

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON FINANCE & CLAIMS

Call to Order: By **SENATOR GARY AKLESTAD, Chairman**, on Tuesday,
March 21, 1995, at 8:00 a.m., Room 108.

ROLL CALL

Members Present:

Sen. Gary C. Aklestad, Chairman (R)
Sen. Thomas F. Keating, Vice Chairman (R)
Sen. Thomas A. "Tom" Beck (R)
Sen. James H. "Jim" Burnett (R)
Sen. Loren Jenkins (R)
Sen. Ethel M. Harding (R)
Sen. Arnie A. Mohl (R)
Sen. Charles "Chuck" Swysgood (R)
Sen. Daryl Toews (R)
Sen. Larry J. Tveit (R)
Sen. B.F. "Chris" Christiaens (D)
Sen. Judy H. Jacobson (D)
Sen. Greg Jergeson (D)
Sen. John "J.D." Lynch (D)
Sen. Mignon Waterman (D)

Members Excused: Senator Eve Franklin

Members Absent: None

Staff Present: Taryn Purdy, Legislative Fiscal Analyst
Lynn Staley, Committee Secretary

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

Committee Business Summary:

Hearing: HB 9, HB 305
Executive Action: HB 4, HB 35

HEARING ON HOUSE BILL 9

Opening Statement by Sponsor:

REPRESENTATIVE ERNEST BERGSAGEL, House District 95, Malta,
sponsor, said that HB 9 is the Arts and Cultural Grants program.
He explained that the prospective projects are sent in for review
by the Arts Council who in turn submits a list to the legislature

for their review and action. Grants range from a cash match, grants, administrative services and endowments.

Proponents' Testimony:

Arlyn Fishbaugh, Director, Montana Arts Council, testifying in support of HB 9, said the cultural trust is administered by the Montana Arts Council, but the grants are made by a 16 member committee, 8 of whom are appointed by the Montana Historical Society and 8 by the Montana Arts Council. Because of low interest rates in the 1994-1995 biennium, grants were cut by 27 percent. This year the total of approximately \$600,000 in grants compares to \$1.3 million that was originally estimated for 1994-1995. In the current and next biennium, there has been a reduction of over \$1 million in funds to the program because of continued low interest rates. The total match for each dollar in project grants is \$12, and every \$100,000 in grant funds has an economic impact locally of \$2.5 million as it is spread across the state.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR LYNCH questioned how the Great Falls Symphony Association Ensemble could go from zero to \$8,700, which is on page 5, HB 9.

SENATOR CHRISTIAENS said there were two grant proposals, one for the Symphony and the other for their endowment. They asked to have them switched, which the committee did. The communities that asked for both did not get both. They originally asked for \$10,000 and got \$8,770, for their outreach work. The money will help support travel expenses for a quartet that goes to rural schools.

SENATOR LYNCH questioned the \$25,000 on page 6 for the Exalted Ruler Acquisition.

SENATOR CHRISTIAENS said there was money left over at the end and while it was not his motion, he fully supported it. He indicated that the Great Falls community has to raise \$1.1 million to keep the Russell painting of the Exalted Ruler in Montana, and the \$25,000 is considered a small amount to keep the painting in the state.

SENATOR LYNCH commented there was money left over because several projects were cut. He questioned where the Copper Village Museum and Arts Center was located, and noted that it went from a recommended \$7,800 to \$3,000.

REPRESENTATIVE BERGSAGEL said the Museum was located in Anaconda, and the reason for the reduction is that most of the grant

request was for educational training. Since there is another grant request providing that educational training, they felt the two could get together for writing grants.

SENATOR LYNCH asked if the cuts were on an individual basis or a percentage.

SENATOR CHRISTIAENS commented to **SENATOR LYNCH** that on page 6, the Butte Center for Performing Arts Renovation of Fox Theater received more than they had asked for, and it would all average out.

In questioning from **SENATOR SWYSGOOD** whether there was a request made for an amount of money for the Beaverhead Development Corporation Road Agent's Trail, **REPRESENTATIVE BERGSAGEL** said there was considerable discussion on the Road Agent's Trail, and the grant request was that an historical evaluation and recording of the trail would be done. The committee felt it was a difficult project to encompass and complete and questions that couldn't be answered.

SENATOR CHRISTIAENS said a problem with the project was that it crossed private property in many places. No one could identify the exact trail, and they didn't know if they could have a right-of-way to mark it. He indicated that the number of problems with the project and the amount of money available wouldn't begin to do what was needed.

When questioned by **SENATOR MOHL** what projects were in the Flathead area, **REPRESENTATIVE BERGSAGEL** said there was a grant for an Arts Center in Kalispell. Two requests were made, and the policy was usually that one of the grant requests was funded and the second was denied.

In questioning from **SENATOR KEATING** as to money appropriations, **REPRESENTATIVE BERGSAGEL** said the monies come from interest from a trust that was set aside, adding that total funds available is approximately \$1 million. He explained that since the interest rates were down, the amount of projects also went down. After administration and some other programs, \$562,720 has been approved for grants. They are predicting an ending fund balance of \$169,039 that would be available to work with next time.

SENATOR KEATING asked if this was the arts and aesthetic trust fund from the coal tax money, to which **REPRESENTATIVE BERGSAGEL** said it was. When asked by **SENATOR KEATING** what percentage of the coal tax money went into the trust, **REPRESENTATIVE BERGSAGEL** said it was .635 percent.

When asked by **SENATOR SWYSGOOD** how much the Road Agents requested, **REPRESENTATIVE BERGSAGEL** said it was \$8,100. **SENATOR SWYSGOOD** commented there was \$169,000 left in the fund.

SENATOR BECK said relative to the Exalted Ruler, if the money had to be raised by a certain time, he questioned what would happen to the money if the deadline wasn't met.

REPRESENTATIVE BERGSAGEL said the money reverts back to the program and goes into the ending fund balance. That would happen to any grant that can't be fulfilled or started.

SENATOR CHRISTIAENS informed the committee that one of the reasons they cut programs was to ensure that there was the \$20,000 available for the Montana Association of Symphony Orchestras that would be coming to Montana. He indicated that the Kennedy Center was putting up \$700,000 to bring the Symphony to Montana. Major symphonies would be in five communities and they will go to schools in the state during the time they are here. He concluded that it would give students in the state the opportunity to play with and hear a National Symphony.

Closing by Sponsor:

REPRESENTATIVE BERGSAGEL, in closing, said the projects are the committee's best effort. He commented that an ending fund balance is needed so the Arts Council people do not have to write a letter to grant recipients requesting that they return 27 percent. That has happened, and most of the people had already spent their money and didn't have the resources to send it back. In his opinion, the Arlee Historical Society Inc. on page 6, line 26, is the best grant request. Last session they came in and didn't realize that they would get a preference in their grant if they stated they had Native Americans on their board when actually half of their board was made up of Native Americans. They had spent all of their money on their grant, and they then received a letter saying they would have to send 27 percent back. They had bake sales, etc., and they made up the money and sent it back to the state of Montana. He felt that was the most reassuring thing he had seen in state government. This year when they came in for \$2,400, the committee felt people like that should be rewarded so they made the grant request for \$3,500. Other people also made the effort to return the money, which is why an ending fund balance of \$169,000 is needed.

