

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON NATURAL RESOURCES**

**Call to Order:** By **REP. BILL TASH, VICE CHAIRMAN**, on February 13, 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 472, HB 478, HB 430, HB 473, HB 483  
Executive Action: HB 351 cont'd. Do Pass Amendments  
HB 215 Do Pass As Amended  
HB 218 Tabled  
HB 341 Tabled  
SB 203 Postponed  
HB 412 Do Pass As Amended  
HB 472 Do Pass As Amended  
HB 478 Do Pass As Amended  
HB 483 Tabled

Tape 1, Side A

HEARING ON HB 472

Opening Statement by Sponsor:

REP. DICK KNOX, House District 93, Winifred, said the people who worked on the Consensus Council for HB 472 were Bob Hanson, Montana Farm Bureau, John Bloomquist, Montana Stockgrowers Association, Mike Murphy, Montana Water Resources Association, REP. ROBERT STORY, Mike Voleski, Montana Association of Conservation Districts, Bruce Farling, Montana Trout Unlimited, Jim Richards, Montana Wildlife Federation and Alan Rollo, Montana Wildlife Federation. Matt McKinney, Director, Montana Consensus Council, worked with the group. During the first meeting in July 1994 the participants agreed to explore opportunities for a cooperative resolution to the issue of instream flow protection. During the next several months the group met numerous times and spent countless hours debating the pros and cons of different ways to protect and enhance instream flow. Throughout the negotiation process the participants went back to their respective organizations to give progress reports and receive additional direction. The efforts of the group were discussed at the annual meeting of each organization. HB 472 represents the culmination of an enormous amount of work by the participants and their organizations. REP. KNOX said he would leave explanation of the bill to the proponents.

Proponents' Testimony:

Robert Hanson, Board of Directors, Montana Farm Bureau, said he was a participant in the drafting of HB 472. The problem of how to handle instream flows has plagued both the environmental community and the agricultural community. HB 472 protects both the environmental community and the agricultural community.

Art Whitney, Montana Chapter of the American Fisheries Society. Written testimony. EXHIBIT 1

John Bloomquist, Attorney, Montana Stockgrowers Association said attempts in the past to resolve disputes over the issue of instream flow have generally been unsuccessful. The bill proposes two ways that water can be recognized for instream use to benefit the fisheries. The first would be a voluntary mechanism where a water right owner could leave the water instream, file a temporary change in use application and attempt to get approval of the application. Within that process there are several safeguards for other water users. The second mechanism for leaving water instream and having it recognized would be a temporary lease which could be negotiated by any individual, corporation, partnership or association. Presently the Department of Fish, Wildlife and Parks can lease certain waters for instream use. There has been a great deal of frustration over this process, not only from the instream

advocates, but also from those that think leasing is a good way to go. At the end of the lease period or at the end of the time that someone wants to leave it instream, the water right would revert back to its original use. The owner of the water right, if it's a leased situation, would be the one that administers the water right, so the person who has historically dealt with his neighbors on the source would still be the one that would do that. There are several safeguards for other water users which allows them to object to a temporary change application.

**Bruce Farling, Director, Montana Trout Unlimited**, said his organization saw this legislation as an additional opportunity to work with agriculture on a cooperative basis for providing instream flow in certain instances in Montana. The bill won't solve every problem but it is a historical step forward.

**Mike Murphy, Montana Water Resources Association**. Written testimony. **EXHIBIT 2**

**Larry Brown, Agricultural Preservation Association**, supported HB 472.

**Alan Rollo, Montana Wildlife Federation**. Written testimony. **EXHIBIT 3**

**Kenneth Knapp, Executive Director, Montana River Action Network**, supported HB 472.

**Barry Hedrick, Montana Stockgrowers Association**. Written testimony. **EXHIBIT 4**

**Glenn Marx, Policy Director, Governor Racicot's Office**. Written Testimony. **EXHIBIT 5**

Tape 1, Side B

**Debbie Smith, Sierra Club**, supported HB 472.

**Robin Cunningham, Executive Director, Fishing Outfitters Association**, supported HB 472.

**Janet Ellis, Montana Audubon Council**, supported HB 472.

**Paul Roos, Landowner**, said he owns a piece of property and is in jeopardy of losing the water rights. HB 472 is an opportunity to protect those water rights, to help downstream water users and help the fish.

**Jo Brunner** supported HB 472 and urged its passage.

**Bob Lane, Chief Legal Counsel, Department of Fish, Wildlife and Parks**, said since 1989 the department has had a pilot program for leasing instream water for instream purposes. The program has similar constraints and protection as HB 472 within it. The

department offered its experience to those who might be engaging in the use of water rights for instream purposes. **Mr. Lang** distributed the department's latest progress report. **EXHIBIT 6**

**Ann Hedges, Montana Environmental Information Center**, supported HB 472.

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions From Committee Members and Responses:** None

**Closing by Sponsor:**

**REP. KNOX** distributed amendments to HB 472 and asked the committee to retain them until executive action is taken. **EXHIBIT 7** The competing interests that have been at odds for so many years on this issue have finally come together. This is an historic occasion.

**CHAIRMAN KNOX** resumed the Chair.

#### **HEARING ON HB 478**

**Opening Statement by Sponsor:**

**REP. ROBERT STORY, House District 24, Park City**, said HB 478 proposes to revise the Natural Streambed and Land Preservation Act of the 310 law. **REP. STORY** distributed a document that explained the proposed changes. **EXHIBIT 8** Conservation districts have 20 years experience administering this act and are experiencing a large increase in the number of applications processed each year. There is getting to be more and more activity on streams and more problems are arising because of people doing work in the streams and not going through the permitting process or not completing the activities called for in the permit. The proposed changes have been requested by conservation districts to expedite the permit process and to address some of the ambiguities in the current law.

**Proponents' Testimony:**

**Paul Kronebusch, Supervisor, Pondera County Canal and Reservoir Company**, said HB 478 is the tool that would help monitor what is happening on the streams and stream banks in Montana.

**Mike Voleski, Montana Association of Conservation Districts**, said the 310 law is taking up an inordinate amount of time for conservation districts. In 1982 there were 600 permit applications annually in conservation districts throughout the state. Presently there are approximately 1,500 permit applications annually. HB 478 will streamline the permit process.



**Mike Murphy, Montana Water Resources Association**, said the association has a minor concern with the law concerning civil penalties and attorney fees in a suit for abandonment or public nuisance. If the government takes action against a person and that person wins the case, the government should have to pay his attorney fees.

**Bob Lane, Chief Legal Counsel, Department of Fish, Wildlife and Parks.** Written testimony. **EXHIBIT 9**

**John Bloomquist, Montana Stockgrowers Association**, echoed **Mike Murphy's** concern but supported HB 478.

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions From Committee Members and Responses:**

**REP. HAL HARPER** said page 2 of the bill defines "project" as "a physical alteration or modification of a stream in the State of Montana that results in significant change." The word "significant" in the Montana Environmental Policy Act that triggers an environmental impact statement as opposed to an environmental assessment. He asked **Mr. Lane** if the addition of the word "significant" would change the requirements of the 310 law. **Mr. Lane** said he assumed the reason for using the word "significant" is to fit the process in with the exceptions that are made for things that have already been done in streams that don't cause great impact and to streamline the process. The word "significant" shouldn't cause a problem especially if it were further defined.

**REP. HARPER** asked **REP. STORY** if it was his intent to strike the word "significant." **REP. STORY** said that is his intent after discussing it with the Attorney General's office.

**Closing by Sponsor:**

**REP. STORY** urged the committee to give HB 478 favorable support.

Tape 2, Side A

**HEARING ON HB 430**

**Opening Statement by Sponsor:**

**REP. JOHN BOHLINGER, House District 14, Billings**, said he became interested in the problem of sulphur dioxide because 68% of the people in his district told him that the Hanna Bill should be repealed. He met with the medical community to determine if there was medical evidence about his constituent's health concerns. **Dr. John Gregory, Yellowstone Valley Medical Society, Dr. John Heiser, and Dr. Tom Olson** met with professional

colleagues who will present their findings that would indicate that a portion of the population in the Yellowstone Valley are at risk because of high levels of SO<sub>2</sub>.

**REP. BOHLINGER** said each year the Environmental Protection Agency (EPA) publishes the National Air Quality and Emissions Trends Report that measures the national ambient air quality standards in 341 cities with populations over 100,000. In 1992, Billings was the worst city in the country for its annual SO<sub>2</sub> concentration and the second worst city after Pittsburgh, PA, for its 24 hour SO<sub>2</sub> concentration. In 1993, Billings was number 2 of the 474 cities, with an average annual concentration of sulphur dioxide of .026 parts per million and a 24 hour concentration of 0.11 parts per million. This is based on actual monitored data from seven ambient air quality monitors. In March of 1993 the EPA informed **Governor Racicot** that the state implementation plan for SO<sub>2</sub> in the Billings-Laurel area was substantially inadequate to attain and maintain the federal SO<sub>2</sub> standards. That meant that the industries in Yellowstone County were out of compliance with even the weaker national SO<sub>2</sub> standards. As a result, the state's Air Quality Bureau was instructed to set emission limits for the Yellowstone County industries.

In March 1994 the Yellowstone Valley Citizens' Council and the American Lung Association sponsored a health forum on the hazards of SO<sub>2</sub> air pollution. Their speaker was **Dr. Kevin Fennelly, M.D.**, a respiratory specialist for the National Jewish Center for Immunology and Respiratory Medicine in Denver, the nation's leading research center for respiratory diseases. **Dr. Fennelly** publicly stated that sulphur dioxide pollution in Yellowstone County possesses such a threat that people, especially those with respiratory problems, should avoid exercising outside when the weather is cold and dry. **Dr. Fennelly** stated that research clearly shows that SO<sub>2</sub> aggravates respiratory diseases such as asthma and bronchitis. He believes that high levels of SO<sub>2</sub> may also cause these ailments. **EXHIBIT 10**

In the Lockwood section of Billings, the public schools, grades K through 8, are located less than a mile from the Exxon Refinery. In 1979 a health study showed that Lockwood students in the third, fourth and fifth grades had poorer lung abilities than children in other communities due to air pollution. In 1991 the Lockwood Fire Department discovered while conducting fire drills in the Lockwood school, that one percent of the first and second graders had breathing problems. By the time these students reached the eighth grade, ten percent of them had respiratory problems.

Article 2, section 3, of the Montana Constitution states that "all persons are born free and have certain unalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities." It further states in article 9 under Environment and Natural Resources,

section 1, Protection and Improvement, that "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 this duty. The Legislature shall provide adequate remedies for the protection of the environment's life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources." The people of the Yellowstone Valley do not receive equal protection under these rights that are guaranteed by our Constitution because there currently exist weaker air quality standards for sulphur dioxide than are applied throughout the rest of the state.

REP. BOHLINGER distributed and explained an amendment to HB 430. EXHIBIT 11 REP. BOHLINGER also distributed testimony from the South Side Neighborhood Task Force, North Park Neighborhood Task Force, and Central-Terry Park Neighborhood Task Force in support of HB 478. EXHIBITS 12, 13 and 14

Tape 2, Side B

Proponents' Testimony:

Berv Kimberley, Self, Billings, supported HB 430.

Ed Zaidlicz, Self. Written testimony. EXHIBIT 15

Dr. Merchant, Physician, Billings Clinic, said if the goal is to have the most lenient standards, the current federal standards are adequate for Billings. The current data does not provide any irrefutable evidence that the exposure to sulphur dioxide, less than .03 parts per million annually or less than .14 parts per million over 24 hours, clearly causes adverse health effects. If the goal is to ensure that air quality does not adversely affect the public's health the federal standards are probably inadequate. Population studies show that adverse health effects from sulphur dioxide at levels significantly below the federal standards do occur. These studies look at associations and do not look at causation, so by definition they are not irrefutable. Laboratory studies emphasize the adverse affect of peak levels in the five to ten minute levels of exposure. If the time period for control is 24 hours or one year, there can be marked fluctuation.

The general consensus among the physicians in the Billings area is that adverse health effects are occurring. Physicians are seeing patients on a week-to-week basis who probably are experiencing adverse health effects from the sulphur dioxide. That is an opinion, it is not science. Sulphur dioxide is water soluble. When it contacts water it dissolves to form sulphuric acid. The normal person, breathing through the nose, filters out 98% of the sulphur dioxide. Only 2% gets into the lower airways. The major effect of acid in the lungs is that it acts as an irritant. Sulphuric dioxide is an irritant gas that induces

airway spasms and the results of airway spasms can range from a mild nuisance to a fatal illness. The effects are dependent on a wide variety of factors including the disparity of the patient's underlying condition. The federal standards need to be relatively stringent to protect against the five minute peak exposures.

**Nick Golder, Northern Plains Resource Council, supported HB 430.**

Tape 3, Side A

**Jeff Chaffee, Division Administrator, Department of Health and Environmental Sciences, Air Quality Bureau. Written testimony. EXHIBIT 16**

**Lynn Davis, Billings City Council, supported HB 430.**

**Bill Shikany, Teacher, Billings West High School, urged the committee to pass HB 430.**

**Karen Kitchel, Central-Terry Neighborhood Task Force. Written testimony. EXHIBIT 17**

**Reverend Gary Keene, On Behalf of Yellowstone Valley. Written testimony. EXHIBIT 18**

**Jack Johnson, Self, Billings. Written testimony. EXHIBIT 19**

**Paula Schilk, South Side Task Force, Written testimony. EXHIBIT 20**

**Mort Reid, Chairman, Yellowstone Valley Citizen's Council. Written testimony. EXHIBIT 21**

**Dennis Alexander, Executive Director, American Lung Association, supported HB 430.**

**Paul Berg, Retired Biologist, Billings. Written testimony. EXHIBIT 22**

**Bill Allen, Montana Audubon Legislative Fund, supported HB 430.**

**Jim Jensen, Montana Environmental Information Center, supported HB 430.**

**Vince and Louise Larsen, Billings. Written testimony. EXHIBIT 23**

**Anne Harris, Billings. Written testimony. EXHIBIT 24**

**Maureen Nugent, Billings. Written testimony. EXHIBIT 25**

**Frieda Parker, Billings. Written testimony. EXHIBIT 26**

Petition from Billings. EXHIBIT 27

James Phelps, Director, Yellowstone Valley Audubon Society.  
Written testimony. EXHIBIT 28

Opponents' Testimony:

REP. SONNY HANSON, House District 9, Ashland, opposed HB 430, and the amendments and said it should be tabled. REP. HANSON said he hasn't seen any facts that would support the bill. The .02 parts per million for sulphur dioxide was arrived at by a motion from County Commissioner Grace Edwards at a commission meeting. Her contention was that if .03 is good, they should go with .02. REP. HANSON said in his district there is a 4 to 1 ratio against HB 430. The political community in Billings has gone on record as opposing the bill. HB 430 goes a long way in destroying the public trust in the legislative process. If the Hanna Bill is repealed, it would be the same as repealing a tax break after an industry has moved into Billings. Industry has said if the Legislature would allow it to operate under federal standards rather than state standards, it would work towards reducing the SO<sub>2</sub> levels. At that time the SO<sub>2</sub> level was about .03 parts per million and industry brought it down. Industry has upheld its end of the bargain and legislators had better uphold their end of the bargain. REP. HANSON read parts of a letter from the Montana Associated Physicians. EXHIBIT 29

Mary Westwood, Director, Governmental Relations, Montana Sulphur and Chemical Company (MSCC), said MSCC was the only industry in 1987 that took a neutral position on the Hanna Bill because it is a pollution control company. The company takes waste gases from the Exxon and Conoco Refinery and removes the sulphur dioxide. The company cannot support HB 430 as drafted. However, the company believes if certain amendments are made to the bill it might be possible support it. The company is concerned about having to support four air quality monitors. For a company as small as MSCC, the cost of collecting the data would be prohibitive. Ms. Westwood proposed an amendment to HB 430. EXHIBIT 30

Steve Hart, Manager, Exxon Refinery, Billings. Written testimony. EXHIBIT 31

Dr. Carlton Grimm, Montana Power Company. Written testimony. EXHIBITS 32 and 33

Tape 3, Side B

Ron Pletcher, Refinery Manager, Cenex, Laurel, said four years ago the company committed \$90 million toward producing cleaner burning fuel and reducing SO<sub>2</sub> emissions. Since 1993 emissions in Laurel have dropped by over 60%. Mr. Pletcher urged the committee to examine HB 430 in light of the considerable

investment industry has made and are making toward reducing sulphur dioxide emissions. He also asked the committee to consider the air quality impact of regulatory activities currently in place, namely the revision of the implementation plan for Billings and Laurel. More state regulations do not necessarily equate to greater prosperity. Unnecessary and costly legislation that provides no known benefit to the public is not warranted.

**Ed Logan, Pipefitter, Exxon Refinery, Billings**, said he had attended several meetings in Helena and the recurring theme seems to be how to attract industry to Montana. He urged the committee not to force industrial jobs to disappear.

**Mark Kennedy, City Council Member, Billings**. Written testimony.  
**EXHIBIT 34**

**Dan Farmer, City Council Member, Billings**, said the Northern Plains Resource Council has stirred up a lot of trouble on the issue of SO<sub>2</sub> emissions and has a lot of people believing that every sniffle and sneeze in the community is caused by SO<sub>2</sub> emissions irrespective of the other pollutants Billings has problems with. **Mr. Farmer** said he is a chemical engineer, has worked in the oil and gas industry for 15 years and worked on the original Hanna Bill. The city council, after separating facts from emotions, has concluded that the legitimate health base standards established by the EPA are correct and the best agency to use as far as enforcement and monitoring.

**Charles Brookes, Billings Chamber of Commerce**, said he has lived in Billings for 26 years. **Mr. Brookes** said his wife is an asthmatic with a lung capacity of 48%. There are many things that cause respiratory problems, but stress and depression are very key factors. **Mr. Brookes** urged the committee to defeat HB 430.

The following people stated their opposition to HB 430:

**David Owen, Montana Chamber of Commerce**

**Dean Schanz, Crane Operator, Exxon Refinery, Wordon**

**Bob Litle, Manager, ARSCO, East Helena**

**Dexter Busby, Montana Refining Company, Great Falls**

**Dennis Fettig, Self, Billings**

**Randy Hall, Employee, Exxon Refinery**

**Mark Montgomery, Self**

**Carl Glover, Self, Billings**

Gail Abercrombie, Executive Director, Montana Petroleum Association

Larry Zink, Vice President, Montana Sulphur Chemical Company, Billings

Ralph Stone, City Council, Billings

Informational Testimony: None

Questions From Committee Members and Responses:

REP. EMILY SWANSON asked Mr. Hart to explain the State Implementation Plan (SIP) process. Mr. Hart said a more stringent test to air standards is what is called computer modeling. SIP uses a computer model to set new emission limits for all industry in the Billings area. The process was started in March 1993 and is effective March 1998. There will be continuous emission monitors installed in every stack and there will have to be reductions in emissions. Exxon's reductions will go from approximately 11,500 tons a year of SO<sub>2</sub> to approximately 6,000 tons of SO<sub>2</sub> a year. REP. SWANSON asked Mr. Hart if SIP was binding or voluntary. Mr. Hart said SIP is a requirement of EPA.

REP. SWANSON asked REP. BOHLINGER to give his opinion of SIP. REP. BOHLINGER said it is the feeling of many of the people in the Billings community that the health care issue is not really addressed through the SIP process.

REP. HAL HARPER asked Mr. Brookes if the city commission or the county commission think that sulphur dioxide in Billings poses a particular health problem to the citizens. Mr. Brookes said both commissions are concerned about the health of the citizens. The Billings Chamber of Commerce and the majority of the Yellowstone County Commissioners support the position of the resolution of the city council and that is to let the SIP process go forward and not repeal the Hanna Bill.

Closing by Sponsor:

REP. BOHLINGER closed.

Tape 4, Side A

CHAIRMAN KNOX turned the Chair over to VICE CHAIRMAN TASH for the duration of the hearing on HB 473.

HEARING ON HB 473

Opening Statement by Sponsor:

REP. DICK KNOX, House District 93, Winifred, reviewed HB 473 section by section.

**Proponents' Testimony:**

**Bob Gilbert, Former Legislator,** said HB 473 the result of HB 280 that was heard during the 1993 session. **Mr. Gilbert** said he had been working on subdivision reform in the state since 1985. The bill protects the rights of property owners. He pointed out that the addition of the word "gift" on page 2, line 28, would allow people in the ranching industry to give portions of their ranch to their children without being subject to review. Page 4, lines 4 through 6, protects the legislative body from lawsuit if the county commissioners approve the final plat before improvements are put in, or before the necessary bonding is there and people are damaged.

**Ernie Dutton, Billings Association of Realtors,** supported HB 473, but said the association believes that there is a need for a tightly controlled exemption allowing the single division of land. The current minor plat review costs between \$1,000 and \$2,000 more than what a single division exemption would cost. **Mr. Dutton** suggested a five year restriction that would allow a property owner to singly divide a piece of property only once every five years.

**Collin Bangs, Montana Association of Realtors.** Written testimony. EXHIBIT 35

**Steve Mandeville, Real Estate Broker,** said HB 473 is good legislation and urged the committee to support it.

**John Shontz, Montana Association of Realtors,** said the language on page 4, line 4, of the bill states that if a local government approves a plat or returns a bond to a developer before the improvements are completed on the development, it can be open to lawsuit. That language protects the public; it ensures that the developers act responsibly and that improvements on subdivisions are done properly. Section 8 provides that the local government may assess a subdivider the capital costs of providing services but must reasonably reflect the expected impacts directly attributable to the subdivision. A very important part of the bill is that for the first time local governments would be allowed to use dedicated funds for maintenance of existing parks that will serve the people that live in the subdivision.

The following proponents expressed support of HB 473:

**Russ Ritter, Inland Properties, Missoula**

**John Bloomquist, Montana Stockgrowers Association**

**Peggy Trenk, Western Environmental Trade Association**

**Don Allen, Montana Wood Products Association**

**Andy Skinner, Self**



Pam Willett, Broker/Owner, ERA Property Store, Billings. EXHIBIT 36

Opponents' Testimony:

Blake Wordal, Lewis and Clark County Commissioner and Montana Association of Counties (MACO) said MACO surveyed its membership about the bill and received no support. Most of the comments received were based upon the fact that it has only had 18 months to deal with the changes made in 1993 is still trying to sort all of those changes out. MACO is disappointed that the bill does not have a fiscal note. There would be a definite cost to every county to integrate the requirements of HB 473 into county rules and regulations.

Tape 4, Side B

Jim Richard, Montana Association of Planners, said HB 473 should be tabled because the problem it addresses is not done properly. Mr. Richard offered proposed amendments to the bill. EXHIBIT 37

The following opponents expressed their opposition to HB 473:

Andrew Epple, Planning Director, City of Bozeman and Gallatin County. EXHIBITS 38, 39 and 40

John Beaudry, Planning Director, Stillwater County. EXHIBITS 41, 42, 43 and 44

Jim Campbell, City of Billings

Janet Ellis, Montana Audubon Legislative Fund

Don Williams, Administrator, City of Hamilton

Debbie Smith, Sierra Club

Ellen Woodbury, Park County. EXHIBITS 45, 46, 47, 48 and 49

Ann Hedges, Montana Environmental Information Center

Kathy Macefield, Planning Director, City of Helena. EXHIBIT 50

Glenna Obie, Jefferson County Commissioner

Webb Mandeville, Chairman, Mandevill Agency. EXHIBIT 51

Tonia Bloom, League of Women Voters. EXHIBIT 52

Informational Testimony: None

**Questions From Committee Members and Responses:**

**REP. EMILY SWANSON** said one of the issues that came up during the drafting of HB 473 was that section 5 would encourage subdividing one minor subdivision at a time without review and asked **REP. KNOX** for his comments.

**REP. KNOX** said the provisions under section 5 a minor subdivision would be reviewed. The provisions of statute 76-3-608 give local governments a great deal of flexibility and ability to provide very explicit and stringent review criteria. **REP. SWANSON** asked **REP. KNOX** why he decided to use fair market value rather than area description under the park dedication requirement section of the bill. **REP. KNOX** said he believed the fair market value was a reasonable way to approach the subdivider tariff. **REP. SWANSON** asked **REP. KNOX** how the fair value market system would work. **REP. KNOX** said based on the criteria in section 9, subsections (a), (b), (c), and (d), there would have to be an appraisal of the unimproved, unsubdivided land, in order to establish its value. **REP. SWANSON** asked **REP. KNOX** if the subdivider would be responsible for the appraisal. **REP. KNOX** replied yes.

**REP. CLIFF TREXLER** asked **Mr. Richard** if the price the subdivider paid for the land would establish the value. **Mr. Richard** said it might but in many cases local governments don't use that method. When there is a difference of opinion between the developer and the local government, an appraisal is almost always required.

**REP. TREXLER** asked **Mr. Richard** to define "any person aggrieved" under section 10 of his proposed amendments. **Mr. Richard** said it means a person with a specific personal and legal interest in a subdivision whose interest has been injured.

**Closing by Sponsor:**

**REP. KNOX** said it was obvious that the city and county planners don't like the bill and he sympathized with their problems. The provisions that are in HB 473 were the consensus of the House of Representatives in the 1993 session and should have been signed by the **Governor** into law. It is the obligation and the duty of this legislative body to address problems as it sees them without having to worry about problems of local planners. A fiscal note has been requested.

Tape 5, Side A

**REP. KNOX** said **Mr. Richard** seemed to have a lot of problems with section 5 of the bill. In addition to the provisions of 72-3-608, MCA, as they apply to section 5, 76-5-505 applies to minor subdivisions and gives local governments the ability to require additional, reasonable environmental information before approving additional minor subdivisions of a tract. These provisions allow local governments, if they so choose, to adopt rules that can be applied to minor subdivisions before granting approval. The Montana Environmental Protection Agency (MEPA) will also be used in minor subdivision reviews because the Department of Health and

Environmental Sciences (DHES) must approve the minor subdivision's impact on water quality as it relates to septic tanks in the subdivision. **Mr. Richard** is also concerned that section 10 of the bill removes citizens from the appeal process. Section 10 provides that any group that has a problem with the process can go to the county commissioners in their area and if it can convince the commissioners to sue on their behalf, the commissioners have the power to do so. The same thing holds true within the municipalities where the commissioners have jurisdiction. The people have not been cut out of the process. They still have the right through their governing bodies to work towards an appeal.

**REP. KNOX** said the bill adds the protection of the rights of the property owners to the statement of purpose. It allows the gift of land to the agriculture exemption section, allowing a land owner to mitigate the impact of the gift in the state taxes that could be imposed on the next generation. It improves the bonding provisions in places in statute commonly used in bonding practices. It will give local governments greater flexibility in establishing rules for minor subdivisions. It adds review of a subdivision impact on water user facilities, therefore, the impact on ditches, canals and pumping stations must be considered. It improves mitigation procedures by requiring that local governments issue written findings that mitigation is required. It also provides clear language that will enable local governments to deny a subdivision if the impacts of the subdivision cannot be mitigated. It puts in place a common sense approach to governing park land dedication. When there are a large number of lots in a subdivision, the maximum dedication will be used. As the lot sizes increase and more open space is created, less dedication is required. The bill allows for money dedicated by the developer for parks to be used for maintenance, thus addressing a statewide problem of neglected weed-infested parks. HB 473 addresses the problems created by a Supreme Court decision that denies the right of appeal to affected parties by a decision of a local governing body to deny a preliminary plat.

**REP. KNOX** asked the committee for its approval of HB 473.

**CHAIRMAN KNOX** resumed the Chair.

#### HEARING ON HB 483

##### Opening Statement by Sponsor:

**REP. ALVIN ELLIS, House District 23, Red Lodge,** said although all the states created after 1789 were to be added to the Union on an equal basis with the original states, 11 states were required to include a disclaimer in their constitution. Section 1 of ordinance 1 of the Montana Constitution disclaims all right and title to all unappropriated public lands lying within its boundaries. With so much land under federal ownership in some counties and in the state as a whole, tremendous stress is placed

on private property to support government in a state so heavily dependent on property taxes. Payment in lieu of taxes does not come close to reimbursing counties or the state for the lost revenue. Both state and private ownership have proven to be more productive for state and local governments, better stewards of the land resources and provide more economic trust for the state's economy. The longer federal government manages land, the more it mismanages it. For example, in Yellowstone Park game herds eat all the brush and shrubs leaving the hillsides with almost no growth where it is open to winter grazing. The federal government has endeavored to introduce wolves in Yellowstone Park to take care of the over population of game that has been caused by the way it has managed the park's ecosystem. There is doubt that the introduction of wolves will work out any better than the federal government's management of game in the park. Montana would clearly benefit from federal recognition of a change in stewardship.

Montana should join its western sister states in asking for constitutional equality with the original 39 states.

**Proponents' Testimony:**

**REP. AUBYN CURTISS, House District 81, Fortine,** said HB 483 is a tenth amendment state sovereignty issue. More and more states west of the Mississippi are having to assert their rights over the administration of public lands. The Governor of Arizona has by executive order established a constitutional defense commission to help defend the state from the intrusiveness of the federal government on its land use policies. It is just a matter of time until other states will be forced to do the same thing.

**Zales Ecton III, Agricultural Preservation Association,** supported HB 483.

**Opponents' Testimony:**

**Louise Bruce, Montana Wilderness Association,** said HB 483 is a serious threat to the liberty all Montanans and Americans now possess to access tens of millions of acres of federal land in Montana. If the state were to assume ownership of federal land, immediate problems of administration and funding would arise and there would be a need to sell public land to private interests. When public land is sold it will not be purchased by average Montanans, it will be purchased by large corporations, agricultural conglomerates and wealthy land developers. When public land is lost to Montanans, so are their opportunities to hunt, fish, hike, camp and enjoy what Montanans rightly consider to be a blessing and a birthright. HB 483 seems to be a plan to divest public land to private owners.

**Jim Jensen, Executive Director, Environmental Information Center,** said HB 483 is based on false, misleading premises which is most clearly stated on page 1, line 19. It alleges that the presence

of public lands in Montana works a severe, continuous and debilitating hardship upon the people of Montana. **Mr. Jensen** urged the committee members to ask themselves how many of their constituents who enjoy the public domain in Montana consider it to be a severe, continuous and debilitating hardship upon their lifestyles.

**Debbie Smith, Sierra Club**, said if the federal government has no authority to own federal lands, then the federal government had no authority to enter into the Louisiana Purchase by which Montana and other western states became part of this country. **Ms. Smith** urged the committee to table HB 483.

**Bill Allen, Montana Audubon Legislative Fund**, concurred with the previous opponents in opposing HB 483.

**REP. BOB RANEY, House District 26, Livingston**, opposed HB 483.

Informational Testimony: None

Questions From Committee Members and Responses:

Tape 5, Side B

**REP. PAUL SLITER** asked **REP. ELLIS** if HB 483 should be a resolution instead of a bill. **REP. ELLIS** said he agreed that maybe it should be.

Closing by Sponsor:

**REP. ELLIS** said the opponents talked about the sale of lands to private parties. While that is an option, it isn't necessarily the best option. Montana is a very good steward of lands. The state could easily protect the right of access of the people to these lands by state ownership. The bill does not challenge federal authority because it takes federal compliance before the state can manage these lands.

EXECUTIVE ACTION ON HB 351

Discussion:

**REP. KNOX** said that **Mr. Kakuk** had amendments that were approved in concept during executive action on HB 351 on February 10. **Mr. Kakuk** explained the amendments. **EXHIBIT 53**

Motion/Vote: **REP. HAL HARPER MOVED DO PASS ON THE AMENDMENTS TO HB 351.** Voice vote was taken. Motion carried unanimously.

(HB 351 as amended, was previously adopted unanimously on February 10, 1995. The amendments adopted at that time were conceptual.)

EXECUTIVE ACTION ON HB 215

Motion: REP. EMILY SWANSON MOVED HB 215 DO PASS.

Discussion:

REP. ORR gave the subcommittee's report on HB 215.

Motion: REP. ORR MOVED DO PASS ON THE AMENDMENTS TO HB 215.  
EXHIBIT 54

Discussion:

REP. HAL HARPER asked REP. ORR if he was going to support the bill with the amendments. REP. ORR replied no.

REP. PAUL SLITER asked REP. VICKI COCCHIARELLA what she thought about the amendments to HB 215. REP. COCCHIARELLA said the bill with the amendments is not as stringent as it was and industry no longer has any problems with it.

Motion/Vote: Voice vote was taken. DO PASS motion on REP. COCCHIARELLA'S amendments carried unanimously.

Tape 6, Side A

Discussion:

REP. ORR said HB 215 does not affect Ross Electric Company and that company was what precipitated the bill. The bill doesn't apply to Ross Electric because the burning of PCB's is not considered hazardous waste. The bill needs more research before it is passed. The bill should be killed so more research can be done on it.

Motion/Vote: REP. AUBYN CURTISS MOVED TO TABLE HB 215. Voice vote was taken. Motion failed 11 to 7.

Motion/Vote: REP. SWANSON MOVED HB 215 DO PASS AS AMENDED. Voice vote was taken. Motion carried 12 to 6.

EXECUTIVE ACTION ON HB 218

Discussion:

REP. KARL OHS gave the subcommittee's report on HB 218.

Motion/Vote: REP. ROBERT STORY MOVED TO TABLE HB 218. Voice vote was taken. Motion carried unanimously.

EXECUTIVE ACTION ON HB 341

Discussion:

REP. KARL OHS gave the subcommittee's report on HB 341.

Motion/Vote: REP. BILL TASH MOVED TO TABLE HB 341. Voice vote was taken. Motion carried 13 to 5. REP. HAL HARPER, REP. CARLEY TUSS, REP. BOB RANEY, REP. DAVID EWER AND REP. JON ELLINGSON voted no.

EXECUTIVE ACTION ON SB 203

Motion: REP. STORY MOVED SB 203 DO PASS.

Discussion:

REP. LILA TAYLOR asked that executive action be postponed on SB 203 because her constituents had a lot of questions on the bill and she would like to discuss it with them.

REP. STORY withdrew his motion.

CHAIRMAN KNOX postponed executive action on SB 203.

Tape 6, Side B

EXECUTIVE ACTION ON HB 412

Motion: REP. SCOTT ORR MOVED HB 412 DO PASS.

Motion: REP. ORR MOVED DO PASS ON AMENDMENTS TO HB 412. EXHIBIT 55

Discussion:

REP. ORR explained the amendments.

Vote: Voice vote was taken. DO PASS motion on the amendments carried unanimously.

Motion/Vote: REP. ORR MOVED HB 412 DO PASS AS AMENDED. Voice vote was taken. Motion carried 16 to 2. REP. BOB RANEY and REP. DAVID EWER voted no.

EXECUTIVE ACTION ON HB 472

Motion: REP. DICK KNOX MOVED HB 472 DO PASS.

Discussion:

Mr. Kakuk explained the amendments to HB 472. EXHIBIT 56

Motion/Vote: REP. KNOX MOVED DO PASS ON THE AMENDMENTS. Voice vote was taken. Motion carried unanimously.

Motion/Vote: REP. HAL HARPER MOVED HB 472 DO PASS AS AMENDED. Voice vote was taken. Motion carried unanimously.

EXECUTIVE ACTION ON HB 478

Motion: REP. ROBERT STORY MOVED HB 478 DO PASS.

Discussion:

REP. STORY said he had some amendments to the bill but hadn't received them from the EQC staff. Mr. Kakuk said he had the conceptual amendments and as far as the EQC staff is concerned, there isn't anything controversial in the amendments. If the committee wanted to act on the amendments there wouldn't be any problem adopting them as conceptual.

REP. STORY proposed additional amendments to strike the word "significant" and insert the word "adverse" on page 2, line 5 and to strike "of not less than \$25 or more than" and insert not to exceed more than \$500" on page 8, line 14 of the bill.

Motion/Vote: REP. STORY MOVED DO PASS ON THE AMENDMENTS. Voice vote was taken. Motion carried unanimously.

Motion/Vote: REP. STORY MOVED HB 478 DO PASS AS AMENDED. Voice vote was taken. Motion carried unanimously.

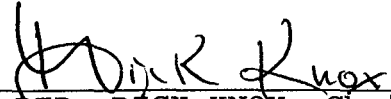
EXECUTIVE ACTION ON HB 483

Motion/Vote: REP. STORY MOVED TO TABLE HB 483. Voice vote was taken. Motion carried 14 to 4. REP. AUBYN CURTISS, REP. PAUL SLITER, REP. DOUG WAGNER and REP. SCOTT ORR voted no.

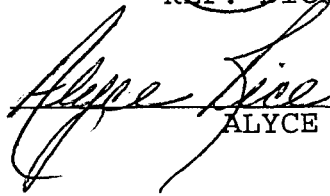


ADJOURNMENT

Adjournment: 9:45 pm



REP. DICK KNOX, Chairman



ALYCE RICE, Secretary

DK/ar

# HOUSE OF REPRESENTATIVES

## Natural Resources

ROLL CALL

DATE 2-13-95

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



## HOUSE STANDING COMMITTEE REPORT

February 14, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that House Bill 351 (first reading copy -- white) do pass as amended.

Signed: Dick Knox  
Dick Knox, Chair

And, that such amendments read:

1. Title, line 8.

Strike: "CERTAIN"

2. Page 3, lines 6 through 11.

Strike: "If" on line 6 through the first "the" on line 11

Insert: "The"

3. Page 3, lines 13 through 21.

Strike: "would" through "state"

Insert: "does not return to the state full market value or that the sale procedure did not provide the public a reasonable opportunity to submit proposals to purchase the land. If the board of land commissioners determines that the sale is not in the best interests of the state or system, it shall notify the board of regents of that determination and the sale is not final"

4. Page 3, lines 15 through 21.

Strike: "For" on line 15 through "purposes." on line 21

-END-

Committee Vote:

Yes 18, No 0.

381121SC.Hbk



## HOUSE STANDING COMMITTEE REPORT

February 14, 1995

Page 1 of 6

Mr. Speaker: We, the committee on Natural Resources report that House Bill 412 (first reading copy -- white) do pass as amended.

