

MINUTES

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

COMMITTEE ON FISH & GAME

Call to Order: By **CHAIRMAN DOUG WAGNER**, on January 5, 1995, at
3:00 p.m.

ROLL CALL

Members Present:

Rep. Douglas T. Wagner, Chairman (R)
Rep. William Rehbein, Jr., Vice Chairman (Majority) (R)
Rep. Emily Swanson, Vice Chairman (Minority) (D)
Rep. Charles R. Devaney (R)
Rep. Jim Elliott (D)
Rep. Daniel C. Fuchs (R)
Rep. Marian W. Hanson (R)
Rep. Hal Harper (D)
Rep. Chase Hibbard (R)
Rep. Dick Knox (R)
Rep. Rod Marshall (R)
Rep. Brad Molnar (R)
Rep. Robert J. "Bob" Pavlovich (D)
Rep. Bob Raney (D)
Rep. Robert R. "Bob" Ream (D)
Rep. Paul Sliter (R)
Rep. Bill Tash (R)
Rep. Jack Wells (R)

Members Excused: None.

Members Absent: None.

Staff Present: Doug Sternberg, Legislative Council
Mary Riitano, Committee Secretary

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

Committee Business Summary:

Hearing: HB 62, HB 59
Executive Action: N/A

{Tape: 1; Side: A; Approx. Counter: 000; Comments: N/A.}

HEARING ON HB 62

Opening Statement by Sponsor:

REP. MARIAN HANSON, House District 1, Billings said that this bill would prohibit the use of rifles, except black powder rifles, during the spring turkey season. She informed the committee that her main proponent was unable to come to the meeting due to medical reasons. However, others were present to speak in support of the bill.

Proponents' Testimony:

Kelly Flynn, Sportsman spoke in favor of HB 62. He supported the bill because he felt that big game rifles cause more damage to the turkey meat, and hunters take chancier shots because big game rifles shoot farther. This bill would provide a hunter with more days of opportunity and improve the safety of people and cattle that happen to be in the area.

CHAIRMAN DOUG WAGNER read a letter from **Frank Cifala**, Sportsman from Big Timber. His letter supported HB 62 and asked for the committee's support in passing it. **EXHIBIT 1**

Opponents' Testimony:

Tony Schoonen, Montana Wildlife Federation passed around a 3" magnum turkey gun for the committee to inspect. He said this gun helped increase the range in which a turkey may be shot. Using turkey guns and rifles increase the likelihood that a turkey may be bagged, especially for beginner turkey hunters. Currently, sportsmen who hunt on private land must obtain the permission of the landowner. The landowner has the right to prohibit rifles on his/her property. **Mr. Schoonen** felt this bill was unnecessary and would penalize hunters. He did not foresee problems with livestock since they do not get placed out to graze until May 15, which is after the spring turkey season ends. According to **Mr. Schoonen** livestock losses are compensated by the Department of Fish, Wildlife and Parks (FWP).

Bob Bugni, Prickley Pear Sportsmen Club believed this issue should be handled by the FWP Commission rather than through legislation.

Stan Frasier, Montana Wildlife Federation opposed HB 62 and thought the FWP Commission should handle the issue.

Bill Holdorf, Anaconda Sportsmen's Club expressed ample concern about the measures from HB 62 being enacted during the fall turkey season. He did not feel that rifles provided less of a chase or harmed the turkey meat.

Tom Bugni, Skyline Sportsmen's Association opposed this legislation. He was concerned about the repercussions HB 62 might have on the fall turkey season. Spring turkeys are hard to shoot and rifles help get "shy turkeys." He said most cows are not on public ranges until the middle of May. Consequently, there should be no conflict with cattle. He did not want to lose opportunities hunting and have it carry over to the future.

Informational Testimony:

Bob Martinka, Department of Fish, Wildlife and Parks distributed written testimony providing information to the committee. Section 87-3-401 prohibits the use of rifles to shoot upland game birds unless specifically permitted by the department. Presently turkeys and mountain grouse are the only upland game birds that may be hunted with rifles. His testimony also provided data collected during the spring hunt of 1983 and a summary of weapons allowed in ten western states for turkey hunting. Of the ten, three allow the use of rifles/handguns for spring turkey hunting. The remaining seven are restricted to shotgun and archery.

EXHIBIT 2

Questions From Committee Members and Responses:

REP. BILL TASH asked **Bob Martinka** if the figures from the 1983 data were harvest or success rates. **Mr. Martinka** said they were success rates.

REP. ROD MARSHALL asked **REP. HANSON** why black powder rifles would be acceptable. **REP. HANSON** replied that the person who asked her to carry this legislation felt that there were not that many black powder hunters and they did not pose a great concern. **REP. MARSHALL** asserted that they would be just as dangerous. **REP. HANSON** responded saying that she did not know if black powder rifles would wreck the meat.

REP. PAUL SLITER asked **Mr. Flynn** about the meat damage from a shotgun fired at close range. **Mr. Flynn** said that the meat would be damaged in this case. Comparing both a rifle and shotgun at traditional hunting distances, he believed there would be less damage with a shotgun. **REP. SLITER** said it was his suspicion that hunters who shoot turkeys with rifles are aiming at the head rather than the body. It is the fastest, most humane, easiest way to kill a bird. He asked **Mr. Flynn** if he agreed. **Mr. Flynn** said he did not know for sure what other hunters aimed at. When he hunts turkey, he tries to aim at the head to preserve the body of the meat. He maintained when a person is shooting on the ranges, the target becomes very small at 150-200 yards. Sportsmen supporting this bill are concerned that rifle hunters are shooting at the body which poses a potential safety and ethical problem.

REP. JACK WELLS asked **Bob Martinka** if handguns can be used in Montana for big game above a certain caliber as well as for

turkeys. **Mr. Martinka** said yes they were allowed. **REP. WELLS** stated that there was nothing in HB 62 regarding handguns, it only prohibited rifles. **Mr. Martinka** confirmed his statement.

REP. BOB REAM asked **Bob Martinka** about the current status of rifles and game birds at the Department of FWP. **Mr. Martinka** explained that there were three species of mountain grouse as well as spring and fall turkeys which can be shot by rifles. **REP. REAM** asked if this has been the policy for awhile. **Don Childress, Department of Fish, Wildlife and Parks**, said as a general rule rifles have been used for both spring and fall. Occasionally restrictions have been set for particular areas, such as the Flathead. **REP. REAM** commented that there have been other proposals before the F&G Commission. **Mr. Childress** said yes, but none had been acted on.

REP. BILL REHBEIN asked **Bob Martinka** if the FWP Commission could take care of this concern without code. **Mr. Martinka** replied that the commission has the authority to make a change.

REP. SLITER asked **Bob Martinka** if he believed there was a problem. **Mr. Martinka** remarked that the issue was more of a value judgement. The Department of FWP does not view it as a big problem. The meat could be harmed by shotgun as well as rifle depending on the circumstances. With either weapon, safety is also an issue.

Closing by Sponsor:

REP. HANSON stated that most of the turkeys in her area are located on public land. In the spring hunting season, some people have turned cattle out onto the ranges. There is conflict in her area between cattle grazing and turkey season. Spring turkeys are dumb and can be called in. Therefore, using a shotgun will accomplish the same result as a rifle. **REP. HANSON** talked to the Department of FWP before the bill was drafted and they did not feel the bill would impact the spring harvest. She would be the first one to oppose legislation proposed to stop a rifle season in the fall. HB 62 only applies to spring turkey hunting.

HEARING ON HB 59

Opening Statement by Sponsor:

REP. BOB PAVLOVICH, House District 37, Butte stated he was asked to introduce this bill by a group of hunters that live in the Butte and Anaconda areas. Bow hunters have the privilege of using a motorized vehicle to retrieve game during their hunting season. Section 87-3-125 has been amended and Subsection (5) has been added. "When a road has been closed by the department or the commission, a hunter who has reduced a big game animal to possession and cannot easily retrieve the big game animal may use the road to retrieve the animal with a motor-driven vehicle if

retrieval occurs after 6 p.m. on the day the animal is taken." In talking to his constituents, he found they wanted to amend the bill changing the time frame of retrieval from noon to 2:00 p.m. He will submit this amendment when the committee goes into executive session.

Proponents' Testimony:

John Masonovich, Sportsman, stated that he hunted for about 55 years. He had no problems dragging elk out when he was younger and fewer roads were closed. Now that many roads are closed, hunters sometimes have trouble getting the big game out. Bow & arrow hunters are allowed to retrieve their animals. Big game hunting begins around October 25th and at that time many of the roads are closed. Hunters who have physical problems, including himself, have nearly an impossible time dragging out their big game. He expressed his support for the bill.

Joe Stipich, Sportsman, explained that since he was getting older, he was in favor of having hours to be allowed to go in and retrieve game. For his disabled friends, he returns to town to get help dragging out big game.

Bill Holdorf, Anaconda Sportsmen Association, expressed his support of the bill and agreed with the proposed amendment which changed the time from after 6:00 p.m. to noon to 2:00 p.m.

Tom Bugni, Skyline Sportsmen Association, stated that for years the Skyline Sportsmen Association has tried to keep areas open for big game animals. With an overabundance of elk and more roads being closed, big game retrieval is getting increasingly difficult, especially for older people. He agreed with the concept of the noon to 2:00 p.m. retrieval time. The animals would generally be bedded down and less hunters would be out. Perhaps some areas could be tested by the FWP to see how it works. He believed harvest of killed animals would increase. **Mr. Bugni** expressed his support of the bill as long as did not infringe on big game ranges.

Opponents' Testimony:

John Bloomquist, Montana Stockgrowers, expressed concern about how the bill would affect the Block Management Program. Currently, there are many state and privately-owned acres under this successful program. One of the incentives for joining the program is control of access and of animal densities. If the bill applies to the block management areas, problems could arise. He did not want to see anything jeopardize this program because it was working so well. If HB 59 was not intended to affect these areas, then his concerns would be addressed.

Bob Martinka, Department of Fish Wildlife, and Parks distributed written testimony in opposition to HB 59. He discussed the reasons roads were closed and how HB 59 might adversely affect

the Block Management Program. He also discussed possible enforcement and safety problems. **EXHIBIT 3**

{Tape: 1; Side: B; Approx. Counter: 000; Comments: Tape was turned over in the middle of Mr. Martinka's testimony. Lost one minute.}

Questions From Committee Members and Responses:

REP. CHASE HIBBARD asked **Mr. Martinka** to indicate where the road closures occur and what types of hunting are involved. **Mr. Martinka** said on most wildlife areas there are closures at some time or another. Some are closed to particular kinds of travel year around. One example is the Beartooth Wildlife area. If vehicle travel is allowed on these roads during the hunting season, wildlife may be displaced onto surrounding private land. **REP. HIBBARD** asked for examples other than the FWP owned land. **Mr. Martinka** stated that currently the FWP has the authority to manage roads through agreement in block management Areas. This legislation seems to affect that authority and allows retrieval in the Block Management Areas. Potentially there could be a conflict between a hunter acting under this legislation and the private landowner under the Block Management Program. Consequently, landowners may decide against participating in the program.

REP. MARSHALL asked **Mr. Martinka** if the landowner under the Block Management Program regulates everything that happens on the program. **Mr. Martinka** responded by saying yes and that the landowners' agreement varies. **REP. MARSHALL** remarked that he did not see how this would affect the Block Management Program. **Mr. Martinka** stated it was unclear what the bill would affect and this concerned the department.

REP. BOB RANEY asked **Mr. Martinka** why bow hunters can retrieve game from the particular areas discussed. **Mr. Martinka** reported that he did not have an answer. He understood the restrictions apply to all hunters. On some federal lands, the road closures do not become effective until October 15. **REP. RANEY** wanted to have this information before executive action is taken. **REP. WELLS** stated that from his experience with bow hunting many roads are open at the start of bow season. On the first day of rifle season, many of the roads are closed. Most of the land he bow hunts on is public land.

REP. HAL HARPER asked **Mr. Martinka** if all closed roads have signs on them. **Mr. Martinka** responded that some have signs and the remaining ones have gates and are locked. **REP. HARPER** said if HB 59 was passed, a key would have to be issued or gates would need to be left unlocked or a hunter damage a fence structure to get in. **Mr. Martinka** confirmed his statement. **REP. HARPER** said HB 59 would open every road closed by the FWP. He asked if there were areas in which this might be more appropriate than others. **Mr. Martinka** said there were areas that this may work better than others. Some wildlife management areas have significant numbers

of wildlife and others do not. Areas that are more difficult to access might warrant a different approach.

REP. RANEY asked **REP. WELLS** if the land he referred to was state or federal land. **REP. WELLS** answered that it was federal land.

REP. TASH asked **Mr. Martinka** if there were areas that FWP has identified for disabled hunters. **Mr. Martinka** stated that some landowners have areas specifically designated for disabled or beginner hunters. He did not believe the FWP Commission has made such designations or if they have the authority to do so. There are areas which the department has designated as having special considerations for disabled hunters. He did not think an area could be set up exclusively for the disabled.

REP. RANEY asked **Mr. Martinka** if this grievance could be taken to the FWP Commission to be resolved. **Mr. Martinka** said that it could be taken care of through the commission.

REP. WELLS stated that a number of roads are closed. He asked **Mr. Martinka** if the gates HB 59 was referring to were on state-owned lands. **Mr. Martinka** said that the majority of roads closed by gates are on BLM land. The FWP can only take care of state-owned gates. **REP. WELLS** asked how many additional people would be needed and what the workload estimate would be. **Mr. Martinka** said he did not have a workload estimate but that significant manpower would be needed.

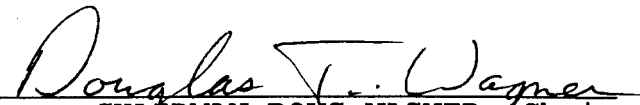
CHAIRMAN WAGNER asked **Mr. Martinka** if he saw any studies that compares foot travel to vehicle travel and the effect on the wildlife displacement. **Mr. Martinka** said there was a study completed about 10 years ago. The study indicated animals would stay longer and, in some instances, a greater harvest resulted when vehicle travel was prohibited. Vehicle travel did displace the animals. **CHAIRMAN WAGNER** asked if he was familiar with the study completed in British Columbia. **Mr. Martinka** said no, but he wanted to qualify his previous statement. There may be areas in northwestern Montana where there is greater hiding/tree cover where the results might differ. **CHAIRMAN WAGNER** stated that the study indicated more displacement of wildlife when only foot travel was allowed. Eastern and western parts of the state differ. In the west vehicles can only get so far because of the terrain while the open spaces in the eastern part of the state provide greater access opportunities state.

Closing by Sponsor:

REP. PAVLOVICH stated that it was a good hearing. He would like to wait for the information on the Block Management Program before executive action. He did not want to disturb that program. The largest concerns expressed were for senior citizens and disabled hunters. The bill could be amended to include an age factor and handicap criteria. He said the committee could examine the issue closer in executive session.

ADJOURNMENT

Adjournment: 4:10 p.m.


CHAIRMAN DOUG WAGNER, Chair


MARY RIITANO, Secretary

DW/mr

HOUSE OF REPRESENTATIVES

Fish and Game

ROLL CALL

DATE January 5, 1995

NAME	PRESENT	ABSENT	EXCUSED
Rep. Doug Wagner, Chairman	✓		
Rep. Bill Rehbein, Vice Chairman, Majority	✓		
Rep. Emily Swanson, Vice Chairman, Minority	✓		
Rep. Charles Devaney	✓		
Rep. Jim Elliott	✓		
Rep. Daniel Fuchs	✓		
Rep. Marian Hanson	✓		
Rep. Hal Harper	✓		
Rep. Chase Hibbard	✓		
Rep. Dick Knox	✓		
Rep. Rod Marshall	✓		
Rep. Brad Molnar	✓		
Rep. Bob Pavlovich	✓		
Rep. Bob Raney	✓		
Rep. Bob Ream	✓		
Rep. Paul Sliter	✓		
Rep. Bill Tash	✓		
Rep. Jack Wells	✓		

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Doug. Wagner

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EXHIBIT

DATE

HB

January 5, 1995
62

January 5, 1994

To: Doug Wagner

From: Frank Cifala
Box 978
Big Timber, MT 59011

Subject Matter: HB62, prohibit use of rifles, except black power, during spring wild turkey season.

Mr. Wagner:

I have been told to contact you regarding HB62. I'd like to submit the following for the record and request that it be read at the hearing today for HB62:

My name is Frank Cifala and I'm from Big Timber. One of my greatest pleasures in life for the past 25 years has been hunting wild turkeys in the spring. I have had the honor of being recognized as the first State of Montana Turkey Calling Champion in 1988 and I am a past member of the National Wild Turkey Federation.

Today, I ask for your support for HB62 which prevents hunters from harvesting turkeys with rifles in the spring. Spring turkey hunting is viewed by many in near religious proportions. A true spring hunt requires an intimate knowledge of and relationship with this elusive quarry prior to the kill. Although male turkeys are easy to locate in the spring because of their gobbling, the spring hunter normally must have some skill and expertise to call a wary Tom into shotgun range. Sniping one with a rifle presents no real challenge nor does it require any hunting ability and thereby cheapens the sport.

I have hunted turkeys in three States over the years and am familiar with hunting regulations in many more. Very few other States, if any, allow turkeys to be hunted with rifles in the spring. I'm sure that fair chase and safety considerations have prevented this from occurring elsewhere not to mention the effects of a rifle shot to a thin skinned bird.

Please make this sport in Montana what it's meant to be by banning the use of rifles to hunt wild turkeys.

Thank you for this opportunity to voice my opinion.

THB62N.H

Bill No. HB62
January 5, 1995
Testimony presented by Bob Martinka
Montana Fish, Wildlife and Parks
before the
House Fish and Game Committee

The department is not taking a position on this bill. Rather, we will provide background information for committee consideration. Statute 87-3-401 prohibits the use of rifles to shoot upland game birds unless specifically permitted by the department. Presently turkeys and mountain grouse are the only upland game bird species that may be hunted with rifles.

The department and commission periodically receive requests to consider changes to the regulation for these two species. These requests have focused on safety and ethical issues as the basis for consideration. Both sides of the issue have valid arguments. Some hunters feel it is more sporting to hunt turkey with a shotgun. Others feel that rifles increase their opportunity to harvest a turkey.

Representative Hanson has proposed to eliminate rifles except black powder during the spring turkey season. One of the important points is the difference between spring and fall hunting techniques. The spring turkey season is often referred to as the "gobbler season."

Male or tom turkeys are the only legal bird during the spring season whereas the fall season permits any turkey to be taken. Typically spring turkey hunters are dressed in full camouflage and utilize decoys and calls to entice a gobbler to within shotgun range - usually 50 yards or less. Weapons used by this type of hunter are generally shotguns or archery. Concern by this group is that they are hidden via camouflage and are at risk from rifle hunters. A survey of spring turkey hunters in southeast Montana in 1983 indicated nearly half the hunters utilized shotguns, 20% rifles, and 30% archery.

Turkey hunting has increased in popularity in recent years. Spring hunting has shown a threefold increase in hunter numbers since 1986 with over 3200 hunters in 1993. The department has not surveyed hunters to determine whether preferences for type of weapon have changed during this period.

Attached is a summary of weapons allowed in other western states for turkey hunting. Three states allow rifles or handguns for spring turkey, the other seven restrict to shotgun/archery.

Attachment

ftm 1/4/95 10:25am
blj 1/5/95 12:20pm

WESTERN STATES METHOD OF TAKE FOR TURKEYS

STATE	SEASON STRUCTURE	METHOD OF TAKE	COMMENTS
Arizona	Spring/Fall	no restrictions	
California	Spring/Fall	shotgun/ archery	not larger than 10 ga.
Colorado	Spring/Fall	shotgun/ archery no restrictions	
Idaho	Spring	Shotgun	
Nevada	Spring/Fall	Shotgun	shot restricted to No. 2 or less
New Mexico	Spring/Fall	Shotgun	
North Dakota	Spring/Fall	Shotgun/ Archery	
Oregon	Spring	Shotgun/ Archery	up to 10 gauge and No. 6 BB shot
South Dakota	Spring/Fall	no rimfire cartridge	
Wyoming	Spring/Fall	shotgun/rifle/ pistol/archery	must be larger than 2.2 mag.

Of 10 western states contacted, three allow the use of rifles/handguns for spring turkey hunting: Arizona, South Dakota and Wyoming. Both South Dakota and Wyoming restrict the caliber to larger than 22 mag or centerfire only. Colorado allows rifles/handguns during their fall season.

Data collected during the spring hunt of 1983 in Region Seven indicated 49% of the harvest was with shotguns, 21% with rifles and 30% by archers (R-7 1982-83 upland bird PR report).

EXHIBIT _____
DATE _____
HB _____

EXHIBIT 3
DATE January 5, 1995
HB 59

THB590.H

Bill No. HB59
January 5, 1995
Testimony presented by Bob Martinka
Montana Fish, Wildlife and Parks
before the
House Fish and Game Committee

The department opposes this proposed legislation.

Road closures enacted by the Department and Fish, Wildlife & Parks Commission are established for six basic reasons: 1) to hold animals in an area so more can be harvested; 2) to hold animals on state owned Wildlife Management Areas and prevent movement to adjacent private land; 3) to control hunter distribution; 4) to prevent establishment of new roads, 5) to prevent damage to the road bed and vegetation, and, 6) to reduce the spread of noxious weeds.

HB 59 would not only affect road closures on department owned lands, but may also affect those established by the department or commission on private land under our Block Management Program (ARM 12.4.201 - 210). In 1994, Block Management Areas involved 406 private landowners and totalled over 4 million acres (approximately 4,309,534 acres).

Providing for vehicular retrieval of downed game would appear harmless. However, the problems which could result are potentially serious when applied broadly to all closures. The basic reasons for the road closures, as I outlined previously, would be compromised with this legislation.

Conflicts between hunters would increase because the 6 pm retrieval time coincides with legal shooting hours beginning with the archery season in early September through late October when daylight savings time reverts to standard time. Hunters would be hunting at the same time as other successful hunters would be on otherwise closed roads to retrieve game.

Enforcement of this statute would be very difficult. The definition of what constitutes a "road," and, when a big game animal is not "easily retrieved" are provisions of the statute which are open to various interpretations. Covering the wide variety of circumstances is too complex, therefore, rendering these terms difficult to define.

There is the potential for other problems, such as: 1) additional off road travel after dark, 2) establishment of camps in areas restricted to foot and horseback, 3) illegal use of spotlights, 4) gates being left open thus negating the closure during the day. Additional department personnel time would be needed to monitor closures.

The department, commission and private landowners consider road restrictions important tools to manage hunters, wildlife and the land resources. This legislation has the potential to inhibit use of this valuable alternative.

ftm 1/4/95 10:23am

blj 1/5/94 11:50am

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

FISH & GAME

COMMITTEE

DATE January 5, 1995

BILL NO. 59

SPONSOR(S) Parlovich

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Charles E Mearby	Sportsmen.		<input checked="" type="checkbox"/>
Robert Montinka	FWP		x
John Masonovich	Butte	x	
Kerry Palagi	"	x	
Bill Holdorf	Butte		
Bob Bugni	- PRICKLY PEAR SPORTSMAN - GELT.		
Joe Stiprick	:	x	
Joe Kulman	Bozeman Chronicle		
Stan Frazier	MWF	x	
Tom Bugni	Shyline Sportsman	x	
Janet Ellis	MT Audubon		x

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

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CS-14

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

FISH & GAME

COMMITTEE

DATE January 5, 1995

BILL NO. 62

SPONSOR(S) Hanson

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Charles C. Baraby	Sportsman	no	
Robert Martinka	FWP	no position	
Bill Holdorf	Bath		✓
Barry Ben Buzar	HLN Sportsman		✓
Kelly Flynn	Sportsman from	✓	
Stan Fresier	MWF		X
Tom Rubin	ShyLine Sports		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

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CS-14