

**MINUTES**

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

**COMMITTEE ON NATURAL RESOURCES**

**Call to Order:** By Chair Bianchi, on February 8, 1993, at 1:03 p.m.

**ROLL CALL**

**Members Present:**

Sen. Don Bianchi, Chair (D)  
Sen. Bob Hockett, Vice Chair (D)  
Sen. Sue Bartlett (D)  
Sen. Steve Doherty (D)  
Sen. Lorents Grosfield (R)  
Sen. Tom Keating (R)  
Sen. Ed Kennedy (D)  
Sen. Bernie Swift (R)  
Sen. Chuck Swysgood (R)  
Sen. Henry McClernan (D)  
Sen. Larry Tveit (R)  
Sen. Cecil Weeding (D)  
Sen. Jeff Weldon (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Paul Sihler, Environmental Quality Council  
Leanne Kurtz, Committee Secretary

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

**Committee Business Summary:**

Hearing: SB 311, SB 253, SB 275  
Executive Action: None.

**HEARING ON SB 311**

**Opening Statement by Sponsor:**

Senator Greg Jergeson, Senate District 8, stated SB 311 would define the division order for the distribution of oil or gas proceeds. He said the division order must be "in line" with the lease before the proceeds may be distributed. Senator Jergeson stated he is not a royalty owner and has no personal experience with a division order for an oil or gas lease. He added,

however, he does operate a farm with an oil lease.

**Proponents' Testimony:**

Mr. Gary Meland, Director, Montana Land and Mineral Owners Association, spoke from prepared testimony in support of SB 311 (Exhibit #1). Mr. Meland also distributed copies of division orders which he identified as either good, fair or poor (Exhibits #2-#5).

Mr. Russell Unruh, Blaine County rancher, spoke from prepared testimony in support of SB 311 (Exhibit #6).

Senator Delwyn Gage, Senate District 5, stated he would give a few examples of some problems he had experienced with poorly written division orders. He said he received a division order from an outfit in Texas which contained contradictory language. Upon protest, Senator Gage was informed by the company that the division order was a standard form. It was his understanding that Montana law entitled the company to recover a share of the taxes only. He said the company informed him that the division order was in compliance with Montana law regardless of Senator Gage's concern about the language. Senator Gage added he requested the company send a letter documenting they were entitled to receive a share of the taxes only, which they eventually did. He noted that in the early days of the Cut Bank oil field, a number of operators sold overriding interest on the gas wells they had acquired. Senator Gage stated that when the wells ran dry, the operators offered the lease holders a number of options to regain some money.

Senator Tveit, Senate District 11, excused himself as a member of the Committee to testify as a proponent of SB 311. He said his father took out an oil lease in 1962. In 1968, the oil company had drilled a dry hole, however, in the meanwhile, Senator Tveit's father had sold two thirds of his interest in the lease. Senator Tveit had retained the remaining one third of the interest on the lease. He said the oil company drilled on a section of land on which Senator Tveit had interest but denied him a portion of the profits due him because the company had changed the division order. Senator Tveit concluded "the lease and division order should say exactly the same thing".

**Opponents' Testimony:**

None.

**Informational Testimony:**

None.

**Questions From Committee Members and Responses:**

None.

**Closing by Sponsor:**

Senator Jergeson stated current law does not protect against the division of mineral interests by companies. He urged the Committee to pass SB 311.

**HEARING ON SB 253****Opening Statement by Sponsor:**

Senator Delwyn Gage, Senate District 5, stated SB 253, which would abolish the Environmental Quality Council (EQC), is not an environmental issue. He said that in examining Montana's fiscal crisis, he has concluded that entire programs should be cut. Senator Gage noted that the state has responded to the budget crisis by cutting back on personnel and services in a number of departments to the degree that they have become largely ineffective. He said the elimination of the EQC would not affect bonding requirements or interrupt the work of the state or Legislature.

Senator Bianchi stated that because a number of House members were present to testify in opposition to SB 253, he would permit opponents to speak first.

**Opponents' Testimony:**

Representative Bob Gilbert, House District 22, stated that as a former chair of the EQC, he opposed SB 253. He said that because the EQC drafts all of the natural resource legislation, additional Legislative Council personnel would have to be hired to pick up the workload. Representative Gilbert stated he admired Senator Gage for wanting to reduce the cost of government, however, he did not think the state would be gaining much by eliminating the EQC. He said the EQC is beneficial because it serves as a middle ground for interest groups and acts to diffuse conflicts regarding natural resources issues before these conflicts turn into lawsuits. Representative Gilbert noted it is the taxpayers who ultimately pay for all lawsuits filed against the state of Montana. He concluded "the EQC is a vital arm to the legislative branch and is one we cannot afford to do without".

Representative Jerry Driscoll, House District 92, distributed testimony in opposition to SB 253 on behalf of Mr. Jerry Sorensen, Planning Director of Lake County Land Services (Exhibit

#7). As the current chair of the EQC, Representative Driscoll expressed his opposition to SB 253. He noted that since his term as EQC chair expires in twenty days, he would not benefit personally from the retention of the EQC. Representative Driscoll stated the EQC is the only legislative agency which has not had any increases in staff. He said growth in government is created by the Legislature, not by its staff.

Representative Ed Grady, House District 47, stated he is a current member of the EQC and is opposed to SB 253. He said the decisions made by the EQC are important for the management of natural resources in Montana and are followed with great interest by its residents.

Representative Hal Harper, House District 44, stated it is critical to have consistency and continuity in natural resource legislation. He reminded Committee members of legislative sessions prior to the establishment of the EQC when environmental groups and industry would go to battle over natural resource issues. Representative Harper said legislators cannot afford such distractions which only serve to isolate people from one another. He said passage of SB 253 would destroy any progress made within the last ten years on environmental issues.

Senator David Rye, Senate District 47, stated the EQC is "an extremely valuable commodity to this Legislature". As a member of the EQC, he complemented the staff on its efficiency and competency. Senator Rye noted the EQC was "just as eager" to draft a bill on subdivision review which was in line with his personal philosophy as they were to draft a subdivision review bill for Senator Doherty. He submitted testimony in opposition to SB 253 from former state senator Jerry Noble (Exhibit #8). Senator Rye concluded the EQC should be retained because it has earned diverse support.

Senator Weeding asked Senator Bianchi to record him as an opponent to SB 253.

#### **Proponents' Testimony:**

Mr. Alan Evans, rancher and appraiser from Roundup, Montana, stated his support for SB 253. He said he had just heard a news report in which President Clinton had called for the abolishment of the national CEQ for many of the same reasons articulated by Senator Gage. Mr. Evans said "the EQC focuses certain biases of special interest groups and forces these biases through the processes of administrative rule". He added that "the EQC has a strangle hold on issues that do not ensure a 110 percent achievement for environmental causes". Mr. Evans said when his organization, the Musselshell Valley Development Corporation, requested their legislator file a bill draft for a Montana energy policy law, the chair of the House Natural Resources Committee, who was a member of the EQC, refused to give the bill a hearing.

Mr. Evans said the bill was eventually carried by their senator and passed the Senate on a 44-4 vote, however, when the bill moved over to the House, the Committee chair again refused to schedule a hearing. Mr. Evans stated the bill was a balanced proposal which involved consumer interest and advocated responsible development and conservation. He stated the EQC has done similar things to other issues and said he was concerned that the EQC is biasing the development and management of natural resources in the state.

**Opponents' Testimony:**

Mr. Brian McNitt, Montana Environmental Information Center (MEIC) stated the EQC performs three important functions. First, the EQC brings together divergent perspectives. Second, the EQC allows the Legislature to carry out its constitutional responsibilities to guarantee citizens the right to a clean and healthful environment. Third, the EQC acts as an avenue by which citizens can access the political process. He urged the Committee to oppose SB 253.

Mr. Tad Dale, mining engineer, spoke from prepared testimony in opposition to SB 253 (Exhibit #9).

Mr. Bob Barry, Montana Alliance for Progressive Policy (MAPP), stated his opposition to SB 253.

Ms. Mona Jamison, attorney, stated she is currently serving a two year term as a citizen appointee to the EQC. She said it did not make sense, for a number of reasons, to discontinue services provided by the EQC. First, she said the EQC is one of the few legislative agencies which serves the people and not the government. Ms. Jamison noted EQC meetings are regularly attended by citizens who are interested in the issues being discussed. She said the most important role of the EQC is that the Council reinforces the concept of process. She said the EQC is the mechanism for people to compromise on competing views and added that the elimination of the EQC would make the legislative process more difficult, especially for citizens not directly represented by an organization. Ms. Jamison concluded the EQC acts to defer litigation.

Mr. Ed Ruppel, Director, Montana Bureau of Mines and Geology, stated he has worked closely with the EQC staff. He said the EQC has proven its ability to handle complex issues and develop good legislation. Mr. Ruppel added that the composition of the EQC permits concentration on key issues during the interim between legislative sessions.

Mr. Clyde Dailey, Director, Montana Association of Senior Citizens Association, stated his opposition to SB 253.

Ms. Janet Ellis, Montana Audubon Legislative Fund, noted that

Article 9, Section 1 of the Montana Constitution states "the state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations. The Legislature shall provide for the administration and enforcement of the duty. The Legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources". She said the EQC enables the Legislature to carry out these duties mandated by the Constitution. Ms. Ellis stated her support for the EQC interim study process and urged the Committee to defeat SB 253.

Mr. Dennis Olsen, Northern Plains Resource Council, stated the EQC encourages cooperation and provides a forum for compromise on difficult and technical issues. He urged the Committee to defeat SB 253.

Mr. Tom Daubert, Helena, stated he agreed with the comments raised by the bill's opponents. He said he has worked with the EQC for twelve years as a representative for both environmental and industry concerns. He said in that time, he has never seen an instance in which the EQC staff was anything but "rigidly professional and fair". Mr. Daubert said discontinuing the EQC would not save money as it would require the Legislative Council to hire additional employees to handle the increased workload.

Mr. Doug Abelin, Helena, stated he was neither an opponent nor proponent of SB 253. He said he has had satisfying results from the EQC, however, he said he also supports Senator Gage's attempts to decrease government spending.

#### Informational Testimony:

None.

#### Questions From Committee Members and Responses:

Senator Doherty asked Ms. Deborah Schmidt, Director of the EQC, about the energy policy resolution mentioned by Mr. Evans. Ms. Schmidt replied that in the last session, the EQC drafted two resolutions regarding energy policy: one at the request of Mr. Evan's group and the other at the request of a legislator.

Senator Doherty asked Ms. Schmidt if the energy policy resolution which was adopted was requested by an individual legislator or the EQC. Ms. Schmidt replied the adopted resolution was drafted at the request of an individual legislator, not the EQC.

Senator Weeding asked if all study topics were the result of legislative action. Ms. Schmidt replied the majority of interim studies result from House or Senate resolutions requesting a

study on a particular issue. She noted that resolutions specifically directed to the EQC are done by the EQC and do not have to go through the Legislative Council ranking process as do other study resolutions. Ms. Schmidt added that the EQC has the authority to conduct studies not requested by any particular legislator.

Senator Swift asked Ms. Schmidt if an interdepartmental agency existed which prepared environmental impact statements (EIS) for the Department of Natural Resources and Conservation (DNRC) and the Department of State Lands (DSL). Ms. Schmidt replied at one time there was an interagency team housed at the DNRC, however, the DSL now prepares the bulk of EIS.

Senator Swift asked Ms. Schmidt if the EQC was doing work on behalf of the federal Environmental Protection Agency. Ms. Schmidt replied no and added that the EQC is a legislative agency and has no regulatory authority. She said the EQC does not prepare EIS or environmental assessments but acts as an oversight body for state agencies as they make decisions. Ms. Schmidt stated the EQC has developed a teaching manual to assist state agencies in complying with state EPA regulations, however, the EQC does not enforce those regulations.

Senator Grosfield stated the fiscal note estimated a \$300,000 savings to the state in fiscal year (FY) 1995 with the elimination of the EQC. He added the fiscal note also estimated it would cost the Legislative Council \$50,000 to pick up some of the EQC's duties. Senator Grosfield asked Ms. Schmidt which agency would assume the remaining EQC responsibilities. Ms. Schmidt replied SB 253 repeals only the section of law which created the EQC. She said SB 253 transfers the majority of EQC's responsibilities to the Legislative Council, however SB 253 is silent as to whether any remaining duties of the EQC would be performed by any other agency or department. Ms. Schmidt concluded the Legislative Council believes it would need between six to eight years to develop the technical expertise necessary to perform the current duties of the EQC.

Senator Keating asked Ms. Ellis if she had quoted Article 2, Section 3 of the Constitution in its entirety as he was under the impression she had made some statements out of context. Ms. Ellis replied her statements came directly from the rule book and proceeded to read Article 2, Section 3 in its entirety.

#### Closing by Sponsor:

Senator Gage stated SB 253 has nothing to do with the ability of the EQC or the competency of its staff. He said his constituents expect him to cut government spending in any way possible. Senator Gage stated he did not agree with the arguments raised by the bill's opponents and reminded the Committee of the cuts necessary to resolve the budget crisis.

**HEARING ON SB 275**

**Opening Statement by Sponsor:**

Senator Jeff Weldon, Senate District 27, stated SB 275 was drafted at the request of the Montana Association of Conservation Districts to assist them in enforcing the Natural Streambed Land Preservation Act. He said SB 275 would assist the Association in the enforcement of streambed permits by adding civil and criminal penalties for violation of the law.

**Proponents' Testimony:**

Mr. Mike Volesky, Vice-President, Montana Association of Conservation Districts, spoke from prepared testimony in support of SB 275 (Exhibit #10). He also submitted letters in support of SB 275 from three different county attorneys (Exhibits #11-13).

Mr. Ray Beck, Department of Natural Resources, stated his support for SB 275. He said his department administers the conservation district laws. Mr. Beck said the workload for the districts and county attorneys in administering regulations and penalties is significant.

Mr. Stan Bradshaw, Trout Unlimited, stated problems exist with the enforcement of current streambed regulations. He said SB 275 would adequately penalize those individuals who refuse to comply with existing law.

Mr. Ron Cunningham, Montana Fishing and Outfitters Association, stated his support for SB 275.

Ms. Janet Ellis, Montana Audubon Legislative Fund, stated her support for SB 275.

**Opponents' Testimony:**

None.

**Informational Testimony:**

None.

**Questions From Committee Members and Responses:**

Senator Grosfield asked Mr. Beck if guilt beyond a reasonable doubt had to be proven in a criminal case, to which Mr. Beck replied yes.



Senator Grosfield asked Mr. Beck who received the revenue generated from criminal penalties. Mr. Beck replied the revenue is given to the counties.

Senator Bartlett stated subsection 2 authorizes the district in which a violation occurred to deposit the revenue collected into a bank account. She asked Mr. Beck if the district had a bank account separate from the county treasurer in which they could deposit this money. Mr. Beck replied districts already have the authority to maintain their own bank accounts and SB 275 would allow them to exercise the same authority with respect to fines.

Senator Hockett asked Mr. Volesky if SB 275 would minimize some of the problems currently associated with processing 310 permits. Mr. Volesky replied it would and added SB 275 provides some funding to offset the cost of processing the permits.

Senator Swysgood asked Mr. Bradshaw what the criminal penalty would be for violation of the permit. Mr. Bradshaw replied a "fine" and "criminal penalty" were one in the same.

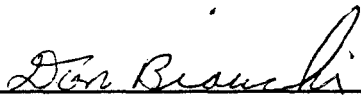
Senator Weeding asked Mr. Beck what the payment was for administering 310 permits. Mr. Beck replied the workload associated with administering 310 permits was significant and the law allows the districts to pay mileage and per diem expenses.

**Closing by Sponsor:**

Senator Weldon requested the Committee defer executive action on SB 275 until he had the opportunity to review a potential amendment to the bill.

**ADJOURNMENT**

**Adjournment: 3:00 p.m.**

  
\_\_\_\_\_  
SENATOR DON BIANCHI, Chair


  
\_\_\_\_\_  
LEANNE KURTZ, Secretary

DB/lk

# ROLL CALL

SENATE COMMITTEE NATURAL RESOURCES DATE 2/8

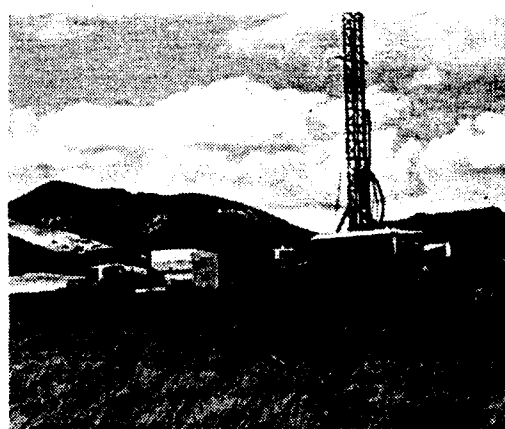
NAME	PRESENT	ABSENT	EXCUSED
Sen. Bianchi	X		
Sen. Hockett	X		
Sen. Bartlett	X		
Sen. Doherty	X		
Sen. Grosfield	X		
Sen. Keating	X		
Sen. Kennedy	X		
Sen. Swift	X		
Sen. Sunsgaard	X		
Sen. McCernan	X		
Sen. Treitz	X		
Sen. Weeding	X		
Sen. Weldon	X		



# Montana Land and Mineral Owners Association

P.O. Box 1301

Havre, Montana 59501



February 7, 1993

Sen. Don Bianchi, Chairman  
Sen. Bob Hockett, Vice Chairman  
Sen. Sue Bartlett  
Sen. Steve Doherty  
Sen. Lorents Grosfield  
Sen. Tom Heating  
Sen. Ed Kennedy

Sen. Henry McClernan  
Sen. Bernie Swift  
Sen. Chuck Swysgood  
Sen. Larry Tveit  
Sen. Cecil Weeding  
Sen. Jeff Weldon

Natural Resources Committee  
Capitol Station  
Helena, MT 59620

Re: SB 311 - Division Orders

Gentlemen:

The Montana Land and Mineral Owners Association consists of 165 members and represents approximately one-and-a-half million acres of private land ownership in north central Montana with members primarily in Blaine, Chouteau, Hill, Liberty, Phillips, and Valley Counties. This area is the major gas-producing area in the State of Montana.

A division order is a legal instrument used to notify mineral interest owners that gas or oil has been found and is going to be produced from their mineral interests. What is needed in a division order is the correct name and address, the tax identification number, a notification clause that if any interest is sold, all involved are notified, and the division of mineral interests on that tract of land so everyone gets the correct share of the proceeds of the production.

To the best of our knowledge, the major producers are doing exactly what a division order is supposed to do; however, we have a few smaller producers and note, a few producers, that have been using division orders that change the terms of an oil and gas lease. Just about all leases give royalty owners a percentage of the gross proceeds less taxes. When division orders are used to change the terms of an underlying lease, it is always at the cost of the royalty owner. They are being charged for transportation, compression, treating, and even production costs.

SENATE NATURAL RESOURCES

EXHIBIT NO. 1

DATE 2/8

BILL NO. SB 311

Natural Resources Committee  
Page 2  
February 7, 1993

The majority of leases in our area are 1/8 share to the royalty owner and 7/8 to the producer. The 7/8 share is supposed to allow producers to pay costs of drilling, production, treating, and transportation to a delivery point, and still make a good profit. And it does.

The method used to change leases with division orders by our somewhat unscrupulous producers is to draft a legal document that is virtually undecipherable unless you have a law degree and then it's questionable unless you have expertise in this area. They send this document to the royalty owner with a letter saying you must sign this division order in order to get your money which at this time, is okay, say for example \$4,000. "We would like to disperse these funds but we cannot unless you sign and return the division order." It is a very exciting time (just like hitting the lottery) and so the mineral interest owner checks the share to make sure that it is right because that part was readable, signs the division order form, and has just been had. When his checks start coming, there are all these deductions that are taken from the gross proceeds over and above taxes.

What is happening is that the people are being taken advantage of and basically being bribed to sign these bad division orders. This law would stop that because if they wanted to change a lease, they would have to amend the lease and most people will take a much harder look at amending the lease. We are not the only ones having this trouble as a number of states already have a similar division order definition on the books.

Enclosed in this testimony are two examples of gas division orders that have taken advantage of the royalty owner. They are the same except they were used by two different companies, one from Canada and one from Colorado. They change the terms of the lease to allow additional deductions before royalties are paid. We also have examples from two of the major producers in Montana that do not change the terms of the lease and to our understanding, none of these major producers in our area are changing the terms of the lease with a division order.

We urge your support of SB 311 - Division Orders.

Thank you,

Gary Meland, Director

GM:sn

Attachment #1: Xeno, Inc. (poor)  
Attachment #2: Smoky Hill Exploration Co., Inc. (poor)  
Attachment #3: J. Burns Brown Operating Co., Inc. (fair)  
Attachment #4: Norfolk Energy Inc. (good)

# GAS DIVISION ORDER

TO: XENO, INC.

EFFECTIVE: August 1, 1978

The below named parties, hereinafter designated as "OWNERS", and each of them by their signatures hereto affixed, do hereby represent, certify and warrant that they are the legal owners in the proportions set out below of all the gas and associated liquid hydrocarbons produced from or allocated to the well, acreage or communited area more particularly described as follows:

Township 36 North, Range 19 East MPM

Section 28 : All

SENATE NATURAL RESOURCES

EXHIBIT NO. 2

DATE 2-8-93

BILL NO. 883 311

in Blaine County, State of Montana, and are entitled to receive payments for gas taken or sold off of the premises, and until further notice credit for such gas so taken or sold from said premises shall be given as directed below:

CREDIT TO  
owner(s)

DIVISION OF INTEREST  
(Working Interest - W.I.  
Overriding Royalty - ORR  
Landowners' Royalty - LOR)

MAILING ADDRESS and  
SOCIAL SECURITY NO.  
or TAXPAYERS  
IDENTIFICATION NO.

Russell S. Unruh &  
Joyce A. Unruh

4.4531 % LOR

CHINOOK, Montana, 59523

Social Security No.: 516-28-3365

XENO, INC. hereinafter called "OPERATOR" may sell and deliver to any purchaser and then remit to the Owners as set out herein for all gas and associated liquid hydrocarbons, including condensate produced, saved and sold from said premises as follows:

1. Payment for gas shall be paid to the Owners according to the division of interest shown above. Payment therefor may be made monthly by the Operator mailing to such parties its check therefor at the post office address stated, on or before thirty (30) days after receipt by Operator of sufficient information upon which settlement therefor may be made. If the amount accruing to the interest of any Owner herein is less than Four Dollars (\$4.00) in any one month, the proceeds of such runs may, at the option of Operator, be accumulated and paid without interest on an annual basis, payment to be made in December of each year.

If a refund of a portion of the proceeds derived from the sale of gas may be required under any order, rule or regulation of the Federal Power Commission or other governmental agency having jurisdiction thereof, or the provisions of the "Natural Gas Act", the price for gas shall be calculated on the basis of the unsuspended or unconditional certificated price for such gas. Operator may hold, without interest, the portion of proceeds subject to possible refund until the amount of the refund, if any, is determined by final unappealable order of the Federal Power Commission or such other governmental agency. Operator is also expressly authorized and given the right, in its sole discretion, to withhold or deduct from the share of any disbursement directed hereunder attributable to any Owner, a sufficient sum to pay all ad valorem taxes, Montana Net Proceeds Tax, Montana Conservation Tax, Resource Indemnity Fund Tax and any other tax (excluding income taxes) that will become due and payable by any Owner, and to pay such taxes and render a full account of any such taxes paid by it to any Owner for whom such taxes have been paid.

2. Settlement for the above interests shall be made on the basis of the net proceeds received from the sale of gas based upon the volume computations made or accepted by the purchasers thereof. "Net proceeds" means the amount received from such sale less transportation, dehydration, separating, treating, processing and compression charges and other costs or expenses, if any. Operator may sell gas to any purchaser of its choice at such quantities and prices as it shall deem prudent. However, in the event the sales price for gas is established or regulated by the Federal Power Commission, or other governmental authority, the price applicable to such sales for the purpose of calculating net proceeds shall be the unsuspended or unconditional certificated price for such gas determined by final unappealable order of the Federal Power Commission or such other governmental agency.

3. Payments so made are to be in full settlement for such gas so taken or sold from said premises.

4. Owners severally shall notify Operator of any change of ownership, and no transfer of interest shall be binding upon Operator until a request to make such transfer and the recorded instrument evidencing such transfer, or a certified copy thereof, shall be furnished to Operator. Transfers of interest shall be made effective not earlier than the first day of the calendar month in which notice is received by Operator. Operator is relieved hereby of any responsibility for determining if and when any of the interests set forth above shall or should revert to or be owned by other parties as the result of the completion or discharge of money or other payments from said interests and the Owners whose interests are affected by such money or other payments, if any, assume said responsibility and shall give Operator notice in writing by certified letter addressed to Operator at the above address, when any such money or when any other division of interest than that set forth above shall, for any reason, become effective, and to furnish requests for transfer accordingly, and that in the event such notice shall not be received, Operator shall be held harmless in the event of and is hereby released from any and all damage or loss which might arise out of any overpayment.

5. In the event of any dispute or question at any time concerning title to the above described lands, or the gas produced therefrom, Operator may hold the proceeds of all gas runs hereunder, until indemnity satisfactory to Operator has been furnished or until such dispute or question of title is corrected or removed to Operator's satisfaction. In the event that any court action or suit is filed in any court affecting title to either the real property above described or to the gas produced therefrom in which any of the undersigned are parties, written notice of the filing of such action shall immediately be furnished to Operator by the undersigned, stating the court in which the same is filed and the title of such action or suit, and Operator or any purchaser of gas runs shall be held harmless from any judgment rendered in such suit and all reasonable costs and expenses incurred in defending against said claim whether in Operator's defense or in the defense of the gas purchaser, and the undersigned shall pay said judgment and said costs and expenses in the proportion and to the extent that the same affects his or their interest. Where, under this provision the proceeds of any gas sales are retained, Owners agree to indemnify and hold the Operator harmless from any liability for any tax proposed or assessed against or paid on account of such retained proceeds, together with the penalties incident thereto, and the Operator may deduct the same from any amount owing by it to Owners. In the event of overpayment for gas to the interest of any Owner herein, Operator is authorized upon discovery thereof to recoup such amounts from future accruals to this or any other interest of such Owner for which Operator may make settlement.

6. This Agreement shall be binding upon all parties agreeing hereto irrespective of whether all parties owning an interest in the minerals, royalty and leasehold estates execute the same, and shall extend to and be binding upon their respective heirs, devisees, executors, legal representatives, successors and assigns. This Agreement may be attached as an exhibit to any other document and incorporated therein by reference for all purposes and execution of any such document to which this Gas Division Order may be attached shall be deemed to be for all purposes of the same force and effect as execution of this document.

7. If applicable, the Operator will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and any amendment or supplement thereto and of the rules, regulations and relevant orders of the Secretary of Labor.

RUSSELL S. UNRUH

JOYCE A. UNRUH

# GAS DIVISION ORDER

TO: **SMOKY HILL EXPLORATION COMPANY, INC.**  
 EFFECTIVE: **April 1, 1982**

The below named parties, hereinafter designated as "OWNERS", and each of them by their signatures hereto affixed, do hereby represent, certify and warrant that they are the legal owners in the proportions set out below of all the gas and associated liquid hydrocarbons produced from or allocated to the well, acreage or communitized area more particularly described as follows:

**Township 35 North, Range 12 East, MPM**  
**Section 13: all**  
**1-13 Meland**

**SENATE NATURAL RESOURCES**

EXHIBIT NO. **3**

DATE **2-8-93**

BILL NO. **SB 311**

in **Hill** County, State of Montana, and are entitled to receive payments for gas taken or sold off of the premises, and until further notice credit for such gas so taken or sold from said premises shall be given as directed below:

CREDIT TO  
(owner)

DIVISION OF INTEREST  
(Working Interest - W.I.  
Overriding Royalty - ORR  
Landowners' Royalty - LOR)

MAILING ADDRESS and  
SOCIAL SECURITY NO.  
or TAXPAYERS  
IDENTIFICATION NO.

