

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **DICK KNOX, CHAIRMAN**, on January 25, 1993, at 3:00 p.m.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Rolph Tunby, Vice Chairman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Russ Fagg (R)
Rep. Gary Feland (R)
Rep. Mike Foster (R)
Rep. Bob Gilbert (R)
Rep. Hal Harper (D)
Rep. Scott Orr (R)
Rep. Bob Raney (D)
Rep. Dore Schwinden (D)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Howard Toole (D)
Rep. Doug Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Michael Kakuk, Environmental Quality Council
Roberta Opel, Committee Secretary

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

Committee Business Summary:

Hearing: HB 212
Presentation: Water Rights & Water Management Course
by Mary Ellen Wolfe

Water Rights & Water Management Course Presentation:

Mary Ellen Wolfe, Montana Watercourse Coordinator, presented a course in water rights and water management to the Natural Resources Committee and distributed a course booklet. **EXHIBIT 1** Ms. Wolfe said the course was designed to improve understanding of water management noting that an informed public will make a difference.

Forty five million acre feet of water leave Montana each year through the main water users in the state, irrigators. The need for a water allocation system fostered the need for water rights, Ms. Wolfe explained.

Montanans have a legal right to use water as well as the right to buy or sell water. From 1864 until the present century, Montana did not have a central authority to deal with water rights. The Montana Water Use Act of 1973 made final, through an adjudication system, the protection of all water rights. The Act also established a centralized record system of minimum stream flows.

Ms. Wolfe said water rights disputes are settled in 85% to 90% of cases. Only federal and local agencies may apply for and hold water reservations.

The following individuals spoke regarding water rights and water management: EXHIBIT 2.

Judge Bruce Loble, Chief Water Judge, Montana Water Courts, Bozeman, discussed the adjudication process.

Jim Beck, DNRC, on new appropriations.

Larry Dolan, DNRC, on water reservations and leasing.

Susan Cottingham, Program Manager, Reserved Water Rights Compact Commission, DNRC, explained that federal and state water rights differ considerably. Federal water rights, unlike state water rights, cannot be abandoned through non-use. The nine member commission, appointed by the governor, has regional offices that manage the states only hydropower, generating \$11 to \$15 million annually.

Gary Fritz, Administrator, Water Resources Division, DNRC, stated that regional offices manage the state's hydropower. Mr. Fritz said the water resources division also includes a water measuring program that monitors chronically de-watered streams.

Larry Peterman, Administrator, Fisheries Division, Department of Fish, Wildlife and Parks, said the department's primary interest is in maintaining good fish habitat. He said Montana has some of the best fresh water fish in the country.

Mr. Peterman noted the 1973 Stream Protection Act was designed to protect the physical habitat of streams. In 1975, this Act was expanded to include the River Restoration Program to repair stream beds.

John Arrigo, Ground Water Section Manager, DHES, stated the department was in charge of protecting Montana's water as well as maintaining the surface water permit program and the waste water treatment system.

REP. RANEY asked Ms. Wolfe what the procedure would be if citizens wanted instream flow. Miss Wolfe explained legislation would be required to change water laws regarding instream flow.

REP. RANEY asked if legislation could condemn water rights on instream flows. Ted Doney, Helena attorney, answered yes.

REP. SWANSON asked how the decision is made regarding basin water adjudication. Mr. Arrigo stated that when local water users believe water is not available for new users, a petition can be signed.

HEARING ON HB 212

Opening Statement by Sponsor:

REP. FRITZ DAILY, HD 69, Butte, presented a history of HB 212. EXHIBIT 3 He said the rising contaminated water within the Berkeley Pit in Butte continues to be a concern. HB 212 would require the state to take immediate action if this water discharges into the bedrock aquifer and ultimately into the Clark Fork and Continental River Basins. The bill will not have an impact if this water does not discharge.

REP. DAILY stated that since the 1991 legislature when he presented a similar bill regarding the Berkeley Pit, the pit has risen 59 feet, filling at the rate of 2 billion gallons of water per year. The water in the pit would cover five square miles at a depth of 19 feet. EXHIBIT 4

REP. DAILY said Montana regards the Berkeley Pit as a waste contamination site and said he fears the possibility of another Love Canal. He said a dichotomy exists between ARCO and the EPA: the EPA allows ARCO to do nothing until the year 2,000.

Proponents' Testimony:

REP. JOE QUILICI, HD 71, Butte, said he felt HB 212 was important legislation. Twenty billion gallons of contaminated water is contained in the Berkeley Pit. If HB 212 is not passed, REP. QUILICI urged the committee to consider working on a filtration system for the pit in case of disaster.

REP. BOB PAVLOVICH, HD 70, Butte, expressed concern that the Berkeley Pit could discharge into the Columbia Basin. He noted a good rain storm could force this untimely discharge.

Jack Lynch, Chief Executive Officer, Butte-Silver Bow, asked if committee members would want the Berkeley Pit in their community. Mr. Lynch noted he felt it was important to keep public attention focused on the pit.

Opponents' Testimony:

Ward Shanahan, registered lobbyist for ARCO, said ARCO was directly concerned about HB 212 because of its effect on public health concerns but said the bill was redundant legislation and attempted to micro-manage areas already covered under existing law.

Bill Williams, ARCO facility manager, said the Berkeley Pit is a complex issue which requires not only public involvement but ongoing cleanup activities, as well. Mr. Williams said ground-water monitoring studies show the contamination level to be below the aquifer presently. He noted with the pit rising 22 to 25 feet per year, the pit should hold its own until the year 2008.
EXHIBIT 5

Russ Ritter, Montana Resources lobbyist, said the Berkeley Pit is a potential catastrophic source and is considered to be the largest Super-Fund site in Montana. He stated the time-line designed by the EPA is on track and, therefore, MRI opposes HB 212. In January 1994, MRI is required to analyze water treatment in the Berkeley Pit. He noted if a discharge should become imminent, EPA has the ability to enforce cleanup.

Ted Doney, Helena attorney, said he opposes HB 212 because it has the potential to create years of litigation.

Stan Bradshaw, on behalf of Trout Unlimited and the Montana Environmental Information Center, stated efforts to clean up the pit now would be costly and noted that legislation currently in place could handle any disaster within the pit.

Questions From Committee Members and Responses:

REP. TOOLE asked if the state had waited too long to correct the problems within the pit.

REP. RANEY asked if the time-line could be moved up to the year 2000. John F. Wardell, Director, Environmental Protection Agency, stated a feasibility study done on the pit would be completed in the fall of 1993. Mr. Wardell said money would be a factor in changing the time-line: current cost to clean up the pit would be \$70 million; by the year 2000, the cost would be \$40 million.

REP. TUNBY asked if the contamination level of the water had increased or decreased. REP. DAILY said, according to a study done by MRI, the contaminant level in the water has increased since 1983 and 1985.

REP. SWANSON asked REP. DAILY why there was a discrepancy between documentation which indicated immediate attention should be given to the Berkeley Pit level while testimony from EPA indicated less concern. She also asked if the pit water is in fact reversing,

and is there a belief that this will take care of the problem?
REP. DAILY replied that if the water within the pit is reversing, the problems that will arise cannot be fixed.

REP. ORR asked for a definition of the contaminant level within the Berkeley Pit. Russ Forba, EPA Project Manager for the Berkeley Pit, said the copper level is presently about 100 ml and zinc is about 600 mg.

REP. WAGNER asked if the rising pit level is a byproduct of the mining process. REP. DAILY replied that the water level increase is mostly from groundwater and the remainder is from mining.

REP. STOVALL asked why there wasn't a cleanup cost to the state. REP. DAILY said there would only be a cleanup cost if the water discharges.

REP. TOOLE asked REP. DAILY if he felt the safety margin is low enough. REP. DAILY stated if the original critical water level had not changed, there wouldn't be a need for the bill. He said the danger point of the pit water needs to be addressed, and noted the West Camp portion of the pit is currently flooding. In 1965, the water in two of the mines began to rise and Butte basements were flooded, REP. FRITZ said. Prior to 1982, the Anaconda Mining Company discharged seven million gallons of water daily into the pit.

Mr Forba said water is moving toward the pit.

Closing by Sponsor:

REP. DAILY said the Berkeley Pit continues to be one of the most serious issues facing the state. In the past year, 23 testing wells have been put in place with the pit. He said he hoped water in the pit didn't discharge but that documentation suggested differently. A lawsuit demands MRI to treat the pit water immediately while the state has demanded that ARCO begin drilling which creates legal problems that require everyone to talk together.

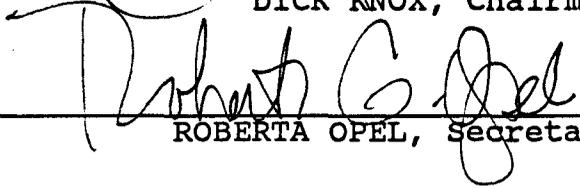
The most serious problem will be in the area east of the Berkeley Pit. REP. DAILY said the Berkeley Pit is an ecological time-bomb. EXHIBIT 6

ADJOURNMENT

Adjournment: 5:30 p.m.



DICK KNOX, Chairman



ROBERTA OPEL, Secretary

DK/ro

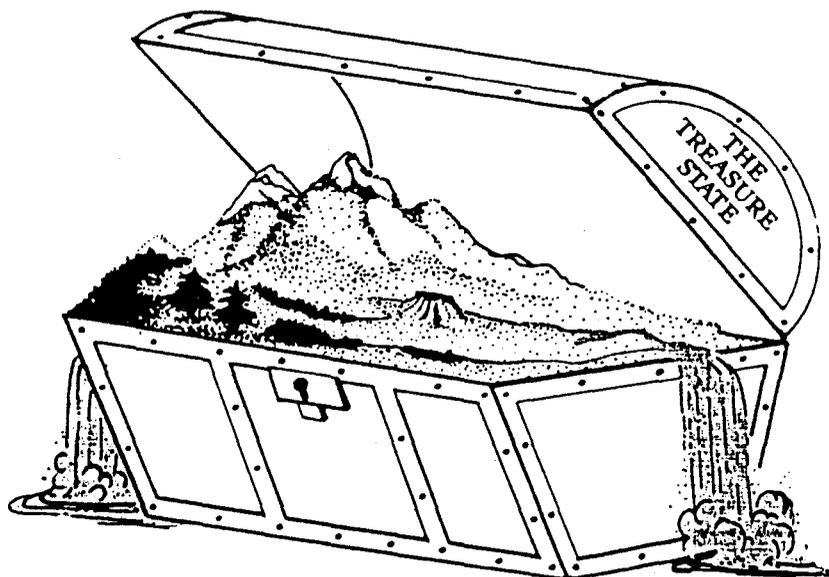
MONTANA
UNIVERSITY SYSTEM

EXHIBIT 1

DATE -25-93

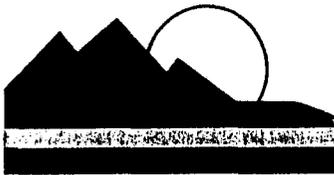
HB Water Rights & Water
Management Presentation

