MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION

Call to Order: By **CHAIRMAN JOE BARNETT**, on February 14, 1995, at 3:00 P.M.

ROLL CALL

Members Present:

Rep. Joe Barnett, Chairman (R) Rep. John "Sam" Rose, Vice Chairman (Majority) (R) Rep. Don Larson, Vice Chairman (Minority) (D) Rep. Jon Ellingson (D) Rep. Dick Green (R) Rep. Harriet Hayne (R) Rep. Gay Ann Masolo (R) Rep. Judy Murdock (R) Rep. Karl Ohs (R) Rep. William M. "Bill" Ryan (D) Rep. Robert R. Story, Jr. (R) Rep. Jay Stovall (R) Rep. Lila V. Taylor (R) Rep. Cliff Trexler (R) Rep. Kenneth Wennemar (D) Members Excused: Rep. George Heavy Runner Rep. Dore Schwinden Members Absent: Rep. Rick Jore Staff Present: Connie Erickson, Legislative Council Jaelene Racicot, Committee Secretary Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee Business Summary: HB 459, HB 452, HB 453, HB 445, HB 520 Hearing: Executive Action: HB 452 TABLED HB 453 TABLED HB 459 TABLED HB 395 DO PASS HB 520 POSTPONED

{Tape: 1; Side: A}

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HEARING ON HB 459

Opening Statement by Sponsor:

REP. VICKI COCCHIARELLA, stated this bill reflected changes made after they compared it to current statute and said this bill was well written. She described the problem in Missoula and other areas where current ditches no longer fit the intended use for rural places. At the present time, the ditches are not being used for irrigation or to water cows, but are used for people to flood-irrigate their lawns and to "water their petunias." She said what they are really doing is drowning children. She said it is time for the Legislature to decide what to do with these ditches now that they have become obsolete.

The language in the bill had been changed from the original draft to limit this ditch bill to affect first-class cities only with a ditch running through it, when 90 percent of the property owners in the district don't use the ditch for commercial purposes. The Missoula Irrigation District had tried to do something about the ditches that run through the rural areas. She said they wanted to stop these drownings and make them safe, however it was almost cost prohibitive. No one would want to pay for all the culverts, for example. The bill would allow for the ditch to be closed in a first-class city. There was no intention in the bill to deal with a rural situation. There are potentially ten commercial users of the ditch, one of which owns 90 acres. Currently, people pay their ditch fee by the acre through taxation. Most people pay \$22 per year, however one owner pays \$800 a year to the district for a ditch they do not use.

Proponents' Testimony:

Tracy Tunek, Missoula, said she was a member of this district and she must pay a fee to the district when the ditch does not even go to her property. She said, "This ditch no longer serves the intended purpose and no longer serves the rural area; rather it goes through city parks and children's backyards." She believed the responsibility to protect children from drowning outweighed any benefits the ditch once had. Changes in the bill reflect the concerns of a task force the Missoula mayor had established. The task force consisted of members from the community including the agricultural users of that water and they approved the referendum that was presented to the city council. The inferendum stated that if they were supplied with alternative sources of water they would be willing to close the ditch. She pointed out this situation was not unique to the Missoula community. She assured the committee as cities grow and their populations increase, this problem would recur.

Guy Kautz, Missoula, said he owned two business in the urban area where the ditch passed through his property. He said he wanted to cover the ditch and add on to his business but he was denied that right. HOUSE AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE February 14, 1995 Page 3 of 30

Judy Pratt, Citizens Against Unfair Taxes, Missoula, said she was not a member of the ditch district or did not pay the fees. The main reason she was in favor of the bill was because of the drownings. She explained that when a little boy drowned as a result of this ditch two years ago she became concerned as a mother and a health professional. She stated, "Missoula does not want the ditch to kill children. A lot of the drowned children have floated up to a mile before being found." She said that 22 people have drowned in the ditch since 1950, 18 of them have been under the age of 3 years, 14 of them have been boys. She read an article written for the Missoulian about a boy named Jonathan. EXHIBIT 1 She commented on the two major arguments against closing the ditch. First, parents should watch their children closer, and second, more kids were getting hit by cars and killed than the number of children drowned in the ditch. Ms. Pratt stated after checking records in Helena kept by the Highway Patrol, "one child had been hit by a car in that district since 1950 compared to the 22 drownings."

She said there were other problems that pointed to the complexity of the ditch issue. She said due to the existence of the ditch, a man could not expand his business and build an addition to his motel. She said that everyone is either on city water or they already have wells. About \$90,000 a year are collected from these fees; perhaps the money should be used for bigger pumps or wells.

{Tape: 1; Side: A; Approx. Counter: 409; Comments: None.}

Most city use is for lawns and gardens with 2,400 land owners in that district. The ditch board does not have any records but thinks there were about 500 users of the ditch water. Other people have to pay the fee but could not access that water. For example, one woman had to pay over \$900 for that fee and there was a 30% increase since last year. She said that all the documentation was in the packet that included letters from the Highway Department, City County Health Department (See Exhibit 1). The average cost to Missoula was \$200,000 a year. The \$90,000 in fees and another \$100,000 estimated by city engineers for road repairs and construction.

{Tape: 1; Side: A; Approx. Counter: 472; Comments: None.}

The aquifer was another misconception spread by people that believe by destroying the ditches, the aquifer could not be recharged. She contended the aquifer was recharged 1.9% by the ditch. The Missoula aquifer contains 15 times more water than they draw from it every year and it was recharged by the river. She said they had a resolution from the Missoula Indian Center who supported this and the Missoula City/County Board of Health and the task force supported this as well. HOUSE AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE February 14, 1995 Page 4 of 30

Opponents' Testimony:

Ray Tipp, secretary and attorney for the Missoula Irrigation District, said the reason for this legislation was to shut down the Missoula Irrigation District. **EXHIBIT 2** He explained the district was established in 1877 before Missoula extended itself south of the river. It is 26 miles of ditches. He said it is not true that there were 500 people using this ditch. In 1922 the Missoula Irrigation District was formed by court decree. He said, "It was formed as a public corporation, a political subdivision with the same status as a municipality, with the same status as a county." The proponents desire to gut and destroy this public corporation.

Mr. Tipp said if it is shut down under the guise of the water in the ditches not being used 90% by commercial users then this bill would allow for an unnamed municipality to allow the ditches to be filled in. He pointed out in the law there are two distinct property laws involved in this situation. One is the water right which is very necessary and valuable and cannot be taken away without due process. Water rights can only be taken away from someone if they abandon it and/or if it is condemned. He pointed out that it can only be condemned if there is a public use for that water. In addition to that, there is a separate right which is a property right and that is a ditch right. A ditch right exists separate and apart from the water rights and vice versa, and they have value. There are 2,400 pieces of land being taxed, but as a public corporation, they have taxing authority. It does tax for maintenance and upkeep of the district, but in addition to that, if this legislation passes, each and every person that may be damaged by governmental action is entitled to compensation. Compensation for two things: their ditch right and their water right, to the extent that it may be destroyed but it can never be destroyed entirely. The ditch runs through part of Missoula and a lot of the county as well.

{Tape: 1; Side: A; Approx. Counter: 846; Comments: None.}

Mr. Tipp pointed out that by telling the city to close up the ditch and block off the diversion, they would be blocking off the people in the county, and for what? For the city to go out and spend its money by digging wells, which may not be enough? How does the water get from the well to the field, the lawn, the garden, to wash off the driveway, in pipes or ditches. He said if they are pipes, who is going to maintain them, who would pay for them, who would they belong to, who would administer them? If they are ditches, how about the volume. What are the problems? This legislation does not touch any of that. This bill only proposes that if it is not being used commercially at least 90% of the time, then the city should shut it down and have the right to shut it down. However, it does not address these other problems and it should and it must.

{Tape: 1; Side: A; Approx. Counter: 924; Comments: None.}

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Mr. Tipp stated the bill talks about commercial uses. He suggested looking at the irrigation district statutes and the water law statutes to see if the water rights in Montana are limited only to commercial purposes. He asked how they would define commercial purposes. "I have a horse, put a horse in the pasture and grow grass for him, or a goat, is that commercial? Or how about a little garden, do we have to sell the carrots to qualify as commercial? Or is there a water right given by law to use and to use the ditch to bring that water?"

{Tape: 1; Side: B; Approx. Counter: 000; Comments: None.}

Ray Tipp continued his testimony and said they agree with the taxing of \$90,000 previously mentioned. He said the district was involved in court with the various people who support the bill as well as the city of Missoula. They have caused extensive legal expenses and the people in the district have to pay for those expenses. One of the proponents filed to be a commissioner on the district, but she will have to work with the district or there will be malfeasance of office and it would be a criminal act. However, this is only an action brought by some people that are not thinking, to try to destroy something that is constitutional and that cannot be destroyed by passing oppressive laws.

Eugene Diemes, Missoula, said he is against the bill. EXHIBIT 4 The land that he represents was patented in 1888 and includes the reservation for the irrigation district and canals. The ownership location of ditches and land with water rights was filed and recorded in October of 1901. The closing of ditches in the city effectively closes the ditches in the outlying area. Having the city provide a well for a commercial grower is not really an option. There are two reasons for this. First, the tremendous cost of a well and its operation. Second, the cold well water will hinder the growing of plants. The short growing season plus cold water will basically shut down agricultural businesses. This bill is not intended to put growers out of business. He said he is a commercial grower, growing vegetables, berries and flowers. He presented four letters in opposition to be entered in the record. EXHIBITS 5, 6, 7, and 8.

David Gist, Missoula, spoke in opposition to the bill. He said that irrigation is essential to him as he has a five-acre tract. He does not qualify for agricultural or commercial classification but rather is a typical rural resident. His parents were there in the 1940s and now he has the property. He needs the water desperately for the horses he raises. He pointed out that they cannot acquire a water right with enough water to handle the needs of his property. He said he highly resents the city taking away his water rights. He said there are very many people highly dependent upon it. He estimates there were several thousand users that pump out of the ditch. He said he could sympathize with the emotional testimony about the drownings, but pointed out there are numerous dangers to children everywhere. However, the HOUSE AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE February 14, 1995 Page 6 of 30

benefits of the ditch need to be weighed carefully with public safety. He felt that public safety could be addressed through education and other measures. Parents do need to keep track of their kids.

Mike Murphy, Water Resource Association, went on record in opposition to HB 459. He said they perceive this as a takings issue. Ultimately looking at the potential for unfunded mandates on taxpayers for class one cities. It is recognized that many people move into the area for the reason of having access to that water. These development issues would continue in the future. However, the 90% threshold of class one city criteria opposing this legislation will really impact very few irrigation ditches.

Larry Brown, Agricultural Preservation Association, echoed the comments of Mr. Murphy. He said they were very concerned about private property rights and water rights.

John Youngberg, Montana Farm Bureau, said he understood the safety factor of the ditch in Missoula but if that law was passed it would affect every class one city in the state. He had a couple of questions. He said there was recourse to dissolve a ditch district and there was also a way to be exempted from the district, it is in the law. What happens to the property when the ditch gets filled in, does that still belong to the ditch district or the city? Who pays for the pumping of the water after they drill the well? It says they would pay for that but they have to pump the water year after year on a continuing basis. There are a couple of other questions about closed aquifers that may not affect the Missoula area but may have an effect in Billings.

John Bloomquist, Montana Stockgrowers Association, said their association opposed this legislation.

Dean Hom, Billings, said he runs a canal through the city. There were laws regarding the termination of ditches within the city to take care of this. He felt these issues should be worked out with their commissioners rather than passing this bill.

Bruce Benson, Missoula, submitted written testimony. EXHIBIT 9

Questions From Committee Members and Responses:

REP. JON ELLINGSON asked **Ray Tipp** how many commercial users there are on this district. **Mr. Tipp** replied that there was no way to know or monitor that. The funds were administered for upkeep and maintenance of the system. **REP. ELLINGSON** asked when a ditch is created for an area that is almost all agricultural then the character of the surrounding land changes, then a safety problem exists, what kind of steps are being taken to address the safety problem that was created? **Mr. Tipp** replied the character of the land has not changed historically. There is a statute that is being attempted to amend that says the city may put in any kind HOUSE AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE February 14, 1995 Page 7 of 30

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of safety systems they want, such as fences. **Mr. Tipp** pointed out the problem of alluvial soils that build up around the culverts and if someone gets in the culverts there is no way to save them.

{Tape: 1; Side: B; Approx. Counter: 323; Comments: None.}

REP. JAY STOVALL asked **REP. COCCHIARELLA** about the definition of commercial. She replied that an amendment was needed regarding tax law for commercial clarification to show that revenue is generated. That would clear up who was commercial and who was not. It would look at agriculture issues and other uses of land that are traditionally irrigation connected and see who had reported income from that property based on that criteria.

REP. SAM ROSE asked **Tracy Tunek** about the result of court action. She replied she did not know. **Ray Tipp**, the attorney for the district, said the legal problem had to do with someone that was not a member of the district but that wanted to be seated.

{Tape: 1; Side: B; Approx. Counter: 420; Comments: None.}

REP. DON LARSON asked if the district was the owner of the property through which the water flowed. **Mr. Tipp** said the district had it in trust for the people. He said the district had three filed water rights that were amalgamated into one recognized right three years ago.

REP. COCCHIARELLA clarified that the land was owned by the landowner and was not the ditch property. **REP. LARSON** asked if there was a recorded easement for the ditch on their deeds. **Ms. Durch** said to refer to page one on the bill lines 19 and 20. She said "If you are part of the district you are part of the district. Devices and improvements must provide access and may not be constructed to hinder the operation and maintenance of the ditch. The law provides in the ditch district that you cannot fence, board up or cover up the ditch on your own property because of this law."

REP. OHS asked **Mr. Tipp** to explain how the ditch rights work in the district. He replied that the ditch became a right in 1880 by prescriptive rights and acknowledged by District Court on September 5, 1922 when the district was formed by court decree. The ditch district has a prescriptive easement through the court decree. The property owners own the property and the water runs across the property by a manner of right.

REP. STOVALL asked **REP. COCCHIARELLA** if the ditch was closed and wells were established would the city furnish the money and continue to furnish money to pay for the power charges. **REP. COCCHIARELLA** said that the intention was to find a way for Missoula to shut down the ditch. They wanted to be able to replace the ditch water with a well for those people who use the water commercially. There was never any intention to pay for the HOUSE AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE February 14, 1995 Page 8 of 30

power to that well forever. The wells would not be very expensive since the water table is so shallow.

REP. DICK GREEN asked **Mr. Tipp** if there were any fundamental differences in the right of enjoyment in free use whether it is fee simple or prescriptive easement. He replied they operated differently but the right is vested to you and cannot be taken away arbitrarily.

REP. JUDY MURDOCK asked **Mr. Tipp** if it was true that the ditch could not be fenced on their own property. He replied that there was never a limitation from fencing, but there had to be room to maintain the ditch. He pointed out if someone gets in the ditch and there is a fence, how are they going to get to that person. The law does allow by statute a city can go in and fence an irrigation ditch at its expense, but there is a liability that goes with it.

{Tape: 1; Side: B; Approx. Counter: 730; Comments: None.}

REP. GAY ANN MASOLO asked **Mr. Hoff** asked how he handled the problem. He said they do not fence but rather they cover the ditch. As long as the landowner takes the expense and covers the ditch, then maintains it to keep the free flow including grading, it is allowed to happen. To fence the entirety of it is not cost effective. **REP. MASOLO** asked if these things were handled locally. He replied that they tried to handle everything at the board meeting.

REP. COCCHIARELLA addressed **REP. MASOLO'S** question. She said the district in Billings is not the same as the district in Missoula and that they did not collect fees on their taxes. Ditch districts are protected under law so tightly that Missoula has tried to do something. If access to the ditch is not provided then fences can be removed. Fences and culverts don't work. Nothing works but to get rid of the urban ditch. This ditch was started in 1877. The issue will keep coming back. A lot of children have lost their lives and business has been hindered because the ditch does not serve its purpose anymore but just gets in the way.

{Tape: 1; Side: B; Approx. Counter: 840; Comments: None.}

Closing by Sponsor:

REP. COCCHIARELLA closed.

{Tape: 2; Side: A}

Will Snodgrass identified himself as the producer by video taping the hearing. He stated he was registered with the Chief Clerk of the House of Representatives. HOUSE AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE February 14, 1995 Page 9 of 30

HEARING ON HB 452

Opening Statement by Sponsor:

REP. MIKE KADAS offered to present HB 452 and HB 453 together. The committee objected, so he introduced HB 452. He said in current law, local governments could adopt ordinances to regulate the application of pesticides. The bill says that in the case of municipalities that after the spraying is done they have to post signs for 48 hours or until the pesticide label expires, whichever is greater. This is spraying lawns within municipalities with reference to kids so that parents know a lawn has been sprayed and they can keep the kids off of it. That is the whole point of the bill, it is a limitation in that it tells municipalities what they can do.

Proponents' Testimony:

Wil Snodgrass, President, Chemical Entry Information Network of Montana, said he was listening to the pesticide industry's argument for over a decade but it is time to do something to protect people. The number one concern among Montana ranch wives in 1992 was pesticides and toxic chemicals. The residues of chemicals and pesticides are in most Americans in their testicles, brains and their breasts. The compounds found in breast milk are at alarming levels.

In July, the Environmental Protection Agency Dioxin Reassessment Program said there were 50-100 pesticides suspected of containing dioxins and the effects are now being seen. There are now new ingredients that are called "trade secrets." They are very difficult to find out about, though physicians can find out about them but only after a child has been poisoned. These ingredients are often far more toxic than the active ingredients by a factor of a thousand. Ranchers are unwittingly spraying those chemicals on their ranchland. These products are not safe. He quoted the EPA as to the dangers and pointed out several labs that had been fraudulently testing chemicals. He said that generational effects of these compounds had been surfacing in children who were exposed as well as in reproductive abnormalities. The cost to Workers' Compensation and the public health care system run into millions of dollars. This all points to the need for signs to warn people of the presence of these chemicals. The environment and people are contaminated with the residues of toxic chemicals, according to the National Academy of Sciences and CBS and ABC news reports. People need protection now, rather than in twenty years when the effects present themselves. He urged passage of the bill since it would not only save money but putting up signs would be far easier than dealing with future liabilities. EXHIBITS 10 and 11

Opponents' Testimony:

Brad Culver, representing AMTOP, Association of Montana Turf and Ornamental Professionals and as owner and operator of Nitrogreen Lawn Care of Helena felt the bill is unnecessary and does not address many issues. In particular, it does not address homeowners which account for the large majority of pesticide applications. Most commercial applicators are already voluntarily posting and have done so for the last five years. On page one, line 19 and 20, the signs cannot be removed for 48 hours after the application or safe reentry time on the label.

Most signs tell people to stay off the applied area until dry and then to remove the sign the day following application. The signs need to be of durable rigid material. However, vinyl signs remain legible indefinitely. Another point they take exception to is the pesticide application. Their company marks all applications whether they are fertilizer only or a fertilizer/chemical combination, however if they fail to post a flag it causes confusion with the property owner. On the second page, language concerning information required on the back of the flags is not necessary. The wide variety of products would make this burdensome for the applicator to fill out and make an unnecessary expense for the property owners for the additional time that it would take. Also, trying to write all the information on the back of the flag and make it legible in 18 point type would be difficult. For a person to read this information would require them to walk on to the area, trespass or become more exposed to the chemical application. This should be avoided.

The flags are to be in a conspicuous place where the application was applied. If a lawn was sprayed for dandelions in twenty different place, then a flag would have to be applied in each different place. Many of the people in the industry practice what is known as IPM or Integrated Pest Management where they apply pesticides in a judicious manner and only where it is necessary. In this bill it would be far easier to blanket-apply pesticides to an entire lawn and post only one or two flags and this would discourage the more responsible IPM approach. He presented amendments to the committee consistent with their current posting, but there are many other concerns that are not addressed such as pesticide applicators, railroad right-of-ways, wheat districts, irrigation districts, etc. He said that those in the pesticide industry are already taking a pro-active stand regarding the concerns of pesticide. The bill is confusing and unnecessary. EXHIBIT 12

Scott Stellstad, a member of AMTOP and past owner of a lawn and tree care business for eleven years, said he was opposed to the bill for several reasons. He pointed out the bill is unfair to professional applicators. It does not cover the homeowner application of pesticides. Companies all over the state have moved towards posting pesticide usage. HB 452 is unnecessary HOUSE AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE February 14, 1995 Page 11 of 30

because SB 334 passed in 1993 already provides for local governments to petition the Department of Agriculture to adopt rules to regulate the application of pesticides that may also include posting. The department would develop policy for review and approval for local pesticide ordinances. If there was a real need for great demand for posting then the mechanism is already there for implementation. No municipality or local government has asked the Department of Agriculture to implement posting regulations. There is no broad support or public demand. Α similar posting ordinance was defeated in 1991 in Missoula in the general election by a margin of 57 to 43. The bill is flawed in that it singles out professional companies that have a history of responsible pesticide use while failing to address homeowners who account for the majority of pesticide use. SB 334 already addresses these uses.

Pam Langley, representing the Montana Agricultural Business Association, said the bill was a better posting bill that has been seen in past sessions or in Missoula. Their association cannot support homeowner posting. However there are some issues that are not addressed that would be confusing such as posting on right-of-ways, weed districts etc.

Dan Halvorson, member of AMTOP said that the signs were put out every spring in every application they did.

Jim Freeman, Weed Supervisor in Cascade County, said the 1993 Legislature provided for this in SB 334 that added the section they were looking at which provided for the regulation of the usage of pesticides by local governments as long as they were consistent with state policy as determined by the Department of Agriculture. This proposal would seem to negate this action and allow local government to adopt local ordinances unilaterally without regard to statewide consistency. This bill would create a nightmare for applicators operating in various jurisdictions and should be defeated.

Ed Kirby, Montana Manager for United Right A Way, a custom applicator, requests a no vote on this bill.

Bob Carlson, Silver Bow Weed Supervisor, said the bill was another attack on the use of pesticides in the state. Should it pass there would be further attacks on county weed districts. This would create a lot of problems. He urged a no vote.

{Tape: 1; Side: B; Approx. Counter: 500; Comments: None.}

Doug Johnson, Administrator of the Cascade County Mosquito & Weed District, said in spraying to eradicate mosquitos for the purpose of public health control of an airborne disease of large areas they must spray in a short period of time. A whole portion of a city or town might be covered in the event of an outbreak of encephalitis; there would be no way to stop and post every house HOUSE AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE February 14, 1995 Page 12 of 30

and it would be cumbersome. He suggested the committee table the bill.

Lorna Franks, Montana Farm Bureau wanted to go on record in opposition of the bill. She mentioned that the TV stories about pesticides, such as in the case of apples, was unfounded and full of misinformation. She said the bill was a bad bill.

Pat Keim, Director, Government Affairs for Burlington Northern Railroad said they supported the bill last year that set up the system under the Department of Agriculture. The problem with the railroad is that it runs through hundreds and hundreds of jurisdictions and regulations. A bill in the transportation committee would require the railroads to keep their right-of-ways clear of weeds. Enacting this bill would create a severe problem for the railroad industry.

Mike Murphy, Montana Water Resource Association went on record as opposing the bill.

Larry Brown, Agricultural Preservation Association went on record opposing the bill.

Bob Stephens, Montana Grain Growers Association, said they feel that regulations are already in place so they are opposing the bill.

Russ Ritter, Montana RailLink, Missoula, said they were also opposed to the bill because their railroad runs through so many districts and the logistics would make it very expensive.

John Semple, Montana Aerial Applicators, also opposed the bill. This bill would encumber both applicators and agricultural land

{Tape: 1; Side: B; Approx. Counter: 698}

David Gast, homeowner from Missoula, opposed the bill as a bureaucratic duplication of existing laws.

Questions From Committee Members and Responses:

REP. LARSON asked **REP. KADAS** asked about the unfairness of commercial applicators. **REP. KADAS** said the comparison was unfair because a lot of people don't apply anything. He said the professionals doing the application are doing a good job but it is not unfair to ask for some notification. There is already a law that provides for notification, but his bill would give the local government the option of making a uniform set of standards of how they would do it.

REP. LARSON said the other concern was the hodgepodge of local ordinances. **REP. KADAS** said this bill would provide uniformity to the local ordinances.

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REP. TREXLER asked **REP. KADAS** if a sign 4 inches by 5 inches would hold enough information to warn children. **REP. KADAS** replied that he did not expect the signs to be warning a lot of children since most of them can't read, rather he'd expect it to be a warning to parents. This was taken in another state with a similar law and they are able to get the information on the signs. He said there is no problem about vinyl signs vs rigid signs, it is not a big issue. Limiting the information on the signs is not a problem either but there should be some specifics about the particular signs they should use. He does not thin! it unfair to have what the pesticide is or some information about it.

REP. TREXLER asked **REP. KADAS** to address the aerial application concerns and how the signs could be put up. **REP. KADAS** said this only applies to a municipality.

{Tepe: 2; Side: B}

REP. KADAS said there should be some accommodation for aerial applications in municipalities.

REP. RYAN asked **Brad Culver**, one of the applicators, about the sign and whether the industry advertised their products. Mr. **Culver** said if information about the product were needed it was better found on the back of a sign on a lawn someplace. He said their company works diligently trying to educate their customers and provide them with the information they need about what they are doing and the products they are using. He said he would rather address concerns about the product himself rather than relying on the signs.

REP. RYAN asked **Mr. Culver** about the "Keep Off" signs. He replied that his signs do say "please stay off until dry" which is what most of the labels say about reentry. The problem is when a number of different products are used.

REP. MURDOCK asked **Mr. Culver** whether it was true the applicators needed extensive training to do this. **Mr. Culver** replied that in order to be a licensed pesticide applicator they need to do a number of testing procedures with the Department of Agriculture. Most companies have their own in-house training also as well as state and national organizations.

Closing by Sponsor:

REP. KADAS closed and said he appreciated that the pesticide applicators do their best to educate their customers. He said the bill was not directed at the customers since they have already made their choices. But rather the bill was aimed at protecting the neighborhood children. He said he did not see the applicators educating the neighbors' kids about the risks. He said he did not expect them to do that, but that this would provide a cost effective way to do that. He stressed there was HOUSE AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE February 14, 1995 Page 14 of 30

already a local option but the bill provides a mechanism for use of the local option and provides uniformity so they do not have a hodgepodge of different situations around the state. He reinforced that it only applies to municipalities which tries to keep in a very limited scope.

HEARING ON HB 453

Opening Statement by Sponsor:

REP. KADAS said that essentially this bill would be amending the same law, only allowing municipalities to do this but it was a little different in respect to irrigation ditches so that the public would have a little better notification. Not all communities have a lot of irrigation ditches, but Missoula does. There should be some notification about pesticides being used around irrigation ditches, since some children do play around them, even though they shouldn't.

{Tape: 2; Side: B; Approx. Counter: 160}

Proponents' Testimony:

Wil Snodgrass, Chemical Entry Information Network of Montana, said the chemistry involved in the ditches is usually Magna side H which contains akrolaids. Of all the toxic substances known to man, akrolaid is one of the most toxic. It has a minimum risk level of .00005 parts per million. He put that in perspective, as an example: take all of the cars ever manufactured on the planet earth and paint one of those cars red, that would be the concentration involved. Another example: one drop of water which is a standard chemical drop of .05 milliliter contaminated at the federally-allowable level for a particular chemical, contains 94,000 molecules of that chemical in one drop. The minimum risk level for akrolaid in the ditches changes for exposure longer than 14 days, it becomes .000009. Here is an extremely toxic compound being pumped into the ditches, volatilizing into the air, getting into a child's backyard, getting in through windows, food, bedding and there is no warning whatsoever about this. This product kills fish. These products are causing chemical injuries to children, and the effects may not show up in their lifetime, but are multi-generational or can show up at age 50 in the form of the many cancers. It is not a big job to put some signs up by the ditches where this extremely toxic compound is being applied, he said.

Opponents' Testimony:

Ray Tipp, Missoula Irrigation District, said that this proposed bill is directed to irrigation districts. He said there are many irrigation ditches and systems, such as the Flynn Ditch which starts in Missoula and moves into the Frenchtown area. There is the Orchard Home Ditch Company which starts at the Milwaukee HOUSE AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE February 14, 1995 Page 15 of 30

Depot area and goes through the city into the Orchard Homes area which is in the county again. There is also the Rattlesnake Ditch. This is not just directed to irrigation districts, but irrigation ditches, which is discriminatory in itself.

Additionally, the statute talks about commercial applicators. There are many applicators who are not commercial applicators. There are licensed applicators that are not commercial applicators. For example, the ditch rider for the Orchard Home Ditch Company is a licensed applicator but not a commercial applicator which puts them outside of the scope of this bill and it's the same with the other companies, he pointed out. The bill does not appropriately get at the situation when it comes to the applicator because the applicator is the minority. Irrigation districts are not the ones who are running the majority of the water through the state. Ditches in general, run by all kinds of people throughout the state. Each ditch has a problem of aquatic moss and grasses and they have to be taken care of by a chemical means. It is not practical or feasible to try to do it in any other way. The grasses and mosses retard the flow of the water. When it does that, build-up can cause big flooding problems.

He said this bill was supposed to be an amendment to a pesticide law. If it is to be an amendment then it should be accurate. The statute definition of pesticide does not define herbicides. The definition of commercial applicator does not define licensed applicator or employees. Irrigation ditches however aren't even mentioned, though in the bill irrigation districts definitely are. The bill is asking for signs to be at every port of access. This will not work since there is access on the right side of the road and the left side of the road, coming and going, the alley, people's backyards, same situation, trails and all kinds of access to a ditch. The definition for pesticide is in the statute but the definition given here is not what is in the statute. (Written testimony of John Semple) EXHIBIT 13

{Tape: 2; Side: b; Approx. Counter: 403; Comments: None.}

Part of this bill states what the law presently is having to do with pesticides, having to do with the department. However, section (b) proposes to give a municipality authority over a district and to pass ordinances without reference back to that which is even necessary to the pesticides. It presupposes that an ordinance once presented must be accepted, there is no provision for a hearing. He said that he did not think the administrative rules allowed that. If someone is going to be legislated out they should have some standing. The districts often are in the county not a part of municipal government. He said the bill is unneeded, not practical and not constitutional and recommended it do not pass.

Jim Freeman, Weed Supervisor for Cascade County, and a certified aquatic applicator, said there are many other herbicides for use in aquatics besides the one mentioned earlier. If Missoula wants

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to post their ditch, there is a current law giving them authority to do that. This law is not needed to make that happen. The current law will work as long as it works with the Department of Agriculture. He recommends the bill be killed.

Mike Murphy, Montana Water Resource Association, said the association opposes HB 453. He said the bill represents unnecessary, impractical and costly regulation. A unit of local government may already adopt an ordinance to regulate pesticide application. Ordinances may include among other things a notification based upon approval provided for policy developed by the Department of Agriculture. If a municipality would adopt an ordinance under HB 453, requiring notice by commercial applicators or the irrigation district prior to applying an aquatic herbicide then notice to the Department of Health would be required no less than 7 days before the date of application.

{Tape: 2; Side: B; Approx. Counter: 540}

He said this is totally impractical because an aquatic plant is heat sensitive and grows extremely fast as it reacts to favorable growing conditions. Under the right conditions the ditch can be almost overflowing from a fast blooming growth in just two or three days. Timing a herbicide application at the appropriate growth and stage of the plant is important in order to be effective. It costs an estimated \$3,000 for an 8-10 mile stretch and must be applied at the most appropriate time in order to be effective. In addition to the problems with timing the weed growth itself, there are factors such as unfavorable weather conditions, emergencies, and personnel absences or mechanical problems experienced by the district or a commercial applicator may restrict the date of application. Changes in application date due to these factors are very common. Pertaining the requirements that a commercial applicator or irrigation district post signs at all access points, such efforts would also be an additional expense to the district and to the irrigators in the district. Considering the extent and the significance of the weed problems it does not make economic or environmental sense to spend time and money on busy work associated with unnecessary government regulation.

In addition, as established under law, the public, in many cases, does not have legal access and are trespassing in order to enter onto the ditches or established easements created under the irrigation district. Access limitation to such districts and associated easements can affect, in some cases, even the owner of the property. This legislation would raise the level of liability and add expenses to the irrigation district due to the public's new knowledge of such applications and opportunity for frivolous claims and lawsuits, etc. He said again, that the Montana Water Resource Association opposes such legislation. **EXHIBITS 14 and 15** HOUSE AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE February 14, 1995 Page 17 of 30

Jay Chamberlain, Project Manager, Dillon Area Irrigation, stated he has handled these types of projects for at least 15 years so he has some experience with it. The cost of the application needs to be addressed. The product is very expensive and is really based on conditions. Growth of the weed is based on water quality and sunlight. An applicator does not apply this on a whim, it is very costly to apply. It is very smelly when the ditches are being applied. You can smell it through town. It pretty much warns the community by the smell that the product is being applied. The product has been used throughout the northwest for many, many years. In Arizona, for example, the application time was put on TV and radio with the dates and times that the product would be applied. After about two applications, the people ignored it. It is not exciting, there is not a lot to They accept the fact that it is very needed. Because of see. the cost again, it is restricted. Plans are filed with the Department of Agriculture who inspect it to make sure all of the criteria is met. The plan has to be filed every year. This is not something you go buy off the shelf, but rather is highly regulated. The product is sensitive and is very effective on aquatic vegetation.

In the irrigation business, the weed basically impedes flow, there is difficulty in meeting delivery demands, canals rise, the liability for failure of the system is high, so the product is not used until absolutely necessary. He encouraged the committee to recognize there is already a procedure in place for safe application and good use of the product.

John Youngberg, Montana Farm Bureau opposed the bill and urged the committee to oppose it as well.

Larry Brown, Agricultural Preservation Association, said they were in opposition to the bill. He said they were concerned about the future ramification of this type of legislation in regards to other herbicides.

{Tape: 2; Side: B; Approx. Counter: 763}

Bob Stephens, Montana Grain Growers Association, said they opposed the bill because they feel there is already regulation to take care of it.

Gene Hollich, Billings Water Association, said they are against the bill. He said they probably run as much water through a city as any city in Montana. Everyone who handles these chemicals are already licensed by the state and are required to go to school. They are already required to fill out a state report as well as the label requires it. Under Montana law there are provisions for municipalities, if they are not satisfied with this they can proceed on. He submitted a statement of opposition. EXHIBIT 16

Brad Culver, on behalf of AMTOP, registered their opposition for the bill.

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Ed Kirby, Montana Manager for United Right of Way, said since the bill does affect the right of way, they are in opposition to the bill.

Dave Gasvoda, Missoula, said they have lived along the ditch for over 40 years and have never observed any harmful effects to animals or plants. He did not think it could be as toxic as some people make it out to be.

Questions From Committee Members and Responses:

None.

<u>Closing by Sponsor</u>:

REP. KADAS said that if the seven days is a problem he would not object to reducing that down to even two days. He said he did not deny that it would increase cost but in an urban area, with a highly toxic substance, there is a legitimate reason for justifying additional costs. This is taking the existing law and providing some uniformity for its use particularly in urban areas. One thing about the smell is that a lot of people do not know what it is. If you can smell it all through town that means you are breathing it all through town. That might be the basis for having a little more information.

{Tape: 3; Side: A}

HEARING ON HB 445

Opening Statement by Sponsor:

REP. ED GRADY, HD 55 introduced HB 445. He is a rancher near Helena. He said that \$50 million per year is spent in Montana in fighting noxious weeds. Montana has an estimated five million acres of spotted knapweed. If spotted knapweed continues to spread at current rates, in 1996 the cost to the Montana Livestock Industry will be \$155 million per year. In addition 2.5 million acres is infested with leafy spurge. He said that knapweed is a real problem. He passed out a set of amendments since the bill was first drafted. The amendments try to address the opposition to the bill to make it a better bill. **EXHIBIT 17**

He explained that they are attempting to prevent the spread of noxious weeds by implementing a volunteer program with individuals and government agencies to purchase forage and mulching materials from producers who have forage crops inspected and certified that it is noxious weed seed-free. The program is to be administered and coordinated by the Department of Agriculture. A nine-member advisory council representing forage producers, users, noxious weed control organizations and the agriculture and livestock industry will advise the department on rules and administration of the program. HOUSE AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE February 14, 1995 Page 19 of 30

Forage is defined as a crop such as small grains, alfalfa, grass, hay pellets and so on that is used for livestock bedding materials or mulches and related products. Forage producers will voluntarily have their crops inspected and certified to be noxious weed seed-free. Based on historic data approximately 15,000 acres will be inspected each year. The number of acres are expected to increase each year as the program develops.

All forage products purchased by government entities and public utilities used for mulch, bedding and erosion control purposes must be certified weed seed-free. All seed use for reclamation use by these entities must be free of noxious weed seed. Under contract with the department, inspections will be conducted by county weed districts, county extension agents or local entities trained and qualified to certify crops as being noxious weed seed All certified noxious weed seed-free forage must be tagged free. and or identified as being certified. Certification standards and procedures will be established by department rule upon the advise of the advisory council. The department may enter into a reciprocal agreement with surrounding states and provinces to facilitate the interstate movement of noxious weed seed-free hay and forage.

{Tape: 3; Side: A; Approx. Counter: 140}

The program will be developed and implemented during the first two years. The department will assist forage producers and users to come into compliance during this time period. The department and county weed boards can investigate any violations of this act. The department can assess civil penalty when violations occur. The department and county weed boards can embargo or stop sale orders on forage found to be in violation of this. The department may also seek permanent or temporary injunction for violation of this act. He explained how the program would be The projected department budget for the program is funded. \$61,899. Of this amount, \$29,550 will be contracted through county weed districts, county extension agents or other local entities to conduct weed-free seed inspections. Another \$8,435 is budgeted to cover the advisory council's expenses. The department's internal budget for administration and compliance is \$23,914. Funding for department or local inspection entities who charge per acre inspection fees, per diem and mileage to cover inspection expenses. Current inspection fees range from \$1 to \$2 per acre. Anticipated revenue from inspection fees, per diem and milage charges are \$33,300. Twenty-five cents of the per acre fee totaling \$3,750 will be sent to the department for administration and compliance costs. For contract, \$29,550 will be retained by the county inspection entity for inspection costs. The department will charge for certification for tags, anticipated to bring in about \$500. The remaining revenue of \$28,099 will be from the noxious weed trust fund. The money will not affect the grant program or the weed trust fund program. He said the bill is good and it is not a new program. The hay cannot go out of Montana unless it is certified and should stop

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hay coming into Montana that is not weed free. He pointed out that now the contractors do not have to use certified straw. This program will make that mandatory and there will be plenty of forage to buy that is weed free.

{Tape: 3; Side: A; Approx. Counter: 190}

Proponents' Testimony:

Ray Meyers, Gallatin County, said that he has been attached to the weed-free program longer than anybody, about 25 years. He said he has produced weed-free hay all during this time. He said the program helps the rancher clean his fields up since he is more conscious of weeds. He said this all came about because of the centennial train when the Forest Service was going to carry pellets. They showed them that pellets were the worst contaminated with weed seed there is. He wanted to see a couple of amendments to the bill. One was the advisory board should be staggered and appointed every three years. This would keep it active. He also wanted to see one outfitter on the board since this was originally written for them. He does not want the board members to have a consecutive term until waiting three years in order to keep it moving.

Monty Schnur, east of Townsend spoke in favor of the bill. He was the first weed seed-free hay producer in Broadwater County. He entered the program as an outfitter because he watched other people taking weedy hay into the back country. He did not want his camp to become infested with weed patches. The Forest Service will eventually require to pack in weed-free feed. То have certified weed free-seed would make it more marketable on the general market in the future. Ranchers 200 miles away bought his hay because it was certified weed-free. Today certified weed-free forage is required on the national forest. He watched the certified weed seed-free program grow from a few producers in southwest Montana to a large number of serious producers throughout the state. The demand for weed-free seed forage has grown dramatically. They have operated on a sort of loose knit honor system under the guidance of the Extension Service and local weed districts. In the days when this started they were piloting for the future. Now they are in the future and need to operate on a more business-like level. Nobody likes to think about it, but without enforcement the program is wide open to abuse and fraud. By placing a certified weed seed-free program under the operation under the Department of Agriculture, enforcement and standards will be in place to ensure credibility and continuity. The Extension Service has done its job well in piloting the program this far. Now it is time for the program to stand on its own, administered by a statewide agency. The advisory board described in the bill will help keep the program efficient and will reflect the needs of producers and consumers in its administration. EXHIBIT 18

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Joel Flynn, a fifth generation farmer from Broadwater County and a charter member of Missouri River Ag Marketing Association has been active for the past eight years trying to improve hay quality. He has been a producer of Montana weed seed free forage. EXHIBIT 19 He participated in the early stages of drafting this legislation and believes he understands the intent of the legislation. The purpose is not to create another market for agricultural products, it is not to open another position within the Department of Agriculture and is not to authorize another bureaucracy. Its purpose is to address the urgent need to control noxious weeds and to confer legitimacy upon a mechanism whose elements are already in place. Perhaps the bill's language needs some clarification or improvement. He wants to ensure this program will remain in the hands of those best qualified to administer. Some portions have been left intentionally vague so the advisory council set by this legislation can solidify those details. He urged support for the bill. He entered into the record a letter from the Missouri River Aq Marketing Association, a group of producers from Broadwater County in support of the bill. EXHIBIT 20

Jim Freeman from Cascade County Weed and Mosquito Management District testified in favor of HB 445. He said it was crucial that Montana enact legislation to formalize a program to prevent the spread of noxious weed seeds in forage products and to standardize the practices and procedures. EXHIBIT 21

Jim Olivarez, Noxious Weed Program Leader for the Forest Service testified for the bill. He talked about the National Forests that use closure orders to restrict the use of forage brought onto national forests to only certified noxious weed seed free forage. He said this program would greatly strengthen the foundation of the current program and provide a stronger base through the promotion of incentives. The Forest Service's prevention strategy is dependent on this program. EXHIBIT 22

Ed Kirby, past weed supervisor of Meagher and Yellowstone Counties and presently working for United Right of Way presented testimony from the Hill County Weed District, Stillwater Weed Control Supervisor and the Montana Weed Control Association. EXHIBIT 23 He said the program was extremely important for the prevention of noxious weed establishment on public land. He said the bill does not impact the local rancher hauling hay from ranch to ranch. Where noxious weeds can be established, they can go undetected for years.

Leo Giacometto, Director, Department of Agriculture spoke in support of the bill. He pointed out that this would be statewide. He said there was nothing set in stone but that they were trying to find an answer in the stopping and spreading of weeds. Anything that would improve the bill will help benefit people across the state.

{Tape: 3; Side: a; Approx. Counter: 693}

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Bob Stephens, Montana Grain Growers Association spoke in support of the bill. He said it is good to have this program in place. He said they do not raise that much hay but do raise a lot of straw.

Bob Carlson, Silverbow County Weed Supervisor spoke for the bill. He said he has been talking to a lot of weed supervisors around the state. He said the amendments seem to address the questions they had. The weed supervisors support the bill.

Rod Kitto, a farmer from the Three Forks area spoke in favor of the bill. He said that it has been established that weed seedfree hay is needed. He said it was important that many members of the council be hay growers since the hay producers would likely fund most of the program. EXHIBIT 24

Steve Johns, a rancher, forage producer and marketer in the Canyon Creek area testified in support of the bill. He has been in the program since 1990 and feels the program is beneficial for its educational value and for providing additional markets for forage. He is in support of the bill as amended. **EXHIBIT 25**

Lorna Frank, Montana Farm Bureau went on record in support of the bill.

Larry Brown, on behalf of the Agricultural Preservation Association supported the passage of this bill.

REP. OHS went on record as being a proponent of this bill.

Tony Novak supported the bill.

Opponents' Testimony:

REP. PAUL SLITER, testified on behalf of the weed free hay producers of Flathead County against the bill. He said a compromise is possible on this after he saw the amendments. He said more amendments were needed. They were worried that the incentives would be eliminated to be a weed-free hay producer. He urged the committee to consider amendments from the Flathead area producers.

Harry Woll, Chairman of the Flathead Valley Hay Association presented testimony opposing the bill. EXHIBIT 26

{Tape: 3; Side: B}

Mr. Woll said the Flathead Valley Hay Association was opposed to the HB 445. The main reason for the opposition was with regard to a dozen proposed separate fees mentioned in Section 7, line 9-21 and Section 8, line 1-12-22. They felt this would discourage producers to enter or remain in the production and inspection of noxious weed seed-free forage. They believe that the market would not bear the price increase to cover another bureaucratic HOUSE AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE February 14, 1995 Page 23 of 30

program. He pointed out that compliance would be expensive for producers. While they support the bill to stop the spread of noxious weeds, they feel this bill will not help in the long run. The hay producers should be given time to work on a bill for the next session.

Carl Simons from Flathead Valley spoke in opposition to the bill.

Questions From Committee Members and Responses:

REP. LARSON asked REP. SLITER if he could identify the concerns that the bill would eliminate the incentives to be weed-free. He replied that the concerns were addressed by the amendments. One amendment would change one member who is a producer to four members who are producers. Two members would be from the county weed districts rather than one. The Director of the MSU Agricultural Extension Service would become ex-officio members which would cut some members in some areas to allow for more producers to be on the board. New rules and fees, section 5, subsection (6) on page 4, line 9 on established standards and subsection (7) establish assessments and an amendment would say accept other funds, line 16 subsection (9), administer rules, line 22, subsection 11, hire employees. The new section on page 5 dealing with fees, processing application fees, fees on per acre inspection, fees on inspection facilities, fees on minimum administration, fees, etc. etc.

{Tape: 3; Side: B; Approx. Counter: 100}

REP. LARSON asked **REP. SLITER** if it was not a voluntary program. He replied that it was not.

REP. STORY asked **REP. GRADY** about the fiscal note whether there was any general fund money going into the program. He replied there was no general fund money. **REP. STORY** asked if the program was geared to be a self-funding program. **REP. GRADY** replied that it would eventually. He said this was seed money, start-up money, weed trust fund which he felt was an ideal place for that money to be going. **REP. STORY** asked if after a period of time the weed trust money would not be going into the program where it would get to the point where the program covers cost. **REP. GRADY** said that he would hope so. **REP. STORY** asked if the program was geared to follow the certified seed program for grain. He replied that it was similar and those programs had worked out well.

REP. TREXLER asked **REP. GRADY** about the voluntary program if this was leading to all the forage groups having to do the program. **REP. GRADY** said this was addressing the forage going in and out of the state and the forage used on reclamation projects. The U.S. Forest Service, Bureau of Land Management and Department of State Lands are all recommending it and all will be requiring it. It is not the intention to certify all hay before it can be sold. **REP. TREXLER** said as a voluntary program, on page 6, section 10 HOUSE AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE February 14, 1995 Page 24 of 30

it tells that in enforcing the provision of this, the department or its authorized agents may enter any private or public premises or vehicle with a warrant. If this is voluntary and a person does not have to be in it why would they need the ability to search and seize.

{Tape: 3; Side: B; Approx. Counter: 195}

REP. GRADY said that was only if it was suspected there was some certified hay going out or coming into the state. The Department could address that.

Mr. Giacometto replied to REP. TREXLER. He said the only ones that it would pertain to would be those involved in the program. For example, if the Forest Service was complaining about hay delivered which was not weed-free but was using the stickers and following the program. If there is a complaint on a producer that has stickers attached to his hay there has to be some authority to see that the producer is meeting the guidelines. Another example is if he has ten ton of hay but only has five certified, this would give authority and integrity to the program.

REP. MURDOCK asked how the bill differed from what was already being done. **REP. GRADY** said it was enlarging the program and giving some money in the program where they can do some things with it. The main thing it will do is stop the weeds from coming into the state. He said there is an escape clause where in an emergency situation that hay does not have to be certified. Reclamation jobs will have to use certified forage. The majority of producers agree. **REP. MURDOCK** asked if this was similar to surrounding states. He replied it was.

REP. OHS asked **Joel Flynn** how many acres in his area were grown certified. **Ann Rouser, Weed Supervisory for Broadwater County,** said that 1300 acres were certified forage. The charge was \$1 an acre.

REP. OHS asked how much more per ton could be made. **Mr. Flynn** replied about \$5 per ton. **REP. OHS** asked about the concerns about fees and how much would be charged. **Mr. Flynn** said perhaps up to \$2 an acre.

REP. LARSON asked the director if he had any idea of how much forage came into Montana in a year. **Mr. Giacometto** said there were no records kept. The only part they were worried about is the hay shipped in that is claimed to be weed-free seed hay. They will not check other hay.

{Tape: 3; Side: B; Approx. Counter: 450}

REP. LARSON asked about comparable standards with other states. **Mr. Giacometto** replied he thought they would compare, however the problem now is no enforcement from the state side. There is no HOUSE AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE February 14, 1995 Page 25 of 30

authority or protection for the producer. **REP. LARSON** asked about the creation of a whole new program with user fees and no general fund impact, it seems like it could be in conjunction with the seed grower certification program that is already in existence. **Mr. Giacometto** replied the whole issue is the program is not working everywhere. There are 14 different programs with different standards.

REP. STORY asked about working out more amendments. **REP. GRADY** said the amendments address most of the Flathead County producers concerns. He said it was about the only county heard from. He said he would be willing to sit down with those people to work things out.

REP. ROSE asked how this would affect the screening for pellets. **Mr. Giacometto** said it would be an issue if they were certified.

{Tape: 3; Side: B; Approx. Counter: 630}

REP. ROSE asked Mr. Olivarez of the Forest Service if spraying was allowed in the back country. He replied that it varies.

<u>Closing by Sponsor</u>:

REP. GRADY said that they were not trying to eliminate any producers, since it was a producer-run program. He said it was new in the agriculture department and would give it credibility. He pointed out there is a .5 FTE for the department to take care of this.

{Tape: 4; Side: A}

HEARING ON HB 520

Opening Statement by Sponsor:

REP. DAN FUCHS, HD 15, presented HB 520. He said the bill would add ostriches to the domestic livestock classification. The bill includes Ostriches, Emus and Rheas in the laws relating to livestock. Page one has nc changes.

Proponents' Testimony:

Emily Loveberg, Montana Ostrich Association, spoke in favor of HB 520. She said the ostrich, emu and rhea need protection from disease and the industry controlled by the Department of Livestock. Harassment of birds from dogs running wild is one reason the protection is needed. Also snowmobiles and airplanes harass the birds. She said the birds were commercially valuable for food and byproducts such as feathers. The classification of livestock will help protect for disease control, theft and harassment and for the expertise of the department in maintaining and growing the livestock. EXHIBIT 27

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Brad Real, current and past president of the Ostrich Association testified in favor of the bill. He said harassment of the animals is one of the reasons for the bill

Mike Hansha, an emu producer west of Helena, said he was in support of this bill.

Bob Stephens, Montana Grain Growers Association said there were a lot of small grain growers out there trying to supplement their income raising some of these animals. They need the best animal care and protection for them. The association is in support of the bill.

REP. DEBRUYCKER, HD 89, said there were several producers in their county. He said they belonged under this classification and he supported the bill.

Cork Mortensen, Executive Secretary of the Board of Livestock, said the board supported this legislation. He pointed out it was a new industry and deserves the opportunity to survive under the proper regulatory authority. He said they can best assist this and the industry so long as there are provisions in the legislation that would permit the Board of Livestock to impose per capita fees on the industry to offset any expenditures by the department in regulating the industry. He explained the department has been involved primarily in the area of animal health. They issue import permits, health certificates on the animals and have been involved in a few instances of poultry type diseases. There are approximately 3,000 herds in the state. The effective date of December 31, 1995 would give the department the opportunity to work with the industry and figure a per capita fee structure. In the area relative to per capita fees, Statute 15-24-921, 922, they ask it be inserted at the end of section one. He said they met with Emily Loveberg and modified the bill. They omitted grazing livestock on the highway. Section 9, 10, 11, 12 in its entirety were omitted. Section 13 is the first section that refers to the Department of Livestock statute. They are in agreement with that as well as Section 14. Section 15, 16, 17, 18, 19, and 20 were amended out. Section 21 to the end of the bill the Department of Livestock can live with. He emphasized that the Board of Livestock wanted to be in support of private enterprise with cooperation with the industry this can be done.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. ROSE asked **Cork Mortensen** if this will change the composition on the livestock board as far as the need for an additional member. He replied they did not discuss it but in his view no. He asked if Lon Mitchell, the attorney for the department was satisfied with removing the sections. **Mr**. **Mortensen** replied he was satisfied and was not aware of any other problems.

HOUSE AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE February 14, 1995 Page 27 of 30

REP. TAYLOR asked **Ms. Loveberg** how many of the birds were in the city limits. If they are livestock, they can't be within city limits. She replied it was a city-by-city issue. **REP. TAYLOR** asked if the members were willing to come up with the funds to include these birds under the Department of Livestock and they said they were.

REP. GREEN asked **REP. FUCHS** why they are designated livestock instead of poultry. **Emily Loveberg** replied that they looked into it for about a year. If they want protection from dogs, they have to be classified as livestock, because poultry does not have that protection.

Closing by Sponsor:

REP. FUCHS closed on the bill and said the legislation is good.

EXECUTIVE ACTION ON HB 452

Motion: REP. WENNEMAR MOVED THAT HB 452 DO PASS.

Discussion:

REP. STORY spoke against the motion because the law presently allows municipalities to do this so the amendment is redundant. They should come to the Department of Agriculture and go through the hearing process and do it that way.

REP. MASOLO spoke against the do pass also because with SB 334 they can already do this.

REP. GREEN spoke in opposition of the bill because the testimony received on the bill was overwhelmingly opposed to it.

REP. LARSON spoke in favor of the bill. He said a unit of local government may adopt an ordinance to regulate pesticides. Rather than having a hodgepodge of local government regulations, they will be able to clarify what they want.

REP. MURDOCK spoke against the bill. She said the industry is already heavily regulated.

REP. ROSE made a substitute motion to table the bill. **CHAIRMAN BARNETT** asked **REP. ROSE** to hold his motion since **REP. WENNEMAR** wanted to speak about the bill.

REP. WENNEMAR spoke in favor of the bill since it allows commercial applicators to have a standard form. The signs would be standard and could be mass produced and be cheaper.

REP. ROSE said he was opposed to the bill. For a city to close a five square area to weed control and not allow sprays within the

HOUSE AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE February 14, 1995 Page 28 of 30

city of Missoula to worry about someone's yard is completely out of context.

<u>Motion/Vote</u>: REP. STORY MOVED TO TABLE HB 452. A roll call vote was taken. The motion carried to table the bill 11-6 with Reps. Wennemar, Ellingson, Larson, Schwinden, Ryan, and Heavy Runner (by proxy) voting no.

EXECUTIVE ACTION ON HB 453

Motion: REP. WENNEMAR MOVED THAT HB 453 DO PASS.

{Tape: 4; Side: B}

Motion: REP. ROSE MADE A SUBSTITUTE MOTION TO TABLE HB 453. A roll call vote was taken. The motion carried 11-6.

EXECUTIVE ACTION ON HB 459

Motion: REP. STORY MOVED THAT HB 459 DO NOT PASS.

Discussion:

REP. WENNEMAR agreed with the motion since many people use the water to irrigate their lawns and gardens. If they are forced to go onto city water the cost would be extreme. The city water sanitation system would be needed to purify the water.

REP. ELLINGSON spoke against the motion. He wasn't sure this is an ideal bill, but said they need to think about how to deal with the problem of development in areas that used to be agricultural and what happens to the safety issues that arise such as in Missoula.

REP. STORY said there is a problem there but the bill has too many constitutional problems.

The question was called on the motion to do not pass.

<u>Vote</u>: The motion carried with Rep. Ellingson voting no.

Motion: REP. ROSE MADE A SUBSTITUTE MOTION TO TABLE HB 459. The motion carried with one no vote by Rep. Ellingson.

EXECUTIVE ACTION ON HB 395

Motion: REP. OHS MOVED THAT HB 395 DO PASS.

HOUSE AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE February 14, 1995 Page 29 of 30

Discussion:

REP. WENNEMAR said the knapweed problem was rampant in Frenchtown and in many other areas. Livestock are affected and this needs to be addressed statewide.

REP. LARSON spoke in favor of the bill. The state should take a proactive stance to control the weed.

REP. MURDOCK relayed that **REP. HEAVY RUNNER** said the tribes should be included as one of the groups supporting this bill.

<u>Vote</u>: Voice vote was taken. The motion carried 12-4 with Reps. Hayne, Murdock, Taylor, and Green voting no.

EXECUTIVE ACTION ON HB 520

CHAIRMAN BARNETT asked REP. TAYLOR to wait on HB 520 until the amendments were available.

REP. STOVALL moved for adjournment.

ADJOURNMENT

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Adjournment: 6:43 p.m.

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JB/jr

Agriculture

ROLL CALL

DATE 2/14/95

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Rep. Dore Schwinden			
Rep. Robert Story			
Rep. Lila Taylor			
Rep. Cliff Trexler			
Rep. Ken Wennemar			
Rep. Joe Barnett, Chairman			



HOUSE STANDING COMMITTEE REPORT

March 17, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Appropriations report that House Bill 395 (first reading copy -- white) do pass.

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Signed Tom Zook, Chair

Committee Vote: Yes <u>7</u>, No <u>/</u>.

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ROLL CALL VOTE

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KNOWN DROWNINGS IN MISSOULA IRRIGATION DITCHES 1950-1993

CLAUDE LACKNER, JR., 18 months, 1950 BRUCE FRY, 13 months, 1954 GEORGIA ANN MERCER, 20 months, 1958 VINNIE JO MCMILLAN, 2 1/2 years, 1958 MARTIN BIGGS, 2 1/2 years, 1959 KELLY RAY HOUCHIN, 19 months, 1963 RORY WARD, 2 1/2 years, 1963 PATRICK TABISH, 14 months, 1964 DAVID STRATTON, 19 months, 1966 VYKE BOEHM, 2 years, 1967 BRENDA LEE STEINBERG, 2 years, 1968 LEE PHILLIP HIGGINS, 2 years, 1970 FRANCIS WINSLOW LEWIS, 57 years, 1971 LEO FRYE, 13 years, 1974 MICHAEL ALLEN LOWRY, 3 years, 1974 TOMMY TURNER, 2 1/2 years, 1976 JOE CHAVEZ, 81 years, 1979 SHANNA JO CLEW, 5 years, 1979 SEAN MORGAN, 21 months, 1983 TRAVIS RAY COOPER AMRINE, 18 months, 1985 CARL H. RHODES, 42 years, 1987 J. KILLINGSWORTH, 18 months, 1993

SAFE DITCHES TASK FORCE RECOMMENDATION

The Safe Ditches Task Force recommends the development of an alternative water source in the form of wells for those who currently use the Missoula Irrigation Ditch for commercial and/or residential use. The current ditch network which forms the Missoula Irrigation District would be closed when an alternative source is developed. In order to accomplish this objective, several *intermediary steps* need to be taken. Additional information needs to be obtained about the size and location of the ditches and the legal effects of closure. Cost and funding sources also need to be identified. The results of any action step may alter the steps that follow, depending upon the conclusions that are drawn.

	SAFE DITCHES IMPLEMENTATION PLAN			
	ACTION STEP	TIME FRAME	LEAD PERSON/ AGENCY	
1.	Conduct a GIS study to gather factual information about the size and exact location of the ditches, who uses the ditches, and for what purpose.	May - November	Jon Harvala, City/ County Health Dept./Consultant	
2.	Develop legal guidelines and opinions about who needs to be legally satisfied (ex. ditch users, people with water rights but no access to ditches, MID).	May - November	City Attorney's Office or contract attorney	
3.	Develop and implement an on-going public education program regarding the dangers involved in working or playing near the ditches.	Begin May and on-going	Safe Ditches Task Force	
4.	Involve all parties in an ongoing dialogue to build consensus about how to resolve the problem (Ditch users, MID, City/County government).	Begin May and on-going	Mayor's Office, City Council	
5.	Safe Ditches Task Force to meet on quarterly basis or as agreed, to receive input from City staff on project progress.	Begin May and on-going	Mayor's Office	
6.	Conduct an engineering analysis of the various well installation and closure options (ex. incremental closure of the ditches as wells are progressively installed), and environmental impact of closure on water quality and area trees. Identify any reclamation needs. Conduct a cost analysis and develop financing options.	September - Jan.	City Engineering/ Health Dept./ Parks & Rec./ Consultant	
7.	Final Report to City Council	February, 1995	Mayor's Office	

Since 1950 there have been 22 known drownings in the urban irrigation ditches of Missoula. Our 18 month-old son, J. Killingsworth, drowned on June 9, 1993.

In the next few weeks concerned citizens will be going door to door asking you to sign a petition which would dissolve the Missoula Irrigation District (MID) of which you are a member and for which you are assessed \$15/acre/year, \$15 minimum, whether you use the water or not. This letter presents information about our urban ditches. We hope you will read it and give this problem careful thought so you can make an informed decision when asked to sign the petition.

*****The victims have been an 81 year-old man, a 57 year-old man, a 42 year-old man, a 13 year-old boy, a 5 year-old girl and 17 children between the ages of 3 years and 13 months. Fourteen of these little children drowned within the same two-mile stretch.

****At least one child is now mentally handicapped, another has a severe hearing loss and others have emotional and psychological problems from encounters with the ditches.

*****On the average, one drowning occurs every 1.95 years. However, for actual time the water is running, May 1 to September 30. the average is one drowning every 9.7 months.

*****\$386,000 of taxpayer money was spent in just the last three years to keep the water running freely in the ditches of the MID. Included in this figure is \$200,000 which had to be spent on the Reserve Street project because the ditches were crossed twice.

*****One of the biggest arguments against closure of the ditches is "Parents should watch their children". We believe no one is at fault when an accident occurs. Not all accidents can be prevented but future ditch accidents can be stopped --- by closure.

*****Another big argument against closure is "The ditches have been here a hundred years." Many historical sites in Missoula are now a thing of the past such as the Milwaukee Railroad and the Florence Hotel. When the ditches were dug in 1887, Missoula was farmland and a useful agricultural purpose was served. Now our town has grown and the ditches run through neighborhoods which house families with children.

*****Covers, culverts, and fences have been considered as possible solutions. Unfortunately each would cost millions of dollars to construct and maintain. Also, each would create a situation of liability which no one wants to assume.

EXHIBIT | DATE 2-14-95 ; HB 459

*****Money and jobs have been lost to this community because businesses were denied the right to expand or even, to begin building because one of the ditches divided their property. Landowners are not allowed to cover or culvert the ditches even at their own expense.

*****We feel a good solution is wells. The a quifer, according to the City/County Health Department Water Quality Study of November 1992, produces roughly 15 times more water than we currently use. Many houses in the MID already have drinking-water wells which could be used for irrigating lawns, gardens and fields. If larger pumps and more wells are needed, funds should be provided. Our group is looking into grant money for these items. We are also looking into the possibility of people leasing their water rights to the Department of Fish, Wildlife and Parks. We are willing to spend time and energy to find a compromise. We hope the landowners will feel it is their civic duty and moral obligation to work for a solution and to seriously consider turning to well water.

*****The MID is not a private business. It is instead a nonprofit public entity managed by an elected board of five persons serving four year terms. The ditch board was granted immunity from lawsuit by the Montana State Legislature in 1922 when the MID was formed. It has total independence and authority over the ditches.

*****Montana state law allows the MID to be dissolved upon petition by 60% of the landowners representing 60% of the acreage. Upon dissolvment, fees can no longer be assessed, the Ditch Board will no longer exist, no one will have the authority to turn on the water in May, and the drownings will be stopped.

> Sincerely, Concerned Persons for Safer Ditches

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Curtis and Lana Killingsworth 2230 South Avenue West Missoula, MT 59801 (406) 549-8528 1. WON'T OUR AQUIFER DRY UP IF THE DITCHES ARE SHUT DOWN? NO!! The aquifer contains 15 times more water than we draw from it. The ditches recharge the aquifer by only 1.9%. Basically all the homes out past Reserve St. already have wells. The rest are on city water.

2. WHAT EXACTLY DO THE DITCHES COST US TAXPAYERS? LOTS!! The average yearly cost is \$200,000. Due to the ditches, road repairs and new road construction cost Missoula an extra \$100,000 per year. Another \$90,000 per year is collected in fees from the 2400 landowners. (The new Reserve St. alone cost an extra \$200,000 because the ditches had to be crossed <u>twice</u>.)

3. WILL THE FEES INCREASE IF THE JUDGE DECIDES TO REDRAW THE BOUNDARIES?

They probably will because there will be fewer people left in the district to spread expenses among. Therefore, be smart and sign the petition to get out now.

4. DO THE DITCHES CAUSE ECONOMIC HARDSHIP TO ANYONE? YES!! There are businesses that have been denied the right to expand and to build parking spots. There are empty lots that cannot be built upon. The Ditch Board will not allow coverings, culverts or rerouting of the water.

All facts & figures are from area studies & county records. *****WHY SHOULD YOU HAVE TO HELP PAY FOR YOUR NEIGHBOR'S SUMMER WATERING BILL? HELP END THIS ECONOMIC WASTE!!!*****

13 Whom it May Concern. <u> EE - Missoula Irrigation Di</u>

's taxpaying members of the Missoula District, we do support the legislation to give local government the authority to abolish irrigation districts as stated in the legislation Many people like ourselves to the services have no access which we are being taxed for Heino

EXHIB	T
DATE	2-14-95
<u> </u>	HB 459

RESOLUTION

WHEREAS, the Missoula Indian Center provides health, human and social services to the Missoula Native American community; and

WHEREAS, the Missoula Indian Center is committed to protecting and improving the quality of life in the Missoula Valley; and

WHEREAS, childhood injury prevention is a concern of the Missoula Indian Center; and

WHEREAS, irrigation ditch-related accidents have caused unnecessary hardships on Missoula's families;

NOW, THEREFORE BE IT RESOLVED, that the Missoula Indian Center supports efforts to identify viable alternatives and solutions which will reduce the risk of irrigation ditch-related deaths and injuries and create a safer environment in Missoula County.

AGREED TO BY THE BOARD OF DIRECTORS ON AUGUST 30, 1993

MISSOULA INDIAN CENTER

Laurie &

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RESOLUTION

WHEREAS, Missoula's citizens and particularly our children, are our most precious resource, and childhood injury prevention is a major concern of the Missoula City-County Health Department; AND

WHEREAS, each year 8,000 of America's children die from unintentional injuries, the leading cause of death for Montana's children; AND

WHEREAS, tragic irrigation ditch-related accidents have taken their toll on families and community members by leaving one child disabled and claiming 22 lives since 1950, including 19 children; AND

WHEREAS, some irrigation ditches in Missoula County are periodically treated with a toxic herbicide posing potential risk to people and animals, as well as the quality of the Missoula Valley Aquifer;

NOW, THEREFORE, based on the Health Department's long history of concern and caring for our citizens, be it resolved that the Missoula City-County Board of Health is committed to participating in a cooperative effort with other agencies and interested parties to identify viable alternatives and explore solutions which will reduce the risk of irrigation ditch-related death or disability and create a safer environment in Missoula County.

MISSOULA CITY-COUNTY BOARD OF HEALTH Bill/McDonald, Chairman Vice-Chairman Schweber, Mike Mary Ann Creaa ames Gouaux Mdi Chapman

Adopted 8/19/93

EXHIBI	7		
DATE	2-	14-95	
1-	HB	459	

February 13, 1995

RE: ORCHARD HOMES ADDITION IRRIGATION DITCHES

To Whom It May Concern:

Most of the ditches in the Orchard Homes Addition have outlived their purpose, especially the residential areas.

Drownings, hazards, taxes, pollution, maintenance, and waste are a few of the problems faced by property owners, not to mention the fact that they just don't want it. Acess to ditches by many homeowners is not there, but they are still taxed for its use.

People who use the water should pay for it, not the rest. We also think the ditch companies should be audited so the public can see where the money goes every year. We'd also like to know what laywers are on retainer fees and what salary they receive.

Thank you.

ARTHUR C. STELLING 3040 S. 3RD ST. W. MISSOULA, MT 59801

VI BACHE 223 STONE ST. MISSOULA, MT 59801

In Associaton with El-Mar Trailer Village Franchisee of Kampgrounds of America, Inc.

MISSOULA, MONTANA 59802

3695 TINA AVENUE TELEPHONE: (406) 549-0881

DITCHES- λ re they safe? healthy? 8/19/93

I came to Missoula in 1942 so I am not a native, but I have seen some changes. I remember coming into Missoula on the Milwaukee Railroad. The station was very busy about midnight. I never dreamed I would see the day that the Milwaukee Railroad would close and the land would go back to adjacent landowners.

In 1942 the Florence Hotel was flourishing. Although the building is still there, it is no longer a hotel. Things have changed in Missoula in the last 50 years.

We are now witnessing a dramatic change in Reserve St. Do you realize that \$204,000.00 has just been spent on Reserve St. to cross the irrigation ditches. Considerably more than that was spent building an overpass for the now closed Milwaukee Railroad.

When the ditches were built most of Missoula was farm land and the ditches served a useful purpose. Now Missoula has grown and this land grows people, instead of hay. I think the safety of these people is important. I am not saying the farmland is not important, but there is a better way to put water on the land. Does it really make sense to move water thru 20 miles of open ditches when the same water is only 30 feet away and modern pumps can bring it to the surface much cheaper, and safer.

I realize that the Missoula City-County Health Department should be concerned with health issues. I see your primary concerns should be:

1. Is the water in the ditches safe to drink? Would you approve it for swimming?

2. Would the amount of water needed for irrigation contaminate the aquifer or deplete the aquifer if supplied by wells instead of open ditches.

3. Would you approve an application for open ditches if they did not already exist.

The ditches must go the way of the Milwaukee Road, The Florence Hotel, Septic Tanks/ Cesspools, Uncontrolled Sumps and indiscriminate disposal of hazardous waste materials.

As a member of the Water Quality Advisory Council I advise you to support the elimination of Missoula's unsanitary ditches for health reasons.

Respectfully,

Elman

Elmer Frame Concerned Citizen Member, Water Quality Advisory Council

	EXHIBIT
	DATE 2-14-95
and the second second	
MISSOULA	DEPARTMENT OF PUBLIC WORKS / ENGINEERING DIVISION
	435 RYMAN • MISSOULA. MT 59802-4297 • (406) 523-4620

E-95-0069

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February 1, 1995

Citizens Against Unfair Taxes Post Office Box 4033 Missoula, Montana 59806-4033

RE: Community Costs Associated With Irrigation Ditches

Dear Citizens:

You recently requested information about the financial costs to the citizens of Missoula that results from the irrigation ditches in our community. This letter will address the costs associated with ditches that relate to construction and maintenance on private property and public roads, bridges, and utilities in Missoula.

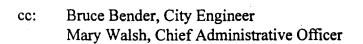
I have spoken with private property owners, the City Street Superintendent, the County Bridge Projects Engineer, and the State Department of Transportation (MDT) District Engineer about how the ditches affect their operations. Irrigation ditches add thousands of dollars each year to the costs of local development and government operations. Jim Weaver of the MDT estimated that the cost associated with the irrigation items on the recent Reserve Street construction project was approximately \$200,000.00. My own experience in utility construction is that every ditch crossing can add hundreds or thousands of dollars to the cost of a project.

The total annual construction and maintenance cost to the community that results directly from the irrigation ditches is approximately \$100.000.00. A breakdown of state and local maintenance and project costs, as well as private development project costs related to the ditches is available for your review. If you have any questions, or wish to discuss the matter further, please call me at 523-4624.

Sincerely,

In lin

R. Steven King, P.E. Assistant City Engineer



VOLUME 1

MISSOULA VALLEY AQUIFER STUDY:

HYDROGEOLOGY OF THE EASTERN PORTION OF THE MISSOULA AQUIFER, MISSOULA COUNTY, MONTANA

BY: WILLIAM W. WOESSNER DECEMBER 16, 1988

TABLE 5.1

Volume Estimates of Recharge to the Missoula Aquifer

Source	Amount	
ſ	acft/yr	% of total
Septic systems	1,600	0.4
Rattlesnake Creek Valley	350	0.07
Storm Water*	365	0.08
Grant Creek**	4,900	1.0
Irrigation***	8,500	1.9 🗙
MWC line loss	.12,300	2.7
Lateral inflow, north	13,400	3.0
Clark Fork River	412,700	90.9

TOTAL ^54,115

(*Missoula area) (**No other creeks quantified) (***Only in the immediate Missoula area)

The volume of natural discharge from the Missoula Aquifer was approximated (assuming no net change in storage) by subtracting the estimated annual recharge to the aquifer (Table 5.1) from the annual withdrawal from wells (Table 5.2). The estimated annual discharge is 423,905 acft.

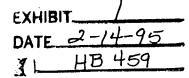
TABLE 5.2 Water Use from the Missoula Aquifer

•	Population	Use Per Capita	
• •	-	Daily (gpd)	Annual (acft/yr)
Mountain Water Company	44,755	550	27,570
Clark Fork Water Company	2,329	360	940
Households with private wells	4,700	320*	1,700
		. Total	30,210

(*gallons per household)

(In summary, aquifer recharge exceeds estimated ground water discharge and withdrawal by 15 times. The leakage of water through the bed of the Clark Fork River accounts for over 90% of the annual recharge. Therefore water table declines noted in Chapter 4 most likely reflect recent climatic conditions which have caused reductions in recharge rates from the river and from Tertiary sediments. Water levels may decline locally in areas of heavy pumping, particularly during periods of low recharge, but in general, current levels of ground water withdrawal do not appear to be over drawing the aquifer.

72



OFFICE OF COUNTY TREASURER MISSOULA COUNTY COURTHOUSE BOX 7249 MISSOULA, MONTANA 59807

(406) 721-5700

August 18, 1993

Judy Pratt 2233 Foothills Dr. Missoula, MT 59803

Re: Missoula Irrigation District

Dear Judy:

AISSOULA

COUNTY

In response to our telephone conversation, I have the figures you requested for the Missoula Irrigation District.

The following information I recieved from the Assessor's office:

Amount Billed for Tax Year 1991 --- \$48,189.60 Amount Billed for Tax Year 1992 --- \$60,485.45 Amount Billed for Tax Year 1993 --- \$64,606.20* *the district has submitted this amount for 1993

The following information I recieved from the Treasurer's office:

Amount Collected in FY 1991 ------ \$48,784.61 Amount Collected in FY 1992 ----- \$72,102.68 Amount Collected in FY 1993 ----- \$60,308.33

Also, you requested information regarding the time frame Missoula County has to process the petition once we receive it. I believe that is a legal question and should be directed to Michael Sehestedt, Deputy County Attorney.

If you have any questions, please do not hesitate to contact me at 721-5700 ext. 3234.

Sincerely,

MI ZUCE

Vickie M. Zeier, Clerk & Recorder/Treasurer

vmz

271

Montana Department of Transportation

> P.O. BOX 7039 MISSOULA, MT 59807 406-549-6491

August 16, 1993

Judy Pratt 2233 Foothills Missoula, MT 59803

The estimated cost associated with the irrigation items on the Reserve Street project was approximately \$200,000.00.

ams T. Weaner

JAMES T. WEAVER, P.E. DISTRICT ENGINEER-MISSOULA

JTW:TM:1m:167

EXHIBIT DATE ΗB

City of Missoula Mayor's Irrigation Ditch Task Force Ditch Safety Education Project MRBA Public Service Campaign Week of May 29th - June 4th, 1994 3x :30

Each summer Missoula's irrigation ditches bring life-giving water (sfx: water rushing) and DANGER (sfx: police radio/siren). Twenty-three people - including 18 children - have drowned in these uncovered irrigation ditches. Children are naturally attracted to water, so parents who live on or near irrigation ditches need to educate their children to avoid playing in them. Residents who live along the ditches should keep an eye out for youngsters who may have slipped away from their own yards to play in a nearby ditch. And everyone should be aware of the danger in Missoula's back yard (sfx: water rushing). The Mayor's Task Force on Ditch Safety Education wants you to recognise the danger in ditches.

Irrigation ditches used to be a recipe for cheap, convenient water (sfx: water rushing). Today, the combination of dense housing and uncovered ditches in urban Missoula is a recipe for DANGER (sfx: kids playing/rushing water). Twenty - three people - including 18 children - have drowned in Missoula's irrigation ditches. Ditches will attract children from several blocks away...and parents should know that kids can travel faster than we realize. If you live in a neighborhood with irrigation ditches - educate your children - $5fx^2 - 5f(c \cap)$ watch out for others. Help prevent tragic drownings. Contact the Mayor's Task Force on Ditch Safety for more information.

RRGATON DITCHES ARE AND **DANGEROUS**

- 23 drownings since 1950, 18 were children between 13 months and 3 years.
- realize.
- rease Children are naturally attracted to water.
- The banks of the ditches are often steep, slippery and hidden by weeds and tall grass.
- Also drowned: a 5 year-old girl, a 13 year-old boy, an 81 year-old Senior Citizen and two men.

Manual Table Fores for Safar Ditabas 522-/601

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Berno,	CITY. ZONE AND STATE	+++
·		C35-16-71548-4

EXHIBIT. DATE 2-14-95 HB 459

543-5116

May 31, 1963

Missoula Irrigation District Mr. Raymond P. Tipp, Attorney 125 West Main Missoula, Montana

Gentlemen:

The City Council, at its meeting of May 27, 1963, went on record declaring that all open irrigation ditches within the City of Missoula were hazards and charged me to notify the owners of such ditches of the council's action.

Personally, I would like to call to your attention that the Legislature passed a law at its last session authorizing the creation of special improvement districts to put fences along these ditches.

The Council and I would like to have something done to remove this hazard as quickly as possible and would welcome any suggestions from you as to how you feel this could be accomplished. I would appreciate hearing from you at your earliest convenience.

Very truly yours,

Leonard M. Roche Mayor

LMR:0

Registered mail, return receipt

FINANCE/CITY CLERK OFFICE 435 RYMAN STREET Missoula, Montana 59802-4297 (406) 523-4604

To: Mayor Dan Kemmis

Memo #93-089

From: Chuck Stearns, Finance Officer/City Clerk

Re: 1963 Mayoral Letter to Missoula Irrigation District on Ditch Hazards

Date: November 26, 1993

Last month, while going through old City records at the Street Division building, I came upon a file labeled "Ditch, Irrigation". In that file was a 1963 letter from then Mayor Leonard M. Roche to Raymond Tipp, Attorney for the Missoula Irrigation District stating that the Council had declared the open ditches in Missoula to be a hazard and requesting that something be done to alleviate the hazard. As the file appears to be a Mayor's file, I am sending you the entire file and sending a copy of the letter to Mr. Tipp to all people at the bottom of the page.

I thought you all would be interested in this historic record and that it might be of use to the Ditch task force.

attachments

cc: City Council Members Mary Walsh, CAO Jim Nugent, City Attorney Guy & Robin Kautz 1627 S. 11th Street W Missoula, MT 59801

August 23, 1993

Dear City Council Members:

We are sorry we could not attend tonight's council meeting. We were asked to voice our opinion concerning our wishes and feelings on the Missoula Irrigation District and the ditches that pass through our properties.

We own properties located in the 2100 block of Sussex and the 2200 block of South Avenue. Concerning the Sussex property, since the purchase in April of 1986 we have tried to have the ditch moved to the property line or colvert it so we could add to our Mini Storage warehouse business. Total land lost is 40' by 100'.

The property on South Avenue is cut off by the ditch. When and if South is widened, we will lose two parking places. If the ditch was not there it would be no problem.

As far as the maintenance of the ditch, we have every year burned the ditch bank. After we are annexed into the city that will no longer be passive. The maintenance crew periodically screens the debris out of the ditch and either leave it on the ditch bank, curb or on the street. If I left garbage on the street I would be fined.

The question is not water it is the ditch. We also affected economically by the ditch. We have land of no use where as the people who need the water for irrigating can easily drill wells into our aquifer.

We have heard the comments of parents being held responsible for their children's safety. we as parents, grandparents, daycare providers and property owners are now taking the responsibility of cTosing the ditches.

Lets move on to the 21st Century!"

Sincerely Guv & Robins K

EXHIBI	т
DATE	2-14-95
1	HB 459

SAFE DITCHES TASK FORCE

October 13, 1993

Sadie Babcock Soil Conservation District 5115 S US Hwy 93 Missoula, Montana 59801 251-4826

Geoff Badenoch MRA 123 W. Spruce Missoula, MT 59802 523-4608

Otto Benson 2418 South 7th West Missoula, Montana 59801 543-5061

Jim Carlson City/County Health Department 301 West Alder 523-4755

Rosalie Cates WORD 127 N. Higgins Missoula, MT 59802 543-3550

Michael Chandler 4401 South Avenue West Missoula, Montana 59801 549-7639

Ann Cotten 2427 West North Avenue Missoula, Montana 59801 549-7376 (d) 721-3797 (e) Wayne Curry 206 Pattee Canyon Drive Missoula, Montana 59803 549-3514

Elmer Frame 3695 Tina Avenue Missoula, Montana 59802 549-0881

Mary Gallagher City Attorney's Office City of Missoula 523-4616

Carol Hovland 400 Rollins Missoula, MT 59801 542-1824

Bob Jensen 3205 South 3rd Missoula, MT 59801 542-1536(h) 728-1400(w)

Betty Jo Johnson 2106 Clements Road Missoula, Montana 59801 721-3322

Lana Killingsworth 2230 North Avenue West Missoula, Montana 59801 549-8528

Curtis Killingsworth 2230 North Avenue West Missoula, Montana 59801 549-8528 Steve King Engineering Dept. City of Missoula 523-4620

Yvonne Lowney 2220 Dearborn Avenue Missoula, Montana 59801 549-8467

Susan Mathewson 1012 Tower Missoula, Montana 59801 728-0249

Wes McAlpin DNRC 1610 South 3rd W., Suite #103 Missoula, MT 59801 721-4284

Mary Ann Pierson 610 Blaine Missoula, Montana 59801 728-1543

Judy Pratt 2233 W. Foothills Missoula, Montana 59803 251-2318

Ken Richardson 4406 Mount Avenue Missoula, Montana 59801 728-5163

Elaine Shea City Council City Hall 728-6446 (d) 543-5350 (e)

Mary L. Walsh Chief Administrative Officer City of Missoula 523-4602 Mayor's Task Force for Safer Ditches 435 Ryman Missoula, MT 59802

May 19, 1994

Missoula County Commissioners 200 W. Broadway Missoula, MT 59802

Dear Commissioners:

This letter is a request for \$10,000 from Missoula County for continuing the work of the Mayor's Task Force for Ditch Safety. The same amount of money and for the same purpose is being requested from the City of Missoula.

The total sum, \$20,000, would be used to conduct a Geographic Information System Analysis (GIS) of Missoula Irrigation District ditches and an engineering analysis. The GIS would map main and lateral ditches, identify and map properties with water rights that have access or no access to the water and determine type of use. The engineering analysis would determine the number of wells and pumps needed and installation locations.

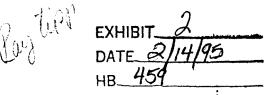
The Task Force's findings provide evidence that our community would benefit monetarily in closing the ditches and providing wells as an alternate source of water for the ditch users. Steve King, assistant city engineer, estimated the cost of the ditches to Missoula (county and city) is \$100,000 per year. Another \$60,000 is paid in fees by the landowners in the MID, most of whom do not have access to the water.

Depletion of the aquifer was found to be an unsubstantiated fear. Jim Carlson, city/county health department official, determined the aquifer contains roughly 15 times more water than is currently drawn from it. This fact is confirmed by two recent studies.

In light of the fact that the ditches pose a public safety concern and that both the city and the county spend large amounts of road maintenance and construction funds every year due to the presence of the ditches, we respectfully submit this request.

Sincerely, Mayor's Task Force for Safer Ditches

CONTACT PERSON: Traci Turek 2321 Mary Avenue Missoula, MT 59801



MEMORANDUM

FROM: Secretary, Missoula Irrigation District, Missoula County, Montana - Raymond P. Tipp

DATE: February 14, 1995

RE: Testimony before the Committee on HB 459.

I am the Secretary of the Missoula Irrigation District. I have read through the legislation and it is obvious that the legislation is directed at the Missoula Irrigation District and it has been submitted by the legislator from Missoula. The Missoula Irrigation District was formed in 1922 pursuant to the statutes of the State of Montana by Court Decree. For those of you that are unfamiliar with irrigation districts, the reason for their creation was to give some central administration to the ditch rights and water rights of various peoples whom at one time had diverse and contradictory claims to ditch rights and water rights. In Missoula as in other cities, the urban area has grown up around the ditches. However, the mere fact that houses have been built around the ditches does not change the character of the property rights contained in the ditches or in the water.

The Montana Supreme Court has continuously held that ditch rights and water rights are property, the same as real property. The people who own or use land in the District use the water supplied through the ditches by the Missoula Irrigation District for their personal private use and also for commercial purposes. We have no way of breaking that down. The proposed legislation discriminates between commercial users and noncommercial users. However, property law does not differentiate between the two. A person who uses the water for merely watering his lawn has as much of a property right in the water as someone who irrigates 300 acres of farm land. He also has a separate ditch right which is a valuable property right.

The legislation is fraught with problems. First and foremost, it is patently unconstitutional since it constitutes a taking of property. The bill discriminates between commercial and noncommercial users, however, noncommercial users have the same property right as do commercial users. Of course, the closing and filling of a ditch affects all of the users in the District and destroys their property rights. Next, the plan to have the City establish a well only to commercial users to replace the lost irrigation water does nothing to mitigate the loss of property of the water rights and the ditch rights of everyone. In fact, many of the properties in question already have wells. Well water is not suitable for various types of agricultural irrigation because of its temperature. Also, the costs of well water far exceed the costs of using the irrigation or the ditch water.

This proposal is simply a proposal to take property owned by citizens of the State of Montana and does not provide any just compensation for the owners of the property. This measure will certainly result in litigation and a tremendous amount of expense to the State and the City of Missoula in terms of condemnation damages. The State already has the power to condemn property. This bill is simply a subterfuge to take citizens' property without paying for it. That is not allowed under either the constitution of the United States or the State of Montana and therefore the bill should fail

EXHIBI

Nandes RUN

Feb. 13, 1995 1012 Tower Missoula, MT 59801 728-0249

To Members of the House Agriculture Committee,

We are writing to you in opposition to HB 459. Why should a city be allowed to take away its neighbors' water rights? This bill comes from the City of Missoula's relentless attempts to abrogate the rights of its County neighbors. Please don't open the door to the hardships that would come to many Montanans if this bill should pass.

Sincerely,

Malcolm D. Smith and

Susan Mathewson

Jusan mathemore

E. 3/14/90 DATL 3/14/90 HB 459 I am Euganic Diamer from Missocila MT. The kind that I represent in & around Missoula was patented in Jan. 1888, which includes resources for invigation ditches & canals. Notice at location of ditches & lands with water rights were filed & recorded in Oct. 1901. closing The ditch through the City will effectively close ditches in the outlying greas. Having The City provide a wall for commercial growers is not really an option, for two Consons: first, the tramandous cost of a well s'it's operation Second, The cold well woter will bet hunder development of growing plants. Our short growing sasson plus cold water will basically put us out at pusiness. Treally don't lacher it is The purpose of this put to put any commercial groway out of pusiness. I ain a Commarcial grower of vegtaples, pariles & Flowers. I have rear Istans from offected grausers in Missoula which I would like to have intered into the necord,

EXHIBIT_5____ DATE_2-14-95____ HB_ 459 -Tebruary 14, 1995 To The 54th Montana Stale Legeslature! In Annabelle Erlast, 131027 the Quene Messoula Montana, hereby wish to express, through this letter, my apposition to House Bill No. 459, I am setty-seven (67) and have lived in Orchard Homes since 1952. The gorden and yord is irrigated with the ditch system. It would be impossible to irregate the large garden fruit thes and lawn with the house pump. It is not possible for me to attend at this time to express my opposition to the ditch closure -I hope you will consider this letter a legitimete protest to House Bill No. 459. Annabelle Eshart -----····

EXHIBIT_6 DATE 2-14-95 HB 459

To the 54th Montana State Legislature:

. I, Steve Erhaut, 2425 Spurgin Koad, hereby wish to express, through this letter, my opposition to House Bill No. 459. I am a 46 year old Montana native, and I have lived in Orchard Homer, on the ditch, Since 1955. I acquired my present residence in 1976 and constructed my oun home with a large yard and garden. I, along with all my neighbors, Keep my yard and garden irrigated with water provided through the ditch system. It would not be practical for me to Irrigate my whole acre of yard and garden with my house pamp. As my house pump was only designed to supply my home with drinking water. Work prohibits me from attending in person to express my opposition to the ditch closures, but I hope you will consider this letter a legitimate protest to House Bill No 459,

• •

Stare Erhart 2625 Spungin Road Missoula Mt. 59801 Phone 406-721-0671

EXHIBIT 7 DATE 2-14-95 HB_______ February 14, 1995 To the 54th Montana Stale Legislature! I alois Earhest, 13/0 27 the Avenue, Messoule Montane, hereby wish to express, through this letter, my opposition to House Bill 110 459. I am seventy three (13) and have lived in Orchard Homes serve 1952, keep my garden and yord invigated with the ditch system. It would be impossible for me to invigate my large garden fruit trees and lawn with my house pump. It is not possible for me to attend in person at this time to express my opposition to the ditch Closure - as I hope you will Consider the letter a lightimate protest to House Bill No 459. Alois Erhart

EXHIBIT___ To Whom It May Concern: DATE 2-14-95 This letter is in protect of HB 459 which is meant to close open inegation ditches in and around the city of Missoula. We are rural property owners adjacent to the city and regularly use water from the ditch for irrigation purposes. The well which supplies our domestic water needs is not adequate to furnish water for our garden, pasture and lawn. Wo d. t. t We do not want our irrigation ditch closed.

Respectfully

Vernon LAndersen

Bonnie Dellandersen

103 Johnson Missoula, Mt 59801

549-7931

February 14, 1995

EXH:B:

I operate a farm in the Orchard Homes area of Missoula County. House Bill no. 459, allowing a city to close a irrigation ditch will affect this operation. Two issues I am concerned about are, replacement wells and differences in the water.

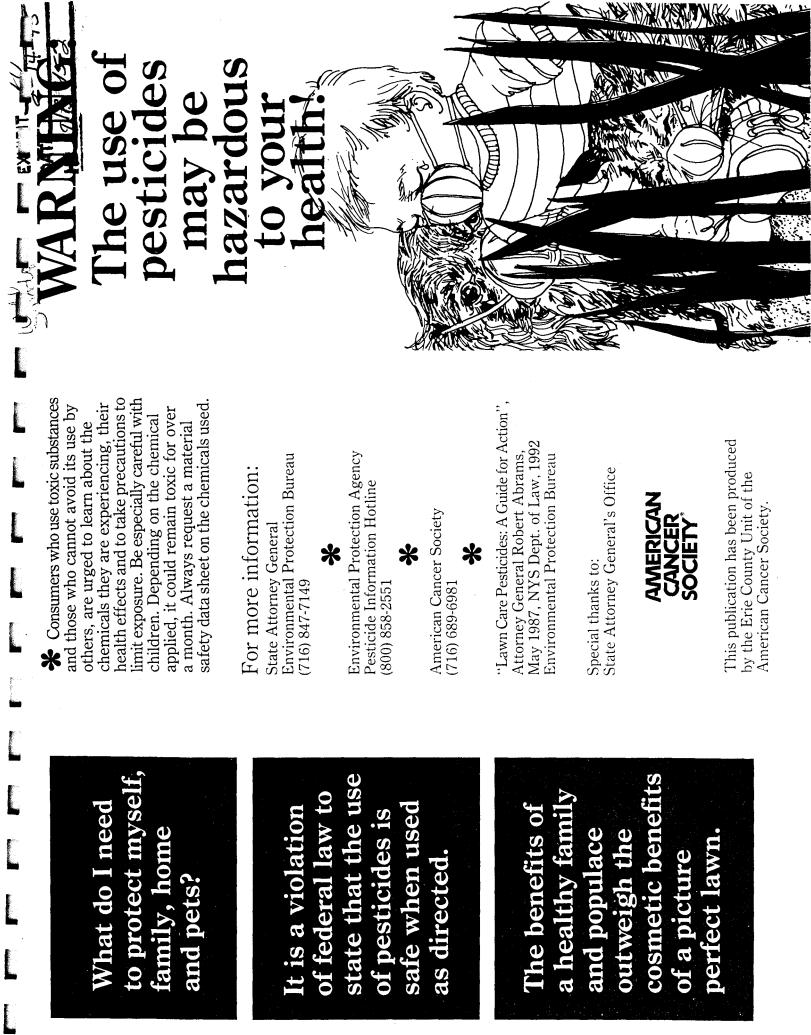
It does not provide for a pump or additional operating costs incurred from pumping out of the ground. These wells will also be a problem for the neighbors whose wells will go dry during the irrigation season.

The crops I grow do fine with the water from the ditch. Well water is different. It will be necessary to adapt to a different water source. I do not know how my current crops would produce but I am sure changes will have to be made. It takes several years to bring a new crop into production.

The of city of Missoula is pushing out land that has been productive farmland for about 100 years. I feel that the city should be prepared to put the ditches back in if well water is not satisfactory.

Bruce A. Benson 2418 so. 7th West Missoula, Montana

noce G. Barson



WHILE you should	MP)	Anow abourpesticides
「「「「」」」」」」」」」」」」」」」」」」」」」」」」」」」」」」」」」」		
Q. What are pesticides?	Q. What are the potential	• 2, 4-D was a component of Agent
${f A}$. Pesticides are poisons designed to kill	health effects of common	Orange and is used in about 1,500 lawn care products.
a variety of plants and animals such as	pesticides:	
insects (insecticides), weeds (herbicides)	\mathbf{A} . The EPA has identified health	O. How can nesticides
Pesticides include active ingredients	effects such as eye, skin, respiratory	reach neonle?
(chemical compounds designed to kill	or unroac arreactor and inuscie spasifis in humans and animals. There may he	
the target organisms) and inert	long term health risks from pesticide	r restictaes can be absorbed through the skin swallowed or inhaled During
ingrements which may be carchingens or toxic substances.	exposure: • A National Cancer Institute study	application, pesticides drift and settle
Q. Are pesticides safe?	indicated that children are as much as	on porches, laundry, toys, pools and furniture People and nets may track
A. No one can assure your safety	six times more likely to get childhood leukemia when pesticides are used	pesticide residue into the house.
when using pesticides. Most pesticides	in the home and garden.	0. Are there healthy
are associated with some risk to human health or the environment	• The Journal of the National Cancer Institute suggests that non-Hodokins	alternatives to deal
Austrational and an and a	lymphoma may be linked to pesticide	with insects. weeds
A. ALC PESUCIUES LEGISICIEU	exposure.	and fungus?
by the U.S. Environmental	• According to a report in the American Tournal of Phidomialour	
Protection Agency (EPA)	AILLELICAL JOULIAL OL EPIUEIII01089, more children with brain tumors and	A. I es. I he use of chemicals can be
really safe?	other cancers were found to have had	emmated by matural of mechanical lawn care practices which build a stron
A. No EPA registration is not a	exposure to insecticides than children	vigorous lawn. Healthy lawns are bette
consumer product safety program.	without cancer.	able to resist weeds and pests.
It is not intended to determine the safety	• As explained in the Journal of the Notional Cancor Institute hours and	 Organic natural methods of lawn
of the pesticide, but rather to indicate	national Cancel Institute, neavy and prolonged exposite to DDT may	and garden care, as well as household
it will kill a targeted pest. The EPA	cause pancreatic cancer.	• During the problems are available.
is now reconsidering the registration of many necticides which have been	According to the State Attorney General:	 r un out weeus manuany. Use biological controls or less toxic
on the market for years, registered	• 95% of the pesticides used on	pesticides like insecticidal, herbicidal,
before the current testing	residential lawns are considered	or fungicidal soaps for serious problem:
requirements took effect. This	probable or possible carcinogens by the EPA.	
to complete. Meanwhile, these	• Organophosphates, like Diazinon	
pesticides are still on the market. The	and Durspan, and carbamates are designed to act as nerve poisons and may	This publication has been produced by
that fall into this category: carbaryl,	cause headaches, dizziness, fatigue, twitching muscles and mental confusion	the Erie County Unit of the American
dicamba, glyphosate, malathion, maneb and methoxychlor.	Diazinon is banned for use on golf	Califer Suciety.
	courses and sou farms, but is writely used on lawns and gardens.	

PESTICIDES ARE POIS ON11-2-14-96

BEFORE YOU POISON YOUR HOME AND CHILDREN, YOUR NEIGHBORHOOD, AIR AND WATER, PLEASE READ BOTH SIDES OF THIS FLYER...CAREFULLY!

The word pesticide is used to describe a toxic group of chemicals which kill birds (avicides), grasses and weeds (herbicides), insects (insecticides), mildew and plant diseases (fungicides), and ground squirrels (rodenticides). All living things on earth are contaminated with pesticide residues, including newborns (Dr. Marion Moses, Pesticide Education Center (PEC), San Francisco CA).

The pesticide industry continues to make illegal claims that its products are safe or nontoxic. The Environmental Protection Agency (EPA) considers such claims to be false and misleading (General Accounting Office report # RCED-90-134). "If anyone tells you that...there is no [pesticide] hazard or that it is non-toxic they are either being dishonest or they are woefully uninformed. None of them are what we at EPA would ever classify as safe!" (EPA Office of Pesticide Programs, re-registration division). Licensed applicators have been telling customers their products are "EPA approved". Such statements are false and illegal; the EPA does not approve pesticides. Dangerous poisons are registered by the EPA for sale as long as 'benefits', including profits, are judged to outweigh the costs (e.g. birth defects, wildlife mortality, ground water contamination, central and peripheral nervous system damage, and cancer). Registration does NOT mean a pesticide is safe (GAO report # RCED 90-134).

Many pesticides have been marketed with incomplete and fraudulent testing. Industrial Biotest Labs was convicted of massive fraudulent pesticide testing in 1988. Craven Labs was recently indicted on 20 felony counts of falsifying data on 43 pesticides (NRDC *Amicus J.* (1987); *Chemical & Engineering News* Oct. '92). Less than 5% of pesticides marketed have been tested as required by law (NCAP).

While testing for active ingredients is poor, the testing requirements for so-called 'inert ingredients' are even worse!. Inerts often make up 50%-99% of a pesticide product and can be far more toxic than the active poison ingredient. Of the 1,800 inerts known in use, most are of unknown toxicity (NCAP). Inerts are classified as 'trade secrets' and need not be listed on pesticide labels. Government agencies will not tell you what these chemicals are (EPA), but researchers have found out some of them. Methylene chloride (paint stripper!) is used in wasp and hornet spray. Xylene, a carcinogen, has been used in Dursban (widely applied by licensed professional applicators in homes, schools and restaurants), and in Malathion & Diazinon (both commonly applied around homes and golf courses). Many inerts are volatile organic compounds (VOC's), which are fat soluble and can accumulate in the nerves and brain. Many VOC's are common ground water contaminants (PEC; NCAP; EPA; USFS memo 1/29/88).

Ask your retailer or licensed applicator to provide you with the **Material Safety Data Sheet** (MSDS), which lists a product's chemical ingredients and health hazards. Ask them to tell you what the so-called 'inert' ingredients are--they probably won't be able to.

'Weed & Feed' type products contain pesticides and so-called inerts. Do you know what's in them? (see product label). 'Three-way' pesticides (such as TRIMEC) may contain Dicamba, a potent ground water contaminant (NCAP). Pesticides designed to degrade rapidly tend to be very acutely toxic, while less acutely toxic ones tend to persist in the environment (NCAP; NCAMP).

Per acre, urban use of pesticides now greatly exceeds agricultural use. Pesticides are often misapplied and overapplied (e.g. off-target application). **Pesticides kill off beneficial plants, insects and animals**, upsetting the balance of nature. As pests become resistant to pesticides, and as natural insect predators (e.g. birds and ladybugs) die off from pesticide poisoning, pesticide use soars. This is called the 'pesticide treadmill', from which pesticide makers benefit. Crop losses have doubled, and pesticide resistant species have quadrupled, while pesticide use has increased ten fold (Dr. R. Van Den Bosch: 'The Pesticide Conspiracy', Doubleday & Co. Garden City NY 1978).

MANY PESTICIDES ARE NERVE POISONS!

EXPOSURE

د ۲۰ مه د ر ر موسیقه همان هم در

If you can smell a pesticide, it has entered your body. No matter how carefully applied, liquid or granular pesticides become airborne (i.e. off-gas) and may drift for miles (National Academy of Sciences, 'Urban Pest Management', 1980; NCAP). Of the 33 most frequently used pesticides, 9 are linked to cancer, 9 to liver and kidney disease, and 20 are neurotoxins (CBS News; NCAMP). So far, 71 pesticides are known to be possible or actual human carcinogens (NRDC press condference, 6/21/93).

Children may be at greatest risk from exposure (Dr. Moses, PEC). Pesticide use in the home (e.g. 'no-pest' strips, flea & tick collars, lawn and garden herbicides and insecticides) is associated with higher rates of leukemia and brain cancer in children living in such homes (R.A. Lowengart et al. in *J. of the Ntl. Cancer Institute* 1987; J. Davis et al. in *Archives of Env. Contamination & Tox.*).

The neurotoxic effects (damage to nerves and brain) of pesticides are called "A critical risk to human health." (American Public Health Association, *The Nation's Health, ISSN* 0028-0496).

2,4-D (dichlorophenoxyacetic acid) and similar chlorophenoxy pesticides (found in weed & feed type products) have repeatedly been linked to cancer in dogs and humans. 2,4-D has been found to be contaminated with **DIOXINS**, deadly organochlorines that accumulate in body fat. Dioxins cause birth defects, reproductive effects, cancer and liver damage (*Scandinavian J. of Work, Env. and Health*, 12:454-488 (1986); J.S. Woods et al. in *J. of the Ntl. Cancer Institute* (1987); M.D. Reuber in *The Science of the Env.* 31:203-218 (1983); R.M. Shearer: 'Health Effects of 2,4-D Herbicide', Issaquah Health Research Institute, WA).

Women with breast cancer have higher levels of DDT (another organochlorine pesticide) in their blood than women who do not have breast cancer. Thirty years ago an American woman had a 1-in-20 chance of developing breast cancer by the age of 85. Now her risks are 1-in-9 (*Chemical & Eng. News* April 19, 1993). Chlorinated pesticides such as DDT are still detected in our food supply, much of which is imported. A fresh food survey in San Francisco found DDT to be the most common residue, despite having been banned from use (but not from production for export) 12 years earlier (Mary S. Wolfe et al.: 'Blood Levels of Organochlorine Residues and Risk of Cancer' *J. of Ntl. Cancer Institute* April 21, 1993, 648-052; NRDC: 'Pesticides in Food: what the public needs to know' NY, NY 1984).

Symptoms of pesticide exposure include:

headaches, nausea, flu-like illness, vomiting, difficulty breathing, weakness, diarrhea, numbness or tingling, fatigue, rashes, dizziness, confusion, sleep disturbance, digestive upset, blurred vision, irritability, eye irritation, aching, chest pain, cough, abdominal pain, tissue tenderness, swelling of extremities, tremors, sweating, rapid/slow heartbeat, salivation, weight loss, incontinence; others...

NON-CHEMICAL ALTERNATIVES EXIST FOR MOST PESTICIDE USES! CONTACT:

<u>Bio-Integral Resource Center</u> (BIRC)--PO Box 7414 Berkley CA 94707, tel: 510-524-2567 'Common Sense Pest Control' by Olkowski, Daar and Olkowski.

<u>Garden City Seeds</u>--778 Hwy 93 N., Hamilton MT 59840, tel: 406-961-4837 in Missoula: <u>The M.U.D. Project.</u> 629 Phillips St., tel: 406-721-7513

Northwest Coalition for Alternatives to Pesticides (NCAP)--PO Box 1393, Eugene OR 97440, tel: 503-344-5044

National Coalition Against Misuse of Pesticides (NCAMP)--701 E St., SE (suite 200) Washington DC 20003, tel: 202-543-5450

For more information, contact: Missoulians for Clean Environment, PO Box 2885, Missoula MT 59806 tel: 406-523-6087

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EXHIBIT

February 14, 1995

HB 452 Testimony by AMTOP President, Brad Culver

Mr. Chairman, members of the committee,

For the record, my name is Brad Culver and I represent AMTOP, the Association of Montana Turf and Ornamental Professionals and also myself as owner /operator of Nitro-Green, a Helena based lawn care company for the last eleven years. We are in opposition to HB 452 as it is written because it is unnecessary and does not address many issues. One point in particular is that it excludes homeowners which account for the large majority of pesticide applications currently being applied. Most commercial pesticide applicators in our industry are already voluntarily posting. My own company has been using these flags to mark all of our applications, not just ones containing pesticides, for the past five years with great success.

The language in this bill would make this practice burdensome and unfeasible. For instance on page 1, line 19 & 20, "The signs may not be removed until 48 hours after the application or until the safe reentry interval on the pesticide label has expired." The labels of products commonly used for lawn care require people to "stay off until dry". The flags we currently use state "Please stay off until dry" and then states to the customer that sign "may be removed the day following application". On line 24 of the same page it states that the sign must "be made of a rigid, weather-resistant material, durable enough to be read for at least 48 hours after posting." Many of us don't use a rigid sign, but a vinyl sign that does remain legible indefinitely.

Another point we take exception to is "pesticide application". As I stated earlier, our company uses our flags to mark all applications, whether it is fertilizer only or a fertilizer-pesticide combination. If we make an application and fail to post a flag, it causes confusion with the property owner. On the second page, language concerning information required for the backs of the flags is not necessary. The wide variety of products that we use would make this burdensome to the applicator to fill out and create unnecessary expense for the property owner. Also, can you imagine trying to write all this information on the back of the flag and trying to make it legible and 18 point type? In order for someone to read this information would require them to walk onto the treated area in order to read information on the back of the sign which would cause them to trespass and become more exposed to the application. This is supposedly what they're trying to avoid in the first place. All of this information and more is available by calling the phone number of the company on the front of the flag which is a policy we currently use.

As far as placement of these flags, we currently post a flag or flags at a conspicuous point or points where they can be easily seen. On line 12, part B, it states "if only a spot pesticide application is made or only a small area treated, a sign must be posted at the location where the pesticide was applied" If a lawn was spot sprayed for 20 individual dandelions, then 20 individual signs would be required according to this bill. Our company as well as many other companies practices what is known as IPM-Integrated Pest Management, whereby we apply pesticides in a judicious manner and only where and when necessary. By the language of this bill, it would be far easier to blanket apply a pesticide to the entire lawn and post only one or two flags than to use the more responsible IPM approach.

We have amendments available that are consistent with our current posting but there are many other concerns which aren't addressed such as pesticide applicators of railroads, right-of-ways, weed districts, irrigation districts etc. In closing, I would like to say that those of us in the pesticide industry are already taking a proactive stance in regards to concerns of pesticides. This bill is confusing and unnecessary and I would hope that you vote a no pass. Thank you for your time.



2/14/95

TESTIMONY AGAINST HOUSE BILL #452

Before the 1995 Legislature, House of Representatives

Committee on Agriculture, Livestock and Irrigation

Mr. Chairman, Members of the Committee, for the record my name is John Semple, representing the aerial application businesses of Montana.

The 1993 Legislature enacted SB334 which added 80-8-120, provisions for notification, to the Montana Pesticide Act. This allows local entities to request, within 30 days, from the department, verification of a local need ordinance.

Number 2 of Section 80-8-120 specifies and requires documentation of a proposed ordinance. This can include posting. To incorporate posting with specific information in to law is inconsistent with 80-8-120. The manufacturer, along with a specific local need, as determined by the Department of Ag and the locality, should address criteria for posting requirements. We are concerned that, session by session, legislation such as this will eventually encompass aerial application to agricultural land.

EPA requires such intense and expensive testing (30 to 50 million dollars worth) before a pesticide can be used, that laws requiring posting only serve to restrict application and ignore sound scientific data as to the pesticide efficacy and safety to human beings. In other words, to require more stringent requirements than the label, tends to insult the very process of legitimate testing and the applicators themselves, who are required to adhere to specific application procedures and labeling requirements.

We ask you to table or kill House Bill 452.

Thank you



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

MONTANA WATER RESOURCES ASSOCIATION Testimony Regarding HB 453 HOUSE AGRICULTURE COMMITTEE February 14, 1995

Mr. Chairman, Members of the Committee. For the record, I'm Mike Murphy, representing the Montana Water Resources Association. The Association opposes House Bill 453.

House Bill 453 would create unnecessary, impractical and costly regulation. A unit of local government may already adopt an ordinance to regulate pesticide application. Ordinances that may include among other things, notification based upon approval provided for under policy developed by the Dept. of Agriculture.

If a municipality were to adopt an ordinance under the provisions of HB 453 requiring notice by a commercial applicator or irrigation district prior to applying an aquatic herbicide the notice to the Department of Health would be required no less than seven days before the date of application. This is totally impractical as the principle aquatic plant generally sprayed for in an irrigation ditch or lateral such as Sago Pond Weed is heat sensitive and grows extremely fast when reacting to favorable growing conditions. Under the right conditions, a ditch can literally be over flowing from a fast blooming growth in just two or three days. Timing of herbicide applications such as Magnacide H (Acrolein), must be at the appropriate stage of growth and conditions to be effective. At an estimated cost of \$3,000 per 8-10 mile stretch of a main canal or lateral, the treatment is very expensive and must be applied at the most appropriate, thus cost effective time. Not simply because notice was provided for a particular date.

"Montana's Voice for Montana's Water"

EXHIBIT 15

MWRA Testimony to House Agriculture House Bill 453 Page 2

In addition to the timing problems associated with the weed growth itself, a number of factors such as unfavorable weather conditions, emergencies, and personnel absences or mechanical problems experienced by either the district or a commercial applicator may restrict the date of application. Changes in application dates due to these factors are very common.

As pertains to the requirement that a commercial applicator or the irrigation district post signs at all access points, such efforts would also be an additional expense to the district and of course to the irrigators within the district. Considering the extent and significance of the weed problems, it does not make good economic or environmental sense to spend time and money on busy work associated with unnecessary government regulations. In addition, as established under law, the pubic for the most part, does not have legal access and are trespassing in order to enter on to the ditches or established easements created under the irrigation district. Access limitations to such ditches and associated easements apply to and affect in many cases, even the owner of the property.

Finally, such legislation would most likely raise the level of liability and associated legal expenses to an irrigation district, due the publics mere knowledge of such applications and opportunity for frivolous claims and law suites, etc.

Again, the Montana Water Resources Association opposes House Bill 453.

Thank you.

BILLINGS BENCH WATER ASSOCIATION 706 MAIN P.O. BOX 50150 HB 45 3

BILLINGS, MONTANA 59105

AGAINST HOUSE BILL NO. 453

WHEREAS The State of Montana already requires us to go to school and obtain licenses in order to apply chemicals.

WHEREAS The State of Montana also requires us to fill out a State plan of our ditches and where this chemical is being applied...

WHEREAS All safety and health requirements for both the individuals as well as the public, is already in effect and which requires some posting .

The new bill will add a tremendous cost and burden to the applicator and there is no benefit to the public.

Whenever a waterway goes through a city or densely populated area, the requirements of this bill will be impossible for anyone to meet and stay within the law. By the time the plant life indicated that it needed application, the implementation of the requirements of this bill would require more time than is left in the growing season in which the plant would affect the operation of the system. In our particular case, if you could imagine using aquatic chemical and having to post 360 miles of ditch. Where the waterway crosses streets every city block would have to be posted.

In our case we feel that this bill would make it impossible for us to apply or use chemical, therefore it would interfere with the crop production on about 22,000 acres at certain times of the year.

By: Gloria Lueck Secretary-Treas.

Glaria Luck

Amendments to House Bill No. 445 Introduced Reading Copy

Requested by Rep. Grady For the Committee on Agriculture

Prepared by Doug Sternberg February 10, 1995

1. Title, line 7. Strike: "STATUTORILY APPROPRIATING PROGRAM FUNDS;"

2. Title, line 9. Following: "AMENDING" Strike: "SECTIONS" Insert: "SECTION" Following: "7-22-2126" Strike: "AND 17-7-502"

3. Page 3, line 15.
Following: "nine"
Insert: "voting"
Following: "members"
Insert: "and two ex officio, nonvoting members"

4. Page 3, line 17. Strike: subsection (b) in its entirety Renumber: subsequent subsections

5. Page 3, line 18. Strike: "one member who is a producer" Insert: "four members who are producers"

6. Page 3, line 19.
Following: "program"
Insert: "and who represent different geographical areas of the
 state"

7. Page 3, line 21. Following: "livestock" Insert: "or agricultural"

8. Page 3, line 22. Strike: subsection (f) in its entirety

9. Page 3, line 23. Strike: "one member" Insert: "two members"

10. Page 3, lines 25 and 26. Strike: subsections (h) and (i) in their entirety Insert: "(f) the director of the Montana state university extension service or a designated representative, who is an ex officio, nonvoting member; and (g) the director of the Montana state university agricultural extension service, who is an ex officio, nonvoting member."

11. Page 4, line 12.
Following: "establish"
Strike: "forage inspection"
Following: "assessments"
Insert: "and accept other funds"

12. Page 5, lines 28 through 30. Following: "(2)" Strike: remainder of subsection (2) in its entirety Insert: "The department may by contract allow for the collection of fees authorized under [section 7]. A portion of the fees collected may be retained by the collector, and the portion of the fees assigned to the department must be submitted to the department. The contract must require: (a) a record of the name of the person collecting fees; (b) a record of fees collected; (c) a record of the amounts submitted to the department; (d) a record of the amount retained by the collector; and (e) that all records be kept in accordance with generally accepted accounting principles." 13. Page 6, line 5. Following: "department" Insert: "for the administration of the noxious weed seed free forage program and" 14. Page 6, line 8. Following: "may" Insert: ", based on the advice of the advisory council appointed

under [section 4],"

15. Page 9, line 18 through page 10, line 17. Strike: section 18 in its entirety Renumber: subsequent sections

16. Page 10, line 28. Following: "9," Strike: "and" Following: "18" Strike: "through 20" Insert: ", 19," My name is Monte Schnur, and I reside east of Townsend. I support HB 445.

I was the first certified weed seed free hay producer in Broadwater County. I entered the program because, as an outfitter, I'd seen the effects of people taking weedy hay into the backcountry. I didn't want my camps to become weed patches. I thought the Forest Service would eventually require that packed-in feed be weed free. I suspected that having certified hay might make it more marketable on the general market in the future. That winter, I was proven right, when a rancher almost 200 miles away bought all my hay because it was certified weed free. Today, certified weed seed free forage is required on the national forest.

EXHIBIT_

I have watched the certified weed seed free forage program grow from a few small producers in southwestern Montana to a large number of serious producers throughout the state. Demand for weed seed free forage has grown dramatically. We have operated on a sort of loose knit honor system, under the guidance of the Extension Service and local weed districts. In the days when we started, we were piloting for the future. Now we are in the future, and we need to operate on a more business like level. Nobody likes to think it, but without enforcement, the program is wide open to abuse and fraud. We need a credible program. By placing the certified weed seed free forage program under theadministration of the Department of Agriculture, enforcement and standards will be in place to ensure credibility and continuity.

The Extension Service has done its job well, in piloting the program this far. Now it's time for the program to stand on its own, administered by the appropriate statewide agency. The advisory board described in the bill will help keep the program efficient, and will reflect the needs of producers and consumers in its administration.

EXHIBIT_

February 14, 1995

To: House Agricultural Committee

From: Joel Flynn, (406) 266-3578 273 Flynn Lane; Townsend, MT 59644

Re: Support of HB 445, Montana Noxious Weed Seed Free Forage

My name is Joel Flynn. I am a fifth generation farmer from Broadwater County. I am a charter member and past secretary of Missouri River Agricultural Marketing Association (MRAMA). For the past eight years I have been active in trying to improve forage quality throughout the state. I have been a producer of Montana Noxious Weed Seed Free Forage.

I participated in the early stages drafting this legislation and I believe I clearly understand its intent and purpose. The purpose is not to create a market for another agricultural product, not to open another position in the Department of Agriculture, not to authorize another bureaucracy. Its purpose is to address an urgent need to control the spread of noxious weeds and to confer legitimacy upon an effective mechanism whose elements are already in place.

Perhaps some of this bill's language may need clarification or improvement. I, too, want assurance that administration of this program will remain in the hands of those best qualified to administer. Some portions have been left intentionally vague so that the advisory council created by this legislation may solidify those details.

The need to control the spread of weeds on public lands, rights of way, on farms and ranches throughout the state of Montana is critical. If we fail to address these problems now, the fate of all the state will be the same as that of many western Montana counties.

Thanks to the house agricultural committee for the opportunity to testify and thanks to those legislators who have sponsored and signed this bill. Please pass this important legislation.

Sincerely,

oel C. Flynn, producer



Missouri River Agricultural Marketing Association, Inc.

EXHIBIT. DATE HB

FEBRUARY 12, 1995

- TO: HOUSE AGRICULTURE COMMITTEE CHAIRMAN JOE BARNETT
- FROM: MRAMA MISSOURI RIVER AG MARKETING ASSOC., INC.
- RE: LEGISLATION HB 445 CERTIFIED NOXIOUS WEED SEED FREE HAY BILL

IN FAVOR OF HB 445

DEAR HOUSE AG COMMITTEE MEMBERS:

IT HAS COME TO OUR ATTENTION THAT HB 445 is in need of support, MANY OF OUR MEMBERS HAVE PARTICIPATED IN THE CERTIFIED NOXIOUS WEED SEED FREE HAY AND STRAW PROGRAM IN THE PAST YEARS AND MANY HAVE BENEFITTED FROM IT BOTH FINANCIALLY AND IN THE FACT THAT THE SPREAD OF NOXIOUS WEEDS TO SENSITVE AREAS HAS BEEN SLOWED, MONTANANS ARE BECOMING AWARE OF THE ACUTE WEED PROBLEM WE ARE ENCOUNTERING AND SEE THE NEED SOME COUNTER-MEASURES, FOR THIS BILL IS Α STEPPINGSTONE IN THE RIGHT DIRECTION, WE WORK CLOSELY WITH THE MSU EXTENSION SERVICE AND ARE GRATEFUL FOR THEIR WORK IN ORGANIZING THIS PROGRAM BUT WE SYMPATHIZE WITH THEM IN WANTING TO TURN THIS OVER TO ANOTHER AGENCY TO CARRY ON AND ENFORCE.

OUR ASSOCIATION'S AFFILIATION AS THE FIRST HAY ASSOCIATION IN THE STATE HAS EARNED US THE RIGHT TO EXPRESS OUR OPINIONS ON THIS BILL. WE HAVE UNANIMOUSLY PASSED A MOTION TO WHOLEHEARTEDLY SUPPORT THIS HB445.

WE NEED THIS BILL, MONTANANS NEED THIS BILL, PLEASE PASS IT,

CORY BAVIS - PRESIDENT

JOAN HAHN - SECRETARY

EXHIBIT HB

IN FAVOR OF HB-445 Before the MONTANA HOUSE OF REPRESENTATIVES AGRICULTURE COMMITTEE 2/14/95

It is crucial that Montana enact legislation to formalize a program to prevent the spread of noxious weed seeds in various forage products, and to standardize and solidify the practices and procedures for certification of these products.

We need this program to:

- Standardize a noxious weed seed free program in Montana.
- Secure credibility for the weed seed free forages now being produced.
- Provide certified weed seed free product for use in areas which now require it.
- Provide a certified product for shipment out of State.
- Prevent the distribution of uncertified or falsely certified products as weed seed free.

As long as I have been involved in noxious weed control, dating back to the early 1970s, I have been working with various groups trying to put together a program to insure that noxious weeds are not spread into uninfested areas with the transport of forages and mulches. I was active on the interim study group (1991-1993), along with producers, user groups, land management agencies, regulating agencies, and related associations that helped to develop the core of the legislation before you today.

We have worked long and hard with public land management agencies to require weed seed free forages on public lands. We have worked long and hard to develop a program to produce these forages. I strongly urge you to support these efforts and pass HB-445 to establish a program to provide a Noxious Weed Seed Free Forage Program for the state of Montana.

Vand, Somerican

James S. Freeman, Weed Supervisor Cascade County Weed and Mosquito Management District.

EXHIBI HB

STATEMENT OF JIM OLIVAREZ, NOXIOUS WEED PROGRAM LEADER, FOREST SERVICE, NORTHERN REGION UNITED STATES DEPARTMENT OF AGRICULTURE Before the Agricultural Committee Montana State House of Representatives

Concerning House Bill No. 445 entitled "NOXIOUS WEED SEED FREE FORAGE ACT". AN ACT ESTABLISHING A NOXIOUS WEED SEED FREE FORAGE PROGRAM AND ADVISORY COUNCIL; ESTABLISHING THE POWERS, DUTIES, AND RULEMAKING AUTHORITY OF THE DEPARTMENT OF AGRICULTURE IN ADMINISTERING THE PROGRAM; AUTHORIZING APPLICABLE FEES; STATUTORILY APPROPRIATING PROGRAM FUNDS; PROVIDING FOR ENFORCEMENT AUTHORITY AND FOR PENALTIES, ORDERS, INJUNCTIONS, AND EMBARGOES APPLICABLE TO THE PROGRAM; AMENDING SECTIONS 7-22-2126 AND 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES."

February 14, 1995

CHAIRMAN AND COMMITTEE MEMBERS:

My name is Jim Olivarez, and I am the Noxious Weed Program leader for the Northern Region of the Forest Service. Thank you for the opportunity to participate in this hearing and to discuss the USDA Forest Service Closure Orders and the relationship of this bill in support of the Region's "prevention" strategy.

The Forest Service utilizes "Closures" to protect various resources as needed on National Forest System lands. These closures are used in a variety of situations, such as:

- * early Spring road closures which restrict vehicular travel during periods when roadbeds are saturated with water and such use would damage the road;
- * seasonal restrictions on motorized access during calving season in critical calving areas;
- * limitation of public access to areas when there is a threat to human safety.

The Northern Region also uses closure orders to restrict the use of forage brought onto national forests to only Certified Noxious Weed Seed Free Forage.

Currently, there are nine National Forests in Montana that have either partial or total closure orders in effect which require the use of Certified Weed Seed Free Forage. Those forests are the Beaverhead, Bitterroot, Custer, Deerlodge, Flathead, Gallatin, Helena, Lewis & Clark, and the Lolo.

The use of Weed Seed Free Forage is part of a Prevention Strategy used within the Integrated Weed Management Program of the national forests in the Northern Region. The intent is twofold: first, to prevent the spread of any Noxious Weeds into clean areas; and secondly, to prevent the spread of specific noxious weed species into areas where they currently do not exist, such as yellowstar thistle onto National Forest System lands in Montana.

In Montana, national forests have individually decided when to require the use of Weed Seed Free Forage. This has been encouraged by the Region, so Forests could build solid cooperative ties with local county weed boards, other state and federal agencies, and associated forage suppliers. A critical aspect of this whole prevention strategy is that adequate supplies of Certified Weed Seed Free Forage are available to forest users.

This bill would develop and implement a Certified Weed Seed Free Forage Program in cooperation with federal, state, and local government, the university system, and private enterprise. The program would be under the authority and responsibility of the Montana Department of Agriculture. It is the feeling of the Northern Region Forest Service that such a state program would greatly strengthen the foundation of the current program. It would also provide a stronger base through promotion of incentives for future supplies

of Weed Seed Free Forage. This would assist in the supplies of these products for use in National Forests where this aspect of the prevention strategy is being implemented.

The Forest Service's prevention strategy in Montana is wholly dependent upon the Certified Noxious Weed Seed Free Program. Presently, this is a voluntary program administered by a county extension agent and is a classic example of cooperation between State, County and Federal agencies and the private sector. However, through this bill, the Certified Noxious Weed Seed Free Program will be strengthened and elevated to a state-sanctioned program. This will simultaneously strengthen the Forest Service's prevention portion of the equation in the War on Weeds.

Montana continues to be an example of progressive, effective and innovative actions against noxious weeds. Again, we appreciate the opportunity to share the Forest Service's position on the use of Certified Weed Seed Free Forage and it's relationship to implementation of the Prevention Strategy on National Forest System lands. This completes my testimony. I will be pleased to answer any questions you may have. TRIANGLE AREA

MONTANA WEED CONTROL ASSOCIATION



Feb. 13, 1995

10:

Joe Barnett Chairman, Ag Livestock and Irrigation Committee House of Representatives Capitol Building Helena, Montana 59620 FAX: 1-900-225-1600

Mr. Barnett,

The Triangle Area Weed Supervisors of the Montana Weed Control Association would like to express our support for House Bill #445, "The Noxious Weed Free Forage Act". Establishing a council to oversee the movement of feeds and forage in our state and across state lines will be a huge asset to the fight to stop the spread of noxious weeds in our state. The actions of this council will also reduce the risk of any new weed invaders from entering Montana through feeds and forage.

Losses to the livestock industry alone in Montana are running in the hundreds of thousands of dollars per year due to noxious weeds. We have already lost too many acres of "The Last Best Place" to noxious weed invasions. Establishment of this advisory council will be a key tool in preserving the beauty and the economy of our wonderful state. Please back this bill with your support.

Thank you, hokiene

Jim Ghekiere Triangle Area Representative Montana Weed Control Association Liberty County Weed Supervisor P.O. Box 451 Chester, Montana 59522 Ph: (406) 759-5673 FAX: (406) 759-5395

cc: Ed Grady Gary Gingery Roger DeBruycker Gary Feland Ø 003

FEB-13-95 MON 13:51 FIRST SECURITY BANK

Hill County Weed District Courthouse Havre, Montana 59501 (406) 265-5481 ext.64 Terry Turner, Supervisor 3 EXHIBIT 2/14/95 DATE 445 HB

liouse of Representives Capitol Building Helena, Mont. 59620

February 13, 1995

Dear Chairman and members of the Agriculture Livestock & Irrigation Committee,

I have reviewed HB 445 on the noxious weed seed free forage program and feel that it is something that is needed for the state of Montana.

The use of clean hay in our construction projects, etc. is very important. Prevention is still the key in noxious weed control.

Our major weed problems in Hill County is directly related to the purchase of contaminated hay back in the 1930's and early 1940's.

I feel because of the cost of controlling noxious weeds, it is well worth the landowner's money to start purchasing certified hay and that the hay is protected by a law.

Sincerely_ Lerry Sumer

Terry Turner, Supervisor Hill County Weed District

cc: Ed Grady

AGRICULTURE-HILL COUNTY'S LARGEST INDUSTRY

4062653032

T.E

	A VIND A	Box 344 bsarokee, Montana 59001 ph. 406/328-4165	County Extension Office Columbus, Montana 59019 ph. 406/322-5334
- H	4 S V	EXHI DATE	BIT 23 2/14/95
		HB_	445

Feb 9, 1995

Lo: El Grady + Lom Beck Re: HB 445 as a weed district supervisor and Certified MNWSFF inspector I would like to register my support for HB 445. It was developed at the request of the past legislature to develop an approved program sanctimed by the Digit of agriculture. It gives is credebility with federal agencies and other states in certifying weed seed free forage -

Sincerly, Wayne Gearson

TESTIMONY IN SUPPORT OF HOUSE BILL 445

Mr. Chairman and members of the Agriculture Committee;

I am Rod Kitto. I farm between Townsend and Three Forks. As a hay grower, I have been involved in promoting the production and marketing of high quality Montana hay.

The area in which certified noxious weed free hay is required has grown substantially in recent years. A program to facilitate production of this hay is needed.

The Extension Service that has administered the program does not want to continue in this capacity. Administration , especially in areas of enforcement, just does not fit the Extension Agency. A change in administration is needed.

Fees paid by voluntary participating hay producers have kept the noxious weed seed free program selfsustaining. While the program is necessary and a change in administration is necessary, I would caution against creating a bureaucracy that voluntary participants (hay growers) can not reasonably fund. If the program is to be administered by an advisory council, I feel it is very important that many of the members of the council be hay growers. Hay producers, who will likely fund most of the program, should have a good feel for the level of funding is viable for the industry and for the noxious weed seed free program.

MR. CHAIRMAN AND COMMITTEE MEMBERS

MY NAME IS STEVE JOHNS

I AM A RANCHER, A FORAGE PRODUCER, AND MARKETER IN THE CANYON CREEK, MONTANA AREA.

I HAVE BEEN IN THE "NOXIOUS WEED SEED FREE FORAGE PROGRAM" SINCE 1990 AND HAVE BEEN INVOLVED ON THE "PRODUCER COMMITTEE" TO DEVELOP THE PROGRAM FOR THE CERTIFIED PRODUCERS OF MONTANA.

THE PROGRAM HAS BEEN OF GREAT BENEFIT TO ME PERSONALLY THROUGH "EDUCATION" AND BY PROVIDING ME WITH ADDITIONAL MARKETS FOR MY FORAGES.

THE LEGISLATION SUPPORTS NOXIOUS WEED MANAGEMENT THROUGH PREVENTION AND WILL ALLOW MONITORING THE TRANSPORTATION OF "CERTIFIED" AGRICULTURAL PRODUCTS IN MONTANA AND THOSE COMING IN FROM SURROUNCING STATES THAT WILL BE USED ON PUBLIC AND PRIVATE LANDS.

THE LEGISLATION IS A "PREVENTION" TOOL AND ENHANCES A FORAGE PRODUCERS IMAGE OF NOXIOUS WEED MANAGEMENT THROUGH MARKETING A CLEAN PRODUCT.

AS A PRODUCER I AM IN HOPES YOU WILL SUPPORT THE LEGISTLATION FOR THE BETTERMENT OF MONTANA AGRICULTURE.....

I, Harry Woll, Chairman of the Flathead Valley Hay Association, have come to this hearing on House Bill 445 in regards to opposing the bill. I am speaking in behalf of the Flathead County Weed Board and the 24 member Flathead Valley Hay Association.

As we view it, the bill is far too open with respect to almost a, and let S dozen proposed separate fees mentioned in Section 7, line 9. This Line 1-12-22 bill would discourage producers to enter or remain in the production and inspection of Noxious Weed Seed Free Forage. The market simply would NOT bear the increase in price required to cover the cost of another bureaucratic program.

This program could be easily managed, but instead, certain individuals including MSU Extension Agents are passing the buck to the Montana Department of Ag. If this bill is passed, the program will be difficult as well as expensive for producers to comply.

We support bills to stop the spread of noxious weeds, but this bill will not help in the long run.

We would like to see this bill killed and would like to see Hay Producers within the counties of the state of Montana be given a chance to meet and submit a bill at the next legislative session, 2 years from now.

Harm Woll

February 14, 1995

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Legislation to Declare Ostriches, Emus and Rheas "Livestock"

What are these birds?

The ostrich, emu and rhea are members of the ratite family of birds. These birds are raised for commercial purposes. Meat, hides, feathers, oils etc. are the products that are derived from these birds. These birds are very very large - 100 pounds to 450 pounds in size and have a red meat.

How many of these birds are in Montana?

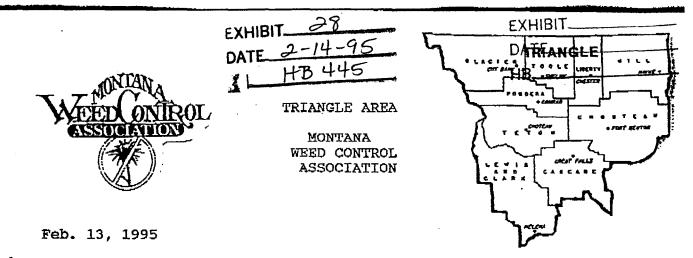
It is estimated that there are about 3000 of these birds in Montana at the present time. Because of the prolific offspring of these birds, this number will probably rise exponentially over the next couple of years.

How many Montanans are involved with these birds?

The Montana Ostrich Association has about 150 bird ranchers in their membership. The Montana Emu Association has 36 families in their organization.

Why are we pursuing this legislation?

The ostrich, emu and rhea are relative newcomers to Montana. Because of this, we want to take a pro-active approach with respect to disease control, departmental jurisdictional issues, protection for our birds, classification, and other rancher business concerns. We believe that the Department of Livestock expertise will be able to assist us in our industry's growth. In the next few months, we will begin to slaughter these birds for commercial purposes. We anticipate three major markets for our bird derived products: Montana, national and international. 02/14/95 07:36



10: Joe Barnett Chairman, Ag Livestock and Irrigation Committee House of Representatives Capitol Building Helena, Montana 59620 FAX: 1-900-225-1600

Mr. Barnett,

The Triangle Area Weed Supervisors of the Montana Weed Control Association would like to express our support for House Bill #445, "The Noxious Weed Free Forage Act". Establishing a council to oversee the movement of feeds and forage in our state and across state lines will be a huge asset to the fight to stop the spread of noxious weeds in our state. The actions of this council will also reduce the risk of any new weed invaders from entering Montana through feeds and forage.

Losses to the livestock industry alone in Montana are running in the hundreds of thousands of dollars per year due to noxious weeds. We have already lost too many acres of "The Last Best Place" to noxious weed invasions. Establishment of this advisory council will be a key tool in preserving the beauty and the economy of our wonderful state. Please back this bill with your support.

Thank you, , Kiene

Jim Ghekiere Triangle Area Representative Montana Weed Control Association Liberty County Weed Supervisor P.O. Box 451 Chester, Montana 59522 Ph: (406) 759-5673 FAX: (406) 759-5395

cc: Ed Grady Gary Gingery Roger DeBruycker Gary Feland 7219957

FROM

EXHIBIT___

MONTANA CONGRESS OF PARENTS, TEACHERS & STUDENTS

Joe Burnett, Chair

TO: HOUSE AGRICULTURE COMMITTEE FR: JEAN CURTISS, MONTANA PTSA LEGISLATIVE CHAIR DATE: FEBRUARY 14, 1995 RE: HB 452 & HB 453, INTRODUCED BY REP. KADAS

My name is Jean Curtiss. I am the Legislative Chair for the Montana PTSA. I speak for the 11,000 members of PTA in Montana. I speak in favor of HB 452 and HB 453.

The third object of PTA is "To secure adequate laws for the care and protection of children and youth". HB 452 & 453 would give-local communities the opportunity to protect children from the dangers of being exposed to pesticides and herbicides.

Concern about pesticide exposures prompted the EPA to perform the Non-Occupational Pesticide Exposure Study (NOPES). Of the 26 pesticides NOPES examined, 19 are nerve poisons, 18 may cause cancer, 15 are mutagens, 15 could cause birth defects and 19 can cause reproductive problems.

To complicate matters further, children are more vulnerable to toxic pesticides than adults, according to Beverly Paigen, research biochemist at Children's Hospital Center in Oakland, CA. Because children are rapidly growing and their cells are dividing rapidly, they are more susceptible to many toxic materials, particularly cancer-causing substances.

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HB 453 would give cities and towns in Montana the opportunity to adopt ordinances requiring commercial applicators to provide notification when applying a pesticide with a very recognizable sign. This notification will give parents a visible warning so they may protect their children's health by keeping them away from the area that has been treated with pesticides.

HB 453 would give communities in Montana the opportunity to adopt ordinances requiring irrigation districts and commercial applicators to provide adequate notification when applying an aquatic herbicide. This notification will also give parents more warning so they may protect the health of their children by keeping them away from the ditch or other water source that has been treated with aquatic herbicides.

Both HB 452 & HB 453 allow for local control of these issues. The Montana PTSA encourages the members of the Agriculture Committee to vote for these two bills to protect the children and youth of Montana as well as their parents.

Thank you. Jean Curtiss, Legislative Chair Montana PTSA 1419 Howell Street Missoula, MT 59802 406-721-1705 **PTSA**

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MiKE KADAS, SPONSOR

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Via Fax: 406-549-9340

HR

TO: Representative Cliff Trexler Montana House of Representatives Desk #99

Tom Alsaker, President Grass Valley Ditch Company From: 11600 Mullan Rd. Missoula, MT. 59802 406-543-8801

Re: House B111 453

I'm contacting you to urge your support to kill HB453 which is to be heard in Agricultural Committee at 3:00pm, Tuesday the 14th.

I hold several licenses for the use of herbicides, pesticides and rodenticides in the State. The priveledge of holding these licenses requires that I be adaquately tested, updated and responsible for the safe and proper use of regulated products as dictated by State and Federal Agencys.

I will be unable to attend the hearing to discuss this bill because of a meeting of the Missoula Water Quality Advisory Council the same day. I have been attending meetings of this committee when they discuss the use of herbicides in area ditches. Because of the exchange of information and rational disucssion of concerns, I feel that one of the fruits of these meetings will be that we will fulfill the intent of HB453 without the hassle and expense of dealing with yet another law.

Thank <u>You</u> for your support.

on Masker

Tom Alsaker

P.S. If anyone on the Ag Committee would like to contact me, please do so.

EXHIBIT

February 15, 1995

2610 Spurgin Road Missoula, MT 59801

Secretary House Agriculture Committee Capitol Station Helena, MT 59620

Dear Sirs:

Please find enclosed the article which I referenced during the comment period of the public hearing on HB459.

I apologize for not having it available at the time. However, please understand that this was my very first visit to the capitol. And, I did find things very interesting.

Bucket risk's inescapable, five-year study concludes

Sincerely,

David S. Gasvoda

Chicago Tribune

WASHINGTON – The Consumer Product Safety Commission has kicked the bucket.

After five years of examining the issue of redesigning five-gallon buckets, the agency has decided against taking action.

against taking action. Alarmed by the deaths of a dozen toddlers from Cook County, Ill., in the 1980s, the commission in 1989 opened an inquiry into the ubiquitous 5gallon plastic bucket to find ways to prevent children from toppling inside partially filled containers and drowning.

The agency last May ordered bucket manufacturers to redesign their product — a task industry executives equated to reinventing the wheel. On Wednesday the commission changed its mind. Concluding that bilingual warnings affixed to industrial pails and an industryfinanced public-education campaign would be sufficient, it decided that a redesign is no longer warranted.

Many people had questioned the wisdom of the agency's course, with some contending that it was an example of a "nanny state" going beyond the bounds of useful regulation.

The safety commission began its investigation after its staff, alerted by a forensic pathologist with the Cook County Medical Examiner's office, reviewed death records and extrapolated that as many as 40 U.S. toddlers a year were falling headfirst into 5-gallon buckets and drowning.

HOUSE OF REPRESENTATIVES VISITORS REGISTER

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Robert T. Grubb	ballatin County		V
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Ed Zuby	United Right of Way		
Dob Carlson	Silver Bow Co		\checkmark
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Brad Culver	AMTOP Nitro Green		~
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MIKE MURPHY	NTT. WATER RES. ASSN		
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Ann Kauser	Brondwater Co.		X	
Bald & Reddle			X	
Danie & Bright	-		X	
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Bill Allen	MT Audubon			/

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pare Hoftman	MDWSFF/Ext.	\times	
JAMES S. FREEM, W	CASCADE COULTY	X	
Robert T. Grubs	Gallatin County	X	
RONALD D. CARLSTROM	Gallatin Co. Externi	X	
Jim Olivaren	USDA- Toxet Service Region	×	
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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Lorna Frank	MT. Farm Bureau	453 452	X	
MIKE HRUSKA	MT EMU Assoc	520		Ø
Lorna Frank	MT. Farm Bureau	445		X
LEO A. GAACOMARTED	MT DEPT. OF AGR	445		X
Roger acBunghen	Diat 89	520		\times
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Bob Stephens	mt. Gran Frowers	540		X

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LARRY Brown	Agy. Pres. Assoc	445		×
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Pam Langley	Montana Agricultural Business Assn.	452 453	Amend	
Bil Stephens	Wit Grain Stowers	452 453	X	
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Mike Volesky	Mt Assoc. Cons. Dist's.	445		X
Deanfall	Billing Bench Water	149	X	
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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Judy Hratt Missoula, MT 59803	Ating against Unfair Taxes			
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