**Sigurd Meland**

**3.125000% LOR**

**Havre, MT 59501**

## SMOKY HILL EXPLORATION COMPANY, INC.

hereinafter called "OPERATOR" may sell and deliver to any purchaser and then remit to the Owners as set out herein for all gas and associated liquid hydrocarbons, including condensate produced, saved and sold from said premises as follows:

1. Payment for gas shall be paid to the Owners according to the division of interest shown above. Payment therefor may be made monthly by the Operator mailing to such parties its check therefor at the post office address stated, on or before thirty (30) days after receipt by Operator of sufficient information upon which settlement therefor may be made. If the amount accruing to the interest of any Owner herein is less than Four Dollars (\$4.00) in any one month, the proceeds of such runs may, at the option of Operator, be accumulated and paid without interest on an annual basis, payment to be made in December of each year.

If a refund of a portion of the proceeds derived from the sale of gas may be required under any order, rule or regulation of the Federal Power Commission or other governmental agency having jurisdiction thereof, or the provisions of the "Natural Gas Act", the price for gas shall be calculated on the basis of the unsuspended or unconditional certificated price for such gas. Operator may hold, without interest, the portion of proceeds subject to possible refund until the amount of the refund, if any, is determined by final unappealable order of the Federal Power Commission or such other governmental agency. Operator is also expressly authorized and given the right, in its sole discretion, to withhold or deduct from the share of any disbursement directed hereunder attributable to any Owner, a sufficient sum to pay all ad valorem taxes, Montana Net Proceeds Tax, Montana Conservation Tax, Resource Indemnity Fund Tax and any other tax (excluding income taxes) that will become due and payable by any Owner, and to pay such taxes and render a full account of any such taxes paid by it to any Owner for whom such taxes have been paid.

2. Settlement for the above interests shall be made on the basis of the net proceeds received from the sale of gas based upon the volume computations made or accepted by the purchasers thereof. "Net proceeds" means the amount received from such sale less transportation, dehydration, separating, treating, processing and compression charges and other costs or expenses, if any. Operator may sell gas to any purchaser of its choice at such quantities and prices as it shall deem prudent. However, in the event the sales price for gas is established or regulated by the Federal Power Commission, or other governmental authority, the price applicable to such sales for the purpose of calculating net proceeds shall be the unsuspended or unconditional certificated price for such gas determined by final unappealable order of the Federal Power Commission or such other governmental agency.

3. Payments so made are to be in full settlement for such gas so taken or sold from said premises.

4. Owners severally shall notify Operator of any change of ownership, and no transfer of interest shall be binding upon Operator until a request to make such transfer and the recorded instrument evidencing such transfer, or a certified copy thereof, shall be furnished to Operator. Transfers of interest shall be made effective not earlier than the first day of the calendar month in which notice is received by Operator. Operator is relieved hereby of any responsibility for determining if and when any of the interests set forth above shall or should revert to or be owned by other parties as the result of the completion or discharge or money or other payments from said interests and the Owners whose interests are affected by such money or other payments, if any, assume said responsibility and shall give Operator notice in writing by certified letter addressed to Operator at the above address, when any such money or when any other division of interest than that set forth above shall, for any reason, become effective, and to furnish requests for transfer accordingly, and that in the event such notice shall not be received, Operator shall be held harmless in the event of and is hereby released from any and all damage or loss which might arise out of any overpayment.

5. In the event of any dispute or question at any time concerning title to the above described lands, or the gas produced therefrom, Operator may hold the proceeds of all gas runs hereunder, until indemnity satisfactory to Operator has been furnished or until such dispute or question of title is corrected or removed to Operator's satisfaction. In the event that any court action or suit is filed in any court affecting title to either the real property above described or to the gas produced therefrom in which any of the undersigned are parties, written notice of the filing of such action shall immediately be furnished to Operator by the undersigned, stating the court in which the same is filed and the title of such action or suit, and Operator or any purchaser of gas runs shall be held harmless from any judgment rendered in such suit and all reasonable costs and expenses incurred in defending against said claim whether in Operator's defense or in the defense of the gas purchaser, and the undersigned shall pay said judgment and said costs and expenses in the proportion and to the extent that the same affects his or their interest. Where, under this provision the proceeds of any gas sales are retained, Owners agree to indemnify and hold the Operator harmless from any liability for any tax proposed or assessed against or paid on account of such retained proceeds, together with the penalties incident thereto, and the Operator may deduct the same from any amount owing by it to Owners. In the event of overpayment for gas to the interest of any Owner herein, Operator is authorized upon discovery thereof to recoup such amounts from future accruals to this or any other interest of such Owner for which Operator may make settlement.

6. This Agreement shall be binding upon all parties agreeing hereto irrespective of whether all parties owning an interest in the minerals, royalty and leasehold estates execute the same, and shall extend to and be binding upon their respective heirs, devisees, executors, legal representatives, successors and assigns. This Agreement may be attached as an exhibit to any other document and incorporated therein by reference for all purposes and execution of any such document to which this Gas Division Order may be attached shall be deemed to be for all purposes of the same force and effect as execution of this document.

7. If applicable, the Operator will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and any amendment or supplement thereto and of the rules, regulations and relevant orders of the Secretary of Labor.

Social Security # \_\_\_\_\_

NOV - 9 1991

GAS DIVISION ORDER

COPY

TO: J. Burns Brown Operating Company  
P.O. Box 130966  
Tyler, Texas 75713

Division Order Number \_\_\_\_\_  
Date Issued January 14, 1991  
Effective Date First Production

This division order applies to oil, gas, condensate, distillate, plant products, and all other hydrocarbons, or the proceeds from the sale thereof, produced from the following described wells(s) and land, to-wit:

Township \_\_\_\_\_ St. M.P.M.  
Section \_\_\_\_\_

DATE NATURAL RESOURCES  
EXHIBIT NO. 4  
DATE 2-8-93  
BILL NO. 80311

Credit To: \_\_\_\_\_ (Division of Ownership)

See attached Exhibit "A"

3

represents to the best of the undersigned's present information

Each of the undersigned, for himself and without regard to any other party, certifies and guarantees that the interest set out opposite his name, is the interest owned by him in the oil, gas, condensate, distillate, plant products, and all other hydrocarbons or proceeds from the sale thereof from the above described land.

Until further written notice of a change in ownership, as hereinafter provided, you will give credit to the undersigned for such interest shown above.

1. You or your assignees, nominees or vendees are authorized to purchase, receive, sell, and/or to deliver to other purchasers for my account and to receive the proceeds thereof, the oil, gas, condensate, distillate, plant products, and all other hydrocarbons as above defined.
- A 2. For all gas taken hereunder, the undersigned will be paid his share of the proceeds at the delivery point of such gas less those expenses and settlement charges set forth below which, for all purposes hereunder shall be considered the price received for such gas under the terms of any applicable gas contract (or amendment or supplement to such contract) which is hereby ratified and confirmed by the undersigned. If J. Burns Brown Operating Company is a party to such gas contract, it will be made available to the undersigned for inspection at the offices of J. Burns Brown Operating Company during normal business hours. Settlement therefor shall be made as herein provided, less taxes, transportation, gathering, treating, processing and compression costs incurred in connection with the marketing of such gas incurred prior or subsequent to the "point of delivery" as defined in the referenced Gas Purchasing Contract, which the undersigned hereby acknowledges and agrees to pay. With all benefits, royalties and bonuses payable to the owner of the well, the undersigned agrees to pay to the owner of the well.
3. For all oil, condensate, distillate, plant products, and all other hydrocarbons, if in order to market such oil, condensate, distillate, plant products and all other hydrocarbons, it is necessary to transport same by truck or barge to a marketing point, then in that event, you are authorized to deduct from the proceeds for such oil, condensate, distillate, plant products and all other hydrocarbons the trucking or barge charges. Proper deductions will be made for sediment and other impurities, and corrections for temperature will be made in accordance with established rules prevailing at the time and place of delivery.
4. The undersigned agrees to indemnify you and hold you harmless from any liability for any tax proposed or assessed against any interest hereunder and hereby authorizes you to deduct and pay such tax or taxes.
5. Accounting and payment shall be made only for the oil, gas, condensate, distillate, plant products and all other hydrocarbons marketed and actually settled for by the purchaser and shall be made by check payable to the undersigned at their respective addresses shown above, provided if the proceeds accruing to any interest hereunder should amount to less than Fifty Dollars (\$50.00) per month, you will withhold payment without accrual of interest until such accruals amount to Fifty Dollars (\$50.00). All payments hereunder shall be deemed properly made upon being deposited in the United States mail, postage prepaid, addressed to the undersigned as above set forth.
6. The undersigned agrees to refund any overpayment which he receives and agrees that you, in your discretion, may withhold proceeds attributable to this interest until the amount of the overpayment is fully recovered.
7. Satisfactory abstracts or other evidence of title will be furnished to you at any time on demand. In the event of a failure to furnish such evidence of title or in the event of an adverse claim or dispute at any time concerning title, you may hold the proceeds of all oil, gas, condensate, distillate, plant products and other hydrocarbons received without being liable for interest on the amount retained until indemnity satisfactory to you has been furnished, and in the event of any action or suit is filed in any court affecting the title either to the lands described above or to the oil, gas, condensate, distillate, plant products and other hydrocarbons produced therefrom in which any of the undersigned are parties, written notice of the filing of said action shall be immediately furnished to you by the undersigned against whom action is commenced, stating the court to which the same is filed and the style of such action or suit; and you and or any carrier transporting the oil, gas, condensate, distillate, plant products and all other hydrocarbons for the undersigned's account shall be held harmless from any judgment rendered in such suit, insofar as the same adversely affects the interest in the above referenced lands owned by the undersigned and/or all reasonable costs and expenses incurred in defending against such claim insofar as the same adversely affects the interest of the undersigned whether, in your defense or in the defense of the carrier transporting the oil, gas, condensate, distillate, plant products and other hydrocarbons for your or the undersigned's account, and the undersigned agrees to pay said judgment and the costs and expenses in the proportion and to the extent that the same affect the interest owned by the undersigned, but such amount shall never exceed the interest of the undersigned hereunder.
- B. If any portion of the proceeds derived from the sale of the oil, gas, condensate, distillate, plant products and all other hydrocarbons is subject to refund under any law, order, rule or regulation of any court, regulatory body, state, the U.S. Government, or any subdivision thereof, you may withhold without interest the portion of the proceeds subject to refund unless indemnity satisfactory to you has been furnished, or until the refund obligation has been finally determined. If any portion of the proceeds derived from the sale of the oil, gas, condensate, distillate, plant products and all other hydrocarbons is thereafter required to be refunded by you under any law, order, rule or regulation of any court, regulatory body, state, the U.S. Government or any subdivision thereof, you are authorized to recover the amount of the refund applicable to the interest of each of the undersigned from future payments, or at your election you may invoice the undersigned therefor and collect the same plus the legal rate of interest you are required in connection with the undersigned's portion of the refund.
9. Quantities are to be computed from regularly compiled tank tables or gas recording charts or other methods of computation, with the undersigned to have the privilege of witnessing and verifying the gauge-tickets, gas charts and chart integration results. You shall make available such records in your possession during normal business hours to the undersigned that will enable the undersigned to verify such quantities; in addition to the deduction of the tank tables and gas charts, corrections shall be made for temperature, impurities, and shrinkage according to the rules and regulations as prescribed by the legal authority of the State in which the wells are located.
10. If any royalty interest hereunder shall become subdivided you shall have the right to require the undersigned to designate of a common agent to receive payment for the several holders of the subdivided portion thereof, and you shall not be required to make payment for the subdivided interest until such designation is furnished.
11. The consideration for the execution of this agreement is the proceeds from the oil, gas, condensate, distillate, plant products and all other hydrocarbons obtained and to be obtained from the unit well and/or lands described above, along with those additional considerations set forth herein which are hereby recognized and acknowledged as being sufficiently reasonable. The undersigned hereby adopts, ratifies and confirms the above described declaration of unit/drilling and production unit together with all amendments and supplements thereto which are duly recorded, and do further ratify the oil, gas and mineral leases listed and described in such declaration of unit/drilling and production unit and amendments or supplements thereto, and do hereby grant, lease and let the land described in such declaration to the record owners thereof according to the terms, provisions and conditions of such leases, and do also agree that all oil, gas and mineral leases heretofore executed by them, covering lands included in such unit are and have been pooled in accordance with such declaration, and all such leases as well as assignments and/or subleases, unit declarations, agreements, gas sales contracts, processing agreements and all amendments covering the tracts of lands as to which the undersigned is credited with an interest are presently valid and subsisting.
12. The undersigned agrees to notify you in writing of any change in ownership of interest and to furnish you with a certified copy of the instrument evidencing such change. Any transfer, assignment or conveyance of any interest in said oil or gas shall be made subject to this division order and effective at seven o'clock a.m. on the first day of the calendar month following receipt of such notice by you.
13. You are hereby relieved of any responsibility for determining when any of the interests shown above shall increase, diminish, be extinguished, or revert to other payments from said interests or as a result of the increase or decrease in production, and you are hereby authorized to continue to remit, pursuant to the division of interest set forth above until you receive notice in writing to the contrary, by mail addressed to you at the address shown above, together with a certified copy of the instrument evidencing such change.

\*SEE APPENDED SCHEDULE

EXHIBIT #4  
DATE 2-8-93  
SB-311

1. You are authorized but not required to deduct from the proceeds of sale the amount of any severance, production excise, occupation or any other tax levied by or under authority of the laws of the United States, the State where the wells are located or any legal subdivision thereof against the undersigned for and on account of his interest in the lands and oil, gas, condensate, distillate, plant products and all other hydrocarbons and to pay such tax or taxes from the deducted revenue. <sup>related</sup> WDL
2. With respect to any <sup>related</sup> interest in the statement of ownership and order of division which is credited to a married person, the spouse of such married person joins herein and becomes a party hereto and authorizes and directs you to receive and market oil, gas, condensate, distillate, plant products and all other hydrocarbons under the terms hereof, and to pay in accordance with this agreement to such married person, in the proportion and interest set forth above; which such payment shall be in full and complete discharge of all obligations hereunder, in the same manner as though such payment had been made directly to such spouse or to them jointly. Each interest owner warrants and represents that his or her marital status has remained constant subsequent to his or her acquisition of interest in the lands described. <sup>only</sup> WDL
3. Should any of the undersigned become indebted to you in any amount, you may apply the proceeds accruing to the sale of any oil, gas, condensate, distillate, plant products, and all other hydrocarbons attributable to the interest of the undersigned as may be indebted to you along with any interest due on said debt to the payment and satisfaction of such indebtedness, along with any other remedies you have, either at law or in equity. WDL
- This division order shall be effective as to each party signing same regardless of whether or not any other party whose name appears above executed this instrument or any other instrument of similar import. This division order supersedes all former division orders given on the above described property.
4. This division order shall inure to the benefit of <sup>related</sup> the parties hereto, their heirs, successors and assigns; and the undersigned, and each of them, by executing this division order hereby agree that the persons, partnerships, corporations or firms to whom all or any part of the oil, gas, condensate, distillate, plant products and all other hydrocarbons produced from or allocated to the lands described above are sold or marketed, may make payment to you for such oil, gas, condensate, distillate, plant products and all other hydrocarbons purchased from the undersigned; and that, insofar as it concerns and to the extent of their interest owned hereunder, they will hold harmless, protect and indemnify all purchasers against any and all claims, damages and expenses of whatsoever nature in connection with the purchase of such oil, gas, condensate, distillate, plant products and all other hydrocarbons by said purchaser and the payment to you for same on the basis of one hundred percent of eight-eighths. <sup>related</sup> WDL

Unless terminated earlier by you upon written notice, this division order shall remain effective for a term of One (1) <sup>year</sup> years and year to year thereafter until terminated by either party upon sixty days written notice prior to the anniversary of the effective date hereof. WDL

Before signing, please verify your interest as set out above and verify your address, with zip code, to which all checks and future notices are to be mailed. Any change of address should be promptly sent to J. Burns Brown Operating Company, P.O. Box 130966, Tyler, Texas 75713. WDL

Please indicate your Social Security or Federal Tax Identification Number in the space provided below your signature.

Sign in ink exactly as your name appears above and have your signature witnessed. If your name is incorrectly stated, return the division order with advice as to your correct name. If executed on behalf of a corporation, indicate your official title and impress the corporate seal attested by a secretary or assistant power of attorney authorizing such action.



APPENDED TO AND BY THIS REFERENCE MADE A PART OF THAT CERTAIN GAS DIVISION ORDER DIRECTED TO J. BURNS BROWN OPERATING COMPANY ISSUED THE 14TH DAY OF JANUARY, 1991, AND EFFECTIVE THE FIRST PRODUCTION DAY AND DATED FOR SIGNATURE THE 24TH DAY OF OCTOBER, 1991.

If J. Burns Brown Operating Company is a direct or indirect purchaser of any or all of the gas and other related hydrocarbons covered by this Order or has any legal or equitable economic interest in the purchaser thereof, the "price received" from such purchaser shall be deemed to be the prevailing wellhead market price for gas and other related hydrocarbons in the area of the well covered by this Gas Division Order.

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/ *inf*

APPENDED TO AND BY THIS REFERENCE MADE A PART OF THAT CERTAIN GAS  
DIVISION ORDER DIRECTED TO NORFOLK ENERGY INC., ITS SUCCESSORS AND  
ASSIGNS, ISSUED THE 23RD DAY OF AUGUST, 1991, AND EFFECTIVE THE  
FIRST PRODUCTION DAY AND DATED FOR SIGNATURE THE 30<sup>th</sup> DAY OF  
OCTOBER, 1991.

If Norfolk Energy Inc., its successors and assigns, is a direct or  
indirect purchaser of any or all of the gas and other related  
hydrocarbons covered by this Order or has any legal or equitable  
economic interest in the purchaser thereof, the "price received"  
from such purchaser shall be deemed to be the prevailing wellhead  
market price for gas and other related hydrocarbons in the area of  
the well covered by this Gas Division Order.

LEGISLATIVE TESTIMONY  
DIVISION ORDER BILL  
SB 311

My name is Russell S. Unruh. I am a rancher in northern Blaine County and am a member of Montana Land and Mineral Association. I am here to testify in favor of SB 311, the Royalty Division Bill.

I believe that a Royalty Division Order should be only a document which is necessary to distribute royalty to mineral interests. In some cases, Royalty Division Orders have been used for other purposes as well.

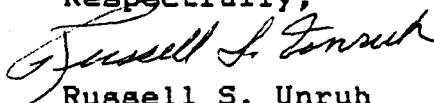
My Division Order, for example, not only described my mineral interest but injected other provisions. One such provision was that "settlement of the mineral interest shall be made on the basis of NET PROCEEDS from the sale of the oil and gas". It then went on to describe net proceeds as "the amount received from such a sale less transportation, dehydration, separation, treating, processing and compressing charges or other expenses, if any".

As a result of the above provisions, I feel that my Royalty Division Order altered the provisions set forth in my lease. My lease stated that "the lessee shall pay the lessor, as royalty, one eighth of the PROCEEDS from the sale of the gas, as such, for gas from wells where gas only is found."

I believe that when we sign a 12 1/2 % land owners royalty lease, we are giving the lessee 87 1/2 % of our gas and oil to produce, transport and market our gas or oil without any cost to us. When we signed the above mentioned lease, we understood that we would receive 12 1/2 % of the proceeds from the sale of our gas as stated in our lease, but we receive approx. \$.45 per mcf less than the sale price. As a result, over the past 13 years that the field has been in production, I feel we have lost many thousands of dollars.

I believe that if SB 311 is enacted, it will stop future Royalty Division Orders from altering provisions in the lease. I would also recommend that future Division Orders use large enough print so you don't have to find a microscope to read them.

Respectfully,



Russell S. Unruh  
Box 457  
Chinook, Montana 59523  
406-357-3628

SENATE NATURAL RESOURCES

EXHIBIT NO. 6

DATE 2/8

BILL NO. SB 311

## LAKE COUNTY LAND SERVICES

## PLANNING AND SANITATION

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

February 8, 1993

Senator Don Bianchi  
 Chairman  
 Senate natural Resources  
 Capitol Station  
 Helena, Montana 59620

Re: SB 253

Dear Chairman Bianchi:

SENATE NATURAL RESOURCES

EXHIBIT NO. 7

DATE 2/8

BILL NO. SB 253

I do not support this bill to eliminate the Environmental Quality Council.

Over the years, I have had the privilege of working with the EQC on a number of difficult issues. Several years ago I participated on the Interim study on subdivisions when Representative Dennis Iverson was Chairman of EQC. It was the most thorough and balanced study of one of the most divisive issues in our state. Much of what was analyzed and prepared as part of that study has surfaced again in the present session in what appears now to be a time of support for subdivision reform.

Most recently, I participated on the Interim Study on Lakeshore prior to this session. The Council and staff did good work in evaluating this issue and coming up with a reasonable bill (HB 30) to allow local governments to better manage lakeshore development.

When I was Chairman of the Flathead Basin Commission, we called upon the EQC staff to facilitate a day long retreat to help us establish our priorities and activities for the period 1989-1991. The staff did a remarkable job helping us sort through a broad range of ideas to come up with a practical agenda for our work program.

I acknowledge that the economic situation for state government is grim. However, many people are coming to understand that protection of our environment is one of the best investments we can make for our future in this great state. I believe the Montana Legislature must take the leadership in the area of environmental quality. The EQC is the proper forum to help the Legislature fulfill that responsibility.

Please retain this vital function of the Legislature.

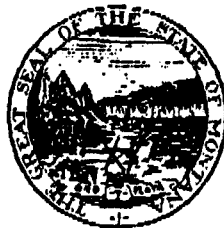
Sincerely,



Jerry Sorensen  
 Planning

Post-It™ brand fax transmittal memo 7671		# of pages > 1
To: Deborah Schmidt	From: Jerry Sorensen	
Co. c/o DPI	Co. Lake County	
Dept. EQC	Phone # 883 6211 ext. 212	

# Montana State Senate



*The Big Sky Country*

SENATOR JERRY NOBLE

SENATE DISTRICT 21

HELLNA ADDRESS:  
CAPITOL STATION  
HELENA, MONTANA 59620  
PHONE: (406) 444-4800

HOME ADDRESS:  
1540 MEADOWLARK DRIVE, S5  
GREAT FALLS, MONTANA 59404  
PHONE: (406) 453 0591

COMMITTEES:  
BUSINESS & INDUSTRY  
HIGHWAYS  
BILLS & JOURNAL  
NATURAL RESOURCES

February 8, 1993

Senate Natural Resources Committee

RE: SB 253

Having spent the last two (2) years as the Vice Chairman of the EQC, I would have to say it is a very worthwhile and necessary committee. There are many environmental problems facing the State each year and I know of no other committee or group who could address these. I feel the EQC weighs both sides of the issue and all involved get a chance to air their feeling. Then these issues can be fairly researched over the interim and resolved for the best of the whole State.

I feel there could perhaps be some small cuts made, but they would probably be insignificant and detrimental to the problems that need to be solved.

I am unable to be at this hearing and would hope you can consider my testimony.

SENATE NATURAL RESOURCES  
EXHIBIT NO. 8  
DATE 2/8/93  
BILL NO. SB 253  
Jerry Noble

February 8, 1993

Senate Natural Resources  
Room 405  
Capitol Building  
Helena, MT 59106

**Re: SB 253**

Members of the Committee:

As a former member of the EQC (1983 - 1989) I felt it was my duty to speak out in opposition to Senate Bill 253. The reason that I use the word "duty" is because I strongly believe that the EQC works; it is accomplishing exactly what it was established to do.

In a nutshell, the EQC provides a forum, based on diligent research, to address the controversial issues that affect our quality of life here in Montana. People, jobs and the economy are an integral part of this process. From my experience, the technical staff has presented the facts fairly, in an unbiased format. The Council itself, after much public input, has all of the tools to then make the recommendations on whatever topic the legislature has directed the EQC to pursue. In most

SENATE NATURAL RESOURCES  
EXHIBIT NO. 9  
DATE 2/8/93

cases, there is a consensus among the members. Where philosophical differences exist there is no time wasted on trying to solve a situation where no answer exists.

Whether you come into the Council from the right or the left, service on the EQC will move you to middle ground. This is where compromise is reached and sensitivity to the other person's "point of view" is important to the learning process, and more importantly doing what is best for the State of Montana.

I would ordinarily support streamlining the size of government, but in this case, it is my feeling that the EQC is necessary to add moderation to our environmental laws in how they are administered among all state agencies. Too often people are left out of the equation when environmental issues are discussed or enforced. I still believe that the best environment is a full "lunch bucket." A healthy environment cannot exist without a healthy economy. The EQC has not forgotten this basic premise. Please support the Environmental Quality Council.

Respectfully submitted,

A handwritten signature in cursive script that reads "Tad Dale".

Tad Dale  
Mining Engineer

NATURAL STREAMBED AND LAND PRESERVATION ACT, aka 310 LAW

A. BACKGROUND

MONTANA CONSERVATION DISTRICTS ADMINISTER THE NATURAL STREAMBED AND LAND PRESERVATION ACT FOR THE PURPOSE OF PROTECTING THE BED AND BANKS OF PERENNIAL-FLOWING STREAMS. THE ACT IS INTENDED TO MAINTAIN THE NATURAL STATE OF RIVERS AND STREAMS BY MINIMIZING EROSION AND SEDIMENTATION, WHILE RECOGNIZING THE NEEDS OF AGRICULTURAL, RECREATION, AND OTHER WATER USES.

ANY PERSON CONTEMPLATING AN ACTION WHICH IMPACTS THE BED OR BANKS ADJACENT TO A STREAM MUST OBTAIN A PERMIT FROM THE LOCAL CONSERVATION DISTRICT. PROPOSED PROJECTS ARE INSPECTED BY A TEAM COMPOSED OF A DISTRICT SUPERVISOR; A DEPARTMENT OF FISH, WILDLIFE, AND PARKS REPRESENTATIVE; AND THE LANDOWNER. THE DISTRICT BOARD OF SUPERVISORS MAKES THE FINAL PERMITTING DECISION, WHICH IS SUBJECT TO ARBITRATION IF REQUESTED BY ANY MEMBER OF THE REVIEW TEAM. VIOLATORS OF THE ACT ARE SUBJECT TO A MISDEMEANOR FINE OF NOT LESS THAN \$25 OR MORE THAN \$500 PER DAY, IF CONVICTED. IN MOST CASES, HOWEVER, VIOLATORS REMEDY THE SITUATION BEFORE FINES BECOME NECESSARY.

B. LOCAL ADMINISTRATION

ADMINISTRATION OF THE 310 PERMIT PROGRAM HAS BEEN QUITE SUCCESSFUL BECAUSE THE EFFORT IS CONDUCTED LOCALLY BY PEOPLE WITH DIRECT KNOWLEDGE OF CONDITIONS IN THE PROJECT AREA. THE DISTRICTS ASSOCIATION WITH THE LOCAL TECHNICAL STAFF OF THE USDA SOIL CONSERVATION SERVICE; THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; AND LOCAL LANDOWNERS HAS PROVEN EFFECTIVE IN MEETING THE INTENT OF THE LAW. DISTRICTS FEEL THAT COOPERATION, EDUCATION, AND LOCAL INPUT ARE MORE EFFECTIVE AND EFFICIENT THAN REGULATION AND CONFRONTATION.

SENATE NATURAL RESOURCES  
EXHIBIT NO. 10  
DATE 2/8/93  
BILL NO. SB 275



C. THE CURRENT SITUATION

CONSERVATION DISTRICTS HAVE TAKEN A SERIOUS APPROACH TO THEIR 310 RESPONSIBILITIES. AS A RESULT, MUCH TIME, EFFORT, AND RESOURCES HAVE BEEN DIRECTED TOWARD THIS GROWING EFFORT.

SINCE ITS INCEPTION IN 1975, THE NUMBER OF PERMIT APPLICATIONS HAVE INCREASED SUBSTANTIALLY DUE TO PUBLIC AWARENESS. MANY DISTRICTS HAVE BEEN FORCED TO CURTAIL OTHER ACTIVITIES TO EFFECTIVELY ADMINISTER THE STAGGERING FLOW OF APPLICATIONS. IN MANY CASES, SPECIAL DISTRICT MEETINGS ARE REQUIRED TO HANDLE 310 APPLICATIONS, AND MEETINGS OFTEN LAST SIX HOURS OR MORE (OFTEN UNTIL 2:00 / SUP' BECAUSE OF PERMIT VOLUME.

TO ENCOURAGE VOLUN THE LRTICIPATION IN THE 310 PROGRAM, DISTRICTS DO NOT LEVY A PERMIT FEE, A PERMITTINNAL FUNDING IS AVAILABLE TO THE DISTRICTS FOR 310 ADMINI MEMBER OF THE UGH SUPERVISORS VOLUNTEER THEIR TIME AT MEETINGS, 310 ADMINISTRATION HAS PUT SEVERE PRESSURE ON ALREADY LIMITED DISTRICT BUDGETS.

IN ADDITION TO PROCESSING 310 APPLICATIONS, SUPERVISORS OFTEN SPEND CONSIDERABLE TIME AND EFFORT, ON ARBITRATION OF DECISIONS AND ENFORCEMENT OF 310 VIOLATIONS. NEEDED LEGAL SUPPORT IS USUALLY VERY DIFFICULT TO OBTAIN FROM COUNTY ATTORNEYS BECAUSE OF LOCAL PRIORITIES AND TIME REQUIREMENTS ASSOCIATED WITH ENFORCEMENT. THOSE COUNTY ATTORNEYS WHO ARE WILLING TO OVERLOOK THESE PRIORITIES AND TIME REQUIREMENTS HAVE HAD A DIFFICULT TIME PROSECUTING 310 VIOLATIONS FOR THREE REASONS:

- 1) IN A CRIMINAL PROSECUTION, THE STATE HAS TO PROVE ITS CASE BEYOND A REASONABLE DOUBT. IN A CIVIL CASE, ALL THAT IS NEEDED IS PROOF THROUGH A PREPONDERANCE OF EVIDENCE.
- 2) A JURY IS OFTEN HESITANT IN SUCH A CASE TO CALL SUCH A VIOLATION A CRIMINAL ACT.

3) THE MANNER IN WHICH JURY INSTRUCTIONS MUST BE DRAFTED REQUIRES THAT THE JURY APPLIES THE POLICY OF THE STATE OF MONTANA WITH LITTLE OR NO FIRST-HAND KNOWLEDGE OF THE SUBJECT. IN ADDITION, IT REQUIRES THE JURY TO DETERMINE WHETHER OR NOT A VIOLATOR ACTUALLY "SIGNIFICANTLY ALTERED OR MODIFIED A STREAM."

EXHIBIT #10  
DATE 2-8-93  
SB-275

# A LOOK AT PERMIT #'s OF FIVE CONSERVATION DISTRICTS

CONSERVATION DISTRICT	NO. OF PERMITS ISSUED IN 1992	VIOLATIONS IN 1992*
MISSOULA CO. CD	77	2
CARBON CO. CD	48	10 (In last 5 years)
BITTERROOT CD (Ravalli Co.)	64	8
LAKE CO. CD	Approx. 25-30	4
FLATHEAD CO. CD	Approx. 200	Approx. 20-30

\*IT IS IMPORTANT TO NOTE THAT NOT ALL VIOLATIONS MAKE IT TO COURT.

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#### SUMMARY OF DOCUMENTATION OF THE PROBLEM

FIRST DOCUMENT IS A JANUARY 15, 1993 LETTER TO SENATOR JEFF WELDON FROM MISSOULA DEPUTY COUNTY ATTORNEY MARNIE MCCLAIN. MS. MCCLAIN ADDRESSES THE BROAD MANNER IN WHICH THE EXISTING LAW IS WRITTEN AND THE ADVANTAGES OF A CIVIL PENALTY.

SECOND DOCUMENT IS AN AUGUST 6, 1992 LETTER TO LAKE COUNTY CONSERVATION DISTRICT SUPERVISOR DENNIS DEVRIES FROM LAKE COUNTY ATTORNEY LARRY NISTLER. IN IT MR. NISTLER ADDRESSES BURDEN OF PROOF AND CIVIL PENALTIES ALLOWED UNDER OTHER STREAM PERMITTING LAWS. HE AS WELL RECOMMENDS AMENDING CURRENT LAW TO INCLUDE CIVIL PENALTIES.

THIRD DOCUMENT IS A MAY 12, 1992 LETTER TO DON MACINTYRE, CHIEF LEGAL COUNSEL AT DNRC. IT IS FROM RAVALLI COUNTY ATTORNEY GEORGE CORN, WHO SPEAKS TO THE VAGUENESS OF THE EXISTING LAW, THE REQUIRED BURDEN OF PROOF, AND THE EASE WITH WHICH ACTION MIGHT BE TAKEN IF THERE WERE A CIVIL OPTION.



**Missoula County  
Facsimile Message**

①

TO: MACO

Attention: Steve Meyers

FROM: Marnie McClain

Deputy County Attorney

DATE: January 21, 1993

SENATE NATURAL RESOURCES

EXHIBIT NO. 11

DATE 2-8-93

BILL NO. SB 275

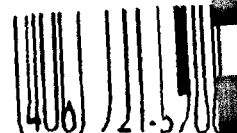
# OF PAGES INCLUDING COVER: 3

OUR FAX # IS: (406) 721-4043

OUR TELEPHONE NUMBER IS: (406) 721-5700 EXT. 3254

MESSAGE:

This is the letter I have faxed to Jeff Weldon.



FAX # (406) 523-4803

Senator Jeff Weldon  
Helena, MT

January 15, 1993

Re: The Natural Streambed and Land Preservation Act

Dear Senator Weldon:

I am writing at the request of the Missoula County Conservation District with some proposed changes for The Natural Streambed and Land Preservation Act. The proposed changes are intended only to clarify prohibited conduct and not to expand the scope of the Act.

One of the problems with the Act is found with the definition of "project" at Section 75-7-103(5). The definition reads as follows: "Project means a physical alteration or modification of a stream in the state of Montana which results in a change in the state of the stream in contravention of Section 75-7-102." Section 75-7-102 is the policy statement for the Act and reads as follows: "It is the policy of the state of Montana that its natural rivers and streams and the lands and property immediately adjacent to them within the state are to be protected and preserved to be available in their natural or existing state and to prohibit unauthorized projects and in so doing to keep soil erosion and sedimentation to a minimum except as may be necessary and appropriate after due consideration of all factors involved. Further, it is the policy of this state to recognize the needs of irrigation and agricultural use of the rivers and streams of the state of Montana and to protect the use of water for any useful or beneficial purpose as guaranteed by the Constitution of the State of Montana." As you can see, the policy statement is quite broad. Its multiple parts confound efforts to state precisely the definition of project. The following definition of project is proposed: "Project means a physical alteration or modification of a stream in the state of Montana which results in a change in the natural or existing state of the stream."

Section 75-7-123 is the penalty section of the Act. Although it is fairly clear, the proposed amendments would make violation of the Act an absolute liability offense and provide for a civil penalty in addition to the criminal penalty. In a absolute liability offense, a person may be guilty of an offense as to each element thereof, without having acted purposely, knowingly or negligently. The proposed amendments for Section 75-7-123 are as follows:

(1) A person is guilty of an offense under this section if he: (a) initiates a project without written consent of the supervisors or

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contrary to a material permit condition; (b) omits material information or makes any false statement or representation in a permit application or during an on-site inspection.

(2) Any person in violation of this section is absolutely liable as provided in Section 45-2-104 MCA.

Lastly, I have proposed adding a civil penalty, which would allow for a larger fine than is allowed under a misdemeanor conviction. This section would address repeat violators and wealthy violators who may not experience a \$500.00 fine as a significant deterrent.

#### Criminal Penalty Section.

(1) A person who violates Section 75-7-123 (1) MCA shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$25 or more than \$500 for each day that person continues to physically alter or modify the stream. In addition, that person shall restore, at the discretion of the court, the damaged stream, as recommended by the team and approved by the supervisors, to as near to its prior condition as possible.

#### Civil Penalty

(1) Any person who violates Section 75-7-123 is subject to a civil penalty not to exceed \$10,000 per violation. Each day of violation constitutes a separate violation.

(2) Action under this section does not bar action under Section 75-10-418.

Thank you for your interest and any assistance you can give.

Sincerely,



Martha E. McClain  
Deputy County Attorney

Form FmHA 2030-8  
(Rev. 7-90)

## FACSIMILE TRANSMISSION

Check box for:  
SECURE ☐  
FAX ☐  
TRANSMISSION ☐

TE: 2/1/93

SENATE NATURAL RESOURCES

EXHIBIT NO. 12

DATE 2-8-93

SUBJECT: 310 - CIVIL - Criminal BILL NO. SB 275

2

TO:

FARMERS HOME ADMINISTRATION

STATE

MT

Attention

Mike Volesky

Receiving Agency or Organization if other than FmHA:

MACD

Facsimile Telephone Number

FTS ( ) Commercial ( )

449-0119

Telephone Number of Recipient

FTS ( ) Commercial ( )

FROM:

Name of Sender

SCS - LK. Co. Cons. Dist.

