

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By CHAIRMAN DON HARGROVE, on February 14, 1997,
at 10:07, 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: SR 12, SB 320 - 2/11/97
Executive Action: None

HEARING ON SR 12

Introduction:

CHAIRMAN HARGROVE introduced Bud Clinch, Director of the
Department of Natural Resources and Conservation.
{Tape: 1; Side: A; Approx. Time Count: 10:09; Comments: None.}

Proponents: Bob Gilbert, Montana Wool Growers Association and
Montana Stock Growers Association

Opponents: None

Opening Statement:

Bud Clinch, Director of the Department of Natural Resources and
Conservation presented his resume to the committee. EXHIBIT 1.

He noted that the DNRC went through executive reorganization last session, combining various functions from several natural resource agencies into a composition unlike any that has existed before. In the last four years he has served in a similar capacity, originally being appointed as the Commissioner of State Lands where he oversaw the 5.2 million acres of school trust land, as well as the Reclamation Division within that department.

His Bachelor of Science degree in Forest Management, with a minor in Forest Recreation, has a particular application since forestry is a large facet of management within the DNRC. His interest in recreation, from both a professional and personal standpoint, has a considerable application since a recreational renaissance is embarking on Montana. He feels his professional work history most qualifies him for his current position. During his six years as Director of Experimental Forest for Montana State University, he was introduced to a large range of natural resource issues, from timber management and wildlife activities to involvement with the innovative management of the Blackfoot Corridor and easements on recreation property. He developed a personal interest surrounding back-country travel and horses. That interest, combined with his experience on the E/L Ranch gave him a better understanding of the interrelationship between the management of Montana's natural resources and the competing interests that are emerging.

In 1981 he moved on to private industry and began his work with Champion Timberlands. Because of the ups and downs of the timber industry, he found himself unemployed and somewhat reluctantly accepted a position with the Montana Logging Association. He noted that he assisted in raising the compensation rate from \$18 to \$42. He was actively involved in the 1985, 1987 and 1987 legislative sessions where some of the early Workers' Compensation reform took place. He was heavily involved with the trade association, which represented 700 private businesses during the start of the greatest amount of scrutiny the logging industry had seen relative to environmental issues. He was instrumentally involved in mitigating some of the allegations.

His help in leading Workers' Compensation reform within the industry included innovative improvements in safety. Records show a substantial improvement in the safety program. In the mid-1980's, the effort to improve the safety program was going so well that the association was able to bring aboard two more staff persons, allowing him to expand his duties to interaction on the environmental front. The Voluntary Best Practices Program that he helped create has become a model for nationwide programs.

In the 1991 Legislative Session he convinced the logging industry to adopt the Stream-side Management Zone Act. That has grown to be a success story about partnership between private enterprises and other public interest groups. This experience allowed him insight into just critical the balance is between regulation and the responsible management of natural resources. It also made

him aware of what it takes to operate a business and produce a commodity.

In 1993, he accepted the appointment as the Commissioner of the Department of State Lands. His responsibilities increased greatly and were a positive influence for him. He emphasized the benefit of the diversified experience he gained in the private sector.

{Tape: 1; Side: A; Approx. Time Count: 10:20; Comments: None.}

Proponents' Testimony:

Bob Gilbert, Lobbyist for the Montana Wool Growers Association, also speaking for the Montana Stock Growers Association, stated that both groups have had a long time association with Mr. Clinch. He remarked that Mr. Clinch has the confidence to tackle the many challenges that will face him.

{Tape: 1; Side: A; Approx. Time Count: 10:21; Comments: None.}

Opponents' Testimony: None.

Questions From Committee Members and Responses:

SEN. DEL GAGE inquired whether, in the reorganization process, more or less has been accomplished than was anticipated.

Mr. Clinch responded that he is uncertain whether the reorganization was specifically directed at the DNRC. For the most part, the programs that were in the old DNRC and the old DSL were functioning well. To some extent, the DNRC is a neutral party that got pushed around because of the greater emphasis to reorganize deregulatory functions. He sees some accomplishment, particularly in the coordination of old DSL and old DNRC functions.

The DNRC is different from other departments in that it is field oriented. The old DNRC and old DSL often had field offices in the same towns. He has embarked on a program of collocating the offices. He has been successful in doing this in Havre, Glasgow, Lewistown and Bozeman. The collocating of an office in Billings should be complete by early summer. Those accomplishments will offer efficiency and ease of access to the constituencies.

The broader concerns about reorganization are tied more permitting relative to the coordination of air quality, water quality and mine reclamation. These aspects fall under the DEQ, over which he does not have control.

Producing results will be a longer process than anticipated. Traditional structure and the relationships of many people have been upset. Getting the people lined up and pulling in the same

direction has been the most difficult aspect. He is confident that in the long run the anticipated results will be produced.

SEN. GAGE asked if the department would best fit under the label of a regulator or a free-enterpriser.

Mr. Clinch answered that the label of fee-enterpriser would fit best.

SEN. GAGE asked how many attorneys there are in the DNRC.

Mr. Clinch reported that there are six.

SEN. GAGE recounted that he was fortunate enough to go on a tour of some of the coal-mining areas. Some mines had been reclaimed and some were still in the process of being reclaimed. He was told by the gentleman giving the tour that the sagebrush at one mine had been deliberately put in. He was alarmed by this since people are spending millions of dollars to get rid of sagebrush. The guide went on to explain that they were required to replace what was initially on the site and to remove ponds that their work created even though the stockman would like to see the ponds stay. A variance would have been necessary to leave the ponds and variances are very difficult to attain.

Mr. Clinch commented that his familiarity with the issue is due to the Reclamation Division being in the Department of State Lands prior to reorganization. He has also been on tours of eastern Montana and has seen the successful re-vegetation. He finds it astonishing that native land that has figuratively been turned upside down can be turned into productive cropland. The set of reclamation standards, passed down from the federal agencies and adopted by the state, mandate that a site must be returned to like type of landform and habitat.

He conveyed that, personally, he agrees with **SEN. GAGE's** type of thinking. However, from a department standpoint, the agency's hands are tied in terms of how it must carry out the regulations.

SEN. GAGE asked for advice in regard to attaining variances.

Mr. Clinch explained that there are opportunities for exemptions. He related that for about the first ten years of coal mining reclamation, the seeding mixture used to reseed was at the time the best available. As native grass species have become available, federal agencies have asserted that the reclaimed areas didn't meet the letter of the law in terms of native grasses. During the 1995 Legislative Session, the department carried a bill that provided a broad-based grandfathering in of all projects on native grass species composition. That solved a portion of the problem. The current problem of replanting sagebrush and soap weeds is ongoing. Work done to change the standards would have to occur on both the state and federal

levels. His indicated the Office of Surface Mining is not as sympathetic with what he perceives to be common-sense practices.

SEN. KEN MESAROS asked **Mr. Clinch** to share his top three goals for the department.

Mr. Clinch proclaimed that his top goal is to be effective in implementing the mission statement of the department, which is to provide protection and management of the resources of Montana for present and future generations. More specifically, one of his personal goals is to make the agency more reflective of the wishes of the public. He perceives these wishes to be for the department to become more streamlined, more efficient and more user-friendly. This is done through structural changes, legislative changes and people management.

So much of running the department hinges on the type of the relationship the he and his key administrators can maintain with the staff so management philosophies are implemented at all levels. Developing an effective communication network is a primary goal.

The fact that he is a hands-on type of manager is illustrated by his providing 95% of the department's testimony before the legislature. Continuation of this practice is a top goal.

SEN. MESAROS asked what policy the department has in regard to public input from the affected parties.

Mr. Clinch responded that the department is consistent the with the rest of the administration in terms of being totally open and encouraging complete input and disclosure. It would be difficult to be successful with a strategy of secrecy. There is an intense scrutiny of agencies by all interest groups.

The Trust Land Management Division having to come under the scrutiny of the Land Board brings a level of public disclosure that is probably unprecedented by any other agency. There are press releases and monthly staff meetings on all issues. There are also monthly Land Board meetings where even minor issues are debated at great length by any party that is remotely interested. He related that the process is sometimes cumbersome and frustrating, but necessary to government. The department is making an effort to continue the process without allowing it to prevent the department from completing its goals.

SEN. FRED THOMAS asked how the department's involvement with the Lincoln gold mine is progressing. He noted that he saw a study indicating the department was significantly impacted financially.

Mr. Clinch stated that the department is involved because the main ore body being explored is on a state school trust section. Each section is specific to one of the nine trusts. The irony is that the section of land with the ore body is dedicated in law to

the Butte School of Mines. Over the projected course of the mining project, that particular trust beneficiary is projected to receive approximately \$30 million in royalties.

The project is moving along as anticipated in light of the current regulatory climate. The DNRC is a co-agency with DEQ in completing the environmental impact statement. The process has already taken 24 months. The application process is quite involved. Several months ago the application from Phelps-Dodge was deemed complete. The DEQ and DNRC were involved in holding public scoping meetings. Multiple meetings have been held in Helena, Great Falls, Lincoln and Missoula. The public comments are used by the third party contractor, Morrison Maierle, in developing the environmental impact statement. The DEQ is approximately mid-way through developing the draft environmental impact statement. The statement includes chapters on topics ranging from groundwater impacts to socioeconomic impacts.

When the document reaches the draft stage there will be internal reviews, then public reviews and, ultimately, a final decision on the EIS. The DNRC will not be involved in deciding the technical aspects, rather, it will decide whether Phelps-Dodge, who has a metalliferous lease on the section, will be able to mine the state school section. That decision will be made by the Land Board and will bring with it a great deal of political debate. The decision-making process will not come until the latter part of 1999 due to the complexity of the EIS.

The composition of the Land Board will change dramatically in the next general election because of term limits. If there is a large amount of revenue that can be produced off the mine, strong proponents of trust land management would say there is a bound duty to mine and produce revenue for the school trust.

SEN. THOMAS inquired whether the Land Board would have to decide whether or not it will allow the mining to take place.

Mr. Clinch responded that the DEQ will be deciding whether a permit is issued. The decision will be based on technical analysis. The current lease for exploration has a stipulation that before any mining can commence, the Land Board must review the operating and reclamation plan and concur with it. Even if a permit were issued, the Land Board could deny the ability to mine. This raises an interesting legal and constitutional question of what the basis would be in the denying the ability to mine if an applicant has met the requirements, since the Land Board is mandated by law to return revenue.

SEN. THOMAS asked if the Land Board leased the authorized exploration.

Mr. Clinch affirmed that it did. Phelps-Dodge has a lease for the mineral rights, with a stipulation that before mining is commenced, the Land Board must approve the plan of operation.

SEN. THOMAS asked if this was done under the current Land Board.

Mr. Clinch affirmed that it was.

SEN. THOMAS asked **Mr. Clinch** if he was at the State Land (inaudible).

Mr. Clinch affirmed that he was.

SEN. THOMAS asked **Mr. Clinch** if he was pressured by schools which had opportunities to generate revenue on school land and were not doing so.

Mr. Clinch responded that, ironically, the answer is almost unequivocally "no". For the most part, there is a great lack of understanding among the constituents of Montana about School Trust Lands, the revenue and about how the revenue is provided. The department has been pressured, but not by the groups that benefit from the dollars. He predicted that as the money for education continues to shrink, there will be an awareness of the potential revenue source that is out there.

Currently \$25 million to \$27 million per year is produced directly. Additionally, approximately \$25 million is produced by the interest on the permanent funds. This money goes into the General Fund and is earmarked to be the first money to fund education. This is between 5 and 10% of the total education budget. Although revenue increases from School Trust Lands, the budget does not increase. Instead, the amount of money that is back-billed from the General Fund decreases. Missing the opportunity to generate revenue is unpardonable; the attempt should be to maximize revenue within the allowed bounds of the law so the burden on the tax-base may be reduced. He related that this view is not shared universally by his overseers.

CHAIRMAN HARGROVE asked, in terms of reclamation, how it is determined what a native grass is. He commented that grasses common to an area have, for a variety of reasons, changed.

Mr. Clinch explained that there are lists that indicate native grasses as well as introduced species. For a number of years reclamation was done with introduced species because they were fairly aggressive and they took well. Shortcomings to the long-range abilities of these grasses was then discovered. He stated he is unaware of the time frame that is used to determine what is native.

CHAIRMAN HARGROVE asked **Mr. Clinch** if he feels the process the state goes through on the various land swaps is proper and appropriate.

Mr. Clinch allowed that he has some frustration with the land swaps as he has been intimately involved with every one of them. He contended that the process is wonderful in allowing for input

from the public at multiple levels. However, as the land manager and the one responsible for generating revenue for the school trusts, he is forced to jump through hoops. Too much time is spent meeting the many requirements. The time would be better spent meeting mandate of the Land Management Division.

He added that he is aware of **CHAIRMAN HARGROVE's** involvement with his constituents on the Turner land exchange. It is his feeling that part of the problem goes back to the public's limited understanding of what school trust lands are and what they are mandated to do. He surmised that most people don't know the difference between school trust lands and federal lands.

CHAIRMAN HARGROVE noted that there is a lot of subjectivity required in interpreting the law. The legislature has the opportunity to intrude upon the executive's business, even through the interim, by virtue of representation and oversight. This manifests itself in the example of a constituent calling a legislator to relate a problem. He indicated that whenever he has called someone from the DNRC to help resolve an issue, the individual to whom he spoke has been very responsive. He asked what the policy of the department is in regard to providing information.

Mr. Clinch reported that the policy is to provide as much help as possible to the public. A higher priority is given to requests from legislators. In many instances the requests go directly through him or staff employees. He has the utmost confidence in his staff. Although he likes to be informed when there is correspondence between an employee and a legislator, he in no way tries to control the process.

{Tape: 1; Side: A; Approx. Time Count: 10:46; Comments: END OF TAPE.}

CHAIRMAN HARGROVE commented that the legislature is in place to determine the most efficient and effective spending of the people's money. He asked how the department prioritizes its spending.

Mr. Clinch stated that the planning is done in both a long-range and short-term manner. He reported that this week he is involved in midterm budget reviews with all of his divisions. Prioritizing creates an interesting dilemma. Each administrator is focused on the aspect for which he/she is responsible. He and key staff people are able to provide a broader perspective of the department as a whole. The budget aspect of the department's goals are evaluated at least twice a year. Evaluation is done on a much more regular basis at the program level. He meets monthly with division administrators. There is little that happens within the department of which he is not aware.

CHAIRMAN HARGROVE commented that the legislature runs into tremendous frustrations in trying to exercising control over budgets. Those within a department are often more knowledgeable

about the department's budget. The director of the department and key administrators are responsible for protecting the employees. The most effective way to determine a budget is to prioritize effectively and weed out what isn't absolutely essential.

SEN. FRED THOMAS stated that it seems that the focus of the Turner land exchange was on wildlife and not on raising money for schools.

Mr. Clinch clarified that the group opposing land exchanges alleges that the lands acquired may not provide suitable wildlife habitat or fishable streams. In the analysis the department went through for exchange, this aspect was not a significant determining factor. The Turner land exchange produced 1 1/2 more acres and almost twice as much annual revenue as well an increase the in projected appraised value of the lands over the next decade. All three ways of measuring whether you're getting a better deal were met.

The difficulty arose with affected public members alleging that specific tracts of land on which they hunted or fished were being traded for tracts that were not of equal value for those purposes. This ties back to the need to recognize what the purpose of the lands are.

SEN. GAGE proposed his ideas for budgeting. The hearing should concentrate on programs rather than money. Incentives should be given to the department based on money-saving practices by the department. The incentives would be use any way the department desired with the balance returning to the General Fund. He asked how this method of budgeting would affect the DNRC.

Mr. Clinch responded that if he was given that mandate, he would not have a problem determining what programs could be cut. He voiced his criticism that the current budget process does not provide for that. It is difficult to go back year after year and operate mandated programs on increasingly smaller budgets. It would be better management to let fewer departments do a great job than have many departments not perform well enough. He conveyed that this would mirror the private sector's allocation of resources.

{Tape: 1; Side: B; Approx. Time Count: 10:56; Comments: None.}

Closing by Sponsor: None.

{Tape: 1; Side: B; Approx. Time Count: 10:56 TO 11:09; Comments: TAPE LEFT ON FOR MEETING BREAK.}

HEARING ON SB 320

Sponsor: SEN. VIVIAN BROOKE, Senate District 33, Missoula.

Proponents: Kevin Keenan
Howard Heffelfinger, Department of Revenue
Luelle Schultz
Tara Melee, Montana Public Interest Research Group
Melissa Case, Hotel Employee/Restaurant Employees
Union and United Health Care Employees Union
Ralph Smith
Tom Schneider, MPEA and Montana Federation of State
Employees
Darrell Holzer, AFL-CIO
Anne Hedges, Montana Environmental Information
Center

Opponents: LeRoy Schramm, Legal Counsel for the Montana
University System
Ernie Nunn
Mark Cress, Department of Administration

Opening Statement by Sponsor:

SEN. VIVIAN BROOKE read the title of the bill and opened the floor to the proponents and opponents.
{Tape: 1; Side: B; Approx. Time Count: 11:37; Comments: None.}

Proponents' Testimony:

Kevin Keenan presented written testimony. EXHIBIT 2. He also presented a written statement on behalf of Howard Heffelfinger with the Department of Revenue. EXHIBIT 3.
{Tape: 1; Side: B; Approx. Time Count: 11:45; Comments: None.}

Luelle Schultz presented written testimony. EXHIBIT 4.
{Tape: 2; Side: A; Approx. Time Count: 49; Comments: TESTIMONY BEGAN ON TAPE 1, SIDE B, TIME COUNT 11:45.}

Tara Melee, Montana Public Interest Research Group, stated that the group has long been involved in "right to know" legislation. The fastest way to insure responsible guidelines is through an open government. Employees are simply the best people within government to maintain accountability for that government and they must be allowed to speak through the proper processes.
{Tape: 2; Side: A; Approx. Time Count: 11:50; Comments: None.}

Melissa Case, Hotel Employees and Restaurant Employees Union and United Health Care Employees Union, stated she spoke with the Legislative Auditor's Office when she became aware of a fraud hotline that was established last legislative session. She related that **Scott Seacat** shared some of his experiences with the hotline.

The hotline has been running for approximately 31 months and it has received 993 calls in that time. **Mr. Seacat** conveyed to her that approximately 25% of the calls received are from state employees. There is some anonymity protection with the hotline, however, the Legislative Auditor's Office does not feel there is enough protection for the caller to come fully forward.

Reports have included a state employee dropping his/her kids off at a local ski area in a state vehicle. This happened several times and the employee was eventually relieved of his/her position. Another report from several years ago involved an employee using state canoes for personal float trips. The individual then lost an expensive camera on one of the trips and billed the state for the camera. That person was also relieved of his position.

She relayed that **Mr. Seacat** indicated to her that in fiscal year 1996, 71 reported cases concerned theft of resources from the state. These cases involved theft by state employees and were reported by state employees. Often times these thefts are felonies and involve cash and other state resources.

This fiscal year, 30 serious fraud cases involving theft have been reported. People have indicated they are fearful of losing their jobs if supervisors or others in the department find out about them reporting the incident.

She relayed that the Legislative Auditor's Office is hopeful the bill will pass because the current statute does not provide ample protection for people disclosing information about coworkers.

{Tape: 2; Side: A; Approx. Time Count: 11:53; Comments: None.}

Ralph Smith presented written material. She added that her former job as a right-of-way agent required extensive travel around the state. She asserted that policy provides that if the state motor pool does not have a vehicle available, the employee may use his/her own car. She relayed that her former chief submitted a memo in contradiction to this policy, stating that if a motor pool car was not available, the employee would use a car from the highway shop. These cars are unsafe in her determination. She maintains that when she resisted using a highway shop car she was told she would be suspended if she did not comply with the memo. The car she ended up having to use had 104,000 miles on it, and had a bald right front tire. The car had no jack. **EXHIBIT 5.**

{Tape: 2; Side: A; Approx. Time Count: 12:01; Comments: None.}

Tom Schneider, MPEA and Montana Federation of State Employees, expressed his concern the bill is not strong enough to protect employees and urged the use of stronger language.

{Tape: 2; Side: A; Approx. Time Count: 12:02; Comments: None.}

Darrell Holzer, AFL-CIO, stated that, although Montana currently has the some of the strongest wrongful discharge statutes of any state, the previous testimony indicates the need for another level of protection for state employees as well as for the public at large. He agreed with Mr. Schneider that perhaps the bill is not strong enough, but allowed that it is a step in the right direction.

{Tape: 2; Side: A; Approx. Time Count: 12:03; Comments: None.}

Anne Hedges, Montana Environmental Information Center, related that she cannot understand how anyone could protest an employee's ability to report mismanagement, a gross waste of public money or violations of the law.

{Tape: 2; Side: A; Approx. Time Count: 12:04; Comments: None.}

Opponents' Testimony:

LeRoy Schramm, Legal Counsel for the Montana University System, provided written material. EXHIBIT 6. He stated that it is in the public interest to protect whistle-blowers, however, the problem arises that the protection can fall to those who are simply malcontents and are not performing their job.

Whistle-blowers are already protected in a multitude of ways as presented in the handout. He questioned why the bill singles out state employees. He asserted that the language in the bill is so broad and vague it could cause unnecessary law suits, arising from such incidents as conflict of personality.

The bill breaks new ground by giving punitive damages against the state. There is currently a prohibition on punitive damages against the state. The bill doesn't repeal that, so there are conflicting sections. Punitive damages are meant to dissuade the perpetrator from repeating the act. Causing taxpayers to pay for punitive damages is not going to dissuade a state employee from his/her actions. He referred to page 2, line 15 and questioned the meaning of "complete affirmative defense" and how it relates to the statement on line 24 regarding "a preponderance of the evidence" or the statement on line 26 regarding "clear and convincing evidence". He stated that the burden upon the employer to disprove an allegation with clear and convincing evidence is incredibly tough. This is a burden that does not have to be met under any other statute.

{Tape: 2; Side: A; Approx. Time Count: 12:19; Comments: None.}

EXHIBIT 7 submitted by Ernie Nunn.

Mark Cress, Administrator of the State Personnel Division, Department of Administration and on behalf of Governor Marc Racicot presented written testimony. EXHIBIT 8.

{Tape: 2; Side: A; Approx. Time Count: 12:22; Comments: None.}

Questions From Committee Members and Responses: None.

Closing by Sponsor:

SEN. BROOKE reiterated Mr. Nunn's written testimony. She also pointed out that those that work for the state have a sincere interest in their jobs and that they are dedicated. She stated that the legislature needs to assist those employees in working toward the betterment of Montana. When a law or policy within a department goes awry, it has a chilling effect on the dedication and creativity of the employee that sees this. This bill provides an avenue for those employees to speak out. She urged the committee to recall Mickey Gamble, formerly of the Department of Corrections, allowing guards to take prisoners out in different arenas that were clearly against policy. She recalled that some of the guards feared for their lives. There should be legal recourse for this type of employee before a tragedy occurs. She argued that the bill does not include all employees in the state because they are responsible for how the taxes and revenues are spent.

{Tape: 2; Side: A; Approx. Time Count: 12:27; Comments: None.}

ADJOURNMENT

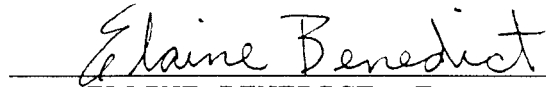
Adjournment: 12:27



SEN. DON HARGROVE, Chairman



MARY MORRIS, Secretary



ELAINE BENEDICT, Transcriber

DH/EMB