MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Rep. Dick Knox, Chairman, on February 1, 1995, at 3:00 PM.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)

Rep. Bill Tash, Vice Chairman (Majority) (R)

Rep. Bob Raney, Vice Chairman (Minority) (D)

Rep. Aubyn A. Curtiss (R)

Rep. Jon Ellingson (D)

Rep. David Ewer (D)

Rep. Daniel C. Fuchs (R)

Rep. Hal Harper (D)

Rep. Karl Ohs (R)

Rep. Scott J. Orr (R)

Rep. Paul Sliter (R)

Rep. Robert R. Story, Jr. (R)

Rep. Jay Stovall (R)

Rep. Emily Swanson (D)

Rep. Lila V. Taylor (R)

Rep. Cliff Trexler (R)

Rep. Carley Tuss (D)

Rep. Douglas T. Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Michael Kakuk, Environmental Quality Council

Alyce Rice, Committee Secretary

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

Committee Business Summary:

Hearing: HB 341

Executive Action: HJR 10 DO PASS AS AMENDED

HB 274 DO PASS AS AMENDED HB 263 DO PASS AS AMENDED

HB 292 DO PASS

Tape 1, Side A

HEARING ON SB 341

Opening Statement by Sponsor:

REP. DON LARSON, House District 58, Seeley Lake, said SB 341 pertains to state-leased lands. It will clarify the Board of State Lands' authority to buy and sell tracts of state land. The bill creates a land bank where proceeds from sales can be deposited and used to purchase comparable private land without having to deposit the money in the school trust fund. There are approximately 800 state-leased cabins in the Department of State Lands (DSL) portfolio that are difficult to administer and are unprofitable. It would be in the best interest of the state and the cabin lessees to sell them.

Proponents' Testimony:

Jeff Hagener, Administrator, Land Administration Division, DSL, said SB 341 provides procedures for the use of differed exchanging as a tool in the management of state trust lands. Although it is arguable that the department currently has authority to adopt the differed exchange program SB 341 would provide legislative approval and direction for the process. Under the current exchange process equal disposal and acquisition lands are reviewed simultaneously. This process can be cumbersome and difficult to accomplish and often effectively deters many possible exchanges which could be in the trust's best The bill provides for flexibility exchanges by allowing that the disposal and acquisition elements of an exchange can be conducted separately through a trust land replacement account. The deferred exchange allows for the pooling of values from one to several tracts of trust land to be applied to the acquisition tracts desired by the state. effectively, the deferred exchange program could be used to dispose of low revenue producing, isolated and problem tracts, in exchange for higher revenue producing, accessible and easier to manage tracts could be acquired. Mr. Hagener urged passage of SB

Rusty Harper, for Mark O'Keefe, State Auditor, said the purpose of SB 341 is to make land exchanges easier. Very often exchanges are in the best interest of the school trust because it can acquire land that will produce more revenue or is consolidated so it is easier to manage. Land exchanges are also in the best interest of private land owners. No one is forced into an exchange. This is one way of doing land exchanges faster and cheaper.

George Schunk, Assistant Attorney General, Department of Justice, said land banking is a tool that will allow the Board of State Lands greater flexibility to address problems such as isolated tracts, creates the opportunity to alleviate some of the management problems and possibly benefit land owners adjacent to the state tracts.

Garth Jacobson, Chief, Legal Counsel, Secretary of State, said SB 341 is a tool that can be used to facilitate disposal of undesirable state land. There has been a hesitancy on the part of the present Board of State Lands to sell land because it is difficult to know if the state will get sufficient value and how to determine the value over a period of years. SB 341 allows land exchanges that will generate income for the school trust.

Tony Schoonen, Coalition for Appropriate Management of State Lands, supported SB 341.

Cary Hegreberg, Montana Wood Products Association, said a number of corporations in Montana hold industrial timber land in a checkerboard ownership with the state of Montana. Those lands are becoming increasingly difficult to manage because of access agreements and problems in obtaining easements. SB 341 will facilitate the management of both the state-owned and privately-owned lands.

Bill Holdorf, Skyline Sportsmen's Association, supported SB 341.

