

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

SUBCOMMITTEE ON NATURAL RESOURCES

Call to Order: By Chairman Gary Spaeth, on January 6, 1989,
at 8:00 a.m.

ROLL CALL

Members Present: All members present.

Members Excused: None

Members Absent: None

Staff Present: Carl Schweitzer, LFA
Jane Hamman, OBPP
Donna Grace, Committee Secretary

Announcements/Discussion: None

HEARING ON REQUEST FOR SUPPLEMENTAL BUDGETS

LFA's agenda is attached as Exhibit 1.

Department of Commerce 002:A (009)

Presentation and Opening Statement: William J. Fogarty, Administrator of the Transportation Division, Department of Commerce, requested supplemental funding in the amount of \$20,000 for costs incurred in connection with the McCarty Farms lawsuit. Mr. Fogarty's testimony is attached as Exhibit 2.

Bob Stephens, representing the Montana Grain Growers' Association stated that he felt Mr. Fogarty had covered the subject well and stated that he supported the request for additional funds.

Senator Jenkins asked where the money would go in the event of a settlement of the case and Mr. Fogarty explained that the funds would be returned to the state plus 10% interest as provided by the legislature. However, Judge Hatfield would be the person who would make the final decision as to how the money from a settlement would be split. Mr. Fogarty explained in answer to a

question that the Governor had included \$90,000 per year for the next biennium for the McCarty Farms case. If the case is settled and this money is not used, it will be returned to the general fund.

Mr. Spaeth asked how much had been spent on this case to date and Mr. Fogarty responded that total costs were \$896,000 since the suit was first filed in 1982.

DEPARTMENT OF STATE LANDS Tape No. 002:B (203)

Presentation and Opening Statement: John North, Interim Commissioner of State Lands, stated that the Legislature had never appropriated money in advance for the department of State Lands firefighting responsibilities because it was impossible to accurately predict what the fire season will be and, consequently, what the costs will be. Instead, the Department of State Lands and the Legislature have an informal agreement that the Department should fight the fires as necessary and pay the costs out of its existing budget. When the legislature next meets, a supplemental appropriation would be made to make the department's budget whole and that is the purpose of the supplemental appropriation request. Unfortunately 1988 was a bad fire year and the bills are still coming in at this point. Total costs for firefighting in 1988 is \$12.6 million.

(236) Gary Brown, State Forester with the Department of State Lands, presented the Department's detailed presentation. His comments are contained in Exhibit 3 attached to these minutes.

Discussion: Several questions were directed to Mr. Brown regarding the responsibility for firefighting when damage to state lands occurs because of the federal "let burn" policy. He assured the committee that when this does occur, the federal government pays the entire cost.

Senator Devlin asked what auditing procedures were used to determine that costs billed by other agencies were actually utilized in fighting fires and Mr. Brown confirmed that prior to the fire season annually the department meets with all the cooperators and they establish what the rates will be. Before the fire season starts they know exactly what they will be paying for retardant, aircraft, smokejumpers, etc. An auditing process is also in place. All expenditures that relate to fires

must be documented and every item can be verified.

(504) Further discussion was held relative to who was responsible for fire protection of state and private lands and Mr. Brown stated that it is the obligation of the Department of State Lands. It was clarified that there are two different types of fires which start on federal lands: (1) those that start in a wilderness area where there is a "let burn" policy and, if the fire escapes, the federal government pays the entire cost and (2) if the fire starts where there is no "let burn" policy and it escapes to state or private land, costs are shared by the state and the federal government.

(002:B:207) Mr. North stated that in a normal year expenses for a fire can be taken out of the State Lands budget. However, because of the extreme expenses in 1988, funds were not available and the Department was faced with three choices: (1) shut down the Department of State Lands when the money ran out, which was not a viable option; (2) call a special session of the legislature to provide a supplemental appropriation or (3) borrow from the general fund, obtain a budget amendment which gave the agency the authority to spend the money and then ask for a supplemental appropriation to repay the loan. The administration chose the third option. However a question of legality was raised by the Attorney General upon request of the Finance Committee. The Attorney General held that the budget amendment process was not intended to do this type of thing because the budget amendment law says that one of the criteria for a budget amendment is that you cannot create an additional obligation on the general fund. Therefore, this process will not be available if the situation should arise again.

North advised that another option in the future would be to appropriate firefighting expenses and the Department of State Lands has requested that the LFA draft a bill requesting \$20,000,000 for the coming year.

Chairman Spaeth stated that it was his opinion that a statutory change should be made allowing the budget amendment process to be used in the future rather than specifically earmarking a \$20,000,000 fund for expenses that might not be used. He asked the LFA, the representative from the Governor's Budget Office and Mr. North to meet to discuss language which would permit this procedure.

Mr. Les Graham from the Department of Livestock presented a request for funds in connection with a move of the diagnostic laboratory at Bozeman. The problem at the diagnostic lab developed when the University requested that the lab move from its location in a building shared with the State Veterinarian. The move will cost approximately \$20,000. There was also a request for funds to cover costs of providing additional tests. The total request for funds was \$28,449 from the general fund and \$35,196 from the animal health fund.

Discussion followed and Mr. Graham said he would, in answer to a request from Senator Devlin, summarize his request in writing.

DEPARTMENT OF AGRICULTURE (588)

Testimony: Mr. Ralph Peck, Deputy Director of the Department of Agriculture, stated that his request was necessary because of an attorney general's opinion regarding grasshopper control. Exhibit 3. The Environmental Quality Council raised the question about the applicability of the Montana Environmental Policy Act and the funds being requested are to cover the cost of the Environmental Impact Statement. The total amount requested was \$37,281 from the general fund.

Chairman Spaeth said that no executive action would be taken on the requests for supplemental funding at this time as it was necessary for some of the committee members to leave the meeting. He also felt that it would be necessary to take a closer look as some of the programs as requests for funds were quite large, i.e., firefighting expense.

ADJOURNMENT

Adjournment At: 9:30 a.m.


REP. GARY SPAETH, Chairman

GS/dg

0526.mina

Natural Resources Subcommittee Agenda - Jan. 6, 1989

1. Department of Commerce
McCarty Farms Supplemental
2. Department of State Lands
Forest Fire Supplemental
\$12.9 million general fund
3. Department of Livestock
Relocation Supplemental
\$28,449 general fund, \$35,196 animal health fund
4. Department of Agriculture
EIS- Grasshopper Infestation
\$37,281 general fund

Supplementals

DEPARTMENT OF COMMERCE
TRANSPORTATION DIVISION

EXHIBIT 2
DATE 1-6-89
HB _____



TED SCHWINDEN, GOVERNOR

1424 9TH AVENUE

STATE OF MONTANA

(406) 444-3423

HELENA, MONTANA 59620-0401

December 15, 1988

MEMORANDUM

TO: Keith Colbo, Director

FROM: William J. Fogarty, Administrator
Transportation Division

RE: Request for Supplemental Funding for McCarty Farms

In its decision of February 12, 1988, the Interstate Commerce Commission (ICC) determined that Burlington Northern Railroad's (BN) rates on shipments of wheat and barley from Montana to the Pacific Northwest exceeded a maximum reasonable level. The Commission also directed the parties to submit evidence on maximum rate levels and reparations using the methods described in the February 12 decision. Since that time both parties have submitted evidence on rate reasonableness and reparations.

When the Complainants submitted their evidence, they notified the ICC that its costing procedures used in the February 12 Decision were erroneous. The costing procedures used by the Commission were developed in Ex Parte 399. The Commission acknowledged this error and corrected its Ex Parte 399 procedures. As a result of this error, the Commission was required to recost its waybill tapes for the years 1979 through 1986. In addition, the Commission also changed its Rail Form A costing procedure to more accurately reflect costs associated with the movement of unit trains. The Commission's recosted waybill tapes for the years 1979 through 1986 have recently been released.

Because of the Commission's costing errors and other changes in costing procedures, the evidence most recently submitted by both parties may no longer be accurate. Accordingly, it will be necessary to use the Commission's corrected and modified procedures to determine if these changes are in the Complainants' favor. Conversely, the BN is also expected to perform these calculations to determine if the changes produce results in their favor.

Because of the Commission's changes, the Complainants must:

1. Use the recosted waybills for the years 1979 through 1986 to develop comparison group traffic revenue to variable cost ratios;
2. Revise the Complainants' Rail Form A Cost Program to comport with the new ICC program;
3. Develop new BN Rail Form A's for the years 1979 through 1986;
4. Alter the Complainants' cost program for the issue traffic to replicate the ICC's revised Ex Parte 399 procedures; and
5. Recost the issue traffic.

To complete the above mentioned tasks would cost an estimated \$12,000. The contracted portion of the work would be completed by L. E. Peabody and Associates (Peabody), located in Alexandria, Virginia. This is the same consulting firm that has performed costing work for us in the past.

There has not been a reopening of the case at the Commission for the submission of additional evidence. We believe the Commission will wait for the parties to take the initiative to submit additional evidence if they believe, it will be in their best interest. Even though no procedural schedule has been established, the costing work needs to be completed in early 1989.

In addition to recosting movements, parties have also been involved in settlement negotiations. These negotiations took place on November 21 and 22 before Magistrate Shanstrom in Billings, Montana, as ordered by U. S. District Judge Paul Hatfield. It is expected the parties will meet again for negotiations within the next 60 days as ordered by Magistrate Shanstrom.

An expert witness from Peabody was present at the November negotiations and will be needed at subsequent negotiations. The estimated cost for Peabody's involvement in settlement talks is \$8,000.

cc: Carolyn Doering
Maureen Stohl

Budget - Expenditures for McCarty Farms FY 89 through November SBAS

| | <u>FY 89</u> |
|--------------------------------|----------------------|
| Personal Services | 10,254 |
| Consultants (Expert Witnesses) | 15,504 |
| Travel | 441 |
| Indirect/Other | 709 |
| TOTAL | <u>26,909</u> |

| | |
|---|--------|
| Remainder of Biennium Appropriation | 5,000 |
| Amount Absorbed by Bureau's budget to date | 21,909 |

Bureau Projections for Remainder of FY 89

| | |
|--|------------------|
| Balance of Bureau Budget for FY 89 | <u>\$120,085</u> |
| Personal Services through June 30, 1989 | 84,103 |
| Legal Charges Incurred to date | 4,320 |
| Computer Processing (Bureau's share) | 700 |
| Supplies (Bureau's Share) | 900 |
| Communications Estimated | 5,200 |
| Travel Estimated | 8,200 |
| (Four trips to Washington, DC for cost analysis are probable, at a cost of approximately \$1,800 each) | |
| Rent (Bureau's Share) | 3,700 |
| Repair/Maintenance (Bureau's Share) | 400 |
| Indirect, Other (Tariff Subscriptions, Dues, Etc.) | <u>12,500</u> |
| TOTAL | 120,023 |
| Balance of Bureau Funds | \$ 62 |

| | 1988 | 1987 | 1986 | 1985 | 1984 | 1983 | 1982 |
|---------------------|------------|------------|------------|------------|-----------|-----------|----------|
| Personal Services | \$ 52,003 | \$ 35,418 | \$ 42,763 | \$ 18,543 | \$ 9,275 | \$ 29,908 | \$ 7,601 |
| Contracted Services | | | | | | 7,425 | |
| NERA | 75,097 | 10,789 | 26,776 | 9,953 | | | |
| L.E. Peabody | 88,540 | 3,600 | | | | | |
| DNS | | 13,000 | 7,000 | 10,000 | | | |
| Hines Assoc. | | 7,500 | | | | | |
| Asia Services | | 10,000 | | 10,000 | | | |
| C. L. Brennans | | 56,742 | 18,000 | 5,000 | | | |
| Wyer Dick Assoc. | | 16,702 | 58,000 | | | | |
| George Shaeffer | | | 67,087 | 63,992 | 6,216 | | |
| Bardwell | | | | 2,000 | | | |
| K. Casavant | | | | 3,779 | | | |
| Legal Fees | | 966 | | | | | |
| Consultant Travel | \$ 13,467 | | | 3,657 | | 325 | |
| Printing | | 46 | 1,500 | | | 80 | |
| Supplies/Materials | 283 | 46 | | 336 | | 28 | |
| Travel | \$ 23,445 | 22,665 | 16,626 | 12,383 | 74 | 4,705 | 973 |
| Communications | 578 | 342 | | 447 | 9 | 157 | 50 |
| Rent | 49 | 220 | | 159 | | 60 | |
| Repair | 3 | | | | | | |
| Indirect/Other | \$ 4,205 | 3,616 | 4,214 | 1,597 | 706 | 3,662 | 991 |
| TOTAL | \$ 257,936 | \$ 181,652 | \$ 241,956 | \$ 142,846 | \$ 16,280 | \$ 46,350 | \$ 9,615 |

TOTAL AMOUNT EXPENDED: \$896,635

TRANSPORTATION Division.

See Brown

DEPARTMENT OF STATE LANDS
FIRE SUPPRESSION SUPPLEMENTAL
FY88-89

The fire suppression supplemental needs to be amended as all of the costs were not available at the time the Executive budget book was printed. A significant part of the total suppression cost is contracting manpower and equipment through the U. S. Forest Service. The supplemental is still based partly on their estimates of the cost for their support, however we have their assurance that the current estimate is 98% accurate. With a fire season such as we experienced last summer, bills for costs in support of our fires have been coming in from all over the country. The majority of these costs are billed to us through the U.S. Forest Service. The amended amounts are as follows:

General Fund - From \$11,465,224 to \$12,639,542

Reimbursement of State expenses by federal agencies: from \$800,000 to \$1,792,081

Therefore, the net increase in the supplemental is only \$182,237

These figures do not include collections resulting from billing negligent parties for their escaped fires. For example, the Department may recoup \$500,319.47 through litigation from Burlington Northern for the Sterling Gulch Fire.

FIRE SUPPLEMENTAL COST SUMMARY

| | |
|---|----------------|
| FY1988 COSTS | \$ 1,335,135 |
| FY1989 COSTS: | |
| SBAS Fire Expense through December 1988 | 5,627,930 |
| U.S. Forest Service outstanding bills: | |
| Dry Fork fire | 2,662,369 |
| Warm Springs creek fire | 1,667,819 |
| Girard Gulch fire | 183,939 |
| Other FY88 fires | 845,120 |
| SBAS bills not posted | 84,730 |
| BLM Montana outstanding bills: | 132,500 |
| Anticipated costs May and June 1989 | <u>100,000</u> |
| TOTAL FIRE SUPPLEMENTAL | \$ 12,639,542 |

The 1988 fire season was one of the most extraordinary in the number of fires that occurred and the wide spread nature of this occurrence. No portion of the State was left unscathed during the 1988 season. The length of the fire season was also unusual and extended from late winter to early fall. A relatively mild winter with light snowpack and less than normal spring and summer rainfall led to explosive conditions throughout the State. The first significant wildfire occurred in February, burning several hundred acres of river bottom lands, pastures and in addition, rural residences, outbuildings, improvements, and equipment. This was the beginning for what was to become an extremely critical and lengthy season for all of the fire protection agencies within the State.

The following fire statistics have been compiled to give you an idea of the seriousness of the 1988 fire season. Numbers and acreage reflect only areas of State direct protection and fires on county protection land on which the Department assisted the county by fighting fire:

| <u>WILDFIRE SUMMARY</u> | | | | | | |
|-------------------------|-----------------|----------------|--------------|-----------------|----------------|--------------|
| | Number of Fires | | | Number of Acres | | |
| <u>Year</u> | <u>Person</u> | <u>Natural</u> | <u>Total</u> | <u>Person</u> | <u>Natural</u> | <u>Total</u> |
| *Avg. | 131 | 137 | 269 | 17,239 | 4,814 | 22,053 |
| 1987 | 237 | 101 | 338 | 4,029 | 165 | 4,194 |
| 1988 | 243 | 235 | 478 | 7,439 | 53,269 | 60,708 |

*Based on a 15 year average.

It is interesting to note that we also responded to a total of 55 false alarms in 1988 and provided assistance to cooperating agencies on another 120 separate fire incidents. State forces responded to a total of 648 incidents during the 1988 fire season. In comparison, in 1987, which was considered one of our more critical fire seasons, State forces responded to only 451 total incidents.

The residential/wildland interface problem was particularly significant during the 1988 fire season. Almost all of the many large fires that occurred within the State presented a direct threat to structures located within forested and non-forested areas. Requests for equipment capable of structural type protection became the norm rather than the exception on most large fires.

The 1988 fire season will definitely go down in the record books as one of the worst seasons experienced in recent history in the State of Montana.



Peck

LEO SCHWENKER
GOVERNOR
STAN STEPHENS

STATE OF MONTANA
DEPARTMENT OF AGRICULTURE

OFFICE OF THE DIRECTOR
AGRICULTURE/LIVESTOCK BLDG.
CAPITOL STATION
HELENA, MONTANA 59620-0201

EXHIBIT 4
DATE 1-6-89
HB _____
TELEPHONE: _____
AREA CODE 406 _____
444-3144

Everett M. Snortland
~~XXXXXXXX~~
DIRECTOR

TESTIMONY OF MONTANA DEPARTMENT OF AGRICULTURE
FOR THE APPROPRIATIONS - FINANCE AND CLAIMS
JOINT SUBCOMMITTEE
NATURAL RESOURCES

Chairman Spaeth, members of the committee, for the record I am Ralph Peck representing incoming Director Everett Snortland here today.

Grasshopper population outbreaks occurred in numerous counties in Montana in 1985, 1986 and 1987. Boards of County Commissioners from various counties petitioned the Governor to declare an emergency in each of the three years to make state monies available to farmers within these counties through the state emergency and disaster fund. The Governor, based upon these petitions and verifications of grasshopper infestations, declared an emergency each year. On June 15, 1987, the Environmental Quality Council (EQC) raised a question about the applicability of the Montana Environmental Policy Act (MEPA) to this action and whether any type of environmental review was necessary. The Montana Department of Agriculture (MDA) subsequently requested an Attorney General's opinion on this issue.

The Attorney General's opinion issued on February 5, 1988, held:

1. The participation of the State of Montana in a grasshopper spraying program in which the state pays up to one-third of the costs and provides financial management and technical expertise, is a major state action in which compliance with the terms of the Montana Environmental Policy Act is required.
2. While an emergency situation is a legitimate exception to the requirements of MEPA, the Montana Department of Agriculture should, in the future, comply with MEPA before participating in a grasshopper spraying program, if the need for such program is reasonably foreseeable.

In the text of the Attorney General's opinion he further stated that: "It appears that (a) programmatic EIS may be the desirable way for the Department to meet the requirements of MEPA and be able to respond readily when confronted by an immediate need to deter a grasshopper infestation." As a result of this the Montana Department of Agriculture ~~is~~ preparing a Programmatic Environmental Impact Statement (EIS) on the public policy considerations that trigger the emergency designation by the Governor, which permits use of state funds along with funds from counties and producers to minimize grasshopper damages to agricultural areas.

The Department of Agriculture respectfully requests reducing our supplemental by \$ 20,221, amending the total required supplemental to \$ 17,060. We have worked to hold costs to a minimum by cross utilizing staff, working to develop the first draft with the requested supplemental FTE resources and existing staff. Due to staff changes and the reallocation of work assignments we have been able to reduce the required personal services for the programmatic EIS from a projected 1.33 to an actual of 0.52.

The Department of Agriculture asks your support for the supplemental request.

VISITOR'S REGISTER

NATURAL RESOURCES

SUBCOMMITTEE

AGENCY(S) _____

DATE January 6, 1989

DEPARTMENT _____

| NAME | REPRESENTING | SUP- PORT | OP- POSE |
|-----------------|------------------------|--------------|-------------|
| John North | Dept. of State Lands | | |
| Carolyn Doering | Commerce | | |
| Tom Clinch | | | |
| Bill Fogarty | Treasury Dir | | |
| Marion Stone | Imp. Dir. MDOC | | |
| Ralph Peck | Mt Dept of Agriculture | | |
| Bob Stephens | Mt. Grain Storage Assn | | |
| Les Graham | Dept of Livestock | | |
| John Shufco | " " " | | |
| Tim MURPHY | Dept. of State Lands | | |
| Grady G. Brown | Dept of state Lands | | |
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IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT.
 IF YOU HAVE WRITTEN COMMENTS, PLEASE GIVE A COPY TO THE SECRETARY.