

MINUTES

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

COMMITTEE ON APPROPRIATIONS

Call to Order: By REP. TOM ZOOK, on February 5, 1993, at 3:20 p.m.

ROLL CALL

Members Present:

Rep. Tom Zook, Chair (R)
Rep. Ed Grady, Vice Chair (R)
Rep. Francis Bardanouve (D)
Rep. Ernest Bergsagel (R)
Rep. Roger DeBruycker (R)
Rep. Royal Johnson (R)
Rep. Mike Kadas (D)
Rep. Betty Lou Kasten (R)
Rep. Red Menahan (D)
Rep. Linda Nelson (D)
Rep. Ray Peck (D)
Rep. Mary Lou Peterson (R)
Rep. Joe Quilici (D)
Rep. Dave Wanzenried (D)
Rep. Bill Wiseman (R)

Members Excused: Rep. John Cobb, Rep. Marj. Fisher, Rep. John Johnson

Members Absent: None

Staff Present: Terry Cohea, Legislative Fiscal Analyst
Mary Lou Schmitz, Committee Secretary

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

Committee Business Summary:

Hearing: HB 401, HB 373
Executive Action: None

HEARING ON HB 401

An Act authorizing the issuance of an interentity loan to the Department of Health and Environmental Sciences from the General Fund to be appropriated for Technical, Legal and Administrative activities for the State of Montana Natural Resource damage litigation in the Clark Fork River Basin.

Opening Statement by Sponsor: REP. MIKE KADAS, HD 55 said two

years this Committee and the Legislature authorized nearly \$5 million loan to allow the state to carry out litigation against the ARCO Corporation for damage in the Clark Fork, Upper Clark Fork and Butte area from 100 years of mining. That loan was to do damage assessment and begin the legal work required to carry on that suit. Today he is asking for the second installment in that program. The bill is \$2.6 million and what they have to do is roll over the \$5 million loan and the \$2.6 million is to carry on the suit. The Department will explain what has been done with the \$5 million, what they intend to do with this \$2.6 million and what the benefits for the state will be as they either settle the suit or go to trial with it. This is a very important issue, not only to those who live within the Clark Fork Basin but also to everyone in the state. This kind of litigation has been done before in other states, Colorado in particular, and they are using a considerable amount of the expertise generated there. If they are ever to repair that River, the Clark Fork, this is the key to it.

The Department informed him of one possible amendment which is on Page 3, Line 6 where they are renewing the \$5 million loan and they did not spend all of it so what might be more appropriate language would be to insert "up to" following "of" so the line would read "the amount of up to \$4.9 million".

REP. KADAS mentioned a hand out, **EXHIBIT 1**, from Peter Nielsen, Missoula City-County Health Department supporting this bill.

Proponents' Testimony: Dick Pedersen, Program Manager, State Superfund Program, Department of Health and Environmental Science and supervises the Natural Resource Damage Program. He offered highlights from **EXHIBIT 2**.

What is being done with the \$4.9 million loan are two main things that the Legislature asked them to do. First, to complete a Natural Resource Damage assessment through the largest Superfund Complex in the country. He referred to a map on the last page of **EXHIBIT 2** that shows the basic area involved. It extends from Butte down to Missoula and encompasses all of Silver Bow Creek and the Clark Fork River to Missoula through the Milltown Dams. With the \$4.9 million appropriation the state is in process of completing it's natural resource damage assessment. They have to determine which resources the state is trustee for that have been injured, how big is that injury, how many fish should be in the Clark Fork River as opposed to how many there are and determine what the damages are or the value of that resource is. That is done by looking at the cost to restore that resource back to what it was before the release of hazardous materials occurred, to look at the value if it was in use, how many dollars would have been spent in fishing on the Clark Fork River if fish would have been there to catch and what is the value associated with just having clean environment there. They have had 25 leading experts working on this case in various scientific and economic areas and a supporting cast of between 50 and 100 people. When damages

are recovered the law is specific that they have to be spent, to restore, to replace or acquire like resources, other than assessment costs.

The second thing the legislature asked them to do was advance the lawsuit. Immediately after they got the funding the Policy Committee appointed Kevin Ward of Harding and Ogborn, Denver, Colorado. Mr. Ward and his law firm have a wealth of experience and knowledge in Natural Resource Damage law and have been an asset in this case.

He feels that by the end of this biennium they will have done what the legislature has asked them to do. They will have completed Natural Resource Damage assessment and will help advance this lawsuit.

He referred the Committee to Table 2, **EXHIBIT 2**, for the biennial costs needed to litigate this case. He said the State of Montana is in a very strong position. They have completed their assessment and have a technical background and knowledge to be able to, in his opinion, recover substantial damages in this case and also their assessment costs. If it is not funded or funded in part it would seriously weaken their position and give ARCO an upper hand in this litigation and threaten the recovery of substantial damages in this case.

Joe Mazurek, Attorney General, State of Montana registered the Office of Attorney General as being in support of this bill and the Attorney General's function as an ex-officio advisor of the Natural Resource Damage Committee. The issue of hiring out-of-state counsel was very carefully considered by the Legal Services Review Committee which decides whether or not or when to go to outside counsel. This is a decision that was made some time ago when this was first commenced. The particular out-of-state attorneys are very capable and have handled litigation similar to this in Colorado. Their hourly charges are reasonable relative to what Montana attorneys of similar experience would charge and the particular individual, Kevin Ward, is especially well qualified and recognized within the National Association of Attorneys General as having special expertise in this area.

The other reason he stands in support is because of the likelihood of a substantial recovery in this case. There has been an encouraging step of late and that is the potential settlement negotiations which, if successful, perhaps would result in not having to expend all the money requested here. What he would like to emphasize most is the fact that there is a threshold of a possibility of settlement or settlement discussions being undertaken does not mean we should diminish the effort. If we cut back on the appropriations now and do not prepare for trial it will weaken our position of negotiation.

Pat Graham, Department of Fish, Wildlife & Parks testified from **EXHIBIT 3**.

Judy Browning, Governor's Office, said when the Governor was Attorney General he served on the Policy Committee and has utmost confidence in the abilities of the team that is handling the case now. To not fund this at this time would send out some kind of signal of weakness. This case was filed ten years ago and since pumping some money they have really progressed in the case and expect to get back more than they have put in. On behalf of the Governor's Office she urged the Committee to approve this legislation.

Bob Robinson, Director, Department of Health and Environmental Sciences said this program is attached to the Department for Administrative purposes. He said they need to go into negotiations or litigation with a position of strength.

C. B. Pearson, Executive Director, Clark Fork-Pend Oreille Coalition said the Coalition is a citizen's organization with offices in Butte, Missoula and Sandpoint, Idaho. Their mission is to insure that water quality is enhanced and water quality is protected. He gave further testimony from **EXHIBIT 4.**

Mary Kay Craig, Upper River Field Representative for the Clark Fork-Pend Oreille Coalition. She said there is a dramatic and growing interest in the clean-up of the area and restoration. The people in the Butte, Anaconda and Deer Lodge area want their communities, creeks and rivers back. Funding for this bill is very important for the future of the children of Montana.

Opponents' Testimony: None

Questions From Committee Members and Responses: **REP. WANZENRIED** asked what kind of damages and the range to be able to recover eventually. **Mr. Pedersen** said part of the Natural Resource Damage Assessment is to determine what damages are and those studies are expected to be completed by the end of this biennium. In 1983 they filed for \$50 million. When the stay was lifted they modified that and took that figure out because at that time they felt the damages could be substantially more than that. He does not have a range for figures yet because the information is not totally completed.

REP. WISEMAN asked what is the history in Colorado and other places in similar kinds of suits and what results have they gotten. **Mr. Pedersen** said there is not a lot of case law in this area but there some examples. The example everyone knows about would be the Exxon-Valdez case. That was a Natural Resource Damage case and that is somewhat different from this because of the nature of that spill but there was a settlement for over \$1 billion. There is a case in California that involves the federal government and the State of California as trustees against a list of potentially responsible parties for pollution there. The State of Utah just tried to settle with Kennecott for a Natural Resource Damage case and it was just ground water. Ground water is just a small part of this case.

REP. PECK asked if there was any contingent fee associated with the lawyers' service. Mr. Pedersen said no.

REP. QUILICI said he understands there is a possibility there could be a stipulation worked out between ARCO and the state of Montana. In the event it doesn't work out how would that money be used? Mr. Pedersen said if they were to get into negotiations with ARCO the settlement negotiations would encompass some of the expert witnesses and various legal people but would not anticipate doing a lot of litigation so the cost that would be saved would be for some outside legal cost. The settlement process would be very complex and require a lot of resources. REP. QUILICI said there has been extensive work under the Superfund site from the tailings around Warm Springs. How does that affect this? Mr. Pedersen said the two processes are tied fairly close together. The damages recovered for restoration cost are the damages for restoration that is needed beyond the remedy that is selected in the Superfund process.

REP. BARDANOUVE referred to the Attorneys' salaries of \$800,000 and asked for an explanation. Mr. Pedersen said this is for a two-year period and is for 7200 hours which calculates to about \$110 to \$115 an hour.

REP. WISEMAN said mining was started 100 years ago by Marcus Daly and William Clark and the State of Montana enjoyed the riches that were generated. The Anaconda Co. took over the operation and when was it bought by ARCO? Mr. Pedersen it was 1976 and the mining operations were shut down in 1983. REP. WISEMAN said this Company (ARCO) only operated seven years and will be stuck for the damage. He said he was amazed any Corporation, referring to the 7-Up Pete Mine near Lincoln, would invest anything in Montana if the state wins this suit. He feels they will win the battle and lose the war. Mr. Robinson said there is a difference between how the Anaconda Co. operated and how the 7-Up Pete will operate. If that mine gets up and going it will have to meet the environmental standards and protect the environment from day 1. This suit will recover damages that were ongoing for 100 years.

REP. MENAHAN said none of the mining companies have lost money in Montana.

Terry Cohea, Legislative Fiscal Analyst, said the loan does not apply under the House Resolution target because it will be recorded as a state special expenditure. However, as the fiscal note shows it will have an impact on the cash balance of the general fund because the money will be spent from the general fund. The cash side of the status sheets will show a \$2.6 million negative impact from this but it won't affect the fund balance. This is one of the factors that is increasing the gap between the fund and cash balance. They show as an asset in the general fund the \$5 million loan from this biennium, this additional \$2.6 million if it's paid. As has been stated today we may receive a re-payment of this in 1995 but if it goes to

trial the re-payment of both loans would not be until FY 1997.

REP. ROYAL JOHNSON asked if the money is being borrowed from the wrong source. Why would we not go to the coal fund which is a rainy day situation, who loan money all the time, borrow all the money and replenish our general fund where we seem to be having a shortage at this particular time.

REP. KADAS said what they lose at the time is interest. Since we invest coal tax trust fund in long term investments as opposed to general fund, costing ourselves less interest because it's in the short-term investment pool (STIP) short-term interest versus long-term interest that we would get if we invested in the coal tax trust fund. That's one issue. The second issue, if we took it from the trust fund, would require 3/4 vote. That might be a problem.

REP. ROYAL JOHNSON said he felt it would not be a problem to get 75%. In addition to that if they truly wanted to repay the coal trust could set the interest rate at whatever rate they chose, long term, short term and pay them back when we get the money. If we don't pay them back all they've done is lost the interest and the principle. With the assurances they have had would feel that is a relatively good investment.

REP. GRADY asked if Fish, Wildlife and Parks would take up some of this financial responsibility. REP. KADAS said the Pitman-Robinson restrictions might come into this.

REP. MENAHAN said the Resource Indemnity Trust (RIT) funds might be taken away from some of the water projects and put into this mining reclamation where it's supposed to be.

Closing by Sponsor: REP. KADAS said he had reviewed the progress of the assessment with Mr. Pedersen and is impressed with the information they have gathered which indicates what they are trying to do and the way they are setting up the case. This is in the executive budget and part of the big picture. What this will do clearly, is increase the cash deficit by \$2.6 million. This is \$2.6 million for the coming biennium. If the case goes to trial then they will be back here for another appropriation for the following biennium. Mr. Pedersen assured him it won't be as much as this one.

CHAIRMAN ZOOK closed the hearing on HB 401.

HEARING ON HB 373

An Act providing a statutory appropriation for audit costs

Opening Statement by Sponsor: REP. MIKE KADAS, HD 55, said this is a bill requested of the Audit Committee. What happened last Session is they ran into a situation where the Auditor was requested to do some work, agreed to do the work, was compensated

but couldn't spend that compensation. The Department of Livestock case where a fellow essentially stole parts from a helicopter is one example and some bond work cases the Legislative Auditor did. What this bill will do is allow them to spend that money they receive from unanticipated work they do. There is some concern about turning their whole budget over as a statutory appropriation. He offered the attached amendment.

Proponents' Testimony: None

Opponents' Testimony: None

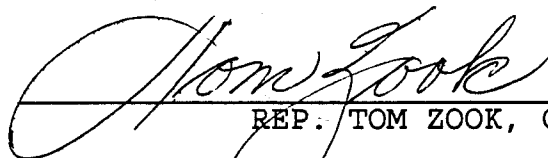
Questions From Committee Members and Responses: REP. KASTEN asked what is 17-7-502? REP. KADAS said that is a list of statutory appropriations.

REP. ROYAL JOHNSON asked how much money did they get that they were not able to spend? Scott Seacat, Legislative Audit Committee, said the Audit Committee approved the budget amendment of \$29,000 and that included a number of these situations. The biggest was the Livestock helicopter fraud that court-ordered restitution for audit costs. There was a Northern Montana Bond audit and four minor reimbursements of audit costs. The work they did after the last special Session to sell Trans, not only for DofA to sell the bonds, but also the Board of Investment contracted with them to provide some audit coverage on the amount in the DofA financial statement because they were asking for collateralizations. The Department of Highways want to re-fund their \$150 million gas tax bond issue. Technically, the way his budget sits now, does not feel he can do the work for them. In the fiscal note the Budget Office said this really should be effective for the fiscal year beginning in 1994 and he disagrees with that for the transportation issue.


Closing by Sponsor: REP. KADAS closed.

ADJOURNMENT

Adjournment: 4:20 P.M.



REP. TOM ZOOK, Chair



MARY LOU SCHMITZ, Secretary

TZ/mls

HOUSE OF REPRESENTATIVES

APPROPRIATIONS

COMMITTEE

ROLL CALL

DATE

2-5-93

NAME	PRESENT	ABSENT	EXCUSED
REP. ED GRADY, V. CHAIR	✓		
REP. FRANCIS BARDANOUVE	✓		
REP. ERNEST BERGSAGEL	✓		
REP. JOHN COBB			✓
REP. ROGER DEBRUYKER	✓		
REP. MARJ. FISHER			✓
REP. JOHN JOHNSON			✓
REP. ROYAL JOHNSON	✓		
REP. MIKE KADAS	✓		
REP. BETTY LOU KASTEN	✓		
REP. WM. "RED" MENEHAN	✓		
REP. LINDA NELSON	✓		
REP. RAY PECK	✓		
REP. MARY LOU PETERSON	✓		
REP. JOE QUILICI	✓		
REP. DAVE WANZENREID	✓		
REP. BILL WISEMAN	✓		
REP. TOM ZOOK, CHAIR	✓		

EXHIBIT 1
DATE 2/5/93
HB HB 401



MISSOULA CITY-COUNTY HEALTH DEPARTMENT
301 W ALDER ST
MISSOULA MT 59802-4123

(406) 523-4755

February 5, 1993

Mr. Tom Zook, Chair
House Appropriations Committee
Statehouse
Helena MT 59620

RE: HB 401, funding Clark Fork Natural Resource Damage Claim

Dear Mr. Zook,

The Missoula City-County Health Department strongly supports continuation of the State of Montana's Natural Resource Damage Claim for the Clark Fork River Basin.

The State invested approximately \$4.9 million in this important program in 1991 to recover damages to natural resources in the Clark For Basin caused by more than a century of mining and smelting in the Butte and Anaconda area. This effort is entirely separate from the U.S. Environmental Protection Agency's laborious process to clean up the Superfund sites at Butte, Anaconda and Milltown to protect human health. This action may result in a return of potentially tens of millions of dollars, or more, for the state to restore damaged natural resources. The investment requested is only a small fraction of the potential return to the state.

Completion of the state's program to assess damages to natural resources such as air, water, agricultural lands and air quality is necessary to place the State in the strongest possible position for litigation or settlement of this important case.

The Missoula City-County Health Department urges the legislature to make continued full funding of the Clark Fork Natural Resource Damage Program a top priority in this legislative session.

Respectfully,

Peter Nielsen
Environmental Health Unit Supervisor

EXHIBIT _____
DATE : 2 2
HB 5/9 13
HB 401

EXECUTIVE SUMMARY

NATURAL RESOURCE DAMAGE PROGRAM

FY 94-95 BIENNIUM

Dick Pedersen
Program Manager

EXHIBIT 2
DATE 2/5/93
HB HB 401

FY 94-95

NATURAL RESOURCE DAMAGE PROGRAM

EXECUTIVE SUMMARY

The State of Montana will complete a Natural Resource Damage Assessment for the Clark Fork River Basin as directed by the 1991 legislature. In addition, the State has advanced the lawsuit State of Montana v. Atlantic Richfield Company, CV-83-317, and is in a very strong position to recover substantial damages. The requested biennial appropriation will keep the State's position strong and result in full recovery of damages and assessment costs.

History:

The State of Montana filed a natural resource damage lawsuit in December of 1983 against the Atlantic Richfield Company (ARCO) to recover for damages from injuries to natural resources in the Clark Fork River Basin. On August 17, 1990, despite the State's opposition, a stay of the lawsuit was lifted. The parties in the lawsuit were ordered to proceed with discovery and other aspects of the case.

The 1991 legislature authorized a state special revenue biennial appropriation of \$4,908,049 to complete a natural resource damage assessment (NRDA), and to advance the State's lawsuit. The biennial appropriation resulted in the creation of the Natural Resource Damage Program (NRDP), the hiring of consultants to complete the NRDA and provide expert testimony, and the retention of outside legal counsel to manage the litigation and guide assessment activities.

Natural Resource Damage Assessment:

The Clark Fork NRDA is nearly complete. A NRDA is a complex and comprehensive process which determines the resources that have been injured, the severity and extent of injuries, and the dollar value (damages) of the injuries. The NRDA includes the work of approximately 25 leading experts in various professional disciplines, including fish and wildlife biologists and toxicologists, geologists, hydrogeologists, statisticians, soils scientists, economists, chemists, and quality assurance/quality control specialists. Another approximately 50 professionals provide support to these experts and the NRDP.

The court schedule currently requires that the State identify its experts, and the facts and opinions to which they will attest, by June 15, 1993. The NRDP will complete its report of injury assessment in the current biennium, and that assessment will support our experts opinions. The report will identify the resources which have been injured and the extent and severity of the injuries. Draft reports have been completed for the various resources (fisheries; surface water; sediments; air; soils, vegetation and wildlife; and groundwater). These reports have depended on both existing data and numerous studies conducted by the NRDP, or its consultants, to address NRDA issues or data needs. These studies include laboratory fish toxicology experiments; fish population surveys; wildlife and habitat modeling; and collection and analysis of surface water, groundwater samples, soil, and

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vegetation samples.

Various economic methodologies are being used to calculate the damages for injured resources. Appropriate alternatives for restoration of injured resources, and their estimated costs, are currently being evaluated. Additional studies and economic surveys to determine the recreational value, non-use (existence and bequest) values, and market values of the injured resources, are in progress and will be completed in the current biennium.

State of Montana v. Atlantic Richfield Co:

A trial date has not yet been set in the lawsuit filed by the state against ARCO, but with the final pre-trial order scheduled to be submitted in July of 1995, the trial will follow approximately three months later and will last several months if all issues are left for trial. In the interim, the litigation team, including the leading experts, will be required to spend a good deal of time on trial preparation. The litigation also involves a comprehensive discovery process which will require that a good deal of attorney and expert witness time be spent on depositions and document production.

The State's objective in this litigation is to recover, as expeditiously and economically as possible, substantial monetary damages for injuries to natural resources in the Clark Fork River Basin. Monetary damages, by law, must be used to restore, replace or acquire like resources. The goal of the recovery of monetary damages is to restore the resources as nearly as possible to the condition they would have been in had the hazardous substances not been released. In the event that it is not feasible to restore some of the resources, the state will then replace or purchase like resources for the basin. In addition, natural resource damage assessment costs, including some legal costs, are recoverable by law and will be used to repay the funds loaned to the program by the legislature.

The parties are also currently undertaking a review of issues that may be addressed and resolved prior to trial. The State and ARCO hope to enter a memorandum of understanding regarding a settlement process by which they may resolve some, or all, of those issues prior to trial.

FY 94-95 Biennial Budget Required:

The attached table summarizes the FY 94-95 NRDP budget needs. The requested \$2,619,076 is broken into three general categories:

- 1) **Program:** the program cost relates to the nine FTEs and associated costs.
- 2) **Contracting Services:** the contract services costs provide the state with expert witnesses along with their support staff, as well as outside legal counsel and other litigation and restoration planning support. The NRDP policy committee has appointed Kevin Ward of Harding and Ogborn as lead counsel representing the State of Montana. Mr. Ward and his law firm, Harding and Ogborn, have special expertise and experience in superfund and natural resource damage litigation matters. Even though the state of Montana's case is unique in its complexity, Mr. Ward's expertise provides the state with an advantageous position, as he directs the case on issues of

EXHIBIT 2
DATE 2/5/93
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liability and affirmative defenses. His office provides the equivalent of two attorneys to add to the state's three attorneys for the full complement necessary to proceed with the litigation.

3) **Legal Fees & Court Costs:** these costs are primarily for obtaining deposition and hearing transcripts through the two year period.

Activities associated with this lawsuit are difficult to clearly define on a fiscal year basis. Therefore, it is necessary to seek a biennial appropriation.

TABLE 2
NATURAL RESOURCE DAMAGE PROGRAM
ESTIMATED BUDGET
FY94-F95

EXHIBIT 2
DATE 2/5/93
HB HB 401

1. Program

a) Salaries, benefits, indirect (est.)	\$ 730,000
b) Supplies, copying	44,818
c) Communications (mail & telephone)	22,702
d) Travel	
In-state	21,494
Out-of-state	40,500
Non-employee	10,000
e) Equipment and rent	21,052
f) Other	8,610

Subtotal **\$ 899,176**

2. Contract Services:

a) Outside legal		
2 equivalent attorneys (7200 hrs)	\$ 823,500	
associated costs	72,000	
b) Expert witnesses		
24 expert witnesses time	306,000	
associated costs	48,000	
c) Expert support staff		
50 support staff time	100,000	
associated costs	50,000	
d) Exhibit preparation	50,000	
e) Temporary services	20,000	
f) Document management	20,000	
g) Restoration planning	100,000	

Subtotal **\$1,589,500**

3. Legal fees and Court costs

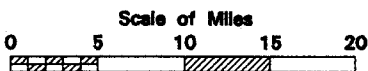
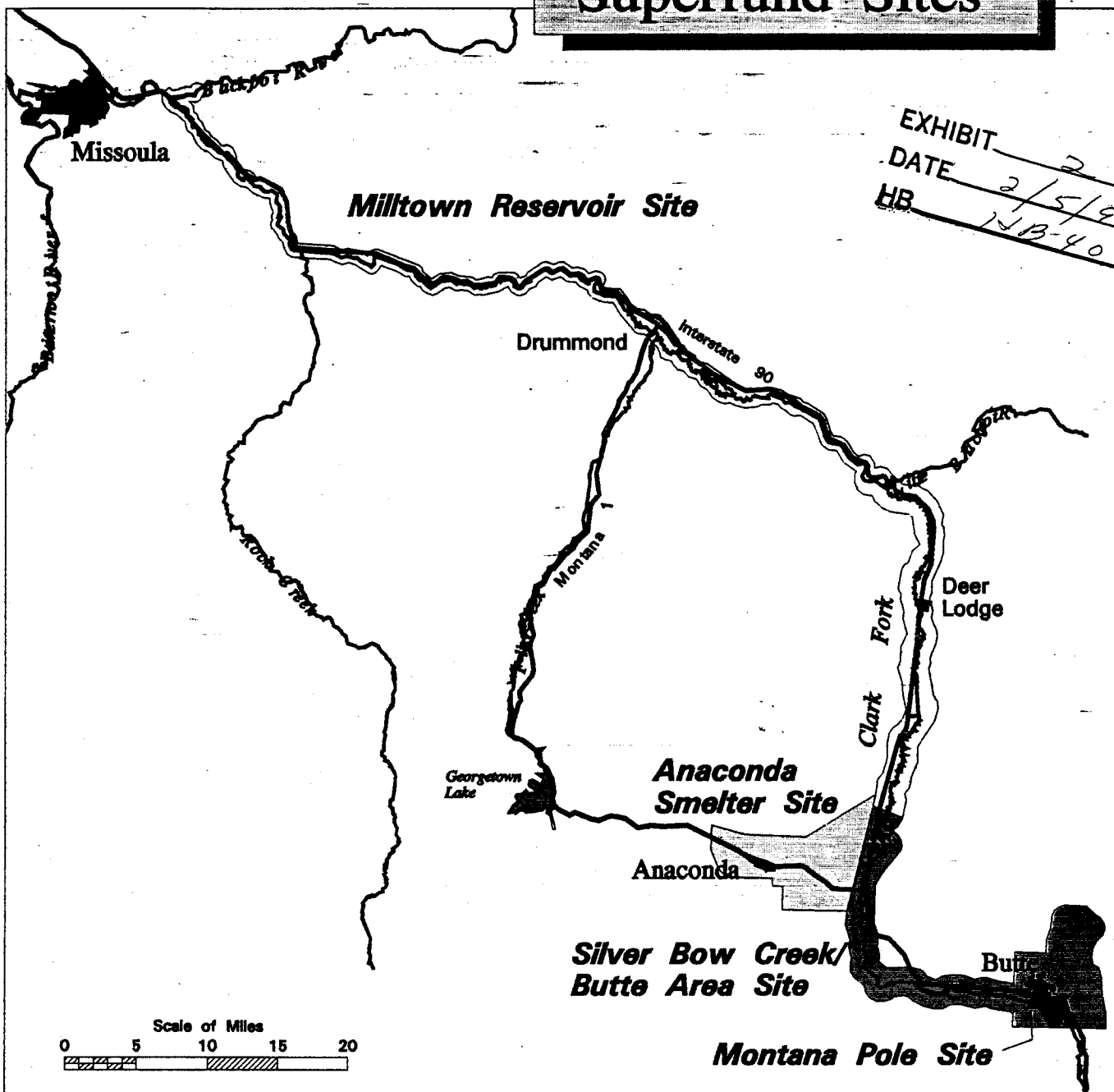
a) Arco 218 days x 150 p/d x \$2/p	\$ 65,400
Exhibits	5,000
b) State 95 days x 150 p/d x \$3/p	42,750
Exhibits	2,250
c) Court transcripts	5,000
d) Special Master	10,000

Subtotal **\$ 130,400**

TOTAL **\$2,619,076**

Clark Fork Basin Superfund Sites

EXHIBIT _____
 DATE 2/5/93
 HB 14B-401



- Town
- Highway
- Stream
- Superfund Sites**
-
-
-

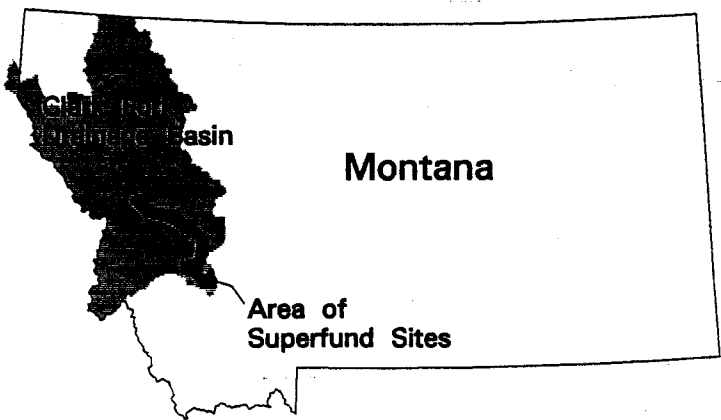


EXHIBIT 3
DATE 2/5/93
HB 14 B 401

HB 401
February 5, 1993

Testimony presented by Pat Graham, Dept. of Fish, Wildlife & Parks
before the House Appropriations Committee

As you are well aware, the 1991 legislature appropriated funds to allow the State of Montana to conduct a natural resource damage assessment in the Upper Clark Fork River Basin and to support litigation of our natural resource damage claim against Atlantic Richfield Company.

As director of the Department of Fish, Wildlife & Parks, I am a member of the policy committee that oversees the assessment and litigation. Our technical staff has worked closely with the natural resource damage program staff and state experts on all aspects of the damage assessment that deals with fish and wildlife resources. The professionals preparing our case are among the best in the country.

We believe we have built a strong scientific and technical basis to support the state's claim for damages to natural resources in the Clark Fork River Basin.

However, as with any litigation, unless the State of Montana is prepared to see the process through to completion, we will inevitably fail to protect Montana's legitimate claims. We therefore urge your support of this bill. We fully expect the returns to be many times our initial investment.

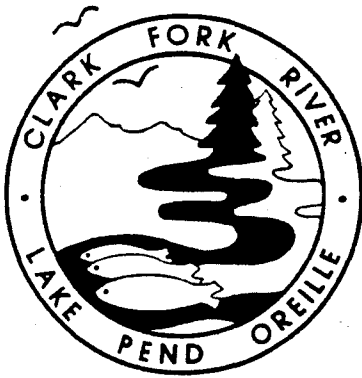


EXHIBIT 4
DATE 2/5/93
HB 13401

Clark Fork - Pend Oreille Coalition

P.O. Box 7593 • Missoula MT 59807 • (406) 542-0539
P.O. Box 1096 • Sandpoint ID 83864 • (208) 263-0347

February, 1993

Why the Legislature Should Continue to Fully Fund the Clark Fork Natural Resource Damage Claim, House Bill 401

Background

The State of Montana filed suit against the Atlantic Richfield Company (ARCO) in 1983 to recover damages for severe injuries to the natural resources in the Clark Fork River Basin caused by more than a century of mining and smelting in the Butte and Anaconda area. The lawsuit was filed under the authority of federal Superfund hazardous waste clean-up law. The lawsuit is separate from the ongoing U. S. Environmental Protection Agency's clean-up process. The suit seeks compensation for damages to resources such as water, land, fish and wildlife, and air.

The suit was originally "stayed" until the Superfund process could complete remedial investigations and feasibility studies of the largest Superfund site in the U.S. However, ARCO petitioned the court in October 1989 to lift the stay. Over the objections of the State, the court lifted the stay and put the case on a "fast-track" scheduling order requiring all discovery in the case to be completed by May, 1993. In 1991, the Governor and the state Health Department asked for and received \$4.9 million from the Legislature to prepare for trial. The biennial appropriation resulted in the creation of the Natural Resource Damage Program whose function is to ensure completion of the Clark Fork Natural Resource Damage Assessment (NRDA) and advancement of the State's suit.

As a trustee for the people of Montana, the State's goal is to recover monetary damages to natural resources in the Clark Fork River Basin. Monetary damages may only be used to restore, replace or purchase similar resources that have been lost.

(over)

Amendments to House Bill No. 373
First Reading Copy

Requested by Representative Kadas
For the Committee on Appropriations

Prepared by Greg Petesch
February 5, 1993

EXHIBIT 1
DATE 2/5/93
HB 373

1. Title, line 5.
Following: "FOR"
Insert: "CERTAIN"

2. Page 1, line 16.
Following: "deposited"
Insert: "that is in excess of general and pay plan
appropriations"