Signed: Dick Knox  
Dick Knox, Chair

And, that such amendments read:

1. Title, line 6.  
Strike: first "AND"
2. Title, line 7.  
Following: "REPORT"  
Insert: "; PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN  
APPLICABILITY DATE, AND A TERMINATION DATE"
3. Page 1, line 13.  
Following: "to"  
Insert: "voluntarily"  
Strike: "compliance issues"  
Insert: "violations"
4. Page 1, line 16.  
Strike: "will"  
Insert: "are"  
Following: "not"  
Insert: "intended to"  
Following: "inhibit"  
Insert: "or be a substitute for"
5. Page 1, line 17.  
Following: "those"  
Insert: "agencies"

Committee Vote:  
Yes 16, No 2

381116SC.Hbk

6. Page 1, line 21.

Following: "a"

Insert: "state"

7. Page 1, line 24.

Following: second "self-evaluation"

Insert: ", not otherwise required by law or regulatory action,"

8. Page 1, line 25.

Following: second "the"

Insert: "primary"

9. Page 1, line 26.

Following: "noncompliance"

Insert: "on a long-term basis"

10. Page 2, line 1.

Strike: ": Privileged Document"

11. Page 2, line 2.

Strike: "may"

Insert: "must"

12. Page 2, line 3.

Following: "purpose"

Insert: "of"

Following: "of"

Insert: "conducting"

Strike: ", including"

Insert: ". These materials may include"

Following: "but"

Insert: "are"

13. Page 2, lines 6 through 13.

Strike: "It" on line 6 through "noncompliance." on line 13

Insert: "All environmental self-evaluation reports must:

(a) include the date or dates on which the  
environmental self-evaluation was conducted; and

(b) identify proposed corrective actions to  
resolve identified noncompliance issues in accordance  
with applicable environmental laws."

14. Page 2, line 15.

Strike: "out"

Insert: "because"

15. Page 2, line 18.

Following: "resolve"

Insert: "the violation"  
Strike: "reasonably"

16. Page 2, line 19.  
Following: "manner"  
Insert: "and corrects the violation according to the compliance  
plan approved by the regulatory agency"

17. Page 2, line 21.  
Following: "investigation"  
Insert: "and resolution"

18. Page 2, line 22.  
Following: "law"  
Insert: ", permit, order, or rule"

19. Page 2, line 28.  
Following: "self-evaluation"  
Insert: " or prepared an environmental self-evaluation report"  
Following: "or"  
Insert: "any person or entity"

20. Page 2, line 29.  
Strike: "any" through "of"  
Strike: "and"  
Insert: "report or any matter"

21. Page 3, line 4.  
Strike: "by"  
Insert: "because of"

22. Page 3, line 13.  
Strike: "raised"  
Insert: "identified"  
Following: "self-evaluation"  
Insert: "report"

23. Page 3, line 16.  
Following: "a"  
Insert: "lawful"

24. Page 3, line 20.  
Strike: "material"  
Insert: "the report"

25. Page 3, line 22.  
Following: "purpose;"  
Insert: "(b) the environmental self-evaluation report was

prepared to avoid disclosure of information:

(i) in an investigation or in an administrative or judicial proceeding that was underway or imminent; or

(ii) for which the person or entity had been provided written notification that an investigation into a specific violation had been initiated;"

26. Page 3, line 23.

Strike: "(b)"

Insert: "(c)"

Strike: "material"

Insert: "report"

Strike: "or"

27. Page 3, line 24.

Strike: "(c)"

Insert: "(d)"

Strike: "material"

Insert: "report"

28. Page 3, line 25.

Following: "the"

Insert: "environmental"

29. Page 3, line 26.

Following: "pursued"

Insert: "to completion"

Following: "noncompliance"

Insert: "; or (e) information contained in the environmental self-evaluation report demonstrates a clear, present, and substantial impending danger to the public health or to the environment in areas outside the facility property"

30. Page 3, line 29.

Following: "diligence"

Insert: "toward completion"

Following: "party"

Insert: ", including the state in a criminal proceeding,"

31. Page 3, line 30 through page 4, line 2.

Following: "(3)(a)" on page 1, line 30

Insert: ", (3)(b), (3)(c), or (3)(e)"

Strike: "proving" on page 3, line 30 through "(3)(b)" on page 4, line 2

Insert: "proof"

32. Page 4, line 7.

Following: "seal"  
Strike: "and"  
Insert: ", "  
Following: "report"  
Insert: ", and shall notify the owner or operator of its  
possession of the report"

33. Page 4, line 8.  
Strike: "obtains the report"  
Insert: "provides notice"

34. Page 4, line 21.  
Following: "for"  
Insert: "exclusion or"

35. Page 4, lines 25 and 26.  
Strike: "specific" on line 25 through "in" on line 26  
Insert: "all or a portion of"

36. Page 4, line 29.  
Following: "are"  
Insert: "not privileged and are"

37. Page 5, line 5.  
Following: "agency"  
Insert: ", except to the extent derived from a voluntary  
disclosure"  
Strike: "or"

38. Page 5, line 6.  
Following: "obtained"  
Insert: "by a regulatory agency"  
Following: "self-evaluation"  
Insert: "or from a voluntary disclosure;  
(4) documents existing prior to the commencement  
of the environmental self-evaluation and independent of  
the environmental self-evaluation; or  
(5) any information not privileged, pursuant to  
[section 3] or otherwise, that is developed or  
maintained in the course of regularly conducted  
business activity or regular practice"

39. Page 5, line 8.  
Following: "limit,"  
Insert: "expand,"

40. Page 5, line 12.  
Following: "violation."



Insert: "(1) "

41. Page 5, line 15.

Strike: "(1) "

Insert: "(a) "

42. Page 5, line 17.

Strike: "(2) "

Insert: "(b) "

43. Page 5, line 18.

Strike: "(3) "

Insert: "(c) "

Strike: "environmental" through "health."

Insert: "harm to the public health or to the environment."

(2) The person or entity shall provide information in writing supporting its claim that the disclosure is voluntary at the time that the disclosure is made to the regulatory authority.

(3) The elimination of civil, criminal, or administrative penalties under this section does not apply if a person or entity has been found by a court or an administrative tribunal to have committed serious violations that constitute a pattern of continuous or repeated violations of environmental laws, rules, permit conditions, settlement agreements, or orders on consent and that were because of separate and distinct events giving rise to the violations within the 3-year period prior to the date of disclosure.

NEW SECTION. **Section 8. Applicability.** [This act] applies to:

(1) only those environmental self-evaluations that result in environmental self-evaluation reports;

(2) voluntarily disclosed violations that are disclosed after [the effective date of this act]; and

(3) all legal actions and administrative actions commenced on or after [the effective date of this act].

NEW SECTION. **Section 9. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 10. Termination.** [This act] terminates June 30, 2001."

-END-



## HOUSE STANDING COMMITTEE REPORT

February 14, 1995

Page 1 of 1


Mr. Speaker: We, the committee on Natural Resources report that House Bill 472 (first reading copy -- white) do pass as amended.

Signed:

  
Dick Knox, Chair

### And, that such amendments read:

1. Page 1, line 17.  
Following: second "to"  
Insert: "temporarily"
2. Page 1, line 20.  
Following: "governor", "convene", and "basis"  
Strike: ", "
3. Page 2, line 26.  
Following: "or"  
Insert: "allow"
4. Page 10, line 20.  
Following: "(4)"  
Insert: "(a)"
5. Page 10, lines 22 through 24.  
Strike: "Except" on line 22 through "permit." on line 24  
Insert: "(b) An appropriator, other than an appropriator identified in subsection (7), may object:  
    (i) during the initial temporary change application process;  
    (ii) during the temporary change renewal process;  
and  
    (iii) once during the term of the temporary change permit."

  
Committee Vote:  
Yes 8, No 0.

381118SC.Hbk



## HOUSE STANDING COMMITTEE REPORT

February 14, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that **House Bill 478** (first reading copy -- white) do pass as amended.

Signed: \_\_\_\_\_

*Dick Knox*  
Dick Knox, Chair

And, that such amendments read:

1. Page 2, line 5.

Strike: "a significant"

Insert: "an adverse"

Following: "stream"

Insert: "due to soil erosion or sedimentation"

2. Page 8, line 14.

Strike: "of" through "more than"

Insert: "not to exceed"

-END-

Committee Vote:

Yes ☒, No ☐.

381120SC.Hbk



## HOUSE STANDING COMMITTEE REPORT

February 14, 1995

Page 1 of 4

Mr. Speaker: We, the committee on Natural Resources report that House Bill 215 (first reading copy -- white) do pass as amended.

Signed: \_\_\_\_\_

*Dick Knox*

Dick Knox, Chair

### And, that such amendments read:

1. Page 2, line 18.

Strike: subsection (13) in its entirety

Renumber: subsequent subsections

2. Page 3, lines 6 and 26.

Strike: "(19) (b) (i)"

Insert: "(18) (b) (i)"

3. Page 3, line 6.

Strike: "(19) (b) (viii)"

Insert: "(18) (b) (viii)"

4. Page 3, line 18.

Strike: "(19) (b) (ii) (A)"

Insert: "(18) (b) (ii) (A)"

Strike: "(19) (b) (ii) (B)"

Insert: "(18) (b) (ii) (B)"

5. Page 3, line 27.

Strike: "(19) (b) (vi)"

Insert: "(18) (b) (vi)"

6. Page 3, line 29.

Strike: "A"

Insert: "Subject to the provisions of subsection (4), a"

Following: "permit"

Committee Vote:

Yes 12, No 6.

381112SC.Hbk

Insert: "that is required"

7. Page 3, line 30.

Following: "facility"

Insert: "under 75-10-406"

Following: "issued"

Insert: ", reissued, renewed,"

Strike: "pursuant to 75-10-406"

Strike: "an application"

Insert: "the filing of a disclosure statement as required"

8. Page 4, line 1.

Following: "issuance"

Insert: ", reissuance, renewal,"

9. Page 4, lines 2 and 3.

Strike: "and" on line 2 through "applicant" on line 3

10. Page 4, line 4.

Strike: "and each principal"

11. Page 4, line 5.

Following: "civil"

Insert: "complaint filed"

Strike: "complaint filed"

Insert: "enforcement action taken"

12. Page 4, line 6.

Strike: "or a principal"

13. Page 4, line 7.

Following: "complaint"

Insert: "or action"

14. Page 4, line 8.

Strike: "or a principal"

15. Page 4, line 10.

Following: "conviction"

Insert: "for activities directly associated with a hazardous  
waste management facility"

Strike: "or a principal"

16. Page 4.

Following: line 21

Insert: "(4)(a) This section does not apply to the issuance of a  
temporary emergency permit under 75-10-406(5) or to the  
modification of a permit that does not reflect a change in

the owner or operator of the hazardous waste management facility.

(b) A person is not required to comply with the provisions of [section 3] or this section for:

(i) the reissuance, renewal, or modification of a valid hazardous waste management facility permit issued prior to January 1, 1995; or

(ii) an application for a new hazardous waste management facility permit for a facility when a permit was issued prior to January 1, 1995, if the new permit is not because of a change in the owner or operator at that facility.

(5) For the purposes of this section, "applicant" includes a subsidiary or successor in interest with respect to the applicant."

17. Page 4, line 24.

Following: "issuance"

Insert: ", reissuance, renewal,"

Strike: "under 75-10-406"

18. Page 4, line 27.

Following: "civil"

Insert: "complaint"

Strike: "complaint"

Insert: "enforcement action"

19. Page 4, lines 28 and 30.

Strike: "or a principal"

20. Page 5, lines 1, 4, and 11.

Strike: "or a principal"

21. Page 5, line 9.

Following: the first "the"

Insert: "number,"

Following: "nature"

Insert: ", "

Strike: "violation"

Insert: "violations"

22. Page 5, line 12.

Strike: "or principal's"

23. Page 5, line 13.

Following: "complaints"

Insert: ", enforcement actions,"

February 14, 1995

Page 4 of 4

24. Page 5, line 14.

Strike: "or principal's"

Following: "entities"

Insert: "involved in the complaints or enforcement actions or"

25. Page 5, line 16.

Insert: "(4) For the purposes of this section, "applicant"  
includes a subsidiary or successor in interest with respect  
to the applicant."

-END-

COMMITTEE PROXY

Date 2-13-95

I request to be excused from the House Nat'l Resource Committee

Committee meeting this date because of other commitments. I

desire to leave my proxy vote with Sliter, Orr or Tash

and he will vote me on amendments.

Indicate Bill Number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

whoever I  
fill these

HOUSE BILL/AMENDMENT	AYE	NO
HB 215		/
{ 218		/
{ 341		/
{ 203		/
{ 412		/
HB 472	/	
HB 478		/
HB 430		/
HB 473	/	
HB 483	/	

SENATE BILL/AMENDMENT	AYE	NO

Not having  
heard most  
of these  
bills, after  
briefly reviewing  
these bills on

the surface, if exc is done, My votes are as  
indicated marked above w/out major  
amendments.

Rep. Douglas T. Wagner 2/13/95  
(Signature)



HB 472

EXHIBIT 1  
DATE 2-13-95  
HB 472

Testimony on behalf of the  
Montana Chapter of the American Fisheries Society  
before the  
House Natural Resources Committee

February 14, 1995

Mr. Chairman and members of the committee, my name is Art Whitney and I am here on behalf of the Montana Chapter of the American Fisheries Society. The American Fisheries Society is an international organization of fisheries and aquatic professionals that promotes the wise use and management of fisheries and aquatic habitat. AFS is the oldest professional society in the United States and the Montana Chapter has about 160 members.

The Montana Chapter supports HB 472. The bill is the result of a unique coalition of water user interests sitting down and reaching consensus on ways to help resolve the problem of dewatered streams in Montana. Previous attempts to resolve the issue have been unsuccessful because the various interests groups had insufficient dialog prior to legislation being introduced. As a result, the legislation failed. This bill is different. It is the result of the different interests talking to each other to reach some agreement on the instream flow issue.

Currently, water leases for instream flow purposes can only be obtained by Montana Fish, Wildlife and Parks under a statute passed in the 1989 legislature. House Bill 472 would broaden the opportunity to improve instream flows in dewatered streams by allowing private individuals and other groups to either convert their existing water rights from a consumptive use to instream flow or for others to lease these rights from willing individuals and convert them to instream flow. Before the conversion could be allowed, approval from DNRC would be required so that the change would not adversely affect other existing water users.

We believe this bill is an important step toward improving fish habitat conditions in streams currently affected by low streamflows and will help protect and restore the important and valuable stream fisheries in Montana.

The Montana Chapter of the American Fisheries Society urges your support of HB 472.

Thank you.

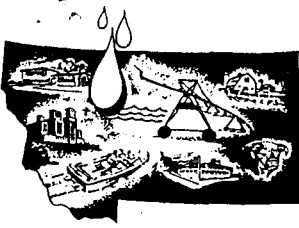


EXHIBIT 2  
DATE 2-13-95  
HB 472



501 N. Sanders, Suite #4 • Helena, Montana 59601 • (406) 442-9666

**MONTANA WATER RESOURCES ASSOCIATION**  
Testimony Regarding HB 472  
Provided to  
**HOUSE NATURAL RESOURCES COMMITTEE**  
February 13, 1995

Mr. Chairman, Members of the Committee. For the record, I'm Mike Murphy, representing the Montana Water Resources Association. The Association supports House Bill 472.

Agriculture has always been concerned for and is a strong advocate of the environment. While Montana farmers and ranchers have utilized their private water rights to produce food and fiber for the nation and the world, those same rights have been used to enhance both wildlife and fisheries resources. In fact, our fisheries are among the best in the nation.

House Bill 472 advances opportunities to further enhance our fishery resources by facilitating the leasing of water rights for instream use. We are confident that these opportunities can be fostered while protecting the principles of the Prior Appropriation Doctrine and temporary water right change process.

Ultimately, as a win-win concept, this legislation must address concerns regarding the need to protect private property rights with those of the environment. In addition, the enabling legislation must ensure that the manner of use of such private property rights will not adversely impact or cause injury to others or to the environment.

This legislation will sunset in ten years, if not reauthorized. Considering the significance of the change from historic uses, we feel this is appropriate and provides sufficient time to initiate

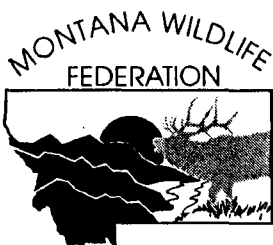
leasing activities and evaluate resulting impacts or problems. If the leasing process is working as hoped, it is reasonable to assume that the provisions of this legislation would continue.

House Bill 472 provides an opportunity for input from those who may be impacted prior to the actual application for a temporary change in order to determine the extent and reason for concerns. By determining in advance the extent and rational of concerns, confrontations may be averted, and reduce the extent of objections that may arise as a result of a proposed lease.

We also feel that it is appropriate as provided for within this bill, that the owner of the involved water right retain sole responsibility and authority for any enforcement requirements that may be necessary during the term of the lease and temporary change for instream use. It is also appropriate that the owner of the involved water right retain sole responsibility and authority for initiating any objection that may be brought against future temporary change of use requests made by the owners of other water rights.

This legislation would establish a significant change from historic use. Positive results are possible for both agriculture and the state's fisheries. Again, our primary concerns are to maintain the integrity of the prior appropriation doctrine and to ensure appropriate protection of existing water rights. If in fact, existing water rights are impacted as the result of activity initiated under the provisions of this legislation, there must be adequate opportunity for objection and resolution.

We feel that these concerns are addressed within House Bill 472. Thank you.



# MONTANA WILDLIFE FEDERATION

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Ph. 406-449-7604  
Fax 406-449-8946

February 12, 1995

EXHIBIT 3  
DATE 2-13-95  
HB 472

House Natural Resources Committee  
Helena, Montana

Chairman Knox and Committee Members:

I am Alan Rollo from Great Falls with the Montana Wildlife Federation, requesting your support for House Bill 472.

As you are aware of, water in Montana can be a very contentious issue and especially the issue of instream flow. For the last eight months several people from state wide organizations sat down to hammer out a compromise that would prevent this problem from escalating. We worked very hard to find a compromise to satisfy all participants and put this issue behind us. This process was not easy but an agreement has been achieved and the bill before you is the proof we succeeded.

The changes to existing law were minimal but required to make this process work. So what is different than previous years where similar bills were met with significant opposition. We started at square one, looked at everyone's needs and built a solid base, one block at a time - a very slow process but one that was built to be strong. I know everyone made a sincere effort to make this process work and I feel proud to have participated on this consensus approach.

You have heard the main elements about this bill but the key parts that I want to stress again are: that this bill works within the prior appropriation system, it does protect junior and senior water right holders, it is strictly voluntary and you will receive briefings on its' progress.

So please give HB 472 favorable consideration so we can allow this instream flow idea to work.

Thank you.

Sincerely,

Alan Rollo  
Montana Wildlife Federation

EXHIBIT 4  
DATE 2-13-95  
HB 472

Statement of Barry R. Hedrich, P.O. Box 93, Ringling, MT 59642

I commend the efforts of the consensus council and the legislature in their efforts to manage the issue of streamflow enhancement.

I am encouraged by legislation which is not cumbersome but which is simple and builds upon the prior appropriation water rights system which works.

I am encouraged by legislation which allows individuals the right to negotiate the value of a resource and terms of use without the involvement of governmental agencies.

I am encouraged by affected groups and individuals striving to put differences aside, finding common ground and agreeing on beneficial solutions to Montana's water resource management without the threat of judicial mandates, costly and frivolous legal action or sweeping changes in Montana water law.

HB 472 provides a sound mechanism by which quantities of water may be acquired to maintain and enhance streamflow during critical periods of the year.

I urge your support and approval of HB 472.

House Natural Resources Committee  
Monday, February 13, 1995  
Testimony In Support Of House Bill 472  
Glenn Marx, Policy Director, Governor Racicot's Office

EXHIBIT 5

DATE 2-13-95

HB 472

Mr. Chairman, for the record I'm Glenn Marx and I serve as policy director for Governor Marc Racicot.

The Racicot Administration rises in enthusiastic support of this bill and pledges a strong commitment to assist with its successful implementation.

There are a few critical components of this bill which bear added emphasis.

One, the bill respects -- and works within -- the prior appropriation system to provide agriculture water users new options in water management and income potential.

Two, the basis for the instream flow agreement is completely voluntary.

Three, the water needed to preserve instream flow can only be obtained through a temporary lease.

Fourth, the water leased is enough to maintain fish and aquatic life.

That means no public trust doctrine, no government mandated actions or "takings," no permanent water sales and only enough leased water to keep fish alive, not enough leased water to keep boats and water-based recreation afloat.

What that all tells us, Mr. Chairman, is that the group who put this bill together did its work in a precise, careful and thoughtful fashion. They did the job right, and Governor Racicot both respects and applauds their efforts and their product.

This is another example of how the Consensus Council can take an issue and transform that issue into a solution that works in Montana's best interest. Congratulations to the Council and those who worked on this bill.

The carefully conceived and voluntary instream flow protection plan proposed in this bill clearly provides needed protection to fish and streams, but it also provides a potentially new and exciting opportunity for landowners and irrigators to modify water management to retain existing agriculture income and add a new source of income. Such resource and financial gains can help individual ranchers and Montana's rural economies.

Finally, Mr. Chairman, the Statement of Intent directs the governor to "monitor and review" the instream flow protection program and to convene a broad-based working group to work with

DNRC on the program itself as well as a legislative report in the year 2001. The governor accepts that obligation and hopes to see the Consensus Council continue its constructive involvement on this issue, the future working group and the report itself.

Thank you for the opportunity to testify and the governor urges passage of the bill.

EXHIBIT 6  
DATE 2-13-95  
HB 472

# ANNUAL PROGRESS REPORT WATER LEASING PROGRAM

November 30, 1994

Submitted to:

Montana Water Policy Committee  
Montana Board of Natural Resources and Conservation  
and  
Montana Fish, Wildlife and Parks Commission

Submitted by:

Montana Fish, Wildlife and Parks  
Fisheries Division



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## **I. INTRODUCTION**

This is the fifth annual report prepared by FWP in response to the reporting requirement under 85-2-436(3)(a) MCA. One new lease (Blanchard Creek) was approved and implemented in 1995, bringing the total to three (3) water leases implemented since the Water Leasing Study was authorized by the 1989 legislature.

## **II. MAJOR ACCOMPLISHMENTS**

Major water leasing accomplishments for 1994 include the following:

1. Completed the second year of implementation of two water leases of existing water rights on Mill Creek, an important cutthroat trout spawning tributary to the Yellowstone River. Began investigation of an additional water lease on Mill Creek to add to the 6.13 cfs already under lease.
2. Completed and implemented a water lease for existing water rights on Blanchard Creek, a spawning tributary of the Blackfoot River.
3. Nearly completed a lease for existing water rights on Cedar Creek, an important cutthroat trout spawning tributary to the Yellowstone River. FWP is presently attempting to negotiate a settlement with two Cedar Creek water users who filed objections to the change of appropriation water right application.
4. Continued work on a water conservation project and lease on Hell's Canyon Creek, a spawning tributary to the Jefferson River; submitted a change of appropriation water right application to the DNRC and continue to work with the users on a final leasing agreement.
5. Nearly completed a lease for existing water rights on Tin Cup Creek, a spawning tributary to the Bitterroot River. FWP is presently attempting to negotiate a settlement with two objectors to the "change" application.
6. Continued to participate in a proposed water conservation and leasing project on Big Creek, a spawning tributary to the Yellowstone River.

### **III. 1994 EFFORTS**

#### **ACTIVELY PURSUED**

##### **1. Big Creek**

Big Creek is a tributary to the upper Yellowstone River entering near Emigrant, Montana. The stream reach studied for leasing extends from the mouth upstream for about one mile. Six irrigation diversions are within this reach and serve nine water users, who irrigate about 1,200 acres.

The water users and the Soil Conservation Service (SCS) are examining the potential for a gravity sprinkler irrigation system to replace the existing earthen ditch system. The increased efficiency of the pipeline system will salvage 11 to 14 cfs of water. This salvaged water could be available for lease to provide instream flows for the spawning of Yellowstone cutthroat trout. The cutthroat hatching success is greatly reduced because the lower one mile of Big Creek is usually dry in August and September.

Prior to 1993, studies by the SCS and FWP to determine project feasibility and to assess the economic benefits to the fishery were prepared with FWP's financial support and resulted in a Preliminary Feasibility Report issued by SCS in May 1992. In 1993, the Big Creek water users hired a project coordinator to assist with their efforts. FWP is proposing to contribute a one-time payment towards project construction and, in return, receive a lease for all water salvaged by the project. FWP continues to work with the users. The users are still in the process of forming an irrigation district, the legal entity needed to secure funds and grants, and working with the SCS in project development.

##### **2. Blanchard Creek**

Blanchard Creek joins the Clearwater River 2.9 miles above the river's confluence with the Blackfoot River near Ovando, Montana. The creek is a prime rainbow trout spawning tributary for the Blackfoot River but its reproductive contribution is limited due to loss of habitat from severe dewatering in the lower stretch.

The stream reach proposed for leasing extends about 1.1 miles upstream from the mouth. Within this reach are two irrigation diversions serving one user. This user, who irrigates 100 acres of pasture, diverts water at both diversions, causing the lower 0.1 mile of stream below the first diversion to go totally dry each summer.

With improved fish passage and increased streamflows, Blanchard Creek could provide significant recruitment of rainbow and cutthroat trout to a recruitment-limited section of the Blackfoot River. Fall spawning trout (brown and bull trout) could also benefit from flow augmentation.

In 1993, a lease agreement was signed and approved by the Fish, Wildlife and Parks Commission. A change of appropriation water right application was prepared by FWP and submitted to the DNRC in August, 1993. The "change" was noticed and approved in 1994, completing this pilot lease. The lease was implemented in 1994.

As a part of the lease agreement, FWP, in 1994, installed "fish friendly" diversion structures at the two existing diversions. These contain fishways to pass migrating trout and, next year, will also be screened to prevent trout, including fry, from entering the ditches. Monitoring of the creek's fish populations, using electrofishing techniques before and after lease implementation showed a three-fold increase in numbers of young trout. The lease is already producing dividends.

### 3. Tin Cup Creek

Tin Cup Creek originates in the Bitterroot Mountains and flows 19 miles before discharging into the upper Bitterroot River near Darby, Montana. Once Tin Cup Creek reaches the Bitterroot Valley, irrigation diversions claim much of the summer flow. By stream mile 2, summer flow is commonly reduced to a trickle (less than 1 cfs).

The Bitterroot River is one of Montana's high quality wild trout fisheries. Maintenance of the wild trout populations requires high quality spawning and rearing tributaries.

The senior decreed right on Tin Cup Creek is being investigated for leasing. This right, which totals 4.7 cfs, is split among six owners who irrigate about 199 acres. Water associated with this right has been historically diverted at the creek's lower-most ditch at stream mile 1. This diversion is immediately upstream from the prime rainbow trout spawning area on Tin Cup Creek. These users have been thwarted in recent years from using their water due to condemnation of their conveyance ditch by the Town of Darby and by numerous objectors to other feasible conveyance alternatives. Consequently, these users now view water leasing as the most viable short-term option for protecting their senior right.

In 1993, leasing terms were negotiated with the six water users. FWP also funded a study to provide data to assist in the preparation of a correct and complete "change" application. The study, which was completed in September, 1993, also provided information showing that the proposed lease would not injure other water users on Tin Cup Creek.

In 1994, the six users signed a lease agreement with FWP. FWP submitted a change of appropriation water right application to DNRC, which was noticed in September, 1994. Two water users on Tin Cup Creek filed objections to the "change". FWP is presently attempting to negotiate a settlement with the objectors.

#### 4. Hells Canyon Creek

Hells Canyon Creek arises in southwest Montana's Highland Mountains and flows for 10.5 miles before discharging into the Jefferson River near Twin Bridges, Montana. The study reach is between the mouth and the only active irrigation diversion on the creek at mile 0.3.

Hells Canyon Creek is a critical rainbow trout spawning and rearing tributary for the Jefferson River for three reasons: (1) rainbow trout have poor spawning success in the river, (2) Hells Canyon Creek is one of only two river tributaries which successfully spawn and rear rainbow trout, and (3) Hells Canyon Creek can potentially produce and deliver high levels of rainbow trout fry to the river.

The creek's summer flows are as low as 1/2 cfs. Dewatering to this level reduces rearing space for trout fry and causes a premature movement of fry into the river. Also, fish trapping studies show a substantial loss of trout fry to the existing ditch.

The three water right holders on the creek irrigate, primarily by flooding, about 100 acres of pasture and 20 acres of crops. The three users will participate in an ASCS-sponsored project to replace the present inefficient ditch system with a gravity pipeline and will convert to sprinkler irrigation. FWP will also participate, contributing a one-time payment to assist with project construction. In return, FWP will receive a lease for all salvaged water, and a "fish friendly" diversion structure will be constructed for the new pipeline.

FWP continues its efforts to negotiate a lease agreement, now in its sixth draft. To facilitate its completion, FWP and its attorney met with the three users and their attorneys on September 7, 1994 to try and resolve our differences. The agreement has yet to be finalized.

During the summer of 1994, FWP measured ditch and stream flows within the Hells Canyon Creek drainage to be used in the preparation of a change in appropriation water right application. The "change" application, which was completed and submitted to DNRC in October, 1994, awaits their review and approval before being noticed for public comment.

#### 5. Cedar Creek

Cedar Creek, a 7.9 mile-long tributary to the upper Yellowstone River, enters the river near Gardiner, Montana. The creek arises in the Absarokee-Beartooth Wilderness area. Despite severe dewatering in the lower portion of the creek, a spawning run of Yellowstone cutthroat trout occurs.

About 0.5 miles upstream from the mouth of Cedar Creek, four irrigation diversions take the majority of summer flow. During 1989, for instance, 97 percent of the flow was diverted at this location. Leakage at the lower-most diversion provides about 0.5 cfs in the downstream channel, thereby preventing the total dewatering of lower Cedar Creek.

About seven Yellowstone River tributaries upstream from Springdale, including Cedar Creek, support spawning runs of Yellowstone cutthroat trout, a "Species of Special Concern" in Montana. Summer dewatering impacts the lower reaches of most of these tributaries. This adversely affects the reproductive success of cutthroat trout and, consequently, limits the production of recruits for the river fishery.

Cedar Creek is one of the better cutthroat spawning tributaries to the Yellowstone River. However, the lower creek is dewatered when cutthroat eggs are incubating and when fry are emerging from the gravel and out-migrating to the Yellowstone River. This critical period extends through July and August. Stream dewatering presently limits the capacity of Cedar Creek to produce cutthroat trout recruits for the Yellowstone River sport fishery.

The U.S. Forest Service, with the purchase of the OTO Ranch, acquired water rights on Cedar Creek and two of its tributaries. These rights, which include the 2nd, 3rd, 5th, and 8th oldest rights in the drainage, are used in combination to irrigate 179 acres of hay meadows on public lands. These rights, which total 19.28 cfs, are more than adequate to provide the 1.3 cfs minimum that is needed to protect critical spawning habitat.

A hydrologic study of Cedar Creek was conducted in the Summer of 1992 and a final report submitted to FWP in February, 1993. The study provided information showing that the proposed lease would not injure other water users on Cedar Creek.

A lease agreement, which was finalized and signed by the U.S. Forest Service, was approved by the Fish, Wildlife and Parks Commission in December, 1993. In July, 1994, FWP prepared an EA for the Cedar Creek lease and sent it out for comments. A change of appropriation water right application, which was submitted to the DNRC in November, 1993, was noticed for public comment in June, 1994. Two water users on Cedar Creek filed objections to the "change". FWP is presently attempting to negotiate a settlement with the objectors. If negotiations are unsuccessful, a formal hearing is set for January 20, 1995.

## 6. Mill Creek

Mill Creek is a major tributary of the upper Yellowstone River entering approximately 20 miles south of Livingston, Montana. The stream reach studied for leasing extends upstream about 6.4 miles to the diversion point for the new Mill Creek Water and Sewer District pipeline.

August is a critical month for both irrigation and for the hatching of Yellowstone cutthroat trout. During August, Mill Creek water diversions remove an average of 90 percent of the mean August flow, resulting in little or no water at the mouth.

A gravity-fed pipeline system completed in the fall of 1991 replaces earthen ditches used for flood irrigation. The project creates salvaged water that is available for leasing. This salvaged water can provide added streamflow to the lower six miles of Mill Creek and

subsequently benefit trout spawning, hatching, and the out-migration of young fry. Two water lease agreements were signed in 1992. In 1993, and again in 1994, the two leases were implemented. The particulars of the two leases are as follows:

Individual Water Right Holder - FWP in 1990 began discussing leasing opportunities with John and Donna Gray, irrigators on Mill Creek. The Grays have, as a result of more efficient delivery of water from the new pipeline, 6.13 cfs available for leasing.

A lease agreement was signed in October 1992. FWP will annually pay \$7,500 for the lease. FWP will pay all costs associated with the installation of measuring devices or for personnel to measure streamflow in accordance with the FWP-provided measurement plan.

In November 1992, FWP submitted a "change" application to DNRC. The "change" was subsequently approved and the lease implemented in Summer, 1993.

Mill Creek Water and Sewer District - During 1992, a water lease contract was signed with the Mill Creek Water and Sewer District to provide an annual, one-time, 48-60 hour water release of 41.4 cfs each August to flush cutthroat trout fry to the Yellowstone River. This 41.4 cfs represents portions of 95 separate rights. Not later than July 1 of each year, the District will petition the District Court to appoint a water commissioner for Mill Creek. The District shall install, operate, maintain and pay all costs for measuring devices necessary to measure the water diverted by the District. In return, FWP will pay the District an annual sum of \$12,750. The FWP will pay all costs associated with the installation of measuring devices or for personnel to measure streamflows in accordance with the streamflow measuring plan required in 85-2-436 (2) (c).

The summer of 1994, which was a period of severe drought, marked the second year the Mill Creek leases were in effect. Lease-related efforts of FWP on Mill Creek in 1994 included:

- 1) assisting the USGS in measuring stream flows to better define the rating curves for the two gaging stations on Mill Creek;
- 2) planting cutthroat trout eggs and fry in Mill Creek to enhance future cutthroat spawning runs;
- 3) providing technical assistance to the water commissioner who administered the leases and the Mill Creek water rights;
- 4) monitoring stream flows at the two Mill Creek gage sites; and
- 5) operating fry traps to assess the effectiveness of the August flush of cutthroat trout.

The 1994 drought provided a test of the leases' effectiveness. Mill Creek to its confluence with the Yellowstone River remained watered until August 19, after the flush was completed (see Appendix A). Fry trapping revealed that the flush was successful in moving young cutthroat to the river. The egg plants were the one disappointment. Rapidly falling flows during the course of the summer led to the dewatering of the sites where FWP personnel planted cutthroat eggs in the stream gravel. Future imprint plants will likely be limited to fry only.

The 6.13 cfs presently leased for the maintenance of summer flow in Mill Creek is, by itself, insufficient to maintain the creek's full reproductive potential. This 6.13 cfs is far short of the estimated 48 cfs that might be needed to fully satisfy the needs of cutthroat trout.

Over the past two irrigation seasons, the current lease proved to be workable in terms of water delivery and administration. Consequently, FWP is seeking additional water leases to add to the current 6.13 cfs. FWP is presently negotiating terms with another water user on Mill Creek. If negotiations are successful, an additional 3.9 cfs of early priority water could become available for instream use. Since Mill Creek has already been approved by the Board of Natural Resources and Conservation as a leasing stream, no further approval by the Board is necessary for this potential lease.



#### IV. REPORTING REQUIREMENTS FOR COMPLETED LEASES

Section 85-2-436 (3)(a) requires that an annual leasing progress report contain specific information on each pilot lease entered into during the report period. The required information, listed under 85-2-436(1), is provided below for Blanchard Creek, the single lease implemented in 1994.

- (i) the length of the stream reach and how it is determined;
- (ii) technical methods and data used to determine critical stream flow or volume needed to preserve fisheries;
- (iii) legal standards and technical data used to determine and substantiate the amount of water available for instream flows through leasing of existing rights;
- (iv) contractual parameters, conditions, and other steps taken to ensure that each lease in no way harms other appropriators, particularly if the stream is one that experiences natural dewatering; and
- (v) methods and technical means used to monitor use of water under each lease;
- (b) based on the data provided under subsection (1)(a), develops a complete model of a water lease and lease authorization that includes a step-by-step explanation of the process from initiation to completion.

- (i) Length of stream reach - The affected reach extends from the creek's upper-most active diversion to the creek's mouth. This 1.1-mile-long reach encompasses the stretch of Blanchard Creek that is severely dewatered each summer.
- (ii) Technical methods to determine critical streamflow - The 3 cfs being leased is the base flow of Blanchard Creek. It is also the approximate flow that will wet much of the creek's riffles, the stream area where rainbow, cutthroat and bull trout spawn and where young trout rear.
- (iii) Legal standards - For the Blanchard Creek lease, an extensive package of information was assembled and used to determine the amount of water available for instream flows. This included:
  - 1. The amounts of the rights claimed for Blanchard Creek under SB76;
  - 2. Evaluation of historic irrigation practices on Blanchard Creek and use of the rights under investigation on the affected lands;
  - 3. An analysis of irrigation return flows;
  - 4. An evaluation of other uses on Blanchard Creek, including diversion locations and the amounts and priority dates of their claimed rights; and

5. An evaluation of in-channel water losses.

This information is discussed in FWP's "change" application for the lease.

(iv) Steps to ensure non-injury to other users -

Various steps incorporated in the leasing process ensure non-injury to other water users. These include:

1. Water users who could be potentially injured have the opportunity to voice their concerns when a lease agreement is brought before the Fish, Wildlife and Parks Commission for approval. No objectors appeared before the Commission or filed letters of objection to the lease.
2. FWP conducted a hydrologic analysis to determine the lease's effects on other users. The analysis showed that these effects would be negligible.
3. Through public notice, the "change" process provides an opportunity for individuals potentially injured by a proposed lease to object and resolve their concerns before a "change" is granted. No objections to the Blanchard Creek change application were received.

(v) Means used to monitor water - The monitoring plan for the Blanchard Creek lease is discussed in Appendix B.

- b. Water leasing model - The leasing process for each water lease under consideration by FWP will vary greatly in complexity. Blanchard Creek represented a relatively simple situation in which to acquire and implement a lease. The following provides a chronological documentation of all the events that led up to its implementation. Despite the simplicity, much effort was expended in securing this lease.

**August, 1991** - FWP begins investigation of leasing potential on Blanchard Creek.

**April 10, 1992** - FWP meets with Frank Vannoy, potential lessor on Blanchard Creek.

**April 22, 1992** - FWP completes a report describing the fishery and flows of Blanchard Creek and potential lessor's water rights.