WATER RESOURCES CENTER



This document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

**A Quick Course in
Water Rights & Water Management
53rd Montana Legislature
January 1993**



The Montana **WATERCOURSE**

An Adult and Youth Water Education Program

EXHIBIT 2
DATE 1-25-93
HB Water Rights & Water Management Presentations

A QUICK COURSE IN WATER RIGHTS AND WATER MANAGEMENT IN MONTANA

53rd MONTANA LEGISLATURE

- I. WELCOME & INTRODUCTION - Mary Ellen Wolfe, Montana Watercourse Coordinator (3 minutes)
- II. WATER RIGHTS IN MONTANA
 - A. A THUMBNAIL SKETCH OF WATER RIGHTS HISTORY & USE - Mary Ellen Wolfe (7 Minutes)
 - B. THE ADJUDICATION PROCESS - Judge Bruce Loble, Chief Water Judge, Montana Water Courts, Bozeman (10 minutes)
 - C. NEW APPROPRIATIONS - Jim Beck, Helena Regional Office, Montana Department of Natural Resources & Conservation (10 minutes)
 - D. WATER RESERVATIONS & LEASING - Larry Dolan or Faye Bergen, DNRC, Helena (10 minutes)
 - E. INDIAN AND FEDERAL RESERVED WATER RIGHTS - Susan Cottingham, Program Administrator, Reserved Water Rights Compact Commission, Helena (10 minutes)
- III. WATER MANAGEMENT IN MONTANA
 - A. DEPARTMENT OF NATURAL RESOURCES & CONSERVATION - Gary Fritz, Administrator, Water Resources Division (10 Minutes)
 - B. DEPARTMENT OF FISH, WILDLIFE & PARKS - Larry Peterman, Administrator, Fisheries Division (10 minutes)
 - C. DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES - Dan Fraser, Chief, Water Quality Bureau (10 minutes)

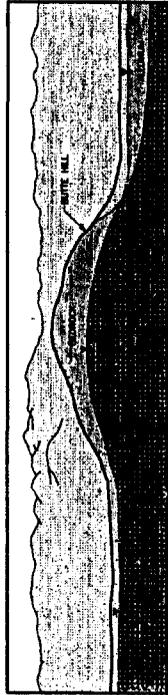
EXHIBIT 3

DATE 2-25-93

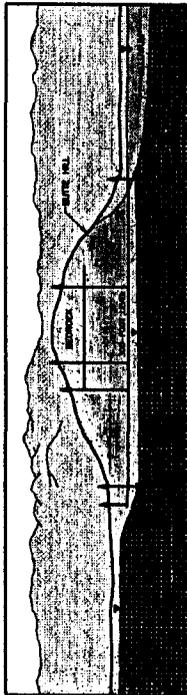
HB 4821a

HISTORY OF THE BERKELEY PIT

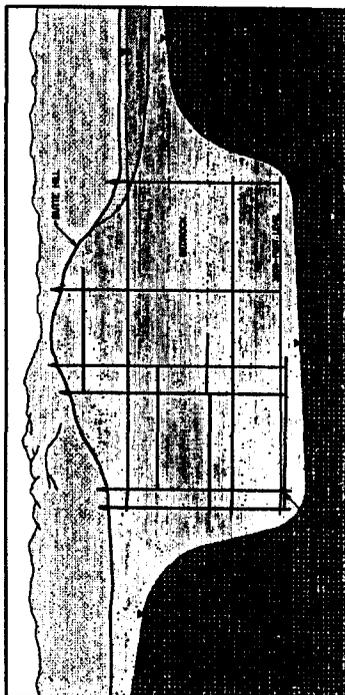
GOLD WAS DISCOVERED IN THE BUTTE AREA IN 1864. FOR THE NEXT 12 YEARS, PROSPECTORS STRUGGLED TO MAKE A LIVING MINING SHALLOW DEPOSITS CONTAINING LOW-GRADE GOLD AND SILVER. BY 1876, BUTTE WAS DEVELOPING AS A SILVER MINING CAMP AND OVER THE NEXT 20 YEARS ESTABLISHED ITSELF AS AN IMPORTANT MINING, MILLING, AND SMELTING DISTRICT. BY 1884, OVER 300 UNDERGROUND MINES AND 8 SMELTERS WERE OPERATING. COPPER MINING IN THE AREA ALSO BEGAN DURING THE SILVER MINING PERIOD. THE UNDERGROUND MINES AT BUTTE DOMINATED WORLD COPPER PRODUCTION BETWEEN 1887 AND 1920. BY 1950, OVER 400 UNDERGROUND MINES, CONSISTING OF SEVERAL THOUSAND MILES OF INTERCONNECTED WORKINGS, HAD OPERATED OR WERE OPERATING IN THE BUTTE MINING DISTRICT. IN JULY 1955, THE ANACONDA COPPER MINING COMPANY (ACMC) BEGAN MINING THE BERKELEY PIT AND BEGAN PHASING OUT UNDERGROUND MINING. THE LAST UNDERGROUND MINE TO CLOSE WAS THE KELLEY MINE IN 1981. THE BERKELEY PIT CONTINUED OPERATING UNTIL 1982. IN 1986, MINING WAS RESTARTED IN THE CONTINENTAL PIT BY MONTANA RESOURCES.



1864 PREMINING CONDITIONS
OCCURRENCE OF GROUNDWATER IN THE VICINITY OF BUTTE HILL PRIOR TO MINING



1901 CONDITIONS
LOCATION OF THE FIRST PUMPING STATION AND THE INITIAL CONE OF DEPRESSION



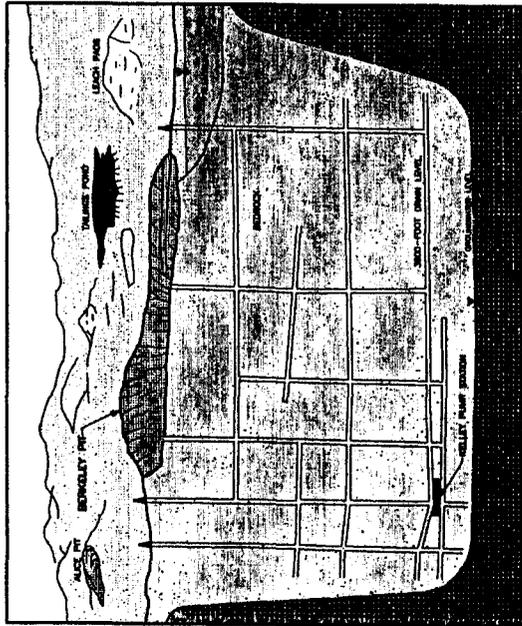
1940 CONDITIONS
PUMPING STATION AT THE 3,800-FOOT LEVEL AND THE ENLARGED CONE OF DEPRESSION

GROUNDWATER HAS BEEN A CONCERN IN THE BUTTE MINING DISTRICT SINCE EARLY MINE SHAFTS ENCOUNTERED THE WATER TABLE AT DEPTHS OF 20 TO 400 FEET BELOW GROUND LEVEL.

