MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN DON HARGROVE**, on January 30, 1997, at 10:03 a.m., in Room 331.

ROLL CALL

Members Present:
Sen. Don Hargrove, Chairman (R)
Sen. Kenneth "Ken" Mesaros, Vice Chairman (R)
Sen. Vivian M. Brooke (D)
Sen. Delwyn Gage (R)
Sen. Fred Thomas (R)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: David Niss, Legislative Services Division
Mary Morris, Committee Secretary

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

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 85, SR 2; Posted 1/27/97
Executive Action: HB 85

HEARING ON HB 85

Sponsor: **REP. HAL HARPER, HD 52, Helena**

Proponents: **Joe Kerwin, Secretary of State for Elections**
Deborah Smith, Montana Common Cause

Opponents: **None**

Opening Statement by Sponsor:

REP. HAL HARPER, HD 52, Helena, said HB 85 provided deadlines for ballot certification, which was needed five different times this past year. He said currently the Secretary of State must certify the ballot for the counties no later than 67 days before the Primary Election or no later than 75 days before the General Election. The County Election Administrator must certify the ballot no later than 62 days before the Primary; however, when a

candidate was removed from the ballot because of failure to meet the requirements of the Commissioner of Political Practices, there was no timeline when the Commissioner had to certify the removal. HB 85 would require the Commissioner to notify the proper official for either the Primary or General Elections by a certain deadline.

REP. HARPER said this past year five candidates were removed from the ballots, and one problem was sometimes if the candidate was removed, the political party had to make a choice because if the slot was empty, the party could make an appointment; however, if there was not time for the political party to make the appointment before the ballot was printed, there was a problem.

Proponents' Testimony:

Joe Kerwin, Secretary of State for Elections, said they supported HB 85; in fact, they requested it be put in. He said one of the major reasons was to avoid conflict with state law, i.e. there was no provision to amend ballot certification because the ballots had to be certified by the above-mentioned deadlines, but there had to be a note from the Commissioner which certified the candidates had met the law for campaign financing. However, there was no deadline by which the Commissioner had to notify their office. **Mr. Kerwin** said in the Primary this past year there were two candidates who had to be removed on April 8, the ballot had to be certified on March 29 and the counties had to certify the ballot by April 3, according to state law. He said they called the counties and told them they had received notice to remove the names from the ballot. There was no challenge to that, but neither was there any set mechanism, which caused them concern. For ballot certification for the Primary, the Commissioner would notify them by the 75th day when they would have to notify the counties. The General Election would require notification one week before the 75th day when the counties were notified. The reason for this was it would allow the affected political parties to make an appointment and put the name on the ballot. **Mr. Kerwin** said this dealt with ballot certification because there were still provisions within the law which allowed the Certificate of Nomination or Certificate of Election to be withheld if there was no compliance with the Commissioner of Political Practices.

He said this year in the General Election, three candidates were removed three days before ballot certification so they were able to notify the counties, but the political parties didn't have much time to make their appointments.

Deborah Smith, Montana Common Cause, said they supported HB 85 because they believed it was consistent with the spirit of the campaign and election laws which required all candidates to work on a level playing field. She said the time required for reporting compliance to the Secretary of State's office was

reasonable and good; therefore, she urged the Committee's support.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

SEN. DELWYN GAGE said he understood the Secretary of State's office was the chief election person of the state, and at one time the Finance & Claims Committee tried to get the whole election process under the Secretary of State's office. He wondered if that had been accomplished, would the afore-mentioned issues be problems today. **Joe Kerwin** said if they were doing the functions of the Commissioner of Political Practices, there would not be those problems.

SEN. GAGE asked **Ed Argenbright, Commissioner of Political Practices,** if he agreed, and was told **Mr. Argenbright** had no problems with HB 85. He said from a practical view, in the past they had called the County Clerks and Recorders for the information and then checked the records to ensure all reports were in. He said his office then called for the missing reports -- HB 85 would remove that action from the Commissioner's office. He suggested HB 85 would cause some hardship to those who hadn't filled out their report by the due date; however, the functions of the Commissioner's office overlapped in certain areas with the office of the Secretary of State.

CHAIRMAN DON HARGROVE asked if HB 85 would impact the counties. **Joe Kerwin** said there would be no cost; in fact, it would save money and as to the reports, he couldn't say. **Ed Argenbright** said County Clerks and Recorders were required to file the financial reports from the candidates and in some counties they did a much better job than in others. He stated no county requirements would be changed with HB 85, but they might have to be a little more aware of the time line.

CHAIRMAN HARGROVE asked about the enforcement. **Mr. Argenbright** said they would not certify the placing of the name on the ballot to the Secretary of State.

Closing by Sponsor:

REP. HAL HARPER expressed appreciation for the candidates' treatment from the Commissioner's office, but said if candidates didn't get the records in, the candidates themselves were liable; HB 85 provided the counties and Secretary of State a timeline by which they could operate. **REP. HARPER** said if HB 85 was CONCURRED IN, anyone could carry it, so **SEN. VIVIAN BROOKE** agreed to carry HB 85.

{Tape: 1; Side: A; Approx. Time Count: 10:17 a.m.}

EXECUTIVE ACTION ON HB 85

Motion/Vote: **SEN. KEN MESAROS MOVED HB 85 BE CONCURRED IN. Motion CARRIED UNANIMOUSLY. SEN. VIVIAN BROOKE** will carry HB 85.

Meeting temporarily adjourned at 10:19 a.m. and reconvened at 10:34 a.m.

HEARING ON SR 2

Sponsor: **SEN. TOM KEATING, SD 5, Billings**

Proponents: None

Opponents: **Stan Frasier, Prickly Pear Sportsmans Association**
Jim Richard, Montana Wildlife Federation
Debbie Smith, Montana Chapter of the Sierra Club
Jim McDermand, Russell County Sportsman, Great Falls
John Gatchell, Montana Wilderness Association
Ira Holt, Ravalli County Fish & Wildlife Association
Janet Ellis, Montana Audubon

Opening Statement by Sponsor:

SEN. TOM KEATING, SD 5, Billings, said SR 2 was a request to the United States Congress to consider patenting the unappropriated public domain to the State of Montana. He said the "WHEREASes" said the founding fathers realized the centralized federal government was not what they desired; in fact, the 13 original colonies and five other states received title to the lands within their boundaries at the time of their statehood. He said all but two of the states who received statehood after 1802 were denied full title and ownership of the lands within their borders. **SEN. KEATING** said the two were Alabama and Mississippi; both went to the Supreme Court and won.

SEN. KEATING began his argument by explaining the yellow highlighted section **(EXHIBIT 1, First Sheet)**, saying there was a specific limit to the land owned by the federal agency. He referred to Article IV, Section 3, of the U.S. Constitution and stated it said new states could be admitted by Congress but no new states were to be formed or erected within the jurisdiction of any other state, nor were they to be formed by the junction of two or more states or parts of states without the consent of the legislatures of the states concerned as well as Congress, i.e. it was the intention new states would be formed or erected from lands which were not already a part of the state. **SEN. KEATING** explained Article IV, Section 3, went on to say when Congress operated the Northwest Ordinance, the Territories were to be administered by Congress.

His next reference was the yellow highlighted sections of **(EXHIBIT 1, Second Sheet)**, explaining it was the Congressional intention to erect new states from the western Territories

(public lands). When the population in the various territorial areas reached 60,000 people, they could apply for statehood; therefore, the United States would build its strength by the possession of the territories erected as sovereign states.

SEN. KEATING said P.L. 52, the Congressional Act which established Montana as a state along with North & South Dakota and Washington State, declared the Territories should form Constitutions, state governments and be admitted into the Union on an equal footing with the original states; also, make donations of public lands to those states **(EXHIBIT 1, Third Sheet).** He maintained the original states were sovereign and had total title to the land within their boundaries; in order for the new states to be on equal footing with their sister states, they should have title to all the lands within their boundaries. **SEN. KEATING** reiterated how Article 4 said no states should be erected from other states; however, the public lands which were retained or reserved at the time of statehood were actually owned by the sister states, and the title was in the sovereign states, not the federal agency. He said the federal agency only had the authority for administration, i.e. for rules and regulations. He contended if a new state had equal footing, it should have the same title to and possession of lands as the original states had; otherwise, the first states owned property within the subsequent states, which were then at an inferior level because they didn't have title to all the property within their boundaries.

SEN. KEATING referred to **(EXHIBIT 1, Fourth Sheet)** and said Ordinance No. 1 was the first act of Montana's new legislature. He remarked the yellow highlighted section meant Montana's people, in accordance with P. L. 52, would disclaim the title to the land until the United States would extinguish the title to the land, i.e. when the U. S. decided to transfer the title of that land to the sovereign state. He stated Montana was still waiting for that to happen, and that was why he was trying to encourage Congress to finally extinguish its title and grant it to the state.

SEN. TOM KEATING's next reference was **(EXHIBIT 1, Fifth Sheet)** and said the Declaration of Independence made it very clear the government intended by the founding fathers was government of the people, i.e. the sovereignty was in the people -- the state was sovereign because the people were sovereign and had the ultimate authority. He explained the federal government wasn't sovereign in and of itself; it was merely a creation of a corporate entity for the administration of the states with limited powers. He explained the Tenth Amendment, saying it was a reminder the Constitution said the powers not delegated to the United States or prohibited by it to the states, were reserved to the states, respectively, or the people who were sovereign in and of themselves; in fact, popular sovereignty brought a new and enduring political ideal. He explained other world powers had "top-down power" so the idea of power coming from the bottom was a revolutionary idea, an idea characterized by Abraham Lincoln as

"of the people, by the people and for the people." **SEN. KEATING** said it was up to the states to decide if they were on equal footing with other states; people in Congress or Convention should make those decisions.

He said that was his argument that unappropriated public lands in Montana be conveyed to Montana, explaining Judge Renquist in his court decision on Indian gaming (a conflict between the Indians and the states because of the treaties which had power in and of themselves) said each state was a sovereign entity in our federal system. It was inherent in the nature of sovereignty not to be amenable to the suit of an individual without the sovereign's consent. **SEN. KEATING** interpreted that to mean the state's sovereignty was primary in our whole system; in fact, when the states debated the Constitution's ratification, the emphasis of the states was the Constitution was merely a contract or treaty between the sovereign states and the federal government merely a corporate creation of sovereign principles. He also explained it another way: The sovereignty of the federal agency was issued from the sovereignty of the states, without which there was no sovereign government; rather, it was merely a corporate creation of the sovereign principals.

SEN. KEATING said the question might be asked, "What would we do all the land if it were dumped on us because we couldn't administer it?" He said currently there were 5 million acres of School Trust Land which were owned and operated by the State of Montana; however, there were 30 million acres of federal land (BLM, forest, etc.) within Montana's boundaries. He referred to **(EXHIBIT 1, Sixth Sheet)** and said a thorough study had been made which compared the state with the U.S. forest land, explaining there were five national forests in Montana, but state and federal forests were intermingled in the various areas. He said the state managed its lands and generated $2.16/acre for every dollar of administration, whereas, the federal forest generated $.16 for every dollar of administration up to $.73/acre for every dollar invested. A statement in the sheet was a summary of that study and said in the forest management, the state earned $2.16 while the U.S. forest earned $.51; in other words, they lost money. The environment of the state forest had a higher quality than the natural environment of the federal forest, which he maintained proved the state was capable of administering or operating the lands; also, a study of grazing lands showed the state earned $3.79/acre while BLM lands earned $.82/acre.

SEN. KEATING informed the Committee with the public domain within our boundaries, in the beginning the lands were reserved to the federal agencies because some of the Homestead Acts were still in existence; particularly, the Homestead Act of May 20, 1862, which meant if people lived on 320 acres for three years and made a living off it, they could get title to it. He said there also were grants to the railroad who would build a railroad through the area and would receive land grants.

{Tape: 1; Side: B; Approx. Time Count: 10:58 a.m.}

The land was held in stewardship and the federal agency would allow patenting and at some point they would be through with the land; however, there was a change in attitude because now the federal agency through the Department of the Interior was actually operating that land. Confrontations between Montana and BLM or Forest Service over the operation of the lands within our boundaries had become greater and greater. There was a *de facto* ownership within the federal agency because they imposed their will on whatever they wanted to do; for example, the black-footed ferret, under the Endangered Species Act, was being planted in Montana and was creating an area of difficulty for the private landowners in that area to operate their lands for ranching and other agricultural purposes. He said the ferret was not a native to the area and the feds were asked by Montanans to not plant them, yet they went ahead and did it anyway. He contended the introduction of the wolves was the same principle and said the feds ignored the Tenth Amendment in imposing their will on us. He suggested the confrontation could be lessened greatly and Montana would benefit if the Department of the Interior didn't have the control of those within our boundaries; in fact, if that land was Montanans', there would be no need for the Department of Interior except for the wilderness areas and national parks.

SEN. TOM KEATING said a couple of years ago there was an article in "Forbes" which said if the federal government was serious in reducing in size, (repealing the Department of Commerce, Department of Education and the other Department) a close look should be taken at the Department of the Interior. He wondered what Congress was waiting for, explaining it could turn public lands from a taxpayers' liability into an asset, transfer them to the states, and retrain a few wilderness and park areas at the federal level which were for environmental and historic reasons; therefore, of general national distinction. He felt this was the best place to start when thinking about scaling back the state of welfare. He asked for a DO PASS so a letter could be sent to Congress; at least they could consider granting Montana title to the property within its boundaries in accordance with the Constitution and the equal footing doctrine which was stated by the United States Congress.

{Tape: 1; Side: B; Approx. Time Count: 11:05 a.m.}

Proponents' Testimony: None.

Opponents' Testimony:

Stan Frasier, Montana Wildlife Federation, said this bill was not about Constitutional issues but about greed because it was a method and scheme to transfer federal lands to state hands, which would make it easier to put into private control. He said the nation's public lands were one of its greatest assets and they set the nation apart from European countries, which had none. He

explained that meant people who weren't rich couldn't enjoy public lands. **Mr. Frasier** agreed the United States government lost money on the management of the public lands because Congress had people who seemed more interested in gaining votes and reelection than in working for the people of the United States. He contended there were give-aways like the 1872 mining laws and he could think of nothing else, except maybe the sales tax issue, which would generate peoples' ire so much as the transfer of federal lands.

Jim Richard, Montana Wildlife Federation, said the Opening Statement seemed to give good Constitutional and legal reasons for transferring the federal lands to the state; however, if that were true, he would have thought there would be successful legal challenges because there were a number of people who were sympathetic to **SEN. KEATING'S** view. He suspected the opponents would focus on the practicality of transferring those federal lands and said those lands were extremely important to the people of Montana and the West, explaining they were what made Montana what it was as well as the West what it was. He said the public lands were important to the economy of much of Montana; in fact, in many ways they provided multiple uses. **Mr. Richard** said one of the most recent actions along that line was Sen. Conrad Burns co-sponsoring a bill which would do the very thing **SEN. KEATING** wanted to do. He said Sen. Burns wrote a letter in November, 1996, asking Governor Racicot and the State of Montana how to receive these public lands and manage them. The Governor wrote back and said he felt it wasn't possible because the State Trust Lands of Montana were managed under a different set of guidelines from the federal lands, and it was his feeling Montana could not do it. He said Sen. Conrad Burns then withdrew his support from that particular bill.

Debbie Smith, Montana Chapter of the Sierra Club, said she admired **SEN. KEATING'S** tenacity and sincerity with which he presented his views, beliefs and interpretation of the Constitution and Montana's right to own the land; however, SR 2 was very similar to legislation he sponsored in the 1995 session which was ultimately defeated by the Senate and contained much of the flawed reasoning of the bill in that session, i.e. the state administering the federal lands if they were returned to the state. She said many of the bill's findings were not supported by historical facts or court interpretations of the law and urged the Committee to consider its actions for SR 2 in the historical context and its effect on the future of both Montana and the United States. She said our country's founders decided against a loosely organized confederation of states and recognized that centralized government was something that needed boundaries; however, our Constitution set out a strong federal government with delegated powers, one of which was a supremacy clause. She said the five states joining the Union after the original 13 were in the Ohio Territory which Britain would have owned and purchased from the Indians. She stated they were part of the original territory and retained the title (weren't granted the

title), which was very different from those states admitted into the Union after the original formation of the United States. The federal government purchased the rest of the United States at taxpayer expense, and the territorial governors agreed to the terms set out by the United States in getting admitted to the Union. **Ms. Smith** said the United States government clearly had Constitutional authority to own land, and if it didn't, the issue would have been settled a long time ago.

She said the equal footing doctrine applied to states admitted after the original 13 colonies and the purpose was to give the individuals in those states the same individual liberties the citizens of the original states retained. **Ms. Smith** suggested if the bill was so popular, why wasn't the timber or agricultural industry present. She admitted neither she nor the Montana Chapter of the Sierra Club agreed on a lot of the financial policy of the federal land; however, those folks were getting a better deal from the federal government than Montana would be able to give them. She reminded the Committee it was well documented last session Montana couldn't afford to administer these lands because they were to be sold off; however, there was an extreme aversion to having them sold off. She asked the Committee to consider why Montana would want to create some sort of "balkinization" where the state would tell the federal government it disagreed with historical facts and with federal Constitutional jurisprudence, and who would want to set forward its vision of its destiny. **Ms. Smith** maintained it didn't create unity nor did it promote the purposes of the federal government; in her mind that was tantamount to sedition. She urged the Committee's opposition to SR 2.

Jim McDermand, Russell Country Sportsmen, Great Falls, read his written testimony. **(EXHIBIT 2)**

John Gatchell, Montana Wilderness Association, sought to encourage the federal government to divest the public lands which today were owned by all Montanans as well as all Americans. If SR 2 were to come to fruition, individual state governments could dispose of those lands as they wished; however, if the states gained control, it was Governor Racicot's judgment they couldn't maintain and manage the lands. He said the key question was not management, but ownership because they were owned by all Montanans; if SR 2 passed, many of these lands would pass into private hands. He referred to a letter from the 1995 session, written by Sen. Robin Taylor, Alaska, in which Sen. Taylor referenced SJR 6 (Alaska legislature). The letter said the doctrine of public domain was contrary to the principles on which our country was founded. SJR 6 demanded the federal government relinquish the so-called public lands to the states for management; hopefully, a large portion of the acreage would eventually be conveyed to the private sector. Attempts to wrest control of America's public lands was not new; historically, private interests opposed the establishment of the national forest reserves at the turn of the century during both President

Theodore Roosevelt's and President Herbert Hoover's administrations. In the 1940s, Congress came very close to passing legislation which would have liquidated public domain. **Mr. Gatchell** said **SEN. KEATING'S** resolution would put the legislature on record backing a legal claim not substantiated by a court of law, but was expounded by a number of groups, such as Militia of Montana. He said in attacking the foundations of public land ownership, the resolution described Montana as a "land-poor" state and claimed unequal footing; however, he maintained Montana had more private lands than most states -- 50 to 60 million acres. **Mr. Gatchell** said the people of Montana had nothing to gain and a great deal to risk if the legislation went on record; therefore, he urged the Committee to vote NO on SR 2. He said **SEN. KEATING** raised some valid management issues, i.e. why was the federal government losing money on federal timber sales, wildlife, etc.

Ira Holt, Ravalli County Fish and Wildlife Association, read his written testimony. **(EXHIBIT 3)**

Janet Ellis, Montana Audubon, read her written testimony. **(EXHIBIT 4)**

{Tape: 1; Side: B; Approx. Time Count: 11:27 a.m.}

Questions From Committee Members and Responses:

SEN. VIVIAN BROOKE asked who the letter from the Alaska Senator was addressed to and was told it was **SEN. DELWYN GAGE**; however, **John Gatchell** said he didn't mean to imply it reflected **SEN. GAGE'S** view.

SEN. BROOKE asked **Mr. Gatchell** how he got the letter and was told he got it from one of their members in Billings, but couldn't remember exactly who. He further explained selling public lands was currently a hot issue in western Montana.

SEN. BROOKE asked about the statement resolutions such as SR 2 was a popular issue in other state legislatures. **John Gatchell** said he meant historically there were attempts to pass similar resolutions and said Sen. Taylor's state of Alaska passed such a resolution, but he didn't know if other states had also. He said he tried to stress the idea was attractive to those who didn't believe the public domain should exist.

SEN. KEN MESAROS asked about the statement state-owned sections (16 & 36, with some blocks) were more productive. **John Gatchell** said the reason for the block of state forest lands in the western part of Montana (where about 3/4 of the timber harvest on state lands occurred) was because where Sections 16 & 36 weren't available because of other federal reservations, the State was allowed to select blocks of land. He said in that area the blocks of state lands were surrounded by federal lands which went

up the mountain; therefore, the productivity dropped dramatically.

SEN. MESAROS asked about **SEN. KEATING'S** remarks regarding administrative and management costs of state lands vs. federal lands. **Jeff Hagener, Trust Land Management Division, DNRC,** verified the accuracy of the cost figures quoted by **SEN. TOM KEATING.**

SEN. FRED THOMAS referred to testimony which said SR 2 was really an attempt to move lands into private control and ownership, and asked if there was proof of that idea. **John Gatchell** said it opened the door to the transfer to private hands, and there was interest in legislation which supported it; however, many federal lands didn't return a great deal of money because they were located on less productive land. He said the historic evidence came in the fact other states had sold their state lands; therefore, the fact was if was turned over to the state legislatures, the authority would rest here.

{Tape: 2; Side: A; Approx. Time Count: 11:35 a.m.}

SEN. THOMAS commented often one heard complaints about the forest service (federal) and asked for explanation of the remark he was really a critic of the forest service, but on the lands being discussed, he would rather deal with the forest service at the federal level than the state level. **John Gatchell** said they had been involved in both federal and state forest management and would continue to be; however, the fundamental question was ownership, rather than management, i.e. the lands were owned by "we the people", rather than a federal agency.

SEN. THOMAS repeated his question of whether **Mr. Gatchell** would rather deal with the federal or our state government and was told they dealt with both and saw this as a slippery slope which would lead to the fact we would no longer own those lands; for sure, we would not own what we and other states today own.

SEN. THOMAS asked about the reintroduction of the grizzly bear in the Bitterroot Valley in Ravalli County, explaining except for ground, trees, forest and water, there was no habitat (feed) for the grizzly; yet, the federal government forced the placement "down the throat" of the people who lived there. He wondered if this went to the heart of the situation. **SEN. TOM KEATING** said he heard the budget for Fish, Wildlife & Parks and a fairly large amount of money had been appropriated for a division which worked in the area of animal & human confrontation, i.e. grizzlies, deer, mountain lions, etc.; however, even though the federal agency had dumped these things into Montana, it still fell on the Department of Fish, Wildlife & Parks at state expense to monitor those confrontations. He maintained these animals were put into habitats where they didn't belong; if they did, they would be there naturally.

CHAIRMAN DON HARGROVE asked which lands were being referred to and **SEN. KEATING** said they were unappropriated public domain; in other words, all lands except Yellowstone & Glacier Parks, the wilderness areas and those historic sites set aside under the Historic Preservation Act and operated by the federal agency.

CHAIRMAN HARGROVE asked if the wilderness areas should be included and **SEN. KEATING** said they were appropriated and set aside for a specific purpose by Congress.

CHAIRMAN HARGROVE commented he had attended the Western Council of State Legislators and they had worked on a resolution which had very similar wording to SR 2; however, the fear was voiced the lands would be sold. It was agreed, though, the state lands were managed in a much better and more efficient fashion than the federal. He referred to the comment this resolution wouldn't get anything done but he felt that was debatable; therefore, he suggested in order to get something done, there might be a middle ground, i.e. transfer to the state's control and management, not ownership, of those properties. **SEN. KEATING** said he once asked a state forester why the state could get a substantial return on its operations but the U.S. Forest Service could not. The forester said each entity had different policies of operation, and explained the U.S. Forest Service was encumbered with other rules and regulations which the state didn't have, and those added to their inefficiences. **SEN. KEATING** contended if the state took ownership, its policies could be applied rather than the encumbering federal policies; on the other hand, if the state would take management of the federal lands, Montana would have to operate those lands under federal policies, which would mean two sets of management policies for the state. **SEN. KEATING** maintained that was why the Governor said the state didn't want to get into that kind of situation and why Sen. Conrad Burns backed away; however, originally, Sen. Burns and Sen. Craig Thomas from Idaho had legislation for transferring title of unappropriated lands to the states. He said in 1981 there was an attempt made to get a resolution to Congress, and the Whereases in SR 2 and his bill in 1995 were very similar to those, as well as to those in the letter referred to earlier from the Alaskan Senator. **SEN. KEATING** reminded the Committee the Alaskan legislature passed the resolution and sent it to Congress.

SEN. VIVIAN BROOKE asked if she was a legislator at another time, would **Deborah Smith** be inclined to support the concept of SR 2, and would she vote for it, even with the errors she had pointed out. **Ms. Smith** said if she supported the notion the state should have control over unappropriated federal lands, she would like to see different "WHEREASes" adopted that would stay accurate, based on fact and correct law. She said it should be noted the state was attempting to push the edge of the envelope on the law to make new law, to get something it was not entitled to under existing law.

SEN. BROOKE asked for comment on appropriated lands. **Ms. Smith** said the federal government originally appropriated all the lands in Montana; there were no unappropriated federally controlled lands, but were lands which had been set aside as national parks, national historic areas and wilderness areas (a subset of forest lands).

SEN. BROOKE commented when **CHAIRMAN HARGROVE** asked what lands would be included, **Ms. Smith** said it would be anything seen as federal lands. **Deborah Smith** referred to the last "WHEREASes" and said it wasn't accurate because wilderness areas or national parks weren't different from other federally controlled lands. She said the issue was to which agency or subset of an agency the federal government had assigned management of those lands.

SEN. DELWYN GAGE asked if there were other lawyers who held different opinions from **Deborah Smith** with regard to some of those things. **Ms. Smith** said there were lawyers who gave all kinds of opinions, explaining she was not a Constitutional scholar, though she felt fairly certain what she said was accurate because she didn't intend to go out on a limb.

SEN. GAGE said he had been part of an organization called the Pacific Northwest Economic Region, explaining it was composed of western states and provinces so it could be a force in the global economy. He said they decided which subjects to look at and came up with 126; however, they narrowed them down to five, one of which was forestry, and the intent was to try to get the Region to operate as one entity in those forestry issues. He said he thought that was where he and Sen. Taylor from Alaska crossed paths. He also explained the legislative members from the member states and provinces contacted each other with issues they thought the others were interested in.

{Tape: 2; Side: A; Approx. Time Count: 11:54 a.m.}

Closing by Sponsor:

SEN. TOM KEATING urged the Sportsman's group to listen carefully to what he was about to say because he had heard their arguments a number of times and they bordered on hysteria. He wanted to assure them if a mining company thought they could have great gain from this property being sold to them, they would be here supporting SR 2. **SEN. KEATING** said he worked for a major oil company for 12 years and when he asked them why they didn't buy the land, he was told they didn't want to because they could lease it and share the royalty with the land or mineral owner; thus, there would be no capital expenditure. He stressed he wasn't representing the extractive industry; however, he wanted to point out if the public domain were given a title to the state, the face of the land would not be changed. Studies had shown, however, that state lands had a better environment for game and fisheries than federal agencies because of the policies of operation; in fact, the best hunting in Montana was on private

lands, of which there were over 62 million acres. He explained Montana took money from the license fees and was spending $4 million on a block management program which had negotiated access to six million acres of privately owned land for the purposes of hunting and fishing; the hunters and fishermen were happy with the program. **SEN. KEATING** said there were five million acres of state land on which people hunted and fished, and the public domain would be just as available as state and private lands.

He declared the audit revealed the state was getting a 1% return on the market value of the land, and if all the state land were sold at the market value and the money invested, the return would be 7%. He again stressed he wasn't advocating sale of those lands nor of the public domain; however, it was his position the state had a right to own it. Much of his argument came from a legal scholar who had worked on the historic review for over four years and was a descendant of John Mason from Virginia, who was active in the independence of the United States.

SEN. KEATING reassured the hunters and fishermen it wasn't his intention to sell the land to anyone, and said the objection to Ted Turner, movie stars or major companies buying property in this state (from the 62 million acres of private lands) was probably unfounded because those people were adding to Montana's economy by paying taxes, keeping up the lands, hiring people to work, etc.

He insisted the 62 million acres of private land was the major source of the productivity and creation of new wealth in Montana which also sustained its citizens. He explained they paid taxes and revenues to keep the state government running; the state could not survive on the income from state land.

SEN. KEATING pointed out to those who cherished the public domain for hunting and fishing, the people of Montana paid tremendous taxes to the federal agency who was using those tax revenues inefficiently to operate the land. He said the operation of that land could be better hunting and fishing as well as less costly to the taxpayers, if the state had title to that land.

ADJOURNMENT

Adjournment: The meeting adjourned at 12:01 p.m.

DON HARGROVE, Chairman

MARY MORRIS, Secretary

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DH/MM