L. F. Thomas, Anaconda Sportsmen's Club, supported SB 341.

Opponents' Testimony:

Chris Mahus, Montana Stockgrowers Association, said the association is concerned that the bill does not specify isolated tracts and the sale of large tracts of land may be damaging to certain ranches.

Informational Testimony: None

Questions From Committee Members and Responses:

REP. BOB RANEY said if the state sells land and puts the money into a statutorily created account there isn't anything to prevent a future legislature from changing the statute and taking the money. He asked SENATOR LARSON to comment. SENATOR LARSON said the board cannot diminish the body of the trust. The board can sell a piece of land but has to buy another piece of land with the proceeds. REP. RANEY asked SENATOR LARSON how long the money can be kept in the bank account before another piece of land is purchased. SENATOR LARSON said it was his understanding that the board would have a piece of land in mind to purchase when a sale is made. REP. RANEY asked Bud Clinch, Commissioner, Department of State Lands (DSL) to comment. Mr. Clinch said realistically there would not be a sale taking place. It would actually be a deferred exchange. When an applicant approaches the department with a desire to purchase a parcel of state land there would be an appraisal to determine the value. A portion of the appraised value would be placed into an account and the department would look for appropriate lands to acquire. exchange would transpire when the appropriate land is found. There is no exchange of money.

REP. ROBERT STORY asked Mr. Hagener if the interest made from the money in the school trust account would go to the schools. Mr. Hagener said the interest would go back to the person who put the money in the account. The deed would not have been transferred so the state would still be leasing the land and receiving the revenues.

Tape 1, Side B

REP. STORY asked Mr. Clinch if the state sells a small cabin site would it try to find another small piece of property or would it sell several of those sites over a period of time and accumulate the money for a larger piece of land. Mr. Clinch said the deferred land exchange would enable the state to receive applications from several cabin site lessees who wish to acquire that land and the state would then look for other land to acquire. In some instances it may be the disposition of multiple tracts of land for the acquisition of one and in some instances it may be the reverse.

REP. JAY STOVALL asked Mr. Clinch to describe what would constitute a public sale. Mr. Clinch said a sale could not be larger than one section to any party and would be subject to competitive bids. The revenue generated from that property must be deposited into the appropriate permanent trust fund depending upon what trust was dedicated to that tract of land.

REP. CLIFF TREXLER asked John North, Legal Counsel, DSL, how the state would get the money back that it spent out of the trust fund for administrative costs that belongs to the buyer if a land exchange failed. Mr. North said the buyer would be entitled to the money that was advanced to pay for the property but the state doesn't refund money advanced for administrative costs. REP. TREXLER suggested to SENATOR LARSON that the word "transfer" on page 2, line 5 of the bill should be deleted if land is only being exchanged and not sold. SENATOR LARSON said in all fairness to Mr. Clinch, there is a sale from one party and a purchase from another and the money is transferred through the trust account. He recommended the word "transfer" be left in the language of the bill.

Tape 2, Side A

REP. DOUG WAGNER asked Mr. Clinch to respond to REP. TREXLER'S question about striking the word "transfer." Mr. Clinch said the department didn't have any problem with striking the word "transfer." It would not change the intent of the bill. The term "exchange" is used because of the department's legal research into the provisions of the Enabling Act and the subsequent disposition of the proceeds of a sale into permanent a trust fund. REP. WAGNER asked Mr. Mahus if he still had the same concerns about the bill as he had earlier. Mr. Mahus said he was still concerned that a sale proposed by an outside party might negatively impact a cabin site user or lessee.

REP. LILA TAYLOR asked SENATOR LARSON if he thought the state land sales would put the state in competition with private enterprise. SENATOR LARSON said he didn't believe the department's intent was to get into the land development business in competition with private enterprise. REP. WAGNER asked Mr. Clinch when he thought it would be likely that the legislature would appropriate more money to put in the trust account. Mr. Clinch replied "on a cold day in hell."

REP. STORY asked Mr. Hagener if DSL receives any of the income from use of state lands to help with administrative costs or does the money come from the general fund. Mr. Hagener said in the Land Administration Division about 80% is general fund money. A small amount of money comes from a statutory appropriation with regard to the recreational use account and there is also money that comes from the resource and development account which is for development on state lands.

Closing by Sponsor:

SENATOR LARSON said he appreciated the committee's interest and concern. SB 341 is a useful tool to manage state lands better. He urged the committee to give SB 341 favorable consideration.

CHAIRMAN DICK KNOX turned the chair over to VICE CHAIRMAN BILL TASH for the duration of the executive action on HJR 10 which he sponsored.

EXECUTIVE ACTION ON HJR 10

Motion: REP. DICK KNOX MOVED HJR 10 DO PASS.

Discussion:

REP. BOB RANEY suggested that a statement be added to the resolution regarding the goals of the state's resource and environmental agencies. REP. KNOX pointed out that line 27, subsection (b) referred to "the constitutional and statutory goals of the various natural resource and environmental agencies and whether these goals are consistent and appropriate and whether these goals are being met." REP. RANEY said there aren't any statutory goals established. Michael Kakuk quoted 75-5-101 of the MCA which says the public policy of the state is to "conserve water by protecting, maintaining, and improving the quality and potability of water for public water supplies, wildlife, fish and aquatic life, agriculture, industry, recreation, and other beneficial uses." He added that the Water Quality Bureau, when asked, will say its goal is to protect, maintain and improve the quality of Montana's water. The Environmental Quality Council has done a study looking for goals.

Not every environmental program in the state has as clean a goal as the Water Quality Bureau.

REP. HAL HARPER offered a new subsection (b) that states "the methods used by other states to improve or measure compliance and enforcement." He said it would be a good idea to look at the measurement methods that are being used in other states.

Motion: REP. RANEY MOVED REP. HARPER'S PROPOSED AMENDMENT TO HJR 10.

Discussion:

REP. RANEY said other state's goals on compliance and enforcement should be studied because it could save a lot of work.

REP. KNOX said he did not necessarily agree that what other states are doing would apply or be beneficial to Montana but didn't have a major problem with the concept of examining the programs in other states.

REP. DOUG WAGNER said what works in other states may not work in Montana. He pointed out that the Legislative Audit Committee has already done an audit on the compliance and enforcement goals.

REP. KNOX agreed and said it was his intention to use the information that was developed from that audit as a base.

Vote: Voice vote was taken. Motion carried 16 to 0.

Motion: REP. HARPER MOVED HJR 10 DO PASS AS AMENDED.

Discussion:

REP. DAVID EWER said he was concerned because often studies are a classic way of putting things off, although he didn't think that was REP. KNOX'S intention. The legislative audit report was very forceful in saying that the Water Quality Bureau is not doing what it is supposed to be doing. He said there is a lot of talk that the Environmental Quality Council (EQC) might be eliminated. REP. KNOX said if the study takes place and the council remains in place, it will be using the findings by the legislative auditor in regard to water quality as a base for the study. If the resolution passes there will be a very determined and concentrated effort on the part of the individuals on the council to ascertain on an ongoing basis if there has been adequate response to the findings of the legislative auditor. There will also be an in depth study of the regulatory agencies and their processes.

REP. TASH said there are inconsistencies in the interpretation of water degradation from department to department. The purpose of HJR 10 is to determine whether the goals of the state natural resource and environmental agencies are consistent and appropriate and whether they are being met.

REP. KNOX said consistency needs to be established for the protection of the environment and for the regulated community as well. It is very important that the regulated community understands what the regulations are and how they are going to be enforced. Without that certainty it makes it extremely difficult for the regulated community to operate. It also provides a degree of uncertainty in the minds of the public which also makes it very difficult for the regulated community.

<u>Vote</u>: Voice vote was taken. Motion carried 17 to 1. REP. WAGNER opposed.

Tape 2, Side B

EXECUTIVE ACTION ON HB 274

Motion: REP. DOUG WAGNER MOVED HB 274 DO PASS.

Discussion:

REP. WAGNER offered the first amendment to HB 274.

Michael Kakuk said if the committee members liked the discussion draft they received Monday they would like REP. WAGNER'S amendments.

A second amendment from the Montana Stockgrowers Association was distributed to the committee.

Motion/Vote: REP. WAGNER MOVED THE FIRST SET OF AMENDMENTS TO HB 274. Voice vote was taken. Motion carried unanimously.

Motion/Vote: REP. WAGNER MOVED THE SECOND SET OF AMENDMENTS TO HB 274. Voice vote was taken. Motion carried unanimously.

Motion/Vote: REP. WAGNER MOVED HB 274 DO PASS AS AMENDED. Voice
vote was taken. Motion carried unanimously.

EXECUTIVE ACTION ON HB 263

Motion: REP. AUBYN CURTISS MOVED HB 263 DO PASS.

Discussion:

REP. CURTISS read a statement to the committee denying any attempt to refocus the management of state trust lands on the Constitutional mandate of generating revenue for public schools, or attempting to mask the intent of HB 263. EXHIBIT 1

REP. BOB RANEY said REP. CURTISS stated that the intent of the bill was to clarify that state trust lands are to be managed in a

way that benefits the Constitutional beneficiaries and not the special interest groups that would like to influence the management policies of these lands. REP. RANEY said HB 263 and numerous other bills are for a special interest group, namely, the wood products industry. That industry is making a statement that it is going to log the land and that will be the primary use of forest land. No other action is being allowed to determine if there is a better use for the land.

REP. BILL TASH said the bill is not about exploitation or extraction of a resource from the school trust land, it is about a renewable resource. It is not about maximizing the returns from school trust lands for the school trust fund, it is about optimizing the returns by satisfying sustained yields. The children that will take advantage of the school trust fund should be considered a special interest group. The Constitution and the Enabling Act demands that the state of Montana consider these children as a special interest group that is very much in need of proper management of the school trust lands that will optimize the return of resource and resource income.

Motion: REP. HAL HARPER MOVED AMENDMENTS TO HB 263.

Discussion:

REP. HARPER said the purpose of the bill is to specify the Enabling Act in terms of guidance and clarification for the Board of Land Commissioners. Sections 10 through 17 of the Enabling Act should be included in the bill. He explained his amendment.

REP. ROBERT STORY asked John North, Legal Counsel, Department of State Lands, to comment on the amendment. Mr. North said some of the language in the amendment would change the intent of the bill considerably.

REP. HARPER withdrew his amendment.

Tape 3, Side B

Motion: REP. STORY MOVED AN AMENDMENT TO HB 263.

<u>Discussion</u>: REP. STORY explained the amendment.

REP. JON ELLINGSON said he was uncomfortable about referencing a limited number of sections in the Enabling Act without referencing the entire Act. He offered an amendment that referenced the entire Enabling Act.

REP. CURTISS asked Mr. North to comment on the amendment. Mr. North said REP. ELLINGSON'S amendment would accomplish the purpose of the bill very well. REP. STORY'S amendment would have made the bill inclusive because it would have referenced all the sections in which other worthy objects are contained but in case

a section is left out REP. ELLINGSON'S amendment would pick that up.

REP. STORY withdrew his amendment.

Motion/Vote: REP. ELLINGSON MOVED HIS AMENDMENT TO HB 263. Voice vote was taken. Motion carried unanimously.

Motion/Vote: REP. ELLINGSON MOVED HB 263 DO PASS AS AMENDED. Voice vote was taken. Motion carried 13 to 5.

EXECUTIVE ACTION ON HB 292

Motion: REP. DANIEL FUCHS MOVED HB 292 DO PASS.

Tape 3, Side B

Discussion:

REP. BILL TASH said he was in favor of HB 292 because there does need to be some accountability in regards to certificates of surveys in both state and local departments.

Vote: Voice vote was taken. Motion carried 17 to 1.

ADJOURNMENT

Adjournment: 5:25 pm

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RER DICK KNOX, Chairman

LYCE RICE, Secretary

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HOUSE OF REPRESENTATIVES

Natural Resources

ROLL CALL

DATE 2-1-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Dick Knox, Chairman			
Rep. Bill Tash, Vice Chairman, Majority			
Rep. Bob Raney, Vice Chairman, Minority			,
Rep. Aubyn Curtiss	V		
Rep. Jon Ellingson			
Rep. David Ewer			*
Rep. Daniel Fuchs		·	
Rep. Hal Harper	1/		
Rep. Karl Ohs	1/		·
Rep. Scott Orr	\//		
Rep. Paul Sliter			
Rep. Robert Story	V/		
Rep. Jay Stovall			
Rep. Emily Swanson	· V,		
Rep. Lila Taylor	\vee		
Rep. Cliff Trexler	\ \ \ \ ,		
Rep. Carley Tuss			
Rep. Doug Wagner			

NATURAL RESOURCES COMITTEE
2/1/95
I VOTE THE FOLLOWING BILLS
HTR 10 - 1165
HJR 10 - YES HB 274 - YES (NO ON ALL AMENDMENTS) HB 263 - YES (NO ON ALL AMENDMENTS)
HB 274 - YES (NO ON ALL AMENDMENTS) HB 263 - YES (NO ON ALL AMENDMENTS)
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HB 292 - YES
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February 2, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that House Joint Resolution 10 (first reading copy -- white) do pass as amended.

igned:

And, that such amendments read:

1. Page 1, line 28. Following: "met;" Strike: "and"

2. Page 1, line 30. Following: "program"

Insert: "; and
 (d) other states' natural resource and environmental
 agencies' attempts to improve and measure compliance
 and enforcement"

-END-

Committee Vote: Yes / Z, No / .



February 2, 1995

Page 1 of 2

Mr. Speaker: We, the committee on Natural Resources report that House Bill 274 (first reading copy -- white) do pass as amended.

And, that such amendments read:

1. Title, line 7.

Following: "EXEMPTING"

Insert: "CERTAIN"

2. Title, line 8.

Following: "FROM"

Strike: "CERTAIN" through "OF"

3. Page 1, line 15.

Following: "such"

Insert: "any"

4. Page 1, line 22. Following: "of"

Strike: "a" through "opportunity"

Insert: "access granted by permission of an adjoining landowner"

5. Page 1, line 26.

Following: "(b)"
Insert: "(i)"

6. Page 1, lines 26 and 27. Following: "of" on line 26

Strike: "a" through "opportunity" on line 27

Insert: "access granted by permission of an adjoining landowner"

Committee Vote: Yes / No O.

7. Page 1, line 30. Following: line 29

Insert: "(ii) The provisions of subsection (3)(b)(i) do not
 apply to situations when the only access is totally
 controlled by a potential purchaser of the timber, in which
 case the department shall seek to negotiate permanent,
 reciprocal access."

8. Page 1, line 30. Following: second "in"

Strike: "this subsection (3)"

Insert: "subsections (3)(a) and (3)(b)(i)"

9. Page 2, line 1.

Following: "75-1-201(1)"

Insert: "to the extent that compliance is precluded by limited time available to take advantage of the sales opportunities described by this subsection (3)"

-END-



February 2, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that House Bill 263 (first reading copy -- white) do pass as amended.

And, that such amendments read:

1. Page 1, lines 15 and 16. Following: "in" on line 15 Strike: "sections" through "of" on line 16

-END-

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February 2, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that House Bill 292 (first reading copy -- white) do pass.

Signed

Dick Knox, Chair

Committee Vote: Yes/Z, No ___

- Mr. Chairman, members of the Committee, this bill is an attempt to refocus the management of state trust lands on the Constitutional mandate of generating revenue for public schools. There has been no attempt by myself, or by proponents of the bill to mask the intent of this bill.
- * I would like to point out the case law citations and attorney general opinions which I passed out and cited in my introduction of this bill clearly indicated my attempt was to focus management objectives of trust lands in favor of beneficiaries, rather than the "general public".
- In my closing statement, I indicated the very presence of opponents to the bill was evidence of the pressing need for its passage. I fully expected environmental and recreational organizations to oppose this bill because it takes away the argument that state lands should be managed for amenity values in addition to financial returns to the intended beneficiaries.
- * Please recall the testimony of Mr. John Hebnes, administrator of the Seeley Lake School District. He spoke at length about attending a tour of a State timber sale in which the Department of State Lands had made major concessions to Fish, Wildlife & Parks to provide thermal cover for whitetail deer. He was disturbed for two reasons:
 - 1) Whitetail deer thrive in Eastern Montana where winter conditions are much more severe than in Western Montana. They survive winters despite the lack of "thermal cover" provided by timber stands. There are few trees in Eastern Montana and whitetail deer do just fine.
 - The revenue which was forgone from this timber sale was substantial. He said if the Department of Fish, Wildlife & Parks wants to preserve habitat on trust lands for whitetail deer, they should compensate the school trust for it. He told us that "other worthy objects" should not be construed to mean whatever wildlife biologists want it to mean. Mr. Hebnes said "other worthy objects" should mean the functions carried out by legal beneficiaries of trust lands.
- * Mr. Hebnes also referred to the lawsuit in which his school district intervened on behalf of the State. He told this committee they entered that lawsuit to ensure the interests of the trust were not overshadowed by demands of special interest groups or individuals. He clearly indicated that obligations to trust beneficiaries outweighed any demands from special interest groups--in this case a wealthy California resident



who didn't want a timber harvest on trust land across from her property. Mr. Hebnes has attended several Land Board meetings, his school district has been a party to lawsuits involving trust lands, and he very clearly understood the ramifications of this bill.

- * Cary Hegreberg of the Montana Wood Products Association, in his testimony, urged this committee to stay focused on the Constitutional mandate to generate revenue for beneficiaries of trust lands. He outlined the consequences of multiple use management of federal lands which has led to gridlock on those lands. Mr. Hegreberg cited the example of six national forests in Idaho which had been enjoined from allowing any resource management activity because of lawsuits similar to those filed by against Department of State Lands by opponents to this bill. The Middle Soup lawsuit, referenced by Michael Kakuk, was filed by Friends of the Wild Swan, an opponent to this bill.
- * In fact, I understand the Department of State Lands has received correspondence from Friends of the Wild Swan, and Alliance for the Wild Rockies, asking for an immediate moratorium on timber harvesting in certain areas. My understanding is the request specifically cites the statute referring to "other worthy objects." I might further point out that Alliance for the Wild Rockies is the organization promoting a 5 state, 16 million acre Wilderness bill.
- * All this points to is the immediate need to clarify Montana statutes which direct the management of state trust lands, before the courts are forced to shut them down like they have our national forests.
- * Mr. Chairman, as the sponsor of this bill, I was completely forthright in explaining the intent of this legislation. The proponents of this bill were very clear in outlining that trust lands should not be managed for all the amenities demanded by environmental groups.
- * The clear and stated intent of this bill is to clarify that State trust lands are to be managed in a way that benefits the Constitutional beneficiaries, and not the special interest groups that would like to influence the management policies of these lands.
- * Federal lands in Montana are subject to a "multiple use" mandate, which has led to virtual gridlock. The Flathead and the Galatin National Forests are essentially locked up for grizzly bears. A lawsuit has been filed against the Beaverhead National Forest to stop grazing of cattle. If we allow our state trust lands to have this same multiple use mandate, the end result will be the same.

HOUSE OF REPRESENTATIVES

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DATE 2-1-95	SPONSOR (S)	Kep.	arson	
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NAME AND ADDRESS	REPRESENTING	BILL	oriose	SUPPORT
Rusty Hayer	State auto	341	·	X
Jeff Dagener	Dept. of State Lands	341		X
Grenth Jecobson	Sec. of Style	11		X
Jas Johnsk	I Ka	341		\times
BUCFOLDORF	SKYLINESPORTSMEN	341		\mathcal{C}
Tong Schoonen	State Land Calite	241		
L. F. Thomas	anaconda Sportine	1		1
Can Heary	MT wood Prod. Assoc.	1		
Chris Mahus	Int Stockgrowers Asson.			
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PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.