HEARING ON HOUSE BILL 305

Opening Statement by Sponsor:

REPRESENTATIVE MIKE KADAS, House District 66, Missoula, sponsor, said HB 305 would continue funding the state's natural resource damage claim against the ARCO corporation for the cleanup of the upper Clark Fork River that was initially filed in 1983. A stay was put on by both parties in the suit shortly after that date and was in place until 1989 when ARCO pushed to have the stay lifted and the case put on a trial schedule. The state resisted the motion at that time, but ARCO insisted and prevailed in

court. In 1991 Governor Stephens, as trustee in the case, established an advisory committee consisting of the directors of State Lands, Fish, Wildlife and Parks, Department of Natural Resources, Department of Health, and the Attorney General as an advisory member, and requested funding so the state could begin to prepare for trial. The 1991 legislature loaned approximately \$4.9 million to the program, with approximately \$4.7 million being expended. Most of that went towards assessment in doing the scientific work. In the 1993 session, \$2.7 million was appropriated for the program with a shift from assessment to litigation. In 1993 there was a severe cash flow problem as well as a fund balance problem. The previous general fund loan was shifted, and the new \$2.7 million was to be a loan from the coal tax trust fund rather than the general fund in order to alleviate the cash flow problems. There are stipulations that any settlement or court action would pay that loan back with interest. In 1995, HB 305 would again use the trust fund, and the interest is calculated by using the interest calculation as prescribed by federal superfund law. Also, in 1993 and 1994 the state entered into some settlement talks with ARCO that established a procedure for settlement talks. During this time the trial was stayed and the trial schedule was stopped. The state did make an offer, but ARCO never made a counter offer; consequently, the state went back to court to ask that the trial get back on schedule. The program was begun in the Department of Health because the focus at that time was the assessment. Governor Racicot has now asked to have it moved to the Department of Justice because of the focus on litigation.

REPRESENTATIVE KADAS said they are suing under the federal superfund law, which is CERCLA, and under the state superfund law, which is CECRA. Under CERCLA, assessment and interest costs can be regained, while under CECRA, assessment and litigation costs can be regained, so it is important to be involved under both statutes. There is no guarantee that all costs will be regained, particularly pertaining to litigation. One difficulty existing is that the Salish-Kootenai Tribe wants to intervene in the suit; if they do, it would slow things up while they catch up with where ARCO and the state are. There may also be an appeal that could go on for some years. He concluded by stating that it is a very important lawsuit and is the state's opportunity in history to help fix the upper Clark Fork basin.

Proponents' Testimony:

Chris Tweeten, representing the Department of Justice and Attorney General Mazurek, emphasized that the state of Montana has already invested \$7 million in the lawsuit because ARCO made the decision to go to trial. He reminded the committee that the state is in litigation and spending this money today because ARCO decided to lift the stay in 1989, which the state resisted. When the legislature created this program in 1991, it had an enormous task of completing a natural resource damage assessment for the Clark Fork River Basin. They knew ARCO would spare no expense

with respect to the lawsuit, and the decision was made at that time that the state had to hire experts of equal national reputation to make its case in the lawsuit. The decision was made at that time to bring in outside counsel as there were no attorneys currently working in state government experienced in natural resource damage litigation. The State of Montana and Governor Stephens made the decision to hire **Kevin Ward, Denver, Colorado** to be lead counsel at that time. **Mr. Ward** is a nationally recognized expert in natural resource damage litigation. In creating the program, an in-house legal staff was created to compliment the outside counsel, and as time has gone on, more of the work has been done by the in-house legal staff because it can be done more economically. That is the reason they have not expended the amount that has been budgeted to outside counsel. However, they still do need the outside expertise. He concluded that the lawsuit is vitally important to the state and they need the appropriation in HB 305 to be successful.

Judy Browning, representing the Governor's office, testifying in support of HB 305, said the state has acted responsibly by keeping to the schedule the parties and the court have agreed to. There was some criticism initially about spending too much on outside counsel, but now in-house staff counsel are handling the case, with the lead attorney in Denver.

George Ochenski, representing Montana Council of Trout Unlimited, testifying in support of HB 305, said he has snorkeled in both the Big Hole River and the Clark Fork River and there is a big difference in the quality of the rivers. The Clark Fork is cemented with old sediment, very few types of aquatic insects and almost no fish. He said he had testified for the lawsuit in 1985 and hoped this is the last time he would have to testify for an appropriation for this lawsuit. He hoped that soon everyone could again enjoy the Clark Fork River the way it used to be.

Robert Collins, Senior Attorney and head of the Natural Resources Damage litigation program, Department of Justice, gave a brief summary of the status of the lawsuit. **EXHIBIT 1** and **EXHIBIT 2**

Robert Lane, Chief Legal Counsel, Department of Fish, Wildlife and Parks, presented testimony in support of HB 305. **EXHIBIT 3**

Opponents' Testimony:

SANDI STASH, Montana Manager for ARCO, testifying in opposition to HB 305, said she is troubled by how the lawsuit is represented to the decisionmakers. Mention was not made that there is a cleanup going on in the upper Clark Fork Basin and that in the last five years, nearly \$300 million has been expended on the same cleanup talked about in the lawsuit. Some notable projects are \$45 million on restoration of the Warm Springs ponds, \$30 million will be spent on the old works site in Anaconda. Due to

the work of the community; they are investing \$10 million in a golf course as a re-use property, which usually doesn't happen under superfund. She pointed out that part of their problem with the lawsuit is that they feel they are being asked to pay twice; once under order by the state of Montana EPA to do the cleanup they have willingly done and, secondly, in the lawsuit. The reason they were unable to settle with the state is they believe by federal statutes that this lawsuit is limited to a \$50 million cap. Also, the statutes are clear that damages can only be recovered for that which occurred post-1981. When ARCO purchased the Anaconda Company in the late 1970's, any impacts from the mining, milling and smelting occurred well before 1981. She commented that they found a lot of flaws in the technical data. For instance, the Butte ground water; Butte went to the Big Hole Valley for water needed for the mining, milling, as well as to support the people. Mining is not the only thing that has occurred in the Clark Fork Basin; the river is chronically dewatered, and they feel that has a lot to do with the fishery that river can support, along with other impacts with the metals. Also, the river runs along the interstate and the railroad, and there is not habitat when a river runs along an interstate or railroad. The things that were done for the mining, milling and smelting were not illegal at the time they were done, but were done under state permits, with full knowledge and acceptance of the state. As such, they have counterclaims in the lawsuit against the state. She noted that the lawsuit is getting a lot of attention outside Montana because, to her knowledge, it is the largest lawsuit of its type.

Questions From Committee Members and Responses:

SENATOR SWYSGOOD asked **Chris Tweeten** regarding a cap that the state is suing under.

Mr. Tweeten said he did not think there was a cap. He indicated that virtually everything **Ms. Stash** said as fact is actually a contested issue in the lawsuit. ARCO has proposed an affirmative defense saying their liability under CERCLA is limited to \$50 million. Case law does not support that argument, and a judge will decide whether or not that cap appears in federal law. ARCO has said there is no liability for anything that was deposited before 1981, but ARCO knows that is a contested issue in the lawsuit. They are asking this committee to make that judgment for the court.