TO FACILITATE UNDERGROUND MINING, THE GROUNDWATER SEEPING INTO THE SHAFTS AND DRIFTS OF THE MINES HAD TO BE PUMPED OUT. BEGINNING IN 1901, IN ORDER TO REMOVE WATER FROM THE BEDROCK IN THE VICINITY OF THE MINES, GROUNDWATER WAS PUMPED FROM THE 300 FOOT LEVEL AT APPROXIMATELY 1,200 GALLONS PER MINUTE (GPM). THE PUMPING CREATED A CONE OF DEPRESSION IN THE WATER TABLE IN THE SHAPE OF A FUNNEL AROUND THE MINE WORKINGS. THE CONE OF DEPRESSION DEFINES THE AREA IN THE BEDROCK WHERE THE GROUNDWATER WAS REMOVED BY PUMPING.

AS UNDERGROUND MINING PROGRESSED TO DEEPER LEVELS, THE PUMP STATION WAS LOWERED, THUS ENLARGING THE CONE OF DEPRESSION AND CREATING A LARGER DRY AREA WITHIN THE BEDROCK. BY 1902, THE PUMP STATION WAS LOCATED AT THE 2,800-FOOT LEVEL AND IN 1940, IT WAS RELOCATED TO THE 3,800-FOOT LEVEL. WATER WAS PUMPED AT A RATE OF 4,000 TO 5,000 GPM AT THIS DEPTH. THIS INCREASED PUMPING ACTIVITY LOWERED THE GROUNDWATER LEVEL AND CREATED A CONE OF DEPRESSION IN THE BEDROCK AQUIFER WHICH ENCOMPASSED NEARLY THE ENTIRE BUTTE MINING DISTRICT.

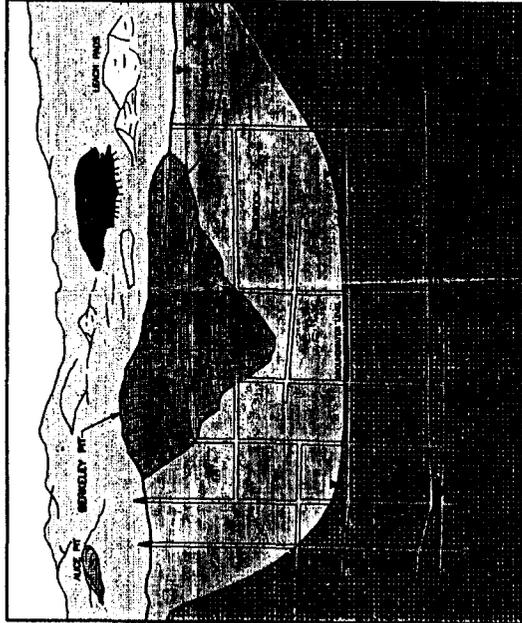
HISTORY OF THE BERKELEY PIT (CONTINUED)



1940-1982 CONDITIONS

PUMPING FROM 3,800-FOOT LEVEL WITH THE BERKELEY PIT EXCAVATED

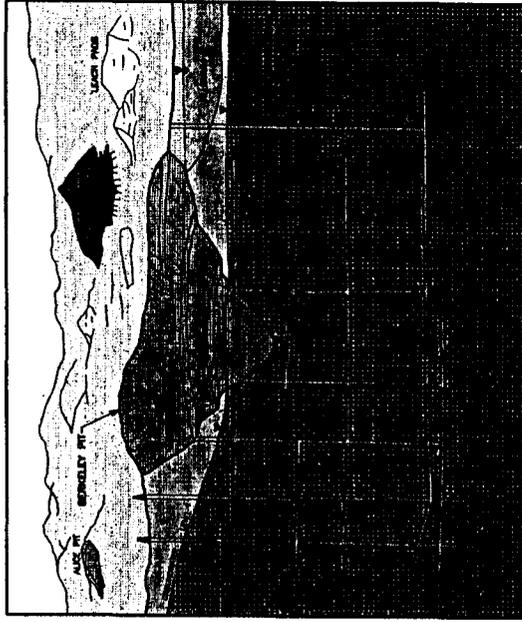
PUMPING OF GROUNDWATER ALLOWED MINING TO CONTINUE IN THE UNDERGROUND WORKINGS FROM 1940 TO THE LATE 1970'S AND IN THE BERKELEY PIT FROM 1955 TO 1982, WHEN MINING WAS DISCONTINUED.



POST 1982 CONDITIONS

RIISING WATER LEVEL AFTER THE PUMPING STOPPED

IN 1982, WHEN MINING ACTIVITIES WERE STOPPED, PUMPING WAS ALSO DISCONTINUED. GROUNDWATER LEVEL (AND THE CONE OF DEPRESSION) LOWERED BY PUMPING BEGAN RISING TO THE 1864 PREMINING WATER LEVEL. FIRST, UNDERGROUND MINE WORKINGS WERE FILLED WITH WATER, THEN THE BERKELEY PIT BEGAN TO FILL WITH WATER. INITIALLY THE WATER LEVEL RISE WAS VERY RAPID, APPROXIMATELY 460 FEET IN THE FIRST YEAR.



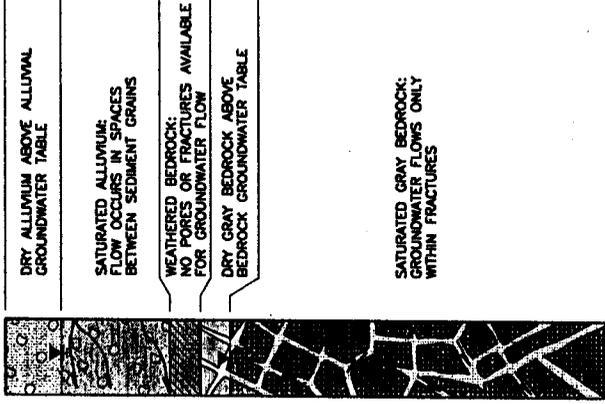
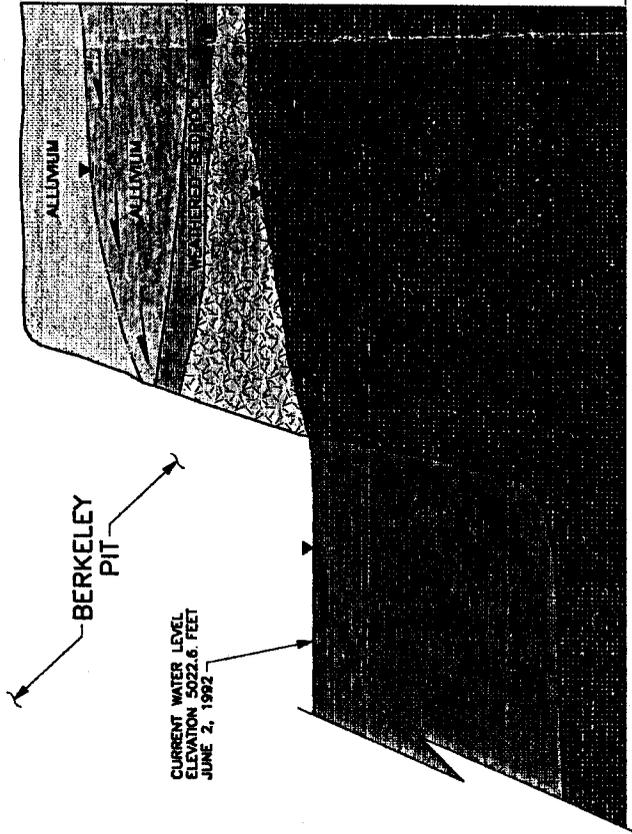
CURRENT CONDITIONS

RIISING WATER LEVEL IN THE BERKELEY PIT

THE WATER LEVEL RISE IN THE BERKELEY PIT HAS SLOWED OVER TIME. CURRENTLY, THE WATER LEVEL IN THE PIT IS RISING AT APPROXIMATELY 26 FEET PER YEAR. THE WATER LEVEL RISE CONTINUES SLOWLY AS THE WATER IN THE BERKELEY PIT APPROACHES THE 1864 PREMINING GROUNDWATER LEVEL. CURRENTLY, THE BERKELEY PIT CONTAINS APPROXIMATELY 13 BILLION GALLONS OF ACID MINE DRAINAGE. THE WATER IN THE PIT IS APPROXIMATELY 700 FEET DEEP.

EXHIBIT 3
 DATE 2-15-93
 1. HO 212

GENERALIZED CROSS SECTION OF THE BERKELEY PIT



1. ALLUVIUM

2. BEDROCK UNIT

DRY ALLUVIUM ABOVE ALLUVIAL GROUNDWATER TABLE

SATURATED ALLUVIUM: FLOW OCCURS IN SPACES BETWEEN SEDIMENT GRAINS

WEATHERED BEDROCK: NO PORES OR FRACTURES AVAILABLE FOR GROUNDWATER FLOW

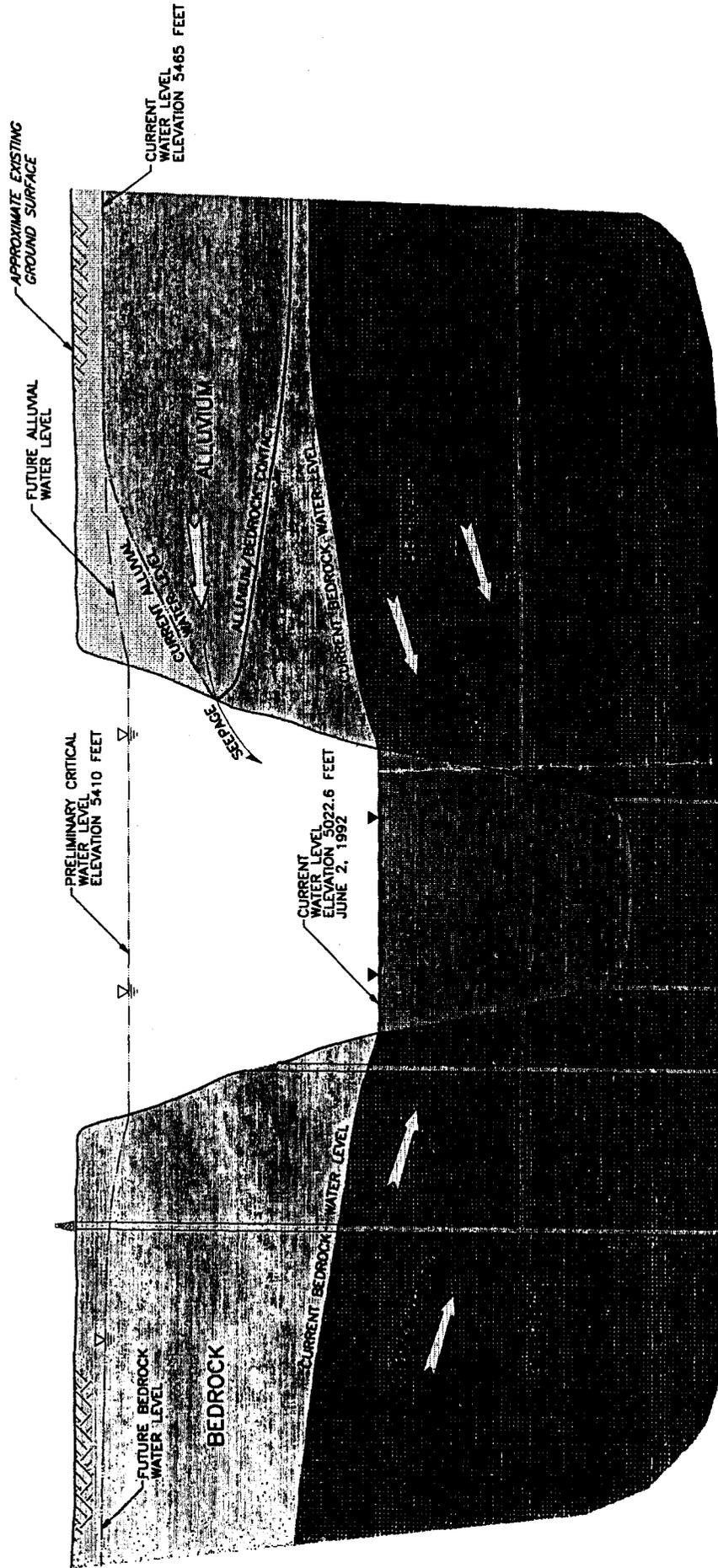
DRY GRAY BEDROCK ABOVE BEDROCK GROUNDWATER TABLE

SATURATED GRAY BEDROCK: GROUNDWATER FLOWS ONLY WITHIN FRACTURES

ROCK UNIT DESCRIPTION:

1. THE ALLUVIUM IS A SEDIMENTARY ROCK UNIT CONSISTING OF LAYERS OF CLAY, SILT, SAND AND GRAVEL. THE UPPER PORTION OF THE ALLUVIUM IS DRY. THE LOWER PORTION OF THE UNIT CONTAINS GROUNDWATER THAT FLOWS THROUGH THE ALLUVIUM IN A FASHION SIMILAR TO WATER FLOWING THROUGH THE POTTING SOIL IN A PLANTER.
2. THE BEDROCK UNIT CONSISTS OF TWO ZONES, THE WEATHERED BEDROCK ZONE AND THE COMPETENT OR GRAY BEDROCK ZONE. THE WEATHERED ZONE IS AT THE TOP OF THE BEDROCK UNIT IMMEDIATELY UNDERLYING THE ALLUVIUM. OVER TIME, THIS UPPER BEDROCK ZONE HAS BEEN EXPOSED TO NATURAL CHEMICAL AND PHYSICAL PROCESSES WHICH HAVE DECOMPOSED THE BEDROCK TO CLAY. THE WEATHERED BEDROCK ZONE ACTS LIKE A LINER OR CUP WHICH HOLDS WATER. AS A RESULT, THE ALLUVIAL GROUNDWATER CANNOT FLOW INTO THE GRAY BEDROCK. THE GRAY BEDROCK ZONE UNDERLIES THE WEATHERED BEDROCK ZONE AND CONSISTS OF BEDROCK WHICH HAS NOT BEEN DECOMPOSED. THE GRAY BEDROCK IS VERY HARD AND IS EXTENSIVELY FRACTURED. GROUNDWATER IN THE GRAY BEDROCK ZONE FLOWS THROUGH THE FRACTURES BECAUSE THESE ARE THE ONLY OPENINGS. GROUNDWATER FLOW IN THE GRAY BEDROCK IS SIMILAR TO A CRACKED CUP HOLDING WATER WHICH IS SLOWLY SEEPING OUT OF THE CUP ALONG THE CRACK.

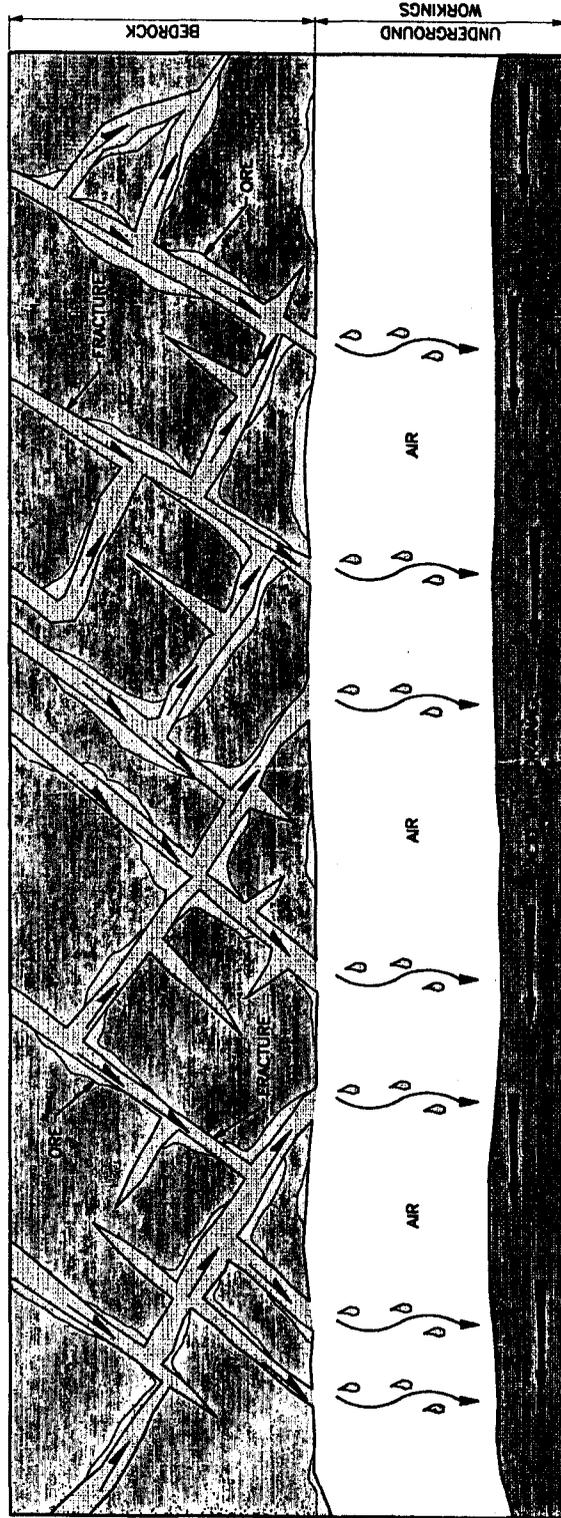
GENERALIZED CROSS SECTION OF THE BERKELEY PIT



BASED ON WATER LEVEL MONITORING DATA, THE DIRECTION OF GROUNDWATER FLOW IS TOWARD THE BERKELEY PIT, THE LOWEST POINT IN THE BUTTE AREA. IT IS EXPECTED THAT THE WATER LEVEL IN THE PIT WILL REACH THE "PRELIMINARY CRITICAL WATER LEVEL" (ELEVATION 5410 FEET) IN THE YEAR 2012. THIS "PRELIMINARY CRITICAL WATER LEVEL" WAS ESTABLISHED AS THE MAXIMUM LEVEL FOR WATER TO RISE IN THE BERKELEY PIT IN ORDER TO MAINTAIN THE FLOW OF WATER TOWARD THE PIT. TO ENSURE THAT THE "PRELIMINARY CRITICAL WATER LEVEL" IS NOT REACHED, WATER FROM THE BERKELEY PIT WILL BE PUMPED FROM THE PIT AND TREATED FOR FUTURE INDUSTRIAL USE OR ALTERNATE DISCHARGE.

EXHIBIT 3
 DATE 1-25-93
 146 212

ACID MINE DRAINAGE



THE GROUNDWATER ENTERING THE BERKELEY PIT FROM THE UNDERGROUND MINE WORKINGS IS ACIDIC AND CONTAINS HIGH CONCENTRATIONS OF METALS AND SULFATE. THE ACID MINE DRAINAGE IS PRODUCED IN THE UNDERGROUND WORKINGS WHEN GROUNDWATER, ORE AND AIR COME INTO CONTACT WITH EACH OTHER. THE AIR AND GROUNDWATER DECOMPOSE THE ORE AND PRODUCE AN ACIDIC SOLUTION. THE ACID MINE DRAINAGE THEN FLOWS TO THE PIT VIA THE UNDERGROUND MINE WORKINGS.

EXHIBIT 4
DATE 1-25-93
HB HB 212

*Berkeley Pit and Butte
Mine Flooding Information*

*Prepared By:
Representative Fritz Daily
January 15, 1993*

This document is stored at the Historical Society at 225 North
Roberts Street, Helena, MT 59620-1201. The phone number is
444-2694.



307 East Park Street, Suite 400
Anaconda, Montana 59711
Telephone 406 563 5211
Facsimile 406 563 8269

EXHIBIT 7
DATE 1-25-93
HB 212

MINE FLOODING/BERKELEY PIT

BACKGROUND

For nearly 100 years, water was pumped from the underground and surface mines in Butte to allow mining to proceed. In 1982, the Anaconda Minerals Company decided to discontinue underground mining. When the mining stopped, dewatering was no longer necessary, and the deep level pumps were shut down. This allowed the groundwater to rise toward its natural, pre-mining levels. At the same time, a water level monitoring program was established to track that rise and to measure changes in deep groundwater quality.

Since 1982, water from the bedrock and overlying alluvium adjacent to the mines, as well as water from activities conducted by Montana Resources, has been entering the abandoned Berkeley Pit and adjacent, interconnected underground mines. Currently that flow amounts to approximately 5,000,000 gallons a day. This water, which is acidic and contains a wide variety of heavy metals, first appeared in the bottom of the Berkeley Pit in 1985.

CURRENT STATUS

In early 1990, ARCO, MRI, the Montana Department of Health and Environmental Sciences and the Environmental Protection Agency reached an agreement to conduct an engineering study (the Mine Flooding Remedial Investigation and Feasibility Study, or RI/FS) to determine the most effective way of dealing with the rising mine waters before they became a problem. Since that time, ARCO has established a more extensive network of groundwater monitoring points to quantify the sources of water flooding the mines and to obtain samples of the water for purposes of evaluating various treatment options. Many of the water sources have been identified. Well drilling for the monitoring network started in October 1990, and the sampling continues today.

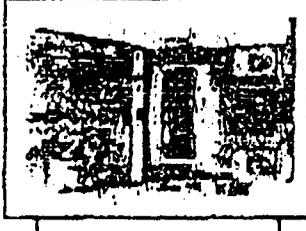
This sampling has provided information which shows that groundwater on all sides of the active mining area is, in fact, moving towards the Berkeley Pit. Previous data indicated that groundwater in mining areas north, east and west of the pit was flowing into the Berkeley. Now we know that groundwater to the south (above Continental Drive) is also migrating toward the pit, not toward Butte.

FUTURE PLANS

With the current filling rate, it is predicted that the water in the Berkeley Pit will reach the critical water level (50 feet below where the surrounding alluvium meets bedrock) in approximately 20 years. ARCO is now actively pursuing an agreement with Montana Resources to reduce the flow of water from their operations. This agreement would extend by at least ten years the date at which the water reaches the critical level. In other words, the water will not reach a level that threatens the surrounding groundwater for at least another 20 to 30 years.

The engineering study directed at finding a solution at the Pit was started in 1990 and is being conducted by Dr. H'uang at Montana Tech. It is currently scheduled for completion in 1995. At that time, the next steps can be taken in planning the construction of a water treatment plant. Given this time frame, the treatment plant could be built and tested long before the water in the Berkeley Pit reaches the critical level.

DATE 1-25-93
HB 212

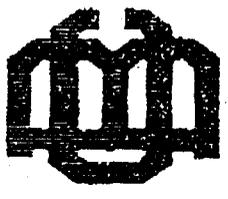


WORLD

**Democrats
can't forget
6**

MONTANA

**Controversial bison
hunt nearing end
3**



SPORTS

**Coaches
hired
9**

The Montana Standard

Vol. 115, No. 299

Good Morning! It's

Tuesday, March 26, 1991

Butte • Anaconda 35

Pit cleanup bill clouds issue

Daily denies his proposal would shift responsibility from Arco to Washington

By Eric Williams
Standard Staff Writer

Due to specific wording in the sale agreement between Duquesne Washington and the Altronic Richfield Company, a bill pending before the Legislature would appear to make Washington responsible for treating the Berkeley Pit's water.

"On the surface, it does look like that," said the sponsor, Rep. Fritz

Daily, U Butte. "But that's also barely out the case."

House Bill 300's basic mission is to change the word "may" to "shall" in regards to the Montana Department of Health and Environmental Sciences forcing treatment if the water reaches a certain level.

"Under current law, the Department of Health has the authority to take action," Daily said. "Under this legislation, the department must take action if the water discharges from the pit."

The change in Montana law would also hike fines for non-compliance from \$10,000 a day to \$25,000 a day.

A major sticking point is this: When Washington bought the bulk of the former Anaconda Company's

holdings, the agreement seems to state that treatment of the Berkeley Pit water — if done under Montana law — is placed on Washington's shoulders.

The 1986 agreement says: "Washington agrees to indemnify and hold Anaconda harmless from all claims arising under the Montana Hard Rock Mining Act."

It goes on to say that "To the extent there is a legal responsibility under the Hard Rock Mining Act for water treatment problems associated with the Berkeley Pit, Washington agrees to assume all responsibility for such obligations, and expressly holds Anaconda harmless on the basis of this negotiated purchase agreement, from any such liabilities or responsibilities under

the Montana State Law.

In a 1987 letter to Thomas Henner, then commissioner of the Montana Department of State Lands, Altronic Richfield (Arco) attorney Eugene T. Daily said, "In addition to all other obligations under the Montana Hard Rock Mining Act transferred to MRI (Montana Resources Inc., the company operating the Berkeley Pit) under the Sept. 19, 1986



agreement, MRI specifically assumed legal responsibility for water treatment problems associated with the Berkeley Pit."

On the other hand, the sale agreement appears to say that Anaconda Arco takes on responsibilities of cleanup and reclamation under federal oversight.

"Anaconda agrees to assume any costs and liabilities arising under CERCLA (federal Superfund law) as a result of Anaconda's operations prior to closing" of the sale.

Currently, the Environmental Protection Agency considers Arco the main party responsible for the pit, though other companies remain potentially liable.

Those portions of the 1985 sale pact are part of the DSL file. They

were supplied to Henner by Tri Ball, after Henner requested Arco officials attend a meeting regarding the pit. Tidball cited these categories as reason Arco need not have civil representation at a meeting.

"According to a Montana Standard source with knowledge of clean laws, the interpretation is that they have to pay a water treatment plant in under (federal) Superfund Arco pays if they have to pay in water treatment plan under the Montana Hardrock Mining Act, the Washington pays.

Daily's bill would increase the chances that care of the Berkeley Pit water would fall under state jurisdiction, particularly if water treatment. Please see CLEANUP Page 9.

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Bill doesn't let Arco off hook, Daily says . . .

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begins to discharge from the pit
"There's nothing I can do with that agreement. Arco and Washington negotiated it," Daily said. "My bill has no effect on that. It doesn't alter responsibility, and it is not intended to take Arco off the hook."

He said Department of Health attorneys have told him his understanding is correct.
Further, if his bill would put MRI out of business, Daily said he would have the measure pulled.

Also, Daily said, until water begins to seep away from the Berkeley, "This legislation has absolutely no effect."
The main point, the Butte Democrat said, is to avoid a catastrophe.

Daily remains convinced that the EPA and Arco negotiated a certain level the pit water must reach before action must be taken — 3,700 feet in elevation — a level higher than EPA previously said could be

the danger zone.
Daily's worry is that if water begins to flow from the pit prior to that, nothing would be done.

"When you get to the point to have to do something, we don't want to have to wait to have litigation to start, and then go on five or six years" before the responsibility issue is ironed out and water treatment would begin, Daily said.

"It's real obvious to me, from the conversations I've had (with Arco, Washington and other officials), at some point there's going to have to be some litigation to resolve this conflict."
The reason, according to The Standard's source, is that large sums of money will be involved.

"This will cost something like \$200 million over the next 20 years," the source said. "This will make the Exxon Valdez (Alaskan oil spill) look like a five-minute cleanup."

Dennis Lund, the Missoula attorney for Washington who is overseeing the legislation for the Missoula industrialist and MRI, declined to return several phone messages asking for comment on the bill.

Bill Williams, director of Montana's Arco operations, limited his remarks.
"It's hard to predict how the bill will come out," he said. "We certainly didn't suggest it and didn't request it be introduced. We thought it was unnecessary because it duplicated other state law."

Williams said Arco is "not interested in creating a war or ill will between parties. What we have done in the past with the Washington folks is work through a cooperative effort."

Daily said he's met with Arco and Washington officials for more than 50 hours in the past couple of weeks, and his impression is both sides favor some recently added amendments, but both oppose the basic premise of the bill.

"Both MRI and Arco are trying to kill this bill," he said. "The reason is they can't agree on who has what responsibility."

He repeated his claim that the firms involved are less of a problem than is EPA.

"Maybe I think this issue is more important than it is, but this is not just a Butte problem; it's a Montana problem, and even more so, it's a Northwest problem," in that the highly contaminated water, left unchecked, could flow into the Columbia River basin.

If the bill isn't passed, Daily said the attempt has been worth the effort because it has gotten the parties involved discussing the issue.

The measure was passed unanimously out of the House of Representatives. The Senate Natural Resources Committee is to decide early this week whether an amended version will go on to the Senate.

HOUSE OF REPRESENTATIVES
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COMMITTEE

BILL NO. HB212

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Ward Vanahan	ARCO		X
Joseph Pagoni	4		X
John Arrigo	SHE S		
Bill Williams	ARCO		X
Ron MacDell	MR		X
Michael Gallagher	ARCO		
Russ Ritter	MR		X
Stan Bradshaw	M.T.U. & MEIC		✓
Rep Bob Schmidt	HD 70	X	
Jack Lynch	Butte-Silver Bow	X	
Joe Imbler	District 71	X	

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