Division

Room Number

Telephone Number

FTS ( ) Commercial ( )

883-5875

COMMENTS

Call if you need anything else. Chris

Authorized By: (Division Director or Branch Chief)

Transmission Completed By:

No. of Pages (incl. this sheet)

3

After the transmission has been completed, the original will be returned to the sender by interoffice mail unless other instructions are given in the comment section above.



# LAKE COUNTY ATTORNEY'S OFFICE

LAKE COUNTY COURTHOUSE  
106 FOURTH AVENUE EAST  
POLSON, MONTANA 59860-2183  
(408) 883-8211

Larry J. Nietler, County Attorney  
Mitchell A. Young, Deputy  
Kathleen O'Rourke-Mullins, Deputy

Administrative Assistant:  
Susan Hi  
Marty Corsi

August 6, 1992

Dennis Devries  
Lake County Board of Conservation District  
P.O. Box 766  
Polson, Montana 59860

Dear Dennis:

Pursuant to the request of the County Supervisors and your letter of June 25, 1992, I have again reviewed the Jim Creek and Piper Creek project activities by Plum Creek for possible criminal prosecution. In doing so, I reviewed the permit, the modified permit, the numerous items of correspondence and reports, photos from Scott Rumsey and the applicable Montana law. I also reviewed this matter with Don McIntyre, legal counsel for the State Department of Natural Resources.

As I previously advised you, I am confident that the Streamside Management Act (SMA) and the Streambed and Land Preservation Act (SLPA) can and do overlap in providing jurisdiction to your conservation district in this case. Violations of either of these acts may also constitute a violation of the Montana Water Quality Act. (MWQA)

As you know, conservation districts supervise enforcement of the SLPA, the Department of State Lands supervises enforcement of the SMA, and the Department of Health and Environmental Sciences supervises enforcement of violations of the MWQA. However, violations of SMA or MWQA are civil violations with civil penalties. Complaints only need be proven by a preponderance of the evidence. Violations of SLPA are criminal and result in criminal penalties. These complaints must be proven "beyond a reasonable doubt", placing a much higher burden of proof on the conservation district in pursuing its complaint.

In assessing this case for criminal prosecution, it appears that this would be something of a "test" case as there is little or no precedent. In speaking with Mr. McIntyre, he noted that Ravalli County has attempted criminal prosecutions of this kind without success. The facts of the case are muddled by the modification of the original permit on February 4, 1992, the conflicting reports from Steve Tralles of the Department of Health and Environmental Sciences, and the conflicting reports of Bill Fischer of the Department of State Lands.

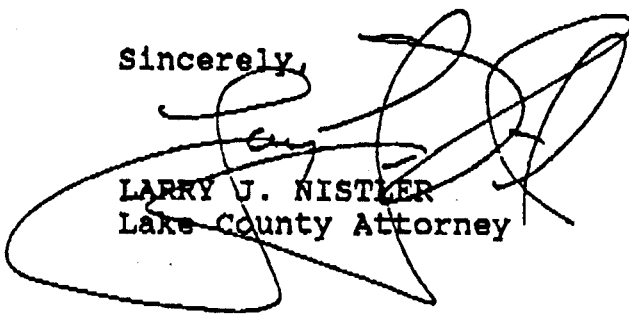
EXHIBIT # 12  
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Dennis Devries  
August 6, 1992  
Page Two

As Mr. Fischer found a civil violation of SMA, he could have sought a civil penalty, but did not. Mr. Tralles' latest report, dated July 1, 1992 states that he now finds a civil violation of MWQA, but does not indicate whether he will seek a civil penalty.

It is my opinion that a criminal charge in this case would not be successful and that the facts of this case do not make it a good "test case" to establish a precedent. Therefore, I am declining to file a criminal complaint and am recommending that your board seek a legislative amendment to MCA 75-7-123. Specifically, those portions of the penalty section which refer to the violations as being criminal should be amended to make them civil. This would greatly enhance your ability to pursue penalties for violations of your permit process.

Sincerely,



LARRY J. NISTLER  
Lake County Attorney

LJN:mc

RAVALLI COUNTY ATTORNEY  
COURTHOUSE BOX 5008, HAMILTON, MT 59840  
(406) 363-4440

George H. Corn  
County Attorney

Gerald D. Williams  
Deputy Attorney

May 12, 1992

Donald MacIntyre, Chief Legal Counsel  
Department of Natural Resources  
1520 East Sixth Avenue  
Helena, MT 59620-2301

Re: State v. Varner

Dear Don:

SENATE NATURAL RESOURCES

EXHIBIT NO. 13

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As you know, this case was brought pursuant to Section 75-7-123, M.C.A. The case was resolved before the jury was picked, by the Defendant's agreement to pay \$1,500, in return for which I dismissed the charges against him. I believe this was the best resolution of the matter that could be achieved. Don Peters of the Missoula Office of Fish, Wildlife & Parks, who is advising the Conservation District on the stream rehabilitation, felt that it was a good resolution.

I have some real concerns with using this law for criminal prosecutions in the future, however, particularly in a situation like this, where the defendant applied for a permit but then exceeded its scope.

My concern is with the vagueness of the law when used as the basis for a criminal prosecution. In support of that, I have included several jury instructions that I drafted, there being no approved or model instructions or, indeed, any cases on the same. As you can see, the jury instructions are quite vague. This would leave it open for the defense attorney to argue that the law does not put one on notice of what conduct is prohibited and, hence, the void-for-vagueness argument applies.

Further, as I feel the instructions must be drafted, the jury is required to apply the "policy" of the State of Montana to the defendant's actions. The jury is further required to determine whether or not the project "significantly altered or modified a stream." Furthermore, although I termed this last phase an affirmative defense, there is no case that says that would be required of the defendant. What's a judge to do in such a situation.

Donald MacIntyre  
May 12, 1992  
Page 2.

In sum, I was quite afraid, after drafting instructions, that the judge might toss the whole thing out as too vague to support a criminal prosecution. However, that could be because I don't have a deft hand at drafting instructions. Accordingly, please feel free to criticize and comment on these instructions, and please don't hesitate to tell me that I am mistaken.

One solution, which we have previously discussed, would be to include a civil penalty in the law. This would give a county attorney the option of going civil or criminal, depending on the person's actions. A civil suit also has the advantage of the State having to prove its case only by a preponderance of the evidence, as opposed to beyond a reasonable doubt in a criminal case. It is my feeling that since the person accused of committing this "crime" is not the "average" misdemeanor, jurors are usually going to be sympathetic to the person. Having a civil option removes the burden of having to prove that a well-meaning but uninformed person committed a criminal act. This is easier on jurors and prosecutors. The criminal penalty would still exist for egregious actions, so you still might want to consider clarifying language.

In closing, let me thank you for your brief. As you know, I was not able to add it on appeal because the judge ruled that the Department was not a party. Fortunately, we were able to convince the judge not to dismiss the case anyway. However, legislation could and should be drafted that would allow the Department to become a party. I believe this would be quite easy if the civil option were available.

I have taken the liberty of sending a copy of it to Stan Bradshaw, since he has expressed an interest in this matter, as well. I am also sending a copy to the Bitterroot Conservation District.

Thank you again for your help in this. Please don't hesitate to call if you have any questions.

Sincerely,

George H. Corn  
Ravalli County Attorney

GHC:se

cc: Stan Bradshaw, 824 9th Avenue, Helena, MT 59601  
Bitterroot Conservation District

DATE 2/8SENATE COMMITTEE ON Natural ResourcesBILLS BEING HEARD TODAY: SB 253, SB 275, SB 311

Name	Representing	Bill No.	Check One	
			Support	Oppose
Alan Evans	Self - MVD Corp.	253	X	
Fit. Rippel	MBME	✓		✓
Wayne Van Voast	"	✓		✓
Susan Hitcham	Self - <del>MBME</del>	253		✓
Deborah Schmidt	EQC	253		
REBIN CUNNINGHAM	FISHING OUTFITERS ASS'N. OF MONTANA	275	X	
Bob Stephens	Int. Game Grow	253		✓
Fred Dale	SELF	253		✓
Ray Beck	DNRC	275	X	
Wendy Olsen	SD 47 - EQC			✓
Larry Meland	MLMOA	311	✓	
Bob Barry	MAFF	253		✓
Russell Smith	MLMOA	311	✓	
Janet Ellis	MT Audubon	<del>253</del> 275	✓	✓
Wanda Jamison	Self	253	<del>✓</del>	✓
John Fitzmaurice	Self / Bryan Golf			✓

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-8-93

SENATE COMMITTEE ON NATURAL RESOURCES

BILLS BEING HEARD TODAY: SB 253, SB 275, SB 311

Name	Representing	Bill No.	Check One	
			Support	Oppose
Rep Bob Kilbert	Self	253		X
Rep Jerry Driscoll	Self	253		X
Rep Klewjan	Self	<del>311</del> 253	X	
Rep Brady	Self	253		X
Rep Harper	"	253		✓
Rep Boltshaw	MT. T.U.	253		✓
Rep Lechner	MWF	253		✓
Rep Abkhia	SELF	257	F	
Mike Volesky	M+ Assoc. Cons. Dist.	275		

## VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY