

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION

Call to Order: By **CHAIRMAN CHUCK SWYSGOOD**, on March 6, 1995, at 3:15 p.m.

ROLL CALL

Members Present:

Sen. Charles "Chuck" Swysgood, Chairman (R)
Sen. Gerry Devlin, Vice Chairman (R)
Sen. Thomas A. "Tom" Beck (R)
Sen. Don Hargrove (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Greg Jergeson (D)
Sen. Linda J. Nelson (D)
Sen. Bob Pipinich (D)

Members Excused: None

Members Absent: None

Staff Present: Doug Sternberg, Legislative Council
Jennifer Gaasch, Committee Secretary

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

Committee Business Summary:

Hearing: HB 411, HB 445, and HB 520
Executive Action: HB 411, HB 445, HB 520 and HB 235

{Tape: 1; Side: A}

HEARING ON HB 411

Opening Statement by Sponsor:

REPRESENTATIVE SCOTT ORR, HD 82, Libby, presented HB 411. He said HB 411 has to do with federal 401 permits and 404 state water permits. HB 411 conforms Montana law with federal law.

Proponents' Testimony:

John Fitzpatrick, said the Army Corps of Engineers requires a drench and fill permit. They divide that permit into two categories. There is one large permit for major river crossings and large dams, and there is a smaller permit which is for

activities in low-flow areas and for minor activities. HB 411 only addresses the small activities. He said there were four permits to be reviewed on water quality conditions. They were asking the state of Montana to give up its right to review the nationwide permit and allow the Army Corps of Engineers to take care of that function. He said HB 411 was important to agriculture and wetlands.

Larry Brown, representing the Agricultural Preservation Association and the Montana Graingrowers Association, stated they supported HB 411. The agricultural community was concerned with the wetlands situation across the state. He said that someone in Wyoming was prohibited by bureaucrats from planting a bed of roses on her land because of a wetlands designation near by. It shows there are some problems that need to be taken care of.

Lorna Frank, representing the Montana Farm Bureau, stated they supported HB 411.

Tammy Johnson, representing the Citizens United for a Realistic Environment, urged the committee's support on HB 411. There are a lot of permitting standards and the Department of Health is doing this optionally and for that reason they could give up that authority.

Candace Torgerson, representing the Montana Stockgrowers Association and the Montana Cattlewomens Association, stated they supported HB 411.

Ken Williams, representing the Montana Power Company and Entech, stated they support HB 411. It is important to recognize that the exclusions covered by the permits do require that they notify the Corps previous to conducting activity. He said they were concerned with the delays and the additional oversight. He urged the passage of HB 411.

Pam Langley, representing the Montana Agribusiness Association, stated they supported HB 411.

Opponents' Testimony:

Janet Ellis, representing the Montana Audubon Legislative Fund, read her written testimony. (EXHIBIT #1)

Stan Fraiser, representing the Montana Wildlife Federation, stated it was his understanding if a person applied for the permits they would receive one.

Debbie Smith, representing the Sierra Club, stated they were opposed to HB 411. She said the proponents indicated that one of the reasons for HB 411 was to bring them in compliance with federal standards. She said they are not out of compliance with the federal standards. The state water quality standards that the DHES enforces through the water quality certifications are

not set by the federal government, they are set only by the state. **Ms. Smith** said what the 404 permit does is regulate dredge and fill activities which the federal Clean Water Act defines as point source activities. They do not have to ensure that state water quality standards will be met. HB 411 would remove the state from any authority to review at all when the water quality standards are being met. While there are several other agencies that have authority to deal with water quality issues, the only agency in this state that has any authority to protect Montana's water quality is the Department of Health and Environmental Sciences. She said they should allow them to continue to have that authority. She urged the committee to table HB 411.

Steve Pilcher, representing the Department of Environmental Sciences, stated they opposed HB 411. They feel that it is a states right issue. Section 401 in the Clean Water Act mentions that the Department of Health and Environmental Sciences (DHES) has the authority to make sure the water quality standards are complied with. The Corps of Engineers is not known as a water quality agency. He said it was taking the Corps of Engineers longer to process the permits. He stated DHES has never denied certification on an agriculture-related Section 126 nationwide permit. Irrigation diversions are excluded from this review.

Informational Testimony:

None

Questions From Committee Members and Responses:

SENATOR DON HARGROVE asked if the DHES has time to do that work? **Steve Pilcher** replied they have to spend some time to assure adequate review, but they are able to get it done in a timely fashion. **SEN. HARGROVE** asked why DHES has not requested legal authority to do that? **Steve Pilcher** replied they did not start a new permit program. They have not approached the legislature to do that. The authority had been in the federal Clean Water Act in Section 401 since 1972. **SEN. HARGROVE** asked if it was true that they did not start doing it until 1992? **Steve Pilcher** replied they have issued 401 certification prior to 1992. **Jack Thomas, the water quality program manager,** said prior to 1992 the state had waived all 401 certification. **SEN. HARGROVE** asked about their relationship with the Core of Army Engineers? **Steve Pilcher** said the Core of Engineers has specific congressional authority and responsibility in Section 404 of the federal Clean Water Act. They also recognize the authority designated to the states in Section 401. In the two different sections in the federal Clean Water Act they each had a respective goal to play in dealing with those incidents.

SENATOR GERRY DEVLIN asked what the average time was in issuing a permit? **Steve Pilcher** replied that review of their files in

December of 1994 indicated that DHES review took generally 5 to 10 days to ensure a permit. He said that was an average. **SEN. DEVLIN** asked what was the longest that he could remember? **Steve Pilcher** referred the question to **Jack Thomas**. **Jack Thomas** replied the average time on an agricultural application was 1 to 2 days. **SEN. DEVLIN** asked what would cause longer times? **Jack Thomas** replied there are times when they have to consult other staff members to get their expertise.

Closing by Sponsor:

REP. ORR said it was very likely that someone would not fill a 10-acre wetland. If it did happen it would be a major project and there would already be a lot of agencies involved. It would probably never happen. It would take some of the duplication of the process out. This would not cause major pollution of the waters. No one wants the waters polluted or degraded. He said they are protected and asked for the committee's concurrence on HB 411.

HEARING ON HB 445

Opening Statement by Sponsor:

REPRESENTATIVE EDWARD GRADY, HD 55, Canyon Creek, presented HB 445. He said HB 445 helps in controlling weeds in Montana. It creates a weed-seed-free hay program within the Department of Agriculture. They have a voluntary program currently. Forage producers will have their crops voluntarily inspected. All seed used for recreation must be weed-seed-free. Certification standards will be established in the Department of Agriculture. The program will be implemented and developed within the first 2 years and the department will assist forage producers and users to comply within this time period. The department can assess civil penalties, embargoes, or seek injunctions when violations occur. The program budget is \$61,899, and about \$29,550 will be contracted to county entities to conduct weed-seed-free hay inspections. It would not affect the weed trust grants. There is extra money there that is not being used for grants. This would be the ideal use of that money. If they do not get going they will not be able to take their hay out-of-state. He said **SENATOR TOM BECK** knows a lot about the issue. He would not be closing because he had to go to another meeting.

Proponents' Testimony:

Maureen Cleary-Schwinden, representing Women Involved in Farm Economics (WIFE), stated they promote progressive and aggressive control of noxious weeds within the state. She said HB 445 would deal with those problems and they support the bill.

Steve Johns, a rancher, a forage producer, and a marketer in Canyon Creek, MT. area, passed out a letter (EXHIBIT #2) and read his written testimony. (EXHIBIT #3)

Monte Shur, from Townsend, MT., read his written testimony. (EXHIBIT #4)

Bud Burkhart, from the Gallatin Valley, said he has been in the program for a long time and it is a very good program. He said he had shipped hay into California. It is hard to ship agricultural products into California, but if it is certified weed-seed-free, they take it. He said the states surrounding Montana are going into this program. He urged the committee's support on HB 445.

Jim Freeman, the weed supervisor in Cascade County and he also was representing Bob Carlson, the weed supervisor in Silver Bow County, said they have been working for a long time to create the program. It would help in keeping noxious weed seeds out of the back country and out of shipments. He urged the committee to support HB 445.

Blake Wordal, the Lewis and Clark County Commissioner, stated the county supports HB 445.

Ron Carlstrom, the Gallatin county Extension Agent, read his written testimony. (EXHIBIT #5)

Gene Suber, representing Montana State Extension Office, said in 1972 he was the county extension agent who started the program. He urged the committee's support on HB 445.

Ed Kirby, representing United Right of Way, he urged the committee's support on HB 445.

Lorna Frank, representing the Montana Farm Bureau, stated they supported HB 445.

Ann Rowser, Broadwater County weed supervisor, stated they supported HB 445.

Larry Brown, representing the Agricultural Preservation Association, stated they supported HB 445.

Gary Gingery, representing the Department of Agriculture, stated they were in support of HB 445.

There was a letter submitted from Wayne Pearson (EXHIBIT #6) and a letter from Ray Sanders. (EXHIBIT #7)

EXHIBIT #8 was left for the committee's use.

Opponents' Testimony:

None

Informational Testimony:

None

Questions From Committee Members and Responses:

SEN. HARGROVE asked them to run through how he can be sure that he was not bringing in weed-seed hay? **Ron Carlstrom** said the program was set up so that he would go out and inspect the field of hay for certification. He then would give the producer certification certificates and also would inspect his stack site to make sure there were not any noxious weed seeds present there. They give the producer tags. It is currently on an honor system to put the tags on the bales in the field that they certify. They cut around areas where noxious weed seeds are found in the fields. HB 445 would provide some sort of a regulation.

SENATOR GREG JERGESON asked if the USDA or any federal agency had any federal standards nationally that describe what weed-seed-free standards are? **Gary Gingery** replied USDA does have some standards on noxious weeds. Primarily they do not impact the State of Montana directly. **SEN. JERGESON** asked if their standards were lower than the State of Montana's or any state? **Gary Gingery** said there is a list of noxious weeds put up by USDA. That is a nationwide standard. He said it is only the noxious weeds that are defined under state law that are involved here. He said there were no federal standards that set up the states and adheres the minimum they have to follow. **SEN. JERGESON** replied the question was raised about a person who was back-packing into wilderness area. Does the department, who might be administering a particular wilderness area, have any standards that have to be met? **Gary Gingery** replied a lot of Forest Service offices in Montana require that there be certified hay, but they are basing that upon currently the noxious weeds as established in the noxious weed laws in Montana. He said they would still follow that under the program in HB 445.

SEN. DEVLIN asked if there was a similar bill like this in another legislature. **Gary Gingery** replied it could have been in the 1991 session. There was a resolution passed for the Department of Agriculture, working with the industry, to come up with a plan.

SEN. BECK asked **Gary Gingery** how many plants were on the noxious weed list in the state? **Gary Gingery** replied he did not know an exact number. In category 1 there was 10 and in category there are 2. There would be 12 total.

SENATOR REINY JABS asked if they spot check the hay that comes into the parks? **Gary Gingery** they do have people who will ask if the hay is certified weed-seed-free.

CHAIRMAN SWYSGOOD asked if there was anything in HB 445 that would prevent a producer from raising hay that was not certified and selling it for commercial use? **Gary Gingery** replied no. The only requirement is if they sell the hay to a state or county agency during right-of-way work or to a public utility. All of that must be certified under law.

SEN. BECK asked if there were certain requirements such as the Forest Service might put on for packers and guides that they might require them to have certified weed-seed free hay before they can go in. **Gary Gingery** replied all of the National Forests have established the program and the only hay they can bring in is weed-seed-free.

SEN. JERGESON replied the program was voluntary unless a producer wanted to sell hay to a number of government agencies or to private people who would insist on that quality of hay. **Gary Gingery** replied that if a person wanted to sell the hay as being free of noxious weeds, then it must be certified. **SEN. JERGESON** asked if it was anticipated that there would be a zero tolerance for noxious weed seeds? **Gary Gingery** replied there are some weeds they see as being noxious weeds.

{Tape: 1; Side: B; Approx. Counter: .1; Comments: Mr. Gingery was cut-off when the tape was changed.}

SEN. JERGESON said he was looking at the enforcement provisions. Under the Investigation and enforcement authority the Department has, a person who voluntarily wishes to participate in a program where there are around four pages of enforcement activities and yet the bill does not say what the potential tolerance was going to be. **Gary Gingery** replied that it was his understanding that because the tolerance can be variable, they see their role as doing compliance assistance. The only time they would pursue someone was if they were totally violating the act. He said eventually they would work out a time frame for compliance. **SEN. JERGESON** asked about the language on page 9, lines 23 and 24. He asked if a person could dispose of that storage as noncertified hay? **Gary Gingery** replied if he does get embargoed and he decided he wanted to sell it to someone else as regular hay, the embargo would be looked at by the council. It would only be when he wanted to sell his product as certified hay that the embargo would remain on the product. **SEN. JERGESON** replied he would feel more comfortable if there was an insertion following "storage" on line 24 that would say "as noxious weed-seed-free" so that he may not move it or dispose of forage as noxious weed-seed free, but make it clear that he could dispose of it although not having it at that standard.

Closing by Sponsor:

SENATOR TOM BECK closed for **REP. GRADY**. **SEN. BECK** replied what they were trying to accomplish was that there were some people who wanted to raise weed-seed-free hay. The Highway Department

is requiring that straw and the seeding of banks has to be certified as weed-seed-free. He said it was a good bill and a good start.

EXECUTIVE ACTION ON HB 445

Motion/Vote:

SEN. JERGESON MOVED amendments to HB 445. On page 9, line 24, following "forage", insert "as noxious weed-seed-free". The MOTION CARRIED UNANIMOUSLY.

Discussion:

SEN. DEVLIN said there was going to be a lot of rulemaking done and perhaps they should put a sunset on the bill in 2 years.

SEN. BECK replied if it was not going right it would probably be back in the legislature anyway. If it is going right then they would have to come back and take the sunset off. He said if it got outside of the noxious weed portion of the bill, then they would have some concerns.

CHAIRMAN SWYSGOOD replied that was his only concern.

SEN. HARGROVE replied this is really just a first step. There were not very many regulations in the bill and a sunset is not necessary.

SEN. HOLDEN replied they want to encourage the program and raise weed-free hay. He said there are already some new sections of law and the farmer might not want to sell the weed-seed-free hay because of the new laws.

CHAIRMAN SWYSGOOD replied they have the option to sell weed-seed-free hay or not.

SEN. BECK replied that they have to sign up for that program.

SEN. HOLDEN said they want people to sign up and do it, so you should not put so many restrictions on the bill.

CHAIRMAN SWYSGOOD stated that not everybody was going to do it because of the cost and the restrictions.

SEN. HARGROVE noted that they were not going to get everybody to do it, but it is a good step.

CHAIRMAN SWYSGOOD replied they check the hay in his area.

Motion/Vote:

SEN. PIPINICH MOVED TO CONCUR IN HB 445 AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

SENATOR TOM BECK will carry HB 445 on the Senate Floor.

HEARING ON HB 520

Opening Statement by Sponsor:

REPRESENTATIVE DANIEL FUCHS, HD 15, Billings, presented HB 520. He stated the intent of HB 520 was to include ostriches, rheas, and emus under current livestock laws. He said this was a rapidly growing sector in Montana.

Proponents' Testimony:

Emily Lovberg, the Director of the Montana Ostrich Association, she said there were 150 families in the organization. She read her written testimony. (EXHIBIT #9) She passed out a rundown of HB 520. (EXHIBIT #10)

Brant Riehl, the President of the Montana Ostrich Association, stated they currently view them as livestock in Montana. He said the taxation was still in discussion. The birds are a viable industry. He said their goal was to achieve 1% of the red meat market. He urged the committee's support on HB 520.

Cork Mortensen, representing the Board of Livestock, stated they support HB 520. They currently provide the industry with animal health, imports, health certificates, lab services, and much more. He said these birds have the same sort of diseases as poultry and it is a new industry. He said they feel they can assist the industry.

B.J. Young, Vice President of the Montana Ostrich Association, stated as a producer she would appreciate the support on HB 520 so that they could enjoy the same protection that the other livestock producers have.

Larry Brown, representing the Agricultural Preservation Association, stated they support HB 520. They think it would be a good opportunity for another addition to the livestock market.

Opponents' Testimony:

None

Informational Testimony:

None

Questions From Committee Members and Responses:

SENATOR HOLDEN asked **Cork Mortensen** about the first part of the bill where there were definitions and at the end of the bill it was talking about airplanes. What was that concerning? **Cork Mortensen** said that the part about airplanes was not a part of their statute. **Doug Sternberg** replied in the drafting of the bill they were adding the new animals to the definition of livestock. The word "livestock" appears throughout the Montana Code in various forms. The idea in drafting the bill was to include the animals in the definition of livestock wherever it appeared in the Montana Annotated Codes. He said basically they would include those new species in the definition of livestock. The section on planes was unlawful landings. That was in the transportation code.

SEN. PIPINICH asked what 67-1-204 had to do with HB 520? **Doug Sternberg** replied if they look on Subsection 5, on line 10, page 9, it says the willful and malicious use of aircraft in stunting or diving over livestock is unlawful. He said the new animals would be included in the definition of livestock.

CHAIRMAN SWYSGOOD said it was only in statute as a definition of livestock and everywhere else where that definition of livestock appeared had been stricken from the bill, so why should this section not be struck also? **Doug Sternberg** replied he thought it could be taken out without affecting the bill.

SEN. DEVLIN asked on page 16, there were dogs chasing livestock, do we need that also? **Doug Sternberg** replied that only applies to part 7 and therefore they could actually reference throughout the livestock sections. They could say that the definition of livestock as given in 81-2-702 would apply to those sections, but they would still have to amend the bill.

SEN. DEVLIN asked **Emily Lovberg** about number 5 of **EXHIBIT #10**, about notifying the Department of Livestock. He said he did not think they had to. **Emily Lovberg** replied she could be mistaken. She was under the impression they had to.

SEN. JERGESON replied he understood the penalty for a dog or wildlife who was harassing livestock was death. On page 9 what is the penalty for the malicious use of aircraft to harass livestock?

SEN. BECK asked **Ms. Lovberg** if the purpose to be classified under livestock was for tax purposes? **Ms. Lovberg** replied that was partially the reason, but their main reason was for protection, harassment purposes, jurisdictional issues for the Department of Livestock, and for the criminal code. **SEN. BECK** asked if they would be wanting the Department of Livestock for shipment of the animals and inspection purposes? **Ms. Lovberg** replied they were currently under the jurisdiction of the Department of Livestock.

SEN. NELSON asked if there was an organization for rheas? **Ms. Lovberg** replied that their numbers are small enough that they have joined with the Ostrich Association and they provide services to them. **SEN. NELSON** asked how they mark the birds? **Ms. Lovberg** replied one was by micro chip identification and it was inserted behind the ear of the bird. A visual identifier was by a leg band. **SEN. NELSON** asked how they marketed the meat? **Ms. Lovberg** replied they have just receive voluntary inspection by USDA of the meat. They have one facility in Montana slaughtering the herds.

SEN. JERGESON replied the malicious use of an aircraft toward livestock was a misdemeanor punishable by \$500 or imprisonment for no more than 6 months.

SEN. DEVLIN asked about the per capita tax levy for the birds? **Cork Mortensen** replied he did not know how that was going to be worked out. The industry agreed they were willing to pay those taxes, but it would be worked out. **SEN. DEVLIN** asked if the chickens and geese and ducks and others were taxed? **Cork Mortensen** replied they were.

SEN. DEVLIN asked how the Department of Revenue was going to figure out the per capita tax. **Mike Noble** replied currently ducks and others are not taxed and they are exempt in statute. He said that would be where these animals would be placed. They would tax them by working with the industry and they have already been in contact. **SEN. DEVLIN** asked if it would be a per capita or what? **Mike Noble** replied it would be an advalorem tax on value.

SEN. BECK asked if they were going to be taxed on the meat value or on the breeding value? **Mike Noble** replied they have come up with the slaughter value, such as with cattle.

Cork Mortensen replied the present per capita on poultry was \$.02.

CHAIRMAN SWYSGOOD replied under rulemaking they have the right to set that per capita tax. **Cork Mortensen** replied they do and the industry has agreed to that.

SEN. HOLDEN asked **Brant Reihl** what the difference was between the different birds. **Brant Reihl** replied that an ostrich was a two-toed bird, the rhea and emu were three-toed birds. There are different functions of them. Ostriches market being for their feathers and meat quality. Emus have the market of their oils and their meat. Rheas are somewhat the lesser of the two.

Closing by Sponsor:

REP. FUCHS said anything they do to concur with the bill will be fine with him. He said **SEN. HARGROVE** would carry the bill on the Senate floor.

EXECUTIVE ACTION ON

Discussion:

CHAIRMAN SWYSGOOD stated this was the bill concerning the noxious weed management program. He asked about the state liability.

Doug Sternberg addressed the third section which was to be repealed. He said there was nothing that would necessitate any different handling of the state's liability for the four members of the alfalfa seed committee. The repeal would be to make the liability consistent with every other committee that had been established by law. The state liability sections would continue to apply.

SEN. BECK replied that currently they can be held personally responsible.

Doug Sternberg replied that was an accurate description of the statute.

Motion:

SEN. BECK replied as long as that would make it consistent with the other committees, he would **MOVED TO CONCUR IN HB 520.**

Discussion:

SEN. PIPINICH replied there was the question of the 12%.

CHAIRMAN SWYSGOOD replied it was currently at 12% in the bill.

SEN. JERGSON replied the 3% of surcharge proceeds was what the old language was, but total surcharge proceeds have nothing to do with administrative expenses. He said the new language would limit them to 12% of the total program expenses which can be used for administration.

CHAIRMAN SWYSGOOD replied they testified that administrative costs were around 9.7%, but this would allow them up to 12%.

Vote:

The MOTION CARRIED UNANIMOUSLY.

SENATOR BECK would carry HB 520 on the Senate floor.

EXECUTIVE ACTION ON HB 520

Motion:

SENATOR DON HARGROVE MOVED HB 520.

Motion:

SEN. DEVLIN MOVED to amend HB 520 and take the parts of the bill out where it was referring to livestock if they are included in the definition of livestock throughout the bill.

Discussion:

Doug Sternberg replied it would be a judgement call. The word livestock was not defined in some of these sections. He said if they took out section 7 that would be alright. He said they do need to leave it in the definition sections.

SEN. DEVLIN replied that was the objective of the bill.

SEN. BECK replied there was a different definition under stolen livestock than the other definitions.

Doug Sternberg replied that was part of the problem.

SEN. BECK said they had to make it appropriate if they want to use the definition of livestock. There are some places where there are different animals mentioned and that should be left in the bill.

SEN. JERGESON asked on these sort of things, where it may not be necessary to repeat the language, does the code commissioner look at that and bring something in the next legislative session to clear that up?

CHAIRMAN SWYSGOOD replied he did not know if they could always bring the code commissioner in to dress up language they had put in the session before.

Doug Sternberg replied they would not have a problem if they were using a consistent definition of livestock throughout the bill.

SEN. DEVLIN replied the did not want to make it worse. SENATOR DEVLIN WITHDREW HIS MOTION.

Vote:

The MOTION CARRIED UNANIMOUSLY.

SENATOR HARGROVE will carry HB 520 on the Senate floor.

EXECUTIVE ACTION ON HB 411

Motion:

SEN. BECK MOVED HB 411.

Discussion:

SEN. JERGESON replied he was concerned that the Senate has adopted some other legislation relating to water quality that makes some changes and if those bills were to be passed they would create the new water quality standards by which the Department of Health would become involved in these issues. He said if they adopted HB 411 there will not be a water quality review. He said he would resist the bill.

SEN. HARGROVE said that they never deny anything and they take less time and it would not take money. He said he did not see why the bill was necessary.

SEN. BECK asked if there was some discussion about a permit that was delayed.

SEN. HARGROVE said he thought there was, but no one had answered that question.

SEN. JABS asked Larry Brown why they needed the bill. Larry Brown replied the 401 certification gives the department authority to act on anything they think they might need to act on outside the premises of what is in the Water Quality Act or the Public Water Supply Act. He said that allows them to participate in the permitting process with the Army Corps of Engineers. It allows them to participate in administration of the state Water Quality Act on all federal lands. He said there is a lot of duplicate permitting that has been going on. He said where wetlands comes in is under section 404 of the Clean Water Act. It brings the corps into the areas where the general permit does not apply. That is where there is a wetland disturbance over 10 acres in size or in streams that flow less than 5 cubic feet per second. He said by expanding the program, the corps is dictated to allow no net loss of wetlands. The corps and the state are saying they can apply wetlands jurisdiction to almost any parcel of land. HB 411 was trying to get rid of duplicate permitting and to give jurisdiction back where it belongs under the federal Clean Water Act.

SEN. HOLDEN asked about the pictures of eastern Montana that they were saying they were wetlands, what is the point of that? Larry Brown replied the 404 permitting process could be applied to either one of the situations; if the water table or standing water was to occur on those pot holes for 7 to 14 days, then it would be designated a wetland. He said there are a lot of places in eastern Montana. They were using the 404 authority to say

that those are wetlands. He said then they would have to get a permit to do anything on that land.

Vote:

The MOTION CARRIED by a Roll Call Vote of 5 to 4 with SENATORS DEVLIN, BECK, HOLDEN, JABS, and SWYSGOOD voting yes and SENATORS HARGROVE, JERGESON, NELSON, and PIPINICH voting no. .

SENATOR BECK would carry HB 411 on the Senate floor.

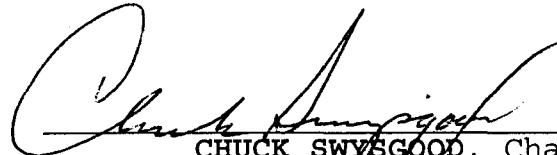
SENATE AGRICULTURE, LIVESTOCK & IRRIGATION COMMITTEE


March 6, 1995

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ADJOURNMENT

Adjournment: 5:15 p.m.


CHUCK SWYSGOOD, Chairman


JENNIFER GAASCH, Secretary

CS/jg

MONTANA SENATE
1995 LEGISLATURE
AGRICULTURE COMMITTEE

ROLL CALL

DATE _____

3-6-95

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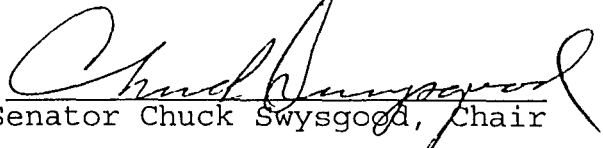
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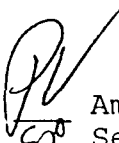
SENATE STANDING COMMITTEE REPORT

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March 7, 1995

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration HB 411 (third reading copy -- blue), respectfully report that HB 411 be concurred in.

Signed: 
Senator Chuck Swysgood, Chair


Amd. Coord.
50 Sec. of Senate


Senator Beck
Senator Carrying Bill

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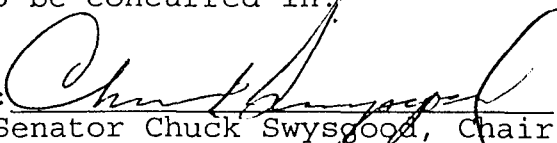
SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 7, 1995

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration HB235 (third reading copy -- blue), respectfully report that HB235 be concurred in.

Signed:


Senator Chuck Swysgood, Chair




Amd. Coord.
Sec. of Senate

Senator Beck
Senator Carrying Bill

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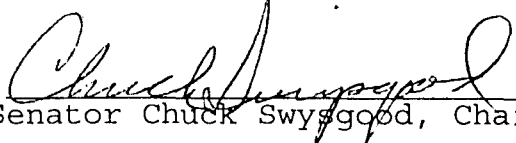
SENATE STANDING COMMITTEE REPORT


Page 1 of 1
March 7, 1995

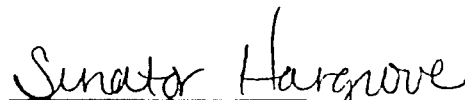
MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration HB520 (third reading copy -- blue), respectfully report that HB520 be concurred in.

Signed:


Senator Chuck Swysgood, Chair


Amd. Coord.
Sec. of Senate


Senator Hargrove
Senator Carrying Bill

531127SC.SPV

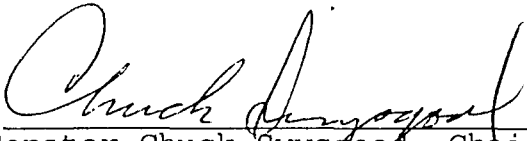
SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 7, 1995

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation having had under consideration HB 445 (third reading copy -- blue), respectfully report that HB 445 be amended as follows and as so amended be concurred in.

Signed:


Senator Chuck Swysgood, Chair

That such amendments read:

1. Page 9, line 24.


Following: "forage"

Insert: "as noxious weed seed free"

-END-



Amd. Coord.
Sec. of Senate


Senator Carrying Bill

531119SC.SPV

MONTANA SENATE
1995 LEGISLATURE
AGRICULTURE COMMITTEE
ROLL CALL VOTE

DATE 3-6-95 BILL NO. HB 411 NUMBER _____

MOTION: TO CONCUR IN HB 411

[illegible]

Montana Audubon Legislative Fund

P.O. Box 595 • Helena, MT 59624 • 443-3949

Senate Agriculture Committee

Testimony on HB 411

March 6, 1995

Mr. Chairman and Members of the Committee,

My name is Janet Ellis and I am here today representing the 2,400 members of the Montana Audubon Legislative Fund.

First I want to give you some background on this program, then I want to explain why we oppose this bill.

Currently there are 36 authorized nationwide permits under Section 404 of the Clean Water Act. Nationwide permits apply to a wide range of activities: from bank stabilization projects to small hydropower.

Under Section 401 of the Clean Water Act, the State of Montana can either review or waive review of nationwide permits. Currently the Dept. of Health and Environmental Sciences has waived certification on all nationwide permits except Nationwide Permit Numbers 12, 13, 16 and 26.

Nationwide Permits # 12 - Utility Line Backfill and Bedding. Discharge of materials for backfill or bedding for utility lines. Materials resulting from trench excavation may be temporarily (up to three months) sidecast into waters of the United States provided that the material is not placed in such a manner that it is dispersed by water currents or other forces.

Nationwide Permit # 13 - Bank Stabilization. Bank stabilization activities necessary for erosion prevention provided that certain restrictions are met concerning the size and location of the project. Notification requirements may apply. The nationwide permit may not be used to place material in any wetland, or place material so that the surface waters flowing into or out of a wetland are impaired.

Nationwide Permit #16 - Return Water From Upland Contained Disposal Areas. For dredging and disposal activities, this permit allows states to review these operations for compliance with established water quality standards.

Nationwide Permit #26 - Headwaters and Isolated Waters Discharges. Discharges of dredged or fill material into isolated wetlands, headwaters of streams (under 5 cubic feet per second, average annual flow) and lakes, as long as the discharge does not cause the loss of more than 10 acres of waters of the United States. If the project will result in the loss of waters of the United States greater than one acre, the applicant

must file a "pre-discharge" notification with the Corps, which then requires a site check by the Corps, and a quick review of the project by wildlife agencies.

The 404 program, administered by the Army Corps of Engineers, is a program that, most importantly, regulates the filling of wetlands. The 401 Program, administered by the Montana Department of Health and Environmental Sciences (DHES), is used for a totally different purpose: protecting water quality.

We oppose HB 411 for the following reasons:

1. The Army Corps of Engineers does not review 404 permits for their impact on water quality. We need this review.
2. The conditions that are generally place on permits help protect Montana's water quality. This makes sense.

- On Nationwide Permits # 12 and #13, the Army Corps of Engineers automatically puts certain conditions on these permits so that the permit complies with Montana's water quality laws. If this bill passes, these blanket conditions would not be attached to these permits.

- No Nationwide Permit #16 has been used in Montana to date.

3. We question whether the state can actually certify all nationwide permits. Certification means that the DHES certifies that these projects comply with Montana's water quality laws. If some of these projects might not conform to Montana's water quality laws, how can the state certify them?

4. Nationwide Permit #26

Nationwide Permit #26, the permit that caused the controversy that brought this bill before you, is the most commonly used nationwide permit in Montana. It allows the filling of up to 10 acres of isolated wetlands, the headwaters of streams, and lakes. Ten acres is the size of seven football fields. Filling up to ten acres of these areas can affect water quality. The state should review Nationwide Permit #26 applications for water quality compliance.

Of the 66 Nationwide #26 applications reviewed in 1994 by DHES: DHES waived their review on 52 of these permits; they placed conditions on 13 permits; and denied 1 permit. The conditions of the permit are designed to protect water quality. The reason that this bill is here is that the mining industry did not like the conditions that were placed on its permit for the Zortman-Landusky Mine. It does not make sense to destroy this entire program because one entity was angry about the conditions of a permit.

- After reviewing the conditions placed on Nationwide #26 permits, they

appear reasonable. A sampling of conditions used by DHES follows:

1. Applicant must monitor the stability of the structure and submit a semi-annual report to DHES.
 2. Applicant must install erosion control structures.
 3. Applicant must mitigate for the loss of the wetland filled by establishing or enhancing wetlands of similar function adjacent to the site.
 4. Applicant authorizes DHES or DFWP to inspect the site to ensure compliance with design standards.
 5. DHES prohibits the use of waste material (broken concrete rubble) for streambank stabilization.
 6. DHES suggests the use of an alternate project design/ alignment to minimize impacts to state waters.
 7. Applicant must dissipate water velocity to avoid erosion problems.
- The project under question was Application # 199490259. According to an August 31, 1994 memo from DHES, they placed 3 conditions on this permit. According to a September 26, 1994 letter (3 weeks later), the company had agreed to the conditions of the permit and was granted DHES certification. The conditions were obviously reasonable enough that the company decided to readily comply.

We oppose this bill because it makes sense for us to examine these permits, especially under Nationwide Permit # 26, to protect Montana's water quality.

Nationwide Permit #12 Conditions:

NW
#12 { (9) Water Quality Certification. In certain states, an individual state water quality certification must be obtained or waived. In Montana, the Department of Health and Environmental Sciences, Water Quality Division (WQD) has denied water quality certification on this Nationwide Permit. The WQD will provide conditional certification for this Nationwide permit on a case-by-case basis, provided that the following special conditions are included: 1) the trench must be backfilled immediately upon final installation of the utility line and 2) that the excess material resulting from trench excavation may be temporarily sidecast (up to 14 days) into waters of the United States provided that the material is not placed in such a manner that it is dispersed by currents or other forces. On Native American Reservations in Montana, the U. S. Environmental Protection Agency has denied water quality certification for this Nationwide Permit. Therefore, water quality certification must be obtained or waived on a case-by-case basis prior to authorization under this Nationwide Permit.

Nationwide Permit # 13 Conditions:

NW
#13 { (9) Water Quality Certification. In certain states, an individual state water quality certification must be obtained or waived. Montana Department of Health and Environmental Sciences- Water Quality Division has provided conditional water quality certification provided that: a) the bank stabilization activity is less than 200 feet in length on all streams except the Missouri River, the Yellowstone River, the Kootenai River, the Flathead River, and the Clark Fork River for which up to 500 feet in length will be allowed; b) that no unsuitable material will be used for bank stabilization including tires and asphalt or concrete fragments.

MADISON COUNTY WEED BOARD

P.O. BOX 278 • VIRGINIA CITY, MONTANA 59755 • (406) 843-5594 • (406) 843-5325 fax

March 3, 1995

Honorable Charles Swysgood
Montana State Senator
Montana State Capital
Capital Station
Helena MT 59620

Re: House Bill 445 - MWSFF


Senator Swysgood:

As Madison County Weed Coordinator, I would like to ask for your support of House Bill 445 - Montana Weed Seed Free Forage that the Senate Agriculture Committee will be reviewing March 6, 1995.

Madison County has implemented the use of noxious weed seed free forage since September 1, 1989 on all Federal lands within Madison County and have had great success with producers of this type of forage and user of designated Federal lands since that time.

Not only does this keep the spread of noxious weed seed down, but it makes the producer and buyer aware of what noxious weeds are and their threat to everyone. It is an easy way to educate growers, buyers and the general public about the invasion of noxious weeds.

Sincerely yours,



BRIAN BEAL
WEED COORDINATOR
MADISON COUNTY

cc. Steve Johns, Producer Committee Member
Tony Novak, Chairman, Lewis & Clark County Weed District
Harold Stepper, State Weed Coordinator

MR. CHAIRMAN AND COMMITTEE MEMBERS

MY NAME IS STEVE JOHNS

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

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

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

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

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

AS A PRODUCER I AM IN HOPES YOU WILL SUPPORT THE LEGISLATION AS AMENDED BY THE HOUSE OF REPRESENTATIVES FOR THE BETTERMENT OF MONTANA AGRICULTURE.....

My name is Monte Schnur, and I reside east of Townsend. I support HB 445.

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

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

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

MAR 6 1995

SENATE AGRICULTURE

EXHIBIT NO. 5

DATE 3-6-95

BILL NO. HB 445

MR. CHAIRMAN AND COMMITTEE MEMBERS

*For the record my name is Ron Carleton,
County Extension Agent*~~MY NAME IS~~ LARRY HOFFMAN, LEWIS AND CLARK COUNTY EXTENSION AGENT

AND ADVISOR TO THE MNWSFF PROGRAM.

*He asked me to read
the following testimony.*

MONTANA HAS BEEN ~~the~~ FORERUNNER IN THE NORTHWEST REGION FOR "CLEAN
HAY" AND THROUGH HB 445 WE CAN CONTINUE TO BE PROGRESSIVE.

IN THE EARLY 70'S SEVERAL COUNTIES ACROSS THE STATE INITIATED
A WEED FREE "CERTIFICATION PROGRAM".

IN THE MID 80'S THE PROGRAM WAS PILOTED ON A STATEWIDE BASIS.

Prevention
THE "~~PREVENTION~~" PROGRAM HAS GROWN FROM A HANDFUL OF PRODUCERS
TO 270 PLUS STRONG PARTICIPANTS WITH OVER 13,000 ACRES AND OVER
23,000 TONS PRODUCED IN THE "NOXIOUS WEED SEED FREE FORAGE
PROGRAM".

OVER 60% OF THOSE IN THE PROGRAM HAVE BEEN CERTIFYING FOR FIVE
YEARS OR MORE.

the
IN 1994 CROP YEAR 35 COUNTIES PARTICIPATED IN THE PROGRAM. THE
13,000 PLUS ACRES WERE INSPECTED BY 59 TRAINED INSPECTORS.

THE NOXIOUS WEED SEED FREE PROGRAM AND LEGISLATION HAS BEEN STUDIED
SINCE 1991. IT WAS INITIATED THROUGH A SENATE JOINT RESOLUTION.

THE MONTANA PROGRAM HAS BEEN MODIFIED AND ADOPTED BY SURROUNDING STATES AND BY STATE AND FEDERAL AGENCIES AS A PROGRAM OF MERIT AND AS A MEANS TO MANAGE AND PREVENT THE SPREAD OF NOXIOUS WEEDS.

BENEFITS OF SUCH A PROGRAM AND LEGISLATION ARE;

- *CERTIFICATION OF -ALFALFA, GRASS, GRAIN HAY, STRAW, PELLETS AND CUBES.

- *STATEWIDE POLICIES, RULES AND GUIDELINES

- *COUNTY REPRESENTATION

- *INSPECTIONS OF FIELDS AND STORAGE AREAS

- *NOXIOUS WEED SEED FREE PRODUCTS FOR LIVESTOCK, REVEGETATION PROJECTS AND INTERSTATE MARKETS

- *OPPORTUNITY TO MOVE FORAGE PRODUCTS FREELY IN RESTRICTED AREAS.

- *PRODUCER HAVING A WEED FREE PRODUCT TO MARKET

- *PROVIDES WEED MANAGEMENT AND EDUCATION TO PRODUCERS ETC.

- *A MEANS TO PREVENT AND MANAGE NOXIOUS WEEDS.

- *THE LEGISLATION "ONLY" EFFECTS TRANSPORTATION AND PRODUCTION OF "NOXIOUS WEED SEED FREE FORAGE".

RULES AND POLICIES ONLY REGULATE "CERTIFIED FORAGE"

- *FEES ASSESSED WILL BE MONITORED BY THE ADVISORY COUNCIL AND BE HANDLED BY COUNTIES

- *FEES DESIGNATED FOR ADMINISTRATION WILL BE PUT INTO A "SPECIAL REVENUE ACCOUNT"

- *FORAGE PRODUCTS WILL BE USED BY PUBLIC UTILITIES - LOCAL,

EXHIBIT 5

DATE 3-6-95

HB 445

STATE, AND FEDERAL - THEY WILL NEED TO USE "CERTIFIED"
NOXIOUS WEED SEED FREE MATERIALS

*THE LEGISLATION WILL MAKE IT A PRODUCER DRIVEN PROGRAM
THROUGH THE "ADVISORY COUNCIL"

IN SUMMARY;

- * A STATE BACKED AND DIRECTED "CERTIFICATION" PROGRAM IS
NEEDED.
- * WITHOUT LEGISLATION PRIVATE OR INDIVIDUAL COUNTY PROGRAMS
WILL LACK UNIFICATION.
- * THE "CERTIFICATION" PROGRAM INSPECTS NOT ONLY FOR CATEGORY
I,II, AND III NOXIOUS WEEDS OF MONTANA BUT ALSO 36 OTHERS.
- * THE PROPOSED "CERTIFICATION" PROGRAM WILL ALLOW ACCESS TO
MARKETS IN MONTANA AND WITH ADJACENT STATES.
- * THE USE OF NOXIOUS WEED SEED FREE FORAGE WILL "MINIMIZE
AND/OR PREVENT" WEED SEEDS FROM SPREADING.
- * THIS LEGISLATION WILL MEET AND EXCEED ADJACENT STATE
REQUIREMENTS AND FEDERAL NEEDS.
- * THE LEGISLATION IS PRODUCER INITIATED
- * THE LEGISLATION WILL MAKE IT PRODUCER AND COUNTY RUN,
WITH STATE SUPPORT.

THANK YOU FOR YOUR TIME AND INTEREST IN MONTANA AGRICULTURE.....

W. J. Strom
W. J. Strom

Stillwater Weed Control



Box 344
Absarokee, Montana 59001
ph. 406/328-4165

County Extension Office
Columbus, Montana 59019
ph. 406/322-5334

SENATE AGRICULTURE

EXHIBIT NO. 6

DATE 3-6-95

BILL NO. HB 445

March 3, 1995

Senator Charles Swygard,

Our weed control district would like to request your support as Chairman of the Senate Agriculture Committee for HB 445. This legislation is needed to legitimize the work we are doing in the Noxious Weed Seed Free Forage program. It enables us to work with the government agencies and other states in stopping the spread of noxious weeds -

Thank you.

Wayne Pearson
Supervisor -

SENATE AGRICULTURE

EXHIBIT NO. 7DATE 3-6-95BILL NO. HB 445

TO: Senate Ag Committee

FROM: Flathead County Weed Board
Ray Sanders, Chairman

RE: House Bill 445

DATE: February 8, 1995

The Flathead County Weed Board has recently met with the Flathead County Hay Association with respect to House Bill 445. After a lengthy discussion, review, and a conference call to a Department of Ag official, we are adamantly against this bill introduced by Senator Beck.

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

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

We support bills to stop the spread of noxious weeds, but this bill will not help in the long run. We urge you to vote no on House Bill 445.

Thank you.

Ray Sanders/blm

SENATE AGRICULTURE

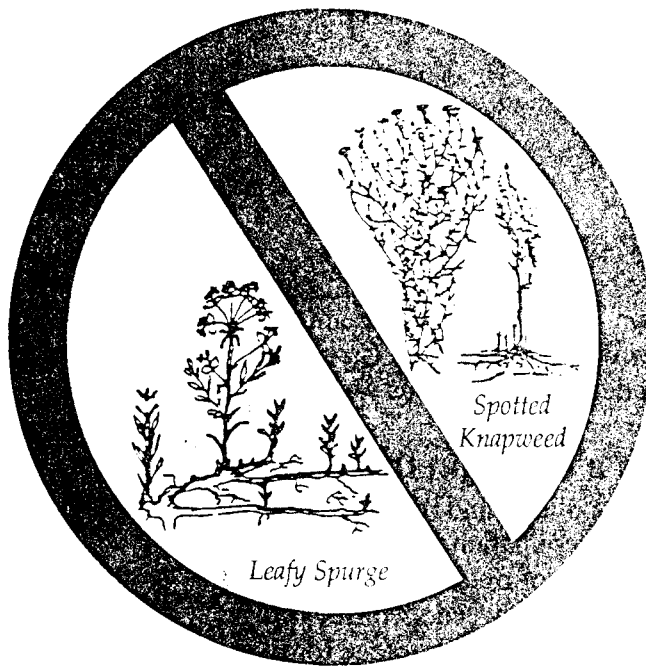
EXHIBIT NO. 8

MONTANA

DATE 3-6-95

BILL NO. HB 445

NOXIOUS WEED SEED FREE FORAGE



Noxious Weed Seed Free Forage List

MONTANA
STATE
UNIVERSITY
Extension Service

1994

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.

February 14, 1995

SENATE AGRICULTURE

EXHIBIT NO. ~~8~~ 9

DATE 3-6-95

BILL NO. HB 520

Legislation to Declare Ostriches, Emus and Rheas "Livestock"

What are these birds?

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

How many of these birds are in Montana?

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

How many Montanans are involved with these birds?

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

Why are we pursuing this legislation?

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

February 14, 1995

Rundown of House Bill 520

1. We are recognized as livestock under property tax law and per capita basis, (this funds the Dept of Livestock to regulate us). This taxation will not be determined until January 1996. Both Dept of Revenue and Livestock will want to meet with us to determine this tax rate.
2. We will be under the jurisdiction of the Department of Livestock. This gives them the authority for disease control, control of theft, harrassment and mischief concerning our birds.
3. Harassment by airplanes, helicopters, snowmobiles is considered criminal.
4. Dogs that attempt to harass or kill our birds can be shot.
5. Wildlife that is molesting, assaulting, killing or threatening to kill our birds can be shot. We must notify the Dept of Livestock within 72 hours if we do so.
6. If our birds are stolen, the thieves' vehicle may be seized and impounded
7. We have access to research and experimental stations for livestock.
8. We have access to the Crimestoppers Program. We will be asked to donate some reward money in a pool with other livestock people.
9. Farm workers hired to work with our birds will be considered farm workers under the broad sense of the law.

RUBY GULCH PERMIT CHRONOLOGY
ZORTMAN MINING, INC.

Date	Permit Chronology
July 8, 1993	Original plan for '85 buttress removal and captures system submitted to BLM/DSL
August 19, 1993	Application submitted for short-term exemption, 3A
August 20, 1993	DSL comments and questions on buttress removal
October 13, 1993	Authorization No. MT-180-93 issued for short-term exemption from surface water quality turbidity standards. Valid 10/15/93 to 12/31/93.
November 24, 1993	ZMI Response to DSL with revisions to reclamation plan of the 85 buttress
March 22, 1994	Environmental Assessment issued
March 29, 1994	Minor revision 94001 to operating permit 00096 and MTM-77778 is approved
April, 1994	Request to reschedule exemption date of the original 3A permit
April 19, 1994	Request for rescheduled 3A denied until a 404 permit is issued or deemed unnecessary
May 4, 1994	404 Application submitted to Army Corps of Engineers
August 13, 1994	DHES requested the Corps of Engineers withhold issuing a permit until 8/31/94
September 1, 1994	Submitted first response to questions on Ruby Plan by Army Corps of Engineers
September 13, 1994	Submitted second response to questions on Ruby Plan by Army Corps of Engineers
September 26, 1994	3A authorization received by DHES
September 28, 1994	Army Corps of Engineers authorized nationwide permit No. 199490259
October 11, 1994	Notice given to regulatory agencies that tailings removal would begin the third week of October, 1994

EXHIBIT 10
DATE 3-6-95
HB 520

FINDING OF NO SIGNIFICANT IMPACT
CONSTRUCTION OF BEAR GULCH ROAD

PROJECT NO. 5291

PROPOSED ACTION

This proposed project is the full reconstruction to current Geometric Design Standards with new horizontal and vertical alignment. This will include 7.75 miles of 29 ft. wide plant mix surfacing.

There are no main drainage crossings within this proposed project. No 404 clearance are required from the Corps of Engineers. New or additional right-of-way is needed, there will be no relocations.

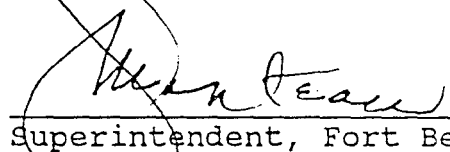
The proposed project begins at the intersection of Cow Creek Campground Road and Seven Mile Road near Zortman, Montana and ends at U.S. 191. The total length of the proposed project is 7.75 miles, all of which is within Phillips County and on and off the Fort Belknap Indian Reservation.

FINDINGS

This proposed project has been evaluated and has no significant impacts as shown in the attached Environmental Assessment (EA).

REASONS

The project will not induce significant land use changes nor promote significant land use changes nor promote unplanned growth. It will not affect existing access to adjacent property nor substantially change present traffic patterns. Therefore, this action will not individually nor cumulatively have a significant environmental impact.



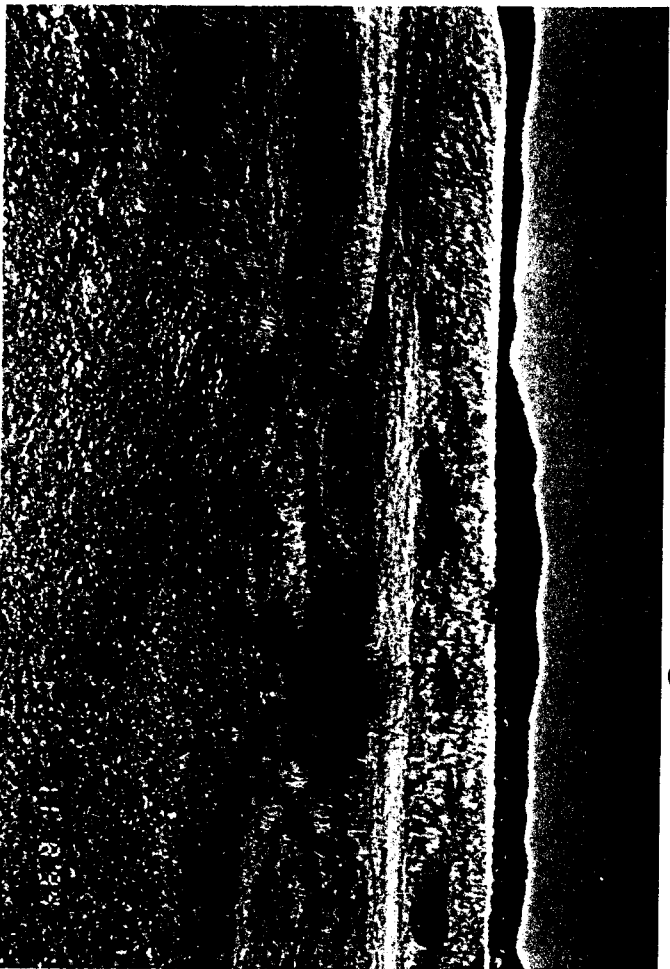
Superintendent, Fort Belknap Agency

7-22-91
Date

WETLANDS

The three physical characteristics for wetlands are:

- hydrology, being inundated with water that saturates the soil for 7 to 14 days each year;
- vegetation, plants that can and do survive in saturated soil;
- soil, which supports and reflects the hydrology and vegetation.



Photos of eastern Montana wetlands



Ruby Gulch Mill
Circa 1907



Ruby Gulch Mill
1993



Ruby Gulch
*Following Partial
Tailings Removal*

10 12 93

DATE March 6, 1995

SENATE COMMITTEE ON Agriculture

BILLS BEING HEARD TODAY: HB 411, HB 445, HB 520

Executive Action HB 235

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Steve Johns	self	HB 445	X	
Debbie Rossmiller	Montana Ostrich Assoc	HB 520	X	
Emily Lovberg	Montana Ostrich Association	HB 520	X	
BRAD RIEHL	MONTANA OST. ASS.	HB 520	X	
Pam Langley	MABA	HB 411	X	
Sandy Hardie	Montana Ostrich Assoc	HB 520	X	
Bill Hardie	Montana Ostrich Assoc	HB 520	X	
Cork Montenson	Brd. of Livestock	HB 520	X	
B.N. Young	MT OSTRICH ASSN	HB 520	X	
Deborah Smith	Sierra Club			X
Bud Burkhardt	SELF	HB 445	X	
Ron Carlstrom	Self Gallatin Co Extension	HB 445	X	
Bob Grubb	Gallatin County Weed	HB 445	X	
John Maher	Beaverhead County	HB 445	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3-6-95

SENATE COMMITTEE ON _____

BILLS BEING HEARD TODAY: _____

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Ann E. Rausen	Broadwater Co.	HB 445	X	
JAMES S FLEEMAN	CASCADE CO.	HB 445	X	
Blake Woodal	Lewis & Clark Co	HB 445	X	
Lee Ohliger	MT. Ag Business			
GENE Surber	MSU/Ext. & Self	HB 445	✓	
Maryellen Schuman	Broadwater Co resident	HB 445	✓	
Monte Schuman	"	HB 445	✓	
John Bloomquist	MT. Stockgrowers	HB 411	✓	
SCOTT OAR	HD 82	HB 411	✓	
Ken Williams	MPC/Entech	HB 411	✓	
Peggy Trenw	WETA	HB 411	✓	
Janet Ellis	MT Audubon	HB 411		✓
Larry Brown	Ag Pres. Assoc	411 ⁵⁵ 520	✓	
Sam Mockler	MT Coal Council	411	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 06/MAR/95

SENATE COMMITTEE ON AG

BILLS BEING HEARD TODAY: _____

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
HALEY BEAUDRY	EMERALD ENGINEERS	411	X	
Lorna Frank	MT. Farm Bureau	HB 445 HB 411	X	
Ken Hoovestol	MT. Snowmobile Assn.	411	X	
Stan Fresier	MWF	411		X
Steve Pilcher	DNER	411		X
Jamara I Johnson	CURE	411	X	
CANDACE TORGERSON	MCWA & MSGA	411	X	
Janet Ellis	MT Audubon	445	X	
Bob Williams	MT MINING	411	X	
GARY LANCELY	MT MINING	411	X	
MIKE MURPHY	MT WATER RES. ASSN	411	X	
Ed Kirby	United Right of Way	HB 445	X	
Maureen Cleary-Schwinden	WIFE	HB 445	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY