jenson pointed out, also on page 6, about how the legislature was going to (unclear) this program through the Appropriations Committee. I'm intimately familiar with the appropriations process. The real hooker in this thing that is going to give the real control is found back on page 8, section 2, "Disposition of water quality permit fees". They want all the money to go into a special revenue fund account - an earmarked account. Some of you have been on the Appropriations Committee and I'm sure those

of you who have will recognize that special revenue funds and federal monies never get the same degree of scrutiny that the general fund does. When you put money into an earmarked account, as this thing does, you're basically giving them the checkbook.

Finally, I'd just like to make one last observation. Rep. Raney pointed out on page 7 that there was an opportunity for appeal under this thing. And that if we didn't like the fees we could go protest it. That bill is so wide open that if we went in and protested, the next round of fee increases would include all of their legal costs. So we get to pay them for the appeal. This bill is probably the biggest gobbler that I've seen in this legislature to date. I would hope you would take serious consideration of the precedent that you are setting here for the Department and put this bill where it belongs...in the round file in the corner. Thank you.

END OF VERBATIM TESTIMONY

Ward Shanahan, Helena attorney representing Stillwater Mining, submitted written testimony. **EXHIBIT 14**

Don Allen, Montana Wood Products Association, appeared in opposition to HB 388. He said no one questions the value of high quality water and no one questions that fees are a fact of life and a cost of doing business. He said the whole fee system needs close scrutiny by the Legislature. There are some serious impacts in this bill. He said any bill that deals with fees should be rereferred to the Appropriations Subcommittee on Natural Resources if it deals with resource issues.

Jim Mockler, Executive Director, Montana Coal Council, said the Council supports the Water Quality Bureau. He had not seen any documentation that Montana would lose its primacy if HB 388 is not passed. He said we can maintain primacy without a fee system. If the federal fee system is implemented, the Legislature can always pass this type of legislation. A 50% fine for being one day late in paying fees is punitive.

Frank Antonioli, representing Contact Mining Company, submitted written testimony. **EXHIBIT 15**

Gary Langley, Executive Director, Montana Mining Association, said he concurred with the previous comments in opposition to the bill. He said he found it offensive that various special interest groups supporting the bill implied that if someone opposed the bill, they are opposed to clean water. He said that is not true. The mining industry is concerned about water quality. He believed the bill is an attempt to control the growth of industry in Montana.

Richard Nisbet, Director of Public Works, City of Helena, said the City Commission strongly opposes the bill. He said they had reluctantly supported fees to fund the Water Quality Bureau two

years ago, however, they opposed the fees on solid waste. He said, in retrospect, they should have opposed all the fees because they were concerned at the time that when local fees are used to fund state government it never ends. This bill says exactly that. He said they were not opposed to primacy being retained by the state, but they were opposed to funding through local fees. He urged the Committee to oppose the bill.

Alec Hansen, Executive Director, Montana League of Cities and Towns, said the bill isn't just about mining and timber. It would have a dramatic affect on municipalities. Virtually every one of the 128 cities and towns in Montana have sewage treatment systems that would be subject to these fees. He said state and local governments do not receive any money from the federal government for their mandated programs. He called the Committee's attention to HR 2, Section 4, which says state costs will not be shifted to local governments or local taxpayers. This bill shifts costs to local governments and local ratepayers. He said the bill is directly in conflict with I-105 and would impose additional costs to the cities which would be passed on to the ratepayers.

Janelle Fallan, Montana Petroleum Association, expressed opposition to the bill.

Dennis Flick, representing the City of Billings, presented written testimony in opposition to the bill. **EXHIBIT 16**

John Bloomquist, Attorney and Special Assistant to the Montana Stockgrowers Association, said the Association works with the Water Quality Bureau in non-point source pollution in dealing with agriculture. He said the bill is too open-ended. The nature of the bill tends to encourage avoidance of permits. He urged the Committee to vote against the bill.

Ted Doney, Attorney representing ASARCO, Inc. and the Montana Dairymens Association, expressed opposition to the bill.

Peggy Trenk, representing the Western Environmental Trade Association, appeared in opposition to the bill.

Mike Harrington, Montana Power Company, said MPC opposes HB 388 for the many and valid reasons stated by previous witnesses. He said they particularly agreed with **Mr. Shanahan's** comments regarding the potential for harm on page 6 of the bill.

Questions From Committee Members and Responses:

REP. HARPER asked what would happen if the Committee acceded to did not pass the bill.

Mr. Jensen said, from his point of view, the environmental groups and citizens in general would have the opportunity to sue the EPA to make them enforce the laws against polluters. Currently,

under state law, they do not have that authority. He also referred to **Mr. Mockler's** testimony regarding decertification of the program. If the Legislature fails to adequately fund the program, they would immediately petition under authority of federal law for the program to be decertified and for primacy to be remanded to the federal EPA.

The following is Mr. Fitzpatrick's answer to the above question by REP. HARPER during the question period of the hearing.

Mr. Chairman, Members of the Committee. I've been around the government for a long period of time and the threat that if the Health Department doesn't get what it wants (unclear) is going to take over and its going to be a (unclear) is kind of an everyday occurrence. And I suspect if the Health Department doesn't get what it wants, I'm sure Mr. Jensen and his group will work at it and endeavor to take that action. I guess I'm, for one, kind of interested in perhaps testing that particular theory out. I wouldn't have any hesitation whatsoever in recommending to my corporation that we join with the state in a lawsuit against the EPA if they endeavor to take certification away from this program on the basis of what Mr. Jensen and his supporters represent as insufficient funding for the program. (His last sentence is unclear).

REP. FELAND asked **Mr. Fraser** if the oil and gas business would be required to get a permit. **Mr. Fraser** said he didn't believe they would unless they were discharging into state waters. There is currently an exclusion for most oil and gas activities under the groundwater exclusion, and under this bill, those exclusions remain in place. There are permits for stripper wells that produce and discharge into the water. He said if that is the permit **REP. FELAND** was referring to, there would be a fee assessed under this bill.

REP. ELLIOTT asked **Mr. Fraser** to address the effects on agriculture in the state. **Mr. Fraser** said it might have some affect on feedlots or animal confinement facilities. He said the only other case where it might have an effect would be in the case of an agricultural development that would require a non-degradation review. If this program is implemented, those reviews would probably be done by the Department and then there would be a fee assessed. Most agriculture is a non-point source, not regulated and, therefore, no fee would be charged.

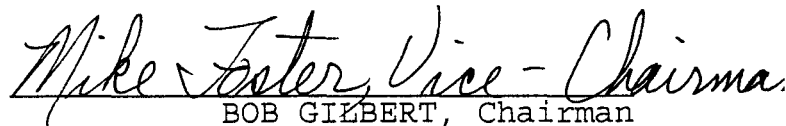
Closing Statement by Sponsor:

REP. RANEY said he understood the concerns of the cities and towns and the fact that the costs would be passed on to the citizens. He asked if Montana should primacy over water quality or not and, if so, are we going to enforce the statutes. If so, the Department has to have money and it will not come from the general fund, it will come from fees. He paraphrased a statement by **Mr. Fitzpatrick** before the Environmental Quality

Council some months before, "You people want all these laws, you people pay for them." Our policy is that we have all these things to comply with in order to maintain clean water in Montana. The mining industry is going to pay the costs of producing the minerals that make them money. If they are going to pollute the water, they are going to have to pay to clean it up. He pointed out the difference between the Mini-Superfund doing cleanup in Butte and the state doing it in Livingston, where the state retained primacy. Things started happening in Livingston immediately. They had somebody in Montana they could talk to, and you can't do that with the EPA. This type of program is working with air quality and there are no complaints. There will be no blank check for the Department. The Department must document its costs under this bill and the companies will be able to appeal those costs. Federal funding is running out and in FY 95 the state has to fund water quality in Montana. He said he didn't want to raise the cost of sewage disposal in his community but that's what he would do because they would be charged a fee for depositing sewage into the Yellowstone River. He said he wants the Legislature to ensure that Montana's water is pristine and clear.

ADJOURNMENT

Adjournment: The meeting adjourned at 11:40 a.m.


BOB GILBERT, Chairman


JILL ROHYANS, Secretary

These minutes were written by Claudia Johnson and edited and proofed for content by Jill Rohyans.

BG/jdr/cj

HOUSE OF REPRESENTATIVES

TAXATION

COMMITTEE

ROLL CALL

DATE

2/4/93

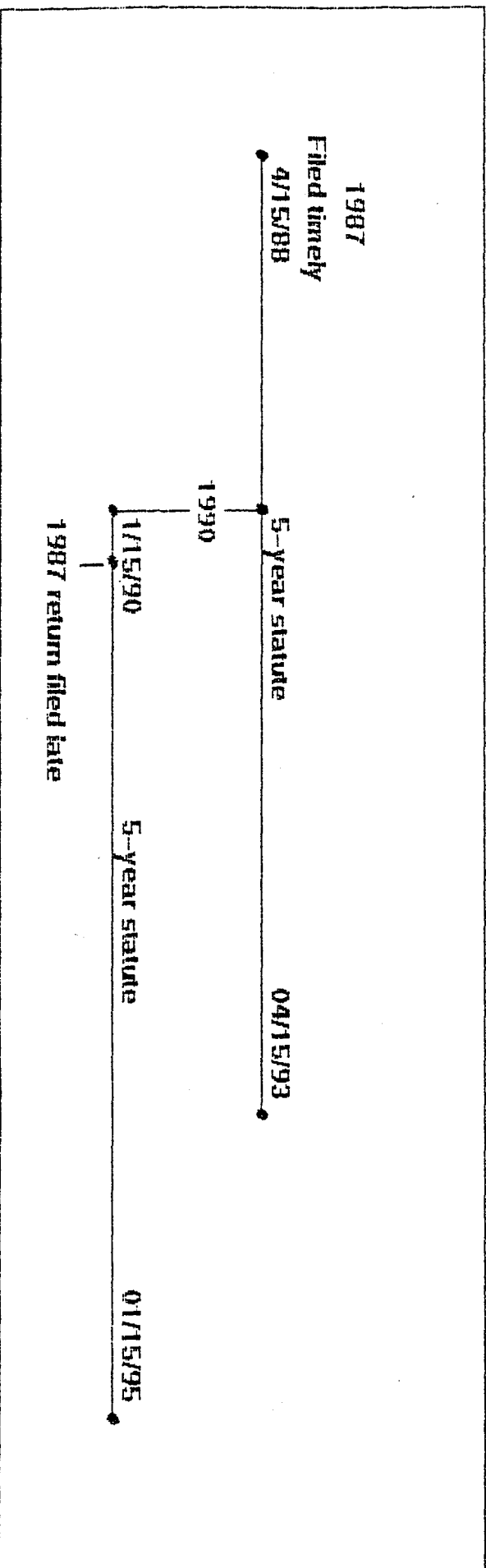
NAME	PRESENT	ABSENT	EXCUSED
REP. GILBERT, CHAIRMAN	✓		
REP. FOSTER	✓		
REP. HARRINGTON	✓		
REP. ANDERSON	✓		
REP. BOHLINGER	✓		
REP. DOLEZAL	✓		
REP. DRISCOLL	✓		
REP. ELLIOTT	✓		
REP. FELAND	✓		
REP. HANSON	✓		
REP. HARPER	✓		
REP. HIBBARD	✓		
REP. KELLER	✓		
REP. McCAFFREE	✓		
REP. MCCARTHY	✓		
REP. NELSON	✓		
REP. ORR	✓		
REP. RANEY	✓		
REP. REAM	✓		
REP. TUNBY	✓		

HB 330

EXAMPLE

Time Line to Amend Income Tax Returns

Currently: 5 years from date of filing



LIMESTONE

COMPANY	TONS	GROSS VALUE	GROSS VALUE PER TON	DEDUCTIONS	NET PROCEEDS	NET PROCEEDS PER TON
CONTINENTAL LIMME	507,329	\$5,151,953	\$10.15	\$2,082,899	\$3,069,054	\$6.05
HOLNAM INC.	445,071	1,295,157	2.91	1,028,677	266,480	.61
ASARCO	28,610	267,181	9.33	242,892	24,289	.84
ASH GROVE	421,183	1,474,141	3.50	1,599,942	0	0
CONTINENTAL LIMME	302,851	\$3,091,262	\$10.21	\$1,317,514	\$1,773,748	\$5.86
HOLNAM INC.	487,576	1,331,082	2.73	1,427,803	0	0
ASARCO	35,212	296,932	8.43	269,938	26,994	.77
ASH GROVE	390,956	1,251,059	3.20	1,191,896	59,163	.15
CONTINENTAL LIMME	300,563	\$3,035,494	\$10.10	\$1,292,532	\$1,742,962	\$5.80
MONTANA LIMESTONE CO.	204,368	854,429	4.18	764,136	90,293	.44
IDEAL BASIC IND.	508,950	865,215	1.70	1,515,512	0	0
ASARCO	30,633	258,217	8.42	234,743	23,474	.76
ASH GROVE	412,805	1,193,006	2.88	1,179,708	13,298	.03
CONTINENTAL LIMME	317,439	\$2,764,522	\$8.70	\$1,263,354	\$1,501,168	\$4.73
IDEAL BASIC IND.	507,109	1,195,410	2.36	637,638	557,772	1.10
ASARCO	32,793	267,310	8.15	243,009	24,301	.74
ASHGROVE	404,868	1,125,533	2.77	1,381,355	0	0
CONTINENTAL LIMME	130,213	\$5,596,758	\$42.98	\$4,491,323	\$1,105,435	\$8.49
IDEAL BASIC IND.	393,882	429,371	1.09	616,344	0	0
ASARCO	36,657	298,965	8.15	217,786	27,179	.74
ASHGROVE	320,842	882,315	2.75	1,295,045	0	0

NATURAL RESOURCE TAXES

42.25.1105

IMP, Secs. 15-23-102 and 15-23-503 MCA; NEW, Eff. 4/5/74; AMD and TRANS, from ARM 42.22.1103, 1986 MAR p. 2072, Eff. 12/27/86.)

42.25.1104 MINING VERSUS NON-MINING PROCESSES (1) The gross value of minerals subject to tax will be determined at the point where mining processes end and manufacturing or non-mining processes begin. In general, mining includes overburden removal, blasting, loading, transportation between mining processes, sorting, reduction and drying. Processes which will be considered non-mining are fine grinding, burning or calcining, blending with other materials, and treatment effecting a chemical change and packaging.

(a) The points at which mining processes end for specific minerals are listed below.

<u>Mineral</u>	<u>Valuation Point</u>
Bentonite	after crushing and drying
Gypsum	after crushing
Limestone	after crushing
Talc	after crushing and sorting
Vermiculite	after screening

(b) No deductions will be allowed for processing costs incurred beyond the valuation point. "After crushing" refers to after all crushing but before grinding. (History: Sec. 15-23-108 MCA; IMP, Secs. 15-23-502 and 15-23-503 MCA; NEW, 1988 MAR p. 1983, Eff. 9/9/88.)

42.25.1105 - COMPUTATION OF GROSS VALUE (1) Gross value for purposes of the mines net proceeds will be determined at the point where mining processes end and manufacturing or non-mining processes begin as discussed in ARM 42.25.1104.

(2) Gross value at the point of valuation will be determined using one of the following methods which are listed in the order they are to be considered.

(a) The producer's actual sales prices for mineral products sold at the point of valuation will be considered the best evidence of value provided the sales are arm's-length and represent approximately 30% of total mineral production. Sales of less than 30% of total production may be acceptable indicators of value if the sales price per unit is corroborated with other representative market data for minerals of like kind

and grade. Documentation for this method must be provided by the producer to the department on request.

(b) If the producer does not have the sales information discussed in (a), a market survey of other producers' sales of like kind and grade mineral products may be done. If this method is used, the producer must obtain market data for 3 or more other producers. This data must represent the results of competitive transactions in markets with a substantial number of unrelated buyers and sellers. The producer must document that all values used are for minerals of comparable quality sold in quantities approximating the producers level of production. It may also be necessary to consider the geographic area served by the markets used for comparison. All information obtained by the producer to support this method must be provided to the department on request.

(c) If the information required by (a) and (b) is not available, the proportionate profits method may be used to compute a value in the absence of adequate market data. The general formula for this computation is stated below.

$$\text{Taxable value/unit} = \frac{\text{Direct costs through valuation point}}{\text{Total direct costs}} \times \text{Sales price/unit}$$

(i) Direct costs through the valuation point will include overburden removal, drilling, blasting, loading, hauling, crushing, sorting, drying, mine reclamation, production taxes and royalties and any other direct costs incurred through the valuation point.

(ii) Total direct costs will include, in addition to those noted above, all direct costs applied to the mineral products up to the point of production of the first marketable product or group of products which have not been manufactured or fabricated. These costs will typically include grinding, burning or calcining, blending with other materials and treatment effecting a chemical change.

(iii) The sales price per unit will be the weighted average price of the first marketable product or group of substantially similar products sold in significant quantities by the producer.

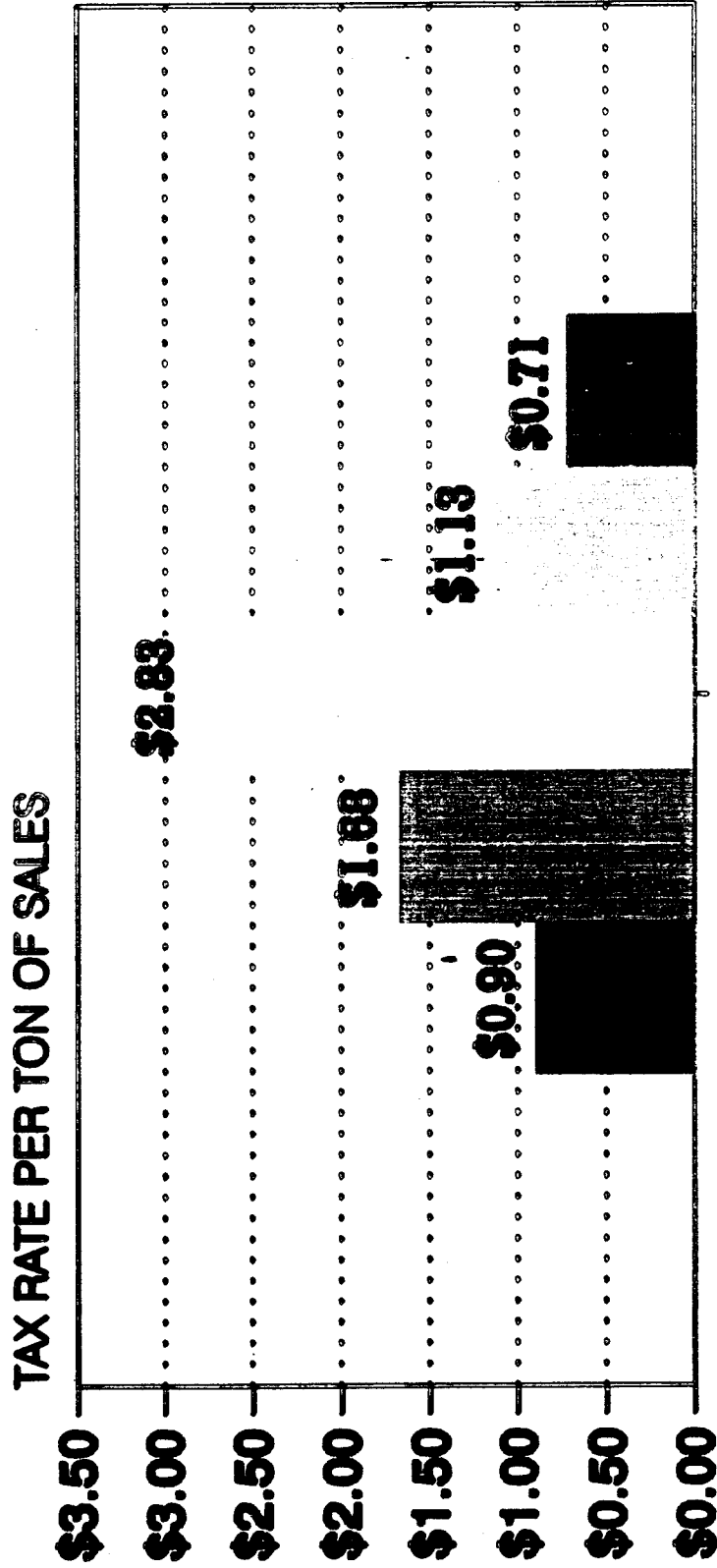
(iv) Only direct costs may be used in computing the cost ratio for the formula. No costs that benefit the operation as a whole or are not directly related to a specific phase of the mining or processing of the mineral product will be included in the ratio.

(d) The department may use an alternative valuation method if warranted by an unusual situation. (History: Sec. 15-23-108 MCA; IMP, Sec. 5-23-502 and 15-23-503 MCA; NEW, 1988 MAR p. 2507, Eff. 11/24/88.)

CONTINENTAL LIME INC.

PROPERTY TAX COMPARISON BY STATE

EXHIBIT 4
 DATE 2/4/93
 HB 382



PLANT TAX RATE BY STATE

■ Cricket Mountain, UT ■ Pilot Peak, NV ■ Indian Creek, MT ■ Frannie, WY ■ Ten Mile, ID

- 1) UTAH AND NEVADA INCLUDES SALES TAX
- 2) NEVADA RATE OF \$1.68/TON IS HIGH DUE TO LOW VOLUME

CONTINENTAL LIME INC.

INDIAN CREEK PLANT - TOWNSEND, MONTANA

NUMBER OF EMPLOYEES WORKING: 56

GROSS ANNUAL PAYROLL: \$1,943,000

STATE INCOME TAXES PAID: \$ 112,000

STATE PROPERTY TAXES PAID: \$ 913,000

GOODS & SERVICES/LOCAL: \$2,068,000

CONTINENTAL LIME INC.

INDIAN CREEK PLANT - TOWNSEND, MONTANA

NUMBER OF EMPLOYEES WORKING: 56

GROSS ANNUAL PAYROLL: \$1,943,000

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STATE PROPERTY TAXES PAID: \$ 913,000

GOODS & SERVICES/LOCAL: \$2,068,000

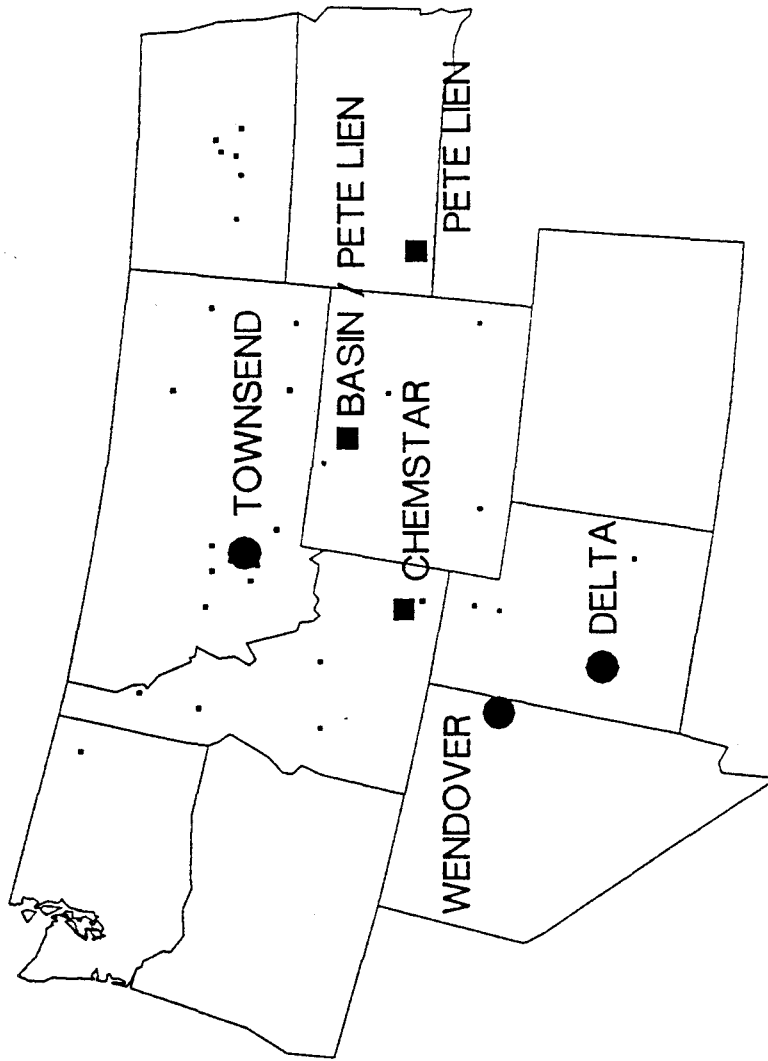
CONTINENTAL LIME INC.
NET PROCEEDS TAX COMPARISONS 1988 - 1992
LIMESTONE PRODUCERS

LIMESTONE

COMPANY	TONS	GROSS VALUE	GROSS VALUE PER TON	DEDUCTIONS	NET PROCEEDS	NET PROCEEDS PER TON
<u>1992 TAX YEAR</u>						
CONTINENTAL LIME	507,329	\$5,151,953	\$10.15	\$2,082,899	\$3,069,054	\$6.05
HOLNAM INC.	445,071	1,295,157	2.91	1,028,677	266,480	.61
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ASH GROVE	421,183	1,474,141	3.50	1,599,942	0	0
<u>1991 TAX YEAR</u>						
CONTINENTAL LIME	302,851	\$3,091,262	\$10.21	\$1,317,514	\$1,773,748	\$5.86
HOLNAM INC.	487,576	1,331,082	2.73	1,427,803	0	0
ASARCO	35,212	296,932	8.43	269,938	26,994	.77
ASH GROVE	390,956	1,251,059	3.20	1,191,896	\$9,163	.15
<u>1990 TAX YEAR</u>						
CONTINENTAL LIME	300,563	\$3,035,494	\$10.10	\$1,292,532	\$1,742,962	\$5.80
MONTANA LIMESTONE CO.	204,368	854,429	4.18	764,136	90,293	.44
IDEAL BASIC IND.	508,950	865,215	1.70	1,515,512	0	0
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ASH GROVE	412,805	1,193,006	2.88	1,179,708	13,298	.03
<u>1989 TAX YEAR</u>						
CONTINENTAL LIME	317,439	\$2,764,522	\$8.70	\$1,263,354	\$1,501,168	\$4.73
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ASHGROVE	404,868	1,125,533	2.77	1,381,355	0	0
<u>1988 TAX YEAR</u>						
CONTINENTAL LIME	130,213	\$5,596,758	\$42.98	\$4,491,323	\$1,105,435	\$8.49
IDEAL BASIC IND.	393,882	429,371	1.09	616,344	0	0
ASARCO	36,657	298,965	8.15	217,786	27,179	.74
ASHGROVE	320,842	882,315	2.75	1,295,045	0	0



CONTINENTAL LIME INC.



CONTINENTAL PLANTS
TOWNSEND, MT.
DELTA, UT.
WENDOVER, NV.

COMPETITOR PLANTS
CHEMSTAR
BASIN
PETE LIEN

- CIL LIME PLANT
- COMPETITOR PLANT
- CUSTOMERS

EXHIBIT #4
DATE 2-4-93
#B-382

EXHIBIT 5
DATE 9/4/93
SB 382

BROADWATER COUNTY

Board of County Commissioners

406-266-3443
P. O. Box 489
TOWNSEND, MONTANA 59644



Mr. Chairman, Members of the Committee:

For the record, my name is Jim Hohn, I am a member of the Broadwater County Commission. Today, I rise in support of House Bill 382. This bill, sponsored by Representative Foster, will establish the value of limestone used for the production of quicklime for net proceeds property tax purposes. Continental Lime Incorporated is very valuable to Broadwater County with 56 employees and a gross annual payroll of \$1,943,000. Goods and services which were purchased locally last year totaled \$2,068,000. As you can see, they are very valuable to the financial stability of our county. They have been and we would like to see them continue to be a very reliable tax paying business in our county. This bill would be one way in which we can help a Montana business. Companies must be encouraged to establish and expand in this state rather than to leave. The existing high taxes are discouraging companies from moving here, and forcing companies to leave. Under the present regulations there is no uniformity in the tax. By simplifying the regulation there would be less confusion in determining the tax, and would each county would be able to more accurately forecast their revenue and reduce the fluctuation in the tax base.

For these reasons I urge you to give favorable consideration to House Bill 382.

6

EXHIBIT 6
DATE 3/4/93
HB 378

February 4, 1993

Rep. Bob Gilbert, Chairman
House Taxation Committee

Subject: HB378

Mr. Chairman and Committee Members:

I, Marian Olson, President of the Montana Assessors Association respectfully submit the following testimony:

From at least 1975 through December 31, 1990, the Montana Department of Revenue had used The "Green Guide" method of establishing the market value of heavy equipment used in the construction and mining industry. This method was the first or primary method for the purpose of property tax assessment.

During the approximately 15 years in which the "Green Guide" method was the primary method of determining market value of heavy equipment, few taxpayers filed tax appeals challenging the use of the "Green Guide" method to determine market value. When this method was challenged, it most often was upheld.

On January 4, 1991, a letter written by Mike Noble, Property Tax Supervisor of the Property Assessment Division, was mailed to each of the 56 county assessors, requiring them to use the "Acquired Cost" method of determining the market value of heavy equipment in lieu of the "Green Guide" method. When the Property Assessment Division was questioned about the change, we were told, "that is Director Adam's decision".

County Assessors objected to this decision, citing many purchases of heavy equipment are made at liquidation auctions, such as foreclosures and quitting business sales. These sales should not be used to determine market value. "Market Value" by definition requires that neither the buyer or the seller be compelled to buy or sell. By using the "Acquired Cost" method the same identical equipment located within an individual county would be assessed with various market values and resulting in a property tax assessment less than 100% market value. The mandate of 15-8-111, MCA requires all property be assessed at 100% of market value.

On May 8, 1991, county assessors and other local officials appeared at a formal administrative rule hearing to testify in opposition to the proposed rule change of using "Acquired Cost" as the primary method of tax assessment of heavy equipment. Only Director Adams appeared to testify in support of the proposed rule. Following the hearing, Cleo Anderson, hearings officer, received a large number of letters in support of the rules.

Page 2

HB378

Montana Assessors Association

The letters were almost identical. Director Adams had sent a format of a sample letter to various members of the industry asking for their support of the "Acquired Cost" method. The letters did not contain any facts or studies which would support the "Acquired Cost" method.

On May 31, 1991, a hearing on the administrative rule was held before the Revenue Oversight Committee. Again county assessors and other local officials testified against the rule, however the Committee did not take any action.

The formal notice to adopt ARM 42.21.131(change in the method for the tax assessment of heavy equipment) was published June 3, 1991. The effective date was made retroactive to January 1, 1991. The rule was adopted without any studies being conducted to determine:

- (1) whether the "Green Guide" method actually resulted in market values exceeding 100%;
- (2) whether the "Acquired Cost" method resulted in an above or below 100% actual value.
- (3) what % of heavy equipment was determined by the "Green Guide" method versus the "Acquired Cost"

June 4, 1991, a litigation case against ARM 42.21.131 was filed in the Sixteenth Judicial District Court as Rosebud County v. Montana Department of Revenue, No. DV91-77.

A public hearing was held on October 9, 1991 to consider the proposed amendments and adoption of ARM 42.21.131 for tax year 1992. Opposing written and oral comments were submitted from Phillips County, Rosebud County and Big Horn County as well as written testimony signed by 25 county assessors. Again Director Adams adopted the proposed administrative rule on October 21, 1991 with no further studies or the appointment of an advisory committee to examine the issue of whether the use of "Green Guides" yield the market value of heavy equipment.

At the present time county assessors are implementing the "Acquired Cost" method for the tax assessment of heavy equipment. We are requesting this method be changed to the use of the "Green Guide" method to facilitate equalization of taxation and a true market value for the specific heavy equipment listed within.

Therefore, the Montana Assessors Association recommends a "do pass" for HB378.



EXHIBIT 7
DATE 2/4/93
HB 378

FEBRUARY 4, 1993

HOUSE TAXATION COMMITTEE
CHAIRMAN REP. GILBERT
MEMBERS

Chairman Gilbert, and members of the taxation committee. My name is Jeanne Barnard and I am the Assessor of Phillips County. My testimony today is on the behalf of the Montana Assessors Association and the Phillips County Commissioners who have had a great deal of involvement with the Green Guide issue as one of the plaintiff/intervenor and respondents involved in the lawsuit. I regret the controversy over the personal property tax rules that resulted in litigation in the District Court of the Sixteen Judicial Court as Rosebud county v. Department of Revenue. In no way is my testimony directed at the Department of Revenue or its Administration. A copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER are attached to my testimony for further reference.

1. Pursuant to 15-8-111, MCA, the Department of Revenue is obligated to find the market value of all taxable heavy equipment in Montana for each tax year. Until 1991, the use of green guides was the primary method by which the market value was obtained for taxation. In 1991, through an administrative rule change, green guides were abandoned as the primary method of valuation and replaced by the method of acquired year; acquired cost. In its unfounded conclusion that green guides did not portray an adequate market value, please note that in ARM 42.21.131 that green guides are used as a "secondary" method of heavy equipment valuation.

2. Upon examination of ARM 42.21.131 it reveals that the depreciation schedules used to calculate and ascertain the appropriate depreciations are dependent on the green guide that are currently being used in the acquired year/acquired methodology.

3. We request the use of green guides as outlined in HB #378 as the primary method for determining the market value of heavy equipment verses the methodology of acquired year/acquired cost for the following reasons:

A) Each taxpayer will be taxed at a different depreciation rate and pay different taxes for the same piece of equipment depending on the year it was purchased.

B) Depending on the purchased price, taxpayers will be taxed and pay different taxes depending on the purchased price of the equipment.

HOUSE TAXATION
FEBRUARY 4, 1993
Page 2

C) The County tax base overall is a loser. Comparing the market values the overall taxable value is adversely affected and the loss of valuation will mean higher mills to residential; commercial and agricultural property owners.

Companies that benefit most from acquired year/acquired cost have already received a huge tax break from the 1989 Legislative Session when the tax rate on heavy equipment and coal and ore haulers was reduced from 16% to 9%, and from 11% to 9%.

If those tax rates were in place on the enclosed example, this company would have paid an additional \$71,462.50. We do recognize that HB 20 attempted to reimburse Counties for loss, however, any expansion such as we have had since 1989 is simply lost revenue to the County and a continued tax break for the companies.

Our concern is for the taxpayers. Should the acquired cost/acquired year methodology be affirmed and continued for heavy equipment, what would stop the precedent for spreading this to other personal property. I would rather a standard value for equal taxation. In the example provided only 27% of the equipment was valued out of the green guides, however, those values made up 85% of the total value listed. Referring to the example, please note on page 1 the last two columns to the right. This shows the difference in value as determined by green guide and the value obtained by using acquired year/acquired cost. Now please refer to page 2. The same 992C Wheel loader caterpillar which was acquired in 1987 shows the same value when valued out of the green guide but a different value when using acquired year/ acquired cost. We do not take into consideration purchase price when valuing vehicles or farm machinery, we use the value out of the NADA book for vehicles and the Farm green guide for farm machinery so every person paying taxes pays on the same market value, and should be so for heavy equipment as well.

EXHIBIT #7
DATE 2-4-93
HB-378

FEBRUARY 4, 1993
HOUSE TAXATION COMMITTEE
Page 3

I truly believe that acquired year/acquired cost has its merit as a creditable method to obtain a value, but it should not be used as the first method to determine market value. The first method should always be the most accurate; the most consistent; and equitable among taxpayers throughout the entire State of Montana, which would be using the Green Guides to value heavy Equipment.

I request a "do pass recommendation of bill #378".

Respectfully Submitted,
98
Jeanne L. Barnard
Phillips County Assessor

COUNTY COMMISSIONERS

EUGENE (GENE) COWAN
Loring, Montana

Carol Kienenberger
Dodson, Montana

WAYNE C. STAHL
Saco, Montana

Clerk and Recorder
Laurel N. Hines

Treasurer
JEAN MAVENCAMP

PHILLIPS COUNTY

EXHIBIT

79

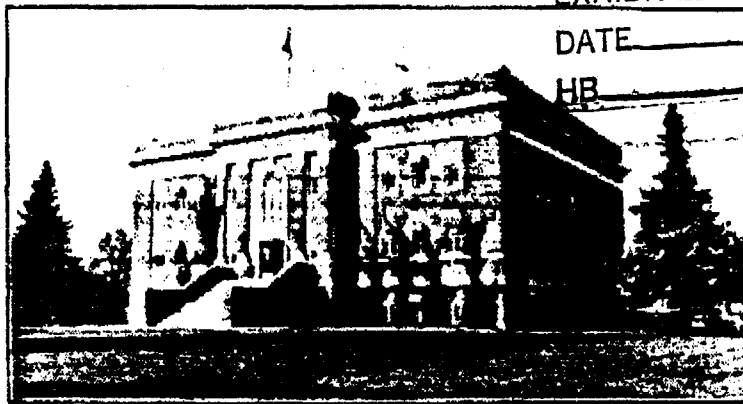
Assessor
JEANNE L. BARNARD

DATE

2/4/93

Sheriff - Coroner
GENE PEIGNEUX

HB

Clerk of Court
FRANCES WEBBSuperintendent of Schools
GARY A. BADENCounty Attorney
JOHN C. McKEONJustice of Peace
GAYLE STAHLDistrict Judge
LEONARD H. LANGEN
Glasgow, Montana

**Malta, Montana
59538**

FEBRUARY 1, 1993

HOUSE TAXATION COMMITTEE
ROOM 437
1993 LEGISLATURE
HOUSE BILL 378 TESTIMONY

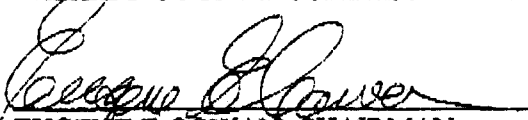
TO WHOM IT MAY CONCERN:

We support HB 378 which would, in part, establish the use of the Green Guide as a primary method for determining the value of heavy equipment, construction equipment, and mining equipment.

We request that HB 378 be put into the statutes.

Thank you,

PHILLIPS COUNTY COMMISSIONERS


EUGENE E. COWAN, CHAIRMAN


CAROL KIENENBERGER, MEMBER

WAYNE C STAHL, MEMBER

Page 1

[illegible]

Chairman

EXHIBIT 7c
DATE 9/4/93
HB 378

MONTANA SIXTEENTH JUDICIAL DISTRICT COURT, ROSEBUD COUNTY

ROSEBUD COUNTY and PHILLIPS
COUNTY, MONTANA, bodies
politic,

Plaintiffs,

vs.

THE DEPARTMENT OF REVENUE OF
THE STATE OF MONTANA, a body
politic,

Defendant.

No. DV 91-77

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER**

Before the court is Plaintiffs' Amended Complaint for Injunctive and declaratory relief from an administrative rule. A preliminary hearing was held on July , 1991, and trial was conducted before the Court on August 7, 1991. Depositions were filed after the trial pursuant to stipulation. The last deposition was filed August 19, 1991, and the matter was deemed submitted. From the testimony and other evidence presented, the court makes the following

FINDINGS OF FACT

1. From at least 1975 through December 31, 1990, the Montana Department of Revenue used the "Green Guide" method of establishing the market value of heavy equipment for purposes of property tax assessments as the first or primary method. Other methods, including the "acquired cost" method of determining valuation were used as a back-up methods of determining market value if the particular item of personal property could not be found in the Green Guide.¹

2. The "Green Guide" method of assessment utilized the "Green Guide" books which are a set of books nationally published which represent a nationwide average of sale prices of equipment in average working condition. The Green Guides include trended depreciation tables. The market values are regionalized to account for market variations. Montana's region also includes Idaho and Washington.²

3. During this period of at least 15 years in which the Green Guide method was the primary method of determining market value of heavy equipment, few taxpayers filed tax appeals challenging the use of the Green Guide method to determine market value. When the Green Guide method was challenged, it was usually upheld. Michael Nobel, Property Tax

¹Typically, Green Guide values cannot be found for older items.

²See Testimony of Jeannie Barnard, Phillips County Assessor.

Supervisor for the Department, testified that use of the Green Guide method does yield the market value of heavy equipment.³ Kenneth Morrison, administrator of the Property Assessment Division, testified that he knew that the Montana Contractor's Association had no objection to the continued use of the Green Guide method when the Director proposed the change to the Acquired Cost method.

4. The "Acquired Cost" method of assessment starts with the purchase price as reported by the taxpayer and then deducts "trended depreciation." The "trended depreciation" deducted under this method is obtained from the depreciation schedules contained in the Green Guides.

5. In April of 1990, Denis Adams, Director of the Montana Department of Revenue (Department), instigated discussions within the Department regarding the possibility of using the acquired cost method as the first or primary method of determining and relegating the Green Guide method to second priority. Under this scheme, the Green Guide method would only be used if the Department could not ascertain the acquired cost of a particular piece of equipment. Director Adams indicated he had talked to several contractors who told him they thought that the use of the Green Guides resulted in too high of a market value being placed on heavy equipment. No facts or studies were cited in support of this proposition prior to the implementation of the rule.

6. Although several discussions regarding the proposed change in methodology apparently occurred in the Department during 1990, Director Adams did not direct that any studies be done to determine:

- a. whether the Green Guide method actually resulted in market values which exceeded 100% of market value?
- b. whether the Acquired Cost method resulted in market values above or below 100% of actual market value?
- c. what percentage of pieces or value of heavy equipment was determined by the Green Guide method as opposed to Acquired Cost method.

In fact, no studies were commissioned or obtained regarding the proposed change until after Director Adams decided to make the change. No one was put in charge investigating or processing the proposed change in methodology.

7. On January 4, 1991, a letter authored by Michael Noble, the Property Tax Supervisor, was mailed to each of the 56 county tax assessors, requiring them to use the Acquired

³Deposition of Michael Nobel, dated August 5, 1991, p. 56.

DATE 2-14-93

HB-378

Cost method of determining the market value of heavy equipment in lieu of the Green Guide method, wherever possible. It is agreed that this letter was binding on the county assessors.

8. Although Director Adams denied "having anything to do" with sending out the January 4th letter to the county tax assessors, he did admit that prior to January 4, 1991, he directed that the change in heavy equipment valuation be made from using the Green Guide method primarily to using the acquired cost method primarily. Michael Noble testified the change was made because "[t]hat was the director's wish."⁴

9. Pursuant to such directive, the county assessors did in fact assess property using the Acquired Cost method as the primary method of determining market value which resulted in significant losses of market value, taxable value and revenue across the State of Montana, and including the two plaintiff counties.

10. The Green Guide method of determining market value of heavy equipment does, in fact, produce 100% market values. It is a proven and accepted method of doing so.⁵

11. No studies or facts have been cited demonstrating that the Acquired Cost method of determining market value produces 100% market values. To the contrary, it appears that the Acquired Cost method will often produce valuations lower than 100% of market value. Two things lead to this conclusion. First, many purchases of heavy equipment are made at auctions, such as foreclosures and quitting business sales. Although these sales may be "arms-length" as testified to by Department personnel, they will necessarily tend to yield lower values because the seller is often compelled to sell. This often leads to a buyer getting a real bargain. That is why buyers go to auction sales -- to buy something for less than what it is worth, to get a bargain. "Market value" by definition requires that neither buyer nor seller be compelled to buy or sell. Requiring the use of the Acquired Cost method for heavy equipment bought at "bargain prices" will necessarily result in property tax assessments lower than 100% market value. Thus, it should not be surprising that the Green Guide method would yield assessments "15% to 25% higher than auction prices."⁶

The second item of proof tending to indicate that Acquired Cost yields an assessment lower than 100% of market value, requires the application of simple logic. (1) Director Adams and Property Tax Supervisor Noble both agree that the Green Guide method yields 100% of market value.[@Cite depositions] (2) They now agree that use of the Acquired Cost method will result in assessments approximately 22% less than would be the case if using the Green Guide

⁴Deposition of Michael Noble, dated August 5, 1991, pp. 10-11.

⁵See Nobel deposition, dated August 5, 1991, p. _____.

⁶Although it should be noted that the Department used the "Quick Sale" values from the Green Guides, which may be expected to be lower than prices at regular, non-auction sales.

method. (3) Therefore, if the Green Guide method yields 100% and the Acquired Cost method yields 22% less, then the Acquired Cost method must yield an assessment at 22% less than 100% of market value, i.e., 78% of market value. Of course, this is in direct contravention of the mandate of 15-8-111, MCA, which requires the Department to assess all such property at 100% of market value and prohibits the Department from adopting any method which results in a lower assessment.

12. Director Adams testified that the principal reason to adopt the change was that it would make it easier to computerize the operations of the tax assessment division. He testified further that either the Green Guide method or the Acquired Cost method should yield market value. His attitude was that it should not make a difference. It should be "no big deal."⁷

13. Director Adams testified that at the time he directed the method be changed he did not have any idea of the fiscal impact the adoption of the change in methodology would have on the other governmental agencies and subdivisions.⁸

14. After January 4, 1991, Michael Nobel did an estimate of fiscal impact as best he could because he thought it might be important, not because anyone told him to do it. He estimated the fiscal impact to be \$811,000 to \$853,000 annually, although Director Adams later admitted the Department did not have any empirical evidence to substantiate those figures.⁹

15. In essence, Director Adams, unilaterally decided to streamline his property assessment operations without any genuine consideration of the requirement to assess at 100% market value and at the expense of other units of government to the tune of over \$800,000 per year.

16. Following actual implementation of the rule, and following the actual hearing described below, Director Adams requested staff persons in the Department to work up some numbers so that he would have something to present to the Legislative Revenue Oversight Committee.

17. After receiving objections regarding the implementation of an amended "rule" by administrative fiat in 1991, the Department initiated the formal rule-making process. This process culminated in a public hearing on May 8, 1991.¹⁰ At the hearing, numerous county officials and other state officials appeared and testified in opposition to proposed rule change.

⁷Deposition of Denis Adams, dated August 5, 1991, pp. 67-68 and p. 112.

⁸Deposition of Denis Adams, dated August 5, 1991, p. 71.

⁹Deposition of Denis Adams, dated August 5, 1991, p. 35.

¹⁰This was just following the close of the 1991 legislative session. There is no apparent reason why the rulemaking process could not have been completed prior to the legislative session, or for that matter, prior to the "target date" of the rule, January 1, 1991.

Only Director Adams appeared to testify in support of the proposed rule change. Much of the opposition testimony involved concerns regarding the fiscal impact of the proposed amendment. However, opponents also questioned the State's ability to audit the "Acquired Costs" certified by the owners. It should be noted that even though the Department had put the amended rule into effect as of January 1st, as of the August hearing date -- 8 months later -- the Department still had no auditors in place to audit taxpayer heavy equipment costs,¹¹ nor did he know whether the county assessors were staffed to conduct such audits. At trial, Jeannie Barnard, Phillips County Assessor, testified she audited heavy equipment on an annual basis. She physically goes out and inspects the equipment, but she has never tried to delve into the paperwork. The counties' concern regarding verification appears significant and genuine as it would be much harder to hide or alter the actual piece of heavy equipment and much easier to alter or misplace documents.

18. Following the hearing, the Department received a large number of letters in support of the amendment from contractors and mining companies doing business in Montana. The letters were almost all identical. They followed the format of a sample letter sent by Director Adams to various members of the industry, expressing the opinion of the senders that in their opinion the Acquired Cost method was a better method to determine market value. Director Adams states he wrote the sample letter of support in response to several requests from contractors around the state. The letters did not contain any facts or studies which would support the expressed opinion.

19. Also following the May 8th hearing, but before the Revenue Oversight Committee meeting on May 31st, Director Adams left directions with Judy Rippingale that he "wanted to know just some of the numbers." It was in this time period that the Department came up with figures that approximately 70% of the property was already being valued using the Acquired Cost method. The Department cites this as a reason for adoption of the rule, but fails to report that 52% of the value of heavy equipment was assessed using the Green Guides, and that only the older, less valuable items which are no longer carried on the Green Guides were valued using the Acquired Cost method. It is also noteworthy that at the time Director Adams decided to implement the change in methodology he had none of the information and did not seem to care whether he had any of the information.

20. On May 31, a hearing was held before the Revenue Oversight Committee of the Montana Legislature. The Revenue Oversight Committee did not take any action regarding the subject amendment.

¹¹Deposition of Denis Adams, dated August 5, 1991, p. 116.

21. On June 3, 1991, formal notice of Director Adams' adoption of the amendment to ARM 46.21.131 (change in methodology for assessment of heavy equipment) was published. The effective date of the amendment was made retroactive to January 1, 1991. He adopted the amendment, even though he had no empirical data to support the Department's estimates and his feelings. He only had a few vague anecdotal reports. He adopted the amendment because he felt it would be easier to computerize.

From the foregoing Findings of Fact, the Court makes the following

CONCLUSIONS OF LAW

22. In Montana, county tax assessors are required to follow the legally adopted rules and directives of the Montana Department of Revenue.

23. The Montana Department of Revenue is required to assess all heavy equipment at 100% of its market value. 15-8-111(), MCA. The Department is prohibited from assessing such property lower than 100% market value. 15-8-111(), MCA.

24. "Market value" is defined by 15-8-111(2) as:

"... the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts."

25. 2-4-305(6) provides:

"Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, no rule adopted is valid or effective unless:

(a) consistent and not in conflict with the statute; and

(b) reasonably necessary to effectuate the purpose of the statute.

Such reasonable necessity must be demonstrated in the agency's notice of proposed rulemaking and in the written and oral data, views, comments, or testimony submitted by the public or the agency and considered by the agency.

26. Since Director Adams and Property Supervisor Noble both agree that the Green Guide method yields market value and that the Acquired Cost method yields an assessment which is 22% less, the Acquired Cost method yields an assessment lower than 100% market value, contrary to 15-8-111(3), MCA. It is also in conflict with the statute and not reasonably necessary to effectuate the purpose of the statute. The amendment is therefore invalid.

27. Alternatively, the Court also determines that, under the circumstances set forth above, the formal rulemaking process which was engaged in during 1991 was a sham and effectively denied the public, the legislature and the affected agencies of state government

meaningful participation in the process of government. The reasons given for adoption of the rule were mere after-thoughts and were themselves not substantiated by meaningful facts or studies.

See Paterson v. Dep. of Revenue (Mont. 1976) 553 P2d 798.

28. Musselshell County controls the question of attorney fees, in that an award of attorney fees is akin to an award of damages for one subdivision of state government against another branch of the same government. Therefore, the Court declines to award attorney fees to the plaintiff counties.

29. Since the Court has determined that the substance and procedure of the rulemaking is deficient and invalidates the new rule in question, the Court need not determine whether the plaintiff counties have "vested rights" regarding the old rule which would prohibit retroactive application of the new rule.

30. It should be noted that this Court by previous order has held that the plaintiff counties have a legal right to sue the defendant Department of Revenue. The jurisdictional findings and conclusions of that Order are incorporated in this Order by this reference. The State argues that the relationship of the State Department of Revenue to the Counties is akin to that of parent and child, and therefore the Counties should not exercise their legal standing to sue. Even assuming the analogy applies to the relationship of the Department to the Counties, the Court notes that even children can "sue" their parents (with the assistance of the Courts) when the parent abuses the children. The Court holds that this is an appropriate case for the "parent" department to be sued.

ORDER

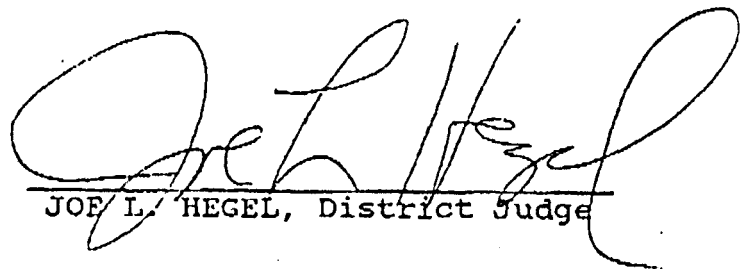
THEREFORE, IT IS ORDERED:

- A. The administrative "rule" implemented by the letter of Michael Nobel, dated January 4, 1991, is invalid as not having complied with the Montana Administrative Procedures Act.
- B. The amendment to ARM 42.21.131, adopted June 14, 1991, is declared invalid for the reasons stated in the foregoing Conclusions of Law.

- C. The Montana Department of Revenue is enjoined from enforcing said invalid rules as to taxpayers within the plaintiff counties.
- D. The Montana Department of Revenue shall issue revised property tax assessments pursuant to 15-8-601, MCA, for all affected taxpayers in Rosebud County and Phillips County. And, if the Montana Department of Revenue determines that limiting the effect of this ruling to the two plaintiff counties would result in a violation of equal protection as to the other 54 counties, then the Montana Department of Revenue shall issue revised property tax assessments for affected taxpayers in all Montana counties, and the Court will modify this Order accordingly.
- E. Each party shall pay their own attorney fees. Plaintiffs are granted their other costs per statute.
- F. Counsel for the Plaintiffs is directed to prepare, file and serve such other documents as may be appropriate to implement these findings, conclusions and order.

LET JUDGMENT ISSUE ACCORDINGLY.

DATED: December 16, 1991.


JOE L. HEGEL, District Judge

Attached is the copy of a memo received in my office from the DOR dated January 4, 1991. This memo instructs Assessors to the methodology of assessing heavy equipment.

The memo also instructs us to carefully review PPBA-18 in Section 3 of our 1991 Assessment Manual. This page, the heavy equipment schedule, states from January 1, 1991 through December 31, 1991 we were to determine the market value for heavy equipment in sequential order.

Moreover the memo dated January 4, 1991 did instruct us to call Helena or the area Clerk in order to find a value if the acquired year acquired cost could not be established by the taxpayer (which implies Green Guides are purchased by the Department of Revenue and distributed to some offices.) This method is workable if the equipment is not being handled by the clerk and taxpayer at the counter in the county offices, which in our office seems to be the case a great share of the time. In some instances when the taxpayer realizes that the method acquired cost is the first option, they are able to come forth with an acquired cost in order to fulfill this requirement. I believe it is worth noting that until 1992 the Department of Revenue did not give any kind of direction as to verification of acquired cost acquired year and then only to state at the bottom of the schedule a Notation saying:

The department may require proof from the taxpayer to certify the accuracy of the acquired cost. If the taxpayer fails to provide proof upon request of the Department, the valuation of the equipment will be based on the procedures herein listed.

In all fairness I must take exception to this Notation. I feel this was a move on the Department of Revenue's part to put the burden on the local assessing clerk as to when they may or should require proof and of whom. The individual clerk must judge who to question as to the accuracy of their value.

My reason for testifying here today is to help establish the most accurate, consistent, and equitable way to derive at a value for heavy equipment throughout Montana.

State of Montana

Stan Stephens, Governor



Department of Revenue

Denis Adams, Director

Property Assessment Division

January 4, 1991

TO: County Assessors and Staff
FROM: Michael C. Noble *MN*
Appraisal/Assessment Bureau
Property Assessment Division
RE: Valuation of Heavy Equipment

RECEIVED

JAN 27 1991

ROSEBUD COUNTY ASSESSOR

As most of you already know, there has been a major change in the valuation of heavy equipment. The use of the Green Guides to determine value is now the second method of valuation rather than the first. The first method is the acquired cost/acquired year. Please carefully review PPBA-18 in Section 3 of your 1991 Assessment Manual.

If you need a Green Guide value contact Helena or your area clerk. If you have further questions on valuing heavy equipment, please give me a call.

MN:kc
mn76g

1991

HEAVY EQUIPMENT SCHEDULE

PPBA-78 8
EXHIBIT 11-8
DATE 2-4-93
11 HB-378

This schedule is to be used from January 1, 1991 through December 31, 1991 and supersedes all previous schedules.

To determine the market value for heavy equipment, use the methods listed below. The methods should be used in a sequential order (1 before 2, 2 before 3, and 3 before 4).

- (1) Apply the percentages on the depreciation schedule to the acquired cost. The percentage to be used will be determined by the year acquired.
- (2) Use the "quick sale" value as shown in the current Green Guide.
- (3) Use the new cost factor chart to trend down the "quick sale" value of equipment whose same make and model are listed in the current Green Guide but whose year is no longer listed.
- (4) Apply the percentages listed on the depreciation schedule to the original F.O.B. (factory price) as determined through old guidebooks. The percentage to be used will be determined by the year the heavy equipment was new.
- (5) Apply the percentage on the depreciation schedule to the trended F.O.B. (factory price) as determined by the new cost factor chart for heavy equipment. The percentage to be used will be determined by the year the heavy equipment was new.

Heavy equipment includes but is not limited to the following: wheel loaders, crawler loaders, wheel tractors, crawler tractors, motor scrapers, motor graders, crawler cranes, truck cranes, hydraulic excavators, hydraulic cranes, mechanical excavators, air equipment, asphalt finishers, crushing equipment, ditchers, log skidders, pumps, rollers, wheel excavators, tower cranes, buckets, pile driving equipment, belt loaders, concrete equipment, sweepers and brooms, motors and generators, road maintenance equipment, water well drilling equipment, draglines, skid steer loaders, backhoes, lift trucks, coal and ore haulers, off-highway hauling units, mobile asphalt equipment and all other miscellaneous mobile heavy equipment.

HEAVY EQUIPMENT SCHEDULE

This schedule is to be used from January 1, 1992, through December 31, 1992, and supersedes all previous schedules.

To determine the market value for heavy equipment, use the methods listed below. The methods should be used in a sequential order (1 before 2, 2 before 3, and 3 before 4).

- (1) Apply the percentages on the depreciation schedule to the acquired cost. The percentage to be used will be determined by the year acquired.
- (2) Use the "quick sale" value as shown in the current Green Guide.
- (3) Use the new cost factor chart to trend down the "quick sale" value of equipment whose same make and model are listed in the current Green Guide but whose year is no longer listed.
- (4) Apply the percentages listed on the depreciation schedule to the original F.O.B. (factory price) as determined through old guidebooks. The percentage to be used will be determined by the year the heavy equipment was new.
- (5) Apply the percentage on the depreciation schedule to the trended F.O.B. (factory price) as determined by the New Cost Factor Chart (PPBA-19) for heavy equipment. The percentage to be used will be determined by the year the heavy equipment was new.

Heavy equipment includes but is not limited to the following: wheel loaders, crawler loaders, wheel tractors, crawler tractors, motor scrapers, motor graders, crawler cranes, truck cranes, hydraulic excavators, hydraulic cranes, mechanical excavators, air equipment, asphalt finishers, crushing equipment, ditchers, log skidders, pumps, rollers, wheel excavators, tower cranes, buckets, pile driving equipment, belt loaders, concrete equipment, sweepers and brooms, motors and generators, road maintenance equipment, water well drilling equipment, draglines, skid steer loaders, backhoes, lift trucks, coal and ore haulers, off-highway hauling units, mobile asphalt equipment and all other miscellaneous mobile heavy equipment.

NOTE: The Department may require proof from the taxpayer to certify the accuracy of the acquired cost. If the taxpayer fails to provide proof upon request of the Department, the valuation of the equipment will be based on the procedures herein listed.

EXHIBIT # 8
DATE 2-4-93
HB-378

Summary of the heavy equipment litigation.

Until 1991, the Department of Revenue (DOR) relied on the values of heavy equipment set forth in the "Green Guides" to ascertain the market value of the property pursuant to MCA 15-8-111. That assessment practice was based upon annual policy statements which were issued to Montana County Assessors and upon an administrative rule which had been adopted pursuant to the Montana Administrative Procedure Act (MAPA).

During January 1991, the DOR abandoned its reliance on the "Green Guides" as the primary method by which it ascertained the market value of heavy equipment, for tax purposes. It issued a new policy statement to Montana County Assessors, compelling them to use the "acquired cost" as primary method, in order to ascertain the market value of heavy equipment. During June 1991, the DOR amended its administrative rule to reflect that the market value of heavy equipment would be determined through the "acquired cost" method of assessing rather than through reliance upon the "Green Guides".

During June 1991, Rosebud County challenged the change by filing a lawsuit in the District Court of the Sixteenth Judicial District. We sought both to stop the new DOR policy - and asked the District Court to declare that the change was unlawful.

A trial took place before the District Court during August 1991. Phillips County intervened to support the position of Rosebud County. During December 1991, the District Court issued an Order in which it found the new format and the manner in which it was implemented, to be unlawful. It found that the use of the "acquired cost" method did not yield the market value of heavy equipment, and that it was therefore, inconsistent with the requirement of MCA 15-8-11. It also found that the DOR had not complied with the MAPA, when it implemented its new heavy equipment "acquired cost" method, and declared the new policy invalid on that ground.

The Court ordered the DOR to change the heavy equipment tax assessments, by using the "Green Guides" as primary method rather than the "acquired cost" method. The DOR was granted a stay of the Court's order, so that it could appeal to the Montana Supreme Court. For that reason, the heavy equipment tax assessments have not been revised according to the Court's Order.

Given the financial condition our State and Counties are in, I firmly believe we must be dedicated to equality in value throughout government which at this point in time is to enact this legislation that will give us the ability to use the Green Guides as primary method and as the appropriate official guide.

In closing, I strongly urge this committee to recommend a do pass on House Bill 278.

Donna Kennedy

BIG HORN COUNTY

HARDIN, MONTANA 59034



BOARD OF COMMISSIONERS
DRAWER H
(406) 665-3520

February 2, 1993

Rep. Bob Gilbert, Chairman
House Taxation Committee
Capitol Station
Helena, MT 59620

RE: House Bill 378

Dear Rep. Gilbert:

We have reviewed prior testimony with regard to the Department of Revenue's policy change and instruction to Assessors to determine heavy equipment values by the acquired cost/acquired year method. The implementation of said policy resulted in drastic reductions of market values which severely effected local governments and school districts.

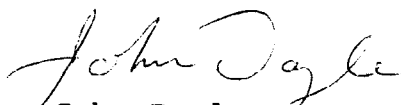
With local governments still operating under the restraints of CI 105, we cannot afford any additional loss to our tax base.


With that in mind, Big Horn County would like to express our support for the passage of HB 378, which will assure the use of quick sale values from the official "Green Guide" published by Dataquest for the value of heavy equipment, in an effort to maintain the tax base for all local governments.


Your consideration of our request and concerns will be most appreciated.

Very truly yours,

BOARD OF COMMISSIONERS
BIG HORN COUNTY, MONTANA


John Doyle
Chairman


Robert Koyama
Member


Debra Johnson
Member

February 4, 1993

HOUSE TAXATION COMMITTEE
CHAIRMAN REP. GILBERT
MEMBERS

Chairman Gilbert, and members of the taxation committee. My name is Sharon Harlin and I am the Assessor of Big Horn County. My testimony today is on behalf of Rick Hartz, Beaverhead County Assessor, who could not be here today due to an illness in his immediate family.

The Green Guide by Data Quest is a nationally recognized appraisal guide for the valuation of heavy equipment. For years it was the number 1 method of valuing heavy equipment in Montana for tax purposes. That was changed in 1991 through the administrative rule process.

In all the years that the Green Guide was used, there were very few tax appeals by the owners of heavy equipment. In fact, in a letter to the former Director of the Dept. of Revenue, Denis Adams, the Sec./Manager of the Montana Contractor's Association at that time, Ken Dunham, stated that our valuation procedures were satisfactory but the tax was too high. This as we all know is a result of the taxable value rates and local mill levies.

The language in 15-8-111(2) (c), MCA suggests that the D.O.R. shall prepare valuation schedules for the appraisal of various types of personal property when no appraisal guide exists. The Green Guides do exist.

I believe one of the primary purposes of using national appraisal guides is to address the issues of equity and statewide uniformity in assessing and valuing like property in a like manner. In other words, that a 1985 D-8 Cat, whether it be in Eureka or Ekalaka will have a similar value. A good example of this already exists in our Motor Vehicle licensing process with automobile and light trucks, as well as the other guide books used to value tractors, combine values, and other types of farm machinery.

Using purchase price and then depreciating from the year purchased is a "last resort" method used in the valuation of other types of personal property because of the inherent flaws in the process. Was there a trade-in involved? Was the seller compelled to sell? These questions and many more like them make this valuation method suspect if our goals include fairness and equity to taxpayers across the State.

HOUSE TAXATION COMMITTEE
FEBRUARY 4, 1993
Page 2

It is true that we are forced to use this method when valuing other types of personal property such as business equipment and office machinery. But that is because no national guide book exist for these types of property.

One of the reasons I believe the D.C.R. pushed the elimination of the Green Guide in favor of the current valuation method was the on-set of the computerization of personal property in the Assessor's offices. Having built in depreciation tables that automatically value property by its purchase price and year is a much faster method than looking up values in guide books and manuals. I question whether this should take a precedent over valuing and taxing property statewide in an equitable manner.

The Green Guide is used by our neighbors to the west in Idaho. In fact, most Idaho counties are using 60-100% of the Green Guide average resale value to arrive at market value.

For these reasons, I recommend a do pass on House Bill 378

EXHIBIT. 11
DATE 2/4/93
HB 328

February 4, 1993

HOUSE TAXATION COMMITTEE
CHAIRMAN REP. BOB GILBERT
COMMITTEE MEMBERS

For the record, my name is Don Bailey. I am a Rosebud County Commissioner and I rise in support of HB 378.

You have heard much technical testimony from Assessors and others so I will try to avoid redundancy.

I first became aware of this situation when Rosebud County Assessor, Donna Kennedy, advised me of her receipt of a memo from Mike Noble, of the Department of Revenue, stating that Assessors were to value heavy equipment on the acquired year/acquired cost basis. A quick look at the potential impact on the tax base in Rosebud County, where we have a significant amount of heavy equipment in the coal mines, told me it could be significant. Later calculations showed a revenue loss of \$800,000 to \$1,000,000 to all counties in the state per year. Further investigation revealed that Administrative Rule 42.21.131 had been implemented in violation of the Administrative Procedures Act. The rule was implemented on January 4, 1991. The hearing was held on May 8, 1991.

Rosebud County further pursued this issue. We participated in several hearings and appeared before the Revenue Oversight Committee with our concerns. Seeing no satisfactory relief for the issue, Rosebud County filed suit in District Court, in Rosebud County, on June 4, 1991.

On December 16, 1991, Judge Hegel upheld the position of Rosebud County. The Department of Revenue has appealed the decision to the Supreme Court. Our purpose here today is to resolve this issue with appropriate legislation so the issue can be laid to rest.

If we accomplish this, Rosebud County would attempt to negotiate a settlement to the law-suit which may spare the Department of Revenue the task of refiguring the valuations on all heavy equipment for the past two years. Otherwise, supplementals would have to be sent out and owners of heavy equipment in the state will have to pay nearly \$2,000,000 in back taxes.

This unfair tax-break afforded heavy equipment owners has been shifted to all other taxpayers in the state. I have attached several documents to my testimony that should be of interest to the committee.

I would appeal to the committee members sense of responsibility and fairness to pass HB 378.

Thank you.

Respectfully submitted,

Don Bailey
Rosebud County Commissioner



**Montana Contractors'
Association, Inc.**

1717 11th Avenue
Post Office Box 4519
Helena, Montana 59604
Telephone (406) 442-4162 FAX (406) 449-3199

COPY

RECEIVED

APR 05 1990

DIRECTOR'S OFFICE
DEPT. OF REVENUE
KEN DUNHAM, Secretary - Manager

April 4, 1990

Mr. Dennis Adams
Director
Montana Department of Revenue
State Capitol
Helena MT 59620


Dear Dennis:

Recently you asked me if the contractors had any better way than the "Green Book" to make valuations on equipment. I've heard back from several of them and everyone seems to be pretty well satisfied with that source.

I did hear back from several contractors expressing concern over any equipment taxation, saying that it discourages the establishment and expansion of any business. That's certainly not surprise in attitude to us, I'm sure.

We do appreciate the concern you have for the construction industry in Montana.

Sincerely,


KEN DUNHAM
Secretary/Manager

RECEIVED

APR 11 1990

DEPARTMENT OF REVENUE
PROPERTY ASSESSMENT DIVISION

**PLAINTIFF'S
EXHIBIT**

6-3-91
Mr. Dunham:
Here is the memo I
referred in my testimony. I
have not seen the letter, but Mr. Morrison
makes mention of it. Bill Hartney

EXHIBIT # 11
DATE 2-4-93
HB-378

RECEIVED
OCT 03 1991
BIG HORN COUNTY ASSESSOR

April 22, 1990

To: Judy Rippingale, Deputy Director
Tax Policy

From: Ken Morrison, Administrator
Property Assessment Division

Subject: Equipment Valuation Procedures

We are continuing to evaluate our procedures. The following is an update of our progress.

I'm providing our analysis of the procedures used in Georgia. These were referred to by Ben Havdahl, Executive Vice President of the Montana Motor Carriers Association, in his letter to Denis. In summary, the "new" procedures adopted in Georgia still produce a higher value than those we are using.

Ken Dunham, Secretary/Manager of the Montana Contractors' Association, in a letter to Denis indicated that our valuation procedures are satisfactory, but the tax is too high. This is caused by a high taxable value rate, which we are proposing legislation to reduce, and the county mill levies.

I will be contacting the mining industry to get their thoughts on our procedures.

We are preparing a suggestion for proposed legislation that will require the Department to use a percent of the average wholesale value found in the national appraisal guides if it can be determined that Montana values are less than the national average.

attachments

DATE 1/7/93
HB 378

H.R. 378 - TAXATION OF HEAVY EQUIPMENT
TESTIMONY BEFORE HOUSE TAXATION COMMITTEE
February 4, 1993

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE. FOR THE RECORD MY NAME IS DENIS ADAMS. AS ONE WHO HAS BEEN CLOSELY INVOLVED WITH THIS ISSUE FOR THE PAST SEVERAL YEARS, I WANT TO PROVIDE YOU WITH SOME BACKGROUND MATERIAL FOR THE REASONS FOR CHANGING FROM THE GREEN GUIDE TO ACQUIRED COST AND WHY IT WOULD BE A REAL MISTAKE FOR YOU TO PASS THIS BILL AND REQUIRE THE USE OF THE GREEN GUIDE AS A STANDARD TO VALUE HEAVY EQUIPMENT. THE GREEN GUIDE IS NOT A SMALL MANUAL SUCH AS THE AUTOMOBILE BLUE BOOK OR THE AGRICULTURAL IMPLEMENT GUIDE. THE GREEN GUIDE IS A MULTI-VOLUME SET THAT TAKES UP TWO OR THREE FEET OF SPACE.

THE REASONS FOR NOT USING THE GREEN GUIDES HAVE TO DO WITH THREE FACTORS - EFFICIENCY, FISCAL MANAGEMENT AND TAX FAIRNESS.

EFFICIENCY

WHEN I TOOK OVER AS DIRECTOR OF THE DEPARTMENT OF REVENUE, ONE OF MY GOALS WAS TO MAKE SURE THAT THE DEPARTMENT WAS BEING OPERATED AS EFFICIENTLY AND EFFECTIVELY AS POSSIBLE. ONE OF THE FIRST AREAS I IDENTIFIED FOR IMPROVEMENT WAS IN THE AREA OF PERSONAL PROPERTY TAXES. MY GOAL WAS TO BRING THIS SYSTEM INTO THE 20TH CENTURY. IT WAS A MANUALLY RUN SYSTEM UNDER WHICH THE TAXPAYER PREPARED A LISTING OF PROPERTY EACH YEAR AND THEN THE ASSESSORS WOULD SPEND HOURS WITH A CALCULATOR DETERMINING THE TAXABLE VALUE FOR EACH PIECE OF EQUIPMENT. ONE OF THE ROAD BLOCKS TO COMPUTERIZING THIS SYSTEM INVOLVED THE USE OF THE GREEN GUIDES IN DETERMINING THE ASSESSED VALUE OF HEAVY EQUIPMENT. THE GREEN GUIDES CANNOT BE COMPUTERIZED. HOWEVER, THIS MANUAL SYSTEM PROVIDED A LOT OF JOB SECURITY FOR THE COUNTY ASSESSORS. LAST YEAR I FINALLY GOT DEVELOPED A COMPUTERIZED SYSTEM FOR VALUING ALL PERSONAL PROPERTY OR BUSINESS EQUIPMENT. A NUMBER OF ASSESSORS RESISTED THIS IMPROVEMENT AND NOT ALL THE COUNTIES WILL BE UP AND RUNNING IN 1993. IF THE LEGISLATURE ADOPTS THIS BILL, IT WILL ROLL BACK THE EFFICIENCIES GAINED AND REQUIRE MORE MANUAL EFFORT AND MORE HOURS FOR THE ASSESSORS TO VALUE PERSONAL PROPERTY.

FISCAL MANAGEMENT

WHY SHOULD THE STATE BE CONCERNED ABOUT THIS ISSUE? FOR THE BENEFIT OF THE NEW LEGISLATORS, THE STATE PAYS THE COST OF THE COUNTY ASSESSORS OFFICES. THE STATE PAYS FOR 100% OF THE STAFF COSTS AND BETWEEN 60-70% OF THE COSTS OF THE ELECTED ASSESSOR AND DEPUTY. DOING THINGS MORE EFFICIENTLY AND ECONOMICALLY SAVES THE STATE MONEY. THE FIRST SAVINGS TO THE STATE IS ELIMINATING THE COST OF PURCHASING THE GREEN GUIDES AT \$1,000 A SET OR OVER \$30,000 A YEAR, IF A SET IS PURCHASED FOR EACH COUNTY. THE SECOND SAVINGS TO THE STATE RESULTS FROM DOING THE SAME AMOUNT OF WORK IN FEWER HOURS IF YOU ARE ABLE TO USE A COMPUTERIZED SYSTEM. THIS SAVINGS CAN BE GENERATED IN ONE OF TWO WAYS: 1. THE WORK CAN

BE DONE WITH FEWER EMPLOYEES SO THE STATE CAN REDUCE JOBS OR 2. IF THE CURRENT NUMBER OF EMPLOYEES ARE RETAINED, THE ASSESSORS STAFF CAN CORRECT ITS WEAKEST AREA WHICH IS IDENTIFYING UNREPORTED PERSONAL PROPERTY. IT IS ESTIMATED THAT UP TO 35% OF PERSONAL PROPERTY IS NEVER REPORTED FOR TAX PURPOSES. WITH THE ADDITIONAL TIME, THE ASSESSORS CAN, WITHOUT ANY ADDITIONAL PERSONNEL, GET OUT INTO THE FIELD AND LOCATE THIS UNREPORTED PROPERTY. THIS WILL INCREASE THE TAX BASE OF THE COUNTY AND, I AM SURE, WILL RESULT IN MORE TAX DOLLARS WITHOUT HAVING TO ARBITRARILY INCREASE THE TAXES ON ANY PARTICULAR GROUP OF TAXPAYERS. IDENTIFYING UNREPORTED PERSONAL PROPERTY BY THE ASSESSORS IS BASICALLY NONEXISTENT. AS I RECALL, ONLY ONE COUNTY ASSESSORS OFFICE, AND THAT COUNTY IS TOTALLY UNDER THE CONTROL OF THE DEPARTMENT OF REVENUE, HAS A DECENT AUDIT PROGRAM FOR IDENTIFYING UNREPORTED PERSONAL PROPERTY.

TAX FAIRNESS:

THE FIRST PARAGRAPH OF H.B. 378 STATES THAT ALL TAXABLE PROPERTY MUST BE ASSESSED AT 100% OF ITS MARKET VALUE EXCEPT AS OTHERWISE PROVIDED. PARAGRAPH 2 (A) STATES THAT "MARKET VALUE IS THE VALUE AT WHICH PROPERTY WOULD CHANGE HANDS BETWEEN A WILLING BUYER AND A WILLING SELLER..." THAT DEFINITION IS THE SAME AS ACQUIRED COST. WHAT DID THE TAXPAYER PAY FOR THE PIECE OF EQUIPMENT. PARAGRAPH 3 (A) PROVIDES LIMITED EXCEPTIONS TO THE MARKET VALUE STANDARD AND THIS BILL ADDS ONE MORE EXCEPTION. THE LEGISLATURE STRENGTHENED THE MARKET VALUE STANDARD IN THE 1991 SESSION AND PROVIDED TAXPAYERS WITH APPEAL OPTIONS IF THE PROPERTY WAS VALUED IN EXCESS OF MARKET VALUE.

THERE ARE 2 MAIN REASONS WHY THE GREEN GUIDE DOES NOT REFLECT MARKET VALUE OF HEAVY EQUIPMENT IN MONTANA. THE REASONS ARE 1. THE GREEN GUIDE REPRESENTS SALES ON A NATIONWIDE BASIS, NOT THE MONTANA MARKET. I CONTACTED THE PUBLISHERS OF THE GREEN GUIDE AND INQUIRED AS TO THE NUMBER OF SALES IN MONTANA IN THEIR BASE. THEY STATED THAT THE WAY THE DATA WAS COMPILED THAT THEY COULDN'T TELL IF ANY MONTANA SALES WERE IN THE BASE. I KNEW THAT TO BE THE CASE SINCE I FOLLOWED HEAVY EQUIPMENT SALES VERY CLOSELY FOR SEVERAL YEARS AND I KNEW THAT MANY ITEMS HAD NO MONTANA SALES DURING THE YEAR. ALSO, I HAVE HAD PROFESSIONAL EQUIPMENT APPRAISERS, WHO APPRAISE EQUIPMENT IN MONTANA, AND MONTANA EQUIPMENT DEALERS TELL ME THAT EQUIPMENT ALWAYS SELLS FOR LESS IN MONTANA THAN THE PRICES SHOWN IN THE GREEN GUIDE. THE SECOND REASON THAT THE VALUES DO NOT REFLECT THE MONTANA MARKET IS BECAUSE THE PRICES ARE OFTEN OUTDATED BY THE TIME THEY ARE USED BY THE ASSESSORS. THE SECTIONS OF THE GREEN GUIDES ARE UPDATED AT VARIOUS TIMES OF THE YEAR. AS AN EXAMPLE, THE SECTION THAT IS UPDATED IN MARCH 1992 HAS SALES GOING BACK TO MARCH 1991, AND THESE PRICES ARE USED BY THE ASSESSORS IN 1993, ALMOST 2 YEARS LATER. USED EQUIPMENT, LIKE USED AUTOMOBILES, DEPRECIATES IN VALUE.

A STUDY PERFORMED BY THE DEPARTMENT OF REVENUE IN 1991 SHOWED THAT OVER 70 PERCENT OF THE EQUIPMENT PIECES WERE ASSESSED UNDER THE ACQUIRED COST METHOD. BY DROPPING THE GREEN GUIDES IN 1991,

SECTION #12
DATE 2-4-93

HB-378

THIS PERCENTAGE HAS INCREASED SIGNIFICANTLY. THE STUDY ALSO SHOWED, THAT ON AVERAGE, THE GREEN GUIDES VALUED EQUIPMENT 22 PERCENT HIGHER THAN THE ACQUIRED COST.

THERE IS A LOT OF HEAVY EQUIPMENT THAT IS NOT LISTED IN THE GREEN GUIDES. ITEMS NOT LISTED IN THE GREEN GUIDES INCLUDE: BLASTHOLE DRILLS, CUSTOM DRAGLINES, CUSTOM LOADERS, MANY OFFROAD TRUCKS, PORTABLE CRUSHING PLANTS, PORTABLE ASPHALT PLANTS, PORTABLE CONCRETE PLANTS, CONVEYORS AND STACKERS, AND SCREENING PLANTS. PARAGRAPH 3 (B) (ii) OF THE BILL REQUIRES THAT THE DEPARTMENT PREPARE A SUPPLEMENTAL MANUAL FOR ALL THIS EQUIPMENT NOT LISTED IN THE OFFICIAL GUIDE.

THIS BILL IS A STEP BACK IN TIME. THE LEGISLATURE NEEDS TO MAKE SURE THAT THE STATE IS GETTING THE MOST FOR ITS MONEY BY EMPLOYEES PERFORMING DUTIES EFFICIENTLY AND EFFECTIVELY. THIS BILL IS A MAKE WORK BILL FOR THE COUNTY ASSESSORS AND PERMITS THEM TO CONTINUE TO AVOID THE UNPLEASANT TASK OF GETTING UNREPORTED PROPERTY ON THE TAX ROLLS. I RECOMMEND THAT THE COMMITTEE MAKE SHORT WORK OF THIS BILL.

MONTANA DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES'

TESTIMONY ON HB 388

ISSUES OF CONCERN:

- **PRIMACY FOR MONTANA POLLUTANT DISCHARGE ELIMINATION SYSTEM (MPDES) PERMIT PROGRAM**
- **IMPLEMENTATION OF THE MONTANA WATER QUALITY ACT'S NONDEGRADATION POLICY**
- **ENVIRONMENTALLY RESPONSIBLE GROWTH AND DEVELOPMENT**
- **PROTECTION OF MONTANA'S SURFACE AND GROUND WATER**
- **ALTERNATIVES**

I. PRIMACY FOR THE MPDES PERMIT PROGRAM

- A. MONTANA'S WATER QUALITY ACT REQUIRES ALL WHO DISCHARGE WASTES TO STATE WATERS (GROUND WATER OR SURFACE WATER) TO HAVE A PERMIT FROM THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES.**

1. THE MONTANA GROUND WATER POLLUTION CONTROL SYSTEM (MGWPCS)

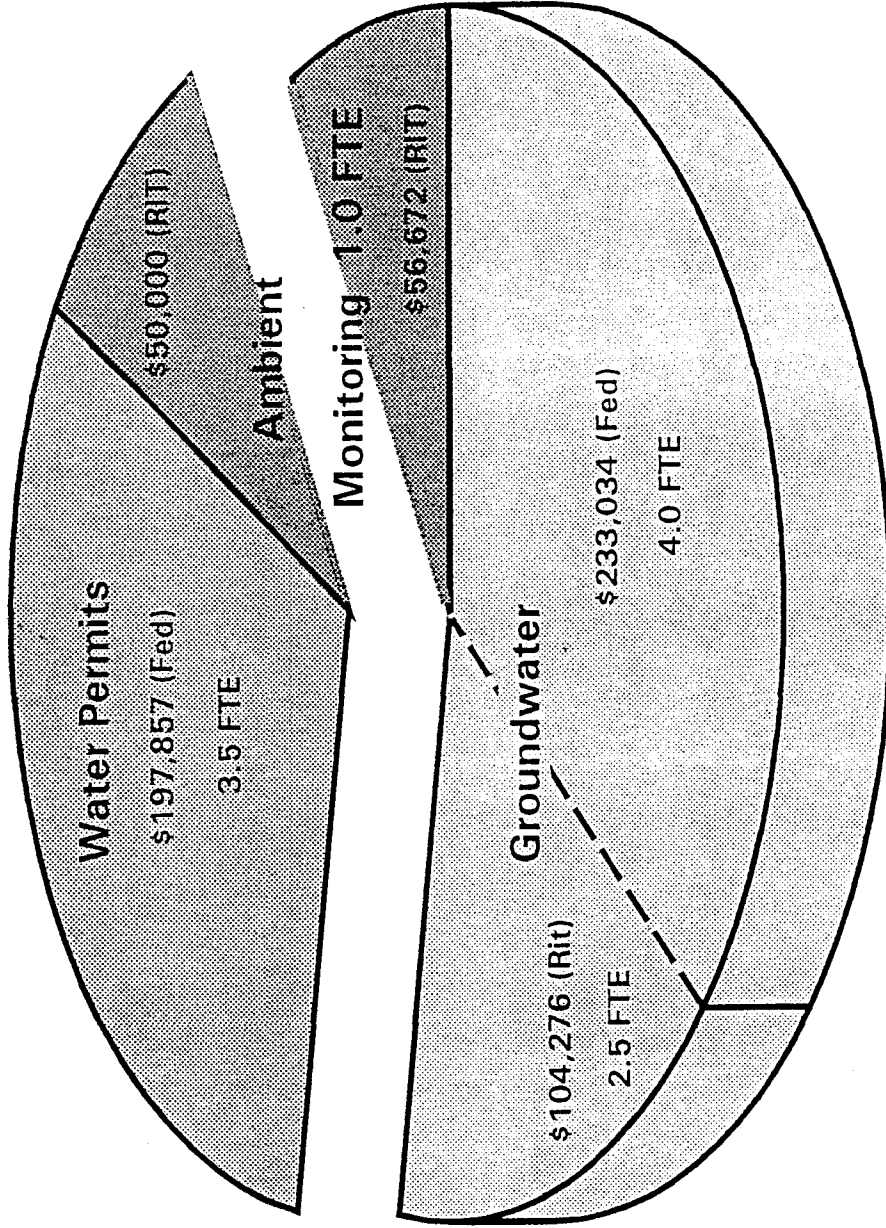
THIS IS A PROGRAM DESIGNED TO CONTROL DISCHARGES OF WASTES TO MONTANA'S AQUIFERS THEREBY PROTECTING THE QUALITY OF GROUND WATER FOR EXISTING AND POTENTIAL USES.

2. THE MONTANA POLLUTANT DISCHARGE ELIMINATION SYSTEM (MPDES)

THIS PROGRAM IS DESIGNED TO CONTROL DISCHARGES OF WASTES TO STATE SURFACE WATERS. IT IS PATTERNED AFTER THE FEDERAL (NPDES) CLEAN WATER ACT PROGRAM.

(SEE FY92 FUNDING)

FY92 FUNDING



GRAND TOTAL \$641,839

II. IMPLEMENTATION OF THE MONTANA WATER QUALITY ACT'S NONDEGRADATION POLICY

A. REQUIRED BY THE MONTANA CONSTITUTION'S ARTICLE IX, SECTION 1 (3); "The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation-----"

This policy is essentially intended to ensure existing high quality waters are maintained for future generations of Montanans. It allows limited degradation to occur when justified and subject to strict conditions designed to protect water quality.

B. THE WATER QUALITY ACT HAS A NONDEGRADATION POLICY WHICH WILL PROBABLY BE MODIFIED DURING THE LEGISLATIVE SESSION. THE DHES WILL BE REQUIRED TO IMPLEMENT THIS NONDEGRADATION POLICY.

III. ENVIRONMENTALLY RESPONSIBLE GROWTH AND DEVELOPMENT

- A. SUBDIVISIONS OF LAND**
- B. METAL MINES**
- C. COAL MINES**
- D. GROWTH OF CITIES AND TOWNS**

IV. PROTECTION OF MONTANA'S SURFACE AND GROUND WATERS

THE WATER QUALITY ACT REQUIRES THE DEPARTMENT TO PROVIDE A COMPREHENSIVE WATER POLLUTION CONTROL PROGRAM. THE DEPARTMENT AND THE ADMINISTRATION HAVE DETERMINED THAT THE ONLY FEASIBLE WAY TO ENSURE THE EXISTENCE OF THIS PROGRAM IS THROUGH THE ASSESSMENT OF FEES ON THOSE WHO WOULD DISCHARGE WASTES TO STATE WATERS.

V. ALTERNATIVES

- A. NO AUTHORIZATION FOR THE DEPARTMENT TO ASSESS FEES FOR NONDEGRADATION AUTHORIZATIONS OR PERMITS TO DISCHARGE WASTES.**
 - **LOSS OF PRIMACY FOR THE MPDES PROGRAM.**
 - **LOSS OF THE STATE'S ONLY LONG-TERM AMBIENT WATER QUALITY MONITORING PROGRAM.**
 - **POTENTIAL LIABILITY EXPOSURE BECAUSE OF THE INABILITY TO PROCESS PERMITS AND/OR NONDEGRADATION AUTHORIZATIONS AS REQUIRED BY LAW.**

- **CAN DEVELOPMENT OCCUR????**
- **DEGRADATION OF STATE WATERS.**

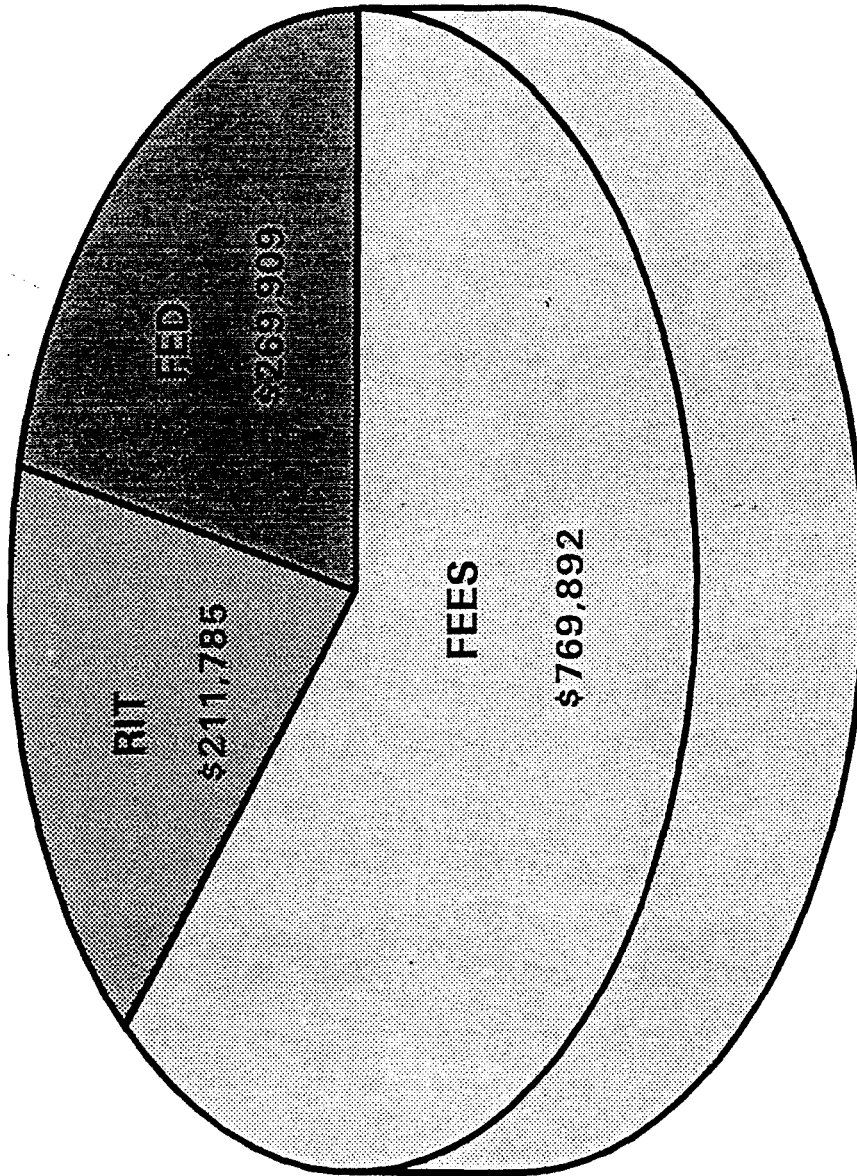
(SEE FY92 FUNDING)

B. AUTHORIZATION FOR FEES PROVIDED.

- **RETENTION OF PRIMACY.**
- **MAINTENANCE OF MINIMAL AMBIENT WATER QUALITY MONITORING PROGRAM.**
- **RESPONSIBLE DEVELOPMENT CAN OCCUR.**
- **WATER QUALITY WILL BE PROTECTED, MAINTAINED & IMPROVED AS REQUIRED BY THE WQA.**

(SEE FY94 FUNDING)

FY94 FUNDING



FEES	
Ambient Monitoring*	50,000
Groundwater*	41,000
Water Permits*	260,422
Surface Water Permits	135,000
Groundwater Permits/Compliance	218,470
Groundwater UIC	65,000
TOTAL FEES	\$769,892
\$351,422* (CURRENT LEVEL)	
FED	
Groundwater	269,909
TOTAL FED	\$269,909
RIT	
Ambient Monitoring	56,473
Groundwater	155,312
TOTAL RIT	\$211,785
GRAND TOTAL	\$1,251,586

EXHIBIT #13
DATE 2-4-93
HB-388

EXHIBIT 14
DATE 7/4/93
HB 358

House Bill 388

Opposition Testimony of Stillwater Mining Company

House Natural Resources Committee

Mr. Chair, ladies and gentlemen of the committee, my name is Ward Shanahan, a Helena attorney, representing Stillwater Mining in opposition to House Bill 388.

There are three specific problems with this bill. First, HB 388 grants too much discretion to the Department of Health and Environmental Sciences to establish the fees to be assessed for water permitting. If general fund appropriations are needed, as the bill's title seems to indicate, the Legislature should determine the amount of money needed and the fees to be assessed. If these fees are truly related to water quality permitting and the actual costs have increased, the Department should have no difficulty justifying to the Legislature the necessity for these increases.

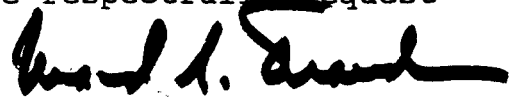
Second, the real purpose of the bill is to fund the Department, and not to merely recovery the documented costs for operation of the pollutant discharge elimination system. The industry in general and Stillwater Mining in particular is not opposed to the payment of permit fees during the period when a project is in the development phase. But it should be shown that the payment of such fees is related to the swift completion of the permitting process. However, the purposes for the fees proposed in Section 1, parts (1)(c) through (1)(j), (page 5 of the Introduced bill) go far beyond the purview of the permitting process, and include things that are clearly general fund items.

Third, under Section 1, part (2)(b), (page 6 of the Intro. Bill) the Department of Health introduces a new concept which would not allow it to assess a fee according to the potential harm to state waters. This is a clear departure from the concept of recovery of permitting costs, and in effect creates a process of "determining environmental damages in advance". This will establish a whole new legal dispute that could drag the permittee through the courts for years as various fears and apprehensions are raised about the long term effect of the project. These issues are already a part of the E.I.S. process and have no proper place in a cost recovery fee system. Department general fund costs should be funded through the state by its citizens, not by industry.

If fees are assessed against Industry according to the potential harm to the waters of the state, then a correlation should be made to some actual or demonstrable harm that cannot be controlled. This

bill (in Section 2 page 6) introduces a concept of a fee for "concentration of process materials or wastes placed in an impoundment or other containment facility". In other words, the industry is to be fined for having met its' obligation to protect state waters by building an impoundment facility. If this is lawful then a fee can be assessed against any dam owner or operator for "the chance" that the dam may break at some future time. If this is truly a fee provision then only point source discharges should be assessed, and the assessment should be based on what is actually being discharged at the present time.

Summary: HB 388 is not a fee bill, it is a penalty bill and it's also an attempt to fund the department's general fund costs by the use of a charge determined solely by the department in accordance with its' own view of its needs. In its' present form it's a "blank check". For these reasons, we respectfully request that this bill be given a "DO NOT PASS".



Ward A. Shanahan
33 South Last Chance Gulch
Helena, Montana
Tel: (406) 442-8560

EXHIBIT 15
DATE 2/4/93
388

Testimony in Opposition to HB 388

Mr. Chairman and members of the committee.

For the record, my name is Frank Antonioli. I represent Contact Mining Company, a small, family owned business which operates a custom metals mill near Philipsburg. In the ten years of the mill's operation, it has served the concentrating needs of at least ten mines in S.W. Montana, ranging from small, family owned mines producing a few hundred tons of ore each year to large mines at times employing upwards of 130 individuals. The one factor common to each of these businesses was that each was dependent on the availability of custom milling facilities in the vicinity to make operation economically feasible.

Contact Mining Company has been subject to the laws and rules of the Department of Health and Environmental Sciences since the beginning of operation in 1981, and has been required to obtain a variety of permits from that agency. Contact does not question the right of the agency to regulate operations such as Contact's, nor are we here to question the content of the current statutes and rules. We are here only to argue strenuously against the granting of the power to the agency to set permit fees and inspection fees at the discretion of agency personnel for the purpose of covering the cost of regulation. Given the ability to do so, the agency is capable, and in our experience, likely to exceed reasonable limits in setting permit and inspection fees.

Contact's recent experience in obtaining the renewal of a previously issued permit will illustrate this point. Please refer to the handout for additional detail regarding the prolonged permit renewal process which I will now briefly describe.

Contact was granted approval to discharge tailings on March 6, 1981, under the very general administrative rules in place at that time, and was issued a Montana Groundwater Pollution Control System permit on October 19, 1983 at the inception of the groundwater permitting program. In accordance with the requirements of this permit and the applicable rules, Contact applied for renewal of the existing permit more than six months prior to the expiration date of the permit, the advance re-application presumably to give the agency time to make its decision concerning renewal, to give the applicant enough time to adequately respond, and to allow the permit to be re-issued without a break in operations. It is significant to note that the application was for renewal only, and did not involve changes or expansion in Contact's operation.

From Contact's two and one-half year experience with renewing our groundwater permit, including over one year of ordered shut-down, threats of \$25,000/day fines without regard to the validity of a violation, and repetitious requests by agency personnel for information previously submitted, it is clear that the permit

review process is not an efficient service provided for the permittee.

The agency time spent on meetings, site visits, and letters, little of which contributed to or was even considered in the final analysis, must have been great. Contact invested heavily in employee time and legal fees and endured a one year period of forced inactivity before obtaining a meeting with agency management personnel and obtaining a satisfactory resolution. If we were to add to this the cost of the actions of ~~the~~ two ~~members~~ agency personnel assigned to the project, Contact would have been hard pressed to cover the costs.

It is also significant to note that it was the desire of the agency to grant Contact a permit with an expiration date of two years rather than the standard five year term, necessitating additional review time and dollar by agency personnel and what would be additional costs passed through to the permittee under HB #388.

The goal of the agency was to obtain satisfactory reclamation of the completed tailings ponds serving the mill. The ultimate irony is that reclamation had ^ubegin prior to application for renewal of the permit and was completed during the renewal process.

(4)

EXHIBIT # 15
DATE 2-4-93
HB-388

As a small business operator in the State of Montana, we urge you disregard this attempt by the Department of Health and Environmental Sciences to add what we feel have the potential to be exorbitant fees to the already enormous burden of Net Proceeds taxes, Metalliferous Mines Tax, Resource Indemnity Trust Tax, and reclamation costs. We ask that the members of this committee not give the Department of Health and Environmental Sciences a blank check from Contact Mining Company or any other regulated business. If regulatory costs must be cut, let it be through a streamlining of the permitting process.

Summary of Permit Renewal Process
Contact Mining Company

02/18/81 Original application to WQB

Advised by Department of State Lands (DSL) that no DSL permit was needed as the Contact Mill is not associated with a mine. Original application is therefore reviewed only by WQB under very general rules. Also apply for and receive WQB surface water discharge permit for discharge of process water into Douglas Creek.

12/21/82 Application for Phase II

New groundwater discharge permit program is now in effect (program was not in effect at time of original application). Permit issued.

10/30/89 WQB letter with report of 09/22/89 inspection

Recommends that a geotechnical analysis of the dams, a reclamation plan, and possible monitoring wells be required to support application for permit renewal.

12/14/89 WQB letter with report of 11/06/89 follow-up inspection

06/27/90 Application for permit renewal (more than six months prior to expiration date of permit)

Addresses all concerns raised in recent inspection reports (dam stability, reclamation, and topsoil salvage).

12/31/90 Permit expires

Advised by WQB several times that permit will remain in effect until action on the renewal application is taken by WQB.

12/03/91 First formal WQB response to Contact's application for renewal - 17 months after application and 11 months after expiration date on permit. Accompanied by report of 08/26/91 inspection.

First mention that reclamation information submitted eight years earlier is not adequate.

States that any operation of the mill prior to permit renewal will constitute a violation of the permit. No opportunity for a hearing was offered.

12/16/92 Meeting between Contact and WQB

Various reclamation issues discussed and methods of resolution identified.

02/13/92 WQB letter summarizing meeting with Contact.

Concerned mainly with reclamation issues. States that Contact must now construct a permanent diversion channel around the tailings or provide for perpetual maintenance through a trust fund.

02/19/92 Meeting between Contact, WQB and DSL on site. DSL advisers state that reclamation issues will be easily resolved.

02/24/92 Contact letter to WQB

Requests clarification of WQB apparent hard line position that Contact cease operation while the renewal application is processed, in light of Contact's compliance with all WQB requirements to date, Contact's application for renewal several months in advance of the expiration date to insure time for resolution of issues, WQB's failure to review the renewal application in a timely manner, and WQB's failure to allow Contact to respond to newly raised issues before closure.

03/21/92 Response by Kevin Keenan, containing inaccuracies as to when Contact had been advised of need for reclamation plan and threatening enforcement action of \$25,000/day.

06/23/92 Detailed reclamation plan submitted

Contact again requests that WQB soften their position on operation during the permit renewal process.

07/02/92 WQB request for additional information including some that had been previously submitted and some that was not feasible.

07/21/92 Contact responds to all issues.

08/05/92 WQB requests more information.

08/26/92 Contact legal counsel meets with WQB counsel

09/03/92 Contact responses to WQB request for more information.

09/14/92 Contact legal counsel meets with WQB counsel

10/16/92 WQB still asking for same information already submitted; department legal counsel summarizes administrative procedure regarding permitting. Once again flip-flop on issue of renewal or new permit.

EXHIBIT # 15
DATE 2-4-93
HB-388

10/26/92 Contact requests a preliminary decision from WQB.

10/30/92 Contact seeks more legal assistance.

11/06/92
11/17/92
11/10/92
11/18/92
11/24/92
11/30/92
12/02/92
12/04/92

— Legal counsel correspondence with WQB - telephone
and letters.

12/04/92 Eleven page Environmental Assessment prepared by Bureau
personnel.

01/10/93 PERMIT ISSUED



CITY OF BILLINGS EXHIBIT 16
PUBLIC UTILITIES DEPARTMENT
DATE 2/4/93
HB 388

P.O. BOX 30958
BILLINGS, MT 59111
PHONE (406) 657-8505
FAX (406) 657-8516



February 3, 1993

MEMORANDUM

TO: Mr. Bruce McCandless, Assistant City Administrator
FROM: Gerald D. Underwood, P.E., Public Utilities Director *My*
BY: Joe Steiner, Plants Superintendent
SUBJECT: HOUSE BILL 388, WATER QUALITY FEES

RECOMMENDATION:

We recommend the bill not be passed in its present form.

DISCUSSION:

The water quality program has historically been federally funded. Apparently these funds are being reduced or no longer available. Therefore this bill is proposing to provide revenue to operate the present program and expand the program by approximately 300% (ie: from \$300,000 per year to \$880,000 per year).

The federal Clean Water Act (CWA) reauthorization has a very similar provision that, if passed, will impose fees on all dischargers that will be used to run the state water quality program. The fees in the CWA bill are \$2500/million gallons per day of discharge. Billings would pay a fee of \$40,000 to \$60,000 per year.

The following are some specific comments pertaining to this bill:

1. The rationale of basing the fee on volume and concentration of pollutant is seriously flawed. There is no correlation between the services rendered to the cost of the permit or annual fee. The rationale behind paying for your "potential to pollute" is based on your use of the available resources, not the actual cost of services provided.
2. Point source dischargers, ie municipalities and industries, would be funding the water quality program for state as a whole. The major source of Montana

Mr. Bruce McCandless
February 3, 1993
Page 2

- pollution, non-point sources, are not being asked to pay their proportionate share of the costs. Again the burden to pay for a program for the good of the entire state is being placed on a select few (point source dischargers).
3. There is no differentiation in the cost of a groundwater permit versus a surface water permit. The Montana Department of Health and Environmental Sciences, during the last legislative session, indicated groundwater discharge permits take three times the effort a surface water permit takes. The fees should reflect that.
 4. Should the fee bill pass, there should be limits on the cost of the permit application and annual fees. They should be capped and based on the actual cost associated with each permit and discharger.
 5. Given the potential for federally mandated fees, if this fee passes, will the state fee be reduced or eliminated by the federally mandated fees? Would Montana be any worse off to wait for the federal fees to be imposed in two to five years?
 6. The bill mandates a very stiff penalty for not paying the annual fee (ie 50% of fee). Is that reasonable?
 7. Should the bill pass, the City should be able to pass the costs on to the consumers without having to meet the statutory requirements of rate increase hearings (Sec 69-7-111).

Once again, a select group is being asked to fund a statewide program. Also, if the state does not fund the program, the permitting program will revert back to EPA. Is this bad? How much do we want to pay to have a "state run" program. I think it is inevitable that eventually (two to five years) the CWA will assess federal fees on dischargers. Do we want to pay for it now? Does the state need to triple the size of their water quality program?

CDU:JS:slh

cc: File

EXHIBIT _____

DATE 2-4-93

Informational

FEBRUARY 2, 1993

HOUSE TAXATION COMMITTEE
1993 LEGISLATURE
SENATE BILL 138

TO: COMMITTEE MEMBERS
REP. JIM ELLIOTT

Enclosed please find the copies Rep. Jim Elliott requested of Jeanne Barnard, Assessor from Phillips County.


The first nine copies are levies for the school districts as submitted by the County School Superintendent. School Districts number 12 (Saco) and number 20aa (Whitewater) are the districts most effective.

The tax levy for all taxing jurisdictions follow the school districts, with County taxable value after that.

I also included reserves that the Saco School District used to offset mill levies as well as the budget for those same years.

The final copy is from myself correcting the 1989 district mill levy for Saco school from 44 mills to 49.36, all other information stands as presented.

Respectfully Submitted,


Jeanne Barnard
Phillips County Assessor

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

EXHIBIT

DATE 2-4-93Informational

1987

TAX LEVY SUMMARY

General	Transp.	Bus Dep.	Tuition	Debt. Serv.	Comp. Ins.	Adult Educ.	Blgd. Res.	TOTAL DIST.	DIST. H. S. TOTAL	TOTAL	1986 TOTAL MILLS
9.11	17.06				2.95		2.93	32.05	44.86	76.91	75.00
5.82	.82				2.44			9.08	50.37	59.45	56.20
2.44	.75				.92			4.11	44.86	48.97	51.50
3.25	3.97				3.08			10.30	50.37	60.67	58.00
18.33	2.17	1.00			1.83	.20		23.53	24.92	48.45	42.00
39.58	7.16		.69	.11	2.84			50.38	50.37	100.75	97.10
15.33		1.14	.18	.01	.53			17.19	16.97	34.16	64.50

Dolores Hughes
Dolores Hughes
Phillips Co. Supt. of Schools

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

House Taxation COMMITTEE BILL NO. HB 330
DATE 2/4/93 SPONSOR(S) BIRD, McLAFFREE, FOSTER, RANNEY
HB 378
HB 382
HB 388

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
GARY LANGLEY	MONTANA MINING ASS.	382	378
"	"		388
Marian Olson	Mt. Assessor Assoc.	378	
Cell Sahle	Mt. Assessor Assoc.	378	
Annice Burnard	Phillips Co / Mt. Assessors Assoc.	378	
Sharon Harris	Big Horn Co / Mt. Assessors	378	
Don Bailey	Bozeman County	378	
REX MANUEL	CENEX PET. DIV		388
Donna Kennedy	Bozeman County, Bozeman	378	
Richard A. Nisbet	City of Helena		388
Bob Turner	DOR	330	
Dennis Adams	Self		378
Gordon Morris	MAA	378	
John Fitzpatrick	Argus Gold Co-P	382	388

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

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

COMMITTEE _____

BILL NO. _____

DATE _____

SPONSOR(S) _____

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Bill Dodge	Continental Lime	382	
Bruce Palmer	" "	382	
Elton Chorney	" "	382	
Don Allen	MT. West Park		388
John Allen	may		378
Dennis Burr	MONTANA TAXPAYERS ASSOC	382	378
Ken Williams	MPC/Entech		378
Mike Harrington	MPC		388
Steve Brown	Continental Lime	382	
Jim MacKer	MT. Coal Council		378 388
Jim Jensen	WETC	388	
WARD SHANAHAN	STILLWATER MINING		388
Russ Allen	Wash Coal MR		378 388
Frank Antenucci	Contact Mining		388

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

**HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER**

COMMITTEE _____

BILL NO. _____

DATE _____

SPONSOR(S) _____

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Peggy Olson Therk	WETA		388
Ted J. Drey	ASARCO Mt. Dormants Assn.		388
John Blomquist	Mt. Shepherds Assoc.		388
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PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.