**June, 1992** - FWP Commission approves Blanchard Creek as a study stream for leasing.

**Sept. 25, 1992** - BNRC approves Blanchard Creek as a study stream for leasing as required in 85-2-437, MCA.

**Nov. 23, 1992** - FWP meets with Frank Vannoy to discuss leasing details and to finalize terms.

**Nov. 30, 1992** - FWP's legal staff is requested to prepare a draft lease agreement.

**Jan. 6, 1993** - FWP requests water right information from Frank Vannoy to be used in preparing a "change" application.

**Jan. 21, 1993** - FWP sends draft "change" application to DNRC for review.

**March 23, 1993** - DNRC sends a letter to FWP identifying their concerns with FWP's draft "change" application and requesting additional information.

**May 6, 1993** - FWP's legal staff completes a draft lease agreement and sends it out for review.

**May 28, 1993** - FWP personnel submit additional flow and irrigation information, as requested by DNRC, to be incorporated into the Blanchard Creek "change" application.

**August 18, 1993** - Final lease agreement is signed by FWP and the Vannoys.

**August 30, 1993** - Final "change" application, which incorporates the additions requested by DNRC in their letter of March 23, 1993, is re-submitted to DNRC.

**Oct. 28, 1993** - An EA is prepared by FWP and sent out for review.

**April 15, 1994** - DNRC sends a letter to FWP requesting additional information for the Blanchard Creek "change" application.

**May 3, 1994** - FWP meets with DNRC in Helena to discuss Blanchard Creek "change" and resolve our differences.

**May 9, 1994** - FWP submits requested additional "change" information to DNRC.

**May 18, 1994** - DNRC notifies FWP that the "change" application is correct and complete.

**May 25, 1994** - Blanchard Creek "change" is noticed by DNRC.

**June 10, 1994** - Deadline for objections to "change" application passes with no objections.

**July 5, 1994** - DNRC authorization to Change Appropriation Water Right is received by FWP, completing approval of this pilot lease.

## **OTHER INVESTIGATIONS IN 1994**

### **1. Jefferson River**

A water user on the Jefferson River, who is subdividing his holdings, contacted FWP to discuss the conversion of his rights to instream use. The user, however, was only interested in selling his rights to FWP. Leasing was not an option.

### **2. Tieshute Creek**

A user on this small stream in the Bitterroot drainage wanted to lease his rights to FWP at no cost to maintain an instream flow for fishery benefits. Because the creek supports brook trout, a species of low priority in the leasing program, and because the creek is already embroiled in a water right controversy, FWP declined the offer.

### **3. Grant Creek**

A user offered to lease water on Grant Creek, a small tributary to the Clark Fork River at Missoula. Based on an FWP analysis, potential fishery benefits were insufficient to justify the cost of leasing.

### **4. Rattlesnake Creek**

FWP is attempting to secure instream water in Rattlesnake Creek, a tributary to the Clark Fork River at Missoula. To date, FWP's efforts have been unsuccessful. One user still has leasing potential. FWP will continue to investigate leasing opportunities on this important spawning tributary.

### **5. Cottonwood Creek**

Cottonwood Creek is an important bull trout spawning and rearing tributary to the Blackfoot River near Ovando. Stream dewatering presently limits its capacity to sustain bull trout, a species of "special concern" in Montana. In 1994, FWP applied for a River Restoration Fund grant to line a 1½-mile-length of leaky ditch on the Blackfoot-Clearwater Wildlife Management Area. If funding is obtained and the ditch is lined, up to 10 cfs of water is expected to be salvaged. Following approval for leasing by the Board and if the change

application is approved by DNRC, this water will be leased and used instream to enhance flows in Cottonwood Creek.

#### 6. Cedar Creek

Two additional water users on Cedar Creek, a stream where FWP is already in the process of finalizing a water lease, offered to lease their Cedar Creek rights for instream use. At this time, FWP is reluctant to secure added water leases on Cedar Creek until the current lease has been implemented and tested and the need for additional water has been evaluated. FWP will reconsider their offers if the current lease proves to be workable and if additional water is required to meet the spawning and rearing needs of Yellowstone cutthroat trout.

APPENDIX A  
MILL CREEK FLOWS  
1994  
EAST RIVER ROAD GAGE NEAR MOUTH

<u>DATE</u>	<u>TIME</u>	<u>GAGE (ft)</u>	<u>FLOW (cfs)</u>
7-5	--	1.3	24.0
7-15	--	1.16	17.0 <sup>a</sup>
7-16	8:00 A.M.	1.10	13.2
7-19	4:00 P.M.	0.98	8.0
7-20	11:40 A.M.	1.00	8.7
7-21	3:15 P.M.	0.90	5.5
7-22	9:20 A.M.	0.78	-- <sup>b</sup>
7-23	--	0.73	--
7-25	2:00 P.M.	0.90	5.5
7-26	9:15 A.M.	1.28	22.8
7-27	2:30 P.M.	1.06	11.2
7-29	1:00 P.M.	1.05	10.8
	2:40 P.M.	0.85	4.3
	2:50 P.M.	0.81	--
	4:55 P.M.	0.72	--
8-1	8:30 P.M.	0.66	--
8-3	3:00 P.M.	0.67	--
8-4	12:30 P.M.	0.80	--
8-5	10:30 A.M.	0.88	4.95 <sup>a</sup>
	11:30 A.M.	0.87	4.8
8-8	2:45 P.M.	0.66	--
8-9	11:45 A.M.	0.64	--
8-12	1:00 P.M.	0.62	--
8-15	9:00 A.M.	0.32	--
	4:00 P.M.	1.00	8.7
8-16	2:30 P.M.	1.18	17.5
8-17	9:30 A.M.	1.18	17.5
8-19	3:30 P.M.	0.50	--
8-19	--	--	channel dry <sup>c</sup>

<sup>a</sup> Flow measured using a current meter

<sup>b</sup> Gage presently unrated below 0.85 ft.

<sup>c</sup> Reported by Randy Nesmith, Water Commissioner

Amendments to House Bill No. 472  
First Reading Copy

Requested by Rep. Knox  
For the Committee on Natural Resources

Prepared by Michael S. Kakuk  
February 13, 1995

1. Page 1, line 17.  
Following: second "to"  
Insert: "temporarily"

2. Page 1, line 20.  
Following: "governor", "convene", and "basis"  
Strike: ", "

3. Page 2, line 26.  
Following: "or"  
Insert: "allow"

4. Page 10, line 20.  
Following: "(4)"  
Insert: "(a)"

5. Page 10, lines 22 through 24.  
Strike: "Except" on line 22 through "permit." on line 24  
Insert: "(b) An appropriator, other than an appropriator  
identified in subsection (7), may object:  
(i) during the initial temporary change application  
process;  
(ii) during the temporary change renewal process; and  
(iii) once during the term of the temporary change  
permit."

**REVISIONS TO THE NATURAL STREAMBED AND LAND PRESERVATION ACT  
HB 478**

Conservation districts have 20 years experience administering this act and are experiencing a large increase in the number of applications processed each year. Because of problems in the current law, the administration of the act is not as efficient as it could be. The proposed changes are requested by conservation districts to expedite the permit process and to address some of the ambiguities in the current law.

**Section 1.** This section would allow a district supervisor to authorize an inspection of unauthorized projects after a reasonable attempt has been made to notify the landowner. Inspection authority is also given where an application has been received.

**Section 2.** New definition - written consent of supervisors - will direct supervisors to be more specific about activities that are authorized in the board's decision.

References to the policy section in the definition of a project were eliminated and the term significant was added.

**Section 3.** As a matter of consistency, the penalty section in 75-7-123 will now apply to all violations of this act.

**Section 4.** An arbitration agreement that outlines procedure in case a team member disagrees with the boards decision will not be part of the application for a permit. Currently, the uniform arbitration act is referred to in the law, but an arbitration agreement is necessary prior to going through the arbitration process (see Section 8).

**Section 5.** Under current law, two meetings should be held to consider applications: one to declare the application a project, and one to take action. The proposed changes will cut review time down by one meeting.

If at any time during the process the board determines the application is not a project, the process can be stopped and the applicant can proceed with their project.

The section also allows the team members and the board of supervisors to waive the 15-day waiting period so the applicant can proceed with their project upon receipt of the board's decision. This is not allowed under the current law.

A new section (9) takes the minimum standards that are now the administrative rules and places them into the law. This addition was important to insure the constitutionality of the act.

**Section 6.** Emergency provisions. Current emergency procedures can drag out for fifteen years and limits individuals to only one emergency exclusion per five year period.

The revised section allows individuals to protect their life, property, and growing crops, but



places a responsibility to notify the conservation district. If the conservation districts determines it necessary, they can require that the individual submit an application to modify their work to limit the damage to the stream. The new section also makes it clear, if the person doesn't carry out the steps, a violation has occurred.

**Section 7, 8, and 9.** Department of Natural Resources and Conservation will be directed to prepare an arbitration agreement outlining procedures if a team member disagrees with the board's decision. This agreement will be part of a revised permit application form to be signed by the applicant before the permit is processed. Section 9 says that arbitration will be the first step in solving disputes and that judicial review will be limited to review of the arbitration process.

**Section 10 and 11.** Makes it more clear about what constitutes a violation under this act. Violations include initiating a project without consent, performing activities outside the scope of a permit, and violations of the emergency procedures.

**Section 12.** Codification instructions.

**Section 13.** Two effective dates are necessary so the administrative process won't change in the middle of conservation districts peak workload. This will give time to revise forms and rules.

EXHIBIT

9

DATE

2-13-95

HB

478

THB478.HP

House Bill No. 478

February 13, 1995

Testimony presented by Bob Lane

Montana Fish, Wildlife & Parks

before the House Natural Resources Committee

Many of you probably know that this Department has a long-standing cooperative relationship with County Conservation Districts and the Department of Natural Resources and Conservation in administration of the Natural Streambed and Land Preservation Act--commonly known as 310 law. The law requires individuals who are proposing projects that will disturb the bed or banks of a Montana stream to first obtain a permit from the local conservation district. The process of obtaining a permit usually involves an inspection of the site by a team of individuals that includes representatives of the Conservation District as well as one of our biologists. Permits are issued with specific conditions as to what is necessary to protect the stream environment.

We have reviewed the revisions proposed by the Department of Natural Resources and Conservation and the Montana Association of Conservation Districts. We believe that the proposed changes strengthen the law and make it an even more effective tool for protecting fishery habitat while at the same time allowing certain in or near stream activities to occur provided that they are appropriately conducted.

We particularly appreciate the more detailed guidance in this bill concerning factors that should be considered prior to project approval, and guidance on emergency projects and arbitration. We also think that it is entirely appropriate for Conservation Districts to recover costs that are associated with prosecuting violators.

This is a good bill and we support the efforts of our co-workers in MACD and DNRC.

Kevin P. Fennelly, M.D., M.P.H.  
March 21, 1994

**SULFUR DIOXIDE POLLUTION: UPDATE ON HEALTH EFFECTS**

**Summary Outline**

**Increased mortality (probable)**

Often confounded by concomitant exposure to particulate pollution

Increased morbidity: chronic bronchitis, chronic cough, and asthma alterations in mucus composition, viscosity and production

Upper airway irritation

Effect of environmental exposures on rhinitis and sinusitis not adequately studied

Dental erosions seen with occupational exposures

**Respiratory malignancy (probable)**

Probably an effect of chronic inflammation

Decreased pulmonary function, increased bronchial reactivity

Airway inflammation and bronchoconstriction

Definitely may exacerbate asthma at low concentrations

Role of etiology in asthma still unclear

Chronic inflammation of airways may increase risk of sensitization

May be blocked acutely with inhaled medication, but long-term therapy not studied

Possible effect on susceptibility to infection

Altered function of alveolar macrophages

Need for primary prevention

Clinicians often frustrated by treating symptoms and signs

Primary prevention through public education and advocacy is necessary to eliminate underlying etiology

Amendments to House Bill No. 430  
First Reading Copy

Requested by Rep. Bohlinger  
For the Committee on Natural Resources

Prepared by Todd Everts  
February 7, 1995

1. Page 1, lines 16 and 17.

Strike: subsection (a) in its entirety  
Re-number subsequent subsections

2. Page 1, line 27.

Strike: "either"

3. Page 1, lines 28 and 29.

Strike: "or" on line 28 through "agency" on line 29

4. Page 1, line 30.

Following: "section"

Insert: "may be based upon dispersion modeling using appropriate models approved  
by the U.S. environmental protection agency and"

5. Page 2.

Following: line 2

Insert: "(d) Each existing or new source that emits or has the potential to emit 250  
tons per year or more of sulfur dioxide shall obtain and operate at least four  
sulfur dioxide ambient air quality monitors. The department shall determine  
the locations for the monitors using EPA-approved computer modeling. All  
costs associated with obtaining and operating the monitors required under  
this subsection (3) must be paid by the source."

**SOUTH SIDE  
NEIGHBORHOOD TASK FORCE**

Billings, Montana

Paula Schilke  
Chairperson  
252-1191

Marion Dozier  
Vice Chairperson  
245-7743

EXHIBIT 12  
DATE 2-13-95  
HB 478

January 27, 1995

TO: Representative John Bollinger  
Capitol Building  
Helena, MT 59620-0400

FROM: Paula J. Schilke, Chairperson  
South Side Neighborhood Task Force

RE: Repeal of the Hannah Bill

It is my understanding that you are in the process of drafting a legislative bill to repeal the Hannah Bill. Thank you. You are holding true to your campaign promise.

I want to reaffirm the position of the South Side Neighborhood Task Force, made at our July 21, 1994 meeting. The members of the Task Force voted unanimously to repeal the Hannah Bill.

The residents of the South Side have lived under the umbrella of pollution for years. They have experienced its negative effects- not only allergy symptoms, but also particulates on their cars and lower property values. The South Side Neighborhood Task Force applauds your efforts, and asks that the rest of the Yellowstone Delegation join in by actively supporting and campaigning for your bill.

Sincerely,



Paula J. Schilke  
Chairperson

cc: Governor Marc Racicot  
Yellowstone County Delegation  
Billings Mayor Richard Larsen  
Billings Gazette  
KTVO-2  
KULR  
Billings Task Force Chairpersons

*To Council*  
**FOR YOUR INFORMATION**  
From Mark S. Watson  
City Administrator

AUG 11 1994

## SOUTH SIDE NEIGHBORHOOD TASK FORCE

BILLINGS, MONTANA

Marion Dozier  
Chairperson  
245-7743

Grege Verstraete  
Vice Chairperson  
259-2856

August 8, 1994

Denise Roth, YVCC  
2401 Montana Avenue  
Billings, Montana 59101

Denise:

At the South Side Neighborhood Task Force meeting on July 21, 1994 we again discussed the Repeal of the Hannah Bill. A motion was made and apssed unanimously by the members to Repeal the Hannah Bill.

The group then discussed the draft of the Clean Air Coalitions goals. Our Task Force again passed, unanimously, a motion to separate out the Hannah Bill and Repeal as a separate bill. We then voted for the remaining three goals: 1) to close the loophole in the one-hour state SO2 standard, 2) to establish Emmision Limits to enforce Ambient SO2 Air Quality Standards and finally, 3) to call for the establishment of a five-minute SO2 Ambient Air Quality Standard.

Although each of the three goals passed unaminously, no determination was made on how to proceed with goals 1, 2 and 3. Our Task Force recognizes the importance of clean air in our community and believes it is time to act now. We stand ready to work on this most important issue.

Sincerely,

*Marion Dozier*

Marion Dozier  
Chairperson

EXHIBIT 13

DATE 2-13-95

HB 478

AUG 17 1994

**NORTH PARK  
NEIGHBORHOOD TASK FORCE**  
BILLINGS, MONTANA

August 14, 1994

Denise Roth, YVCC  
2401 Montana Avenue  
Billings, MT 59101

This is to advise you that the North Park Task Force, at the July 20, 1994 meeting, unanimously passed the resolution to support the Clean Air Coalition's remaining three 1995 legislative goals. However, the membership's resolution allows two years for industry compliance.

I would also like to take this opportunity to express our appreciation for the two guests at the July meeting representing the Clean Air Coalition, Debbie Murtagh and Pat Creighton. We were very much impressed with their commitment to clean air for Billings and Yellowstone County.



Shirley Girard McDermott, Chair

CC: Marion Dozier

JUL - 6 1994

# NORTH PARK NEIGHBORHOOD TASK FORCE

BILLINGS, MONTANA

JULY 4, 1994

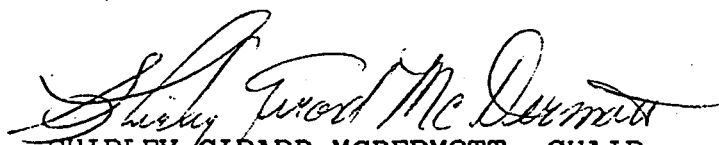
DENISE ROTH, YVCC  
2401 MONTANA AVENUE  
BILLINGS, MT 59101

I HAVE RECEIVED YOUR LETTER DATED JUNE 29, 1994 AND THE DRAFT "LEGISLATIVE GOALS" FACTSHEET.

AT THE JUNE, 1994 MONTHLY MEETING OF THE NORTH PARK NEIGHBORHOOD TASK FORCE, THE MEMBERSHIP VOTED AND UNANIMOUSLY PASSED A MOTION TO SUPPORT REPEAL OF THE 1987 HANNAH BILL. PREVIOUS TO OUR VOTING ON THE REPEAL, BERV KIMBERLEY PROVIDED US WITH AN UPDATE OF THE CLEAN AIR COALITION'S GOALS.

REPEAL OF THE HANNAH BILL WAS THE FIRST OF FOUR GOALS LISTED ON YOUR FACTSHEET. WE WILL DISCUSS THE REMAINING THREE GOALS AT OUR JULY 20TH MEETING. IF YOU WISH TO ATTEND AND SPEAK AT THAT MEETING, OR SEND A REPRESENTATIVE, WE WOULD BE HAPPY TO PLACE YOU ON OUR AGENDA.

NORTH PARK TASK FORCE MEETINGS ARE HELD THE THIRD WEDNESDAY OF EACH MONTH, 7:00 P.M. AT THE RAINBOW HOUSE, 925 NORTH 18TH STREET.



SHIRLEY GIRARD MCDERMOTT, CHAIR  
2110 - 10TH AVENUE NORTH  
BILLINGS, MT 59101  
259-9935 (HOME)  
255-2785 (WORK)

CC: Marion Dozier



EXHIBIT 14  
DATE 2-13-95  
HB 478

JUL 21 1994

City Council Members  
210 North 27th Street  
P.O. Box 1178  
Billings, Montana 59101

July 18, 1994

I am writing to you at the request of the Central-Terry Park Neighborhood Task Force. As a grass roots citizens' group actively working for improved quality of life here in Billings, we are asking for your involvement in the air quality crisis in our city.

We in Billings, Montana are no longer part of the "Big Sky". Instead, we are living a "Big Lie" as residents of the city with the highest annual sulphur dioxide level in the United States. (Billings Gazette "City Ranks No. 1 in SO<sub>2</sub>", 1/23/94) This situation is not acceptable to us, nor is the simplistic argument of "jobs vs. health" that has been the sign of irresponsible leadership and citizenry alike. This is, and has been, a very complicated problem for Billings, and the Central-Terry Task Force has taken the time to become educated and active regarding this threatening situation. We urge your self-education and action as well.

At the July 14, 1994 Central-Terry meeting, the Task Force membership voted to strengthen our previous stand in favor of repeal of the Hannah Bill to include a recommendation for a two-year compliance period. We feel that a strong stand must be taken in order to adequately insure the current and future health of the residents of Yellowstone County, and that such actions may be taken without bankrupting industry, as has been proven in numerous sites across the United States. At the 7/14/94 meeting, the following recommendations were endorsed:

1. Repeal of the 1987 Hannah Bill, with a two-year compliance period. Industry has already had seven years to show compliance, and has failed; we feel a stronger time frame must be insisted upon to protect our health interests.
2. Close the loophole in the one-hour state SO<sub>2</sub> standard. We ask for the elimination of the current loophole that allows 18 violations per year, and re-establish a one-violation limit.
3. Establish limits to enforce ambient SO<sub>2</sub> air quality standards. We believe there should be enforced emission limits for each polluting source, and that the limits should be established by the state Air Quality Bureau.
4. Call for the establishment of a five-minute SO<sub>2</sub> ambient air quality standard. We encourage the State Board of Health to take necessary steps to establish a five-minute standard that would be a more accurate measure of health-threatening SO<sub>2</sub> concentrations.

February 13, 1995

Natural Resources Committee  
Hearing H.B. 430

My name is Ed Zaidlicz -- long time resident of Billings.

On March 13, 1987, as chairman of the Montana Health Board, and on behalf of the Montana Department of Health I presented strong opposition to this body regarding the proposed Hannah Bill - H.B. 534.

It is with much personal satisfaction that I point to the record which confirms our predictions in their entirety.

Many promises were made by the polluters and their advocates to ensure enactment of H.B. 534; none were ever honored! Today Billings/Laurel is recognized as one of the dirtiest communities in America for SO<sub>2</sub> pollution! The Hannah Bill is an unmitigated disaster!

Our polluting industries vigorously oppose repealing the Hannah Bill on 3 spurious premises: 1) Federal Standards protect everyone, 2) never been a monitor violation and, 3) the current system is enforceable.

We know conclusively that the Federal Standards do not protect all "at risk" residents, as the Clean Air Act intended. The American Lung Association estimates over 40,000 of our 113,000 residents are at risk!

On December 7, 1994 Mary Nichols, Assistant Administrator for EPA Air Office, when publicly challenged to confirm polluter's claims, would not do so. CASAC, EPA's advisory council, reached the same conclusion in pondering the 5 minute issue -- that Federal Standards do not cover atypical "hot spots" (like Billings/Laurel).

Recent scientifically and legally accredited modeling technique prove that Billings/Laurel is not in compliance with even the effete Federal Standards and for that matter we may never have been! Clearly the current 1977 SIP system is bankrupt and deemed unenforceable. It is so riddled with legal loopholes that every enforcement action is subject to costly litigation that the State cannot afford.

May <sup>24</sup>14, 1993

TO: Mayor Richard Larsen  
Billings City Council

FROM: Ed Zaidlicz  
724 Park Lane  
Billings, MT 59102-1933  
Phone: 252-0010

To the surprise of many, the GRI study served our community well by modeling just how extensive and unacceptable the SO2 pollution really is across our valley.

It should now be apparent to all Montanans that EPA's March 4, 1993, SIP recall for the Billings area reinforces that we have the worst SO2 pollution in the west and that only 3 cities in all of America consistently have worse emissions than ours.

While all of Montana industry has operated under the more stringent MAAQS, we apparently can't even comply with the weak federal standards.

For at least the last 13 years, our polluting industries have collectively waged a successful campaign to resist any effort to control or reduce their self-determined levels of emissions and to impede any entrance of outside competition into their "airshed."

Our sad experience over the last 6 years, operating under the 1987 Hannah Bill, should move us to question how long this pollution anarchy can continue.

The arguments and promises industry used to gain passage of the Hannah Bill encompassed these now-evident spurious concerns: (1) that no health problem exists, (2) that "capricious, incompetent bureaucratic regulations and regulators" could not be trusted, were anti-business and, (3) that industry could not operate economically under the unreasonable MAAQS. (4) If they were forced to comply, Exxon, Cenex and Montana Power Company would close up and leave, (5) and, finally, if freed from the bureaucratic harassment, they would voluntarily reduce emissions.

We now see that the 1987 emasculation of Air Quality Board enforcement authority has resulted in even worse emissions and that industry now determines the quality of air we breathe.

The economic blackmail industry used has so frightened our elected officials that we now find the resident taxpayers

April 26, 1993

TO: Mayor Richard Larsen  
Billings City Council

FROM: Ed Zaidlicz  
724 Park Lane,  
Billings, MT 59102-1933

SUBJECT: SO2 AIR POLLUTION - BILLINGS/YELLOWSTONE COUNTY

For 14 years, I have been involved and concerned with the quality of our air, particularly the levels of sulphur dioxide pollution, that we are exposed to.

I remain amazed and appalled at the determined effort by responsible officials to deny that a problem exists. The objective appears to be not to "rock the boat" and to assure that the status quo is perpetuated. Any meaningful abatement of existing SO2 pollution levels is thus thwarted.

In 1979, the Montana Health Board and the Department of HES conducted a thorough, comprehensive analysis of the SO2 air quality issue. Their final conclusion was that Federal National Ambient Air Quality Standards (NAAQS) were not adequate to protect our air quality and to protect the health concerns of all Montana citizens.

In 1980, the Montana Ambient Air Quality Standards were enacted, tailored to protect Montana citizens and resources. The Dept. of Health and Air Quality Bureau were accountable for making Industry comply.

I resigned from the Health Board in 1987, after 7 years of service, in frustration and disgust.

From 1980 to 1986, while all of Montana complied with the new MAAQS, the Billings/Laurel Industries refused to.

In 1986, our Health Board, unable to reason with the 6 polluting industries, ordered AQB to force compliance and to define emission limits for all SO2 sources.

Industry, in 1987, marshaling a powerful lobby, comprising the Chamber of Commerce, friendly legislators, and ill-advised supporters, had the Hannah Bill, HB 534, passed -- despite spirited opposition from both the Health Board and D. of HES. Thus the 6 polluting industries were excused from complying with MAAQS and were grandfathered under the lenient NAAQS.

The rest of Montana and any new industry would still have to

were encouraged. They won by candidly admitting that we recognized our SO2 pollution problem, and, as a community, we would correct it.

We forfeited our right to that honorary title by your ill-advised action in voting to oppose the original Towe Bill, SB 389, on March 8, 1993, which was introduced to accomplish what we promised. Your position, that of County Commissioner Mathew, the Billings Chamber of Commerce and the other "status quo" advocates initiated the amendment process that ultimately killed our hopes for early SO2 pollution abatement and SB 389.

The residents of Yellowstone County now have a desperate need for accountability. The 14 year record of "status quo" air pollution can be accepted no longer.

Why must residents/tax payers subsidize the air pollution industry with our health and tax dollars?

Who is accountable for the expenditure of \$6+ million in tax incentives for pollution abatement equipment to the 5 SO2 polluters when our pollution levels have actually worsened?

When do we analyze objectively the flip side of the Chamber of Commerce "economic growth" card for; the adverse impact of dirty air and our "Pittsburgh of the West" identity as in:

- 1) Loss of new clean industry and jobs.
- 2) Loss of new residents.
- 3) Loss of tourism.
- 4) Image of our Regional Medical complex
- 5) Real estate values
- 6) Retirement/nursing home development
- 7) The extraordinary costs borne by 3000 to 5000+ residents suffering respiratory impairment compounded by SO2 "episodes."
- 8) Finally, I would ask our legislators and elected officials to explain and identify what legal authority exists to permit depriving the citizens of Yellowstone County of the right to clean Montana air that the rest of Montana enjoys?

A wise friend has observed, "We can correct our air pollution problem in 2 ways: 1) By legislation

or

- 2) By litigation.

We tried desperately by State legislation on 3/8/93, and lost badly! It's time, based on the existing factual data, that we address accountability for who is responsible to protect the public-taxpayers' interest!

Department of Health and Environmental Sciences  
Air Quality Division

Testimony on House Bill 430  
House Natural Resources Committee  
February 13, 1995

1. Introduction - Jeff Chaffee, Division Administrator, Air Quality Division, Department of Health and Environmental Sciences.
2. The department supports the restoration of the state ambient air quality standards for sulfur dioxide (SO<sub>2</sub>) for the entire state as required by HB 430.
3. State ambient air quality standards are established to protect human health and the environment. The Montana Ambient Air Quality Standards (MAAQS) were adopted in 1980 by the Board of Health and Environmental Sciences following an extensive review of health effects information and scientific literature.
4. The 1987 Legislature directed the Board to revise the SO<sub>2</sub> MAAQS to require that sources (industries) out of compliance with the standards in 1985 only have to meet the federal ambient air quality standards. This had the effect of exempting industries in the Billings/Laurel area from the SO<sub>2</sub> MAAQS and stipulating that they meet an annual average of 0.03 ppm and a 24-hour average of 0.14 ppm. The remainder of the state retained the MAAQS of 0.02 ppm annual average and 0.10 ppm 24-hour average.
5. HB 430 requires that the MAAQS established in 1980 be applied statewide. As amended, it requires that violations of the standards are shown through ambient air monitoring. When a violation is measured, the bill requires the Board to adopt an emission control plan for the area within three years of the violation. In developing the emission control plan, the department may utilize dispersion models approved by the EPA.
6. As amended, the bill also requires that each industrial source in the state which has the potential to emit over 250 tons per year of SO<sub>2</sub> purchase and operate four ambient air quality monitors. All monitoring costs are to be borne by the industry.
7. For comparison purposes, tables showing ambient air quality standards in other states have been attached. They show that Montana's SO<sub>2</sub> standards are similar to those of many of our neighbors.
8. Department staff are available to address questions from the committee.

# SULFUR DIOXIDE

STATE	AVERAGING TIME	CONCENTRATION	
		PRIMARY	SECONDARY
FEDERAL STANDARD	Annual average 24 hour 3 hour	0.03ppm/80 $\mu$ g/m <sup>3</sup> 0.14ppm/365 $\mu$ g/m <sup>3</sup>	0.5ppm/1300 $\mu$ g/m <sup>3</sup>
ALASKA	3 hour	0.5ppm/1300 $\mu$ g/m <sup>3</sup> *	
CALIFORNIA	24 hour 1 hour	0.04ppm/105 $\mu$ g/m <sup>3</sup> * 0.25ppm/655 $\mu$ g/m <sup>3</sup> *	
COLORADO	3 hour	700 $\mu$ g/m <sup>3</sup> *	
FLORIDA	Annual average 24 hour	60 $\mu$ g/m <sup>3</sup> 260 $\mu$ g/m <sup>3</sup> *	
ILLINOIS (Chicago)	Instantaneous	500ppm	
MAINE	Annual arithmetic mean 24 hour 3 hour	57 $\mu$ g/m <sup>3</sup> 230 $\mu$ g/m <sup>3</sup> * 1150 $\mu$ g/m <sup>3</sup> *	
MINNESOTA	Annual arithmetic mean 3 hour 1 hour	0.03ppm 0.50ppm * 0.50ppm *	0.02ppm 0.35ppm *
NEW MEXICO (Except 3.5 mile radius of Chino Mines Co. at Hurley)	Annual average 24 hour	0.02ppm 0.10ppm	
NORTH DAKOTA	Annual average 24 hour 1 hour	0.023ppm/60 $\mu$ g/m <sup>3</sup> 0.099ppm/260 $\mu$ g/m <sup>3</sup> 0.273ppm/715 $\mu$ g/m <sup>3</sup>	
PUGET SOUND (Washington)	Annual average 30 day 24 hour 1 hour 1 hour 5 minute	0.02ppm 0.04ppm 0.10ppm **** 0.25ppm *** 0.40ppm **** 1.00ppm *****	
WASHINGTON	Annual average 24 hour 1 hour 1 hour	0.02ppm 0.10ppm 0.25ppm *** 0.40ppm ****	
WYOMING	Annual average 24 hour 3 hour	0.02ppm 0.10ppm 0.50ppm	

- \* Not to be exceeded more than once in a calendar year
- \*\* Maximum 3 hour concentration not to be exceeded more than once per year in Air Quality Control Regions 127, 129, 130, and 132
- \*\*\* Not to be exceeded more than twice in seven days
- \*\*\*\* Short-term standard never to be exceeded
- \*\*\*\*\* Not to be exceeded more than once in eight hours

Montana and Surrounding States  
S02 Ambient Air Quality Standards

State	Annual Avg. (ppm)	24-Hr. Avg. (ppm)	3-Hr. Avg. (ppm)	1-Hr. Avg. (ppm)	Avg. Method
Montana	0.02	0.10 <sup>1</sup>	--	0.5 <sup>2</sup>	rolling
BAAQSA	0.03	0.14	--	0.5 <sup>2</sup>	rolling
Colorado	incremental <sup>c</sup>	incremental <sup>c,1</sup>	0.266 <sup>1</sup>	--	rolling
Idaho	0.03	0.14 <sup>1</sup>	0.50 <sup>1</sup>	--	block/calender
North Dakota	0.023	0.099	--	.273	block/calender
Oregon	0.02	0.10 <sup>1</sup>	0.50 <sup>1</sup>	--	block/calender
South Dakota	0.03	0.14 <sup>1</sup>	0.50 <sup>1</sup>	--	block/calender
Utah	set by "Top-Down" BACT on a case by case bases				----
Washington <sup>b</sup>	0.02	0.10 <sup>1</sup>	--	0.40 <sup>1,3</sup>	rolling
Wyoming	0.02	0.10 <sup>1</sup>	0.50 <sup>1</sup>	--	block/calender

- 1 - Not to be exceeded more than once per year  
2 - Not to be exceeded more than 18 times per year  
3 - 0.25 ppm is not to be exceeded more than two times in any 7 consecutive days
- a - Billings/Laurel existing sources exempted from 24-Hr. and annual MT. standards per 1987 legislation  
b - Washington State AAQ objective is: S02 shall not be greater than 0.30 ppm average for 5 minutes  
c - Colorado State AAQS for S02 are expressed as allowable amounts of increase in ambient concentration (increments) over an established baseline. Baseline is defined as that concentration of S02, measured or estimated, by the Division to exist on the effective date of this amended regulation (August, 1977). Increments are based on PSD Class I and II.



February 13, 1995  
Testimony on HB 430; given by Karen Kitchel  
to the House Natural Resources Committee  
State Capitol, Room 437, Helena, Montana

EXHIBIT 17  
DATE 2-13-95  
HB 430

Greetings, to the Members of the Committee, and to all my neighbors. I'm here today at my own expense, to speak in favor of HB 430. I'm Karen Kitchel, representing the Central-Terry Neighborhood Task Force of Billings, Montana. Central-Terry is one of the original city task forces, founded in 1977, and we're one of the largest. Our task force area roughly corresponds to Census tracks #4 and #10, a primarily residential area of over 9,900 people.

Early last year, Central-Terry went on record in favor of repealing the Hannah Bill. Our grass roots, neighborhood group works on a variety of issues that pertain to the quality of life for ourselves, and for our neighbors. That's what we're talking about today, about what it means to be neighbors. We *don't* want to take anybody's job, *and*--we don't want to be the victims of a profit margin. Being *good* neighbors means give-and-take, it means compromise, and it means doing what's right in the long run for the majority of the people we live with.

Who *do* we live with?

Some work at the polluting industries. Some of us are office workers, we are retired, we are service workers, we are health care providers, we are the self-employed. And more than ever, we are active, we are aware, and we are concerned. *We* are the public. *Before* the fall elections, the majority of legislative candidates in Yellowstone County were publicly in favor of cleaning up the air in Billings. Now they are quibbling. *What* they say *now* will ultimately be between us and them, back home.

To quote Abraham Lincoln, "Fellow citizens, we cannot escape history...this legislature will be remembered for what it did, *and for what it did not do.*" Members of the Natural Resources Committee, the Central-Terry Task Force respectfully asks that you pass this bill out of Committee, and permit a full, public vote. The time for the changes we seek *may* not be now, but, *for now*, we deserve to hear *how* well our representatives have heard us.

Do not muffle the debate on this issue. The people ask that House Bill 430 be sent to the full House. Thank you.

**Testimony given by Rev. Gary M. Keene on House Bill 430 to the House Natural Resources Committee on 2/13/95**

EXHIBIT 18  
DATE 2-13-95  
HB 430

To members of the House Committee, good afternoon:

It is my privilege, my opportunity, and my responsibility to take today off from work and come here at my own expense, to give support to HB 430, and more specifically, to encourage you to move this bill out of committee so that action can be taken on behalf of the Yellowstone Valley.

Once before state representatives took action on behalf of the Valley: in 1987 it passed the Hannah Bill #534. At that time, just as at this time, elected representatives were asked to look into the crystal ball of the future, and guess what legislative actions could be taken to yield a positive economic future.

We ask you to once more look into your crystal ball, since ours has become clouded by competing hopes, interests and financial concerns. Is the future of the Yellowstone Valley to be a repeat of Montana's past? Do we all need to visit Butte and Anaconda one *more* time?

The sole, singular and unabashed reason for the Hannah bill was so that industry could get going, make jobs and make money. Those who would sustain the Hannah bill cling to the tragic promise of industry that it can assure jobs and money in the future, IF they just don't have to go by the same air standards as the rest of Montana.

Today we know more, and we- you should know better: no industry of any kind can guarantee anything, least of all the promised land of economic security. Ask Detroit; ask Pittsburg, ask even Los Angeles who thought the defense industry gravy train would roll on forever.

There is only one promised land in our future, and that is our land, this Last Best Place. With clean air, we can continue to draw persons from all across the country who have learned what we have forgotten: that money in your pocket cannot buy happiness, and it certainly cannot buy health. Those are the gifts of living with respect for the land, the air and our own lungs.

If Billings is to have a future that is both economically *and* physically healthy, then let Billings share in offering the best of what is Montana: a beautiful Big Sky filled with clean air, and a living environment that attracts people who appreciate what we have here, and want to treasure it, not trash it for their own profit. Let them come with their diversity of jobs that are sustainable and that respect what Montana is, so that our great grandchild will still be able to live here, breathe here, and respect you for what you do for them in this session.

Testimony HB430 Rm 437 Monday, February 13, 1995  
Repeal of the Hannah bill, J. Bohlinger  
Natural Resources Committee - Dick Knox, Chairman

Mr. Chairman, other members of the Natural Resources Committee, my name is Jack Johnson, I live at 2303 Virginia Ln in Billings. My wife and I have lived in Billings for 38 years. We have worked and raised our family in Billings. We are very happy to call Billings our home. We are pleased that John Bohlinger is our representative and that he is sponsoring legislation that would help correct a serious problem in Yellowstone County. I am pleased that my senator, Sharon Estrada has signed on in support of HB 430. I give credit too, to Rep. Joan Hurdle. Beyond that, Mr. Chairman, it is embarrassing to have to come before your committee today to discuss ambient air <sup>quality</sup> standards for our county when so many of our legislators either oppose the bill or have not yet made up their minds which way they might eventually vote on the issue of clean air in Yellowstone County.

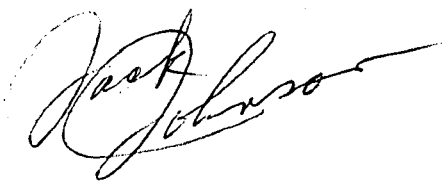
Many of us in Billings were very unhappy when the "Hannah bill" was passed some seven years ago now. Unhappy to learn that local industries would be excused from meeting the ambient air quality standards for sulfur dioxide in Yellowstone County. As I remember it, the reason for the Hannah Bill was to allow Yellowstone County industries more time to make ~~adjustments~~ <sup>the</sup> changes necessary to meet the new standards being adopted in our state.

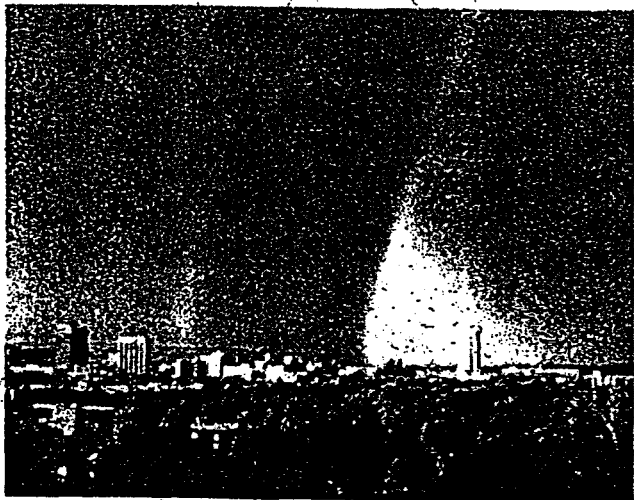
Today, now, the statement of intent found in Rep. John Bohlinger's bill, HB430 calling for repeal of the Hannah Bill states in part and I quote, "...the legislature recognizes that all citizens of Montana have the constitutional right to equal protection of the law. There currently exists weaker air quality standards for Sulfur dioxide in Yellowstone County than are applied throughout the rest of the state.

~~Therefore, the citizens of Yellowstone County are not granted equal protection under the law. Therefore, it is the intent of the legislature to grant Yellowstone county citizens equal protection of the law by restoring the state annual and 24-hour ambient air/standards for sulfur dioxide to Yellowstone County.~~  
As such, the citizens of Yellowstone County are not granted equal protection under the law. Therefore, it is the intent of the legislature to grant Yellowstone county citizens equal protection of the law by restoring the state annual and 24-hour ambient air <sup>quality</sup> standards for sulfur dioxide to Yellowstone County." unquote.

That same 'statement of intent' also stated clearly that the act would become effective three years from date of passage and approval. Let's see, that would be 10 years for compliance by sulfur dioxide polluting industries in Yellowstone County, wouldn't it?

Mr. Chairman, I have here a copy of the summary of the detailed data report issued on November 30, 1994 in Billings for the first ever Yellowstone County Community needs Assessment. It is a comprehensive community needs audit from and by the citizens who live in Yellowstone County, not just in Billings. The results are to be used to inform the public and to assist community organizations in setting priorities, working together, trying to avoid duplication of efforts and for building better communities and a better life within Yellowstone County. The survey asked citizens to rate 140 service categories in 12 areas of community need. The surveys were randomly distributed in June 1994 to approximately 35,000 residents of Yellowstone County. The results of the assessments are highly accurate. <sup>Two versions necessary - 70 Cat each</sup> Over 1500 residents completed each version of the survey. For the purposes of this report, categories selected as most important need, by at least 20 percent of respondents, are considered to be higher priorities for the community as a whole. The area of community need which we are concerned about <sup>today</sup> here, <sup>which is community - air - environmental</sup> is found on pages 20 and 21 of the report. Survey results pointed to recycling home pick up and air pollution control as services many residents felt were not ~~being met~~ meeting their needs. High percentages of respondents indicated those needs were poorly met or not met. Air pollution control was rated poorly met or not met by 57 percent of those surveyed. Fifty-seven percent of 1500 respondents equals 855 citizens. A SIGNIFICANT MAJORITY (60 percent) OF THE RESPONDENTS SELECTED AIR POLLUTION CONTROL AS THE COMMUNITY'S MOST IMPORTANT ENVIRONMENTAL NEED. You know that 60% means 900 citizens listed air pollution as our most important environmental need. In fact, only two categories of need in the county ranked higher than air pollution. Those were; affordable homes to buy and avail<sup>ability</sup> of affordable rentals. They ranked 65% and 69%.





## MISSION:

*The Community Needs Task Force will develop and complete a comprehensive community needs audit.*

*The resulting information will be used to inform the public and to assist community organizations in setting priorities, working collaboratively and avoiding duplication.*



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# INTRODUCTION

## ***What is the Community Needs Assessment Survey?***

The Community Needs Assessment Survey is the first comprehensive public survey of its kind in Yellowstone County. It asked citizens to rate 140 service categories in 12 areas of community need. Because of the length of such a comprehensive survey, two versions were used, each containing half of the categories for each area of need. The surveys were randomly distributed in June 1994 to approximately 35,000 residents of Yellowstone County.

## ***Who commissioned the survey?***

Originally undertaken by United Way and Saint Vincent Hospital and Health Center, the community needs assessment survey grew into a cooperative effort involving a wide variety of public and private service providers, including: the Sample Foundation, the Billings Gazette, Yellowstone County, Deaconess Medical Center, the City of Billings, Conoco, the Breakfast Exchange Club, US WEST, and Fenske Companies.

A steering committee made up of volunteers from several of these and other organizations began work in September 1993 to develop the survey format and questions. The process included reviewing needs assessment surveys from cities similar in size and composition to Billings, interviewing local service providers, and designing and field testing prototype surveys. The finalized survey was distributed to Yellowstone County residents in June 1994. Results were tabulated and made available to the public in November 1994.

A complete listing of steering committee members and organizational backers is on the back page of this brochure. Organizational backers provided over \$24,000 in funding and additional personnel for the coordination, development, distribution, analysis and reporting of the survey. As organizations that devote a great deal of time and money to worthy causes in

Yellowstone County, they felt it necessary to go directly to the people they serve and ask how well specific needs are being met and which concerns are most important.

## ***Who answered the survey?***

Each version of the survey was completed by at least 1,500 people. They came from all parts of the county and all segments of society. In fact, the demographic characteristics of people responding to the survey matched within two percentage points the demographic characteristics of Yellowstone County residents as compiled in the 1990 census.

### ***Gender and age***

Of those answering the survey, 48 percent were men and 52 percent were women. Four percent were ages 18-24 years, 16 percent were ages 25-34 years, 43 percent were ages 35-54 years, 24 percent were ages 55-70 years, and 13 percent were 71 or more years old.

### ***Educational achievement***

Survey respondents' educational backgrounds ranged from those who had completed junior high to those who held graduate degrees. Seven percent had not completed high school, 27 percent held a high school diploma or GED certificate, 15 percent had attended some type of post-high school training program, seven percent had attended junior college, 21 percent were college graduates and 23 percent had some graduate level studies or a graduate degree.

### ***Employment***

Thirty-three percent of those surveyed said they held professional, managerial or executive positions. Twenty-six percent were employed in technical, sales, administrative support or service related jobs. Four percent held jobs in construction or industry. Six percent worked as homemakers. Seven percent listed other occupations and 22 percent said they were retired. Two percent of respondents reported being unemployed.

# EDUCATION

## Where are educational services falling short?

Four categories in education were rated as *poorly met* or *not met* by at least one in five of those surveyed:

- Guidance counseling (24 percent)
- Summer school (23 percent)
- Graduate education (22 percent)
- Work force preparation (21 percent)

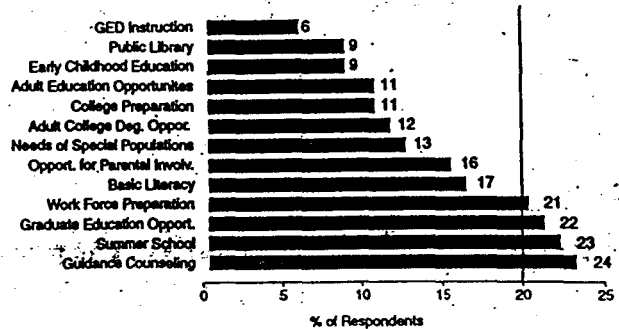
Some educational efforts may suffer from a lack of exposure to the general public. The following needs received fairly high *no opinion/don't know* responses:

- Guidance counseling (26 percent)
- GED Instruction (34 percent)
- Meeting the needs of special populations such as non-English speakers or drop-outs (35 percent)
- Summer school for kindergarten through twelfth grade (42 percent)

## Which educational needs are well served?

Overall, education in Yellowstone county received fairly high marks. Eleven of the thirteen areas of educational need were rated as *well met* by at least 20 percent of those surveyed.

Percentage of Respondents Rating Needs Poorly Met or Not Met



- The Parmly Billings library received the highest percentage of responses as an educational need that is *well met*. Nearly 58 percent of those surveyed indicated the need for a public library is *well met*. Additionally, residents are apparently well acquainted with the library, less than four percent of those surveyed marked *no opinion/don't know*.

- Other categories receiving favorable responses were college degree opportunities for adults (46 percent *well met*), non-degree adult education opportunities (42 percent *well met*), and GED instruction (35 percent *well met*).

- Residents also generally approved of efforts to meet community needs in early childhood education. Thirty-eight percent of those surveyed indicated the need for pre-school education is *well met*.

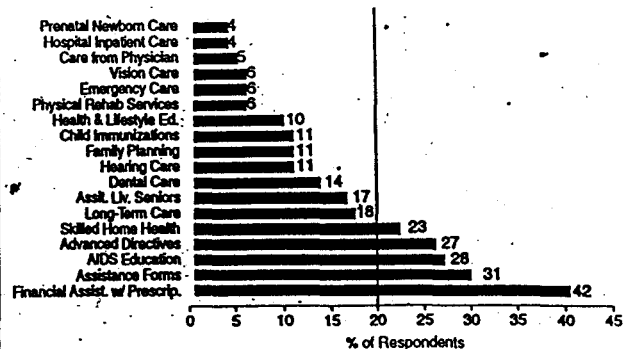
# PHYSICAL CARE

## Where are medical services falling short?

Financial assistance with prescriptions was described by the highest number of respondents as a need that is *poorly met* or *not met*. Close to half of those surveyed (42 percent) marked one of those responses. Another third (32 percent) marked *no opinion/don't know*, while just eight percent said financial assistance with prescriptions is a *well met* need.

- About one of every three respondents (31 percent) said assistance in filling out medically related forms such as Medicare, Medicaid, and welfare is a need that is *poorly met* or *not met*. However, the highest number of responses to this question (36 percent) were in the *no opinion/don't know* section.
- Twenty-eight percent of those answering the survey said the need for AIDS education is *poorly met* or *not met* in Yellowstone County.
- Assistance with developing advanced directives such as living wills was rated by 27 percent of respondents as a need that is *poorly met* or *not met*.
- Skilled home health care was rated by 23 percent of respondents as a need that is *poorly met* or *not met*.

## Percentage of Respondents Rating Needs Poorly Met or Not Met



## Which physical care needs are well served?

- Hospital in-patient care received the highest marks as a community need that is *well met*. Approximately three fourths of those surveyed (73 percent) said the need is *well met*. Less than five percent marked *poorly met* or *not met*, and about five percent responded by marking *no opinion/don't know*.
- A large majority of those surveyed (73 percent) said care from a physician is a *well met* need. Less than six percent indicated this need is *poorly met* or *not met* and less than three percent marked *no opinion/don't know*.
- Vision care was considered a *well met* need by 72 percent of those surveyed.
- Emergency care was judged *well met* by 65 percent of respondents.
- Fifty-five percent said the need for dental care is *well met*.



# MENTAL HEALTH

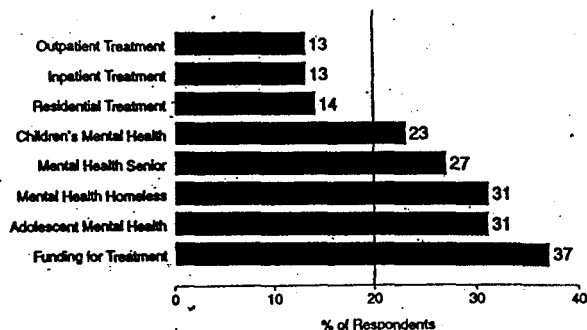
## ***Where are mental health services falling short?***

Several categories in the area of mental health were frequently rated as *poorly met or not met*.

- Funding for treatment (37 percent)
- Mental Health services for homeless persons (31 percent)
- Adolescent mental health services (31 percent)
- Mental health services for senior citizens (27 percent)
- Children's mental health services (23 percent)

Additionally, survey results indicate residents of Yellowstone County may not have a good understanding of mental health needs and services. In six of the eight areas of need, the *no opinion/don't know* response was marked more often than any other response. Mental health services for senior citizens had the highest number of respondents marking *no opinion/don't know*, a full 43 percent.

Percentage of Respondents Rating Needs Poorly Met or Not Met



## ***Which mental health needs are well served?***

Although mental health services targeted to specific groups were not highly rated, broader categories received more favorable ratings.

- Outpatient treatment was rated *well met* by nearly 28 percent of respondents.
- Twenty-six percent of those surveyed said the need for inpatient treatment is *well met*.
- Residential treatment such as group homes and the Yellowstone Treatment Centers was rated *well met* by 25 percent of respondents.

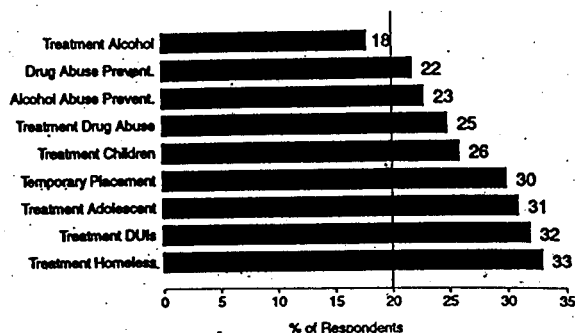
# SUBSTANCE ABUSE

## ***Where are substance abuse services falling short?***

Services related to substance abuse appear to be falling short of residents' needs. In eight of nine categories more than 20 percent of respondents said community needs related to substance abuse were *poorly met* or *not met*. Many respondents apparently are not familiar with substance abuse programs. In six of the nine categories a significant number of respondents marked *no opinion/don't know*.

- Treatment services for individuals who are homeless (33 percent *poorly met* or *not met*, 42 percent *no opinion*)
- Treatment services for individuals who receive traffic citations for DUI, driving under the influence (32 percent *poorly met* or *not met*, 27 percent *no opinion*)
- Treatment services for adolescents (31 percent *poorly met* or *not met*, 25 percent *no opinion*)
- Temporary placement for intoxicated individuals (30% *poorly met* or *not met*, 39 percent *no opinion*)
- Treatment services for children (26 percent *poorly met* or *not met*, 40 percent *no opinion*)

Percentage of Respondents Rating Needs Poorly Met or Not Met



- Treatment for drug abuse (25 percent *poorly met* or *not met*, 20 percent *no opinion*)
- Alcohol abuse prevention (23 percent *poorly met* or *not met*, 18 percent *no opinion*)
- Drug abuse prevention (22 percent *poorly met* or *not met*, 16 percent *no opinion*)

## ***Which substance abuse needs are well served?***

Two categories were rated as being *well met* by at least 20 percent of those surveyed.

- Twenty-five percent of respondents said the need for treatment for alcohol abuse is *well met*.
- Alcohol abuse prevention needs were rated *well met* by 20 percent of those surveyed.

# YOUTH DEVELOPMENT

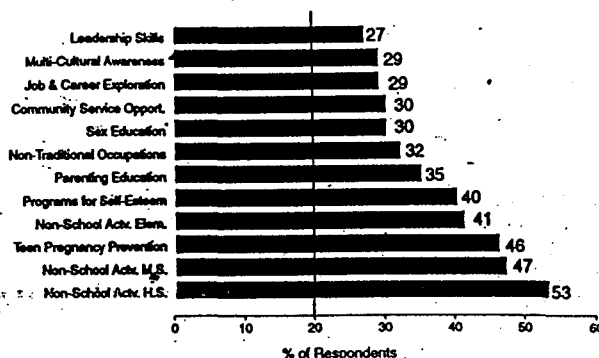
## Where are youth development services falling short?

Youth development services were not well rated by survey respondents. All 12 categories were rated *poorly met* or *not met* by more than 20 percent of respondents and five categories were rated *poorly met* or *not met* by 40 percent or more of those surveyed.

- The need for affordable, non-school sponsored activities for high school students was rated *poorly met* or *not met* by more than half of those surveyed (53 percent).
- Affordable, non-school sponsored activities for middle school students also fared poorly. The need for such activities was rated *poorly met* or *not met* by 47 percent of respondents.
- Forty-six percent of those surveyed said the need for teenage pregnancy prevention programs is *poorly met* or *not met*.
- Affordable non-school sponsored activities for elementary age students were rated *poorly met* or *not met* by 41 percent of respondents.
- Forty percent said the need for youth programs in self-esteem and confidence building was *poorly met* or *not met*.

Several categories had more than 20 percent of respondents mark the *no opinion/don't know* option.

Percentage of Respondents Rating Needs Poorly Met or Not Met



- Opportunities for girls to explore non-traditional occupations (30 percent)
- Programs for leadership skills (29 percent)
- Affordable, non-school sponsored activities for middle school children (27 percent)
- Programs for self esteem and confidence building (27 percent)
- Teen pregnancy prevention (26 percent)
- Sex education for pre-teens and teens (24 percent)
- Opportunities for community service (24 percent)
- Multi-cultural awareness activities (23 percent)

## Which needs are well served?

None of the youth development needs listed on the survey were rated *well met* by 20 percent or more of respondents. Multi-cultural awareness activities and opportunities for community service were the highest rated categories. Each was rated *well met* by about 15 percent of those surveyed.

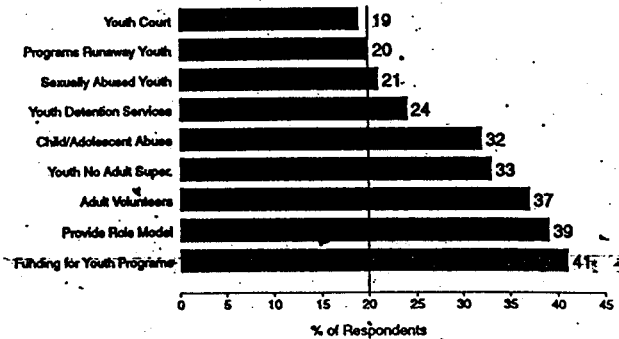
# YOUTH INTERVENTION

## Where are youth intervention services falling short?

Like youth development, youth intervention services were poorly rated on the survey. Lack of funding and adult involvement with young people were some of the lowest rated categories. However, all categories but one were rated *poorly met* or *not met* by at least 20 percent of respondents. Lack of familiarity with available programs also impacted the ratings on youth intervention services. High percentages of those surveyed marked *no opinion/don't know* on most categories in this section.

- Funding for youth programs received the highest percentage of responses as a need that is *poorly met* or *not met* (41 percent). However, one third (33 percent) of those surveyed marked *no opinion* rather than rate how well the community meets the needs for funding of youth programs.
- Thirty-nine percent of respondents said the need for role models for troubled youth is *poorly met* or *not met*. Twenty-seven percent indicated they had *no opinion* on this category.
- The need for adult volunteers to work with youth was considered *poorly met* or *not met* by 37 percent of those surveyed. Twenty-eight percent marked the *no opinion* category.
- Support services for youth living without adult supervision were rated by 33 percent of respondents as *poorly met* or *not met*. Nearly half (45 percent) of those surveyed indicated they had *no opinion* on this category.

Percentage of Respondents Rating Needs Poorly Met or Not Met



- Child/adolescent abuse services were rated *poorly met* or *not met* by 32 percent of respondents. Another 32 percent marked *no opinion/don't know*.
- Youth detention services were rated *poorly met* or *not met* by 24 percent of respondents. Twenty-nine percent marked *no opinion*.
- Twenty-one percent of those surveyed said the needs of sexually abused youths are *poorly met* or *not met*. Nearly 38 percent marked *no opinion*.
- The need for programs for runaway youths was rated *poorly met* or *not met* by 20 percent of respondents. Thirty-two percent marked *no opinion*.

## Which needs are well served?

None of the categories listed under youth intervention were rated *well met* by at least 20 percent of those surveyed. Youth court services and programs for runaway youth received the highest percentages of responses (12 percent each) as being *well met* needs.

# HOUSING

## Where are housing services falling short?

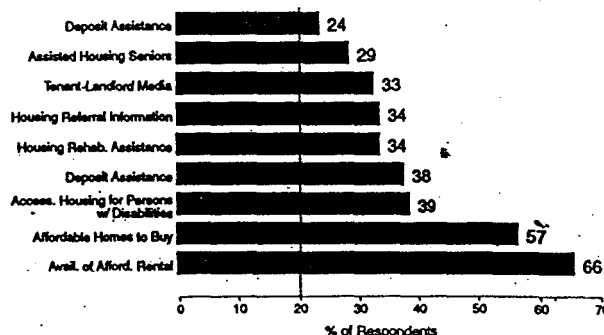
Although all categories of need in the housing section were rated *poorly met* or *not met* by more than 20 percent of respondents, affordable housing needs stood out as far and away the most problematic.

- Sixty-six percent of respondents said the need for affordable rental homes is *poorly met* or *not met*
- Fifty-seven percent said the need for affordable homes to buy is *poorly met* or *not met*.

Significantly, most people surveyed felt knowledgeable enough about affordable housing issues to rate these categories. Just eight percent of those responding to affordable rental homes and seven percent of those responding to affordable homes to buy marked *no opinion/don't know*. Other categories in this section had much higher percentages of respondents who marked *no opinion/don't know*.

- Accessible housing for persons with disabilities (39 percent *poorly met* or *not met*, 37 percent *no opinion*)
- Deposit assistance for rental housing (38 percent *poorly met* or *not met*, 43 percent *no opinion*)
- Housing rehabilitation assistance such as repairs and weatherization (34 percent *poorly met* or *not met*, 22 percent *no opinion*)

Percentage of Respondents Rating Needs Poorly Met or Not Met



- Housing referral information (34 percent *poorly met* or *not met*, 30 percent *no opinion*)
- Tenant-landlord mediation (33 percent *poorly met* or *not met*, 41 percent *no opinion*)
- Assisted housing for seniors (29 percent *poorly met* or *not met*, 33 percent *no opinion*)
- Deposit assistance for utilities (24 percent *poorly met* or *not met*, 34 percent *no opinion*)

## Which needs are well served?

No categories under the housing section were rated by 20 percent or more of respondents as being *well met*. The category with the highest percentage of *well met* responses was deposit assistance for utilities. Eleven percent of respondents marked it *well met*.

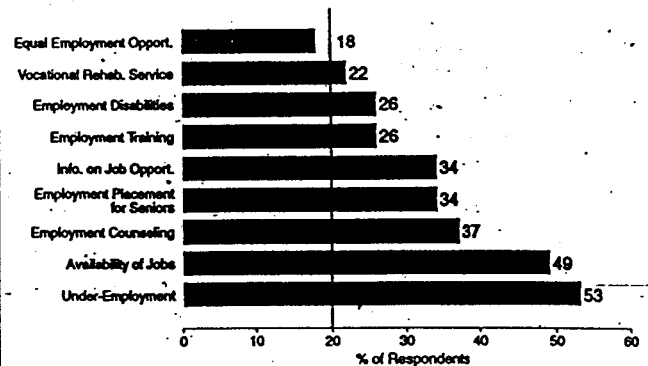
# J O B D E V E L O P M E N T

## ***Where are job development services falling short?***

Overall, job development services were not highly rated. All categories but one were considered *poorly met* or *not met* by at least 20 percent of those surveyed. However, especially large percentages of survey respondents rated remedies for under-employment, the availability of jobs, information on job opportunities and employment counseling as needs that are *poorly met* or *not met*.

- Fifty-three percent of those surveyed indicated the need for remedies for under-employment is *poorly met* or *not met*.
- The availability of jobs was rated *poorly met* or *not met* by 49 percent of respondents.
- Employment counseling and job placement was considered to be *poorly met* or *not met* by 37 percent of those surveyed.
- Thirty-four percent of respondents said information on job opportunities is a need that is *poorly met* or *not met*.
- Employment placement for seniors was rated *poorly met* or *not met* by 34 percent of those surveyed.

Percentage of Respondents Rating Needs Poorly Met or Not Met



In four categories more than one of every four people marked *no opinion/don't know*.

- Employment placement for seniors (37 percent)
- Supported employment for persons with disabilities (33 percent).
- Remedies for under-employment (29 percent)
- Vocational rehabilitation services for persons with disabilities and individuals injured on the job (27 percent)

## ***Which needs are well served?***

Equal employment opportunity appears to be the best served need in this section. It was rated *well met* by 28 percent of those surveyed. Only 18 percent rated equal employment opportunity as being *poorly met* or *not met*. (Seventeen percent marked *no opinion/don't know*.)

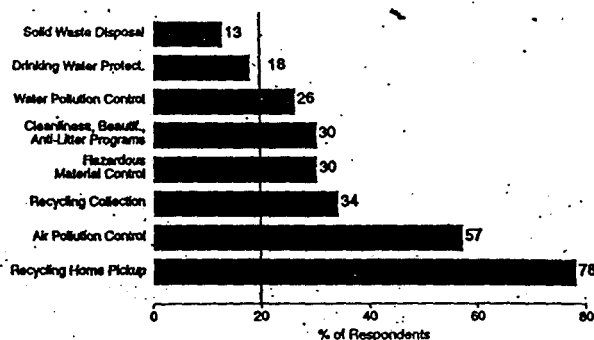
# COMMUNITY/CIVIC/ENVIRONMENTAL

## Where are community environmental services falling short?

Survey results point to recycling home pick up and air pollution control as services many residents feel are not meeting their needs. High percentages of respondents indicated those needs were *poorly met* or *not met*. Several other categories were also rated *poorly met* or *not met* by more than 20 percent of those surveyed.

- Recycling home pick up was rated *poorly met* or *not met* by three out of every four respondents (78 percent).
- Air pollution control was rated *poorly met* or *not met* by 57 percent of those surveyed.
- The need for recycling collection centers was rated *poorly met* or *not met* by 34 percent of respondents.
- Thirty percent of those surveyed indicated the need for hazardous material control is *poorly met* or *not met*.
- Thirty percent of respondents said the need for cleanliness, beautification, and anti-litter programs is *poorly met* or *not met*.
- Water pollution control was rated *poorly met* or *not met* by 26 percent of residents surveyed.

Percentage of Respondents Rating Needs Poorly Met or Not Met



Most residents appeared to feel knowledgeable enough about environmental services to rate the categories. Very few respondents marked the *no opinion/don't know* option for any categories in this section. Hazardous material control had the highest percentage of *no opinion/don't know* responses (19 percent). Recycling collection centers and beautification programs had the lowest percentage of *no opinion/don't know* responses (three percent each).

## Which needs are well served?

Solid waste garbage disposal received the highest percentage (44 percent) of responses as a *well met* environmental need. Thirty percent of those surveyed also said the need for drinking water protection is *well met*.

Interestingly, two categories rated *poorly met* or *not met* by at least 20 percent of respondents also had at least 20 percent who rated them as *well met*. The need for recycling collection centers was rated *well met* by 27 percent of those surveyed, and the need for beautification programs was rated *well met* by 20 percent of respondents.

# CULTURAL

## Where are services falling short?

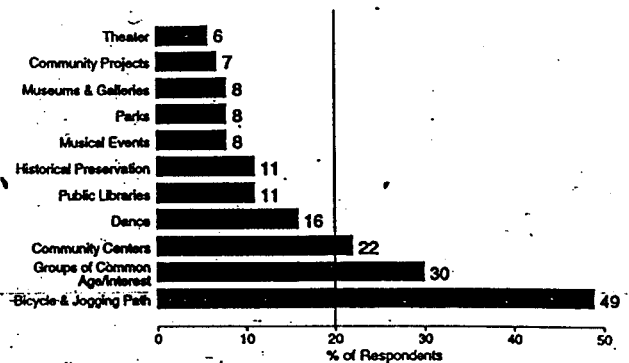
One of the most striking survey results in the cultural section is how well respondents feel most needs are met. The clear exception is bicycling and jogging paths; nearly half of those surveyed said the need for such paths is *poorly met* or *not met*. Two other categories were also rated *poorly met* or *not met* by more than 20 percent of respondents.

- The need for bicyclé and jogging paths was rated *poorly met* or *not met* by 49 percent of those surveyed.
- The need for opportunities to belong to groups of common age or interest was rated *poorly met* or *not met* by 30 percent of respondents.
- Twenty-two percent of those surveyed indicated the need for community centers is *poorly met* or *not met*.

## Which needs are well served?

Many residents appear to be satisfied with how well their cultural needs are met in Yellowstone County. Ten of eleven categories were rated *well met* by 20 percent or more of those surveyed. The cultural section also had some of the lowest percentages of respondents marking the *no opinion/don't know* option. Percentages ranged from a high of 12 percent *no opinion* on dance to a low of two percent *no opinion* on public libraries.

Percentage of Respondents Rating Needs Poorly Met or Not Met



- Theater needs were rated *well met* by 60 percent of respondents.
- The need for public libraries was rated *well met* by 55 percent of residents surveyed.
- Fifty-three percent said the need for community projects (like ZooMontana, the Moss Mansion, and playgrounds) is *well met*.
- Parks were considered a *well met* need by 53 percent of respondents.
- Fifty-two percent indicated the need for musical events is *well met*.
- The need for museums and galleries was considered *well met* by 49 percent of those surveyed.
- Historical preservation/revitalization needs were rated *well met* by 36 percent of residents surveyed.
- Dance needs were rated *well met* by 32 percent of respondents.
- Although many respondents said the need for opportunities to belong to groups of common age or interests is *poorly met* or *not met*, 22 percent indicated the need is *well met*.



# BASIC HUMAN SERVICES

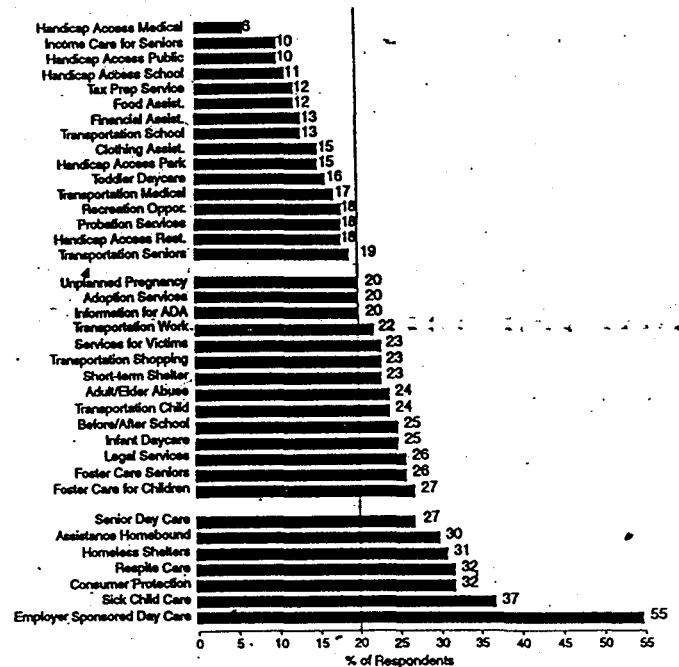
## ***Where are basic human services falling short?***

Twenty-one of the 37 categories in this section were rated *poorly met* or *not met* by at least 20 percent of respondents. The need most often rated negatively was employer sponsored day care; over half of those surveyed indicated it is a need that is *poorly met* or *not met*.

Categories with significant percentages of respondents rating them *poorly met* or *not met* include:

- Employer sponsored day care (55 percent)
- Sick child care (37 percent)
- Respite care for caregivers (32 percent)
- Consumer protection (32 percent)
- Homeless shelters (31 percent)
- Assistance for homebound senior citizens (30 percent)
- Senior respite care and/or adult day care (27 percent)
- Foster care for children (27 percent)
- Foster care for seniors (26 percent)
- Legal services (26 percent)
- Infant day care (25 percent)
- Before and after school care (25 percent)

Percentage of Respondents Rating Needs Poorly Met or Not Met

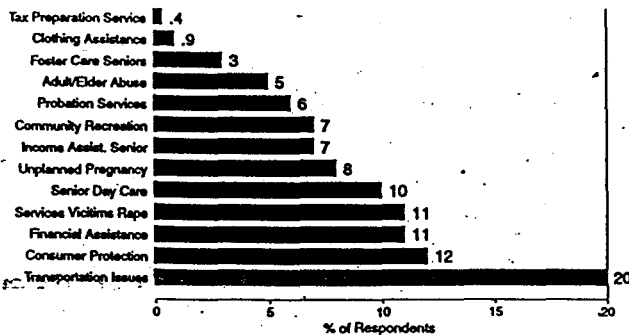


- Adult/elder abuse services (24 percent)
- Transportation for children to day care (24 percent)
- Services for victims of rape or domestic assault (23 percent)
- Transportation for shopping for food (23 percent)
- Short-term shelter or temporary housing (23 percent)
- Transportation for getting to work (22 percent)
- Access to information on making facilities and programs accessible to persons with disabilities (20 percent)
- Adoption services (20 percent)
- Unplanned pregnancy counseling (20 percent)

# BASIC HUMAN SERVICES

## continued

Most Important Community Need  
Version A

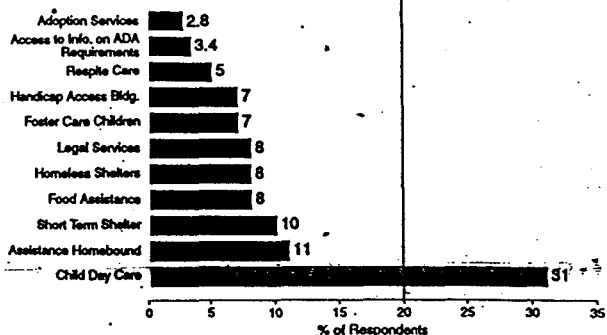


### *Which basic human services needs have priority with residents?*

Based on survey results, transportation issues and child day care services appear to be higher priority concerns for residents of Yellowstone County. Both categories were rated as the *most important* community need in basic human services by at least 20 percent of respondents.

- Transportation was considered the *most important* community need by 20 percent of version A respondents.
- The need for child day care services was ranked as *most important* by 31 percent of version B respondents.

Most Important Community Need  
Version B



### *What did people have to say about basic human services?*

Excerpts from the "comments" section of the survey.

*"We need affordable, dependable and decent child care."*

*"Help latch-key kids by opening school buildings after hours and making playgrounds and gyms open for them. Make evening child care available."*

*"We need longer hours for the Met bus and service to a larger area."*

*"We need bus service on weekends."*

*"Too many services create dependence and burdens."*

# PUBLIC SAFETY

## Where are services falling short?

Gang violence prevention was the public safety need most frequently rated as *poorly met* or *not met*. Crime prevention, community-based police officers, adequate number of police officers, and hate crime prevention were other categories rated as *poorly met* or *not met* by at least 20 percent of survey respondents.

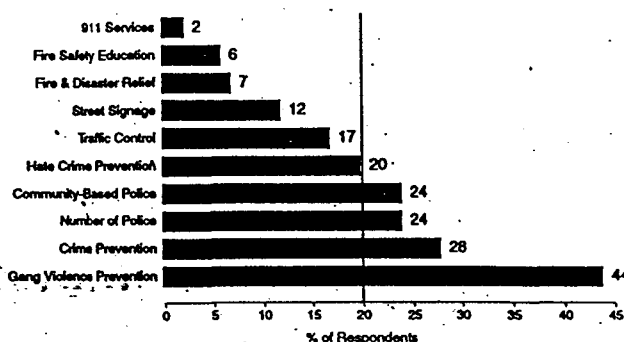
- Gang violence prevention was considered *poorly met* or *not met* by 44 percent of those surveyed.
- Crime prevention was rated *poorly met* or *not met* by 28 percent of respondents.
- Twenty-four percent of those surveyed said the need for community-based police officers is *poorly met* or *not met*.
- An adequate number of police officers was rated *poorly met* or *not met* by 24 percent of respondents.
- Twenty percent of those surveyed considered the need for hate crime prevention as *poorly met* or *not met*.

## Which needs are well served?

Survey results indicate a high level of satisfaction with rescue and 911 services. Street signage, fire safety education, and fire and disaster relief were also highly rated by many respondents.

- Approximately 65 percent of those surveyed said the need for rescue and 911 services is *well met*.

Percentage of Respondents Rating Needs Poorly Met or Not Met



- Forty-two percent indicated the need for street signage is *well met*.
- Fire safety education was considered *well met* by 41 percent of those surveyed.
- Fire and disaster relief needs were rated *well met* by 38 percent of respondents.
- One third of respondents (33 percent) said traffic control needs are *well met*.

Two categories rated *poorly met* or *not met* by at least 20 percent of those surveyed were also rated *well met* by at least 20 percent of respondents. Hate crime education and prevention was considered a *well met* need by 27 percent of those surveyed. The need for an adequate number of police officers was rated *well met* by 20 percent of respondents.

For all categories in this section, low percentages of residents surveyed marked *no opinion/don't know*. Fire and disaster relief had the highest percentage of *no opinion* responses (15 percent), and crime prevention, traffic control and street signage had the lowest (3 percent each *no opinion*).

# BARRIERS TO SERVICE

## What barriers prevent people from using existing services?

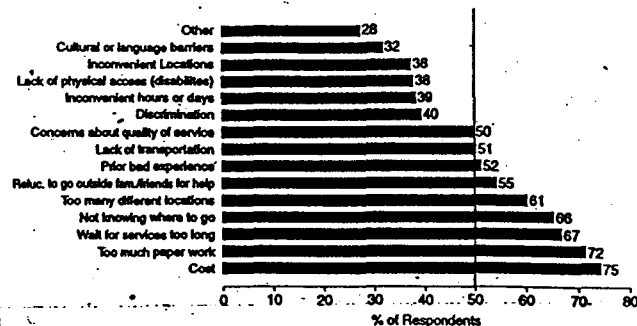
The final portion of the Yellowstone County Needs Assessment Survey asked respondents about problems that might prevent people from using the services they need. For each barrier listed, respondents indicated how serious a barrier they felt it was: *not at all serious*, *not very serious*, *somewhat serious*, *very serious*, or *no opinion/don't know*.

Every barrier was perceived as *somewhat serious* or *very serious* by at least 20 percent of respondents. However, cost was the difficulty most often seen as preventing people from using available services. Three of every four people surveyed identified cost as a *somewhat serious* or *very serious* barrier. Nearly that many believed too much paperwork is a *somewhat serious* or *very serious* barrier to service.

