MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION

Call to Order: By **CHAIRMAN JOE BARNETT**, on January 24, 1995, at 3:00 P.M.

ROLL CALL

Members Present:

Rep. Joe Barnett, Chairman (R) Rep. John "Sam" Rose, Vice Chairman (Majority) (R) Rep. Don Larson, Vice Chairman (Minority) (D) Rep. Jon Ellingson (D) Rep. Dick Green (R) Rep. Harriet Hayne (R) Rep. Rick Jore (R) Rep. Gay Ann Masolo (R) Rep. Judy Murdock (R) Rep. Karl Ohs (R) Rep. George Heavy Runner (D) Rep. Robert R. Story, Jr. (R) Rep. Jay Stovall (R) Rep. Lila V. Taylor (R) Rep. Cliff Trexler (R) Rep. Kenneth Wennemar (D)

Members Excused: Rep. Bill Ryan & Rep. Dore Schwinden

Members Absent: None

Staff Present: Connie Erickson, Legislative Council Jaelene Racicot, Committee Secretary

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

Committee Business Summary: Hearing: HB 212, SB 44, HB 235 Executive Action: None

HEARING ON HB 212

Opening Statement by Sponsor:

REP. SHIELL ANDERSON, HD 25, stated HB 212 was a good bill with some cleanup language for the pesticides act. He said there were some labeling requirements and some accountability for users of pesticides.

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HB 212 clarified the Department of Agriculture's role in the pesticides act. He asked the committee to remember one thing about the bill and "that was by encouraging compliance with labeling requirements ... we as pesticide and herbicide users keep our house clean."

Proponents' Testimony:

Leo Giacometto, Director of the Department of Agriculture, said they wanted to clean up the language and bring it into compliance and uniformity with the federal rules and regulations. Mr. Giacometto stated they wanted to make sure there was some "teeth" in the bill to help enforce it because the penalties were there to do that.

Mr. Giacometto then explained the changes were in the bill starting with section 1, page 2, line 19, which dealt with "a licensee that does not satisfy a judgment imposed by the court, the Department could revoke their license." Another amendment on page 3 addresses the authority of the Department to conduct investigations. He said at the present time the Department was doing this but the attorneys felt the Department needed to clarify the language. The Department would have statutory language to ensure a person subject to investigations understands the powers of the state so it's not left to administrative rules in statute.

Upon passage of this bill, the Department would be required to obtain permission or a warrant. "Someone cannot come on to that property without having prior permission or received a warrant to conduct that investigation; again, this protects their rights."

On page 3, line 17 clarified the language "to inspect or investigate" a person even though they may not be currently licensed. At the present time the Department does not have the authority to do so, therefore they cannot protect the environment or the pesticide use because they do not have the authority to conduct an investigation.

Subsection (3) deals with amendments that would be presented later to make sure buying and selling agreements are not affected by this law. Mr. Giacometto explained, for example, if a person purchased a piece of property where there has been a spill or an underground tank or some type of a possible contamination of the soil. He said they wanted to clarify who would be responsible for that.

Page 6, lines 4 through 20 puts some "teeth" into the act. This would raise the civil penalty from \$1,000 to \$2,500 and on a first violation for a farm applicator the civil penalty would be raised from \$200 to \$500. He said the increases in penalties would help deter people and "if someone stepped over the line, at least we'd have the authority to punish them." HOUSE AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE January 24, 1995 Page 3 of 10

He said page 7, line 5 "provides for the misuse of pesticides, not only proven harm, but exposure as well. Somebody who is misusing pesticides and caused another person and people to be exposed could be prosecuted. He said if they didn't have that authority for the exposure, then ten or 20 years later they might have difficulty proving harm.

The other proposed violations described on page 7 dealt with federal law. He said there were some new federal laws that have been passed and the state language needed to be clarified to show these were also violations. If they make this in compliance with federal law, they could possibly lose their program and the EPA would take over the program and enforce the law. He said, "We are very cautious that we're trying to maintain the ability for Montana to regulate and not have the feds come in and do the regulating."

He said page 7, line 19 clarified there could be one violation occurring in two years which was changed from one year. Also on page 7, line 24 through 28 they wanted to delete that part of the statute to make it more consistent with other state statutes.

He said all administrative civil penalties that would be assessed by the agency would be subjected to review by the Montana Administrative Procedures Act and also by a district court judge. This means whatever the Department does as a civil penalty, 99.9% would be a mutual agreement between the defendant and the Department and it must meet with the Montana Administrative Procedures Act.

Mr. Giacometto referred to page 6, line 21 through 25. He said one of the main issues of the rules are agricultural commodities. The Department wanted the authority to turn this over to the district court if a violation occurred. Then beginning on line 26 to line 29, page 6 this provides where a violation of the act could become a felony. The person must wilfully or intentionally carry out an unlawful act. An example of this is if a person used an agricultural chemical or pesticide to inflate the value of a commodity, but at the same time make that commodity unable to be consumed, possibly enhancing their income but at the same time possibly poisoning someone.

Overall, the act has been working, it just needed some clarification language. Montana was a leader when it came to environmental issues and the ag community has been in support of bringing everything up to standard.

Lorna Frank, Montana Farm Bureau, stated they were in support of HB 212. She said it was a good bill and good for agriculture.

Bob Stephens, Montana Grain Growers, was in support of HB 212. Mr. Stephens handed in testimony by Pam Langley from the Montana Agricultural Business Association. EXHIBIT 1 HOUSE AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE January 24, 1995 Page 4 of 10

Paul Newby, Bozeman, stated he was in general support of HB 212 but he had some concerns with several parts of the bill. He said many landowners have fears of being held responsible for what someone else had done to the land.

Note: Mr. Newby referred to different parts of the bill, but did not have the amended form of the bill REP. ANDERSON and other previous proponents had referred to. Mr. Newby then got bill the members of the committee and proponents had.

He then referred to section 4, page 5 and read the amended form. He said he wouldn't argue with the changes, but they would benefit from not restricting their access to other courts. Mr. Newby said when government agencies are given the power to make a felony out of issues such as most of these we have dealt with in the state, he has not seen a great problem as yet at the state level, but has witnessed this type of power misused greatly at the federal level. He said he had been victimized by a federal agency referring to the same kind of issue and this issue was generated from a false report. He asked if the legislature, through passage of this bill, would be placing a great deal of power in people who could misuse it.

John Bloomquist, Montana Stockgrowers Association, stated REP. ANDERSON had some amendments that would address some of the concerns of Mr. Newby. He said the amendments had been discussed with the Department and were accepted by them. Mr. Bloomquist then explained the amendments.

John Arrigo, Department of Health and Environmental Sciences, was in support of HB 212. He read testimony by Steve Pilcher, Division Administrator of the Department of Health and Environmental Sciences. EXHIBIT 2

Maureen Cleary-Schwinden, Women Involved In Farm Economics, urged the committee to support the bill with the amendments John Bloomquist presented to the committee.

John Semple, Association of the Montana Aerial Applicators, stated with the amendments they would support HB 212. He said his group did have concerns with line 14 through 20 on page 4. However, they voted to support the bill but would appreciate changes to that.

Larry Brown, Agricultural Preservation Association, stated his organization wanted to remain neutral to HB 212, but with the amendments they would support it. He said they were very concerned about the penalty portion of the bill and that both departments would have enforcement capabilities. He said passage of the bill with the amendments would take care of his concerns.

Deborah Smith, Attorney from Helena representing the Sierra Club, supported this bill especially since it is favored by the agricultural community. She hoped the Department of Agriculture

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used all the authority it had to enforce this act. She said she had not been able to review the amendments. She added the Sierra Club was supportive of citizen lawsuits and urged the committee to support the bill.

Leo Giacometto stated he was in support of the amendments presented by John Bloomquist from the Montana Stockgrowers Association.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. HARRIET HAYNE asked **REP. SHIELL ANDERSON** to explain John Semple's recommendations. **REP. ANDERSON** stated that he fully supported the amendments presented by **Mr. Bloomquist.** He then proposed an amendment to address the recommendations by **Mr.** Semple. He said the present language on page 4 could open it up to litigation. **REP. ANDERSON** gave an example where a person who spilled pesticides on a property goes bankrupt and though it was entirely his fault, property owner may be liable, because he is not able to pay the damages. He felt the language was unnecessary. He stated the language also appeared on the bottom of page 8 lines 27 through 30 and on top of page 9, lines 1 through 3. He wanted that language deleted.

REP. DON LARSON asked **Ms. Smith** to comment on the proposed amendment by **REP. ANDERSON. Ms. Smith** stated she would respond to his request but she needed to review the amendment beforehand.

REP. JON ELLINGSON asked **REP. ANDERSON** about the amendments he now supported that deleted reference to private cause of action and wanted **REP. ANDERSON** to explain why he now supported it. **REP. ANDERSON** stated that language in the bill was not as clear as the proposed amendments.

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

REP. ELLINGSON asked **REP. ANDERSON** if there would be any private cause of action in the absence of a formal indemnification agreement. **REP. ANDERSON** asked **REP. ELLINGSON** to provide him with an example. **REP. ELLINGSON** stated what he thought of as a private cause of action that would exist in common law is if someone caused damage to a property as the result of the misuse of pesticides. He said, "I would want to make sure by deleting this section which I think exists right now." **REP. ANDERSON** stated he did not think they were taking away a person's cause of action. He said what they were doing was clarifying "that person should go after the person who has accepted liability for that and you need to be a former owner of that property."

REP. STORY asked **REP. ANDERSON** that on page 7, line 5 he felt the language there needed better clarification referring to the

"exposure to humans." **REP. ANDERSON** replied he had a good point and clarification was needed.

REP. STORY asked Leo Giacometto about the clarification on page 7, line 5 to do with "exposure to humans." Mr. Giacometto stated whatever was done to it, it needed to be clear. Mr. Giacometto then gave an example. He said, "If we have someone in Japan pick up a newspaper or turn on CNN and they hear of some producer that had contaminated his grain trying to beat the protein level, and we find that grain before it gets to any channels, all that has happened is that they have exposed that ag commodity to a chemical. Now there hasn't been any harm because nobody has consumed it, but what you have done now you have exposed that ag commodity to this pesticide and nobody's had any harm, but at the same time he intentionally did that to try and beat the system." He said if they had not caught it, people could have become deathly ill or even die.

REP. LARSON asked **Ms. Smith** to comment on the proposed amendment by **REP. ANDERSON. Ms. Smith** stated it was not clear to her that the bill as written would grant citizen suit status anyway. She said what the amendments say is that anyone that may have an independent private cause of action existing under any other law that may exist whether it was common law or any other statutory law isn't precluded by the passage of this act. She said she did not see harm and it would be beneficial to leave that portion in the bill.

REP. ROSE asked **REP. ANDERSON** if he would get the bill along with all the amendments in a gray bill for the committee to consider. **REP. ANDERSON** stated that he would do that and if the chairman wanted it in a subcommittee he would do that.

REP. ELLINGSON asked John Bloomquist about the section of not precluding a private cause of action did he have a problem with that left in there. Mr. Bloomquist stated he has heard of three different types of interpretation and the section needed some clarification.

<u>Closing by Sponsor</u>:

REP. ANDERSON stated he would work to get the bill clarified and this was a good bill and he urged the committee to support it.

HEARING ON SB 44

Opening Statement by Sponsor:

SEN. TOM BECK, SD 28, stated they are trying to increase the penalties for certain cattle to run at large. He tried to address the problem of taking or rescuing a trespassing animal from the possession of a person who lawfully retains the animal, for unlawful possession of a stray. He said one of the main

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highlights in the bill was the "willful negligence of moving of livestock from their owner's customary range to another area." He said there was an amendment approved by the Senate on page 3, line 11 through 19.

He said SEN. LOREN JENKINS was there to explain the amendment.

SEN. LOREN JENKINS, SD 45, stated when the bill hit the Senate floor he had a problem with "negligently" on page 3, line 7. He said when someone moves cattle in the fall they would sometimes pick up a neighbor's cattle, especially if they run all solid colored cattle. He stated he worked with the Department of Livestock and SEN. BECK and that was how they derived subsection (2).

Proponents' Testimony:

Cork Mortensen, Executive Secretary of the Board of Livestock, urged the committee to support the bill. Mr. Mortensen handed in written testimony. EXHIBIT 3

Larry Brown, Agricultural Preservation Association, stated this was a good bill and the amendment made it a "better bill." He urged the passage of SB 44.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. MURDOCK asked Marc Bridges, Administrator of the Department of Livestock's Brands Enforcement Division, if she had a problem with the negligence and if it could apply to any operator. Mr. Bridges stated that presently "willful" was an element of theft which is a felony. He explained that "negligence" was an element that had to be proven. He then read the definition of negligence which was "the failure to use such care as a reasonably prudent and careful person would use under similar circumstances. It is the doing of some act which a person of ordinary prudence would not have done under similar circumstances or failure to do what a person of ordinary prudence would have done under similar circumstances." He presented the committee an example of negligence. He said in the fall when a rancher gathers his/her cattle and happens to gather some neighbor's cattle, this is negligence.

REP. MURDOCK asked **Marc Bridges** if this would apply to a person that did all of the proper things and still accidently gathered one of the neighbor's cattle. **Mr. Bridges** stated he did not believe it would. He said in 1994 they inspected 2.4 million head of cattle and they recovered 4,237 strays and he said when a dollar value was assessed at \$3,198,000, it was "turned back to the rightful owner." He said out of the 4,237 strays, many times there are continual occurrences.

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REP. STOVALL asked **Mr. Bridges** how they defined second and third offenses. **Mr. Bridges** stated the Department writes about 100 warning tickets to everyone they wish to appear. He said he gives the person an opportunity to correct their previous failure. He said the first offense is usually a warning. The second offense would be a \$25 fine.

REP. ROSE asked **Mr. Bridges** if there are regulations allowing a stallion or non-registered bull to run loose on the range. **Mr. Bridges** replied that they do. Any male equine over the age of one year cannot run at large.

REP. KARL OHS said he was having a problem with the words willfully and negligence. He asked **Mr. Bridges** to explain willfully. **Mr. Bridges** stated willful was an act of intent. He said when someone willfully and knowingly does something it would be an willful act.

REP. GREEN asked Mr. Bridges about a person who was meaning to be negligent, wouldn't he have to have knowledge of those animals in his possession. Mr. Bridges replied not necessarily. REP. GREEN asked Mr. Bridges if a person who has gathered his cattle and accidently got someone else's cow would have to have knowledge that cow was in his herd to be negligent. Mr. Bridges said to some degree that was correct. REP. GREEN discovered the animal was not his and did nothing about it, then it becomes negligence. Mr. Bridges indicated that was correct.

REP. STORY asked **Mr. Bridges** if a person was convicted for a first offense and then seven years later he was convicted again, would that be his second offense? **Mr. Bridges** stated in the most broadest terms, that's correct.

<u>Closing by Sponsor:</u>

SEN. BECK stated they had the bill back to committee twice and back to the floor four times. He said there was a lot in the bill that deserved the committee's consideration. He said there was a problem out there with the county attorneys not having the authority to prosecute people who consistently repeat this violation.

HEARING ON HB 235

Opening Statement by Sponsor:

REP. GRADY, HD 55, stated HB 235 was recommended by the Legislative Auditors to correct the problem. He said this act generally revises the funding of certain Department of Agriculture programs. He urged the committee's passage of HB 235.

Proponents' Testimony:

Leo Giacometto, Director of the Department of Agriculture, stated the legislative auditors assess the accounts to ensure the departments are doing things according to statute. He stated that under the noxious weed act, a trust fund that reached the limit of \$2.5 million would be capped and the funds could never be spent. At the present time, the fund had reached the \$2.5 million limit. The Legislative Auditor stated they needed a new account "since it has reached the cap." They said the Department needs to have a state special account. He said this was not changing any laws, it would just set up a new account.

Also, the Legislative Auditor said it was not clear how the administrative costs would be charged and they recommended language to specify what they could charge and assess a cap of not more than 12%.

Next, the legislative auditors recommended the Department to invest the anhydrous ammonia fees and the interest would be credited back to the account. He said under current law, there was a possibility the money that was in the account had to go to the general fund instead of back to the account it was paying for. This account was the anhydrous ammonia account.

Last, he referred to the alfalfa seed act and that the interest received on those investments could stay in that fund.

Bob Carlson, Silver Bow County Weed Supervisor and the statewide Weed Supervisor's Representative to the Legislative Committee on the Montana Weed Control Association, wanted to go on record in support of the bill.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. ROBERT STORY asked **Mr. Giacometto** if most of the bill the legislature was dealing with were earmarked funds and if any of the funds were in jeopardy of being de-earmarked. **Mr. Giacometto** stated it depended on another bill and at the present time he did not know how the bill would be structured. He stated he would not be surprised to see all of these de-earmarked.

<u>Closing by Sponsor:</u>

REP. GRADY stated HB 235 was basically a housekeeping bill and urged the committee to pass it. He said he hoped if they decided to de-earmark the program, this would not destroy it.

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ADJOURNMENT

Adjournment: 4:38 p.m.

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Chairman JOE

Secretary RACICOT, JAELENE

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HOUSE OF REPRESENTATIVES

Agriculture

ROLL CALL

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Rep. Sam Rose Vice Chairman, Majority	V		
Rep. Don Larson, Vice Chairman, Minority	1		
Rep. Jon Ellingson	~		
Rep. Dick Green			
Rep. Harriet Hayne			
Rep. George Heavy Runner			
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Rep. Jay Stovall			
Rep. Bill Ryan ?			
Rep. Dore Schwinden?			
Rep. Robert Story			
Rep. Lila Taylor			
Rep. Cliff Trexler	V		
Rep. Ken Wennemar			
Rep. Joe Barnett, Chairman			



EXHIBIT

HB212 House Agriculture Committee Hearing Testimony Pam Langley, executive director

The Montana Agricultural Business Association, which represents pesticide applicators, dealers, distributors and companies, supports House Bill 212 as drafted with one exception.

Our one concern with the legislation has been that new provisions on cleanup might supersede any buy-sell agreements or lease agreements. However, we understand that sponsor Rep. Shiell Anderson has an amendment which will assure that these agreements take precedence.

With the amendment, we support House Bill 212.

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			COGSWELL BUILDING 1400 BROADWAY
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	(406) 444-2406 FAX (406) 444-1374	Memorandum	PO BOX 200901 HELENA, MONTANA 59620-0901
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FROM:	Steve Pilcher	Division Administrator	
DATE:	January 24, 19	995	
		(406) 444-2406 FAX (406) 444-1374 FROM: Steve Pilcher	STATE OF MONTANA (406) 444-2406 FAX (406) 444-1374 Memorandum FROM: Steve Pilcher/Division Administrator

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SUBJECT: Testimony in support of HB-212

The Department of Health and Environmental Sciences supports HB-212; specifically Section 5 and Section 7. Section 5 eliminates the requirement that ground water monitoring data be reported to the Department of Health and Environmental Sciences. This reporting requirement is unnecessary because in cases where pesticides are detected at levels that exceed the triggers specified in 80-15-212, MCA, the Department of Agriculture shall develop and implement a specific agrichemical management plan. Management plans must be submitted to the Department of Health and Environmental Sciences for review.

Authority granted to the Department of Health and Environmental Sciences to assess administrative penalties is unnecessary because the department has existing administrative penalty authority under the Montana Water Quality Act and the Montana Public Water Supply law. The department supports elimination of this duplicate authority.

Amendments to House Bill No. 212 First Reading Copy

Requested by Representative Anderson For the House Committee on Agriculture, Livestock, and Irrigation

> Prepared by Connie Erickson January 23, 1995

1. Page 3, line 9. Following: "<u>water and</u>" Insert: "environmental protection agency"

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2. Page 4, lines 21 and 22. Strike: "<u>An</u>" on line 21 through "<u>party</u>" on line 22 Insert: "The provisions of this subsection (3) are not intended to void or affect indemnity or liability agreements between the person who owns, leases, or has possession or control of the site and the person who sold the site, who is the lessor, or who has relinquished possession or control of the site"

4. Page 5, line 29. Following: "law" Insert: "notwithstanding the existence of other remedies of law"

5. Page 6, line 4. Following: "-" Insert: "When a person makes pesticide applications in more than one county on a commercial basis without a license or permit or operates in violation of a lawful written order of the department in more than one county, the district court of Lewis and Clark County has concurrent jurisdiction with the district court of another county where a violation has occurred or is about to occur and the department may select and proceed in the court that is most appropriate under the circumstances."

6. Page 6, line 21. Strike: "<u>either</u>" 7. Page 6, line 22.
Strike: "affected"
Insert: "significantly harmed"

8. Page 6, line 24. Strike: "<u>the</u>"

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and the symbolic states of the states of the

9. Page 6, line 25. Strike: "<u>of the first judicial district, Lewis and Clark County</u>"

10. Page 6, line 26. Following: "<u>who</u>" Insert: "willfully"

11. Page 7, line 16. Following: "<u>with</u>" Insert: "pesticide"

12. Page 7, line 16. Following: "<u>water and</u>" Insert: "environmental protection agency"

13. Page 9, lines 4 and 5. Strike: "<u>An</u>" on line 4 through "<u>party</u>" on line 5 Insert: "The provisions of this subsection (2) are not intended

to void or affect indemnity or liability agreements between the person who owns, leases, or has possession or control of the site and the person who sold the site, who is the lessor, or who has relinquished possession or control of the site"

EXHIBI

SENATE BILL 44

Mr. Chairman and members of the committee, for the record my name is Cork Mortensen and I am the Executive Secretary to the Board of Livestock. The Board and Department of Livestock support this legislation and urge you to support Senate Bill 44 for the following reasons:

This bill simplifies various penalty provisions by standardizing misdemeanor penalties. It will then be easier for judges to apply the sanctions imposed in a more or less uniform manner.

This bill also changes section 81-5-101 by insertion of the term "negligently". That will allow the judicial system to more easily prosecute individuals <u>if</u> circumstances warrant. You should also be aware that this change is being done at the behest of various county attorneys.

Thank you for your time and consideration in this matter. Once again, the Board and Department of Livestock urge you to support this legislation. If you have any questions or need more information, I should be happy to respond.

Thank you,

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E.E. "Cork" Mortensen, Executive Secretary To the Board of Livestock

HOUSE OF REPRESENTATIVES VISITORS REGISTER

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Lorna Trank	Mr. Tami Bureau		4
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JOHN ARRIGO	SHES		
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John Bloomsmist	Mt. Stockgrover		
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Leo Giacometto	Dept of Aq	~	
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