

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

JOINT SUBCOMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN ROGER DEBRUYCKER**, on January 23, 1995, at 8:00 a.m. in Room 402 of the State Capitol

ROLL CALL

Members Present:

Rep. Roger Debruycker, Chairman (R)
Sen. Thomas F. Keating, Vice Chairman (R)
Sen. Judy H. Jacobson (D)
Sen. Loren Jenkins (R)
Rep. John Johnson (D)
Rep. William R. Wiseman (R)

Members Excused: none

Members Absent: none

Staff Present: Mark Lee, Legislative Fiscal Analyst

Connie Huckins, , Office of Budget & Program
Planning

Debbie Rostocki, Committee Secretary

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

Committee Business Summary:

Hearing: Department of Health & Environmental Sciences
-Water Quality Division, cont. from 1/20

Executive Action: Department of Health & Environmental Sciences
-Petroleum Tank Release Compensation Board
-Waste Management Division

A memorandum from Department of State Lands (DSL) Land Administration Division administrator **Jeff Hagener** detailing revenues vs. expenditures in the division's programs was distributed to the committee. **EXHIBIT 1**

EXECUTIVE ACTION ON Department of Health & Environmental Sciences Petroleum Tank Release Compensation Board

Discussion: Mr. Bob Robinson, Director of the Department of Health & Environmental Sciences (DHES), explained that if the

budget for this division was held at the 1994 base level, there would be a delay in the release of tanks.

Ms. Jean Riley, Executive Director of the Petroleum Tank Release Compensation Board ("Petro Board"), reviewed the Present Law (PL) Adjustments and new proposals for the board. The increase in Contracting and Professional Services is due to the fact that the board is expecting that more payments will be made to local governments for assisting DHES staff in reviewing releases. They also anticipate increased litigation expenses due to the increased volume of claims they expect to be submitted. At present they have three cases going on. Another portion of the increase in professional services is related to hiring secretaries in the Polson and Billings offices.

Regarding PL No. 6, the board had to move out of its office building because the building needed upgrading and it would have been too costly. They moved in with DHES and the result has been improved communications. Two individuals are now located in Billings and one will be located in Polson and this also contributes to the increase in rental expenses.

The two vehicles proposed to be leased (PL No. 7) are for the Billings and Polson offices. It had originally been proposed to purchase the vehicles, but the executive did not approve this. They also investigated leasing from the State Motor Pool, but this was not an option either.

Questions: **SEN. LOREN JENKINS** asked **Mr. Mark Lee**, Legislative Fiscal Analyst (LFA), for a clarification on what indirect charges were. **Mr. Lee** described indirect charges as a rate tied to personal services costs which is charged to all DHES programs to pay for the central operating costs of the department. In the base year, indirect charges were low compared to what was negotiated (with the federal government) for 1996. In 1994 the rate was 10.54% and the federal government came out with about 21%. The indirect charge also contains a factor to compensate for over- or under-recoveries and this results in the charges balancing out over time. The significant under-recovery for 1994 has resulted in a proposed increase in the rate (PL No. 8). The rate is established via negotiations between DHES and the federal government. Once it is determined, it is applied to each program based upon the personal services costs in that program, regardless of the funding sources.

SEN. JENKINS then inquired as to whether all the tanks weren't already out of the ground. **Ms. Riley** replied that quite a few had been removed but there continues to be a lot of activity from new cases, mainly driven by property transfers. She pointed out that the program also monitored above-ground tanks and there are still a considerable amount of farm tanks under this part of the program. She estimated that 60% of the compensation paid was for the underground tanks and 40% was for above-ground tanks, including bulk plants. **Mr. Robinson** reported that for the past

several years they have been getting slightly more than one tank release notice per day.

In response to **SEN. JACOBSON**, Mr. Lee related that funding for the costs associated with cleanup was statutorily guaranteed but administrative costs were not. The funding in the present law adjustments is all non-statutory.

REP. WISEMAN wanted to have a list of all the large corporations the board had reimbursed over the past four years. **Ms. Riley** agreed to provide this.

In response to **SEN. KEATING**, **Ms. Riley** explained that the law provides that tanks in the ground before April 13, 1989 are eligible to receive reimbursement. Three quarters of a cent is charged on diesel and gasoline to provide cleanup funding. **Ms. Riley** stressed that the owners of the tanks are required to make a co-payment as well as paying for the removal of the tank. There is a similar set-up in 38 other states. The only federally-mandated part of this program is the requirement that tank owners have financial assurance.

REP. WISEMAN wanted to know how the Board would trim their program if their present law budget was reduced to \$200,000. **Ms. Riley** said the cuts would be in employee services and at present (with a full staff) they are already six months behind in claims processing. If staff is lost, tank owners will not be reimbursed. She submitted that the budget is already lean. In response to **SEN. KEATING**, **Ms. Riley** said there was \$4.2 million in the fund. Annual claims for 1994 were \$3.2 million and are expected to be \$5 million in 1995. In response to **REP. WISEMAN** she described the process the staff went through for a typical case. She pointed out that the sites which impacted public water supplies could get very expensive. She reviewed the history of the Autoshine Car Wash claim in Great Falls. **REP. WISEMAN** wanted to know if it would be possible to streamline the process. **Ms. Riley** said the most complicating factor was the extent of the cleanup was an unknown at the beginning of the process. Third party impacts can be significant. **Mr. Robinson** said the Petro Board had looked at the possibility of the cleanup being done on a competitive bid basis. However, construction firms have balked because they wouldn't be able to accurately calculate the extent of the contamination until after the bidding process had ended.

Tape No. 1:B:000

Ms. Riley objected to the process being characterized as a "bureaucratic nightmare" and pointed out that the board was comprised of citizens who were working hard to prevent this.

Motion: **SEN. JACOBSON** moved to accept PL Adjustments No. 4-10 on p. B-189.

Discussion: SEN. KEATING wanted to know if gas tax revenues were helping fund Central Services via indirect costs. Mr. Robinson explained that indirect costs helped fund the Director's Office, the department's computer system and Central Services responsibilities regarding budgeting, accounting, payroll, etc. Historically, indirect costs have run about 15%. In the current biennium the rate was set at 10% when it should have been 15%. DHES had to charge a 10% rate and was unable to recover what it needed. The increase to 21% has been made to get the average back to 15%.

Vote: REP. JOHNSON seconded SEN. JACOBSON'S motion. The question was called for and the motion carried with CHAIRMAN DEBRUYCKER and REP. WISEMAN opposed.

Discussion: REP. WISEMAN suggested that costs might be cut if the minimum amount of a compensation check could be set at \$20,000. Ms. Riley said this would take a statutory amendment. She pointed out that in some cases the total amount of the reimbursement did not equal \$20,000.

Motion/vote: SEN. KEATING moved to accept New Proposals No. 1 and 2 on p. B-190; REP. WISEMAN seconded the motion. Motion carried unanimously.

EXECUTIVE ACTION ON DHES Waste Management Division

Discussion: Mr. Lee reviewed the program and said the LFA did not raise any specific issues with this budget except for the junk vehicle contingency (PL No. 4, p. B-192).

Mr. Roger Thorvilson, acting division administrator for the Waste Management Division, spoke. He stressed that this was not a growing division. Increases in personal services are primarily due to vacancy savings. The programs are essentially fully staffed at present except two vacancies in the Hazardous Waste Program which won't be filled unless a commercial facility applies for a hazardous waste incineration permit. Funding for the position will come from the fees generated. Regarding PL No. 7, he explained that the Waste Management Division, Environmental Remediation Division and the Petro Board staff are in the same building and this space has increased its rent in the past year. For equipment (PL No. 9), there are a number of items that need replacing, including old computers and a 1986 vehicle.

He introduced the four program managers within the division: Darrel Stankey, Motor Vehicle Recycling and Disposal; Don Vidrine, Hazardous Waste; Jon Dilliard, Solid Waste Management and Frank Gessaman, Underground Storage Tank (UST) program.

Mr. Stankey spoke. He explained that a strong scrap steel market has kept this program solvent. The program has a contingency fund related to the federal Clean Air Act requirements which prohibit releasing air conditioning vapors into the atmosphere.

Although freon gets a good price it is expensive to remove from junk vehicles. Freon, once "containerized," is either reprocessed by the contractor or sent to the Dupont Company for reformulation. The program is currently involved with 203 licensed motor vehicle wrecking facilities. The contingency fund, which was set up in the last legislative session, had previously been a line-item in the budget for contracted services. It is "self-dedicated" and has a starting balance of \$30,000. In FY 1994 approximately \$3,400 was spent.

SEN. JENKINS wanted to know more about the requested increase in grants to local governments. **Mr. Stankey** said that monies are used to fund county junk vehicle programs. The grant is based on a figure established in statute which provides for \$1 for all vehicles under 8,100 pounds registered in the county. He added that the number of vehicles is rising at about 17,000 per year.

SEN. JENKINS submitted that the state was bringing in more than the \$1 that was going back to the counties (\$.50 paid yearly at registration, \$1.50 paid when a title is transferred). **Mr. Stankey** pointed out that the fee was spread out over the life of the vehicle. The cost to get vehicles collected and crushed is running about \$55 per vehicle. About \$32 is earned and returned back into the contingency fund when the crusher pays for the vehicle. He clarified that \$1 is available to the counties for each vehicle registered but is used only to process the junk vehicles, which is a much smaller amount of vehicles.

Tape No. 2:A:000

Mr. Thorvilson said that about 16% of the expenditures in this program are used by DHES and the remainder goes to the counties. The increase will provide the counties with more money for collecting junk vehicles.

Mr. Lee said that of the \$1.1 million in funding per year for the Junk Vehicle program, about \$900,000 was granted to the counties. The \$1.1 million figure includes the \$30,000 contingency fund. OBPP and the LFA had agreed that the contingency fund should not be included in the base budget and as a result it was included as a PL adjustment. **SEN. KEATING** declared that contingency funds expanded the size of budgets even when they weren't spent.

Mr. Vidrine then spoke about the Hazardous Waste Program's requested PL adjustment No. 5. He explained that all the facilities which receive a "RCRA" permit are required to make an assessment over the entire area of their facility to determine whether there had been any releases of hazardous waste or hazardous constituents over time. The idea of the law was to prevent Superfund and RCRA laws from applying to the same facilities at the same time. He said there were four different steps of corrective action. The first phase, assessment, has been completed at all facilities. The next phase occurs if it is decided that further investigation is necessary. The investigation determines what kind of contaminants there are at a site, their lateral and horizontal extent, the effect on public health or the environment and whether or not remediation is

necessary. They are asking for funding for consulting expertise in the areas of hydrogeology and soil chemistry to help the state ensure that the facilities have delineated the source of contamination and made a determination about remediation.

DHES expects that by late 1997 the Ash Grove facility permit will be required to be issued. Once this occurs the facility is required to do a trial burn to demonstrate under the worst case scenario that they are able to combust the hazardous materials in compliance with the permit. DHES is asking for consulting services to help with the interpretation of these trial burn results. The request for additional money for laboratory testing is so that the facilities' lab results can be tested in order to determine whether or not what the facilities are claiming is true.

In response to **SEN. KEATING**, **Mr. Vidrine** explained that most of the program's funding was from the Environmental Protection Agency (EPA) and the "CERCLA" account which is funded with Resource Indemnity Trust (RIT) monies. The only fees that are collected are associated with commercial hazardous waste facilities. The way the law is currently structured, Ash Grove gives DHES \$50,000 up front and \$50,000 when the application is complete. DHES has the ability to assess up to an additional \$50,000. The department expects that the consulting costs at this site will run at least \$50,000. He estimated that half of the \$140,000 contained in PL No. 5 will be funded by fees.

REP. WISEMAN wanted to know how much of the \$86,834 requested in 1997 (PL No. 5) would not be needed if the Ash Grove facility did not receive its permit. **Mr. Vidrine** said this would amount to about \$50,000. **Mr. Robinson** clarified that contingency funding and funding for consulting or contracted services was not included in the base if the money is not spent. In response to **SEN. KEATING**, **Mr. Robinson** said he had received no complaints about the size of the fees.

Mr. Gessaman then talked about the UST program. In FY 94 and 1995 a \$262,000 appropriation was received in grants. The counties only spent a total of \$44,198 of those monies. The FY 96 request has been scaled back to \$181,214. The grants are for compliance inspection work the counties would do for DHES as well as for installation inspections. DHES has 34 local units which present grant requests but many times they are not able to spend the money made available for this use. **SEN. JACOBSON** wanted to know more specifically what they were using the money for. **Mr. Gessaman** described the two different kinds of grants DHES makes available. The first is for compliance inspection work and the other kind of grant is for actual inspections at installations, removals, repairs and modifications. At present there is no county which does installation work because of liability. DHES pays either a flat rate for small tanks or an hourly rate for commercial facility inspections. He explained that this program was involved with the regulatory aspect of underground tanks

while the Environmental Remediation division works with owners and operators who have leaking tanks. He pointed out that in the Underground Tank program there were only three inspectors for about 7,000 facilities. The money for the program comes from annual tank registration fees. In addition there is a federal grant which provides \$162,000 and is matched with 25% RIT money.

Tape No. 2:B:000

In response to **SEN. JENKINS**, **Mr. Gessaman** explained that the contamination in Great Falls was associated primarily with service station tanks. DHES is assisting the Highway Department in identifying the level of contamination on the property it plans to acquire when it widens the highway. The Petro fund will be responsible for the cleanups because the facilities are in compliance with DHES rules. In further response to **SEN. JENKINS** he said that the state program parallels the federal program. There is a federal requirement that all underground tanks be upgraded by 1998.

In response to **SEN. JENKINS**, **Mr. Gessaman** said the state did not have primacy at this time. He assured **SEN. JENKINS** that the commercial tank owners would rather deal with DHES than the EPA. He agreed that the residential and small farm tanks were exempted from the federal program but were not under state law. However, these persons have less stringent requirements than the commercial owners.

Regarding tank removal, **Mr. Gessaman** said the state's site assessment fee provides for about \$300 of its costs (not including removal). If the tank owner hired a private consultant to do this it would cost over \$2,000. Lending institutions are now routinely requiring site assessment information. **SEN. JENKINS** wanted clarification on the original provision in the state law which he said allowed for a locally conducted visual inspection. **Mr. Gessaman** said that the rules which were written by DHES in 1989 required that measurements be taken where contamination was most likely to be present, for tanks under 600 gallons. These tests cost about \$100 each. He stressed that these tests were the only sure way of determining the level of contamination. If a contamination level of more than 100 parts per million (ppm) is exceeded the state does an evaluation. If it is determined that groundwater or adjacent properties will not be affected, no further action is taken. The Fire Marshall's office is the authority which determines whether a tank needs to be removed. **SEN. JENKINS** insisted that when the state law was passed in 1989 there was a provision for visual inspection.

Mr. Gessaman then distributed a handout detailing the program's portion of the requested increases contained in PL No. 5. **EXHIBIT 2** They are asking for an increase in their legal budget in anticipation of more activity related to an increase in penalty mitigation hearings.

CHAIRMAN DEBRUYCKER wanted to know how closely DHES worked with the State Fire Marshall when new tanks are installed. **Mr. Gessaman** said that generally the Fire Marshall doesn't disagree with DHES in the permitting process. However, above-ground tanks are the Fire Marshall's jurisdiction. DHES's responsibility begins at the point a pipe goes into the ground. Leak detection is required on the pipe. DHES has tried to correct confusion in the permitting process by now requiring that the Fire Marshall's plans be presented before the permit is issued.

Motion/vote: **REP. WISEMAN** moved to accept PL Adjustment No. 10 on p. B-192, amended to \$100,000 in each year, with the department to decide how much of the reductions would come from the UST program and how much would come from the Junk Vehicle program. **SEN. KEATING** seconded the motion. The motion carried with **REP. JOHNSON** opposed.

Motion/vote: **SEN. JACOBSON** moved to amend PL No. 4, at the level of \$5,000 per year; **SEN. KEATING** seconded the motion. Motion carried unanimously.

Motion/vote: **SEN. KEATING** then moved to accept PL Adjustments No. 4, 5, 6, 7 and 8; **SEN. JACOBSON** seconded the motion. Motion carried with **REP. WISEMAN** and **SEN. JENKINS** opposed.

Motion/vote: **SEN. JENKINS** moved, and **REP. WISEMAN** seconded the motion, to accept New Proposal No. 1 on p. B-193. The motion carried unanimously.

Tape No. 3:A:000

HEARING ON DHES Water Quality Division

Opponents' Testimony: **Mr. John Fitzpatrick**, Director of Community and Governmental Affairs for Pegasus Gold Corporation, criticized DHES and submitted that the Water Quality Division was the most inefficient and ineffective agency he has seen in Montana state government. He added that a recent audit done by the Office of the Legislative Auditor gave a "scathing indictment" of the Division's performance, but in his opinion missed the bigger picture: he felt DHES in general, and the Water Quality Division in particular, had an inability to say "when." He submitted that the program presently in place was substantially larger than their ability to manage. He felt that instead of seeing the audit as an opportunity for restructuring and amending the law, DHES has sought greater authority and more money.

He said that the Executive budget recommended an additional 16.5 FTE in 1996 and an additional 18.5 FTE in 1997, for a budget increase of about \$880,000, 10% of which comes from the general fund. He said that the Water Quality Division was in no position to be adding to its program because it could not do the job presently before it. He submitted as supporting evidence of this

a letter to **Mr. Bob Robinson**, Director of DHES, detailing some of the problems between the Water Quality Division, the Department of State Lands, and Zortman Mining, Inc. concerning the South Buttress Project at the company's Zortman/Landusky Mine. He submitted that DHES did not do its job of jointly reviewing permits with DSL, as outlined in a memorandum of understanding between the two departments. **EXHIBIT 3** He added that since the election in November there has been more receptivity to getting something done regarding the issue.

Mr. Fitzpatrick said the DHES was "incredibly slow" in reviewing permits, and he characterized their activity as one of "malfeasance." He suggested that rather than adding staff, DHES needed to work on getting their work done with the existing staff. He held up as evidence of the poor performance of the Department documentation of a request for a renewal of a MPES permit which was submitted in August 1993 but not finalized until January 1995. He said renewal should only have been a matter of running a new permit out of a word processor and should have only taken a few hours to process instead of 16 months. He contended this was not the exception, it was the case.

Regarding the request for additional administrative support, he commented that the only time he had ever received a prompt response from the DHES was when he got a letter demanding a \$10,000 payment for MPES permit fees. He suggested that the committee take a good look at the current level operations of the department. He said legislation was being introduced to waive one current function of DHES, the review of "404" permits. He suggested that one FTE could be cut in this area. In addition, the one or two FTE working with DSL to coordinate mine permits should be cut because he felt they had not been very active in the past year: they did not go to staff meetings with DSL very often, and they had "dropped the ball" repeatedly on getting permits. He said that theoretically such a liaison should promote efficiency, but this was not the case.

In addition, **Mr. Fitzpatrick** suggested that the committee look at using contracted services in lieu of staff in the areas of permit work involving engineering and consulting firms, radon functions and review of public drinking water systems. He suggested the latter function had probably been judged more responsive by the cities and counties than it has been by the industry.

Proponents' testimony: **Mr. Bob Robinson** then spoke. He submitted that **Mr. Fitzpatrick's** presentation was part of the tactic of Pegasus Gold in litigation regarding the permit violations at the Zortman/Landusky Mine. He explained that there had been a number of illegal discharges and violations of the Montana and federal Water Quality Acts, and the litigation had been going on since 1993. He added that in a telephone call less than a year ago, **Mr. Fitzpatrick** had indicated to him that he was going to do everything that he could to "emasculate" the department as part of this process, and the testimony just

presented was aimed at doing this. He submitted that this was unethical and improper. He requested that the committee give **Mr. Steve Pilcher**, Administrator of the Water Quality Division, an opportunity to respond to the allegations, which in closing **Mr. Robinson** submitted were bogus.

Mr. Mark Lee then gave a brief overview of the DHES Water Quality Division.

Ms. Angie Grove, Office of the Legislative Auditor (OLA), reviewed the audit findings for this division. The last four recommendations have been addressed via several bills before the Legislature. The other recommendations deal primarily with management controls, policies and procedures which the division needs to clarify and the budget proposals address these issues.

Ms. Grove summarized each audit recommendation. No. 1 recommends that DHES put together a formal enforcement policy for all the divisions. The second recommendation concerns the rule-development process within DHES. In some areas rules are statutorily required and need to be set up. The department is pursuing legislation to get some of these requirements for rules eliminated from the statutes. The third recommendation is that consistent law enforcement procedures be established for all staff to follow.

Recommendation No. 4 concerns management issues including the delegation of authority. Recommendation No. 5 addresses the management information system. An examination of the permitting process was recommended for a future audit. Recommendation No. 6 speaks to the liaison position with DSL mentioned by **Mr. Fitzpatrick**. The division is not pursuing the Hard Rock water quality enforcement as actively as the OLA feels they should. There seems to be some confusion regarding who is responsible for ensuring the law is enforced.

The remainder of the recommendations are concerned with statutory changes. The first concerns the groundwater exclusions the department has outlined in their administrative rules. It was recommended that either DHES eliminate the exclusions currently in the rules or seek corrective legislation.

Recommendation No. 8 deals with seeking wider-ranging enforcement actions under the Water Quality Act and the Public Water Supply Act. Current state law requires strict enforcement action for any violation. Recommendation No. 9 speaks to statutory clarification of the performance bond requirement currently in the Water Quality Act. At present the wording requires voluntary filing of a performance bond but because of the language a bond has never been submitted to DHES. **SB 78** addresses several of these areas.

Recommendation No. 10 suggests that DHES seek legislative clarification regarding the use of economic considerations when

enforcing the Water Quality and Public Water Supply acts. There is currently nothing in the enforcement language of the law that addresses the violator's ability to pay or the economic gain derived because of the violation, etc. The last recommendation found several areas of inconsistency between environmental statutes and regulations. It was suggested that the Environmental Quality Council conduct a review to help ensure consistency and continuity and possibly recommend statutory changes.

SEN. KEATING reviewed the issue of double-permitting. In the past, if a permit was granted by either DSL or the Department of Natural Resources and Conservation (DNRC), these departments by rule were waiving the permit requirement from DHES for the same activity. The OLA said that this could not be done and recommended that DHES either seek statutory exclusions or enforce the permit, which would mean double-permitting in some cases. He asked **Mr. Robinson** why DHES's decision had been to enforce the statute. **Mr. Robinson** replied that in the areas of oil well groundwater permits and certain mining permits DHES wasn't seeing adequate enforcement or supervision on the part of DSL or DNRC and it was felt DHES could do a better job in this area. In fact, if the proposed executive reorganization is adopted, all the permits would be handled in one place. He admitted that what DHES had done in this regard had not worked very well. He pointed out double-permitting did not cost the applicant any more money and the standards remained the same regardless of which entity was involved. **Tape No. 3:B:000**

SEN. JENKINS pointed out that the time lag on permitting mentioned in the audit was costing the applicants. **Mr. Robinson** said the lag was due to a workload problem. In reference to **Mr. Fitzpatrick's** allegations that DHES's renewal of an MPES permit had taken too long, he pointed out that shortly after the application had been sent in, Pegasus had been granted an interim authorization to continue operating at the same level and therefore the delay had "absolutely no effect on their operations."

Regarding the allegations that DSL and DHES were not working together efficiently, **Mr. Robinson** said the liaison person for DHES had to do the work of two and a half people and this made it difficult to do the job.

SEN. JENKINS submitted that for just one division the audit had a large number of recommendations. **Mr. Robinson** disagreed and felt it was a function of the level of detail and the amount of time spent examining that portion of DHES operations.

Mr. Steve Pilcher, Water Quality Division Administrator, then spoke. He distributed a summary of the new proposals contained on p. B-166. **EXHIBIT 4** He then reviewed the PL adjustments.

Regarding PL No. 4, **Mr. Pilcher** said the request would help the division acquire more data concerning nondegradation and to work

on establishing streams' total daily maximum loads in the Water Quality Management program.

The funding for PL No. 5 is available as pass-through money from the EPA. In 1996 they expect to receive three times the amount of Nonpoint source money as they have in the past. It will be used to fund demonstration projects, watershed projects, education for the agricultural community, groundwater projects and other programs. The funds are also used for capacity-building and training: i.e., working with existing groups which are doing education and working for good stewardship of the state's lands.

In reference to the subject of wetlands, DHES has contracted with a number of groups to assist in wetlands development and monitoring. These groups are primarily other state agencies, the U.S. Department of Transportation, the (University of Montana) Montana Riparian Association and the MSU (Montana State University) Montana Watercourse. **EXHIBIT 5** He explained that the figures in **EXHIBIT 5** reflect only the functions within the wetlands portion of the division's Water Quality Management and Nonpoint Source program. In the broader picture, this funding would provide money for the Bullhead Salinity Control Project (near Conrad), a demonstration project for Muddy Creek near Great Falls, monitoring activity in the Buffalo Rapids Irrigation Project near Glendive and watershed planning book preparation for the Ruby and Teton Rivers, as well as continued education in the development of Best Management Practices (BMP's). **EXHIBIT 6** Montana was cited for its booklet educating the timber industry on improved ways to harvest timber. The booklet was drawn up by **Bob Logan**, a MSU Extension forester and **Bud Clinch**, State Lands Commissioner. **EXHIBIT 7**

In response to **SEN. KEATING**, **Mr. Pilcher** explained that the primary benefit from the BMP's was that they illustrated cost-effective alternative ways to log timber that were less damaging to the environment.

Mr. Robinson pointed out that due in part to educational efforts like this, voluntary BMP compliance has been successful. This has prevented the BMP's from having to be set in law.

Mr. Pilcher then outlined the process used in the distribution of "319" (Federal Clean Water Act) monies. Interested parties, primarily conservation districts, are allowed to apply for funding for water quality problems which could be addressed through a demonstration project, training and/or education.

DHES has good engineering standards for the review of plans and specifications for public wastewater systems but in the area of industrial wastewater they do not have the corresponding standards. Historically, the division has not been able to conduct a detailed review of industrial wastewater sources and they are now finding there is some liability associated with not

doing this. Therefore, they propose to contract for expertise in this area. The industry will be better able to understand the standards which are expected and this will lead to fewer delays in the permitting process.

Regarding PL No. 7, **Mr. Pilcher** stated that DHES gets a lot of funds which it passes through in the form of low-interest loans to local governments for the construction of new wastewater treatment plants. The program is handled jointly through the Water Quality Division and DNRC. DHES has utilized outside expertise in the interests of keeping staffing levels in the division down. They propose to spend about \$25,000 per year for bond counsel advice. Consultants are necessary to help establish a loan tracking data base, as well as providing expertise in marketing, engineering and environmental evaluations.

PL No. 8: this section contracts with a number of individuals and groups, including the Montana Rural Water organization and Northern Montana College. This has helped hold down the number of staff increases. In addition the division proposes to contract for technical assistance from the Montana Bureau of Mines and Geology regarding implementation of the wellhead protection program.

Tape No. 4:A:000

Questions: In response to **SEN. KEATING**, **Mr. Pilcher** clarified that 1993's **SB 401** had clarified the nondegradation provision in the Water Quality Act. During the debate it was noted that nondegradation was not just a mining issue and could impact everyone. After a year and a half of rule-making, DHES has identified somewhat lower acceptable nitrate levels for subdivisions. It attempts to recognize that nitrate concentrations will vary from site to site. While some concentrations are naturally occurring, others have been influenced and increased by humans.

DHES is reviewing subdivisions with respect to nondegradation and this includes an analysis of the impact on nitrate levels. DHES has been working with the industry to develop Level II Treatment techniques, which include sand filters and other mechanisms. These techniques help reduce the level of nitrates getting into groundwater. DHES has a circular which lists the allowed concentrations of nitrates; the level depends on the conditions. In most cases the background nitrate concentration may be increased up to a maximum of 2.5 ppm.

The only time a concentration of anything approaching one ppm is considered is if there is an impact on surface water, because it is very responsive to nutrient increases. An example of this is Flathead Lake's algae bloom, which is related to the wastewater treatment plant.

SEN. KEATING said his concern was the increased expense related to enforcement of the new standards, to persons buying property

in subdivisions. **Mr. Pilcher** said the use of an alternate method of wastewater treatment and disposal may contribute to an increase in costs but under the law it has to be recognized that over time the state is gradually eroding the water quality. Even though the levels DHES has chosen are less than the maximum contaminant level, this was their intention in order to help ensure that all of the state's groundwater aquifers do not become contaminated to the maximum level. This protection of the groundwater is required under the nondegradation charge of the Water Quality Act.

REP. WISEMAN submitted that it was being proposed to spend \$3 million on wetlands (62% of the PL increases) and he felt that this was not acceptable. He wanted to know what authority the federal government had regarding enforcement. **Mr. Pilcher** said that this was not a primacy issue. He stressed that the \$3 million was not all for wetlands, which were one small element in the overall nonpoint source program. If the money available from the EPA is not accepted it will just be reallocated to some of the other states in Region 8 for use for similar purposes. In his opinion, DHES would lose the opportunity to show people that there are cost-effective alternative ways of doing things, as it has done through the demonstration projects.

REP. WISEMAN wanted to know how much had been spent in the nonpoint source program in the last biennium. **Mr. Pilcher** said that about \$800,000-\$1 million per year had been spent for nonpoint source demonstration projects. He questioned whether these expenditures were in the base. **Mr. Pilcher** said the amount of federal monies available for the last two years has been about \$650,000 for this program, and \$664,000 was the 1994 base amount. The present law request is tied to projections from the EPA which indicate DHES will be receiving approximately this much of an increase in federal money. He pointed out that it was primarily spending authority.

Ms. Connie Huckins, Office of Budget and Program Planning (OBPP), said that in 1994 the amount that was available for the Nonpoint Source grant was \$684,480 and for the wetlands grant the amount was \$231,014. This is the amount that was expended and she did not know how much had been appropriated.

SEN. JENKINS wanted to know how many ppm the law specified for nitrate levels. **Mr. Pilcher** said that there were two different areas: 10 ppm is the maximum contaminant level allowed in public water supplies under both state and federal law. DHES has been delegated with carrying out the requirements of the federal Safe Water Drinking Act and the state law is very similar to that act. The lower numbers mentioned apply only to surface water quality. Montana's surface water quality standards forbid increasing nuisance algae growth. The concentration of nitrate or other compound which might trigger this growth needs to be determined. This is done almost on a case by case basis and in some instances the acceptable amount may be as small as one ppm.

Dr. Loren Bahls, head of the Water Quality Management section, addressed **SEN. JENKIN'S** question regarding how often the level is put at one ppm. He said that the one ppm is an EPA guideline for implementing the narrative standard for preventing toxic algae blooms in flowing water. For still bodies of water, the guideline would be even smaller than one ppm. For surface waters, most of DHES's cases would be at one ppm or lower. For ground water it would range from 2.5 to 10 ppm.

SEN. JENKINS asked about a drinking system in the Havre area which had been in place for 20-30 years and had been under scrutiny from DHES. A pipeline was proposed but progress has been stopped due to DHES. He wanted to know why DHES was unable to be flexible and also the extent of the public health risk with the water system. **Mr. Pilcher** replied that he did not feel DHES was "stonewalling." The predicament Havre has is that the federal government requires filtration of all surface water supplies.

SEN. JENKINS pointed out that the system was tested routinely by DHES staff and as far as he knew had never had a bad test. **Mr. Pilcher** said there were a number of systems in that area who have had some serious problems. All of this came into play when DHES was evaluating the pipeline project, which would share Tiber lake water with other users in the area. DHES has spent a lot of time working with the area's districts regarding tying into this large rural pipeline and to help evaluate whether their problems could be resolved by doing this.

The dilemma with the Havre system is that DHES had to issue an administrative order setting up a compliance schedule to implement the requirement of providing filtration. DHES has been looking at ways to relax the schedule so the potential of the pipeline being an alternate source of water can be pursued. DHES's concern regards delaying enforcing the administrative order in the dozen or so other communities involved in the pipeline proposal. He pointed out that before the matter could be resolved Congressional approval had to be won. DHES would like to find a way to justify to all the other communities that Havre should be given "extra room."

SEN. JENKINS said that his water system was constructed about ten years ago with filtration and at the DNRC Compact Commission meeting he was told even this system would be out of compliance and he should join the pipeline as well. He asked for comment on this. **Mr. Pilcher** attested to the fact that the number of federal regulations that small community systems have had to comply with has grown significantly. **Tape No. 4:B:000**

SEN. JENKINS rose in support of putting common sense in the regulations. **Mr. Pilcher** said this frustration was shared by a lot of the people having responsibility for small water systems. He added that **SEN. JENKINS'** frustration was shared by a lot of the people on the Drinking Water staff. DHES has conveyed this

sentiment to the EPA and Montana's congressional delegation as well. All DHES can do is try to manage the program in such a way that the burden on the small communities is minimized as much as possible within the constraints of existing laws and regulations.

Mr. Pilcher pointed out there were two PL increases related to enhanced enforcement capability, as had been recommended by the audit. Most of the division's responsibilities are regulatory in nature but enforcement is a critical component. Even though they have requested funds for work in permit review and technical assistance in the Public Water Supply program, this is connected with enforcement and a lot of these people tie back to enforcement capabilities. DHES feels the additional staff is needed in order to do a better job of managing the division's programs. Some are tied more obviously to enforcement activities than others.

SEN. KEATING summated that the "devil is in the details" regarding the state's duty to protect the environment. A lot of the work of enforcement, however, is a matter of interpretation. The extent to which the law is written and misunderstood is what drives the confusion. He suggested that the "law of the ballot box" requires that no more money than needs to be spent should be spent. Therefore the Legislature needs some idea of whether regulations are legitimate and necessary or not. The idea that absolutely clean water is necessary everywhere in the state is a great ideal but it was never 100% clean even in the beginning and to get it there may not be cost-efficient. He stressed that the committee needed to remember that what drove this budget was what was written in the law and if the budget was going to be cut the law will have to be cut as well.

Mr. Robinson said there was legislation to address **SEN. KEATING'S** concerns. He rose in support of the professionals on staff at DHES and stressed that they were not "carrying an environmental flag or an industry flag." He said they understood that cleanup couldn't be 100%. One of the bills introduced addresses the definition of "natural" and says that "there ought to be a way for somebody who is living on an impaired section of stream to develop the property, with the objective of cleaning up over time.

Mr. Lee pointed out that New Proposals No. 1 and 6 were aimed at addressing points raised in the audit. The LFA raises issue with the proposed exclusive utilization of general fund to fund the new proposals, however. **Mr. Robinson** said that at some point the issue of Montana's general obligation to look out for its water rather than pinning everything on permits needed to be addressed.

Mr. Pilcher said that when the budgets were being developed it was determined that these two new positions were needed in response to the audit recommendations: DHES currently has 50 alleged violations of the law which need to be pursued. The

money wasn't there from other sources and it was felt that the state needed to fund the carrying out of the responsibilities of the Montana Water Quality Act. This is why general fund was decided upon. He added that these were the only two positions proposed to be funded by general fund. The others could be funded by permit fees and other revenue sources.

SEN. KEATING requested a summary of the 50 law violations mentioned by **Mr. Pilcher**, including the basis for the violation and who had determined that there was a violation. **Mr. Pilcher** said he was not certain the department could provide him with the entire list due to legal concerns. **Mr. Robinson** said even if the names couldn't be provided a summary of the violations could be supplied by the following morning.

ADJOURNMENT

Adjournment: 11:30 a.m.



ROGER DEBRUYCKER, Chairman



DEBBIE ROSTOCKI, Secretary

RD/dr

This meeting was recorded on four 60-minute audiocassette tapes.

DEPARTMENT OF STATE LANDS

DATE

HB

P.O. BOX 201601

MARC RACICOT, GOVERNOR

STATE OF MONTANA

(406) 444-2074

1625 ELEVENTH AVENUE
HELENA, MONTANA 59620-1601

January 19, 1995

MEMORANDUM

TO: Senator Thomas Keating, Vice Chairman, Joint
Appropriation/Finance and Claims Subcommittee - Natural
Resources

FROM: Jeff Hagener, Administrator, Land Administration Division, DSL

RE: Request on revenues vs. expenditures by DSL Land Administration programs

Attached is a breakdown of the revenues received from various trust resources; allocation of DSL resources to manage the trust resources; and FTE titles and locations.

Hopefully this provides the information you have requested. Please feel free to contact me at 444-4978 if you have questions.

/ns

c. Rep. Roger DeBruycker
Rep. John Johnson
Rep. Bill Wiseman
Sen. Loren Jenkins
Sen. Judy Jacobsen
Roger Lloyd, LFA
Flo Smith, OBPP
Bud Clinch, Commissioner

LANDS ADMINISTRATION PROGRAM
Administration Statistics

Assumptions:

- Lands Division Administrator duties are split evenly between MMB and SMB
- Expenditures include indirect costs of 11.3% (figure commonly used by CMD)

Facts:

| | ACRES ADMINISTERED | ACRES LEASED | FTEs | FY94 REVENUE | FY94 EXPENDITURES |
|----------------------------|-----------------------|-----------------|------|-----------------|----------------------|
| Minerals Management Bureau | 6,200,000 | 793,686 | 10.5 | \$8,241,023 | \$469,147 |
| Surface Management Bureau | 4,600,000 | 4,600,000 | 20.5 | \$14,446,797 | \$901,590 |
| Total Program | 10,800,000 | 5,393,686 | 31.0 | \$22,687,820 | \$1,370,737 |

| | REVENUE PER FTE | EXPENDITURES PER FTE |
|----------------------------|--------------------|-------------------------|
| Minerals Management Bureau | \$784,859 | \$44,681 |
| Surface Management Bureau | \$704,722 | \$43,980 |
| Total Program | \$731,865 | \$44,217 |

| TOTAL ACREAGE: | REVENUE PER ACRE ADMINISTERED | EXPENDITURE PER ACRE ADMINISTERED |
|----------------------------|-------------------------------------|---|
| Minerals Management Bureau | \$1.3292 | \$0.0757 |
| Surface Management Bureau | \$3.1406 | \$0.1960 |
| Total Program | \$2.1007 | \$0.1269 |

| ACREAGE LEASED: | REVENUE PER ACRE LEASED | EXPENDITURE PER ACRE LEASED |
|----------------------------|-------------------------------|-----------------------------------|
| Minerals Management Bureau | \$10.3832 | \$0.5911 |
| Surface Management Bureau | \$3.1406 | \$0.1960 |
| Total Program | \$4.2064 | \$0.2541 |

Ratio of Revenues Received to Funds Expended:
(includes overhead costs)

| | |
|----------------------------|-------------|
| Minerals Management Bureau | \$17.60/\$1 |
| Surface Management Bureau | \$16.02/\$1 |
| Total Program | \$16.55/\$1 |

LANDS ADMINISTRATION PROGRAM
Fiscal Year 1994

| | # of Agreements | Revenue Received | Allocation of Resources |
|-----------------------------|--------------------|---------------------|----------------------------|
| Minerals Management Bureau: | | | |
| Metalliferous Leases | 35 | \$42,887 | 13% |
| Nonmetallif. Leases* | 21 | 280,737 | 13% |
| Coal Leases | 28 | 3,681,053 | 9% |
| Oil and Gas Leases | 1,977 | 4,236,345 | 62% |
| Underground Storage | 5 | ** | 1% |
| Geothermal Leases | 0 | 0 | 0% |
| Royalty Audits | | ** | 2% |
| Total | | \$8,241,022 | 100% |
| Surface Management Bureau: | | | |
| Agricultural Leases | 3,000 | \$9,486,264 | 27% |
| Grazing Leases | 8,500 | 4,264,030 | 43% |
| Special Leases*** | 790 | 360,198 | 6% |
| Secondary Licenses*** | 448 | 214,652 | 8% |
| Easements*** | | 87,021 | 10% |
| Sales*** | 2 | 34,632 | 1% |
| Exchanges*** | 1 | | 4% |
| Recreational Use**** | | | 1% |
| Total | | \$14,446,797 | 100% |

* Nonmetalliferous Leases includes revenue generated from nonmetalliferous leases, aggregate material permits and land use licenses.

** The revenue from Underground Storage Leases (\$54,137) and from the Royalty Audit Program (\$90,521) are included in the Oil and Gas Lease income.

*** The revenue generated from these "special uses" of trust land include revenue generated by the Special Uses Section in both the Lands Administration Program and the Forestry Program. There are two sections that administer special uses, depending on the classified use of the land involved.

**** The recreational use program figures are not included in the discussion on the Lands Administration Program budget due to the nature of its funding. However, 31,411 licenses were sold (3/93 - 2/94) generating \$94,233 for the school trust. Also, 140 Special Recreational Use Licenses were issued for a total of \$76,046.

LANDS ADMINISTRATION PROGRAM
SUMMARY OF FTEs

| <u>POSITION TITLE</u> | <u>POSITION#</u> | <u>FTE</u> |
|--------------------------------------|------------------|------------|
| Lands Division Administrator | 00032 | 1.00 |
| Minerals Mgmt. Bureau Chief | 00084 | 1.00 |
| Hydro-Geologist | 00086 | 1.00 |
| Petroleum Engineer | 00065 | 1.00 |
| Mineral Accountant | 00083 | 1.00 |
| Mineral Lease Sect. Supervisor | 00003 | 1.00 |
| Accounting Technician | 00011 | 1.00 |
| Mineral Lease Clerk | 00040 | 1.00 |
| Surface Mgmt. Bureau Chief | 00033 | 1.00 |
| Land Mgmt. Sect. Supervisor | 00041 | 1.00 |
| Land Management Specialist-VACANT | | 0.50 |
| Environmental Impact Specialist | 00059 | 1.00 |
| Hydro./Water Rights Specialist | 00043 | 1.00 |
| Special Uses Sect. Supervisor | 00045 | 1.00 |
| Appraiser | 00051 | 1.00 |
| Right-of-Way Clerk | 00038 | 1.00 |
| Surface Leasing Sect. Supervisor | 00007 | 1.00 |
| Administrative Clerk | 00077 | 1.00 |
| Accounting Clerk | 00005 | 1.00 |
| <u>Central Land Office</u> | | |
| Unit Manager - Conrad Unit | 00053 | 1.00 |
| Land Use Specialist - Conrad Unit | 00182 | 1.00 |
| Land Use Specialist - Dillon Unit | 00013 | 1.00 |
| <u>Eastern Land Office</u> | | |
| Office Manager | 00056 | 0.50 |
| Range Specialist | 00036 | 1.00 |
| Agriculture Specialist | 00122 | 1.00 |
| <u>Northeastern Land Office</u> | | |
| Word Processing Operator | 00186 | 0.50 |
| Unit Manager - Glasgow Unit | 00124 | 1.00 |
| Land Use Specialist - Glasgow Unit | 00037 | 1.00 |
| Office Manager - Glasgow Unit | 00064 | 0.50 |
| Unit Manager - Lewistown Unit | 00035 | 1.00 |
| Land Use Specialist - Lewistown Unit | 00118 | 1.00 |
| Land Use Specialist - Havre Field | 00181 | 1.00 |
| <u>Southern Land Office</u> | | |
| Land Use Specialist | 00039 | 1.00 |
| TOTAL FTEs | | 31.00 |

NOTE: When determining the allocation of FTEs to the Minerals Management Bureau (MMB) and the Surface Management Bureau (SMB), the FTEs involved in field operations were allocated approximately 25% for MMB and 75% for SMB.

These employees perform duties involving both bureaus, therefore cannot be easily split between the bureaus. The approximate 25%/75% split gives MMB 3 FTEs and SMB 9.5 FTEs.

EXHIBIT 1

DATE 1-23-95

LANDS ADMINISTRATION PROGRAM
SUMMARY OF FTEs
PAGE 2

In addition to these FTEs, there are two additional FTEs that contribute to the Lands Administration Program. However, these are funded out of other sources.

There is a Recreational Use Coordinator who works under the Surface Management Bureau. This position is funded out of a Statutory Appropriation for the Recreational Use Program.

There is also a Royalty Auditor who works under the Minerals Management Bureau. This position is funded through Central Management Division. The position exists in cooperation with the Department of Revenue, in their Natural Resource Division.

The figures used to derive the ratios in relation to the Lands Administration Program do not include these FTEs, as they are not included in the budget figures for Lands Administration Program.

WASTE MANAGEMENT DIVISION
UST RELEASE PREVENTION PROGRAM

| <u>Object of Expenditure</u> | <u>FY94 Actual</u> | <u>FY96 Requested</u> | <u>FY97 Requested</u> |
|--------------------------------------|------------------------|---------------------------|---------------------------|
| Consultant and Professional Services | 12,620 | 15,000 | 15,000 |

Proposed FY 96 needs

Estimated cost

- Installer licensing examination services \$ 3,000
- Continuing education seminars for licensed installers 2,000
- and development of outreach materials for tank owners
- Production of tank registration tags (3 year contract) 1,500
- Professional consultant services for the evaluation and 3,000
- and resolution of design and installation permit issues
- involving the design and installation of tank systems,
- corrosion protection equipment and release detection
- systems.
- Procurement of expert witnesses to support litigation 2,000
- Database services to upgrade registration and permit 3,500
- modules for Access database. A-REV database maintenance.

Proposed FY 97 needs

Estimated cost

- Installer licensing examination services \$ 3,000
- Continuing education seminars for licensed installers 2,000
- Development of educational materials, training and 2,500
- outreach program on the 1998 upgrade requirements
- for tank owners and operators
- Production of tank registration tags (3 year contract) 1,000
- Professional consultant services for the evaluation and 3,000
- and resolution of design and installation permit issues
- involving the design and installation of tank systems,
- corrosion protection equipment and release detection
- systems.
- Procurement of expert technical witnesses to support 2,000
- litigation
- A-REV Database consultation services 1,500

Nat. Res. Subcomm.

EXHIBIT 2
DATE 1/23-95
HB _____



EXHIBIT 3
DATE 1/23/95
HB

October 7, 1994

Mr. Bob Robinson
Director
Montana Department of Health
and Environmental Sciences
P.O. Box 200901
Helena, MT 59620-0901

Dear Mr. Robinson:

I am writing to you as a follow-up to some of the discussion that took place during the review of the Department of Health (DHES) audit before the joint Legislative Audit/EQC Committee meeting on Friday, September 30, 1994.

During my testimony I was very critical of the efficiency and effectiveness of the Water Quality Division's (WQD) permit processes. Notwithstanding the severity of my critique, I believe that the situation is correctable if WQD is willing to work with applicants rather than against them. Pegasus and its subsidiary companies are committed to working with the Department and you can count on our full cooperation in any permit process in which we might participate.

I was quite pleased to hear your remarks during the exchange with Senator Doherty in which you made a personal commitment to see that things in the Water Quality Division were improved. I can't think of anyone any more qualified to make that happen, and I want to see you begin to enjoy success in that regard immediately.

I am writing to request your personal participation in and review of the situation of a project known as the South Butress Project at the Zortman/Landusky Mine. I briefly discussed this Project in front of the committee where an agency-required reclamation activity has been obstructed by the WQD staff for several months.

Background

The South Butress Project is located in the Landusky Mine site and consists of resloping and raising the dike face of the Sullivan Park leach pad and relocating a contingency pond downstream to the toe of the resloped dike. This Project was undertaken at the explicit request

Mr. Bob Robinson

October 7, 1994

Page 2

of the Department of State Lands (DSL) and the Bureau of Land Management (BLM) to reduce the potential for acid rock drainage (ARD) from the Sullivan Park dike. ARD is not a major problem at Sullivan Park. Flows from the dike are extremely low, related to seasonal weather patterns, and the capture system installed by the company has worked very effectively. Nevertheless, DSL and BLM felt that reducing the slope of the dike face, adding a clay cap and revegetating the area would substantially reduce, if not eliminate, the potential for ARD from that facility.

The company's plans for the South Buttress Project were first presented to the regulatory agencies at a meeting held in a DSL conference room on February 24, 1993. The WQD liaison to DSL was in attendance at the meeting. A written plan for proposed amendments to the Landusky Mine site reclamation plan including the South Buttress Project, were submitted to the regulatory agencies on March 15, 1993. The agencies reviewed the plan and requested additional information from Zortman Mining, Inc. (ZMI) on April 7, 1993. ZMI submitted additional information to the agencies on June 20 and again on July 23, 1993. DSL issued a letter to ZMI on August 27 declaring the application complete. The regulatory agencies prepared an Environmental Analysis (EA) and issued a draft document for public review in November, 1993. The final EA and decision notices authorizing the Project were issued on March 9, 1994. The Department of Health and Environmental Sciences, Water Quality Division is listed as a consulting party for that preparation of the EA.

On May 10, 1994, when you and several members of the DHES staff were touring the Zortman/Landusky Mine, the Department's legal unit telefaxed a letter to Zortman's legal counsel demanding that the company halt construction of the South Buttress Project. A few days later at a meeting held in Helena, the WQD liaison to DSL claimed to have not known about the South Buttress Project. In that letter, the Department demanded that ZMI obtain special authorization from DHES under Section 75-6-112(4), MCA, the Public Drinking Water Supply Act, for the construction of the South Buttress Project. That section of law has never been applied to a mining project in the past. The Department's own rules (ARM 16.20.632(4)(a)) provide for the review of heap leaching facilities under the Montana Water Quality Act, not the Public Drinking Water Act. In addition, WQD reviews of mine permit applications are subject to a Memorandum of Understanding between DSL and DHES calling for the joint review of mine permit applications.

On May 19, 1994, ZMI legal counsel sent a letter to DHES' attorneys indicating that ZMI would withhold work on the South Buttress Project until August to give the Department time to review the material it had requested from the company and, hopefully, to resolve the status of the lawsuit DHES had filed against Zortman.

During the last week of July, 1994, I called Mr. Steve Pilcher, WQD administrator, to inquire about the status of the South Buttress Project review. After consultation with WQD staff he called back and indicated that nothing had been done. During that call he verbally requested

Mr. Bob Robinson
October 7, 1994
Page 3

additional information from the company. On August 5, 1994, ZMI sent WQD thirteen pages of additional narrative and drawings describing the South Buttress Project as requested by Mr. Pilcher. On August 9, 1994, WQD sent ZMI a letter asking several more questions about the Project. ZMI responded to WQD in a letter dated August 15, 1994. The company also provided additional technical information regarding the Project on August 26, 1994. On September 19, 1994, a meeting was held at WQD offices where ZMI submitted additional information to the division regarding the South Buttress Project.

On August 30, 1994, DHES' legal counsel sent a letter to Zortman's attorneys indicating that the South Buttress Project could not be acted upon and suggested this issue be wrapped into the larger settlement of the Department's lawsuit against the mine.

Observations

In the course of the meeting with the Legislative Audit Committee, you indicated the Department's first priority at the Zortman/Landusky Mine was to insure compliance with the Water Quality Act. That simply is not true. Everything that has been done at the Zortman/Landusky Mine has been at the initiative of Zortman Mining, Inc. with review, input, and approval from DSL and BLM. DHES has had to be dragged along every step of the way. On several occasions DHES has demanded that the company get permits and then, when the application materials were submitted, the Department did nothing with them. A case in point is the Zortman water treatment plant. ZMI notified the Department that it was planning to build that facility in September, 1993. It submitted formal plans and specifications in November, 1993. The Department did absolutely nothing with the material for several weeks except to threaten us with additional legal action should we proceed with the development and construction of the water treatment plant. The fact that the plant is in operation and making a significant contribution to the improvement of water quality is because Zortman was persistent in its quest to build the treatment plant and Mr. Pilcher had the wisdom to intervene on behalf of the Department and help get it into operation.

At the Legislative Audit Committee I discussed Zortman's ten-month quest for permits to construct two water retention ponds in Ruby Gulch. Again, a major factor in the delayed development of those facilities was the Water Quality Division and its failure to promptly review the material submitted to DSL and, subsequently, the 404 permit documents after WQD demanded the 404 permit. DHES' delay in this instance has been sufficiently significant that it's unlikely the ponds will be completed this season given the difficulty of undertaking construction during the winter.

In the matter of the South Buttress Project, it appears as if DHES is trying to use the Project as leverage against the company in the settlement negotiation process for its lawsuit against ZMI. If that's true, Zortman fails to understand the rationale for the Department's action. The South

Buttress Project is preeminently a reclamation effort designed to enhance and improve water quality and by delaying its implementation DHES would appear to be acting in a manner inconsistent with its responsibility under state law.

The Water Quality Division appears to have a difficult time in understanding the nature of its mission under state law. Certainly, enforcement of the Water Quality Act is one facet of their responsibility but permitting is another equally, if not more important, aspect. Football aficionados understand that winning teams achieve that status by grinding out touchdowns--3 yards, 8 yards, 10 yards at a time--not by throwing 80 yard touchdown strikes. The same approach is applicable in the case of reviewing and issuing water quality permits. At Zortman, full water quality compliance can be achieved but it will take the Department of Health working with Zortman Mining, Inc. one permit at a time.

Permit Process

The South Buttress Project was once a fairly straightforward reclamation project. However, through demands for a multitude of permit reviews, DHES has enveloped the Project in a shroud of competing and conflicting permit issues that DHES is doing little to resolve. Please allow me to clarify the matters before you.

- A. DHES has demanded that Zortman receive a special authorization or permit pursuant to 75-6-112(4), MCA, the Public Drinking Water Supply Act, to construct the South Buttress. That particular section of law is a construction review statute. Zortman has submitted documents regarding the construction of this facility to DHES on several separate occasions. Inasmuch as DHES is demanding the right to review the construction plans, now that those documents have been provided to the Department, it should move forward with its review and approval of the plans. Under the law, this approval is not contingent upon the receipt of other state permits.
- B. DHES has demanded that Zortman receive an MPDES permit prior to the construction of the South Buttress Project. We disagree with the Department's position. An MPDES permit is needed to discharge contaminants into the waters of Montana, not for the construction of a facility. One of the principle accusations in the Department's lawsuit against Zortman is that the company did not have an MPDES permit. That particular issue is unchanged whether the South Buttress is built or not. Furthermore, Zortman submitted an MPDES permit application to DHES covering several sites at the mine on August 26, 1993, fourteen months ago. Once again--company application, DHES inaction.

Mr. Bob Robinson
October 7, 1994
Page 5

If, in fact, the Department is truly concerned about protecting Montana's water resources, then it should go ahead with the permitting of the South Buttress so that improvements can be made in that area. Once the facility is constructed there may not be a discharge that needs to be covered by an MPDES permit.

- C. The Department has demanded that Zortman receive a Dredge and Fill permit from the Army Corps of Engineers, referred to as a 404 permit. We contacted the Army Corps of Engineers' Helena office on this matter and were told that a permit for the South Buttress would be a retroactive permit because there has already been disturbance in Sullivan Gulch where the proposed South Buttress would be built. When the Sullivan Park leach pad and dike were built in 1991, a contingency pond was constructed at the toe of the facility. After removing the pond and regrading the foundation, the South Buttress Project would be built in that area. The Corps of Engineers staff indicated, and Mr. Pilcher confirmed, that it is WQD policy not to review or certify retroactive 404 permit applications. Why is DHES demanding that Zortman obtain a retroactive 404 permit when the agency does not review such permits as a matter of policy?

Zortman believes that DHES is simply using the 404 process to protract the permit process. First, WQD wants to review the construction specifications under the Public Drinking Water Act. Next it wants a separate review through the MPDES permit and finally, it appears to want a third review of the project under 404. Surely, the Department could consolidate the construction review and 404 process into a single effort in the interest of efficient regulation, or it could formally waive its review of the 404 permit as appears to be the current policy.

Zortman will be happy to seek a retroactive 404 permit for the South Buttress Project but it wants a clarification of DHES policy regarding the Department's participation in that process.

Closing

I believe that you are committed to improving the operations of the Water Quality Division. Mr. Pilcher's re-assignment as Administrator of WQD has been a positive step. He, at least, seems to understand the agency's role and has been willing to try and resolve some of the problems in the permit process. But, much more is needed. Zortman is willing to help and cooperate. To quote State Senator Jergeson, "Together we can make government more efficient and effective as well as more responsive to the citizens it serves." There is no better place to

Mr. Bob Robinson

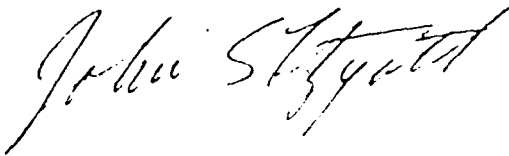
October 7, 1994

Page 6

start that process than by working to improve water quality at the Zortman/Landusky Mine by completing the review and permitting of the South Buttre Project.

If you have any questions or need additional information, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in cursive script, reading "John S. Fitzpatrick". The signature is written in dark ink and is positioned above the printed name and title.

John S. Fitzpatrick
Director, Community and
Governmental Affairs

cc: Governor Marc Racicot
Steve Pilcher

WATER QUALITY DIVISION MODIFIED SUMMARY PROPOSALS 1996-97

Modified Budget Summary (Proposal #1)

Enforcement and Legal Support

A request for 1 FTE, Administrative Support, is necessary to allow the agency to respond to Audit Recommendations #1 and #5. The Enforcement and Legal Support Section has never been provided and administrative support position, and effective, timely and efficient pursuit of enforcement cases requires the dedication of administrative support to the Enforcement Program. The ability to meet current enforcement and compliance data management objectives requires the dedication of considerable administrative support to the project and the Enforcement Program.

Modified Budget Summary (Proposal #2)

Drinking Water/Subdivision Section (CVs50056-58)

The proposed budgets for FYs 1996-97 are similar to the current biennium. The executive budget includes requests for additional FTEs, Modified Budget Summary Proposals #2, 4, and 8. Funding is provided through a federal grant, existing service connection and plan review fees, and the RIT fund.

EPP #2 - 2.0 FTE Public Water Supply (PWS) Program:

This proposal would add 2.0 FTE and expenditures of \$107,687 in FY 1996 and \$97,972 in 1997 for assistance to water suppliers with technical and compliance issues. In 1990, the Public Water Supply Task Force reviewed the PWS Program and recommended an interim staffing level of 22.5 FTEs to implement EPA regulations adopted prior to 1993. There are currently 20.25 FTEs. One FTE is proposed for a PWS Program water quality specialist to provide proactive compliance monitoring and assistance to water suppliers to achieve compliance with complex federal monitoring requirements. This will allow existing staff to provide more direct field assistance to water suppliers. Another FTE is proposed for a PWS Program water quality specialist to perform technical assistance in the field from the Billings Regional Office. Funding would be provided by an EPA grant, state fees and the RIT fund. An increase in fees is not necessary.

Modified Budget Summary (Proposal #3)

NPDES Fees Modified

This proposal is a request to transfer approximately \$35,000 of state special revenue funds within the Water Permits budget from contracted services to personnel services to add 1.0 FTE. The state special is water quality permit fees.

The purpose of the proposal is to create a position that will provide full time administrative support, particularly in the areas of MPDES effluent data entry and permit fee assessment, billing, and tracking. In the past the MPDES effluent data entry has been performed by a combination of "fill in" time borrowed from administrative support positions of other bureau programs and by contract temporary employees. As a result, the MPDES data entry has not been accomplished on a regular basis. This has been detrimental to timely compliance assessment of the permittees, and is a hindrance to timely and complete enforcement resolution and documentation that was cited in the legislative audit report.

Water quality permit fee legislation was passed by the 1993 legislature and fee rules were promulgated effective February 25, 1994. About 700 permittees must be assessed fees under the rules and no other administrative support has been dedicated to assist in performing fee related tasks. The assessment, billing, and tracking of fees by a single individual utilizing an automated system was a recommendation of the legislative auditors. These tasks are time-consuming since permittees are billed for application fees and annual fees. Late fees may be assessed and fees must be calculated for the various permits based upon amount and quality of effluent discharged.

Modified Budget Summary (Proposal #4)

EPP #4 - PWS Program and Subdivision Program Support:

In November of 1991, the Public Water Supply Task Force convened again and recommended that the program pursue additional resources through increased federal funding. Montana has since successfully pursued additional federal funding through the Association of State Drinking Water Administrators (ASDWA). Congress has increased Montana's PWS Program grant funding from \$633,000 in FY 1992 to \$805,000 in FY 1995. This grant increase would provide funding for the PWS Program positions. State match funding would be provided by fees and RIT funds. An increase in PWS or Subdivision Program fees is not necessary.

Two new FTEs are proposed for expenditures of \$77,948 in FY 1996 and \$62,283 in FY 1997. 0.5 FTE is proposed for a support position for the Subdivision and PWS Programs in the Polson Regional Office. There are currently two technical staff in the Polson Office, but no support position. 1.0 FTE is proposed for a PWS Program file clerk in the Helena Office. 0.25 FTE is proposed for additional administrative support in the PWS Program in the Helena Office. 0.25 FTE is proposed for additional administrative support for the Water and Wastewater Operator Certification Program. The duties that would be performed by these positions are currently addressed through contracted services. Regular personnel turnover and the subsequent re-training of new personnel have resulted in inefficient and/or inadequate job performance.

Modified Budget Summary (Proposal #5)

Ground Water Program

Many activities that discharge wastes into ground water, such as oil and gas exploration and production facilities, municipal sewage lagoons, or businesses that dispose of waste water in open-bottom drains, have historically been excluded from Montana Ground Water Pollution Control System (MGWPCS) permits. The department intends to eliminate exclusions from MGWPCS permit requirements in response to a legislative audit recommendation. As a result many more activities will be required to obtain a MGWPCS permit and additional staff is required to process the permits and ensure compliance with the Water Quality Act. The Ground Water EPP (CV92038) requests an additional 1.5 FTE in FY96 and 1 more FTE in FY 97. Two FTE would be professional staff and the half FTE administrative support. Initial funding for the program expansion will be generated by permit fees. The department will seek authorization from EPA to administer the Underground Injection Control Program for Class V injection wells (open-bottom drains). Additional funding from EPA would be provided if authorization is granted.

Modified Budget Summary (Proposal #6)

Legal Support

A request for 1 FTE, Attorney Specialist is requested to allow the agency to respond to the Audit Recommendation #1. The implementation of a formal enforcement policy will require additional legal resources to provide effective and timely response to the Division's enforcement needs and priorities.

Modified Budget Summary (Proposal #7)

Division Admin Support

The Division has grown considerably, with no central, additional administrative FTE in relation to the professional and technical staff increases occurring as a result of section/program growth. The requested position is needed to assist with daily and/or routine tasks so the Administrative Assistant can function at peak levels, assisting the Division Administrator as needed while providing office management support.

Modified Budget Summary (Proposal #8)

One FTE is proposed for an PWS Program environmental engineering specialist for a total of \$57,158 in FY 1996 and \$52,254 in FY 1997. The position would provide engineering expertise and field assistance in the new Polson Regional Office. 40% of Montana's public water supplies are located west of the continental divide. Funding would be provided by the increased federal grant with matching state funding provided by existing fees and RIT funding.

Modified Budget Summary (Proposal #9)

MPDES Industrial Plan Review

This proposal is to create and fund a 1.0 FTE engineering position which will review industrial waste disposal and treatment system plans as required by the Montana Water Quality Act and Montana Public Water Supply Act. This position will also be responsible for adopting and implementing the waste disposal and treatment system design standards necessary for industries. The DHES has not implemented these industrial plan review requirements in the past due to resource limitations. Now, potential legal liability mandates that this work be done. Lack of implementing rules for statutory requirements was one of the faults of DHES found by the auditors.

Every new MPDES permit applicant will probably have plans to be reviewed, in addition to proposed industrial treatment modifications and other proposals which plan to utilize non-discharging systems and thereby evade discharge permitting requirements. It is estimated that 150 sets of plans per year would have to be reviewed.

Funding for this proposal would be provided by plan review fees under 75-5-516 and 75-5-401. Revised fee rules would have to be adopted by the Water Quality Division and the Board of Health and Environmental Sciences.

Modified Budget Summary (Proposal #10)

Water Quality Monitoring

The purpose of this proposal is to create and fund a position that will provide ambient water quality data and other information in support of developing discharge permits under the Montana Pollutant Discharge Elimination System (MPDES).

Discharge permits are sometime written on the basis of a single, dated flow measurement or water quality sample collected from the receiving water. This may result in discharge limits that are unnecessarily restrictive or in limits that allow violation of water quality standards for part of the year. Follow-up monitoring is needed to determine how well permit limits actually protect the quality of receiving waters and their beneficial uses. Waste load allocations and new nondegradation and mixing zone rules will underscore the need for accurate and timely water quality data.

Modified Budget Summary (Proposal #11)

State Revolving Loan Program

Funding is requested to allow the addition of one new staff member to support the state revolving loan program. It has been found through operation of a relatively new program and oversight by EPA that additional support is needed for financial

management of the program and compliance with federal programmatic requirements. More staff should also help the program make more loans and provide better service to Montana communities. Adequate funding is generated within the program to support the position.

Modified Budget Summary (Proposal #12)

State Drinking Water Revolving Fund

Budget authority was requested to allow development and implementation of a financial assistance program to help Montana communities build drinking water facilities. The enabling federal legislation is being considered by Congress under the Safe Drinking Water Act with state legislation to be considered by the 1995 Legislature. Draft legislation and program procedures establishing this program are very similar to the existing wastewater revolving fund program. Budget is requested for three FTE's in the first year of the biennium with one additional staff person in the second year. New staff requested includes three technical and one administrative positions. Existing staff within the WQD and DNRC will also be extensively relied upon to support this new program, but cannot handle all program functions without help. Significant budget was also requested for contracted services to allow retention of financial experts needed to assist in program development. This budget request is contingent upon passage of federal and state authorizing legislation.

Recent federal drinking water requirements and a historical lack of federal funding for drinking water systems should create a significant demand upon this new program for assistance. Draft federal legislation for this program indicated that Montana could receive 80 million dollars in federal funds over a six year period.

Modified Budget Summary (Proposal #13)

4 Wheel Drive Truck/Clean Lakes

This request for a 4WD pickup truck will be dedicated to the DHES Clean Lakes Project. The vehicle would be used to pull the lake project's 18' work boat and trailer. The vehicle would be used for lake sampling, volunteer training, and other project-related travel. The vehicle needs to be available on demand and easily connected to the electrical light circuit of the boat trailer.

1992-1994

104(b)(3)

WETLANDS FUNDING / CONTRACTS

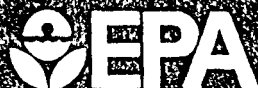
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|---------------------------------|-----------|---|
| Water Quality Division/DHES | \$229,480 | Wetlands Strategy & Monitoring |
| MT Watercourse/MSU | \$149,001 | Wetlands Education |
| Dept. Natural Resources & Cons. | \$168,610 | Wetlands/Riparian Ed. |
| Dept. of Transportation | \$ 65,569 | MDOT Wetlands Program Audit |
| Montana Riparian Assn./UM | \$236,800 | Wetlands delineation & classification manual & training |

404 Permits waive 1 FTE

United States
Environmental Protection
Agency

Office of Water
(4503-F)

841-S-94-004
November 1994



Section 319 Success Stories

EXHIBIT 6
DATE 1-23-95

A CLOSE-UP LOOK AT THE NATIONAL NONPOINT SOURCE POLLUTION CONTROL PROGRAM





Water quality experts discuss BMP designs in the field.

Dividing the project into phases allowed design improvements to be made on the initial BMPs, while Phase II and III BMPs were being built. Since the BMPs were all somewhat untried, this phasing was important to the project's success. It allowed improvements gained through early experience to improve later performance.

The Boulder Creek project has two goals. The first is to verify basic assumptions about how enhancing the riparian habitat affects the water quality. The second goal is to verify the cost, constructability, and durability of BMPs. Early attempts to construct a dynamic computer model of the Boulder Creek system showed that a full-scale demonstration project was the only practical means to test the effect of channel modifications, revegetation, and erosion control on in-stream quality and habitat.

Comprehensive testing allows sediment loads, hydraulics, weather, and other complex factors—such as algal growth within the stream—to occur in real time, rather than being simulated in

a computer model. Projects such as Boulder Creek also require real-time verification since, unlike a computer model, seasonal and long-term effects cannot be quickly generated. Full-scale testing incorporates all the complex and synergistic effects that occur in a natural system and reflects a system more accurately than a model can.

The Boulder Creek project is transferable to other streams requiring similar treatment. Riparian restoration that can provide multiple benefits to wildlife, water quality, and property owners can increase the effectiveness of existing traditional treatment facilities.

MONTANA

The public/private partnerships that evolved from the forestry best management practice education effort have led to many small successes across Montana. Those small successes will breed major victories for water quality protection in the state.

CONDUCTING AN EXPERIMENT IN FORESTRY EDUCATION

A recent experiment under Montana's forestry education program has proven that its section 319-funded public awareness and education efforts are working. Since 1989, Montana has concentrated its voluntary forestry BMP education program on presenting workshops for loggers and landowners, developing printed literature, and distributing literature to thousands of loggers, landowners, and professional land managers.

In 1991, Montana decided to determine if a new BMP education campaign could make a measurable difference in knowledge among its target audiences. A new 34-page, full-color

forestry BMP booklet—written by Bob Logan, a Montana State University Extension forester, and Bud Clinch, a Department of State Lands commissioner—provided the material.

The experiment had two major objectives—to measure user knowledge before the booklet's release and to measure knowledge 12 months later. In 1991, a direct mail questionnaire was sent to 550 randomly selected potential respondents—timber fallers, forest landowners, dozer/skidder operators, road builders, logging contractors, and foresters. The survey document contained 38 true-false and multiple-choice questions covering such subjects as stream crossings and their effect on water quality, streamside management and timber harvesting BMPs, hazardous materials, forest roads, and other forest activities.

All those who completed the questionnaire received the BMP booklet by return mail. Approximately 12 months later, the same questionnaire was sent to all who responded to the 1991 mailing. The return rate on the 1991 questionnaire was 36 percent. The return rate for the second questionnaire from those who had previously responded and had received the booklet was 53 percent (Fig. 8-1).

Scores of all six audiences responding to the second questionnaire showed improvement (Fig. 8-2). Forest landowners showed the largest increase in knowledge—with test scores increasing by 9 percent. Road builders and timber fallers increased 5 percent, with logging contractors and dozer/skidder operators increasing by 4 percent. Knowledge of stream crossings increased the greatest of all subject areas—by 20 percent (Fig. 8-3).

Prior to this experiment, the prevailing attitudes to Montana's voluntary BMP education program were "Don't tell me what to do," "I know all there is

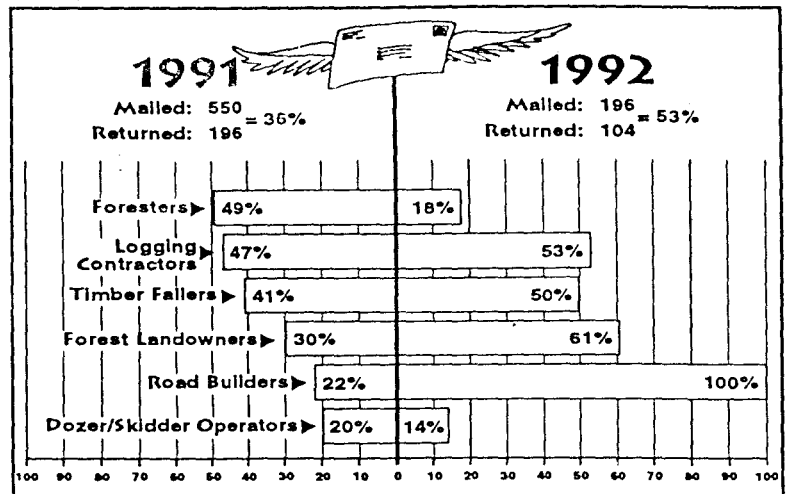


Figure 8-1.—Summary of questionnaire responses.

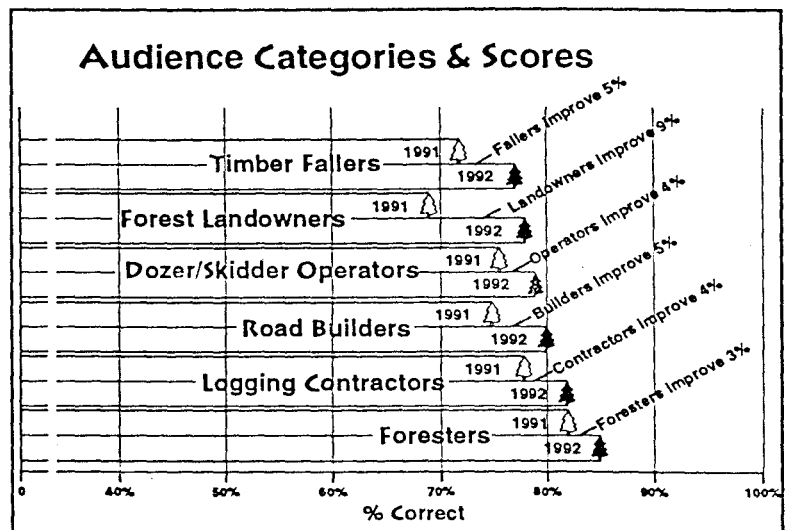


Figure 8-2.—Comparison of responses showing increased knowledge.

to know about BMPs," and "BMPs are just a matter of common sense." However, the 1992 questionnaire indicated a dramatic change in attitude among respondents. For example, when asked about the need for increasing attention to forestry BMPs, the average respondent leaned heavily toward the opinion that this information was long overdue (Fig. 8-4).

Montana's voluntary forestry BMP education program, using \$86,430 in section 319 funds, appears to be working. On-the-ground audits of forest harvest sites, conducted regularly by the

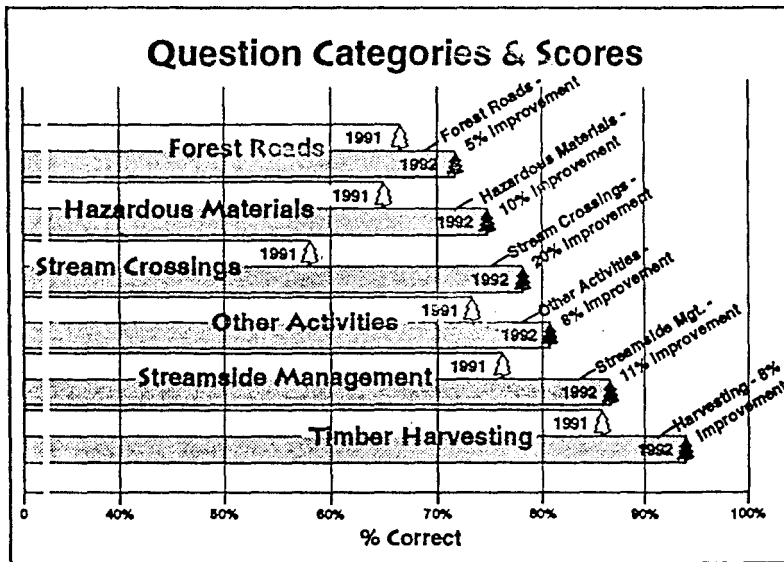


Figure 8-3.—Comparison of responses showing increased subject knowledge.

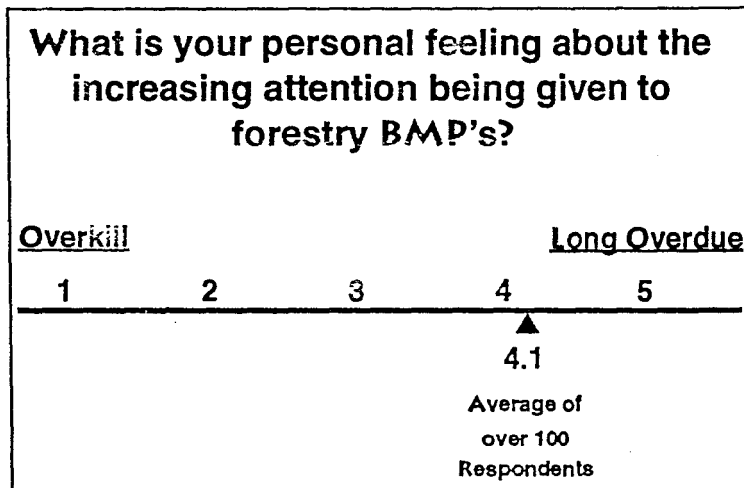


Figure 8-4.—Result of respondents' attitude.

Department of State Lands Forestry Division, show that in addition to increasing the knowledge of critical audiences in subjects important to water quality protection, application of that knowledge in the forest has dramatically improved.

NORTH DAKOTA

Nonpoint source pollution is the greatest threat to water quality in most of North Dakota's rivers, streams, lakes, and wetlands. The state has

devoted a majority of its section 319 funds to agriculture, the dominant land use. The State Department of Health and Consolidated Laboratories has established a close working relationship with USDA to combine resources and address priority areas.

CONSERVATION PRACTICES WORK FOR BOWMAN-HALEY RESERVOIR

The Bowman-Haley Watershed Project, located in southwestern North Dakota along the South Dakota border, is one of the state's most successful section 319 projects. The Bowman-Haley Watershed Project covers 304,000 acres. The principal land uses of the area are rangeland (167,740 acres), cropland (121,890 acres), farmstead (7,230 acres), and roads (7,146 acres).

Bowman-Haley Dam, constructed by the U.S. Army Corps of Engineers in 1966, was established to provide an alternative water supply, downstream flood control, and recreation. The resulting 2,560-acre reservoir provided a much needed recreational facility for all.

Over a period of time, however, residents began to notice a steady decline in water quality. More alarming, recreational use of the reservoir for swimming, boating, and fishing dropped off. In 1989 and 1990, evaluations of the water quality, physical characteristics, and fishery by the state health agency found that the reservoir was hypertrophic and nutrient rich. Moreover, its water quality was progressively degrading. Algal blooms dominated in summer, with low dissolved oxygen in winter. Nutrients and sediments from improper agricultural management were soon identified as the culprits. These conditions—which affected sport

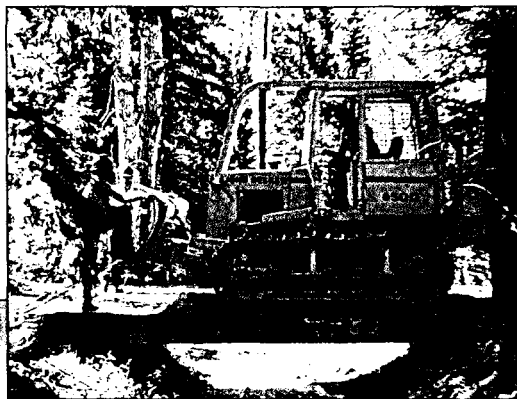
Montana

EXH 7

EXHIBIT
DATE 1/23/95
HB

Forestry BMP's

Best Management Practices



The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

Forest Stewardship Guidelines for Water Quality

Includes information about the 1991 STREAMSIDE MANAGEMENT ACT

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NAT. RESOURCES SUB COMMITTEE

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