The percentage of respondents marking *somewhat serious* or *very serious* are listed below:

- Cost (75 percent)
- Too much paperwork (72 percent)
- Wait for services too long (67 percent)
- Not knowing where to go for services (66 percent)
- Too many different locations (61 percent)
- Reluctance to go outside family or friends for help (55 percent)

## BARRIERS TO SERVICE



- Prior bad experience (52 percent)
- Lack of transportation (51 percent)
- Concerns about the quality of services (50 percent)
- Discrimination (40 percent)
- Inconvenient hours of days (39 percent)
- Lack of physical assess for people with disabilities (38 percent)
- Inconvenient locations (38 percent)
- Cultural or language barriers (32 percent)
- Other (28 percent)

Very few people marked *no opinion/don't know* in this section of the survey. The exception was the "Other" category (which allowed people to write in barriers not listed on the survey). Sixty-six percent of respondents indicated no opinion/don't know on the "Other" category.

EXHIBIT 20  
DATE 2-13-95  
HB 430

TESTIMONY ON HB430  
FEBRUARY 13, 1995

Hello. My name is Paula Schilke, and I am the Chairperson for the South Side Neighborhood Task Force located in Billings, Montana. Our Task Force consists of approximately 185 members, who are mainly blue-collar and service workers, or retired senior citizens. The Task Force area is located just north of the Western Sugar Refinery, and west of Conoco and Montana Power, and consists of about 1000 residences. In July of 1994 our Task Force voted unanimously to support the repeal of the Hannah Bill.

For years the residents of our Task Force have lived with the problems of pollution - particulates on their cars and houses, allergy symptoms, and lower property values. Last spring, as a realtor, I sold a home which was located in the southwest area of Billings, approximately five (5) miles from the Western Sugar Refinery. When the appraisal came back it contained the following statement: "Proximity to the Billings Sugar Beet factory is a detrimental (odor) factor."

In the past these residents have attempted to live with the problems - making very few demands in exchange for the blue-collar jobs which these industries offer. In the meantime, the high-paid executives choose to make their homes elsewhere. Maybe, if they lived where they worked this problem would have been resolved a long time ago.

I was told by a wife of one of these industry leaders that, if I didn't like the pollution, I could move. She is right. I can. But, I am not a blue-collar worker, earning minimum wage or slightly above. These individuals cannot afford to live in Gregory Hills, Wilshire Heights, Yellowstone Country Club, or even on Clark Avenue. Although industry representatives and some of their friends in the city council of Billings would like to have you believe that this is a "radical environmental issue", I don't agree. I believe that it is a health issue, and a class issue.

In closing, I would like to enlist the aid of the delegations from the western part of our state to help us in dealing with this problem by supporting HB430. At this point we are receiving little assistance from the majority of our own delegates, who have backtracked on their campaign promise. I have been told that we can get no support from the rest of the State, because it is a Billings problem. But it was a majority of the State legislators that passed the Hannah Bill, leaving us without the protection afforded to the rest of the State. It is the responsibility of the entire legislature, and the Governor, to look into this issue once again in order to determine if the people in Billings are being treated fairly by this exemption.

The South Side Neighborhood Task Force wishes to thank John Bollinger, Joan Hurdle and Sharon Estrada for their support. We also wish to thank Conoco for their willingness to cooperate to bring clean air to Billings. I urge all Montanans, who are in favor of clean air, to buy their products. Thank you.

Chairman Knox, and members of the committee,

My name is Mort Reid and I'm Chairman of the Yellowstone Valley Citizen's Council.

I've traveled here today from Billings at my own expense to urge your support for HB 430.

According to statistics provided by the Morgan Quinto Corporation, Montana has the second highest death rate in the nation for Chronic Obstructive Pulmonary Disease or COPD. COPD is a respiratory disorder which includes chronic bronchitis and emphysema. There are thousands of asthmatics and people with upper respiratory problems that are not even included in this statistic who reside in Montana.

The COPD death rate for Yellowstone County is higher than the state's and 66% higher than the national average.

THESE ARE VERY ALARMING STATISTICS

Here is another alarming statistic. Over the past seven years the six major polluting industries in the Billings area emitted over 30,000 tons of SO<sub>2</sub> in our airshed annually.

We don't know if the excessively high levels of SO<sub>2</sub> in the airshed is a contributing factor in our high mortality rate for COPD.

We do know that adding 30,000 tons of SO<sub>2</sub> to an airshed that has the second highest death rate in the nation for COPD is a very serious problem.

The industries have argued that they are in compliance with the federal standards and that the federal standards are adequate to protect public health.

In 1993, the EPA determined that Yellowstone County was not in compliance with the federal standards and ordered a State Implementation Plan revision for SO<sub>2</sub>. As of this date only one of the polluting industries in Yellowstone County, Conoco, has signed the SIP stipulations that assure compliance with the federal standards.

In 1980, after exhaustive research and numerous public hearings, the Montana Board of Health determined that the federal standards did not protect public health. That was when the Montana Ambient Air Quality standards were adopted.

You will also hear from some of the polluters that they have never had a monitored violation of the federal standard.

This is primarily because the current system of monitors in Yellowstone County is wholly inadequate. There are currently 7 ambient monitors for SO<sub>2</sub> in the Billings area that monitor a 560 square mile airshed.

Most of the ambient SO<sub>2</sub> in our airshed never gets detected because there simply

aren't enough monitors to provide an accurate picture of our air quality problem.

It is for that reason that the industries favor monitoring over modeling as a compliance mechanism.

If the "trigger" for compliance is monitoring then several more monitors are needed to provide a more complete picture of our airshed.

If, however, the "trigger mechanism" for compliance is a modeled violation then the addition of a few number of monitors would be adequate to protect our airshed.

The industries have expressed vigorous opposition to modeling as a compliance mechanism opting instead for monitoring. HB 430 accommodates industries' position with a requirement that each polluter pay for and maintain 4 monitors.

Any law is only as good as the enforcement mechanism that is written into it.

The polluters in our community have operated without any enforcement mechanism for the past 14 years. Our airshed has suffered and our citizens have suffered.

It is time to end the polluters' stranglehold over our citizens and our economy.

Please support HB 430. Thank you.

Mort Reid

A handwritten signature in cursive script that reads "Mort Reid".

Chair, YVCC

STATEMENT BY PAUL F. BERG  
BEFORE THE BILLINGS CITY COUNCIL  
ON THE FINAL SO2 DISPERSION MODELING STUDY REPORT  
BILLINGS, MONTANA, MAY 24, 1993

EXHIBIT 22  
DATE 2-13-95  
HB438

Honorable Mayor and City Council Members:

I am Paul Berg, 3708 Harry Cooper Place, Billings, Montana, 59106.

The adverse effects of Sulfur Dioxide (SO2) emissions on public health and our environment in the Billings/Laurel airshed have been well-documented.

As a retired wildlife biologist and concerned citizen, I offer the following comments on the SO2 controversy:

The sponsors and supporters of the 1987 Hanna bill (HB 534) which I testified against, and the end result of the 1993 legislative maneuvering on the same subject (SB 389) were pollution anarchy. They disenfranchised the public, emasculated the scientific community, and deprived the public of its constitutional rights to clean, healthy air.

The SO2 problem is worse now than in 1987 despite industry promises to clean it up voluntarily, because too many myopic state, county and local politicians were more responsive to industry lobbyists than to the professional scientists of the Department of Health and the Air Quality Bureau who are legally responsible for clean air, public health and associated environmental conditions.

If the decisions about SO2 cleanup made by professional scientists continue to be sidetracked by politicians who have no idea of what is best for public health, or care about our environment, and if the industries continue their mad push to maximize profits with no regard for the consequences, all SO2 problems will escalate.

All polluters have a long way to go to become responsible members of our society.

Technology is available to solve the SO2 problem. However, since industry personnel and the politicians who do not care about serving the public or protecting our environment slept through biology, ecology, chemistry, logistics and human physiology classes, SO2 solutions will not be forthcoming soon.

For many years the industries ignored the public health and environmental impacts of SO2 emissions.

They insisted that SO2 emissions caused no problems.

They misinformed the public.

They brainwashed the legislature and the media.

They exercised their combined political force and power upon the legislature.

The time is long overdue for them to follow the advice Chief Justice Turnage gave to the 1985 legislature in his State of the Judiciary address:

"...Force must give way to reason and power to justice."



The Montana Department of Health and the Air Quality Bureau have outstanding professional scientists and managers who know all about the SO2 problem and how to solve it to protect public health and our environment.

In the interest of restoring and perpetuating clean, healthy air quality conditions in the Billings/Laurel airshed, I recommend that the Governor:

1. Order the Montana Department of Health and the Air Quality Bureau to solve the SO2 problem expeditiously, and
2. Provide sufficient funding, staffing and facilities.

In conclusion, I leave you with this thought:

Those who play politics with pollution jeopardize the health of our citizens and our environment. People, especially the children, are the most valuable resource.

The opportunity to comment is appreciated.

Paul F. Berg  
Paul F. Berg  
May 24, 1993

EXHIBIT 23  
DATE 2-13-95  
4B 430

VINCE AND LOUISE LARSEN  
910 COBURN ROAD  
BILLINGS, MONTANA 59101-6422

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RESIDENCE (406) 248-6822

TESTIMONY TO MEMBERS OF THE HOUSE NATURAL  
RESOURCES COMMITTEE IN FAVOR OF HB 430

13 February, 1995

My wife and I are proud to be members of America's petroleum industry. We are a part of a great fraternity that has contributed so immeasurably to the high standards of living, the quality of life and to the betterment of peoples both here and around the world. I am a geologist and have worked in the oil industry for over 38 years. We believe in and support corporate America and are stockholders in some of America's finest companies. We believe in profits. We also believe in corporations being responsible corporate citizens, in all areas in the country in which they operate.

It is certainly not with any pride that I reveal and discuss the following events for it is the energy industry - my industry - that is responsible for our shameful SO2 pollution dilemma.

There has been a reluctance among the majority of the Yellowstone County delegation to look the truth in the eye on the SO2 issue, even when presented with overwhelming, compelling factual information. The truth is that this story has an ugly, seamy side. Until the state Legislature, and more specifically, the Yellowstone County delegation - most of whom are Republicans - recognizes this and decides that it's time to put an end to corporate arrogance and manipulation, this issue is not going away.

If a bill was ever passed that allowed continued abusive behavior by industry, the Hannah Bill is indeed a classic. For years, industry had made mockery of Montana Clean Air laws. Then, in 1987, our Legislature permitted them to do it legally. The passage of the Hannah Bill (HB 534) was a hoax. It was purely a special interest bill, contrived by our local industries and their lobbyists and supported by those who listened only to their story of woes. Unfortunately, what they told them was not true. The polluters very simply did not want to comply with the Montana Ambient Air Quality Standards (MAAQS).

In passing the Hannah Bill, the 1987 Legislature allowed the polluters to make fools out of them while denying the citizens of Yellowstone County the right to clean air.

Every argument presented by industry for maintaining the status quo has been thoroughly rejected as either untrue, nonsense, or only part of the story. For example:

MYTH: The MAAQS are overly restrictive and unreasonable.

even in the face of contrary monitoring data..."

The two attached maps illustrate how few SO2 emissions are ever detected by the ambient air monitor. Before the two new BGI monitors, only about 9-10% of Exxon's emissions were ever monitored. At the present, 10% of MPC's and 18% of Exxon's are potentially monitored. The point here is that unless the wind blows directly from the source to the monitor, the pollution goes undetected. The monitors only tell us a small fraction of the story, and we must know the whole story to ensure our public health is protected. Therefore, we cannot rely on our current monitoring system to demonstrate compliance with the state or federal standards.

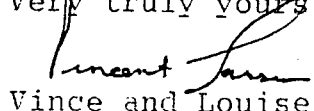
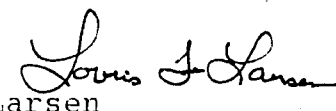
We are as pro-industry as any among you, but we cannot support the lies and distortions of the truth by the major polluters on our deplorable SO2 situation. Recent "Oil and Gas Journal" articles report that imported refinery crude oils are becoming lower in gravity (heavier oils) and have higher sulfur content. Millions of barrels of this high sulfur content crude oil is destined for Billings refineries every year. Conoco has spent \$240 million, and Cenex has spent \$90 million in order to refine this crude. Exxon, on the other hand, has made no major refinery improvements, as they have in every other refinery that they operate. If Exxon refuses to upgrade and modernize their 1950's plant, then at the very least, they should charge 1950's prices for their products! You must not allow Exxon to treat Billings as a third world country. We have become Exxon's dumping ground.

Attached are two letters, two maps, and one chart. The chart will show you why we are focusing on Exxon. You will see that of the six major sources of SO2 pollution in our valley, Exxon is by far the worst. This is especially true with the estimated 1994 emissions. It is ironic that Exxon brags the loudest about the current reductions taking place when in reality, they have very little to brag about. The letters tell how this deplorable situation came about. Please read them. If, after reading them, you can still defend Exxon's arrogant behavior, then so be it. It won't be because you did not know the truth.

Some of you ran on "putting people first". If you do, you will support HB 430, as presented to you by Representative John Bohlinger. Furthermore, you must not allow this bill to be weakened. A law, as you well know, is only as good as it can be enforced. It is time to put this issue to rest. Vote in favor of the passage of HB 430.

Thank You.

Very truly yours,

   
Vince and Louise Larsen

**BILLINGS - LAUREL AIR QUALITY TECHNICAL COMMITTEE**

**ANNUAL SULFUR DIOXIDE EMISSIONS - TONS/YEAR**

COMPANY	1988	1989	1990	1991	1992	1993	AVG.	EST-1994
EXXON Refinery	12,124	12,176	11,218	11,310	10,028	11,626	11,414	10,500
CENEX Refinery	7,037	7,314	7,835	7,151	8,534	8,966	7,806	3,500
MPCo. - J.E. Corette	7,001	7,447	5,634	6,125	9,012	8,586	7,301	6,720
MT SULPHUR & CHEMICAL CO.	3,607	3,525	3,397	2,760	3,327	3,762	3,396	3,186
CONOCO Refinery Jupiter Sulfur (Kerley)	2,845	3,144	3,094	2,745 5	2,212 54	1,904 9	2,659 23	1,722 12
WESTERN SUGAR	425	164	261	376	432	450	351	420
<b>TOTAL/YEAR</b>	<b>33,039</b>	<b>33,770</b>	<b>31,439</b>	<b>30,472</b>	<b>33,599</b>	<b>35,303</b>	<b>32,937</b>	<b>26,060</b>
<b>(TONS/DAY)</b>	<b>(90.5)</b>	<b>(92.5)</b>	<b>(86.1)</b>	<b>(83.5)</b>	<b>(92.1)</b>	<b>(96.7)</b>	<b>(90.2)</b>	<b>(71.4)</b>

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PRESENTATION TO CHAMBER OF COMMERCE,  
LEGISLATIVE AFFAIRS COMMITTEE  
9 NOVEMBER, 1994

OUR SHAMEFUL SO2 DILEMMA

My wife and I are proud to be members of America's petroleum industry. We are a part of a great fraternity that has contributed so immeasurably to the high standard of living, the quality of life and to the betterment of peoples both here and around the world. I am a geologist and have worked in the oil industry for over 38 years. We believe in and support corporate America and are stockholders in some of America's finest companies. We believe in profits. We also believe in corporations' being responsible corporate citizens, in all areas in the country in which they operate.

It is certainly not with any pride that I reveal and discuss the following events for it is the energy industry -- my industry -- that is responsible for our shameful SO2 pollution dilemma. The Billings industries have collectively, with few exceptions, demonstrated a blatant disregard for the health and well-being of our citizens, by putting profits before people. And certainly we have deserved better since we support them by utilizing their service and by buying their products.

The technology to solve our decades-old pollution problem has also been available for decades. With the exception of Conoco, the major polluters simply refuse to install it. The strangle-hold that industries have had over the decision makers in our city has allowed them to operate here with impunity. After all, it was good for business.

When we started working with a local citizens' group three years ago, it was certainly not our intention to engage in a confrontation with the major industries in the Billings/Laurel area. We wanted to work with others to try to convince the major sources of sulfur dioxide pollution in the Billings area that the time has come to clean up our polluted airshed and restore our heritage as "The Big Sky Country."

In recent years, no other state in these United States has allowed industry to successfully manipulate clean air legislation at the expense of its people. For years, industry representatives and their supporters in Yellowstone County have made a mockery of Montana's Clean Air laws. This, in spite of the fact that the Montana Clean Air Act was voted on by the popular will of the people, expressed through their legislators.

We find it incredible that twenty-seven years after the Clean Air Act was enacted, the citizens of Yellowstone County are still waiting for compliance by the Billings/Laurel industries. Now a new generation of corporate officials is dusting off old industry arguments in their effort to once again forestall compliance with the Montana Ambient Air Quality Standards (MAAQS). The same rumors are being circulated that industry and its supporters so effectively employed a quarter of a

history in 1986, even though average crude oil prices declined to \$15 per barrel from \$27 in 1985." "...the result was an overall 10 percent increase in net income over 1985." Exxon's total net income was \$5.36 billion.

From this published document, there obviously was no time of need. It was very simply arrogance and greed on the part of Exxon and their lobbyists.

Let's discuss Exxon Manager Hubble's comment about having to close if forced to comply with what he calls Montana's "unnecessarily stringent" standards. When Hubble made this remark, Exxon was operating the Bayway refinery in Linden, New Jersey, under air quality standards among the toughest in the country.

Exxon installed a scrubber at the Bayway refinery on the FCCU in 1976, at a cost of \$20 million, that reduced SO2 emissions by 90%. During the 1980s, Exxon worked with the NJ Dept. of Environmental Protection Agency to further reduce FCCU emissions. (Oil and Gas Journal, 25 June, 1990) Exxon has refused to use this technology here in Billings, even though it was installed 28 years ago in New Jersey.

The Bayway refinery is 4 1/2 times larger than the Billings Exxon refinery; and, in 1992, emitted 502 tons of SO2. Exxon Billings emitted 10,028 tons of SO2 in 1992, and 11,594 tons in 1993. Exxon sold the New Jersey Bayway Refinery to Tosco in 1993.

Exxon's refinery in the Bay Area at Benecia, California, was operating under similarly stringent air quality standards. The refinery at Benecia is three times larger than the Billings refinery, yet emits less than one-half as much SO2, even though it is refining Alaska sour crude.

The objectives of the Bay Area air quality standards are health-based and were established to prevent respiratory disease, crop damage and odor problems. "The California Air Resources Board estimates the number of lives saved or prolonged as a result of air pollution controls to be 80,000 per year." This is approximately 1.3% of the 6 million people that live in the Bay Area District. This may not seem like a significant number percentage wise - unless, of course, you happen to be one of the 1.3%. In Billings, this would equate to nearly 1500 people. (Bay Area Air Quality Management District, Air Quality Handbook, 1993)

The Bay Area Exxon refinery at Benecia operates under ambient air quality standards that are from 2 to 2.8 times more stringent than the Montana standards. Exxon Billings can't even operate in compliance with the federal standards.

The 24-hour Bay Area standard is 0.05 ppm, which is twice as stringent as the Montana standard of 0.10 ppm and is 2.8 times more stringent

"Vince, the biggest problem in Billings is secondary cigarette smoke." I then wrote to the Exxon Vice President of Environment and Safety at their corporate office in Irving, Texas. He said, "After reviewing your letter and attachments with my operating management, my conclusion is that refinery management is handling these issues responsibly."

Let's compare the Exxon operation at Benecia with the Exxon refinery in Billings. The Exxon refinery at Benecia, is located in what is called the Bay Area Air Quality Management District. This is an area encompassing 5600 square miles, consisting of seven counties and portions of two others, surrounding San Francisco Bay. The Billings/Laurel airshed is only 560 square miles, all in Yellowstone County. Total population in the Bay Area is 6 million people; in all of Yellowstone County, there are only 113,000 people. Total cars and light trucks in the Bay Area total 4 million; in all of Yellowstone County, there are 107,000 registered vehicles. Total daily SO2 emissions from all 45 listed sources in the Bay Area are 116 tons per day. The six polluting industries in the Billings/Laurel airshed emit 96.3 tons of SO2 per day. 1993 SO2 emissions from all sources --all industries in the 5600 square mile Bay Area -- are 42,340 tons. In 1993, the 6 polluting industries in the Billings/Laurel airshed emitted 35,167 tons of SO2 or 83% as much SO2 as that emitted in an area 10 times larger.

The following are indicative of our industries' arrogance. Total SO2 emissions of Exxon Billings in 1993 were 11,594 tons of SO2. This is 27.4% as much SO2 as emitted from all SO2 sources in the 5600 square mile Bay Area. Montana Power emitted 8588 tons of SO2 in 1993 or 20.3% as much SO2 as all SO2 sources in the Bay Area. These two SO2 sources in a 12 square mile area in Billings emit 47.7% as much SO2 as all 45 listed SO2 sources in the 5600 square mile Bay Area Air Quality Management District.

These 45 listed Bay Area sources of SO2 include five oil refineries, power plants, cogeneration plants, chemical plants, cars, light and heavy trucks, buses, off-highway mobile sources (construction equipment), ships, planes and trains. All of these use fossil fuels and are sources of SO2.

In 1993, Exxon Billings refined 42,000 barrels of oil per day, while emitting 11,594 tons of SO2 in the refining process. Conoco, our largest refinery, processed 47,000 barrels of oil per day, while emitting 1902 tons of SO2. Conoco emitted 600 percent less SO2 than Exxon, while refining 5000 more barrels of oil per day. Conoco is our good corporate neighbor!

A comparison between the coal-fired Billings Montana Power Company (MPC) Corette plant and the MPC Colstrip power complex of four coal-fired units, ninety-one miles away, is equally disgraceful. Air pollution scrubber technology is an American invention that is exported universally, but, for obvious reasons, has not found its way to Yellowstone County.

On 30, September, 1994, the Wall Street Journal listed, "The World's 100 Largest Public Companies." Exxon was No. 6 in total assets, but No. 1 in Net Income. Its 1993 Net Income was \$5.28 billion or a net profit of \$14.5 million per day. Remember what Exxon's Hubble said "It would take \$10 million to \$20 million to comply with the state's standard." So much for issue 1); they can certainly afford compliance.

Several of my Exxon friends have told me that the Billings Exxon refinery has the highest rate of return on investment of any Exxon refinery. Now I understand why!

#### HEALTH EFFECTS (Issue 2)

In 1985, one year prior to the proposed Hannah bill legislation a tragic event happened in Billings. Nettie Lees, a 53 year old resident of Billings and an asthma sufferer died after encountering heavy refinery emissions. She had been advised by her doctors that her asthmas attacks were being brought on by air pollution, and she had reported the problem to state officials.

On the evening of July 2, 1985, as she was being driven home by her friend, Eileen Morris, both women noticed a "strong refinery odor." Ms. Lees was overcome by a swift asthma attack. According to Ms. Morris, Ms. Lees used her medication and was taken home immediately. Despite medication, she died about 10:00 p.m. the following evening.

The Montana State Air Quality Bureau investigated this death and concluded that "...air pollution could have been a contributor toward Nettie's asthma attack on the days in question." Mr. Henry Thomas with the EPA also investigated her death and made some very significant discoveries that were soon forgotten or ignored. Regarding the circumstances of her death, he stated, "... that there is no scientific mechanism to make a determination one way or the other." Thomas noted, "As you can see, Exxon and Cenex refineries are the two largest sources, followed by a power plant owned by Montana Power. In absolute terms, none of these sources are particularly large, but the emissions are certainly great enough to affect local air quality." (EPA Memorandum, to John Haines, From Henry Thomas, October 13, 1988. Status Report on Billings, Montana, SO2 Air Quality and Death of Nettie Lees.)

He said, "Although we will never know what prompted Ms. Lees attack, it is near certainty that other asthmatics in the Billings area do experience "exposures of concern." I am bothered that our previous characterizations of air quality in the Staff Paper and elsewhere tended to downplay such a possibility in urban areas away from large sources (e.g., power plants, smelters, etc.). "...air quality in Billings is probably worse than any or most urban areas.

From this EPA memorandum, it is clear that the warning signals had been hoisted, but were not heeded by either Montana State or EPA officials. This incident occurred before the "Hannah Bill" was passed, that exempted the area's polluting industries from the more stringent State



with respiratory problems should avoid exercising outside when the weather is cold and dry. He said that if people want to exercise during cold and dry weather, they should stay inside or get "away from Billings." Dr. Fennelly stated that research clearly shows that SO<sub>2</sub> aggravates respiratory diseases, such as asthma or bronchitis. He believes that high levels of SO<sub>2</sub> may also cause those ailments.

Three Lockwood schools -- grades K through 8th grade -- are located less than a mile from the Exxon refinery. In 1979, a health study showed that Billings' parochial school students and Lockwood students in the 3rd, 4th and 5th grades had poorer lung abilities than children in other communities, due to air pollution.

In 1991, the Lockwood Fire Department discovered, while conducting fire drills in the Lockwood schools, that 1% of the 1st and 2nd graders had breathing problems. By the time the students reached the 8th grade, 10% of the students had respiratory problems.

#### SUMMARY

Several factors contributed to our present situation as America's most polluted city. The complacency and ignorance about the pollution issue by our citizens was, and still is, one of the factors. Another was - and still is - the arrogance and greed of our major corporate polluters. They simply did not want to spend any money on pollution control technology, while at the same time reaping tremendous profits from their products and services. The third factor was the willingness of our public officials, both in Billings and at the State level, to accommodate industries' wishes, whatever they might be, in spite of the fact that laws had been passed to protect people's health. Industry recognized the weakness of the Billings City Council, Billings Chamber of Commerce, and our state legislators, and shamelessly exploited it. Each time industries were asked to comply with the Montana Ambient Air Quality Standards, they threatened closure of their facilities, and each time, they were given a reprieve, to the detriment of our citizens' health. It is partly on behalf of these disenfranchised people that we are here today.

Remember, we are not asking any of these major polluters to do anything here in Yellowstone County to reduce SO<sub>2</sub> emissions that they have not already done in other places where they operate.

I think you should also ask why a corporation that averages over \$5 billion a year in net income is allowed to operate in our city with 1950's - 1960's technology. They do not operate this way anywhere else in the world. They have treated the people of Billings like a Third World country. All of our polluters are in the top 15% of U.S. energy companies in net income. They have made fools of us all and have laughed all the way to the bank.

Another question that you, who are businessmen and women, should ask is: Why are you giving them enormous tax breaks that you are not

VINCE AND LOUISE LARSEN

910 COBURN ROAD  
BILLINGS, MONTANA 59101

FAX (406) 248-6823

RESIDENCE (406) 248-6822

1 December, 1994

TO ALL INTERESTED PARTIES:

A HISTORY - WHY AND HOW THE HANNAH BILL WAS PASSED

THE YEAR - 1979 Montana's Department of Health and Environmental Sciences and the MT Board of Health deemed the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO2) inadequate to protect the health of all Montana residents. (Ambient air = outside air)

The 1979 National Ambient Air Quality Standards (NAAQS) failed to recognize the serious health effects of short-term exposure to the corrosive gas for as little as 5 minutes. The majority of states with high levels of SO2 have long rejected reliance on federal standards and operate under more responsive state laws. (See STATE AIR QUALITY STANDARDS - A COMPARISON later in this letter)

THE YEAR -1980 In response, the Board of Health adopted the Montana Ambient Air Quality Standards (MAAQS) for SO2 to correct the federal health deficiencies. The three new state standards regulated pollution concentrations in a 1-hour period, a 24-hour period, and annually. These standards were adopted by the popular will of the people through their legislators.

THE YEAR - 1986 Six years later, the Billings/Laurel polluting industries, with the exception of Conoco, were still not in compliance with the state SO2 standards. In frustration, the Montana Board of Health ordered the State Air Quality Bureau (AQB) to enforce the state's SO2 standards in Yellowstone County. Industry balked so legislation was artfully crafted to exempt them from what they considered to be "unnecessarily stringent standards." HB 534 (The Hannah bill) was thus concocted by industry lobbyists and supporters which exempted industries in Yellowstone County from compliance with the Montana Ambient Air Quality Standards. Our industries would be allowed to continue operating under the status quo. This is what happened.

BILLINGS GAZETTE, 25 JUNE, 1986.

Exxon's Operations Manager, Henry Hubble, told the Gazette that "closing the Billings plant may be Exxon's only workable option if the company is forced to comply with Montana's air quality standards."

"...it probably wouldn't be viable to stay open. That's the bottom line right now." He said, "It would take \$10 to \$20 million to comply with the state standards."

Hubble said if the bill (Hannah bill) isn't passed, Exxon might balk at spending the money to comply with what it calls Montana's "unnecessarily stringent standards ..." "And, right now, anything we

#### EXXON'S POOR ENVIRONMENTAL RECORD IN BILLINGS

Exxon's Annual Reports from 1986 (the year the Hannah bill was proposed) through 1993, have provided a wealth of information about Exxon's operations and strategy worldwide. The quotations in the following pages are from these annual reports over this 8 year period. In conclusion, one would have to ask, "Why haven't they made significant pollution control improvements here in Yellowstone County where 1/8 of Montana's citizens reside?" Answer - they didn't have to.

Exxon's 1989 annual report stated that "...important technologies already developed by Exxon Research and Engineering for use in their own operations were receiving wider acceptance by world industry in 1989. These technologies, intended specifically to reduce sulfur dioxide and nitrogen oxide emissions into the atmosphere have been granted patents worldwide and are being licensed to others."

These new technologies are:

- \* "EXXON WET GAS SCRUBBING removes 70 to 90 percent of the sulfur dioxide and particulates from catalytic cracker flue gases. "Cat crackers" are a key part of most U.S. and many foreign refineries."
- \* "GO-FINING eliminates over 80 percent of the sulfur in light fuel oils used in power plants."
- \* "FLEXSORB gas treating reduces the sulfur compounds emissions in refinery gases and natural gas to as low as 10 parts per million."
- \* "FLEXCOKING converts heavy, high-sulfur fuels to gasoline, diesel and light fuel components with 60 to 70 percent of the original sulfur removed."

Note: These technologies were only listed to demonstrate that Exxon had developed the technology to reduce substantial amounts of SO<sub>2</sub> in the refining process. This enabled Exxon to operate in states and countries where air quality standards are as stringent or twice as stringent in some cases as the Montana Ambient Air Quality Standards.

"In all, some 21 more companies were either licensed or were moving forward with projects during 1989 that will use these Exxon technologies. This means that over 250 million pounds (125,000 tons) of sulfur and 20 million pounds of nitrogen oxide will not enter the atmosphere each year because of these projects."

"At Exxon, protecting the environment has been a priority concern for decades. We are dedicated to conducting all of our various businesses with a careful regard for their potential impact on the environment."  
(Exxon 1989 Annual Report)

Exxon Billings has a dismal environmental record in preventing air,

ground and groundwater pollution. In view of the arrogance demonstrated by Exxon over the Valdez incident, one would think that senior Exxon management would be concerned about their operations here. Several years ago, as an industry person, I wrote a five-page letter to the Exxon refinery division in Houston. I listed several concerns and pointed out the risk of liability in the Billings operations. Two days later, the local Exxon refinery manager called and told me, "...the biggest problem in Billings is secondary cigarette smoke!"

"Exxon has devoted considerable time and resources to environmental performance. Since 1970, Exxon's U.S. refineries have contributed to cleaner air by reducing emissions related to ambient air quality by an average of 87 percent. Significant improvements also were achieved at Exxon's refineries in Europe and the Far East where sulfur dioxide emissions have declined more than 50 percent since 1981." (1991 Exxon Annual Report)

During the Hannah bill hearings, Exxon supporters applauded Exxon's willingness to reduce SO<sub>2</sub> by 15 percent. Let's assume Exxon had been polluting as much as 17,000 Tons of SO<sub>2</sub> yearly in the early '70s, and if they had reduced their emissions 87 percent as the annual report stated, they would have reduced their emissions by 14,790 tons and now be emitting only 2210 tons of SO<sub>2</sub>. Instead, they emitted 11,594 tons of SO<sub>2</sub> in 1993. They clearly deceived the leaders of our community and it is obvious they had no intention of reducing their emissions. On the other hand, look at Conoco's exemplary record of 1902 tons of SO<sub>2</sub> in 1993.

Obviously, refinery improvements at the Billings Exxon facility were at the bottom of the list considering the numerous improvements made at other Exxon refineries elsewhere in the U.S. and around the world. Exxon has treated the people of Yellowstone County like a third world country.

Several months ago, during a meeting with the EPA, I asked if the Exxon refinery in Billings and the MPC Corette plant could relocate in any other State in the country, and operate the way they do here. The response was, "No, with the new source rule, they could not." The federal standards grandfathered in industry obsolescence, which, in effect, encouraged pollution anarchy such as that exhibited here by Exxon and Montana Power Company.

The technology for controlling SO<sub>2</sub> emissions (pollution control technology) has been available to industry for over 25 years. It is clear, after reviewing Exxon's annual reports to stockholders, that Exxon has utilized this technology in its own refineries (elsewhere) yet refused to clean up its Billings operations. The following took place in 1976 -- 28 years ago, at the Exxon Bayway refinery in New Jersey.

In 1976, Exxon installed a scrubber on the FCCU at the Bayway refinery

them here in Billings.

Exxon reported that production from the Cold Lake field "...reached a new high of nearly 73,000 barrels of bitumen (heavy oil) a day. Most of this is sold to refineries in the midwestern U.S. that are specially equipped to process heavy oil, including Exxon USA's refinery at Billings, Montana. Cold Lake blend (bitumen mixed with gas condensate for shipping) reaches Billings via a 120 mile pipeline completed in late 1985 from Edmonton to Sundre, Alberta, where it connects with existing systems. At year end, the refinery (Exxon Billings) was being supplied at a rate of 15,000 barrels a day. (Exxon Annual Report, 1986) Note: The field is now producing approximately 104,000 barrels per day. I would venture to guess that the bulk of Exxon's high sulfur heavy crude oil refined here in Billings comes from the Cold Lake field.

The reason Exxon has made an exceptionally high rate of return on their investment in Billings is that they have refused to upgrade this refinery as they have done elsewhere in the U.S. and worldwide. In the previous paragraph, Exxon mentioned that the Cold Lake crude was being "sold to refineries in the midwestern U.S. that are specially equipped to process heavy oil, including Exxon USA's refinery in Billings, Montana." This refinery is not specially equipped to process heavy oil nor control SO2 emissions. They just refine it anyway and are not held accountable to anyone for their excessive SO2 pollution. Exxon employees have told me for years that the Billings Exxon refinery has the best rate of return on investment of any Exxon refinery. Now I understand why!

Our community, however, has suffered and paid a price for Exxon's "enormous profits." The refining of large volumes of this high sulfur crude is the primary cause of the large SO2 emissions from the Exxon refinery. That situation can be easily corrected by installing Exxon's own pollution control technology. Conoco has voluntarily installed pollution control technology throughout its refinery. Cenex has just recently completed installation of its hydrodesulfurization (HDS) unit to produce cleaner burning fuels while reducing SO2 emissions.

"Conoco, Inc., received approval for a 24,000 b/d (barrels per day) expansion of its Cut Bank-Billings, Montana, crude pipeline to supply its refinery and an Exxon Corporation refinery at Billings and the Farmers Union Central Exchange refinery at Laurel, Montana. The expansion will boost throughput to about 100,000 b/d, with most added capacity for heavy oil. Conoco processes about 47,000 b/d at its Billings plant. Nearly 70% of that volume is heavy crude." (O & G Journal, 1 Feb., 1993)

Conoco is our largest refinery, and, as noted above, refines significant volumes of Cold Lake sour crude oil. Yet, in 1993, the 47,000 barrel-per-day Conoco refinery emitted only 1902 tons of SO2. The 42,000 barrel-per-day Exxon refinery emitted 11,594 tons of SO2.

Area allows one exceedence of the one-hour standard, while the Montana and Billings one-hour standard can be exceeded 18 times.

The Bay Area has a 3-minute standard of 0.50 ppm. Interestingly, all oil refineries, chemical plants, power plants and co-generation plants operate in compliance with this most stringent of standards. There isn't any reason why a 5-minute SO2 standard cannot be established here in America's most SO2 polluted city. Then we would have and enjoy clean air.

Exxon has historically complained about Air Quality Standards being too stringent in Billings. Ask them why they are and were willing to comply with the most stringent standards in California and in New Jersey.

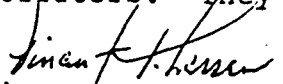
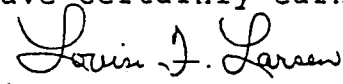
"Exxon continues to focus on long-term energy efficiency, and as part of this program, has recently installed co-generation projects in Antwerp, Belgium; Rotterdam, Netherlands; Santa Ynez, California; and has one underway in Billings, Montana. (1993 Exxon Annual Report)

BGI was not constructed for the purpose of reducing SO2. M.P.C. signed a \$1.1 billion, 35 year contract to buy electricity from the co-generation project involving Billings Generation, Inc., and the Exxon Refinery. This \$150 million co-generation project was a business decision by Exxon to profit from the huge coke pile that had accumulated at the refinery site. The estimated 3,000 ton reduction in SO2 was a fortuitous and timely coincidence since the contract was signed about the time the SIP process came into being.

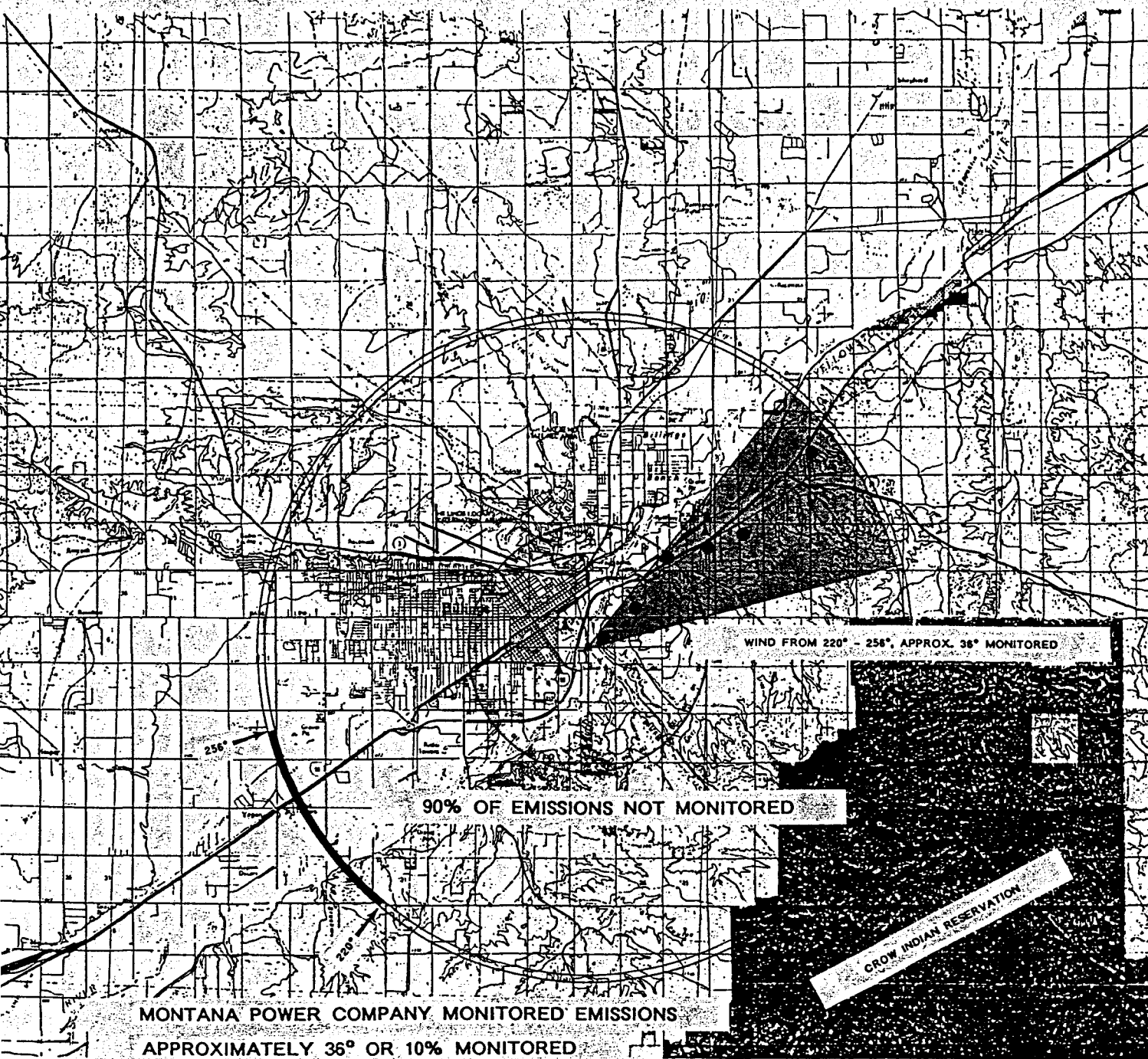
Today, Exxon is lobbying hard to keep our legislature from repealing the Hannah Bill and restoring the State standard to the citizens of Yellowstone County. What right does Exxon have to lobby against our health based air quality standards? They have even refused to sign the recently completed stipulations for the State Implementation Plan (SIP) that set new emission limits for our industries so that Billings will be in compliance with the weak National Ambient Air Quality Standards.(NAAQS) The SIP was mandated by the EPA in March, 1993.

Sooner or later, the truth on Exxon's scandalous corporate attitude toward the people of our city will find its way into the national media. And, sooner or later, our public will say to our local leaders that we have had enough of this corporate arrogance, blackmail and greed. This will happen whether or not our local Exxon manager remains on the Board of Directors of the Chamber of Commerce. This shameful chapter in our city's history must come to an end.

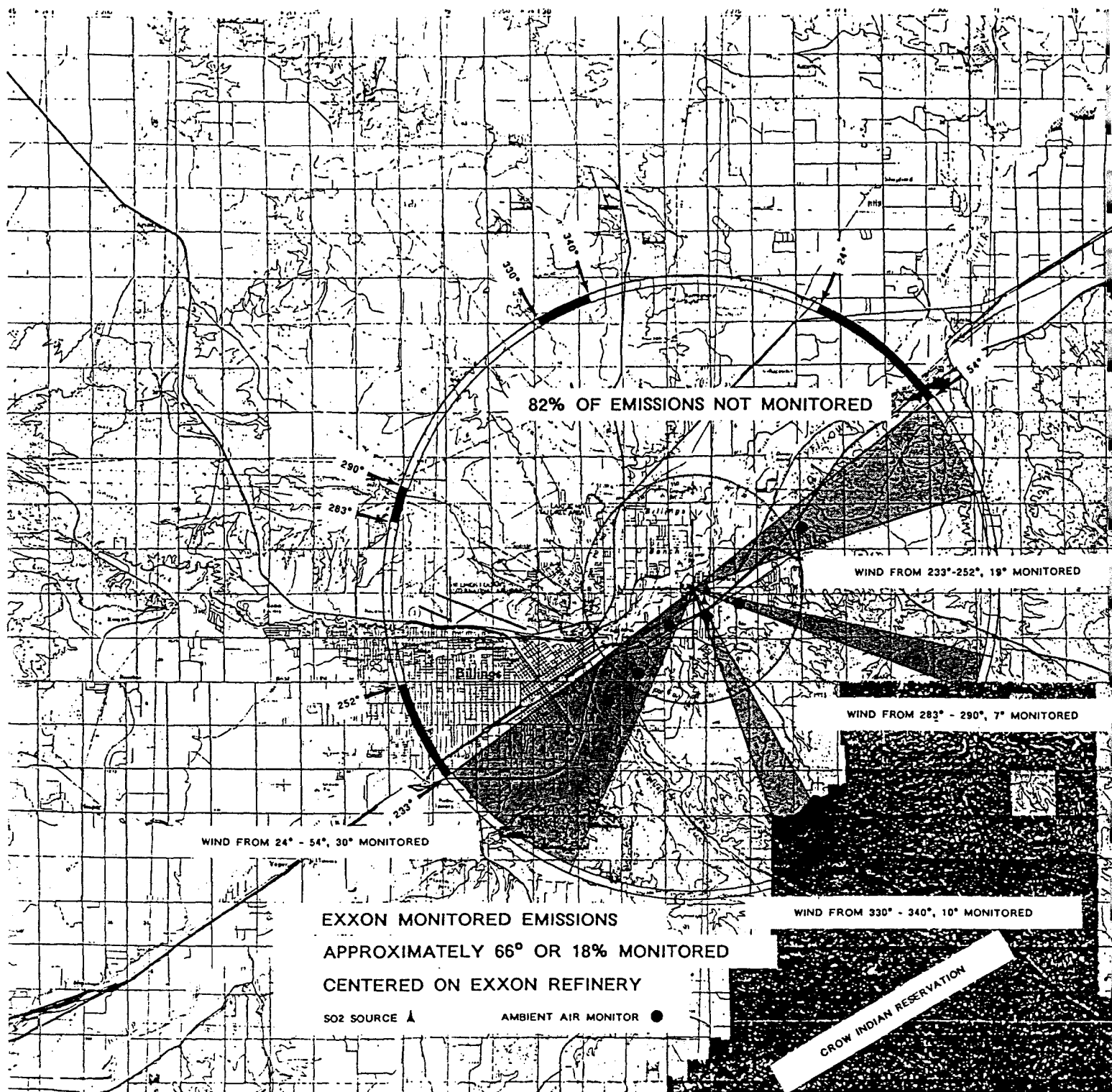
The Council of Economic Priorities, an organization based in New York City has identified Exxon as one of America's worst corporate polluters. They have certainly earned that title here.

   
Vincent T. and Louise F. Larsen

Billings, Montana











**TUESDAY**

January 17, 1995

■ SULFUR DIOXIDE IN BILLINGS

# Critic: Exxon refinery dirtiest

BY CLAIR JOHNSON  
Of The Gazette Staff

The Billings Exxon refinery is the dirtiest major refinery for sulfur dioxide pollution in the country, according to an analysis by Vince Larsen, a Billings resident working to restore stricter state air quality standards to the Billings-Laurel area.

Larsen's study of the pounds of sulfur dioxide emitted per barrel of oil refined shows that the Billings Exxon refinery emits 1.5 pounds of sulfur dioxide per barrel, which places it at the top of 124 U.S. plants refining 10,000 barrels or more daily.

Exxon, he said, does not operate in any other city or state the way it operates in Billings.

**"We've never had a monitored violation."**

—Steve Hart  
refinery manager

"It is a disgrace that Exxon, the most profitable stock corporation in the world, operates the dirtiest refinery in America right here in Billings," Larsen said in a recent letter to the Billings Area Chamber of Commerce. "This is an insult to all of us and demonstrates corporate arrogance and a blatant disregard for the well-being of our entire citizenry by one of America's once-great companies."

Exxon Refinery Manager Steve Hart disagreed with Larsen's conclusions. "We've never had a monitored violation," he said. "I think that is the most key thing."

Exxon's Billings refinery is in compliance with state and federal laws, he said, and those laws are designed to protect the public health.

Furthermore, Exxon will reduce its SO<sub>2</sub> emissions with its participation in a \$150 million cogeneration plant now under construction and a new state plan to control the pollutant Hart said.

Larsen, a petroleum geologist, recently compiled the analysis using emission data from the Environmental Protection Agency, refinery information from the

(More on Refinery, Page 5A)

## Ranking the refineries

Comparison of the Billings Exxon refinery with Exxon's three other U.S. refineries.

Refinery	Barrels per day	SO <sub>2</sub> tons per year	SO <sub>2</sub> lbs. per barrel	Rank*
Baton Rouge, LA	424,000	2,729	0.035	103
Baytown, TX	396,000	4,041	0.014	115
Benicia, CA	128,000	4,922	0.211	53
Billings	948,000	8,692	1.517	1

\* Rank based on pounds of SO<sub>2</sub> per barrel refined among 124 major refineries. SOURCE: Vince Larsen, EPA, Oil & Gas Journal, New Jersey Environmental Protection Agency, Texas Natural Resource Commission

— Z OVER —>

EXHIBIT 24  
DATE 2-13-95  
HB 430

Chairman Knox and members of the committee,  
My name is Anne Harris. I took time off from work today and paid my own way to come here. I've been a resident of Billings for the past fourteen years.

When we moved to Billings from Lewistown, my 4 year old daughter wound up in the hospital for a week with asthma and she'd never had more than a cold before that. I've lived with no ill health effects in inner city Detroit and next to oil refineries in New Jersey. I've had to buy a breathing machine since my move to Billings.

In cold weather, it is very hard to breathe for many and the air in Billings is much worse at night. One legislator told me people can move if they don't like Billings air. I have commitments to and in my city. Also in recent surveys conducted by the Community Needs Assessment Task Force, the majority of the population of Billings feel that the air is a serious problem that is not being addressed. Not all of those people can move. Children certainly can't pull up stakes on their own.

I urge you to support House Bill 430. I see no need for anyone's job to be affected. Exxon makes huge profits; as an Exxon stockholder, I know that. Jobs are now being lost because of pollution. Micron wouldn't even consider moving 3500 good paying jobs to Billings because of our air pollution.

I think it's hard to comprehend the pollution in Billings unless you live in it. Women's and children's lungs are more affected. I have never lived in a place where there is so much respiratory illness going around in certain parts of town. Before you vote, please think of tiny children struggling to breathe. That just is neither fair nor necessary.

It feels like some companies are playing a game with the residents of Billings as if we were disposable. We have a high death rate for pulmonary disease in my town. There are many people in Billings whose every day lives have become intolerable because of the air.

Please listen not just to industry lobbyists and representatives but to ordinary citizens as well. Please support House Bill 430. Thank you.

*Anne Harris*

Anne Harris  
2206 Patricia Lane  
Billings, Mt. 59102

EXHIBIT 25  
DATE 2-13-95  
HB 430

Testimony for the House Natural Resources Committee

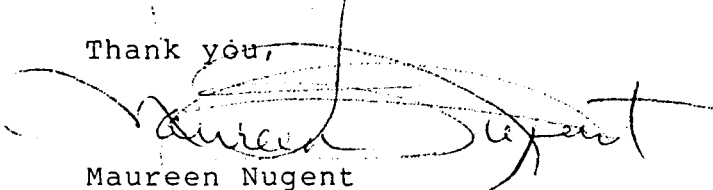
re: HB430, sponsored by Rep. John Bohlinger (R-Billings)

Please support this bill to repeal the Hannah Bill and return Billings-Laurel to the Montana state Air Quality standards. High concentrations of SO2 are harmful to pre-adolescent children, the elderly, and those with respiratory diseases. Nearly half the population of Yellowstone County, or some 38,500 residents, fall into one of these categories. At age 52, I am neither young nor elderly, nor do I have asthma or any other respiratory disease. However, I do have Multiple Sclerosis (MS), a degenerative nerve disease for which there is no known cause or cure.

I have difficulty breathing in Billings MT and El Paso TX, where the air pollution floats across the Rio Grande from the totally unregulated industries in Mexico. I have no trouble breathing the air in New York City, Eastern New Jersey, or San Francisco. Most of the members in my MS Support Group here in Billings have breathing problems. Members who attend meetings from out of town say they have no breathing problems until they reach Billings. One member of the group has already moved to Manhattan, where he can breathe freely. Most MS sufferers are tied to Billings by their need to be near medical care and full-time caregivers. Many are confined to wheelchairs and have become unable to perform even the most rudimentary functions for themselves. Needless to say, breathing difficulties add infinitely more stress to their existence.

Air Quality affects more than just the scientifically established "at risk" group. Please consider viewpoints other than those presented by the well-financed industries, who are concerned only with their obscenely high profit margins.

Thank you,

  
Maureen Nugent  
717 Beverly Hill Blvd  
Billings MT 59102

Testimony in Support of HB 430

EXHIBIT

26

DATE

2-13-98

HB

430

Submitted by: Frieda Parker

1516 1/2 Burlington Ave.

Billings, MT 59102

I support giving Yellowstone County residents the same air quality standards the rest of Montana's residents enjoy. I support HB 430 because:

1. There is a sulfur dioxide air pollution problem in Yellowstone County.
  - No one disputes the quantity of SO<sub>2</sub> emitted: about 34,000 tons per year. Even though SO<sub>2</sub> is colorless, there is not doubt it is in the air we breath.
  - The EPA mandated the SIP be redone because Yellowstone County was not in compliance with federal SO<sub>2</sub> standards, much less state standards.
  - The fact that Yellowstone County may have a carbon monoxide problem does nothing to mitigate the SO<sub>2</sub> problem. While carbon monoxide has its own set of health risks, it is not a respiratory irritant like sulfur dioxide.
2. Federal SO<sub>2</sub> standards do not adequately protect public health.
  - Federal SO<sub>2</sub> standards are currently under review. They have not been reviewed every five years as required by law and the EPA was successfully sued to get the SO<sub>2</sub> standards reassessed. Currently the review process is focusing upon the need for a national 5-minute standard to protect at-risk individuals from dangerous short-term acute exposures to SO<sub>2</sub>. The CASAC advisory committee recommended stricter regulations for problem SO<sub>2</sub> areas such as the Billings-Laurel area. The CASAC committee in no way stated current federal SO<sub>2</sub> standards were sufficient to protect public health. (See attached CASAC letter.)
  - Recent scientific research has shown that short-term acute bursts of SO<sub>2</sub> pollution is dangerous to those with impaired lung function such as the elderly, children, and those with respiratory illnesses. Standards averaged over time (24 hours, annually) do not prevent very high short-term bursts. Yellowstone County monitors have shown 5-minute averages to be .6 ppm and peaks over 1 ppm. Asthmatics can have reactions at levels as low as .25 ppm.
  - The Montana 1980 Board of Health, the American Lung Association and states such as California, Wyoming and North Dakota have all determined that federal SO<sub>2</sub> standards do not adequately protect public health.
3. Air pollution is bad for the economy.
  - Montana's second largest industry is tourism. Tourists do not like dirty air.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

4-84-25  
V-D-36

June 1, 1994

OFFICE OF THE ADMINISTRATOR  
SCIENCE ADVISORY BOARD

EPA-SAB-CASAC-LTR-94-007

Honorable Carol M. Browner  
Administrator  
U.S. Environmental Protection Agency  
401 M St., S.W.  
Washington, D.C. 20460

Subject: Clean Air Scientific Advisory Committee Closure on the  
Supplements to Criteria Document and Staff Position  
Papers for SO<sub>2</sub>

Dear Ms. Browner:

The Clean Air Scientific Advisory Committee (CASAC) at a meeting on April 12, 1994, completed its review of the documents: Supplement to the Second Addendum (1986) to Air Quality Criteria for Particulate Matter and Sulfur Oxides; Assessment of New Findings on Sulfur Dioxide and Acute Exposure Health Effects in Asthmatics; and Review of the National Ambient Air Quality Standards for Sulfur Oxides: Updated Assessment of Scientific and Technical Information, Supplement to the 1986 OAQPS Staff Paper Addendum. The Committee notes, with satisfaction, the improvements made in the scientific quality and completeness of the documents.

With the changes recommended at our March 12 session, written comments submitted to the Agency subsequent to the meeting, and the major points provided below, the documents are consistent with the scientific evidence available for sulfur dioxide. They have been organized in a logical fashion and should provide an adequate basis for a regulatory decision. Nevertheless, there are four major points which should be called to your attention while reviewing these materials:



Recycled/Recyclable  
Printed with SoyCandor, Inc. on paper that  
contains at least 50% recycled fiber

*Billings*

*EPA says  
it isn't*

sources of short-term sulfur dioxide spikes rather than imposing short-term standards on all sources. All of the nine CASAC Panel members recommended that Option 1, the establishment of a new 5-minutes standard, not be adopted. Reasons cited for this recommendation included: the clinical experiences of many ozone experts which suggest that the effects are short-term, readily reversible, and typical of response seen with other stimuli. Further, the committee viewed such exposures as rare events which will even become rarer as sulfur dioxide emissions are further reduced as the 1990 amendments are implemented. In addition, the committee pointed out that enforcement of a short-term NAAQS would require substantial technical resources. Furthermore, the committee did not think that such a standard would be enforceable (see below).

*Modeling will  
be used in  
Billings.*

4. CASAC questioned the enforceability of a 5-minute NAAQS or "target level." Although the Agency has not proposed an air monitoring strategy, to ensure that such a standard or "target level" would not be exceeded, we infer that potential sources would have to be surrounded by concentric circles of monitors. The operation and maintenance of such monitoring networks would be extremely resource intensive. Furthermore, current instrumentation used to routinely monitor sulfur dioxide does not respond quickly enough to accurately characterize 5-minute spikes.

The Committee appreciates the opportunity to participate in this review and looks forward to receiving notice of your decision on the standard. Please do not hesitate to contact me if CASAC can be of further assistance on this matter.

Sincerely,

*George T. Wolff*

George T. Wolff, Ph.D.  
Chair, Clean Air Scientific  
Advisory Committee

WE THE UNDERSIGNED REQUEST THE MEMBERS OF THE MONTANA LEGISLATURE  
TO SUPPORT THE REPEAL OF THE HANNA BILL (H.B.534) AND AN EXHIBIT  
CLEAN AIR COMPLIANCE ACCORDING TO STATE STANDARDS.

DATE 2-13-95

NAME	ADDRESS	PHONE
1. <del>James M. Stiehm</del>	544 1/2 Ave E	245-5010
2. John M. Stiehm	RMC A223	238-7243
3. <del>Oliver Curry</del>	RMC #122A	238-7220
4. <del>James M. Stiehm</del>	RMC 210A	238-7230
5. <del>James M. Stiehm</del>	<del>RMC</del>	<del>238-7228</del>
6. <del>Robert L. Stiehm</del>	21 King Arthur	256-6302
7. <del>Robert L. Stiehm</del>	1001 24th St. W #11	1050-5327
8. <del>Frederick R. Jansen</del>	3703 Jean Lane	259-3440
9. <del>Lucy L. Edrins</del>	833 W. 8th	259-9067
10. <del>Major Major</del>	1701 Patricia	248-8538
11. JON BECKER	3409 1ST AVE. N.	256-6219
12. <del>Ken Hutchinson</del>	P.O. Box 22793 Billings	652-3417
13. <del>Marcia Meche</del>	P.O. Box 476 Laurel	652-6289
14. <del>Scott Rothstein</del>	P.O. Box 476 Laurel	652-6289
15. <del>James M. Stiehm</del>	2303 Lincoln	252-5837
16. <del>Robert L. Stiehm</del>	2303 2ND Billings	967-7950
17. <del>Robert L. Stiehm</del>	200 FAIR PARK DR. Bldg	652-4473
18. <del>Robert L. Stiehm</del>	2515 Homer	252-3931
19. <del>Robert L. Stiehm</del>	81 Mtn. View Bldg	259-8226
20. <del>Robert L. Stiehm</del>	747 MOUNTAIN VIEW LN. BILLINGS	248-4428
21. <del>Robert L. Stiehm</del>	P.O. Box 35 Wyo. Pl.	343-5601
22. <del>Robert L. Stiehm</del>	52 Charlotte St	248-2232
23. <del>Robert L. Stiehm</del>	52 Charlotte St	248-2232
24. <del>Robert L. Stiehm</del>	31 1st	252-5765
25. <del>Robert L. Stiehm</del>	2444 W. 8th	252-4473
26. <del>Robert L. Stiehm</del>	307 Alderton	248-3311
27. <del>Robert L. Stiehm</del>	3544 Toboggan Rd.	248-3802
28. <del>Robert L. Stiehm</del>	29 1/2 F. Ave N #B	252-4473
29. <del>Robert L. Stiehm</del>	2309 Ave C #2 Bldg	652-1643
30. <del>Robert L. Stiehm</del>	2921 Rimpier P. Bldg	252-4473
31. <del>Robert L. Stiehm</del>	217 Clark	245-4237
32. <del>Robert L. Stiehm</del>	220 Leeson	258-6239

WE THE UNDERSIGNED REQUEST THE MEMBERS OF THE MONTANA LEGISLATURE  
TO SUPPORT THE REPEAL OF THE HANNA BILL (H.B.534) AND ASK FOR  
CLEAN AIR COMPLIANCE ACCORDING TO STATE STANDARDS.

	NAME	ADDRESS	PHONE
1.	Kris Decker	2635 Terry	656-2015
2.	Ann Githals	5843 Deer Park Dr.	259-4259
3.	Kristin Page-Mei	107 Terry Ave	245-2239
4.	Holly Huernkens	3216 Ramrock Rd	656-2861
5.	Holly Huernkens	3216 Ramrock Rd	656-2861
6.	Kate Wright	PO Box 1874 Bozeman MT	—
7.	Marilyn Lake	1247 Wick Lane Blot	259-7191
8.	Susan Thomas	538 Park Lane Bldg	259-7368
9.	Rob Geest	PO Box 1711 Kalispell, MT	462-57-1727
10.	Carl Kochner	538 Park Lane, Billings MT	406-259-7368
11.	Andrea Stander	541 Riverside Rd Billings	59101 252-6276
12.	Maire Johnson	6103 12 mile Rd Billings	59105
13.	Diane Dale	1025H Cold Stream Circle Emmaus Pa. 18049	
14.	J H NIE	HARNEY 3124 3RD AVE	MT 59105
15.	Peter Aengst	715 S 3rd Bozeman MT	59705
16.	Alan Trumbull	PO Box 959 Billings MT	59103 259-3515
17.	JEFF HUNES	1135 PRINCETON BILLINGS MT	59102 259-3291
18.	Cristi Hunes	1135 Princeton Billings MT	59102 259-3291
19.	Dave Pauli	4235 Zephyr Billings MT	59106 652-3195
20.	Shirley Rose	Box 265 PAULY MT	59747 685-3485
21.	Louise Dillay	Box 2013A Livingston MT	59247 532-114
22.	Mike Chast	PO Box 1872 Bozeman	59771
23.	Ed Mannin	PO Box 294 Billings	59103
24.	ISOBEL MORRIS	914 N 18 BLGS	59101
25.	SUSAN BENTZ	914 N 18 BLGS	59101
26.	Diane Theobald	310 Beverly Hill Bldg	59101 259-2372
27.	Georgia J. Frasier	2735 N. 1st Ad. Warden, MT	59088
28.	JUDY SILVERMAN	1041 STRANDERRY, BGS	59105 252-3107
29.	ATLAS	" "	" "
30.	Dubois, Todd	3700 Changer Ave. W Bldg MT.	656-1022
31.	Carlyle Dwyer	PO Box 21635 Bldg MT	59104 669-3253
32.	Margaret Banning	P.O. Box 1010 Bozeman, MT	59001



WE THE UNDERSIGNED REQUEST THE MEMBERS OF THE MONTANA LEGISLATURE  
TO SUPPORT THE REPEAL OF THE HANNA BILL (H.B.534) AND ASK FOR  
CLEAN AIR COMPLIANCE ACCORDING TO STATE STANDARDS.

	NAME	ADDRESS	PHONE
1.	<del>John Jones</del>	<del>102 Clubhouse Way</del>	<del>259-1257</del>
2.	Lisa Kirchberg	2912 6th N.W.	252-7400
3.	Joyce P. Henderson	2912 6th Ave E	
4.	Bob Bailey	619 N 31st	256-5058
5.	Brenden Watne	2513 Hoover	252-3931
6.	Dave Jensen	1342 Center Ave	252-5899
7.	Roxas Kickett	530 Cook	245-8203
8.	William Berko	41 Lewis Ave	252-8249
9.	Sunny Dickson	319 Jackson	256-1971
10.	Samuel Cotton	4214 Bennett	373-5846
11.	Michelle Frank	3907 Ladd Ln	248-8063
12.	Chris Howell	1024 N. 31st	252-4031
13.	Amber Lefthouse	314 Terry Ave	256-7756
14.	Rachel Smearle	1119 Erickson St	252-6112
15.	Laura Strong	1228 Sun Valley	259-3887
16.	Donna Brown	1769 Broadview	245-8143
17.	KATE M HURT	26 BERK	245-2648
18.	David Lohmer	4121 Milrose Ave	245-2298
19.	Jimmy J. Pithon	Pox 198 BL MT 59008	446-2258
20.	Carole Brutto	113 Ave E. Billings MT.	59101-256645
21.	Ken Briggs	1236 N. 31st BL 65	248-9227
22.	Mark Van Deyn	218 Ave B	245-7182
23.	Joyella Rose	2528 Poly Bl 95	652-3528
24.	Ben Hore	614 Broadwater	Billings
25.	Mike Hore	1135 Princeton	259-3291
26.	Maya M. Weber	2645 Clark Ave	656-2576
27.	Colleen	519 Clark Bl 95 MT	245-2395
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29.			
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WE THE UNDERSIGNED REQUEST THE MEMBERS OF THE MONTANA LEGISLATURE  
TO SUPPORT THE REPEAL OF THE HANNA BILL (H.B.534) AND ASK FOR  
CLEAN AIR COMPLIANCE ACCORDING TO STATE STANDARDS.

	NAME	ADDRESS	PHONE
1.	Pamela Blyden	609 Miles Ave	259-8659
2.	Joyce Knight	605 Mile Ave	252-6591
3.	Bonnie Lempert	239 Custer	
4.	Evelyn Veckes	808 Broadwater	259-7787
5.	Marion Arnold	805 Broadwater	245-7497
6.	Jim Hartung	620 Burlington	256-9350
7.	Jack Johnson	2303 1st Ave	259-8578
8.	Shirley	4011 2nd Ave. S.	256-3936
9.	Ann C Marshall	38 Ave C	252-7700
10.	May Jo Maute	HC54 Box 38 C, Columbus	3224861
11.	Q J W. Lally	270 Lehigh	259-6239
12.	Stephen E. Bradley	3903 2nd Ave S	252-3936
13.	Bonnie Lempert	239 Custer	
14.	Doreen M. Kueffer	502 Burlington	245-7140
15.	Stanley Bruce	821 Broadwater	252-8942
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17.			
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STATEMENT OF JAMES PHELPS, DIRECTOR, YELLOWSTONE VALLEY AUDUBON SOCIETY, made at City Council meeting, Billings, MT, Mon., May 24, 1993

EXHIBIT 2-13-93  
DATE 2-13-93  
HB 430

My name is James Phelps. I am a member of the Board of Directors of the Yellowstone Valley Audubon Society, a broad-based conservation and environmental organization. We have some 500 members in the territory described by our name. I have authority to speak for the organization. I think I can make my point by describing a bit of personal history. I have resided in Billings for nearly 23 years; prior to that I lived in Pocatello, Idaho, for 24 years. Both cities had or have problems with air pollution. At Pocatello, the main problem was with two plants northwest of the city that made phosphorous rock into elementary phosphorous and phosphate fertilizer. The plants were built in the early 1950s and contributed to the economic well-being of the city. There were jobs! Not so apparent were the problems caused by air pollution. No one knew about such things. Jobs were what counted, you see. My wife developed bronchitis and so did the children after they came along. We were downwind from the plants. I didn't develop too many problems, except I seemed to catch colds more often after the plants were up and running. I thought later my trouble were less because my job required I leave town several times a week for periods of 11 to 20 hours or more. I could always tell when I neared the terminal; when returning, my nose told me!

By the time we moved to Billings, the elder of the two children was grown. We sent him to school in Oregon, primarily in an attempt to cure his problems, which we were told could become asthma if they worsened, but he has respiratory problems to this day.

When I moved to Billings in 1970 my first desire was to live at Laurel, because a good share of my work would be at the railroad shops and yards there. But the refinery made us have second thoughts. We decided to live in Billings, being very careful to be upwind from the refineries. You see, by that time, we were learning something about air pollution. We should have, we spent plenty on doctor bills. My throat, ear, and nose physician at Pocatello told me that with the arrival of the two plants his practice became almost more than he could handle. And even though we live upwind, so to speak, we still pay a price. My own price isn't quite as high, although since retiring I find I get more colds. Until I retired I was like a good many men who have jobs that require travel; I was away from the pollution more than I experienced it.

The point of all this personal history is to ask a question: Should we pay for pollution directly by having our plants and industries control it, or should we pay indirectly by increased medical bills and the handicaps that go with not being well?

By the peculiar economic analyses employed, the continued growth of the medical facilities here contributes directly to the Gross National Product. Have there been any surveys made of the effect of these air pollutants upon the people through studies of the patients treated?

Controlling pollution is not cheap; the people will pay. I would rather pay directly in higher costs for the product I use, if I so choose, rather than indirectly through medical costs. I can do little about it, but the gasoline I use is made by the refinery that is spending a good deal of money to bring its plant up-to-date. I did not patronize, if I had a choice, outlets that sell the product of the refinery that threatens to close if we persist in our efforts to attain better air quality. Now I must take again; despite its threats, this refinery is reducing its emissions; is there a message there? It is the coal-fired electric generating facility whose emissions are increasing (Billings Gazette, Sunday, May 23, 1993).

When are we going to do something about what are "violations"? When are we going to get "compliance"? The promised health study was never financed, much less made. New industry cannot come in until SO<sub>2</sub> emissions are reduced by the existing industries.

You are the first step. Go on record as wanting our standards to be the same as the rest of Montana. In the long run, we will be a better city for it.

JAMES PHELPS  
2110 Bradbrook Court  
Billings, MT 59102

# MONTANA ASSOCIATED PHYSICIANS

1242 North 28th Street  
Billings, Montana 59101  
406-248-1635  
1-800-648-MAPI (6274)  
FAX 406-248-1036

EXHIBIT 29  
DATE 2-13-95  
HB 430

February 13, 1995

The Honorable Dick Knox, Chairman  
House Natural Resources Committee  
Montana State House of Representatives  
Capitol Station  
Helena, MT 59620

Dear Mr. Chairman and Members of the House Natural Resources Committee:

It is my understanding that HB 430 (Bohlinger) has been introduced and is scheduled soon for hearing before the House Natural Resources Committee.

This bill, which addresses Sulfur Dioxide (SO<sub>2</sub>) standards, has generated significant debate in the Billings area, although the bill as drafted applies statewide with regard to exceedences. An issue which I would like to raise on behalf of the Montana Associated Physicians, Inc. (MAPI) an association of over 100 physicians in the Billings area generally, and the pulmonologists specifically, within our association pertains to the issue of health. I am Executive Director of MAPI.

Proponents for returning the Billings area to state standards on a 24-hour and annual average have stated that the existing federal standards are not adequate to protect public health in Yellowstone County.

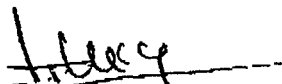
The existing federal standards are specifically developed by the U.S. Environmental Protection Agency (EPA) to protect public health. The standards are designed to protect the health of the most sensitive population, with a margin of safety. By law the EPA has a panel of independent, nationally recognized health experts who, every 5 years, must review the latest scientific studies and recommend revisions, if any, in the air quality standards to protect the public health. This panel of experts is the Clean Air Scientific Advisory Committee (CASAC).

The CASAC reviewed the latest studies on SO<sub>2</sub> during 1993 and 1994. These studies focused on the clinical and public health consequences of the effects of five to ten-minute concentrations of SO<sub>2</sub> on exercising asthmatics. CASAC unanimously concluded that a new short-term (5 to 10 minute) SO<sub>2</sub> standard was not required and did not recommend changing the other existing federal standards.

The Honorable Dick Knox, Chairman  
February 13, 1995  
Page 2

Obviously, this is the Committee's decision as to changing the federal standards in the Billings area. This letter is intended to separate fact and hyperbole regarding the existing federal standards and to confirm that they are health based.

Sincerely,

  
Lawrence T. McGovern  
Executive Director

LTM/jm

EXHIBIT 20  
DATE 2-13-95  
HB 430

AMENDMENT TO HB 430

Insert in language on modeling:

When modeling for emission control strategies, stack heights and conditions existing or approved for construction on or before July 1, 1995, shall be used.

EXHIBIT 31  
DATE 2-13-95  
HB 430

**TESTIMONY TO THE HOUSE NATURAL**  
**RESOURCES COMMITTEE**  
**ON H.B. 430**

**Stephen P. Hart; Manager, Billings Refinery  
Exxon Company, U.S.A.**

**February 13, 1995**

Mr. Chairman, members of the Committee, my name is Steve Hart and I am Manager of the Exxon Billings Refinery. I appreciate the opportunity to express our opposition to H.B. 430. Exxon believes that it is imperative that all evidence surrounding the SO2 issue and this bill be fully and fairly presented. After all the information is heard, we believe you will agree that this legislation is neither scientifically, environmentally, nor economically justified.

The Billings Refinery has been a good corporate citizen of Montana for nearly 50 years, and our 250 employees and their families are concerned members of the community who share an interest in a safe and healthy environment. We are proud of our excellent environmental record and are committed to comply with all SO2 and other laws. These laws and regulations, however, should be justified by scientific evidence and be based on a sound analysis of costs and benefits. This piece of legislation does not meet this fundamental test.

H.B. 430 imposes additional state regulation on industry and citizens, both in Billings and throughout the state. Billings SO2 standards would be forced to go beyond federal standards which are already required by law to protect public health; the state-wide 1-hour SO2 standard would also be tightened without clear scientific justification; industry would be provided only 3 years to develop, permit, construct, and operate complex new control technology; and over-predictive computer modeling programs--versus real-life monitoring data--would be required to determine compliance. These provisions are excessive, unnecessary, and scientifically unwarranted.

A review of the facts will instead show that: existing Billings and state SO2 standards are specifically designed to protect public health and the environment; Billings has consistently met these health-based standards and a program is already in place--the State Implementation Plan (SIP)--to ensure continued protection of public health in the future; Billings SO2 air quality is improving and emissions will continue to markedly decrease under existing laws and regulations. In short, an effective SO2 program which protects public health, while maintaining a strong state industrial and economic base, is already in place and doing its job. We urge you to let it continue to work.

I would like to briefly review a few facts which we hope will guide your deliberations on this legislation.



The fact is that existing Billings SO<sub>2</sub> air quality standards are specifically set by the U.S. Environmental Protection Agency to protect public health and the environment. Federal law requires that these standards "accurately reflect the latest scientific knowledge", "allow for an adequate margin of safety", and protect the "most sensitive members of the population"--in the case of SO<sub>2</sub>, exercising asthmatics. Existing Billings SO<sub>2</sub> standards must also be thoroughly reviewed at five-year intervals and be revised when scientifically justified. A review committee comprised of independent, nationally recognized health experts and scientists--the Clean Air Scientific Advisory Council, or CASAC for short--is required to assist in this process by recommending changes to the standards. During 1993 and 1994, CASAC comprehensively evaluated the latest scientific studies and recommended that no changes be made to the current standards.

The evidence also shows that Billings air quality has consistently met these health-based federal standards. In over 12 years of continuous operation, a network of air quality monitors selectively placed by the state in areas of high SO<sub>2</sub> concentration have never recorded a violation of the standards. Consequently, the EPA considers Billings as being "in attainment" for SO<sub>2</sub>. Forty-seven other U.S. cities do not meet these same standards. Based on the latest year of data, the average SO<sub>2</sub> air concentrations in the City of Billings are only 15% to 40% of the health-based standard. Readings are lowest in the most populated areas of the city.

Billings SO<sub>2</sub> air quality has, in fact, significantly improved under existing laws and regulations, and emissions are expected to continue to markedly decrease in the future. Over the past several years, local industry has invested \$480 million in projects which reduce SO<sub>2</sub> emissions. The air quality benefits of these projects are reflected in this year's emissions data. Yellowstone County SO<sub>2</sub> emissions in 1994 were at their lowest levels in at least 15 years, down 25% from 1993 levels. Exxon, in partnership with Billings Generation, Inc., has invested \$150 million in a cogeneration plant, which upon startup in 1995, will reduce total Billings/Laurel emissions by another 10%.

What about future protection of public health? A process is already in place--the State Implementation Plan (SIP)--which will ensure that Billings remains in compliance with the federal health-based SO<sub>2</sub> standards and air quality continues to improve. The SIP utilizes theoretical computer modeling to determine SO<sub>2</sub> projections under highly unlikely worst case conditions. Based on this data, the EPA in 1993 required that the Billings SO<sub>2</sub> SIP be revised. Exxon and other Billings industry have worked closely and diligently with the state over the past two years to develop an effective plan. The state Air Quality Bureau and EPA agree the completed SIP will assure future compliance with federal standards, as well as reduce emissions, set legally binding emissions limits for each SO<sub>2</sub> sources, and require continuous emissions monitors at each facility. When fully implemented by 1998, the plan is expected to result in overall Yellowstone County SO<sub>2</sub> emissions which are 30% below pre-plan levels. Exxon Refinery emissions are anticipated to be 45% below historic levels. We urge this committee to allow the SIP process time to work, and its SO<sub>2</sub> benefits realized, before unnecessarily considering additional costly and unwarranted controls.

The evidence is indeed clear--existing SO2 laws and regulations are effective and meeting their objectives. Public health has and will continue to be protected. A process is already in place which ensures that SO2 standards reflect the latest scientific data. Billings air quality is improving and SO2 emissions will continue to markedly decrease in the future. At the same time, current SO2 standards reflect the unique and vital economic importance of local industry. Unwarranted SO2 standards would result in an unjustified burden on local companies, their employees and contractors, and the community. Any attempts to impose stricter standards on essential local industry should be based on sound scientific evidence and a careful weighing of costs and benefits. H.B. 430 simply does not meet this test. I urge your defeat of this bill.

STATEMENT  
IN OPPOSITION TO HOUSE BILL 430

EXHIBIT 32  
DATE 2-13-95  
HB 430

Good Afternoon! I am Dr. Carlton D. Grimm. My employer is the Montana Power Company. My home residence is in Butte, Montana. I have worked in areas of pollution control and permitting for coal fired electric generating facilities the past 22 years.

I am stating my opposition to House Bill 430 (the Bollinger Bill) because the Bill calls for an arbitrary change in the number of exceedences of the State one-hour ambient SO2 standard already in place in the Billings-Laurel area. This change of going from 18 to three exceedences will affect more sources and more places throughout the state than just the Billings-Laurel location. I am against tinkering with this standard.

This Bill calls for dispersion modelling for demonstration of ambient standard compliance. One must remember that the dispersion models do over-predict the magnitude of the ambient levels. In setting the Federal ambient standards there is a margin of safety included and the overprediction inherent to the mathematical dispersion models introduces another safety factor. ✓ MPC's J.E. Corette coal fired generating facility is across the Yellowstone River and immediately west of high terrain. The EPA mandated State Implementation Plan review with dispersion modeling reduced this

plants potential to emit from 14000 tons of SO2 to 5000 tons. The high actual emission two years ago at this plant was just over 9000 tons. The emissions for 1993 and 1994 were approximately 8500 tons and 6700 tons respectively. The State Air Quality Division placed an ambient monitoring station on the high terrain east of the plant, approximately 1700 feet distant horizontally and 150 feet higher vertically than the coal fired plant's stack top. This monitoring station, to my knowledge, has not seen an exceedence of the Federal ambient standards with the J.E. Corette's present emissions the past year and a half nor to the best of my knowledge has there been values over the state 24 hour or annual standard had those standards been in place. My point is the dispersion model predicted exceedences in that high terrain area with current emissions and the ambient monitor has not recorded any violations or exceedences. I can cite similar situations for ambient modelling predictions exceeding ambient monitoring values in the

Colstrip area. *REPEALING THE HANFRA BILL WILL REQUIRE AN ADDITIONAL 40% REDUCTION IN MPC'S EMISSIONS AND MAY SERIOUSLY QUESTION THE ECONOMIC VIABILITY OF THIS FACILITY*

The time allotted to bring a source into compliance in the Bill is too short. The EPA SIP process mandates 5 years and that is a tight constraint. Remember that it takes a year or two under either modeling or monitoring to gather data to know what reductions will be required. Then companies such as ours must obtain internal approvals, including budget approvals, do engineering and design studies on feasible options, order

equipment, obtain required permits, install and startup that equipment. A five year window is indeed very tight and three years *or Three Months* is impractical.

One final thought, there are seven ambient SO2 monitors in the Billings-Laurel area---this makes the area one of the most monitored locations in the United States. MPC has an emission monitor on it's stack and the other industries will put emission monitors on the major emitting sources under the Federal SIP. Let's monitor the results of the lengthy Federal SIP process and not introduce an additional confounding factor such as this proposed legislation.

Thank you.

**ARGUMENTS IN OPPOSITION TO H.B. 430  
"AIR QUALITY STANDARDS FOR SULFUR DIOXIDE"**

**Changes in existing standards are neither scientifically, environmentally, nor economically justified**

**Existing Billings SO2 standards are specifically required by federal law to "protect the public health"**

- Standards must: provide an "adequate margin of safety"; protect the "most sensitive members of the population"; and "accurately reflect the latest scientific knowledge"
- E.P.A. must conduct a thorough review of standards at five year intervals
- Scientific review committee--Clean Air Scientific Advisory Committee (CASAC)--must be appointed to "review the standards and recommend any revisions as may be appropriate"
- CASAC comprised of leading health experts and scientists

**Billings SO2 air quality has consistently met federal health-based standards**

- Monitors have never recorded a violation--Billings is "in attainment" for SO2
- Lowest readings occur in the most populated parts of the city--15% to 40% of the standard

**Billings SO2 air quality has and will continue to markedly improve under existing laws and regulations**

- Local industry has recently invested \$480 million in SO2 reduction projects
- 1994 emissions are the lowest in over 15 years; 25% reduction from 1993
- \$150 million Exxon/BGI cogen project will reduce emissions by another 10%

**Process is already in place--State Implementation Plan (SIP)--which will ensure future Billings compliance with health-based SO2 standards and reduce emissions even further**

- SIP nearing completion; all provisions to be fully implemented by 1998
- SIP will: assure future compliance; result in substantial SO2 reductions; set legally binding limits for each facility; require continuous emissions monitors
- By 1998, SIP will result in SO2 reductions 30% below pre-plan levels

**Existing SO2 standards reflect unique and vital economic importance of local industry, while still protecting public health**

- Unwarranted additional standards, not based on sound science and careful cost/benefit analysis, would result in unjustified burden on companies, employees, and community

EXHIBIT 34  
DATE 2-13-95  
HB 430

P.O. Box 1178  
Billings, MT 59103  
January 31, 1995

Representative John Bohlinger  
Capitol Station  
Helena, Montana 59620

Dear John:

As we understand it, you are pressing ahead with a legislative proposal to repeal the "Hannah Bill" based upon your perception of health considerations and a constitutionality question. We would like to voice some thoughts for your consideration.

The EPA established a Clean Air Scientific Advisory Committee (CASAC) to oversee the Federal SO-2 standards. This highly regarded independent group recently found no need to impose a more strict, 5-minute standard even for exercising asthmatics. Bear in mind that Montana's standards for SO-2 are 50% more strict than the federal standards. To embrace three local doctor's statements that Billings' air is a danger, as you say, may require some definitive studies detailing where and when the asthma attacks occurred and how the doctors determined that SO-2 was the main or sole causative. For example, do the doctors' records reflect the reduction in Billings' SO-2 levels from 1993 to 1994, or the breakdown at the Conoco Refinery on December 14, 1994?

Your concerns about two air quality standards being unconstitutional may be valid. However, if your legislation places Billings under more strict air quality requirements than areas in Montana that don't have models, that would seem to be unconstitutional. Consider how many modeled violations occurred in Billings compared to the monitored violations. If the model under predicted, is it fair to the asthmatics? If it over predicted, is it fair to industry? If you are prepared to mandate models for every air shed in Montana, you have more courage than we do.

Modeling as a predictive tool is valuable if used properly. But if it is an accurate tool, why is the "worst case" scenario used to forecast violations? If ground monitors record exceedances, the monitors in each industry's stacks (as required by the State Implementation Plan) could pinpoint where the excess SO-2 came from. Under a monitored SIP, there can be no "finger pointing".

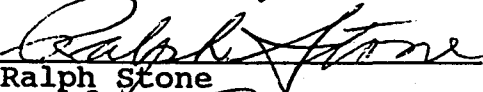
Your statement that reducing the levels of SO-2 in the Billings Airshed would allow new SO-2 emitting industries to move in is illogical. How could you rationalize to your asthmatic constituents bringing in other sources of "pollution"? How could you rationalize forcing one industry to lower its SO-2 emissions (at great cost) and then bring in another industry that would emit SO-2 into our air?

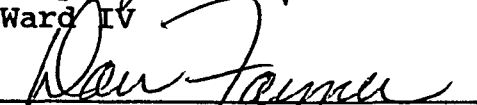
BOHLINGER, REP.  
JANUARY 31, 1995  
PAGE TWO

Again, we ask that you look carefully at the improvements in SO-2 levels that have occurred in Billings and at the prospects of continued improvements and then keep the Hannah Bill in place at this time.

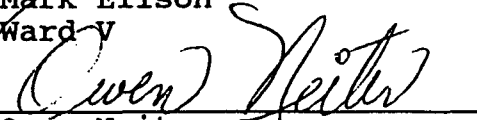
Sincerely,

  
Norm Kolpin  
Ward V

  
Ralph Stone  
Ward IV

  
Dan Farmer  
Ward II

  
Mark Elison  
Ward V

  
Owen Neiter  
Ward IV

  
Mark T. Kennedy  
Ward III

BCC:bm  
cc: Billings City Council  
YELLOWSTONE COUNTY DELEGATES





MONTANA ASSOCIATION  
OF REALTORS®

*The Voice for Real Estate™ in Montana*

EXHIBIT 35

DATE 2-13-95

HB 473

EXECUTIVE OFFICES

208 North Montana, Suite 105  
Helena, MT 59601

Telephone 406 443-4032  
In Montana 800-477-1864  
Fax 406 443-4220

February 13, 1995

The Honorable Richard Knox, Chairman  
Committee on Natural Resources  
Montana House of Representatives  
Capitol Station  
Helena, Montana 59620

RE: House Bill 473

Dear Chairman Knox,

HB 473 is reasoned legislation that addresses environmental concerns while taking into account the needs and rights of property owners in Montana.

The Bill:

- Section 2. Adds language to the purpose section of the statute that protects the rights of property owners. The section will provide Legislative guidance to Montana Courts when the courts is asked to interpret the subdivision statute. The new section assures that, for the first time, the rights of property owners will be taken into account when local governments review requests for subdivisions.

- Section 3. Adds property transfer by gift of agricultural land so long as the land is continually used for agricultural purposes. This section will ease the current inability of persons to transfer agricultural land on to the next generation without subjection to serious gift and estate tax consequences.

- Section 4. This section requires that developers complete improvements with a subdivision before approving a final plat. In the event bonding is used to provide security for improvements, the section modifies the bonding requirements by requiring incremental bonding and permitting bonding of projects finished in phases. This section will assure that improvements are completed while keeping development costs in sync with revenue flows.



- Section 5. This section lowers costs where five or less parcels are subdivided or readjusted by limiting environmental assessments (EAs) to major subdivisions. The section also asks that local governments, within statutory limits, clearly articulate EA criteria via rule making. This section can reduce the cost of the division of small tracts by as much as \$1,500.00 per tract.

In addition, the section will give Montana landowners a clearer understanding of the local rules and regulations they must follow when subdividing larger parcels of land than is the case today. The section also gives local governments more flexibility in adopting subdivision rules that meet local needs.

A concern mentioned by some is that a subdivider will be able to escape environmental review of a large number of land divisions by creating minor subdivisions (five parcels per year over a period of years). Under 76-5-505 MCA (not subject to amendment by this bill) local governments can impose reasonable requirements for minor subdivisions created from a tract of land. Thus, local governments retain the right to require that environmental information be developed on minor subdivisions of a tract of land. Furthermore, under 76-6-608 MCA, local governments retain the ability to determine the extent to which reasonable environmental information is necessary before approving additional subdivisions of a tract.

Finally, we note that public hearings are still required under 76-5-609 MCA for additional (beyond the first) minor subdivisions of a tract of land. The public has a clear opportunity to comment on and therefore the opportunity to impact the environmental consequences of multiple divisions of a tract of land through the use of this statute.

- Section 6. This section also increases the local government review criteria by including:

- 1) review of subdivision's impact on agricultural water user facilities.
- 2) mitigation requirement but only if the local government justifies the requirements in writing by substantial credible evidence.
- 3) an exemption for minor subdivisions in certain master planned areas.

Under this section, a subdivision's impacts on agricultural water user facilities such as ditches, canals and pumping facilities must be taken into account by the local government when reviewing a subdivision.

This section also provides, for the first time, that the local government can require that a subdivider minimize and mitigate significant adverse impacts that a subdivision may have on agriculture, ag. water use facilities, local services, the environment, wildlife & habitat, as well as public health and safety. the local government will also be able to disapprove a plat if mitigation is not possible.

To assure that mitigation requirements or reasons for denial are reasonable, the section also requires the local government imposing mitigation on a subdivider must issue written findings based on substantial credible evidence that mitigation is necessary or the plat denied.

This section will assure that a local government does not act in an arbitrary or capricious manner thus avoiding litigation resulting from its subdivision decisions. The section will also assure that a local government makes subdivision decisions based only on the specific criteria articulated by the legislature.

The section provides that certain minor subdivisions are exempt from review if the local government has a master plan in place and the minor subdivision meets the criteria of the master plan and any zoning governing the parcel to be divided. This provision, if properly implemented, will save the purchaser of a parcel as much as \$2,500.00 since the full blown subdivision review will no longer be necessary without

- Section 7. Clarifies that minor subdivisions are not subject to environmental assessments.

- Section 8. This section allows local governments to require developer to pay for capitol improvements that are directly attributable to the subdivision. This is a new section in the law. The section assures that subdivisions do not overwhelm the current service base of local government. The section also provides that the developer is required only to pay for capitol services that are reasonably and directly related to the subdivision.

- Section 9. the section makes the park dedication statutes more flexible by

- 1) adopting a sliding cash in lieu of scale based on lot size. The scale recognizes that smaller lots will create the need for additional park space and therefore places a premium on the "cash in lieu" value of small lots.
- 2) Creating certain exemptions from park land. The section recognizes, for example, that dedicated parks are not necessary to provide open spaces when the lots in a subdivision exceeds five acres in size.

3) Allowing donated funds to be used for park maintenance.

The section allows local governments the ability to use funds paid in lieu of land to be used for the maintenance of parks to be used by residents of the subdivision. The section accepts the wisdom of maintenance of current facilities in light of increased use instead of simply expanding a local government's thinly stretched existing service base by creating additional parks. the section requires that current park services must be reasonably available and within reach of subdivision residents.

- Section 10 Clarifies that developers, adjacent landowners, and local governments can seek judicial relief from preliminary plat decisions and sets thresholds for suit. This section recognizes that a preliminary plat is, for all practical purposes, the final decision document of the local government.

The section therefore specifically overturns the Montana supreme court decision in City of Kalispell v. Flathead County, 93-069 (1993). In that decision, the court opined that a decision on a preliminary plat could not be judicially reviewed because the plat was not the final administrative finding of the local government. The Court held that because the administrative review process was not exhausted, the plaintiff lacked standing to seek judicial relief.

The section also clarifies who can bring suit. In the past, "standing" determined who could bring suit against a local government regarding its decision on a subdivision. A person's standing, or her/his ability to show harm or damage as a result of a local government decision, was open to judicial interpretation on a case by case basis only.

The section defines who can bring suit against a local government for its decision regarding a preliminary plat. First, the section permits a developer to bring suit against a local government for damages in the event the local government's decision is arbitrary or capricious, is unlawful, or exceeds its lawful authority. The potential for suit to be brought under this section is substantially reduce by the local government mitigation requirements found in section 6 of the bill. The language in section 6 requiring local governments to submit mitigation requirements in writing and supported by reasonable credible evidence will assure that local government act in a responsible and legal manner.

Second, the section further permits a number of stakeholders in a subdivision to turn to the courts to challenge a local government decision regarding a preliminary plat in state district court. Challenges will probably not be heard by the courts

if the plaintiff has failed to fully participate in the public subdivision review process and any related master plan and zoning public hearings. Any challenger will be also required to illustrate, by a preponderance of the evidence, that the local government acted unreasonably under the controlling statutes, unlawfully or beyond the scope of its authority.

The subdivider can challenge the decision in district court. A person who owns land contiguous and who can demonstrate the likelihood of material injury to his/her property can challenge the local government's decision. We note that for both the subdivider and his/her neighbor, this bill provides protection of private property rights under section 2.

Neighbors who are not contiguous to the subdivision but who suffer a decline in the quality of their property because of activity caused by the subdivision will be able to bring suit against the developer and/or the subdivision residents under Montana's nuisance and trespass laws. The bill in no way diminishes the ability of any party to seek redress or abatement of a nuisance (such as noise, dust, or actual trespass) under Montana law.

A local government may also bring an action in district court against another local government concerning a subdivision decision. This does occur as the case noted above relates. This provision is particularly important for two reasons. First, local governments may have conflicting agendas and jurisdictions. Second, local governments provide the citizens' voice in the planning and development process. Third, local governments have been given certain police powers by the Legislature. In the land development arena, local governments have the power to protect the public health and safety.

First, local governments in Montana may have conflicting jurisdictions over subdivision control. We note that certain cities possess certain jurisdictional controls up to four and one half miles beyond their municipal boundaries. This section gives municipalities the authority to seek judicial relief from decisions made, for example, by county commissioner that are contrary to the municipality's best interests.

Second, local governments represent the citizen's voice in planning decisions. Acting through their local governments, citizens can seek reversal of a competing local government's decision to issue or deny a preliminary plat. The bill does prevent undue harassment of orderly development. While the bill limits persons with no direct interest in the subdivision from litigating a local government decisions, the bill specifically allows any citizen to petition their local elected officials to bring suit on behalf of their community.


Furthermore, persons with no direct interest in a subdivisions are also encouraged as well as afforded every opportunity to participate in the public process regarding zoning, planing and the local government review of the specific subdivision itself.

The section affords all Montanans and their local governments far more access to judicial relief from a local government decision to approve or deny a preliminary plat than the law currently affords. The section also assures that orderly development approved by the proper authorities will NOT be subjected to delays and harassment through frivolous lawsuits.

Third, local governments have the power to regulate land use activity under the state's police powers. The Legislature, through HB 473, enhances the powers of local governments to assure that public safety and health concerns are met. For example, local governments have the ability to designate areas in their jurisdiction that may be environmentally sensitive through master planning and zoning. Local governments are also afforded the opportunity to advise everyone up front what are deemed environmental sensitive areas.

If we can be of further information, please let us know.

Sincerely,

  
Collin Bangs, Chairman  
Legislative Committee  
JMS/11



EXHIBIT

36

DATE

2-13-95

HB

473

## ERA® PROPERTY STORE

REPRESENTATIVE DICK KNOX  
NATURAL RESOURCES DEPT  
HELENA, MT

I URGE YOU TO VOTE IN FAVOR OF  
H B 473.

THANK YOU.

PAM WILLETT  
BROKER/OWNER

AMENDMENTS TO HOUSE BILL 473

EXHIBIT 31  
DATE 2-13-95  
HB 473

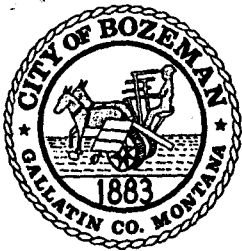
Requested by the Montana Association of Planners

1. Page 4, line 10  
Strike; "for a major subdivision"
2. Page 5, lines 10 through 19  
Strike in their entirety
3. Page 5, line 30  
Following : "discussion of"  
Strike: "physical"
4. Page 6, line 22  
strike: "governing body"  
insert: "public for parks or recreation areas"
5. Page 6, lines 23, 25, 27, and 29  
Strike: "fair market value"  
Insert: "area"
6. Page 7, line 11  
Following: "spaces for"  
Insert: "recreational vehicles,"
7. Page 7, line 29  
Strike: "fair market value"  
Insert: "area"
8. Page 7, line 30  
Following: "exceeds"  
Strike: "the value of"
9. Page 8, lines 3, 4 and 5  
Strike in their entirety  
Insert: "the area of land protected under subsection (6)  
(b)(i) equals or exceeds the dedication required  
under subsection (1); or"
10. Page 8, lines 6, 7, and 8  
Strike in their entirety  
Insert: "the area of land provided in combination under  
subsection (6)(a) and (6)(b) equals or exceeds the  
dedication required under subsection (1)."



11. Page 8, line 13,  
Strike Section 10 in its entirety  
Insert:

"NEW SECTION. Section 10. Appeal procedure. Any person aggrieved by a decision of the governing body to approve, conditionally approve or disapprove a proposed preliminary plat or final subdivision plat may, within 30 days after the decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made."



THE CITY OF BOZEMAN

35 NO. BOZEMAN AVE.

CARNEGIE BUILDING

BOZEMAN, MONTANA 59771-0640

P.O. BOX 640

EXHIBIT

38

DATE

2-13-95

HB

473

BUILDING INSPECTION PHONE/TDD (406) 582-2375

ENGINEERING DEPARTMENT PHONE/TDD (406) 582-2380

February 13, 1995

Representative Dick Knox, Chairman  
HOUSE NATURAL RESOURCES COMMITTEE  
Capitol Station  
Helena, MT

RE: HOUSE BILL 473 -- OPPOSE

Dear Representative Knox and Members of the Committee:

The City of Bozeman urges you not to pass House Bill 473 for the following reasons:

1. THE REQUIRED CHANGES WOULD CONSTITUTE AN UNFUNDED MANDATE TO LOCAL GOVERNMENTS -- Thousands of dollars were spent in 1993 to amend local subdivision regulations as a result of changes made in the Montana Subdivision and Platting Act by the Legislature two years ago. Requiring local governments to once again incur the expense of advertising and holding public hearings, preparing reports and findings, and codifying required amendments to their subdivision regulations, without providing state funds to do so, constitutes an unfunded mandate.
2. THE PROPOSED CHANGES ARE UNNECESSARY -- The current Subdivision and Platting Act works well, providing a solid framework within which development can occur. In 1994, in the Bozeman planning area alone, 829 new residential subdivision lots gained preliminary plat approval; 511 received final plat approval -- all within the current statutory framework. Let's not embrace change just for the sake of change.
3. THE PROPOSED LANGUAGE IS VAGUE -- The use of vague and ambiguous terms, especially in Section 8, will create a bonanza for land use attorneys who will tie up subdivision approvals in courts for years. For example, what is "substantial credible evidence?" What is meant by "whenever feasible?" How many "benefits" to a developer are needed to make up "some benefits?" At what point do regulations "unreasonably restrict" a landowner's ability to develop land?

Dozens of new Attorney General Opinions and court cases will be necessary over the next several years to interpret these

Representative Dick Knox  
February 13, 1995  
page 2 of 2

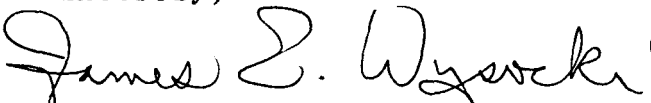
and other phrases found throughout the proposed amendments. But in light of the fact that the Act is working well, why create the confusion?

4. A "SECOND CLASS" OF CITIZEN WOULD BE CREATED -- Section 10 of HB 473 restricts who can appeal a subdivision decision to district court. The general public, who might have an interest in a development if it were to raise their property taxes, could not appeal. Neither could the local association of homebuilders, even if a subdivision decision could negatively effect their business. Limiting access to the courts to a special class of citizens seems un-American and may very well be unconstitutional.
5. INCREASED COSTS TO THE DEVELOPER -- Section 9 of HB 473 complicates and adds expense to the current method of calculating park land dedication. Whereas now a simple area method is used for calculating the requirement, under HB 473 a developer would have to hire an appraiser, calculate real estate values, then convert the dollar value into an area requirement.

In conclusion, House Bill 473 appears to be unnecessary legislation. The current Subdivision and Platting Act, as amended in 1993, is working reasonably well and should be allowed to continue to do so. We do not need to complicate and add expense to the subdivision review process.

For these reasons, the City of Bozeman urges you to give a DO NOT PASS recommendation on House Bill 473.

Sincerely,

  
James E. Wysocki, Manager  
CITY OF BOZEMAN



**BOZEMAN  
CITY-COUNTY  
PLANNING OFFICE**

35 NORTH BOZEMAN AVENUE  
P.O. BOX 640, BOZEMAN, MONTANA 59771-0640  
PHONE: (406) 582-2360 FAX: (406) 582-2363

February 13, 1995

EXHIBIT 39  
DATE 2-13-95  
HB 473

Representative Dick Knox, Chairman  
HOUSE NATURAL RESOURCES COMMITTEE  
Capitol Station  
Helena, MT

RE: HOUSE BILL 473 -- OPPOSE

Dear Representative Knox and Members of the Committee:

The Bozeman City-County Planning Board urges you not to pass House Bill 473 for the following reasons:

1. THE REQUIRED CHANGES WOULD CONSTITUTE AN UNFUNDED MANDATE TO LOCAL GOVERNMENTS -- Thousands of dollars were spent in 1993 to amend local subdivision regulations as a result of changes made in the Montana Subdivision and Platting Act by the Legislature two years ago. Requiring local governments to once again incur the expense of advertising and holding public hearings, preparing reports and findings, and codifying required amendments to their subdivision regulations, without providing state funds to do so, constitutes an unfunded mandate.
2. THE PROPOSED CHANGES ARE UNNECESSARY -- The current Subdivision and Platting Act works well, providing a solid framework within which development can occur. In 1994, in the Bozeman planning area alone, 829 new residential subdivision lots gained preliminary plat approval; 511 received final plat approval -- all within the current statutory framework. Let's not embrace change just for the sake of change.
3. THE PROPOSED LANGUAGE IS VAGUE -- The use of vague and ambiguous terms, especially in Section 6, will create a bonanza for land use attorneys who will tie up subdivision approvals in courts for years. For example, what is "substantial credible evidence?" What is meant by "whenever feasible?" How many "benefits" to a developer are needed to make up "some benefits?" At what point do regulations "unreasonably restrict" a landowner's ability to develop land?

Dozens of new Attorney General Opinions and court cases will be necessary over the next several years to interpret these

Representative Dick Knox  
February 13, 1995  
page 2 of 2

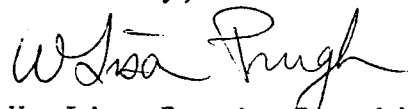
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In conclusion, House Bill 473 appears to be unnecessary legislation. The current Subdivision and Platting Act, as amended in 1993, is working reasonably well and should be allowed to continue to do so. We do not need to complicate and add expense to the subdivision review process.

For these reasons, the Bozeman City-County Planning Board urges you to give a DO NOT PASS recommendation on House Bill 473.

Sincerely,



W. Lisa Prugh, President  
BOZEMAN CITY-COUNTY PLANNING BOARD



# GALLATIN COUNTY

331 West Main, Rm. 301 • Bozeman, MT 59715

EXHIBIT **40**  
DATE **2-13-95** County Commission  
HB **473**

Kris Dunn  
Jane Jelinski  
Phil Olson

Phone (406) 582-3000  
FAX (406) 582-3000

February 13, 1995

Representative Dick Knox, Chairman  
House Natural Resources Committee  
Capitol Station  
Helena, MT

Post-it™ Fax Note 7671		Date <b>2/13</b>	# of pages <b>2</b>
To <b>Andy Epple</b>		From <b>Pat Lewis</b>	
Co./Dept.		Co.	
Phone #		Phone #	
Fax # <b>3002</b>		Fax #	

RE: HOUSE BILL 473 -- OPPOSE

Dear Representative Knox and Members of the Committee:

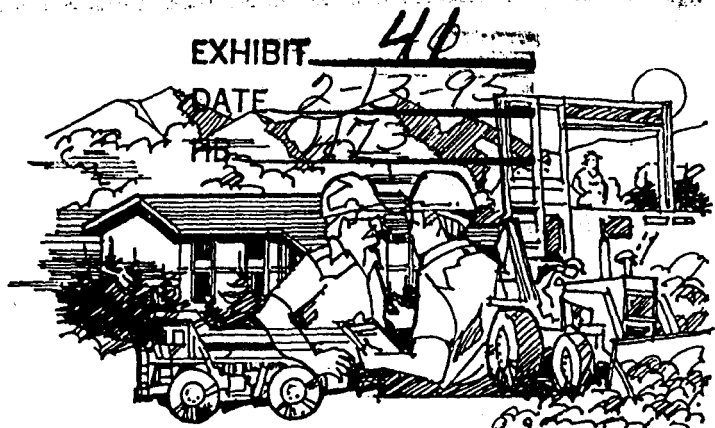
Gallatin County urges you not to pass House Bill 473 for the following reasons:

- 1. THE REQUIRED CHANGES WOULD CONSTITUTE AN UNFUNDED MANDATE TO LOCAL GOVERNMENTS.** Thousands of dollars were spent in 1993 to amend local subdivision regulations as a result of changes made in the Montana Subdivision and Platting Act by the Legislature two years ago. Requiring local governments to once again incur the expense of advertising and holding public hearings, preparing reports and findings, and codifying required amendments to their subdivision regulations, without providing state funds to do so, constitutes an unfunded mandate.
- 2. THE PROPOSED CHANGES ARE UNNECESSARY.** The current Subdivision and Platting Act works well, providing a solid framework within which development can occur. In 1994, in the Bozeman Planning Area alone, 829 new residential subdivision lots gained preliminary plat approval; and 511 received final plat approval -- all within the current statutory framework. Let's not embrace change just for the sake of change.
- 3. THE PROPOSED LANGUAGE IS VAGUE.** The use of vague and ambiguous terms, especially in Section 6, will create a bonanza for land use attorneys who will tie up subdivision approvals in courts for years. For example, what is "substantial credible evidence?" What is meant by "whenever feasible?" How many "benefits" to a developer are needed to make up "some benefits?" At what point do regulations "unreasonably restrict" a landowner's ability to develop land?

Dozens of new Attorney General Opinions and court cases will be necessary over the next several years to interpret these and other phrases found throughout the proposed

**Stillwater County Planning Office**

P. O. Box 881  
Columbus, Montana 59019  
Phone 406-322-4439  
Fax 406-322-4698



*Planning for the Future*

House Natural Resources Committee  
Capitol Station  
Helena, MT 59620

February 13, 1995

**RE: OPPOSE HB 473**

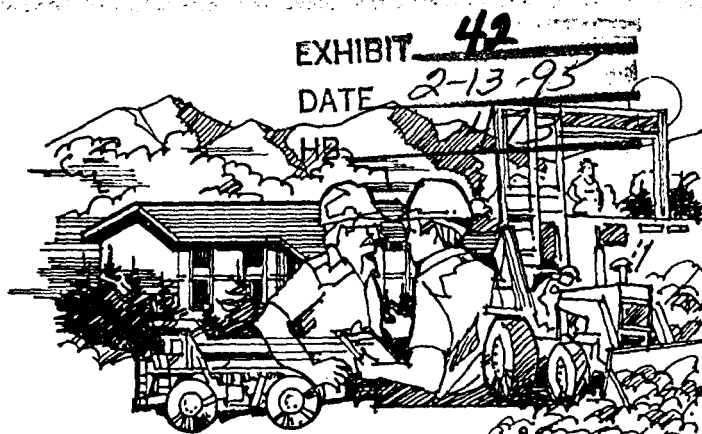
Members of House Natural Resources Committee:

We just went through a lengthy implementation process as a result of the 1993 legislative changes generally revising local subdivision laws. I am opposed to HB 473 for the following reasons.

- The direct cost of amending local subdivision regulations in our county is approximately \$3,000..
- Subdivision review currently takes the full 60 days for major subdivisions and up to 35 days for minor subdivisions. The additional requirements contained in HB 473 sections 2, 4, 6, 9, and 10 are all expected to require more time to review. This results in delays and associated costs. The time specified for review of preliminary plats in 76-3-604 MCA may need to be increased to 120 days for major subdivisions and 60 days for minor subdivisions to accommodate these proposed legislative mandates. The alternative is to place the full burden of proof onto the subdivider.
- Additional costs associated with implementation of HB 473, if it should become law, will likely be passed on to the subdividers through increased fees.
- Section 4 places a greater burden on local governments and exposes them to additional liabilities. The end result is at the taxpayers expense.
- Section 5 strikes clear language and replaces it with vague language. Our experience with subdivision review indicates vague statutory language leads to confusion.
- Section 6 places a greater burden of proof on local governments and increases the risk of litigation. This is viewed as an unfunded mandate which only leaves local governments with two options. Increase fees and shift the burden to the subdivider.

## Stillwater County Planning Office

P. O. Box 881  
Columbus, Montana 59019  
Phone 406-322-4439  
Fax 406-322-4698



EXHIBIT

42

DATE

2-13-95

HB

*Planning for the Future*

House Natural Resources Committee  
Capitol Station  
Helena, MT 59620

February 13, 1995

RE: **OPPOSE HB 473**

Members of House Natural Resources Committee:

We just went through a lengthy implementation process as a result of the 1993 legislative changes generally revising local subdivision laws. I am opposed to HB 473 for the following reasons.

- The direct cost of amending local subdivision regulations in our county is approximately \$3,000.
- Subdivision review currently takes the full 60 days for major subdivisions and up to 35 days for minor subdivisions. The additional requirements contained in HB 473 sections 2, 4, 6, 9, and 10 are all expected to require more time to review. This results in delays and associated costs. The time specified for review of preliminary plats in 76-3-604 MCA may need to be increased to 120 days for major subdivisions and 60 days for minor subdivisions to accommodate these proposed legislative mandates. The alternative is to place the full burden of proof onto the subdivider.
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- Section 4 places a greater burden on local governments and exposes them to additional liabilities. The end result is at the taxpayers expense.
- Section 5 strikes clear language and replaces it with vague language. Our experience with subdivision review indicates vague statutory language leads to confusion.
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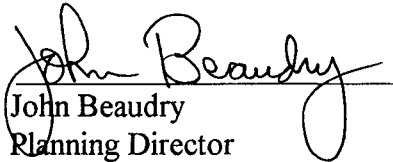
- Section 10 of HB 473 invites litigation. This can be a waste of everyone's time and resources.

We cannot afford the additional liabilities and unfunded mandates contained in HB 473!

Please vote no on HB 473.

**OPPOSE HB 473!**

Sincerely,

  
John Beaudry  
Planning Director



House Natural Resources Committee  
Capitol Station  
Helena, MT 59620

EXHIBIT 43  
DATE 2-13-95  
HB 473

## County of Stillwater State of Montana

BOARD OF COUNTY COMMISSIONERS  
P.O. Box 147  
Columbus, Montana 59019

February 10, 1995

RE: **OPPOSE HB 473**

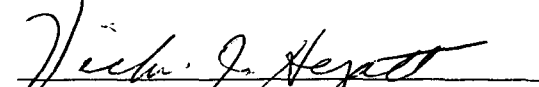
Members of House Natural Resources Committee:

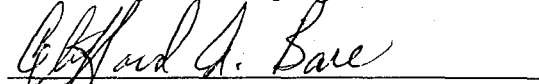
We are opposed to HB 473 , changes to the Subdivision and Platting Act. We just went through a lengthy and expensive implementation process as a result of the 1993 changes. We are not interested in doing it again. We oppose HB 473 because it exposes our county taxpayers to greater legal and financial liabilities. The biennial tinkering with the Subdivision and Platting Act by the Legislature is a waste of our resources.

Stillwater County cannot afford greater legal and financial liabilities or any more unfunded mandates. We hope you will vote no on HB 473.

**WE OPPOSE HB 473!**

Sincerely,  
BOARD OF COUNTY COMMISSIONERS

  
Vicki J. Hyatt, Chairperson

  
Clifford A. Bare, Member

  
L. Harold Blattie, Member

OFFICE OF THE COUNTY ATTORNEY  
STILLWATER COUNTY, MONTANA

38 North 4th Street  
P.O. Box 179  
Columbus, Montana 59019  
(406)322-4333

Blair Jones  
County Attorney

EXHIBIT 44  
DATE 2-13-95  
HB 473

Robert Eddleman  
Deputy

February 10, 1995

House Natural Resources Committee  
Capitol Station  
Helena, Montana 59620

RE: Opposition to HB 473

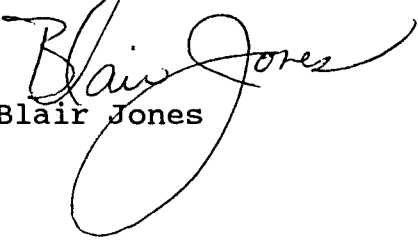
Members of House Natural Resources Committee:

I am opposed to the changes to the Subdivision and Platting Act proposed in HB 473 because it exposes Montana counties to substantially greater legal liability. The proposed changes to sections 76-3-102(6), 76-3-507(3), and 76-3-608(4), MCA, constitute an unwarranted reduction of governmental immunity applicable to counties; provides for greater burdens of proof to be shouldered by counties in the exercise of their review authority; and even invites litigation by the express wording of the proposed statute. Additional legal liability placed on local governments ultimately becomes an additional burden for the taxpayers.

Local governments have enough liability exposure. I respectfully request that you vote no on HB 473.

Very truly yours,

STILLWATER COUNTY ATTORNEY

  
Blair Jones

BJ/sf

EXHIBIT 45  
DATE 2-13-95  
HB 473

Park County

# PLANNING OFFICE

414 East Callender — Livingston, MT 59047 — 1-(406) 222-6120

February 13, 1995

House Natural Resource Committee  
Capital Station  
Helena, MT 59620

Dear Senator Knox and Committee Members:

As Chairperson of the Park County Planning Board, I am opposed to any amendments to the subdivision legislation passed in 1993. The proposed amendments are in many cases vague, and also undermine the purpose of the subdivision regulations which is to protect the public health, safety and welfare, protect the environment and assure that local taxpayers are not overburdened with costs that should go to the developer.

Section 76-3-608 (5) requires that the governing body justify all mitigation measures. If counties have to review mitigation measures and address the criteria under sub-section five, we also ask that extend the time limit for review of all subdivisions. Current time limits are not adequate for review of all the criteria required by these amendments. We would request 120 days for minor subdivisions and 180 days for major subdivisions.

I would request that you vote against any proposed amendments to the current law.

Sincerely,

  
Chloris Zimmerman, Chairman  
Park County Planning Board

EXHIBIT 46DATE 2-13-95HB 473414 E. Callender  
Livingston, Montana 59047  
406-222-6120**PARK COUNTY COMMISSIONERS**

February 13, 1995

House Natural Resource Committee  
Capital Station  
Helena, MT 59620

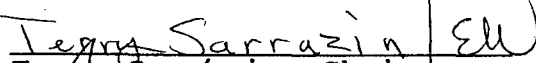
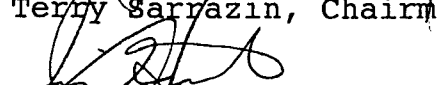

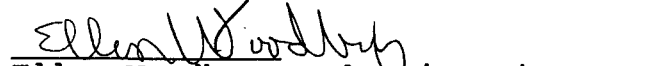
Dear Senator Knox and Committee Members:

Park County Commissioners and other officials are concerned about any proposed amendments to the subdivision legislation passed in 1993. When the subdivision regulations were amended in 1993, local governments had to spend time and money rewriting their existing regulations, holding public hearings, and educating the public on the changes. If the regulations are again amended, local governments would have to again repeat the process. This amounts to an unfunded mandate from state government to local government. While we supported the 1993 amendments, we do not support repeating the process at this time. Park County spent an estimated \$3,000.00 revising subdivision regulations in 1993. County governments, as most government entities, are trying to live within I-105, and spending time and money on legislation that is not needed and in many cases only confuses current legislation, seems to us a waste of taxpayer dollars. If the subdivision laws are changed, we would request that the legislature also provide funding to local governments to finance changes in local regulations.

Under the current regulations neither the planning board nor the commissioners have had any trouble meeting time deadlines. However, Section 76-3-608 (5) requires that the governing body justify all mitigation measures. If counties have to review mitigation measures and address the criteria under sub-section five, we also ask that you extend the time limit for review of all subdivisions. Current time limits are not adequate for review of all the criteria required by these amendments. We would request 120 days for minor subdivisions and 180 days for major subdivisions.

However, we wish to go on record as opposing any amendments to the current law at this time.

Sincerely,

  
Terry Sarrazin, Chairman  
Jim Hunt, Commissioner  
Dan B. Gutebier, Commissioner  
Ellen Woodbury, Planning Director

# Park County Attorney

EXHIBIT 47

DATE 2-13-95

HB 473

Tara DePuy

Jon M. Hesse Deputy

Kendra K. Anderson Deputy

414 East Callender — Livingston, MT 59047

Telephone: (406) 222-6120 ext. 239

February 13, 1995

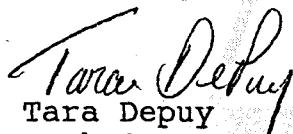
House Natural Resource Committee  
Capital Station  
Helena, MT 59620

Dear Senator Knox and Committee Members:

As Park County Attorney, I am concerned about the vagueness of the language in some of the amendments to the Montana Subdivision and Platting Act. For example, section 76-3-603, subsections (2) and (3) remove specific criteria from the law and replace it with language such as "a summary of probable impacts and additional relevant and reasonable information". Section 76-3-608 subsection (5)(b) states that "whenever feasible", mitigation should be designed to provide some benefits for the subdivision. All of this language is open to litigation for definition as to what is reasonable, relevant, and feasible. I am concerned that the proposed amendments will result in additional court time and costs to local governments defining the intent of the law. It also adds to the uncertainty for the developer. We currently have twenty years of case law, much of which would have to be redefined if the law is amended as proposed.

I would request that you vote against any proposed amendments to the current law.

Sincerely,

  
Tara DePuy  
Park County Attorney

EXHIBIT

48

DATE

2-13-95

HB

473

414 E. Callender  
Livingston, Montana 59047  
406-222-6120**PARK COUNTY COMMISSIONERS**

February 13, 1995

House Natural Resource Committee  
Capital Station  
Helena, MT 59620

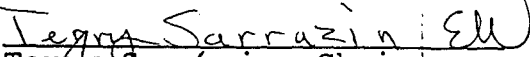
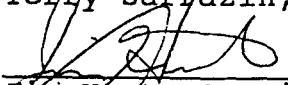
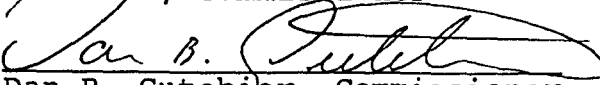
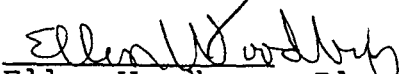
Dear Senator Knox and Committee Members:

Park County Commissioners and other officials are concerned about any proposed amendments to the subdivision legislation passed in 1993. When the subdivision regulations were amended in 1993, local governments had to spend time and money rewriting their existing regulations, holding public hearings, and educating the public on the changes. If the regulations are again amended, local governments would have to again repeat the process. This amounts to an unfunded mandate from state government to local government. While we supported the 1993 amendments, we do not support repeating the process at this time. Park County spent an estimated \$3,000.00 revising subdivision regulations in 1993. County governments, as most government entities, are trying to live within I-105, and spending time and money on legislation that is not needed and in many cases only confuses current legislation, seems to us a waste of taxpayer dollars. If the subdivision laws are changed, we would request that the legislature also provide funding to local governments to finance changes in local regulations.

Under the current regulations neither the planning board nor the commissioners have had any trouble meeting time deadlines. However, Section 76-3-608 (5) requires that the governing body justify all mitigation measures. If counties have to review mitigation measures and address the criteria under sub-section five, we also ask that you extend the time limit for review of all subdivisions. Current time limits are not adequate for review of all the criteria required by these amendments. We would request 120 days for minor subdivisions and 180 days for major subdivisions.

However, we wish to go on record as opposing any amendments to the current law at this time.

Sincerely,

  
Terry Sarrazin, Chairman  
Jim Hunt, Commissioner  
Dan B. Gutebier, Commissioner  
Ellen Woodbury, Planning Director

Planning Department  
P. O. Box 278  
Madison County  
Virginia City, MT 59755

February 13, 1995

House Natural Resources Committee  
Capital Station  
Helena, MT 59620

Dear Representative Knox and Committee Members:

I am concerned about any proposed amendments to the subdivision legislation passed in 1993. When the subdivision regulations were amended in 1993, local governments had to spend time and money rewriting their existing regulations, holding public hearings, and educating the public on the changes. If the regulations are again amended, local governments would have to again repeat the process. This amounts to an unfunded mandate from state government to local government. While we supported the 1993 amendments, we do not support repeating the process at this time. County governments, as most government entities, are trying to live within I-105, and spending time and money on legislation that is not needed seems to us a waste of taxpayer dollars. I am also a part-time planner and do not have the time to be revising the subdivision regulations in addition to my regular duties. If the subdivision laws are changed, the legislature should also provide funding to local governments to finance changes in local regulations.

The current subdivision regulations have worked well in Madison County, and neither the planning board nor the commissioners have had any trouble meeting time deadlines? I would request that you vote against any proposed amendments in the current law.

Sincerely,

A handwritten signature in cursive script that reads "Valerie Counts".

Valerie Counts  
Planning Director



# Park County Attorney

Tara DePuy

Jon M. Hesse Deputy

Kendra K. Anderson Deputy

414 East Callender — Livingston, MT 59047  
Telephone: (406) 222-6120 ext. 239

February 13, 1995

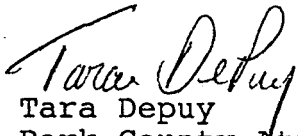
House Natural Resource Committee  
Capital Station  
Helena, MT 59620

Dear Senator Knox and Committee Members:

As Park County Attorney, I am concerned about the vagueness of the language in some of the amendments to the Montana Subdivision and Platting Act. For example, section 76-3-603, subsections (2) and (3) remove specific criteria from the law and replace it with language such as "a summary of probable impacts and additional relevant and reasonable information". Section 76-3-608 subsection (5)(b) states that "whenever feasible", mitigation should be designed to provide some benefits for the subdivision. All of this language is open to litigation for definition as to what is reasonable, relevant, and feasible. I am concerned that the proposed amendments will result in additional court time and costs to local governments defining the intent of the law. It also adds to the uncertainty for the developer. We currently have twenty years of case law, much of which would have to be redefined if the law is amended as proposed.

I would request that you vote against any proposed amendments to the current law.

Sincerely,



Tara DePuy  
Park County Attorney

EXHIBIT 49  
DATE 2-13-95  
HB 423

Planning Department  
P. O. Box 278  
Madison County  
Virginia City, MT 59755

February 13, 1995

House Natural Resources Committee  
Capital Station  
Helena, MT 59620

Dear Representative Knox and Committee Members:

I am concerned about any proposed amendments to the subdivision legislation passed in 1993. When the subdivision regulations were amended in 1993, local governments had to spend time and money rewriting their existing regulations, holding public hearings, and educating the public on the changes. If the regulations are again amended, local governments would have to again repeat the process. This amounts to an unfunded mandate from state government to local government. While we supported the 1993 amendments, we do not support repeating the process at this time. County governments, as most government entities, are trying to live within I-105, and spending time and money on legislation that is not needed seems to us a waste of taxpayer dollars. I am also a part-time planner and do not have the time to be revising the subdivision regulations in addition to my regular duties. If the subdivision laws are changed, the legislature should also provide funding to local governments to finance changes in local regulations.

The current subdivision regulations have worked well in Madison County, and neither the planning board nor the commissioners have had any trouble meeting time deadlines? I would request that you vote against any proposed amendments in the current law.

Sincerely,



Valerie Counts  
Planning Director



EXHIBIT 50  
DATE 2-13-95  
HB 473

## City of Helena

February 13, 1995

Representative Dick Knox  
House Natural Resources Committee

Dear Committee Members:

The 1993 Montana Legislature adopted extensive revisions to the Montana Subdivision and Platting Act. The law was revised after several years of work was completed with a wide range of various interest groups (including realtors, developers, local government, environmentalists, agricultural groups, etc.) to address concerns, and compromise was reached. After the law was adopted, each city and county developed and adopted new subdivision regulations to comply with the changes.

In the City of Helena, public hearings were held before the Planning Board and City Commission for a total cost of approximately \$2,000. The requirement to revise the City's subdivision regulations did not include funds to cover the costs that were borne by the City and its taxpayers. During the time needed to revise the regulations, other requests by citizens were put on hold.

Since October 1993 when the new local subdivision regulations were adopted, the City has reviewed and approved three major subdivisions creating 115 residential lots (including one major subdivision with 65 lots, which was initially denied and then resubmitted and approved with 60 lots for 69 dwelling units); one major subdivision for 220 units for rent; and eight minor subdivisions creating 23 lots.

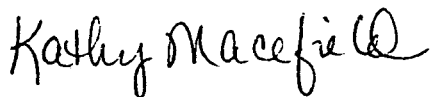
The City of Helena opposes HB 473 for the following reasons:

- 1) The revised subdivision regulations have not been in place long enough to determine if there are any problems, or what those problems might be.
- 2) Needlessly revising the subdivision regulations requires additional time that is not readily available. Helena, like many other Montana communities, is in a period of rapid growth and development. Revising regulations takes time away from other development projects and can result in unnecessary delay for developers.

- 3) Needlessly revising the subdivision regulations incurs additional expense that is not provided by the Legislature (i.e., an "unfunded mandate").
- 4) If changes are going to be made to the Subdivision and Platting Act, they should only be considered after there has been a discussion with the various groups that have an interest in those changes. This careful and considered discussion is important to avoid confusing language in the proposed legislation.
- 5) HB 473 severely limits the aspects the governing body may require to be considered with the environmental assessment by striking "such additional relevant and reasonable information as may be required by the governing body."
- 6) HB 473 has confusing language for mitigation considerations. In order to adequately address the mitigation measures, it may take more time than is presently provided by the subdivision review process (60 days for major subdivisions, 35 days for minor subdivisions).
- 7) HB 473 identifies the parties that are able to appeal a governing body's decision for a subdivision. As a technicality, how would a county or city commission sue itself for a decision it made? Yet, the public has been specifically excluded from that legal process.

For these reasons, the City of Helena asks you to not support HB 473.

Sincerely,



Kathy Macefield  
Planning Director

**Mandeville  
Agency  
Inc.**

EXHIBIT

**50**

DATE

**2-13-95**

- Insurance -

- Real Estate -

Home & Auto

HR

Residential

Business, Farm & Ranch

Farm & Ranch

Life & Health

Commercial

**473**

February 10, 1995

House Natural Resources Committee  
Capitol Station  
Helena, MT 59620

**RE: OPPOSE HB 473**

Members of House Natural Resources Committee:

I am opposed to HB 473, changes to the Subdivision and Platting Act. Our community just went through a lengthy and expensive implementation process as a result of the 1994 changes. We are not interested in doing it again. The biennial tinkering with the Subdivision and Platting Act by the Legislature is a waste of limited local resources.

Our community cannot afford the additional liabilities and unfunded mandates contained in HB 473. I hope you will vote no on HB 473.

**OPPOSE HB 473!**

Sincerely,

COLUMBUS CITY-COUNTY PLANNING BOARD



WEBB C. MANDEVILLE  
Chairman

WCM/tcl

**IN COLUMBUS**

130 S. Pratten  
P. O. Box 69  
Columbus, MT 59019  
(406) 322-5361



**IN ABSAROOKEE**

Woodard Ave.  
P. O. Box 385  
Absarokee, MT 59001  
(406) 328-4500

League of Women Voters  
of Montana



EXHIBIT

52

DATE

2-13-96

HB

473

WRITTEN TESTIMONY PRESENTED BY THE LEAGUE OF WOMEN VOTERS OF MONTANA

House Natural Resources Committee

3:00 p.m., Monday, February 13, 1995

House Bill 473 by Knox

Two years ago Montana's subdivision laws underwent a major revision, with the elimination of exemptions and loopholes under which most subdivision activity in the state for decades had escaped any meaningful review. HB 473 proposes few major changes, but rather tinkers with certain aspects of the current law. Unfortunately, in many instances this tinkering would reduce local discretion and would derail review criteria for vastly different local situations. Many of the changes proposed in this bill are well intentioned, but largely unnecessary or ill-advised.

The proposed changes to the bonding requirements in Section 4 could weaken the governing body's ability to ensure that agreed upon improvements are actually carried out. The governing body already has discretion in structuring a bonding agreement or other reasonable security. This section attempts to unnecessarily micro-manage the decisions of the local government. Subsection 3 appears to attempt to settle a judicial question by legislative fiat.

Section 6, Subsections 4 and 5 would involve the local governing body in the design of mitigation measures for a proposed subdivision. The government's role would no longer be to identify problems with a proposed subdivision and communicate them to the developer, who could then address them and bring the proposal back. Now the local government would begin to take on the responsibility for redesigning a subdivision and proposing mitigation measures. We believe that the proper role of government should be to review subdivisions, not to redesign them.

Subsection 6 of the same section would exempt minor subdivisions from review for their effects on agriculture, local services, the natural environment, wildlife and wildlife habitat and public health and safety, if the proposal is for an area where a master plan has been adopted. Yet the criteria laid out for a master plan are too minimal and vague to warrant the waiving of these important review criteria.

The proposed changes to the park dedication requirement are a mixed bag. It may make sense to have a sliding payment scale based on the size of the parcels being created, but it does not make sense to mandate the elimination from the park dedication requirement of land proposed for subdivision into parcels larger than 5 acres. Local governments should have the discretion, depending on local circumstances, to waive or not to waive the dedication for larger parcels. In some parts of the state a large volume of subdivision of land into parcels of 5 acres or more may warrant a park dedication requirement for such parcels.

The lack of funds for park maintenance is certainly a problem for many local jurisdictions. However, it is not clear that park dedication funds are the best source of support for maintenance. Park dedication monies are highly variable from year to year, depending on the

level of subdivision activity. And if local governments become dependent on park dedication funds for maintenance, the acquisition and development of parks may suffer. Proposed New Section 9 also details criteria for the development of parks. But with such diverse levels and patterns of development across Montana, such decisions would be better made at the local level.

Proposed New Section 10 reiterates rights to sue which already exist in law. This section also invites an appeal to district court of virtually any subdivision decision.

The League of Women Voters believes that, with the elimination of the major exemptions, the current subdivision laws provide a good framework for local government review of subdivisions. The current law strikes a good balance between state guidelines and local discretion. In the absence any pervasive statewide problems, we believe the legislature should refrain from tinkering with the subdivision laws as they now stand.

Thank you

Ronla Bloom, Legislative Corps., LWVMT

Amendments to House Bill No. 351  
First Reading Copy

Requested by Rep. Harper  
For the Committee on Natural Resources

Prepared by Michael S. Kakuk  
February 13, 1995

1. Title, line 8.  
Strike: "CERTAIN"

2. Page 3, lines 6 through 11.  
Strike: "If" on line 6 through the first "the" on line 11  
Insert: "The"

3. Page 3, lines 13 through 21.  
Strike: "would" through "state"  
Insert: "does not return to the state full market value or that  
the sale procedure did not provide the public a reasonable  
opportunity to submit proposals to purchase the land. If  
the board of land commissioners determines that the sale is  
not in the best interests of the state or system, it shall  
notify the board of regents of that determination and the  
sale is not final"

4. Page 3, lines 15 through 21.  
Strike: "For" on line 15 through "purposes." on line 21



Amendments to House Bill No. 215  
First Reading Copy

Requested by Rep. Cocchiarella  
For the Committee on Natural Resources

Prepared by Michael S. Kakuk  
February 10, 1995

1. Page 2, line 18.  
Strike: subsection (13) in its entirety  
Renumber: subsequent subsections
2. Page 3, lines 6 and 26.  
Strike: "(19)(b)(i)"  
Insert: "(18)(b)(i)"
3. Page 3, line 6.  
Strike: "(19)(b)(viii)"  
Insert: "(18)(b)(viii)"
4. Page 3, line 18.  
Strike: "(19)(b)(ii)(A)"  
Insert: "(18)(b)(ii)(A)"  
Strike: "(19)(b)(ii)(B)"  
Insert: "(18)(b)(ii)(B)"
5. Page 3, line 27.  
Strike: "(19)(b)(vi)"  
Insert: "(18)(b)(vi)"
6. Page 3, line 29.  
Strike: "A"  
Insert: "Subject to the provisions of subsection (4), a"  
Following: "permit"  
Insert: "that is required"
7. Page 3, line 30.  
Following: "facility"  
Insert: "under 75-10-406"  
Following: "issued"  
Insert: ", reissued, renewed,"  
Strike: "pursuant to 75-10-406"  
Strike: "an application"  
Insert: "the filing of a disclosure statement as required"
8. Page 4, line 1.  
Following: "issuance"  
Insert: ", reissuance, renewal,"
9. Page 4, lines 2 and 3.  
Strike: "and" on line 2 through "applicant" on line 3
10. Page 4, line 4.  
Strike: "and each principal"

11. Page 4, line 5.

Following: "civil"

Insert: "complaint filed"

Strike: "complaint filed"

Insert: "enforcement action taken"

12. Page 4, line 6.

Strike: "or a principal"

13. Page 4, line 7.

Following: "complaint"

Insert: "or action"

14. Page 4, line 8.

Strike: "or a principal"

15. Page 4, line 10.

Following: "conviction"

Insert: "for activities directly associated with a hazardous waste management facility"

Strike: "or a principal"

16. Page 4.

Following: line 21

Insert: "(4) (a) This section does not apply to the issuance of a temporary emergency permit under 75-10-406(5) or to the modification of a permit that does not reflect a change in the owner or operator of the hazardous waste management facility.

(b) A person is not required to comply with the provisions of [section 3] or this section for:

(i) the reissuance, renewal, or modification of a valid hazardous waste management facility permit issued prior to January 1, 1995; or

(ii) an application for a new hazardous waste management facility permit for a facility when a permit was issued prior to January 1, 1995, if the new permit is not because of a change in the owner or operator at that facility.

(5) For the purposes of this section, "applicant" includes a subsidiary or successor in interest with respect to the applicant."

17. Page 4, line 24.

Following: "issuance"

Insert: ", reissuance, renewal,"

Strike: "under 75-10-406"

18. Page 4, line 27.

Following: "civil"

Insert: "complaint"

Strike: "complaint"

Insert: "enforcement action"

Amendments to House Bill No. 412  
First Reading Copy

For the Committee on Natural Resources

Prepared by Michael S. Kakuk  
February 13, 1995

1. Title, line 6.  
Strike: first "AND"
2. Title, line 7.  
Following: "REPORT"  
Insert: "; PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN  
APPLICABILITY DATE, AND A TERMINATION DATE"
3. Page 1, line 13.  
Following: "to"  
Insert: "voluntarily"  
Strike: "compliance issues"  
Insert: "violations"
4. Page 1, line 16.  
Strike: "will"  
Insert: "are"  
Following: "not"  
Insert: "intended to"  
Following: "inhibit"  
Insert: "or be a substitute for"
5. Page 1, line 17.  
Following: "those"  
Insert: "agencies"
6. Page 1, line 21.  
Following: "a"  
Insert: "state"
7. Page 1, line 24.  
Following: second "self-evaluation"  
Insert: ", not otherwise required by law or regulatory action,"
8. Page 1, line 25.  
Following: second "the"  
Insert: "primary"
9. Page 1, line 26.  
Following: "noncompliance"  
Insert: "on a long-term basis"
10. Page 2, line 1.  
Strike: ": Privileged Document""
11. Page 2, line 2.  
Strike: "may"

19. Page 4, lines 28 and 30.

Strike: "or a principal"

20. Page 5, lines 1, 4, and 11.

Strike: "or a principal"

21. Page 5, line 9.

Following: the first "the"

Insert: "number,"

Following: "nature"

Insert: ", "

Strike: "violation"

Insert: "violations"

22. Page 5, line 12.

Strike: "or principal's"

23. Page 5, line 13.

Following: "complaints"

Insert: ", enforcement actions,"

24. Page 5, line 14.

Strike: "or principal's"

Following: "entities"

Insert: "involved in the complaints or enforcement actions or"

25. Page 5, line 16.

Insert: "(4) For the purposes of this section, "applicant"  
includes a subsidiary or successor in interest with respect  
to the applicant."

Insert: "must"

12. Page 2, line 3.

Following: "purpose"

Insert: "of"

Following: "of"

Insert: "conducting"

Strike: ", including"

Insert: ". These materials may include"

Following: "but"

Insert: "are"

13. Page 2, lines 6 through 13.

Strike: "It" on line 6 through "noncompliance." on line 13

Insert: "All environmental self-evaluation reports must:

(a) include the date or dates on which the  
environmental self-evaluation was conducted; and

(b) identify proposed corrective actions to resolve  
identified noncompliance issues in accordance with  
applicable environmental laws."

14. Page 2, line 15.

Strike: "out"

Insert: "because"

15. Page 2, line 18.

Following: "resolve"

Insert: "the violation"

Strike: "reasonably"

16. Page 2, line 19.

Following: "manner"

Insert: "and corrects the violation according to the compliance  
plan approved by the regulatory agency"

17. Page 2, line 21.

Following: "investigation"

Insert: "and resolution"

18. Page 2, line 22.

Following: "law"

Insert: ", permit, order, or rule"

19. Page 2, line 28.

Following: "self-evaluation"

Insert: " or prepared an environmental self-evaluation report"

Following: "or"

Insert: "any person or entity"

20. Page 2, line 29.

Strike: "any" through "of"

Strike: "and"

Insert: "report or any matter"

21. Page 3, line 4.

Strike: "by"

Insert: "because of"

22. Page 3, line 13.

Strike: "raised"

Insert: "identified"

Following: "self-evaluation"

Insert: "report"

23. Page 3, line 16.

Following: "a"

Insert: "lawful"

24. Page 3, line 20.

Strike: "material"

Insert: "the report"

25. Page 3, line 22.

Following: "purpose;"

Insert: "(b) the environmental self-evaluation report was prepared to avoid disclosure of information:

(i) in an investigation or in an administrative or judicial proceeding that was underway or imminent; or

(ii) for which the person or entity had been provided written notification that an investigation into a specific violation had been initiated;"

26. Page 3, line 23.

Strike: "(b)"

Insert: "(c)"

Strike: "material"

Insert: "report"

Strike: "or"

27. Page 3, line 24.

Strike: "(c)"

Insert: "(d)"

Strike: "material"

Insert: "report"

28. Page 3, line 25.

Following: "the"

Insert: "environmental"

29. Page 3, line 26.

Following: "pursued"

Insert: "to completion"

Following: "noncompliance"

Insert: "; or (e) information contained in the environmental self-evaluation report demonstrates a clear, present, and substantial impending danger to the public health or to the environment in areas outside the facility property"

30. Page 3, line 29.

Following: "diligence"

Insert: "toward completion"

Following: "party"

Insert: ", including the state in a criminal proceeding,"

31. Page 3, line 30 through page 4, line 2.

Following: "(3)(a)" on page 1, line 30

Insert: ", (3)(b), (3)(c), or (3)(e)"

Strike: "proving" on page 3, line 30 through "(3)(b)" on page 4,  
line 2

Insert: "proof"

32. Page 4, line 7.

Following: "seal"

Strike: "and"

Insert: ", "

Following: "report"

Insert: ", and shall notify the owner or operator of its  
possession of the report"

33. Page 4, line 8.

Strike: "obtains the report"

Insert: "provides notice"

34. Page 4, line 21.

Following: "for"

Insert: "exclusion or"

35. Page 4, lines 25 and 26.

Strike: "specific" on line 25 through "in" on line 26

Insert: "all or a portion of"

36. Page 4, line 29.

Following: "are"

Insert: "not privileged and are"

37. Page 5, line 5.

Following: "agency"

Insert: ", except to the extent derived from a voluntary  
disclosure"

Strike: "or"

38. Page 5, line 6.

Following: "obtained"

Insert: "by a regulatory agency"

Following: "self-evaluation"

Insert: "or from a voluntary disclosure;

(4) documents existing prior to the commencement of  
the environmental self-evaluation and independent of  
the environmental self-evaluation; or

(5) any information not privileged, pursuant to  
[section 3] or otherwise, that is developed or  
maintained in the course of regularly conducted  
business activity or regular practice"

39. Page 5, line 8.

Following: "limit,"  
Insert: "expand,"

40. Page 5, line 12.  
Following: "violation."  
Insert: "(1)"

41. Page 5, line 15.  
Strike: "(1)"  
Insert: "(a)"

42. Page 5, line 17.  
Strike: "(2)"  
Insert: "(b)"

43. Page 5, line 18.  
Strike: "(3)"  
Insert: "(c)"  
Strike: "environmental" through "health."  
Insert: "harm to the public health or to the environment."

(2) The person or entity shall provide information in writing supporting its claim that the disclosure is voluntary at the time that the disclosure is made to the regulatory authority.

(3) The elimination of civil, criminal, or administrative penalties under this section does not apply if a person or entity has been found by a court or an administrative tribunal to have committed serious violations that constitute a pattern of continuous or repeated violations of environmental laws, rules, permit conditions, settlement agreements, or orders on consent and that were because of separate and distinct events giving rise to the violations within the 3-year period prior to the date of disclosure.

NEW SECTION. Section 8. {Standard} Applicability.  
[This act] applies to:

- (1) only those environmental self-evaluations that result in environmental self-evaluation reports;
- (2) voluntarily disclosed violations that are disclosed after [the effective date of this act]; and
- (3) all legal actions and administrative actions commenced on or after [the effective date of this act].

NEW SECTION. Section 9. {standard} Effective date.  
[This act] is effective on passage and approval.

NEW SECTION. Section 10. {standard} Termination.  
[This act] terminates June 30, 2001."



Amendments to House Bill No. 472  
First Reading Copy

Requested by Rep. Knox  
For the Committee on Natural Resources

Prepared by Michael S. Kakuk  
February 13, 1995

1. Page 1, line 17.  
Following: second "to"  
Insert: "temporarily"
2. Page 1, line 20.  
Following: "governor", "convene", and "basis"  
Strike: ", "
3. Page 2, line 26.  
Following: "or"  
Insert: "allow"
4. Page 10, line 20.  
Following: "(4)"  
Insert: "(a)"
5. Page 10, lines 22 through 24.  
Strike: "Except" on line 22 through "permit." on line 24  
Insert: "(b) An appropriator, other than an appropriator  
identified in subsection (7), may object:  
    (i) during the initial temporary change application  
process;  
    (ii) during the temporary change renewal process; and  
    (iii) once during the term of the temporary change  
permit."

HOUSE OF REPRESENTATIVES  
VISITOR REGISTER

Natural Resources COMMITTEE BILL NO. HB 472  
DATE 2-13-95 SPONSOR(S) Rep. Jones  
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<u>Bob Smith</u>	<u>MT FBF</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Jim Richards</u>	<u>MT. Wildlife</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Alan Rollo</u>	<u>MWF</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<del>Paul F. Berg</del> <u>MIKE MURPHY</u>	<u>MT. WATER RES ASSN</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Paul F. Berg</u> <sup>Billings</sup>	<u>Self</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Art Whitney</u>	<u>MT Chapter</u> <u>Am. Fish. Society</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Janet Ellis</u>	<u>MT Audubon</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Ken Karp</u>	<u>MRAW</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Paul Roos</u>	<u>Self</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>LARRY BROWN</u>	<u>Ag. Pres. Assoc.</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Bruce Farling</u>	<u>MT. Trout Unlimited</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Glenn Marx</u>	<u>Governor's office</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>John Youngberg</u>	<u>MEBF</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>ROBIN CUNNINGHAM</u>	<u>FISHING OUTFITTERS</u> <u>ASSN. OF MT.</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES  
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Natural Resources COMMITTEE BILL NO. HB 472  
DATE 2-13-95 SPONSOR(S) Rep. Sawyer

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Anne Hodges	MEIC	X	
John Bloomquist	MT. Stockgrowers	X	
JAMES A LOFFTUS	NAT FIRE DIST ASSN	✓	
Deborah Smith	Sierra Club	X	

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## HOUSE OF REPRESENTATIVES

## VISITOR'S REGISTER

Natural Resources  
 DATE 2-13-95 SPONSOR(S) Rep. Story

COMMITTEE

BILL NO. HB 478

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
MIKE MURPHY	MT. WATER RES. ASSN			✓
Larry Brown	Ag Pres. Assoc			✓
Ellis Hagen	MACD			✓
John Bloomquist	MT. Stockgrowers			✓
Stephen J. Vast	MACD Area 5			✓
Paul KRONBUSCH	POWDERHORN CON. DIST.			✓

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## HOUSE OF REPRESENTATIVES

## VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. HB 430  
 DATE 2-13-95 SPONSOR(S) Rep. Dillingham

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
DAVID WALL	EXXON	430	✓	
Charles R. Brooks	Yellowstone County Blgs & Chamber of Comm.	430	✓	
Mark T. Kennedy	Blgs City Council	430	✓	
STEVE HART	Exxon	430	✓	
DAN FARMER	Bill City Council	430	✓	
GARION GRIMM	MONTANA POWER	430	✓	
DEAN SCHANZ	EXXON	430	✓	
Mark Montgomery	Flawmark Co.	430	✓	
ED LOGAN	EXXON	HB 430	X	
Ted Lange	NPRC	HB 430		✓
Bob Teicher	Self	HB 430		✓
Mort Reid	YVCC	HB 430		✓
W James Kembel	City of Billings	"	✓	

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## HOUSE OF REPRESENTATIVES

## VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. NB 430  
 DATE 2-13-95 SPONSOR(S) Rep. Schlingensiefen

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
PAUL HAWKS, MELVILLE 59055	SELF			✓
Anne Hedges	MEIC			X
GAIL ABERCROMBIE	MT Petrol Assn		X	
BOB ROBINSON	DHKS			X
Gloria Paladichuk	Richland Development		X	
Deborah Smith	Sierra Club			Y
HALEY BEAUDRY	EMERALD ENGINEERS	430	X	
Tom Nelson	Exxon	430	X	
David Owen	MT Chamber	430	✓	

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## HOUSE OF REPRESENTATIVES

## VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. AB 430  
 DATE 2-13-95 SPONSOR(S) Rep. Dahlinger

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
<u>Jan Hurdle</u>	<u>HP13 Blend</u>			<input checked="" type="checkbox"/>
<u>Dennis Alexander</u>	<u>American Lung Assoc.</u>			<input checked="" type="checkbox"/>
<u>Glennice Ore</u>	<u>NP RC</u>			<input checked="" type="checkbox"/>
<u>HS Hanson</u>	<u>HD-9</u>		<input checked="" type="checkbox"/>	
<u>Peggy Trenk</u>	<u>WETA</u>		<input checked="" type="checkbox"/>	
<u>FRANK CONLEY</u>	<u>BILLING GENERATION INC</u>		<input checked="" type="checkbox"/>	
<u>BOB LITTLE</u>	<u>HSRCO E Helena</u>		<input checked="" type="checkbox"/>	
<u>Allen Barkley</u>	<u>Columbia Falls Aluminum Co</u>		<input checked="" type="checkbox"/>	
<u>Jim Barnett</u>	<u>Columbia City MT</u>			<input checked="" type="checkbox"/>
<u>Patt Luskam</u>	<u>self</u>			<input checked="" type="checkbox"/>
<u>Mary Kay Cowan</u>	<u>Lampman-Shilo Task Force</u>			<input checked="" type="checkbox"/>
<u>Laurie Gono</u>	<u>citizen</u>			<input checked="" type="checkbox"/>
<u>Jim Jensen</u>	<u>MEIC</u>			<input checked="" type="checkbox"/>

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## HOUSE OF REPRESENTATIVES

## VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. HB430  
 DATE 2-13-95 SPONSOR(S) Rep. Dahlinger

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
MAUREEN NUGENT	YVCE (self)	430		X
Anne Harris	myself			X
LARRY ZINK	Montana Sulphur <sup>self</sup>	430	<del>as written</del>	
Mary Greenwood	MONTANA SULPHUR			
Willa Hoge	LWV			X
Jack Johnson	UDATA and Hel. Co. Needs Assess.	430		X
RALPH STONE	CITY BILLINGS COUNCIL		✓	
Paula SCHILKE	SO SIDE TASK FORCE	430		✓
Robert K. Merchant	Self	430		X
Bill Allen	MT. Audubon	430		X
Ernie Dotson	self			X
Nick Felder	NPRC	430		✓
Jeff Chatter	ONES - N. Quality Division	430		✓

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## HOUSE OF REPRESENTATIVES

## VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. HB430  
 DATE 2-13-94 SPONSOR(S) Rep Dahlinger

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Ed Zaidler <sup>Bullington</sup>	Resident Taxpayer			X
Denise Roth Billings				X
Paul F. Berg <sup>Billings</sup>	self			X
Bill Shikany	SELF			X
Sally Keene	BILLINGS RESIDENT			✓
Bern Kimberley	Self			✓
Carol Gill	MT Farm Bureau			
KAREN KITCHEL	CENTRAL TERRY TASK FORCE - BLGS			✓
Dymon Davis	Ward I			✓
Dexter Busby	Ment. Ref. Co.		✓	
DENNIS FETTIG	THRAW/APOLLO		✓	
Ron Pletcher	CENEX		✓	
Paul Glaser	SELF (RETIRED CENEX)		✓	

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## HOUSE OF REPRESENTATIVES

## VISITOR'S REGISTER

Natural Resources

COMMITTEE

BILL NO. HB 473DATE 2-18-95SPONSOR(S) Rep. Knapp

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
<u>John Brandy</u>	<u>Stillwater Co.</u>	<u>HB 473</u>	<input checked="" type="checkbox"/>	
<u>Jim Richer</u>	<u>MT Assoc Realtors</u>	<u>473</u>	<input checked="" type="checkbox"/>	
<u>Alan Rollo</u>	<u>MPR</u>	<u>473</u>	<input checked="" type="checkbox"/>	
<u>Willa Hall</u>	<u>LWV</u>		<input checked="" type="checkbox"/>	
<u>J. Shontz</u>	<u>MT ASSOC REALTORS</u>	<u>473</u>		<input checked="" type="checkbox"/>
<u>MIKE MURPHY</u>	<u>MT WATER RES ASSN</u>			<input checked="" type="checkbox"/>
<u>W. James Kembel</u>	<u>City of Billings</u>		<input checked="" type="checkbox"/>	
<u>Shenna Obri</u>	<u>Jeff. County</u>	<u>473</u>	<input checked="" type="checkbox"/>	
<u>COLLIN DAVIS</u>	<u>MT. ASSOC REALTORS</u>	<u>473</u>		<input checked="" type="checkbox"/>
<u>Ernie Dutton</u>	<u>MT ASSOC Realtors</u>			<input checked="" type="checkbox"/>
<u>Nick Golder</u>	<u>NPRE</u>	<u>473</u>	<input checked="" type="checkbox"/>	
<u>Blake Wandal</u>	<u>Lewis &amp; Clark Co</u>	<u>473</u>	<input checked="" type="checkbox"/>	
<u>Don Allen</u>	<u>MT. Wood Products Assn</u>	<u>473</u>		<input checked="" type="checkbox"/>

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## HOUSE OF REPRESENTATIVES

## VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. 473  
 DATE 2-13-95 SPONSOR(S) Rep. Furr

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Steve Manderille <sup>Helena</sup>	MT Assoc Realtor	473		X
David Owen	MT Chamber			X
Bob Stephens	mt. Grain Growers			X
Russ Rutter	Wash Corp			X
Bob Gilbert	SELF			X
Chris Racicot - Helena	Montana Building Industry	473		X
Bob Gilbert	Mont Fire Association Districts Assn			X

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## HOUSE OF REPRESENTATIVES

## VISITOR'S REGISTER

Natural Resources

COMMITTEE

BILL NO. HB 473DATE 2-13-95SPONSOR REP. KNOX

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Janet Ellis	MT Audubon	473	✓	
Andrew Epple	City of Bozeman		✓	
Ellen Woodbury	Gallatin County		✓	
	Park County			
DON WILLIAMSON	CITY OF HAMILTON		✓	
Peggy Trenk	WETA			✓
ANDY SKINNER	SELF			✓
Larry Brown	Ag. Pres. Assoc.	473		✓
John Youngberg	MT. Farm Bureau	473		✓
Kathy Macfield	City of Helena		X	
ROBIN CRAWFORD	F.O.A.W.	473	X	
John Bloomquist	Mt. Stockpiles	473		X
Gordon Morris	MACo	473	X	
Deborah Smith	Sierra Club	473	X	

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## HOUSE OF REPRESENTATIVES

## VISITOR'S REGISTER

*Natural Resources*

COMMITTEE

BILL NO.

*AB 483*DATE *2-13-95*

SPONSOR(S)

*Rep. Ellis*

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
<i>Edward Eschler</i>	<i>Myself</i>	<i>483</i>	<i>X</i>	
<i>Mort Reid</i>	<i>yellowstone valley citizens' Council</i>	<i>430</i>		<i>X</i>
<i>Jim Richards</i>	<i>MWF</i>	<i>483</i>	<i>X</i>	
<i>Stan Frasier</i>	<i>Self</i>	<i>483</i>	<i>X</i>	
<i>Paul F. Berg</i> <sup><i>Billing</i></sup>	<i>Self</i>	<i>483</i>	<i>X</i>	
<i>Louise Bruce</i>	<i>Montana Wilderness Association</i>	<i>483</i>	<i>X</i>	
<i>Janet Ellis</i>	<i>MT Audubon</i>	<i>483</i>	<i>X</i>	
<i>Deborah Smith</i>	<i>Sierra Club</i>	<i>483</i>	<i>X</i>	
<i>Jim Jones</i>	<i>MOTC</i>	<i>483</i>	<i>X</i>	
<i>ZACHS ECTON III</i>	<i>AGRICULTURAL PRESERVATION ASSO.</i>	<i>483</i>		<i>X</i>

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