When asked by **SENATOR SWYSGOOD** if the state's \$600 million lawsuit is fairly secure, **Mr. Tweeten** said they believe the \$600 million claim is well supported by facts and by statute. There is no guarantee that the amount recovered will be \$600 million.

In questioning by **SENATOR SWYSGOOD** if the cleanup done by ARCO is taken into account, **Mr. Tweeten** said some of the things ARCO has spent money on to clean up do not involve natural resource damage claims. In reference to the old works cleanup in Anaconda, there

are no natural resource damage claims associated with that so it would not duplicate anything the state is claiming damages for in the lawsuit. If ARCO has expended money to remediate natural resource damages covered by the lawsuit, they will not be charged again when judgment is entered in the case.

{Tape: 1; Side: 2; Approx. Counter: ; Comments: .}

Rob Collins, Department of Justice, said they are not asking for double recovery.

SENATOR SWYSGOOD commented that SB 330 and SB 331 dealt with degradation and water quality issues, and the department testified as it related to dissolvable and recoverable metals. He questioned if there was a trend now by the EPA in other states to go to the dissolvable method of measurement instead of total recoverable and if so, how strong would the state's case be.

Mr. Tweeten said ARCO has been supplying statistics in which they claim that some 40 states have adopted, or will adopt, in the near future, dissolvable versus total recoverable as the standard. However, the issue is a subject of extensive scientific debate, and the EPA has recently funded a number of studies with respect to that so the science of that issue is hardly settled. He said experts have made an assessment of the Clark Fork River Basin individually and specifically, and based on that study they have determined that the pollution with respect to metals should be measured using the total recoverable standard. The concern with SB 331 is that it was asking this legislature to adopt the science of dissolvable versus total recoverable; and they felt since that was such an open scientific question across the country, it would undercut the work done by the experts. ARCO scientists differ with the scientists the state of Montana has retained, and the court will have to make the decision.

SENATOR LYNCH asked **Ms. Stash** if it was ARCO that chose to lift the stay and go to court and now the state has to defend itself.

Ms. Stash said they didn't choose the lawsuit; they were sued. They did lift the stay and felt it makes good sense to stay the suit until the cleanup is done. It became apparent during the settlement discussions that everyone would be better served if the cleanup was finished and then a decision made if there are any residual damages to talk about. She added that the river system is getting cleaner every year as the cleanup is enacted.

SENATOR LYNCH questioned if much of **Ms. Stash's** testimony before this committee is what the attorneys would be using in court.

Ms. Stash said yes, adding that they feel they have an extremely strong argument on the before 1981 question and the \$50 million cap. She concluded that they believe they have a strong argument on the technical details.

When questioned by **SENATOR JENKINS** as to when a settlement could be expected, **Mr. Tweeten** said the court has entered a case management order which has set a schedule. Under that order, the parties are now answering what is called discovery, the sworn statements of experts on both sides. There is a date set in the order by which that has to be completed. Five or six months later, all of the pre-trial motions have to be litigated and decided by the court. At that point, there will be a final pre-trial conference scheduled, probably in December of 1996; a trial date can be set ninety days after that. Following that schedule, the trial would begin in March of 1997.

SENATOR JENKINS asked if the courts could look at the cleanup work that has been done and take that off the judgment and it then would not be \$600 million, or the state could win the case.

Mr. Tweeten said that was possible, but they are convinced they have a strong claim. While it may not be worth \$600 million, it is clearly worth hundreds of millions of dollars.

In questioning from **SENATOR JENKINS** if the attorneys were shifted to the Department of Justice, **Mr. Tweeten** said the entire program is attached administratively to the Department of Justice. The original loan in 1991 was a HB 2 appropriation. Governor Stephens decided in 1993 that the funding would not be in HB 2. For consistency in 1995, it is being appropriated through HB 305.

When questioned by **SENATOR JENKINS** where the FTE's were, **Mr. Tweeten** said they are shown as Department of Justice personnel.

When asked by **SENATOR JENKINS** if they were under the Department of Health last session, **Mr. Tweeten** said it was his understanding that when the executive order was signed in June, the program showed up for budgeting purposes as though it were in the Department of Justice for the entire biennium rather than just for the last six months.

SENATOR MOHL voiced concern why the Salish-Kootenai wanted to get involved in the lawsuit.

Mr. Tweeten explained that the Salish-Kootenai claim they have off reservation hunting and fishing rights in the Clark Fork Basin, and those rights make them a trustee for the natural resources that are subject to the lawsuit. Federal law allows Indian tribes to be trustees for resources, but there is a question as to whether that allows them to claim resources outside the reservation.

When questioned by **SENATOR MOHL** if that would slow the process, **Mr. Tweeten** said that was one of the reasons they have argued with the court against that intervention. This case has been in existence for over ten years, and he commented that the tribe has had ample time to make a decision to intervene. He concluded that to let them in at this late date would be an injustice to the state of Montana.

SENATOR MOHL questioned the efforts that have been made to negotiate the whole cleanup without a lot of money and penalty and the necessity to go to court if ARCO is willing to clean it up satisfactorily.

Mr. Collins explained the difference between remediation and restoring natural resources. To remediate a site with bad soil or tailings is to cap it, which means it would protect human health. In order to restore it, the ground water aquifer would have to be treated to bring it back to what it was, which also would apply to the fishery. Cleaning up along the river does not necessarily restore the fishery. The goal is to restore the natural resources to what they would have been if there hadn't been mining.

Mr. Tweeten said to his knowledge there has not been a concentrated effort to get the remediation and natural resource damage issues on the table at one time in an attempt to settle them. There were settlement discussions during the last biennium regarding the natural resource damage aspect of the case. Since the sides were so far apart, nothing was accomplished.

SENATOR KEATING asked if there was an initial claim by the state against ARCO before the \$600 million.

Mr. Collins remarked that the initial complaint was \$50 million. When the law changed in 1986, an amended complaint was filed which did not set a figure. The amount was set after viewing the reports within the last few months.

When questioned by **SENATOR KEATING** if the Department of Health had made a billion dollar claim against ARCO, **Mr. Collins** said that during the settlement negotiations preliminary copies of their reports were issued, and the newspapers indicated there was a billion dollar claim. It was not a claim, although that is what the total figures were. There are various restoration alternatives they were pursuing in court, and a particular alternative was not yet chosen. They have since refined their reports and chosen the restoration alternatives they are going forward with which adds up to \$600 million.

SENATOR SWYSGOOD asked **Mr. Collins** about the original claim of \$50 million and the law that was changed.

Mr. Collins said that CERCLA, the superfund law changed.

When asked by **SENATOR SWYSGOOD** if the law would change again with the reauthorization by Congress, **Mr. Collins** remarked that the law may change in favor of business.

SENATOR BECK questioned **Ms. Stash** regarding the amount of money spent on reclamation so far, to which **Ms. Stash** answered that as of the end of last year, \$250 million had been spent, with another \$35 to \$40 million budgeted this year. The amount spent since about mid-1980 is in excess of \$350 million.

SENATOR BECK commented that the Department of Justice said they could not get the figures from ARCO on what had been spent on the clean up.

Ms. Stash contended that when they passed \$200 million, they made it very public.

SENATOR BECK questioned if there was an attempt at any time by ARCO to settle with the state.

Ms. Stash said they attempted to settle it for about a year and a half. Two things prevented that from happening; one, they are too far apart on the dollar amount and, two, they believe the state is not recognizing the good the cleanup is doing.

SENATOR BECK asked **Ms. Stash** what would happen if the state would not fund their portion of the suit.

Ms. Stash said she did not know, but it is important that there be encouragement from this legislative body to get the parties together.

SENATOR BECK commented that the state has already spent \$7 million on this lawsuit, mostly for reports and expert testimony. They currently are asking for \$2.36 million which should take it into litigation, and he questioned if the costs would drop as the process is gone through with the appeals, etc.

Mr. Tweeten said if the court adheres to the scheduling and sets the case for trial early in 1997, they expect the trial to be completed before the end of the upcoming biennium that is being funded by HB 305. Once the case gets into the appeal process, the expense for outside consultants will essentially be finished.

When concern was voiced by **SENATOR BECK** if it could be fully litigated within two or three years, **Mr. Tweeten** said the appeal process would probably take a couple years because it is not an average case and would have an extensive record, as well as many complicated issues.

SENATOR JENKINS asked if they wanted to get it back to pristine quality rather than just cleanup quality.

Mr. Collins said the law requires they go back to base line, which is what it would have been but for the mining impacts. He said they are not trying to bring bull trout back but are trying to bring rainbow and brown trout back to the Clark Fork.

SENATOR JENKINS remarked that the way HB 305 is funded, the bill could be passed but the funding might not be there because it requires a three-fourths vote.

Mr. Collins said they originally submitted it in the form of a general fund bill, but at the request of the House committee it was changed to a full tax bill.

In questioning from **SENATOR TOEWS** how close they were in the dollar amount, **Ms. Stash** said they think the case is worth no more than \$50 million.

SENATOR AKLESTAD said the statement was made that in instances where the \$50 million figure was discussed, they had lost that argument in all other states, and he asked **Ms. Stash** to comment on that.

Ms. Stash said the Coeur d'Alene, Idaho mining district settled for approximately \$100,000. Under this particular statute, the cases for superfund have been low. She commented that the Exxon Valdez case always stands out, but that was an oil spill and not this type of case.

SENATOR AKLESTAD questioned how much of the \$250 million cleanup was on a volunteer basis and how much has been mandated as far as studies.

Ms. Stash said they were directed to do the work in either a signed administrative order of consent or a unilateral order. The bulk of the work has been done under those orders, which are that if something is not done, there will be a \$25,000 a day fine.

When asked by **SENATOR AKLESTAD** if it was possible to restore this stream and bring back trout and aquatic life, **Ms. Stash** said through a combination of cleanup along the banks, work on the creek and some help from mother nature, they feel they can render the water quality of Silver Bow Creek, which is the most heavily contaminated area, and that it will come back very quickly. However, in some areas, such as the Butte hill aquifer, the bedrock will not fix itself in a short period of time.

SENATOR AKLESTAD voiced concern why the \$50 million cap, the statute of limitations and the Indian tribe issues were not separated a long time ago and why an attempt is not made to settle them now before we go into the assessment.

Mr. Tweeten said a lot had to do with the court scheduling order. Only recently the parties were required to make their final

efforts to amend their pleadings to solidify what the issues would be in the case. From a litigation strategy perspective, it is very difficult to settle the issues before the discovery is completed.

When asked by **SENATOR AKLESTAD** if the state of Montana tried to get these issues resolved and if there was any documentation, **Mr. Collins** said they did file a motion to dismiss the various counterclaims ARCO made in 1992, but there was a problem getting the court to rule on that.

SENATOR AKLESTAD asked if it was possible to separate the issues at this time and get a judgment made.

Mr. Collins remarked that it is possible to file motions on their affirmative defenses in an attempt to get some type of adjudication. They have now filed another motion to dismiss the counterclaims and hope to get a ruling soon. The tribe's motion to intervene has been pending since November 30th.

SENATOR AKLESTAD said it was his understanding that any other legal service the state has is on a contract basis and not a contingent basis. **Mr. Tweeten** said that was correct; they were paid by the hour. **SENATOR AKLESTAD** asked if there was any way they could change that at this time for an encouragement to settle. **Mr. Tweeten** said it is a contract, and if the parties want to renegotiate, they can. He did not know if the attorney they have hired would be willing to take the case on a contingent fee basis. The potential cost to the state of Montana using the standard contingent fee of 33 percent of the amount of recovery would be \$200 million in legal fees. He didn't think it would be in the state's interest to make that arrangement as it would be a huge risk to the state.

SENATOR LYNCH voiced concern with the Berkeley pit water in Butte.

Mr. Collins said they are asking damages for those waters that would be contaminated in the range of \$40 million. The remediation calls for the water to be treated and pumped before it reaches the level that it would ruin the Clark Fork.

SENATOR KEATING asked **REPRESENTATIVE KADAS** if HB 305 was asking for general fund money for this case and if it was then amended in the house to borrow from the permanent trust fund.

REPRESENTATIVE KADAS said as introduced, it was general fund because the general fund situation is better than last biennium. However, the House Appropriations Committee wanted to continue using the coal trust fund as they have in the past.

In questioning from **SENATOR KEATING** if \$7 million has already been borrowed from the trust fund and this would make it \$9 million, **REPRESENTATIVE KADAS** said that was correct.

SENATOR KEATING remarked that they were losing interest income. **REPRESENTATIVE KADAS** said part of the language in the bill is that the interest would be paid back on the loan. In terms of the trust fund, he is trying to see that the state gets back all the investment.

SENATOR KEATING voiced concern with the risk and if there would be enough money to pay back the fund.

REPRESENTATIVE KADAS said we have a responsibility as trustees for this resource to take that risk, and to not take it would be irresponsible. He noted that we are suing for damages and can also claim our costs, which would be in addition to the damages.

SENATOR KEATING noted his concern that when we get into these obligations, and if there is a loss, the money would have to be paid back into the trust fund with general fund money, plus interest at some point.

REPRESENTATIVE KADAS stated that there is no requirement that the general fund will have to be paid back in case the suit did not regain all of the loan. In that case, it would be a loss to the trust.

SENATOR MOHL said he agreed with **SENATOR KEATING** and commented that if we don't win the lawsuit, we will lose the \$11 million. He questioned how the money could be recovered.

REPRESENTATIVE KADAS said he does not believe we are trying to punish ARCO, but rather trying to restore the resource. He did not think ARCO would do anything if it weren't for laws that give authority to force them to participate. The state made an offer and the next step in the settlement process was for ARCO to make a counteroffer, which they never did. He agreed that he would rather be in a settlement process, but if ARCO is not willing to do that, there is no other alternative but to pursue the suit.

SENATOR SWYSGOOD voiced concern on the type of message being sent to businesses that desire to come to Montana.

Ms. Stash said this is the worst thing that can happen to a company. It is the most expensive cleanup in the country in a superfund case that is known for ridiculously expensive cleanups. The message is that businesses do not want to do business in Montana.

SENATOR AKLESTAD asked what is outlined by ARCO for the next year or two as far as voluntary or forced cleanup.

Ms. Stash said they are under orders to do a \$30 million cleanup of the industrial area of Anaconda, Montana. That is about one-third completed and it will go on through 1997. The Colorado tailings removal is a \$50 million cleanup, and they have expended about \$5 million to date that will go on through the end of the

decade. They are under a record of decision for the Berkeley pit, and they expect to get an order from EPA this year. They expect decisions on the Rocker timber and treating plant, the streamside tailings, which is Silver Bow Creek, Anaconda community soils and the Mill Town reservoir this year. They expect orders to follow suit early next year. They are under a \$5 million commitment to the City of Butte, and they have completed a \$50 million flue dust clean up and will continue to monitor that into future years. They expect an order to start the study for Butte and the Clark Fork River which are the last two this year. They expect to be under order to do the cleanup by the early to the middle of next year, with the exception of the Clark Fork.

When questioned by **SENATOR AKLESTAD** if they were working on anything for the Clark Fork, **Ms. Stash** said they funded the Governor's Office \$7 million a few years ago to do a one mile demonstration project, and they are negotiating with the City of Deer Lodge to do a mile section of that river. They expect to do an approximately \$5 million study under orders from EPA this year.

SENATOR AKLESTAD asked **Ms. Stash** the approximate amount it would take to clean up the Clark Fork River and get it back to the fishery life that has been stated.

Ms. Stash said they can bring it back to a fishery, but they don't believe it will ever look like it did in the Lewis and Clark days. They have expended about \$300 million to date. They expect a streamside of \$30 to \$40 million cleanup and somewhat under that for the Clark Fork and also in that range for the remainder of Anaconda. Butte is not in that estimate as there are potential responsible parties there, but that would probably be an additional \$30 to \$40 million.

SENATOR JERGESON commented that a company that might potentially be interested in investing in Montana could avoid the potential this suit represents by following the rules to make sure contamination doesn't occur to begin with rather of fighting the lawsuit.

Ms. Stash stated her belief that industry does try to do the right thing, and from her perspective ARCO is going way beyond cleaning up the environment.

SENATOR JERGESON asked **Mr. Tweeten** what would happen to the state's position if the funding for this particular case is not approved.

Mr. Tweeten said they would dismiss the lawsuit. They presently have no resources to pay the expert witnesses who prepared the reports and could not afford to bring the witnesses to trial and pay them to testify. He feels ARCO knows what will happen if HB 305 doesn't pass, and that is the lawsuit will go away because

this legislature will have made the decision that the state is no longer willing to invest in resources.

{Tape: 2; Side: 1; Approx. Counter: ; Comments: .}

SENATOR JERGESON questioned the consequences in other cases if the state withdrew from this particular case.

Mr. Tweeten said the Crow coal case is not in that analogy because there is the coal mining industry that has an interest and a financial stake in how that case comes out. If the state withdrew from that case, there would be approximately \$250 million in the coal severance trust that would be paid to the Crow Tribe.

In questioning from **SENATOR JERGESON** whether water users along the Clark Fork would sue ARCO for cleanup if the state withdrew from that case, **Mr. Tweeten** said individual water users would not have standing to go into court to sue to recover natural resource damages. Those cases can only be brought by someone who is a trustee for those resources which in Montana is the governor.

In answer to a question from **SENATORS MOHL** and **SWYSGOOD** regarding getting the borrowed money repaid, **Mr. Tweeten** said there is a risk that the state could not repay all the money borrowed. If HB 305 is not funded, it is a certainty that the \$7 million already borrowed will not be repaid unless this legislature decides to divert general fund money to do that.

SENATOR TOEWS asked **REPRESENTATIVE KADAS** if he would resist an amendment stating that if the state could not get an agreement with ARCO for a certain amount of money they would not engage in the suit but would settle for a certain amount of money.

REPRESENTATIVE KADAS said if **SENATOR TOEWS** was suggesting it be contingent upon settlement, he thought that would weaken the state's case. It would force the issue but at millions or hundreds of millions of dollars to the state.

In questioning from **SENATOR TVEIT** if the intent of the lawsuit was to sue ARCO to do what they are doing now or to gain money for the state, **REPRESENTATIVE KADAS** said there are at least two major parts of the superfund law. One is the remediation and cleanup, which is what they are doing. The other is the natural resource damage claim part which is what the suit is about, and that has to do with state type resources. In some instances there is overlap, but in that case they cannot double collect.

SENATOR TVEIT questioned to what extent ARCO was responsible.

REPRESENTATIVE KADAS said based on the state's interpretation of the law, ARCO is responsible for \$600 million dollars.

When questioned by **SENATOR AKLESTAD** whether the work ARCO has already done and that which they are going to do is being done by federal statute of the superfund effort rather than the lawsuit, **REPRESENTATIVE KADAS** said that was his understanding.

When asked by **SENATOR AKLESTAD** if that cleanup would continue whether the lawsuit was in existence or not, **REPRESENTATIVE KADAS** said that was correct.

In questioning from **SENATOR AKLESTAD** whether the cleanup would bring back the fishery and aquatic life, **REPRESENTATIVE KADAS** said it would to some extent, but not to the extent afforded under this lawsuit. He agreed that there is some overlap but not 100 percent.

Closing by Sponsor:

In closing on HB 305, **REPRESENTATIVE KADAS** noted that the state is not trying to punish ARCO, but is trying to recover for a resource that we have responsibility for. He explained that the coal tax trust fund requires a three-fourth's vote from the Senate, and added that the House did give it a three-fourth's vote. If the Senate cannot achieve a three-fourth's vote, it would have to come from general fund which would be a majority vote. He noted that the staff and advisory council have done a good job and have gotten us into a good position in relation to ARCO on this suit. He concluded that backing away at this point would be doing a great injustice to the people of Montana and particularly to the people of this basin.

CHAIRMAN AKLESTAD asked if the committee members would like a select committee appointed to meet with representatives of state government to discuss the amendment and issues relating to the statute of limitations and the \$50 million cap.

After a general consensus from the committee, **CHAIRMAN AKLESTAD** appointed **SENATOR TOEWS** and **SENATOR KEATING** to meet with individuals representing the state of Montana in the case and to then report back to the Finance and Claims Committee.

SENATOR JERGESON questioned why a minority member of the Senate Finance and Claims Committee was not appointed.

CHAIRMAN AKLESTAD said he appreciated the suggestion and asked **SENATOR JERGESON** if he would like to serve on the committee. **SENATOR JERGESON** was appointed to the committee with **SENATORS KEATING** and **TOEWS**.

Motion: SENATOR SWYSGOOD MOVED AN AMENDMENT TO HB 4. EXHIBIT 4

Discussion: Taryn Purdy explained the amendment. The Department of Family Services has received a \$600,000 three year grant. The \$600,000 is the entire grant that would be carried forward into 1996-1997. The Human Services subcommittee put the amount of money anticipated to be spent from this grant in 1996-1997. If \$600,000 remains in the budget amendment bill, it would be double appropriated for those two years.

Vote: Motion CARRIED on the amendment.

Motion: SENATOR JACOBSON MOVED AN AMENDMENT FROM THE BUDGET OFFICE. EXHIBIT 5

Vote: Motion CARRIED on the amendment.

Motion: SENATOR KEATING MOVED AN AMENDMENT ON THE CROW BOUNDARY SETTLEMENT ACT. EXHIBIT 6

Vote: Motion CARRIED on the amendment.

Motion: SENATOR AKLESTAD MOVED AN AMENDMENT RELATIVE TO THE FIREFIGHTER SETTLEMENT. EXHIBIT 7

Discussion: SENATOR AKLESTAD explained that the amendment EXHIBIT 7 deals with the firefighter settlement at Great Falls. He indicated that those individuals that were brought in to generate the additional costs were beyond the statute of limitations so it is a voluntary basis; secondly, if the formula is changed, there would be less money and he therefore is amending it down to where it originally was.

SENATOR CHRISTIAENS asked someone from the department to address the amendment.

Doug Booker, Department of Military Affairs, said it was an administrative decision to add those people that did not sign on to the lawsuit.

Vote: Motion CARRIED on SENATOR AKLESTAD'S amendment. EXHIBIT 7.

Motion/Vote: SENATOR KEATING MOVED HOUSE BILL 4 AS AMENDED BE CONCURRED IN. Motion CARRIED with SENATORS SWYSGOOD and BURNETT opposed. SENATOR JACOBSON will carry the bill on the Senate floor.

EXECUTIVE ACTION ON HOUSE BILL 35

Motion/Vote: SENATOR SWYSGOOD MOVED TO TABLE HOUSE BILL 35. Motion CARRIED on a roll call vote.

ADJOURNMENT

Adjournment: 10:30 a.m.



SENATOR GARY AKLESTAD, Chairman



LYNN STALEY, Secretary

GA/ljs

MONTANA SENATE
1995 LEGISLATURE
FINANCE AND CLAIMS COMMITTEE

ROLL CALL

DATE

3/21/95

NAME	PRESENT	ABSENT	EXCUSED
SWYSGOOD, CHUCK	✓		
BURNETT, JIM	✓		
MOHL, ARNIE	✓		
JERGESON, GREG	✓		
FRANKLIN, EVE			✓
TVEIT, LARRY	✓		
JENKINS, LOREN	✓		
JACOBSON, JUDY	✓		
LYNCH, J.D.	✓		
HARDING, ETHEL	✓		
TOEWS, DARYL	✓		
CHRISTIAENS, B.F. "CHRIS"	✓		
WATERMAN, MIGNON	✓		
KEATING, TOM - VICE CHAIRMAN	✓		
BECK, TOM	✓		
AKLESTAD, GARY - CHAIRMAN	✓		

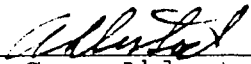
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 21, 1995

MR. PRESIDENT:

We, your committee on Finance and Claims having had under consideration HB 4 (third reading copy -- blue), respectfully report that HB 4 be amended as follows and as so amended be concurred in.

Signed: 
Senator Gary Aklestad, Chair

That such amendments read:

1. Page 2, line 26.

Strike: "600,000"

Insert: "200,000"

2. Page 3, following line 2.

Insert: "Land Administration Division

Crow Exchange 1995 25,000 Federal

Special"

3. Page 4, line 20.

Following: "PROGRAM"

Insert: "and the literacy resource center"

4. Page 5, line 11.

Strike: "988,164"

Insert: "690,000"

5. Page 5, line 27.

Strike: "906,623"

Insert: "275,000"

6. Page 6, line 1.

Strike: "8,141"

Insert: "29,141"

7. Page 6, line 3.

Strike: "1,250,000"


Insert: "850,000"


8. Page 6, line 10.

Following: line 9

Insert: "All remaining fiscal year 1995 federal special and other budget amendment authority for units of the Montana university system is authorized to continue into fiscal year 1996."

-END-


Amd. Coord.
Sec. of Senate


Senator Carrying Bill

651318SC.SPV

MONTANA SENATE
1995 LEGISLATURE
FINANCE AND CLAIMS COMMITTEE
ROLL CALL VOTE

DATE 3/21/95 BILL NO. HB 35 NUMBER _____

MOTION: Senator Swysgood Table
HB 35 Motion. Carried.

NAME	AYE	NO
SWYSGOOD, CHUCK	✓	
BURNETT, JIM	✓	
MOHL, ARNIE	✓	
JERGESON, GREG		✓
FRANKLIN, EVE		
TVEIT, LARRY		
JENKINS, LOREN	✓	
JACOBSON, JUDY		✓
LYNCH, J.D.	✓	
HARDING, ETHEL	✓	
TOEWS, DARYL	✓	
CHRISTIAENS, B.F. "CHRIS"		✓
WATERMAN, MIGNON		✓
KEATING, TOM - VICE CHAIRMAN		✓
BECK, TOM	✓	
AKLESTAD, GARY - CHAIRMAN	✓	

DEPARTMENT OF JUSTICE
Natural Resource Damage Litigation Program

HB 305 - 1997 Biennium Funding Request for the Lawsuit:
State of Montana v. Atlantic Richfield Company

History and Status of Litigation:

In 1983 the State of Montana filed a natural resource damage lawsuit in U.S. District Court against the Atlantic Richfield Company (ARCO) under the federal "Superfund" law. The State seeks to recover damages for injuries to natural resources in the Upper Clark Fork River Basin resulting from the mining and smelting operations of ARCO and its predecessor, the Anaconda Company. The geographic scope of the damage includes nearly 127 miles of the Clark Fork River corridor from Butte to Missoula and associated upland areas, particularly near the City of Anaconda. Hazardous substances are continuing to be released and cause damage to this day due to large quantities of toxic metals and acids left in the soils, sediments and waters of the river basin.

The case has been delayed twice, the second time in early 1993. As part of an agreed upon settlement process, the parties exchanged extensive reports and held numerous meetings. However, no settlement was reached and litigation has resumed. Assuming that there are no additional stays of litigation, the case is expected to go to trial in Spring 1997.

To prepare the case for trial, the State has prepared a natural resource damage assessment (NRDA) and report in accordance with U.S. Department of Interior Regulations. By the end of this fiscal year, the State of Montana will have expended nearly \$7 million on the NRDA and litigation. These funds have been loaned from the State's Coal Tax Fund.

Natural Resource Damage Assessment and Report:

The Upper Clark Fork River Basin NRDA was completed and the State's Report of Assessment released to ARCO and the public on January 13, 1995. Montana's NRDA is documented in its Report of Assessment -- a series of more than 20 reports including the following:

- Five groundwater injury assessment reports: More than 600,000 acre-feet of ground water, including more than 200,000 acre-feet in the City of Butte, has been contaminated.
- An aquatic resources injury assessment report: There are substantial injuries to the surface waters, fish, sediments, and the benthic macroinvertebrates in Silver Bow Creek and the Clark Fork River. Because of hazardous substances, the Clark Fork fishery alone contains less than 18 percent of the fish it should otherwise support.

- A terrestrial resources injury report: There have been substantial reductions of wildlife and wildlife habitat due to hazardous substances in the Clark Fork and Silver Bow Creek riparian zones and in nearly 20 square miles of upland areas near Anaconda, which have been practically denuded of vegetation.
- Compensable Damages Reports: Estimated damages amount to \$301 million for past and future lost use and non-use of the injured resources. These include damages for lost recreational fishing dating back to Dec. 1980, when the Superfund law was enacted.
- A Restoration Determination Plan: The alternatives for restoration of the injured resources tentatively selected by the state are estimated to cost some \$327 million in damages.
- A report prepared by an accounting firm estimating assessment and legal costs incurred by the State for purposes for this litigation through November 30, 1994, in the amount of \$7.8 million (including \$1.1 million in interest).

Goal of Litigation

The State's objective in Montana v. ARCO is to recover from ARCO, as expeditiously and economically as possible, some \$628 million in compensable and restoration damages, plus nearly \$8 million in costs. Federal law requires the State to use the damages recovered to restore or replace the resources or acquire like resources. The State's overriding objective is to restore the natural resources in the upper Clark Fork basin as nearly as possible to the condition they would have been in had the hazardous substances not been released.

FY 96-97 Biennium Budget Request

The State of Montana has expended some \$7,000,000 to prosecute this litigation and prepare its case for trial. The State is now in a strong position to prevail against ARCO on its \$635 million claim. A loan in the amount of \$2.3 million to fund the NRD Program and litigation during the coming biennium is necessary for the State to maintain its position, proceed through trial and recover damages.

HB 305, as amended in the House, requests a loan of \$2,359,875 from the coal severance tax trust fund to proceed with the case through trial. HB 305 also provides that the outstanding loans to the Department from the Coal Tax Fund be extended for repayment through FY 97.

The details of the proposed budget are shown on the attached sheet. The budget for outside counsel will support the equivalent of one and one-quarter outside attorneys. The Governor's Policy Committee, which guides and directs the program, has appointed Kevin Ward of Denver as the State's lead counsel. Ward has special expertise and experience in Superfund and natural resource damage litigation -- credentials that are critical in a case of this magnitude and complexity. Ward's legal expertise provides the State with an advantageous position, despite the numerous law firms and attorneys representing ARCO in this litigation.

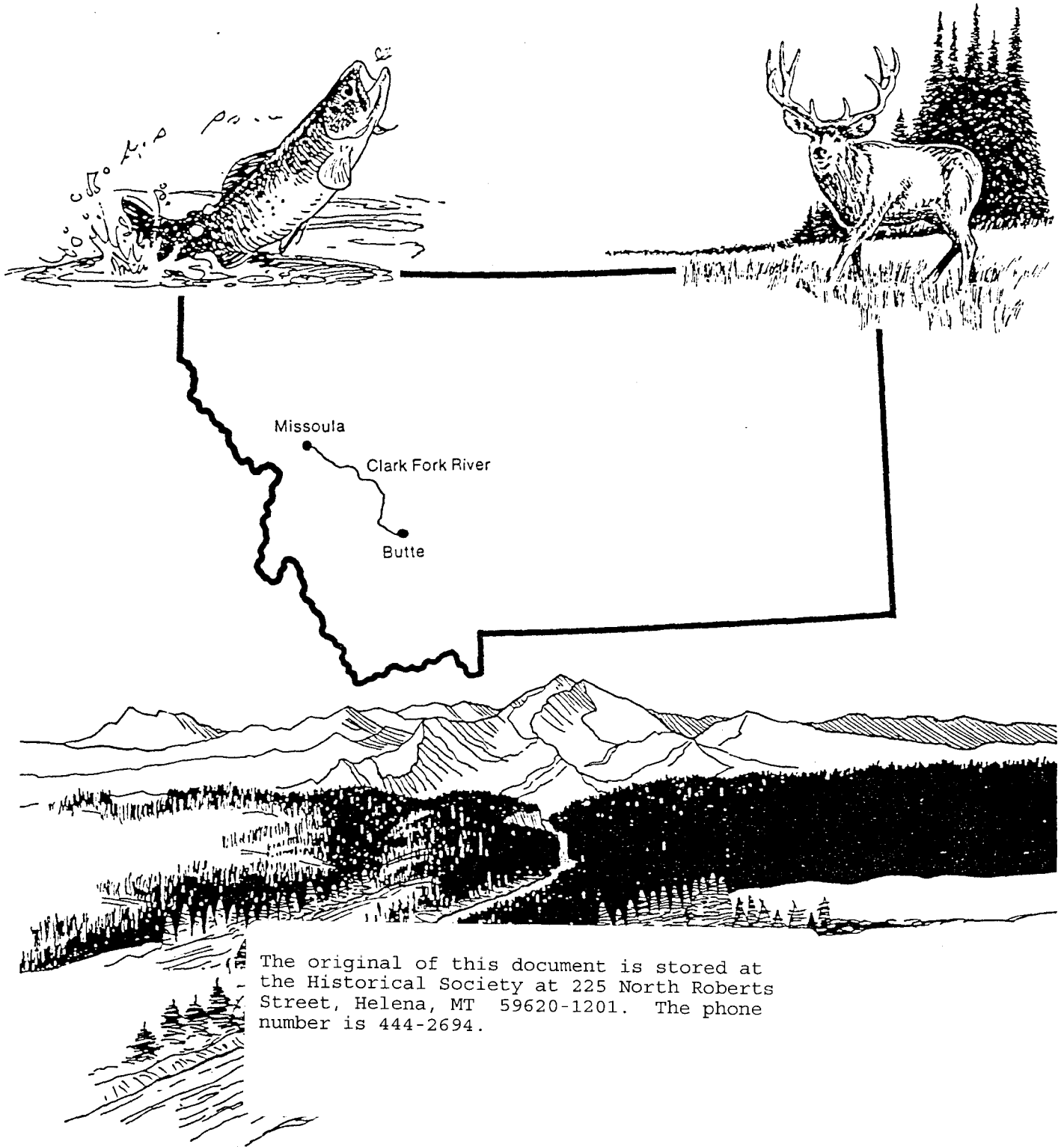
PROPOSED NATURAL RESOURCES DAMAGE PROGRAM BUDGET

1.	Program	
a)	Salaries, benefits, indirect	\$712,200
b)	Supplies, equipment, copying	43,538
c)	Communications (mail & telephone)	22,573
d)	Travel	
	In-State	21,494
	Out-of-State	40,500
	Non-Employee	10,000
e)	Rent/Maintenance	22,000
f)	Other	9,052
	SUBTOTAL	\$881,357
2.	Contract Services	
a)	Outside legal	
	1 ¼ equivalent attorneys (4500 hrs)	\$652,500
	Travel costs	48,000
b)	Expert witnesses	
	30 experts	286,000
	Travel costs	52,000
c)	Expert support staff	
	30 support x 5 days x \$500/day	75,000
	Travel costs: 30 x \$1000	30,000
d)	Exhibit preparation	50,000
e)	Temporary services	20,000
f)	Document management	20,000
	SUBTOTAL	\$1,223,500
3.	Deposition, Transcript, and Court Costs	
a)	Depo Transcripts	
	ARCO 218 days x 150 p/d x \$2/p	\$65,000
	Exhibits	5,000
b)	Depo Transcripts	
	State 95 days x 150 p/d x \$3/p	42,750
	Exhibits	2,250
c)	Court hearing transcripts	5,000
d)	Special Master	10,000
e)	Deposition fee for ARCO witnesses	
	25 Experts x 4 days x 1000/day	100,000
	Travel costs: 25 x 1000	25,000
	SUBTOTAL	\$255,000
	<u>TOTAL</u>	<u>\$2,359,857</u>

STATE OF MONTANA
DEPARTMENT OF JUSTICE
NATURAL RESOURCE DAMAGE LITIGATION PROGRAM

REPORT TO THE LEGISLATURE

FEBRUARY 1995



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.

House Bill No. 305

March 21, 1995

Testimony presented by Robert Lane

Montana Fish, Wildlife & Parks

before the Senate Finance and Claims Committee

Over the last four years, the State of Montana, through its Natural Resource Damages Program, has worked very hard to develop an assessment of damages to natural resources in the upper Clark Fork River Basin.

Montana Fish, Wildlife & Parks has worked closely with the staff of the Natural Resource Damages Program to complete this important effort because many of the damages associated with this lawsuit are those to fish and wildlife resources and their habitats. I am a member of the Policy Committee that oversees this effort along with other natural resource agency directors and representatives of the offices of the Attorney General and the Governor.

I believe that the state has a very strong position in this lawsuit. The consultants that we have hired to help us prepare our assessment reports are among the leading professionals in their fields in the country. However, in order for us to bring this lawsuit to a successful conclusion, it is essential that we continue to fund the program.

If we were to eliminate or substantially reduce funding at this late date we are certain to fail. Most importantly, the citizens of Montana will not be adequately compensated for damages that have occurred to our natural resources in the Clark Fork River Basin. We therefore urge you to continue to authorize funding for this program and to see this effort through to conclusion.

Amendments to House Bill No. 4
Third Reading Copy

For the Committee on Finance and Claims

Prepared by Taryn Purdy
March 9, 1995*Carried*

1. Page 2, line 26.
Strike: "600,000"
Insert: "200,000"

HB 4 currently includes all funds anticipated for the Crisis Nursery Project in fiscal 1995 and the 1997 biennium. HB 2 currently includes the 1997 biennium portion of these funds, or \$400,000. Therefore, this amendment reduces the amount appropriated in this bill to the amount anticipated in fiscal 1995. Language authorizing expenditure in fiscal 1996 of any funds from this appropriation still unspent at the end of fiscal 1995 remains in this bill.

{Office of Legislative Fiscal Analyst

444-2986}

Amend House Bill 4, Third Reading As Amended
Senate Finance and Claims Committee
March 14, 1995

1. Page 4, line 20
Following: "PROGRAM"
Insert: "AND THE LITERACY RESOURCE CENTER"

2. Page 5, Line 27.
Strike: "906,623"
Insert: "275,000"

Page 6, Line 1.
Strike: "8,141"
Insert: "29,141"

Page 6, Line 3.
Strike: "1,250,000"
Insert: "850,000"

Page 6, Line 10.
Following: Line 9
Insert:

"All remaining fiscal year 1995 federal special and other budget amendment authority for units of the Montana University System is authorized to continue into fiscal year 1996."

EXPLANATION

1. The State Library Commission will not be able to spend the entire Literacy Resource Center budget amendment in FY95 and is requesting to continue the federal grant authority into FY96.
2. The current tuition appropriations contained in HB004 were estimated prior to the completion of spring semester registration at the units. Actual tuition collections have fallen short of the projected tuition by \$1,010,623. This amendment reduces the Montana University System appropriation amount in HB004 by \$1,010,623. This amendment also allows any fiscal year 1995 unexpended authority to continue into fiscal year 1996. This continuing authority will allow the units to better manage their resources and is consistent with the language included in the budget amendment bill adopted by the 1993 Legislature.

DBP
MVL

AMENDMENTS TO HOUSE BILL NO. 4 BILL NO. HB 4
(Third Reading as Amended (Blue) Copy)*Carried*

1. Page 3, following line 2.

Insert: "Land Administration Division

Crow Exchange

1995

25,000

Federal Special"

(Informational Narrative)

The Crow Boundary Settlement Act of 1994 (Public Law 103-444) was signed into law on November 2, 1994 by President Clinton. Section 5(d)(1)(A) of the Act provides in part, "The Secretary shall negotiate with the State of Montana for the purpose of exchanging public lands within the State of Montana for State trust lands within the Crow Reservation having a total value of the surface estate of the approximately 46,625 acres of State trust lands obtained by the State of Montana pursuant to the Act of February 22, 1889 (commonly known as the "Montana Enabling Act"; 25 Stat.676, chapter 180),....".

The DSL informed the Congress during consideration of the Act that the exchange(s) envisioned by the Act would not be a high priority for the state unless sufficient funding and assistance were provided to the state. The current DSL funding and resources would not allow much time to be expended on the exchange(s) without impacting other current revenue generating programs. Congress recognized the state's concern and Section 5(d)(1)(E) of the Act provides, "The Secretary shall provide such financial or other assistance to the State of Montana and to the Crow Tribe as may be necessary to obtain appraisals, and to satisfy administrative requirements, necessary to accomplish the exchanges made pursuant to subparagraph (A)". The Bureau of Land Management (BLM), the Bureau of Indian Affairs (BIA), the Crow Tribe and the DSL have recently begun the preliminary process to implement the exchange(s) necessary to fulfill the requirements of the Act. The BLM and the BIA have requested funds from the Secretary of Interior to be made available to the state. The DSL has been notified that: the BLM currently has \$16,000 available for the remainder of federal FY95 (ending September 30, 1995); and the BIA will have \$85,000 available for the remainder of federal FY95. The Act anticipates that at least five years will be required to consummate the necessary exchange(s) with the State. Therefore, it is expected that the federal funding to the state will be continued throughout the process. DSL has already requested and received approval from House Appropriations for spending authority for this project in FY96 and FY97.

The Land Board has directed the DSL to actively proceed in cooperation with the BLM, BIA and the Crow Tribe to consider the proposed exchange(s). The Land Board has given this direction to the DSL with the assumption that the Secretary of Interior would provide funding and assistance to the DSL in this effort.

SENATE FINANCE AND CLAIMS
EXHIBIT NO. 7
DATE 3/21/95
BILL NO. HB 4

Amendments to House Bill No. 4
Third Reading Copy

Requested by Senator Aklestad
For the Senate Finance and Claims Committee

Prepared by Sandy Whitney
March 20, 1995

1. Page 5, line 11.
Strike: "988,164"
Insert: "690,000"

This amendment returns the firefighter settlement in the Department of Military Affairs to the original \$690,000 federal fund appropriation.

{Office of Legislative Fiscal Analyst

444-2986}

DATE

March 21, 1995

SENATE COMMITTEE ON

Finance and Claims

BILLS BEING HEARD TODAY:

HB 9 Rep. Bergsagel
HB 305 Rep. Kadas

< ■ >

PLEASE PRINT

< ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
WASH	ARCO	305		✓
Kenner	ARCO	305		✓
Rob Collins	Dept. of Justice	305	✓	
Chris Tweeter	Attorney General	305	✓	
DMay	"	"	✓	
Browning	Gov Off	305	✓	
GEORGE OCHENSKI	TROUT UNLIMITED	305	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY