MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on March 5, 1993, at 10:08 a.m.

ROLL CALL

Members Present:
Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: Sen. Crippen

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Rebecca Court, Committee Secretary

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

Committee Business Summary:
Hearing: HB 582
HB 429
HB 121
HB 323
Executive Action: NONE

HEARING ON HB 582

Opening Statement by Sponsor:
Representative Brown, District 72, said HB 582 was requested to address concerns of sheriffs, peace officers, and gun owners regarding permits of concealed weapons. HB 582 would require a sheriff to give a written statement to the applicant if the permit is denied. Rep. Brown said the appeal process would allow a court to determine facts, as well as law, which is not bound by factual, legal, or other determinations of the sheriff. Rep.

Brown said the applicant would have to demonstrate their ability to handle a firearm to the sheriff, if the sheriff and applicant both agree. Rep. Brown told the Committee that the House Judiciary Committee took out section 3 of HB 582.

Proponents' Testimony:
Alfred (Bud) Elwell, Montana Weapons Collection Society, Northwest Montana Weapons Collection Society, told the Committee that he is an instructor and has been one for 30 years. Mr. Elwell said HB 582 would alleviate problems that have arisen because of the current concealed weapons statute.

Surge Meyer, Deer Lodge County, supports HB 582 due to the fact that he had been a victim of the law because he was denied a weapons permit with no cause. Mr. Meyer told the Committee that he had been a previous owner of a class three weapons permit and had no criminal record. Mr. Meyer said when he applied for a permit the sheriff would not issue him one even though he was previous owner of a concealed weapons permit. Mr. Meyer said he was issued a concealed weapons permit after threatening the county sheriff with misconduct. Mr. Meyer told the Committee that he is in support of HB 582 to make sure this does not happen to anyone else.

Opponents' Testimony:
NONE

Questions From Committee Members and Responses:
Senator Towe asked Mr. Elwell what the applicant would be demonstrating. Mr. Elwell said he believed a person would demonstrate the familiarity with the weapon that would be concealed, but was not certain.

Senator Towe asked Mr. Elwell if law enforcement opposes HB 582. Mr. Elwell said no.

Senator Towe said HB 582 asks the law enforcement community to assume a great deal of responsibility in making a determination of whether a person is familiar with firearms.

Senator Towe asked Mr. Elwell if that would be cause for abuse. Mr. Elwell said no. The applicant and the sheriff would both have to agree to demonstrate the familiarity of a firearm.

Senator Towe asked Rep. Brown if he was satisfied with HB 582. Rep. Brown said yes.

Senator Blaylock asked Rep. Brown if he presented a bill three years ago that removed the responsibility of issuing permits from the judge to the sheriff. Rep. Brown said yes and that is the

law that would be amended.

Senator Blaylock asked Rep. Brown why HB 582 was introduced. Rep. Brown told the Committee HB 582 was introduced because of the concerns of people who are being turned down for permits without cause. Rep. Brown said HB 582 would give sheriffs control and offer flexibility for a person applying for a permit.

Senator Blaylock asked Rep. Brown if HB 582 would allow for more concealed weapons. Rep. Brown said no.

Senator Blaylock asked Rep. Brown about liability. Rep. Brown said liability is limited for the sheriff in the event of an accident after the demonstration had taken place.

Senator Doherty asked Rep. Brown about the appeal. Rep. Brown said the denial of a permit to carry a concealed weapon, or a refusal of a renewal, would be subject to an appeal.

Senator Doherty asked Rep. Brown if courts take into account the facts that were presented before the sheriff. Rep. Brown said that a court would take into account all facts that were before the sheriff when deciding an appeal case.

Senator Franklin asked Rep. Brown about the problems in the original Concealed Weapons law. Rep. Brown said some sheriffs were not doing what was required of them by law in regards to issuing concealed weapon permits.

Chair Yellowtail asked Mr. Meyer why he did not appeal to district court. Mr. Meyer said he had a hard time finding an application. Mr. Meyer said he had to call Helena and threaten everybody to get an application to begin with. Mr. Meyer said that he did not go to court because it would cost money and he was eventually issued a permit.

Chair Yellowtail asked Mr. Elwell about the intent of HB 582. Mr. Elwell said the intent of HB 582 is that an applicant must show completion of a fire arm safety course PLUS familiarity with a firearm. Mr. Elwell said the law as it exists today says that a firearms safety course is mandatory before issuance. It also states that the applicant must demonstrate familiarity with a firearm. HB 582 would make it easier for the sheriff and the applicant to get together for a demonstration if they both agree.

Chair Yellowtail pointed out that HB 582 does not reflect that intent, but the Committee would change the bill to show that intent.

Closing by Sponsor:
Rep. Brown said he would like to look at HB 582 further in order to propose an amendment that deals with the question of the intent. Rep. Brown said HB 582 covers the problems of law enforcement and gun owners. Rep. Brown urges support for HB 582.

HEARING ON HB 323

Opening Statement by Sponsor:
Representative McCarthy, District 66, said HB 323 is an act which allows the court, upon a second or subsequent conviction of cruelty to animals, to limit a defendant's further ownership, possession, or custody of animals, if the court believes it is appropriate. Rep. McCarthy submitted a packet of newspaper articles dealing with a case of severe animal cruelty in the State of Montana. (Exhibit #1)

Proponents' Testimony:
Edward Beaudett, County Attorney in Anaconda-Deer Lodge County, told the Committee that HB 323 was requested to address a specific problem that has occurred and is continuing to occur in Anaconda-Deer Lodge County and Powell County. Mr. Beaudett said current law is inadequate in that there is no way to prevent a person from continuing to own animals if they are engaged in cruelty to animals. The situation in Anaconda-Deer Lodge is a case where Mary Kellogg and her husband had more than 300 horses, an untold number of dogs, cats, goats, and rabbits on a piece of property that was not able to sustain them. The case has been going on for more than a year and a half. Mr. Beaudett told the Committee that the Kelloggs have been fined and placed in jail, but still continue to own animals. The animal control officer for Anaconda-Deer Lodge County indicated that there were at least 85 horses and a lot of other animals still on the property today. Mr. Beaudett said this is a problem that is recognized throughout the United States. There are many people who sacrifice their own well being to try to take care of animals, which is a form of cruelty and a form of mental illness. Mr. Beaudett said although it is not a diagnosable form of illness, it is a problem that is recognized. Mr. Beaudett told the Committee that 31 states have statutory provisions similar to the HB 323. Those statutes allow judges to prevent a person from continuing to own animals if there is evidence of cruelty to animals.

Dr. Mark Ransford, Flint County Valley Veterinary Clinic, said he assisted in the investigation of the Kellogg ranch. Dr. Ransford said he was appalled when he visited the ranch and is still appalled whenever he returns. Dr. Ransford said Ms. Kellogg had 300 or more horses on a ranch designed to carry 100 horses. Ms. Kellogg had made no provisions to provide the horses with feed in the winter until she was forced to by the county. Dr. Ransford told the Committee that a horse he examined died from starvation, which was only one of many. Dr. Ransford said Ms. Kellogg does not feel there is a problem and every time he visits the ranch there are more animals. Dr. Ransford said the problem with the current law is that there is no remedy to deal with someone who is mentally unbalanced, and the county cannot afford to feed animals for an extended period of time. Dr. Ransford urged support for HB 323 to give the courts a remedy for this problem.

Dr. Ransford told the Committee that his clients are in agreement with HB 323.

Mike Grayson, an Attorney from Anaconda, said he is in favor of HB 323 for a number of reasons. The law as it is on the books today does not give prosecutors the power to look prospectively at what is going on in certain situations. Mr. Grayson said there were 300 horses at the Kellogg Ranch and upon receiving numerous complaints about the ranch, a search warrant was granted. Pictures were taken of the animals that were in poor or unsatisfactory condition. Of the animals that were examined 30 to 35 horses were found to be in poor or unsatisfactory condition, therefore the Kelloggs were charged with cruelty to animals. There was nothing that could be done with the remaining animals, although a number of them were documented to be in fair condition and were deteriorating going into the winter. The county attorneys office filed a charge of cruelty in December of 1991. The Kelloggs plead guilty, therefore the judge put a number of conditions on the sentence, which included a maximum fine of $500 and a list of orders to be carried out at the ranch. The order included monthly inspections to be performed by veterinarians, which were to be followed. The Kelloggs refused to comply with the orders. By February of 1992, eight or nine horses had died, therefore a second charge of cruelty was filed and the Kelloggs plead guilty. Mr. Grayson told the Committee that the court was limited in what they could do, even though it was the second offense. Mr. Grayson said that even though some horses were in good condition, the current law does not allow a county to seize control of an animal that has not been documented as being abused. HB 323 would give the court the power, upon a second or subsequent conviction of cruelty, to enjoin or limit a persons further ownership or possession of an animal. Mr. Grayson said HB 323 is necessary to help deal with the problem of cruelty to animals.

John Siders told the Committee that he is an animal control officer for Deer Lodge County and was the investigating officer in the Kellogg case. Mr. Siders said HB 323 would give him a tool to do his job.

Dave Guhlke stated that he is a veterinarian in Anaconda, MT. Dr. Guhlke said in 99% of all cases of cruelty, the animals are given new homes or put to sleep if they are in very poor condition. Dr. Guhlke said Mrs. Kellogg does not realize she is neglecting her animals, which is why the legal system needs a remedy to take those the animals away before they suffer.

Senator Beck, District 24, told the Committee that the Kellogg ranch is near his own personal property. Senator Beck said the Kellogg situation is a serious problem. Senator Beck told the Committee that the dogs on the ranch bark all night because they are hungry and the horses stagger around the fields in hunger. Senator Beck asked for serious consideration in HB 323.

Opponents' Testimony:
NONE

Questions From Committee Members and Responses:
Senator Grosfield asked Mr. Grayson if Mrs. Kellogg was charged with 35 counts of cruelty. Mr. Grayson said Mrs. Kellogg was charged with only one count of cruelty.

Senator Grosfield asked Mr. Grayson if Mrs. Kellogg could be charged a second time with regard to the same animals. Mr. Grayson said the second charge was filed after a number of horses had been found dead.

Senator Grosfield asked Mr. Grayson about the sale of the animals. Mr. Grayson said giving the judge the discretion to enjoin a persons ownership of an animal, the judge could order the person to sell the animals, If they did not comply, the judge could order a sale and return the proceeds back to the owner of the animals after the cost of the sale is met.

Senator Grosfield asked Mr. Grayson about the effective date. Mr. Grayson said the intention of HB 323 was to be effective upon passage.

Senator Doherty asked Mr. Grayson about making major abuse a felony. Mr. Grayson said after a second conviction of cruelty the crime would become a high misdemeanor. Mr. Grayson said it would not be in the best interest of the animals to send the owner to jail because no one would be able to take care of the animals. Mr. Grayson told the Committee that the proper remedy would not be jail time.

Senator Doherty asked Mr. Grayson about increasing the fine for cruelty to animals. Mr. Grayson said part of the problem with the people who are neglecting animals is financial. The money is better applied to feed the animals.

Senator Doherty asked Mr. Grayson about giving courts the discretion to order counseling. Mr. Grayson said that is already present in the law under the General Sentencing Statute.

Senator Halligan asked Mr. Grayson about the possibility of removing the animals after the first offense. Mr. Grayson said after the first offense, the hope is that the person would not repeat their wrong doings. Mr. Grayson said if there is more than one animal, a second conviction could be given at the same time as the first, therefore allowing the animals to be removed.

Senator Halligan asked Mr. Grayson if there would be constitutional problems with forfeiting property. Mr. Grayson said there would not be constitutional problems because the person would receive the proceeds from the sale of the animals. Senator Halligan said the issue of forfeiture should be looked

into.

Senator Towe asked Mr. Beaudett about the constitutionality problem about taking peoples property. Mr. Beaudett does not feel there would be a constitutional problem because due process is available. The animals would only be taken after a second offense and after the defendants had been given an opportunity to make amends.

Senator Towe asked Mr. Beaudett if a person would have all their animals taken away if he violated rules on horse racing. Mr. Beaudett said the judges would have discretion in determining whether a person would be able to continue to own race horses. Mr. Beaudett said a person would be able to own other types of animals if there was no indication of cruelty.

Senator Towe asked Mr. Beaudett if he would object to adding the word "similar animals" instead of "any animals" on page 2, line 5. Mr. Beaudett said yes because if the wording was changed, in the Kellogg situation, numerous cases would have to have be brought against all the different types of animals.

Senator Towe asked Mr. Beaudett about language dealing with taking away specific animals. Mr. Beaudett said the judge has the discretion to review all the evidence and make an appropriate order, whether it be specific to a particular animal, or to every type of animal.

Closing by Sponsor:
Rep. McCarthy urged the Committee to pass the effective date amendment which would make it effective on passage. Rep. McCarthy said that would give the state a tool to deal with the Kellogg problem immediately.

HEARING ON HB 429

Opening Statement by Sponsor:
Representative Strizich, District 41, told the Committee that HB 429 was brought to his attention by law enforcement personal. Currently there is no statute specifying an offense relating to the manufacturing or cultivation of dangerous drugs. Rep. Strizich told the Committee that when law enforcement agencies discover a methamphetamine lab or a marijuana growing operation they have to weigh the amount of substance available at the site. The plants are uprooted and dried, then the prosecution decided if there is enough probable cause to proceed for a higher level of prosecution. Rep. Strizich gave an example. If a marijuana grower has 100 marijuana plants and their dry weight is less than 60 grams, the offense may constitute a misdemeanor even though there were 100 plants. Rep. Strizich said HB 429 with amendments would send a clear and defined message to drug manufacturers that they are not welcome in Montana and if caught manufacturing drugs

they would be committing a felony.

Proponents' Testimony:
Bryan Lockerby, Montana Police Association, said the United States is now exporting drugs instead of importing. HB 429 addresses the concern of laboratories of dangerous drugs. Mr. Lockerby said intelligence trends show that laboratories are being moving to Montana because the laws are not as strict as the west coast and it is rural, therefore they can be hidden easier. Mr. Lockerby told the Committee that HB 429 address two issues. The first issue is those people who cultivate dangerous drugs and secondly, those people who process or manufacture dangerous drugs in a laboratory environment. There is a public safety concern for those people who are manufacturing dangerous drugs. People have been killed in Montana because they did not know what they were doing and blew up their labs. Mr. Lockerby said the current problem with marijuana cultivations is that if law enforcement seizes over 100 plants they are required to dry those plants, strip them, and weigh the leafy plant material only. If the leafy plant material weighs less than 60 grams they have only committed a misdemeanor unless law enforcement can show that the person was trying to cultivate that plant for sale. Mr. Lockerby said the intention is to make cultivating marijuana a felony. Mr. Lockerby said under HB 429 if a person grows one pound or less of marijuana or has 30 plants or less, there would be no minimum mandatory. But if it is over the amount, the first offense would be a two year minimum mandatory. The penalty after that would double if there were any prior convictions. A first offense for manufacturing dangerous drugs would be a minimum mandatory of five years. The second offense would be 20 years and the third offense 40 years. Mr. Lockerby said the law would be tough, but would discourage people from coming into Montana to cultivate dangerous drugs. Mr. Lockerby urges support for HB 429.

Mike Teets, Administrator of Law Enforcement Services for the State of Montana, supports HB 429.

John Connor, Montana County Attorneys Association, supports HB 429. Mr. Conner told the Committee that the Supreme Court, in 1979, declared that cultivation was unconstitutional as included in the "sale" statute. Mr. Connor said since 1979 attorneys have not been able to charge sale by cultivation. The Montana County Attorneys Association support the concept of HB 429. Mr. Connor said that although the penalties are more severe in some instances, it is important to note that HB 429 would NOT impose a mandatory minimum.

Opponents' Testimony:
NONE

Questions From Committee Members and Responses:
Senator Grosfield asked Mr. Lockerby how many marijuana plants would weigh a pound and what part of the plant would be weighed. Mr. Lockerby said the weight of the plant would include the leaves and the stem structure, but not the root structure. Mr. Lockerby said the marijuana plant produces an active ingredient called THC, which is what gets people high. Mr. Lockerby said the entire plant, minus the root structure, would be weighed in order to determine a pound because it contained THC. Mr. Lockerby said the Drug Enforcement Agency determined that a marijuana plant produced one pound of marijuana per plant.

Senator Grosfield asked Mr. Lockerby about dry weight. Mr. Lockerby said the dry weight of marijuana would be weighed.

Senator Towe asked Mr. Lockerby about the penalties. Mr. Lockerby said the first offense for manufacturing dangerous drugs would be a five year minimum mandatory. The second offense would be 20 years. The third offense would be 40 years.

Senator Towe asked Mr. Lockerby how that compared with the sale of dangerous drugs. Mr. Lockerby said the sale of any dangerous drug is a minimum mandatory of one year to life.

Senator Towe asked Mr. Lockerby if there was a second conviction for sale. Mr. Lockerby did not know.

Senator Towe asked Mr. Lockerby why the penalty for the production of dangerous drugs is more stringent than the sale of dangerous drugs. Mr. Lockerby said the people who are producing the drugs are the ones that are giving it to the people to sell, therefore the penalty should be more stringent.

Senator Towe asked Mr. Lockerby about the marijuana penalty. Mr. Lockerby said the first offense for growing marijuana is not minimum mandatory if it is less than 30 plants or under one pound. However, if it is over that amount a minimum mandatory of two years would apply. Mr. Lockerby gave an example. If a person had 20 plants that weighed over a pound the minimum mandatory would apply.

Senator Towe asked Mr. Lockerby about the sale of marijuana. Mr Lockby said the sale of marijuana is a minimum mandatory of one year to life.

Senator Towe said there is not a minimum mandatory sentence for the growth marijuana, if less than one pound or less than 30 plants, but there is a minimum mandatory sentence for over that amount. Mr. Connor said he agreed.

Senator Grosfield asked Mr. Lockerby about the weight of a dry plant. Mr. Lockerby said the marijuana plant could produce one pound of marijuana, beginning with the growth stage until the final development stage.

Senator Blaylock asked Rep. Strizich about alternatives to prison. Rep. Strizich said he would support alternatives to incarceration, but those people who manufacture drugs should be incarcerated and separated from society.

Senator Doherty asked Rep. Strizich about inserting "dry" in front of weight on the bottom of page 2. Rep. Strizich had no objection.

Senator Grosfield asked Rep. Strizich if dry plants would weight a pound. Rep. Strizich said yes.

Closing by Sponsor:
Rep. Strizich said HB 429 would send a clear message to drug manufacturers that they are not welcome in Montana. HB 429 sends a clear message that Montana intends to create a bad business climate for that type of industry. Rep. Strizich told the Committee that HB 429 is a good bill and recommends it BE CONCURRED IN.

HEARING ON HB 121

Opening Statement by Sponsor:
Representative Fagg, District 89, said HB 121 was requested by the Water Policy Committee. HB 121 establishes a gross negligence liability standard in damage suits against dam owners of permitted or engineered dams by people taking up occupancy downstream from an already existing dam. Rep. Fagg said the gross negligence standard would apply if someone moved below an existing dam. HB 121 establishes a penalty for failure to comply with the Montana Dam Safety Act, or rule, or order of the Department of Natural Resources and Conservation.

Proponents' Testimony:

Laurence Siroky, Montana Department of Natural Resources and Conservation, read from prepared testimony. (Exhibit #2)

Gary Fritz, Department of Natural Resources and Conservation, supports HB 121.

Jo Brunner, Executive Director of Montana Resources Association, read from prepared testimony. (Exhibit #3)

Opponents' Testimony:
Russell Hill, Montana Trial Lawyers Association, read from prepared testimony. (Exhibit #4)

William Antrobious, a student at the University of Montana Law School, asked who was going to pay for the dams which are located in Montana. Mr. Antrobious told the Committee that the environment is not compatible with dams. Mr. Antrobious said he

was not opposed to all dams, but HB 121 implies that ALL benefits from a dam are positive, which is not true. Mr. Antrobious said he is opposed to the standard of gross negligence and it should be strict liability.

Derik Corzine, a student at the University of Montana Law School, told the Committee that he had been a commercial river guide for the last eight years. Mr. Corzine said HB 121 encourages people to build more dams, for which he is opposed. Mr. Corzine told the Committee that there are a lot of opportunities already in existence in Montana for white water recreation and would like to see those few stretches of white water that Montana has left, reserved.

Questions From Committee Members and Responses:

Senator Doherty asked Rep. Fagg if the state would be immune from liability. Rep. Fagg said yes.

Senator Doherty asked Rep. Fagg if a 2/3 vote would be required to provide the state immunity. Rep. Fagg said no.

Senator Doherty asked Rep. Fagg why it would not be required. Rep. Fagg asked if there was a requirement. Senator Doherty said yes. Rep. Fagg said he would check into that question.

Senator Doherty asked Rep. Fagg about the definition of downstream. Rep. Fagg said downstream would mean "anyplace below a dam."

Senator Doherty asked Rep. Fagg about existing structures. Rep. Fagg said if a dam was in existence before someone built their house, the standard would be gross negligence in order for that person to recover against the particular dam owner.

Senator Doherty asked Rep. Fagg about equal protection problems because the Berkeley pit is exempt in HB 121. Rep. Fagg said the more exemptions in a bill, the more the bill is weakened. The reason the Butte exemption had some merit is because it is federally regulated.

Chair Yellowtail asked Rep. Fagg about Mr. Hill's equal protection question. Rep. Fagg said people have to take responsibility for their actions. Rep. Fagg said the equal protection argument is the reason for the purpose clause in HB 121, so it is understood by the court system why the Montana legislature has made a policy decision to implement HB 121.

Chair Yellowtail asked Rep. Fagg by what margin HB 121 passed in the House. Rep. Fagg said it was in the 60's, but did not know if it was a 2/3 vote. Rep. Fagg told the Committee he would check on the vote.

Closing by Sponsor:
Rep. Fagg said Mr. Hill told the Committee that failure was defined on page 4, line 17. "Damage resulting from leakage, or overflow of water, or floods caused by the failure of the dam or reservoirs." Rep. Fagg told the Committee that downstream was defined as "anyplace below the dam." Rep. Fagg said he did not want every river in Montana dammed and would be opposed to damming free flowing rivers, like the Yellowstone River. Rep. Fagg said he does not anticipate a flood of dams being built with the passage of HB 121. Rep. Fagg said the Water Policy Committee does want to encourage dams, and feels people should take responsibility for their actions. Rep. Fagg said if someone moved below an existing dam, the Water Policy Committee felt that they should take some responsibility for that. The Water Policy Committee is not saying that person cannot sue, but if a person moved below an existing dam, they would have to prove gross negligence to recover if they were damaged.

ADJOURNMENT

Adjournment: 12:20 p.m.

Wm Yellowtail
BILL YELLOWTAIL, Chair

Rebecca Court
REBECCA COURT, Secretary

BY/rc

ROLL CALL

SENATE COMMITTEE Judiciary DATE 3-5-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen			X
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

FC8

Attach to each day's minutes

Animal cruelty charges filed

Attorney W.G. Gilbert III of Dillon, representing a Galen-area woman, appeared in Anaconda-Deer Lodge County Justice Court Thursday where his client was charged with animal cruelty.

Mary Kellogg, 1180 Yellowstone Trail, is charged with cruelty to animals, not having rabies vaccinations for her dogs and not having a kennel license.

Kellogg is scheduled to appear before Justice of the Peace Lorraine Biggs Oct. 17 to answer the charges, which originated with the recent discovery that hundreds of horses may be starving to death.

The allegations were made by investigating law enforcement officers after neighbors complained that there was not enough forage or other feed available for her animals. According to court documents, nearly 370 horses are on the property

The rabies and kennel license charges were brought because there are at least 40 dogs on her property and they are allegedly not properly vaccinated.

Meanwhile, the county switchboard has been swamped with calls from citizens offering help and emergency food supplies, according to operator Bobbie Austin.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 3-5-93
BILL NO. HB 323

-lorse owner charged with cruelty

Mary Kellogg to plead Oct. 17, authorities negotiate to feed animals

· Duncan Adams
ndard Staff Writer

\ Galen-area woman sent her at-
ney Thursday to Anaconda-Deer
lge County Justice Court on her
ıalf to hear a charge of cruelty to
ımals stemming from concern
ıut hundreds of horses on her
ıch.

\ttorney W.G. Gilbert of Dillon
ıeared before Justice Lorraine
gs on behalf of Mary Kellogg,
ı owns a ranch at 1180 Yellow-
ne Trail. Kellogg was charged
h cruelty to animals, a misde-
anor, and with failing to have ra-
s vaccines and a kennel license
44 dogs on her property.

he was scheduled to enter a plea to the charges Oct. 17.

According to County Attorney Sherry Petrovich-Staedler, in addition to having more than 300 horses, Kellogg owns approximately 77 dogs.

"That's her count," said Petrovich-Staedler.

The criminal complaint accompanying the cruelty to animals charges alleges that Kellogg "without justification, knowingly or negligently subjected approximately 368 horses to mistreatment and neglect by failing to provide (them) with proper food, drink and shelter ..."

Petrovich-Staedler would not release the report of veterinarian Mark Ransford, who visited the ranch Wednesday with police.

But her description of Ransford's write-up of that visit indicated conditions at the ranch might not be as bad as first believed.

"She does have some horses that are in very good condition. But she's got a big group of them that don't look so good," said Petrovich-Staedler.

She does have some horses that are in very good condition .... But she's got a big group of them that don't look so good

She added that authorities who served a search warrant on Kellogg Wednesday believe they may have missed some of the animals in the roughest shape. A videotape in police possession shows horses that police did not see Wednesday, she said.

"The vet's report is based on th horses they saw yesterday. The ve does say that those horses are lack ing in feed, but they're not to th point of starvation," said Petrovich Staedler.

Meanwhile, authorities are ne gotiating with Kellogg and her a torney to allow the city-county t begin feeding the horses. And Ke logg reportedly has been forbidde to sell any of the animals until lega questions and charges are resolved

According to a police report, Ke logg has received at least one ha rassing telephone call since the in vestigation regarding her horses be came public. That report, made b Kellogg, described a phone ca from an unidentified female wh said, "You're disgusting. I'll go you."

Court orders Galen rancher to obtain mental evaluation

Evaluation might look at 'animal addiction'

By Duncan Adams
Standard Staff Writer

They say a dog is man's best friend. Perhaps Roland said it more succinctly: "The more I see of men, the better I like dogs."

Truth is, both everyday experience and scientific research suggest that animals do soothe a human's everyday cares.

Many researchers also claim that a small and daily glass of wine can offer a fine if fleeting solace.

GRAYSON

But just like there are those whose quest for relaxation takes them past a glass of wine to a bottle or two, there are those whose affinity for animals occasionally gets out of control.

To date, no one has officially argued that rancher Mary Kellogg of Galen, convicted of cruelty to animals and recently sentenced to serve four days in jail, suffers from what some researchers call "animal addiction."

But prosecutors in Anaconda-Deer Lodge County, and Justice of the Peace Lorraine Biggs, have recommended that Kellogg seek an evaluation of her mental health.

A range analysis expert has concluded that Kellogg's ranch provides pasture enough to support only 44 mature horses year-round without supplemental feeding. Yet, according to court records, Kellogg has had more than 270 horses on her ranch in recent months.

A horse found last fall on Mary Kellogg's ranch

At one point, records show, she also had dozens of dogs.

During a court hearing Thursday, Justice Biggs ordered Kellogg to reduce her herd of horses to 100 head by July 7.

Dr. Karen Kemper, a veterinarian for the city of Houston's Animal Control Bureau, has made a study of the phenomenon of "animal addiction."

According to a July 1991 article by Evan Moore in the "Houston Chronicle," Kemper believes behaviors associated with animal addictions share characteristics with traits identified in connection with substance abuse.

According to Moore's article, those "10 parallels of behavior" are:

- A preoccupation with the addiction.
- Repetition or cycling of the addictive behavior.
- Alibis for behavior.
- Neglect of personal, physical and environmental conditions.
- Claims of persecution.
- Presence of enablers, people who help continue the addiction.
- Denial that the addiction exists.
- Isolation from the rest of society except those who also deal in the addiction, such as enablers.
- Abuse of animals through neglect.
- Have been committed at least once and found sane.

Kellogg was charged in October with cruelty to animals for her alleged neglect of scores of horses on her ranch. In December, she received a deferred sentence, with conditions for that charge.

Recently, however, Kellogg, 44, and her husband, William, 52, were in court on a new charge of cruelty to animals. Both entered an Alford plea of guilt to those charges Thursday, and sentencing was set for July 7.

Justice Biggs also revoked Mary Kellogg's earlier deferred sentence, citing failure to comply with court conditions defining recommendations for proper care of the animals on her ranch.

Biggs sentenced Kellogg to six months, with all but four days in jail suspended, and ordered her to reduce the size of her herd of horses.

And she reiterated the court's directive for Kellogg to participate in a mental health evaluation.

There was talk during Thursday's hearing of a "referral question" for a mental health professional to consider during his or her evaluation of Kellogg.

On Friday, Deputy County Attorney Michael Grayson was asked whether that referral question, from his perspective, might ask an evaluator to consider the possibility of animal addiction.

"I think that's what we have in mind as a referral question," Grayson replied. "That's certainly what I was looking at, and I think that's what the court was looking at, too."

ACLU says prison endangering w

EXHIBIT 1
DATE 3-5-93
HB 323

Horses get food, probe continues

By Duncan Adams
Standard Staff Writer

The animal control warden for Anaconda-Deer Lodge County began feeding horses Friday at a ranch near Galen where authorities believe many of the horses have been starving.

"I went down and fed the horses, Friday and Saturday," said animal control warden John Siders on Monday.

Siders said the "horses almost tore my truck apart," trying to get at the hay he was delivering.

Around 4 p.m. Friday, Siders called in to report to police that he had found a horse dead on the ranch, owned by Mary Kellogg, at 1180 Yellowstone Trail.

On Monday, Siders said an autopsy is being performed on the horse, which may have died from causes unrelated to malnutrition.

The horse, said Siders, "appeared to have some meat on it," unlike many of Kellogg's 300-plus horses. Authorities have said they fear some of these animals do not have the necessary reserves to live through a Montana winter.

Kellogg was charged in Anaconda-Deer Lodge County Justice Court Thursday with cruelty to animals. Records show she is accused of "failing to provide (the horses) with proper food, drink and shelter."

She is scheduled to enter a

Please see FOOD Page 8

Food . . .

(Continued from Page 1

plea to that charge, a misdemeanor, on Oct. 17.

Police Chief Jim Connors said Monday that officials have not yet worked out the legal issues and logistics involved in the city-county's role in providing for the horses. For example, Connors said, the city-county has not identified an appropriate place for storing hay and other feed donated by area residents.

For that reason, Siders said, "I was told to hold off just a little bit longer" before actively soliciting additional donations of feed for the horses.

Oct 9- 1991

Starving horses focus of inquiry

WED OCTOBER 9, 1991

By Duncan Adams
Standard Staff Writer

What may be the largest cruelty to animals case currently under investigation in the United States is gradually coming to light in Anaconda-Deer Lodge County.

The city-county's animal control warden is desperately seeking feed and other assistance for more than 300 head of horses believed to be starving at a ranch in the Deer Lodge Valley.

Meanwhile, police chief Jim Connors says authorities are investigating the horses' dire circumstances. He said the ranch owner, Mary Kellogg of Yellowstone Lane, was charged Oct. 3 in justice court with cruelty to animals, a misdemeanor.

"The statement has been made that the horses' hipbones are sticking out so bad that you could hang a hat on them," Connors said.

During a interview Tuesday, animal control warden John Siders said charges of cruelty to animals can be difficult sometimes to prove in court. But for Siders, the evidence seems clear enough. He said he has knowledge of horses at the ranch eating their own dung for lack of other food.

Siders said he has solicited and received real or promised aid from several humane societies in other Montana cities and towns and from a national humane society. And, he said, a local man has agreed to donate a haystack. But, he said, additional feed will be required to keep the animals alive through the winter.

Connors reported that approximately 250 horses are being kept in Anaconda-Deer Lodge County, with an additional 67 head across the line in Powell County.

The chief said Siders has been tracking the case since he took the animal control job last May.

Connors said Kellogg has refused to part with the horses, even to prospective buyers, and, he said, "there's absolutely no pasture" at the Kellogg ranch.

"I don't know what's going to happen to them," he said.

"She swears she's feeding them. But you don't have to know much about horses to see that they're starving."

Oct 10- 1991

Officer: Horses in poor shape

Police veterinarian say animals lack hay for winter

By Duncan Adams
Standard Staff Writer

Two police officers, an animal control warden, and a veterinarian served a search warrant Wednesday afternoon at a ranch near Galen where authorities say hundreds of horses are starving.

Anaconda-Deer Lodge County Police Capt. Michael Softich, Lt. Jack Eklund, animal control warden John Siders and Philipsburg veterinarian Dr. Mark Ransford reportedly were met at the ranch by its owner, Mary Kellogg, and her attorney.

Siders said later that his tour of the ranch confirmed fears about the condition of many of the horses there.

"I feel they're in very poor shape," said Siders

Siders and Police Chief Jim Connors seemed to speak more cautiously Wednesday about conditions at the ranch, noting the potential complexity of legal issues associated with charging Kellogg with cruelty to animals.

Connors clarified Wednesday that Kellogg had not yet appeared in justice court. He had said she'd made an initial appearance on Oct. 3. But he was scheduled to appear Thursday on a misdemeanor charge citing cruelty to animals, he said.

Siders was tight-lipped, too, when asked to describe the findings of Ransford.

"He's writing up his report," Siders said. "He said that the pasture is overgrazed and that the horses have no reserves to go into the winter.

"She needs to get some hay out there," Siders added.

Kellogg would not talk to a reporter who stopped at her ranchhouse on Yellowstone Trail Wednesday. A woman at the house said Kellogg was not feeling well.

But a member of a ranching family in the Deer Lodge Valley was willing to share her feelings about the Kellogg controversy on the condition she not be identified.

"I'm so glad something finally is being done," she said, adding that many area ranchers have been concerned about the horses at the Kellogg spread.

"I'm upset with these people because they keep breeding these horses year after year. I don't know why they don't sell a few so they can feed the ones they have," she said.

Gesturing toward some thin and apparently lethargic horses grazing in a parched field nearby, the woman pointed out one horse's protruding hip bones.

"These are yearlings from last year, and they're just starving to death," she said.

Siders said Wednesday that officials have estimated it will require approximately three tons of hay per day to keep all the horses, most of them Arabians, alive.

"That's bare minimum," Siders said. "My horse gets at least 30 pounds of hay per day, plus a quart

Please see HORSE Page 8

SEE NEXT PAGE

EXHIBIT 1
DATE 3-5-93
HB 323

Horse investigation . . .

(Continued from Page 1)

of oats."

Siders said officials do not yet have an accurate count of the total number of horses owned by Kellogg. However, he said authorities believe there are more than 300 horses at the ranch.

"It's not definitely clear how many there are. It would be almost impossible to get a completely accurate account," Siders said, adding that he walked more than five miles Wednesday searching pastures on the ranch and tallying horses.

He was asked to describe Kellogg's reaction to the appearance of police Wednesday afternoon.

"She was cooperative. Of course, when you have a search warrant served on you, most people are (cooperative)," he said.

Siders said he had received at least six calls Wednesday from people offering some kind of assistance for the horses. But neither he nor Connors has an idea yet how the problems at the ranch will be resolved.

The National Humane Society is keeping tabs on the case, Siders said. And Powell County authorities are assisting the investigation, he said, since some of Kellogg's horses are pastured in that county.

The woman who said area ranchers have been watching the Kellogg spread said she had "been trying to keep track of all the horses" there.

"There was the prettiest little black colt I used to see. I haven't seen it recently. I hate to think what might have happened," she said.

Subject of charges

OCT 11 1991

Staff photo by Walter Hinick

THIS HORSE, intermingled with healthier looking companions, was photographed Thursday on Mary Kellogg's ranch on Yellowstone Trail near Galen. Kellogg was charged Thursday in Anaconda Justice Court with cruelty to animals. A story is on Page 5.

EXHIBIT 1
DATE 3-5-93
HB 323

New cruelty counts filed

Prosecutor claims Galen couple let animals die

By Duncan Adams
Standard Staff Writer

This time the charges do not specify the animals are starving. This time the charges say 10 of the horses, "mostly colts," two dogs, two calves, and a goat are dead.

A Galen-area rancher, Mary A. Kellogg, 44, Yellowstone Trail, pleaded innocent Friday afternoon in Anaconda-Deer Lodge County Justice Court to cruelty to animals, second offense.

Her husband, William Kellogg, 52, pleaded innocent to cruelty to animals, first offense.

Deputy County Attorney Michael Grayson would not comment specifically about the new charge filed against Mary Kellogg, who received a deferred sentence in December for a previous charge of cruelty to animals.

But a motion Grayson filed last week to revoke Mary Kellogg's deferred sentence offered specific al- [illegible] accompanying the latest proved check of the defendant's property," Grayson's motion alleges.

"Siders states that all of the animals are believed to have died since the court's judgment (in December)," the motion adds, a judgment that directed Kellogg to comply with official recommendations for the care and feeding of her horses.

Grayson's motion included other grounds for his petition to revoke Mary Kellogg's deferred sentence:

- That she allegedly failed to comply with a court order to submit evidence by Feb. 11 to Justice of the Peace Lorraine Biggs that Kellogg had participated in an evaluation of her mental health.
- That Kellogg has not been feeding her horses enough hay based on recommendations for supplemental feeding resulting from a range analysis of her property by MSU professor John R. Lacey.

According to court records, Lacey reportedly determined that Kellogg's ranch could support only [illegible]

New animal cruelty charges . . .

(Continued from Page 1)

for supplemental feeding of Kellogg's horses suggest she should be supplying more than two tons of hay per day to properly feed her herd. But, Grayson's motion charges, "... Siders has documented that the defendant is only feeding about one-half ton of hay per day total."

A hearing to consider Grayson's motion has been scheduled tentatively for next Thursday in justice court.

The Kelloggs were represented during their court appearance Friday by attorney Kevin Vainio of Butte. After his clients' appearance, Vainio was asked by a reporter to respond to the charges filed against the Kelloggs.

"Just that we deny the charges and the accusations," Vainio said.

He added that he believed earlier accounts last fall in *The Montana Standard* of the situation at the Kellogg ranch were unfair and not an accurate [illegible] of conditions there.

Asked whether she had a statement about the latest charge filed against her, Mary Kellogg replied, "Not at this time."

A police citation accompanying the cruelty to animals charges against the Kelloggs alleges that they "negligently subjected 10 horses to mistreatment [illegible] by failing to provide proper food, drink, shelter, and proper licensed (veterinary) care to seriously-ill animals."

Siders states that all of the animals are believed to have died since the court's judgment (in December)

Justice Court

Couple sentenced for contempt

Mary and William Kellogg were each sentenced in Anaconda-Deer Lodge County Justice Court to six months in jail for criminal contempt for failure to abide by the conditions set by the court Thursday.

Mary Kellogg will serve her sentence five days at a time while William Kellogg will serve his sentence three days at a time. They will also be responsible for paying their own jail fees.

According to Judge Lorraine Biggs, the Kelloggs did not comply with the conditions of their sentence because they did not file the veterinary reports they were ordered to file. In addition, they did not have a planned grazing system and they did not supply a list of the animals in their possession and the names of their owners. Animal Warden John Siders stated that there were 90-98 head of horses on the property at the last count.

The Kelloggs last appeared in justice court with their attorney, Kevin Vainio, on Oct. 28 for a revocation hearing concerning a sentence given to the Kelloggs in December 1991 after the Kelloggs entered an Alford plea of guilty to charges of cruelty to animals.

At that time Biggs ordered a state financed veterinary inspection of the herd of horses under the Kelloggs' care before she made a ruling on the revocation

During the October revocation hearing Deputy County Attorney Michael Grayson and Siders attempted to prove that the Kelloggs had not complied with the terms of their sentences by showing that as of 12:05 p.m. that day the Kelloggs still had over 100 head of horses on their property and they did not file the requested monthly written reports on the status of the animals' health.

Vainio and the Kelloggs stated that they have tried to comply with the order and by the end of Oct. 28 or at the latest, by the end of Oct. 29 the herd on their ranch would be down to 100 head. They had been moving horses when Siders was on their property counting horses at noon the day of the hearing.

The sentence originally given to the Kelloggs was a one year deferred imposition with conditions and fines of $500 with a $15 surcharge. The conditions of Kellogg's sentence were devised by Biggs and Grayson.

The conditions were as follows:

• Veterinarian Phil Murphy of Deer Lodge would conduct monthly inspections of the Kellogg ranch and the Kelloggs were to comply with any recommendations Murphy had for the feeding or care of the horses.

• In addition to the veterinary visits, range management specialists would also visit Kellogg's ranch to determine the appropriate number of horses the ranch can support.

• The 35 horses that appeared to be in bad shape must be brought into decent shape or sold by Kellogg.

• Kellogg will be required to seek and complete a mental health evaluation within 60 days and a report must be filed with the court.

The veterinary visits to the ranch were to be paid for by Kellogg. Grayson explained that Dr. Murphy had discontinued services for the Kelloggs because they allegedly would not pay their veterinary expenses.

According to Grayson the herd was supposed to be reduced by July 1, 1992, but due to a series of troubles that befell the Kelloggs extensions were granted. Wednesday was the final extension date for the herd reduction.

Forfeitures

EXHIBIT
DATE 3-5-93
HB 333

Trial set in horse neglect case

By Duncan Adams
Standard Staff Writer

A Galen-area woman is scheduled to go to trial this month on charges she has neglected and mistreated scores of horses on her ranch.

Mary Kellogg, who owns a ranch at 1180 Yellowstone Trail in the Deer Lodge Valley, is scheduled to appear Dec. 19 in Anaconda-Deer Lodge County Justice Court for a bench trial on a misdemeanor charge of cruelty to animals.

On Oct. 18 in Justice Court, Kellogg pleaded innocent to that charge and accompanying allegations she had failed to provide rabies vaccinations for 44 dogs and did not have a kennel license.

On Tuesday, Deputy County Attorney Michael Grayson acknowledged that the local animal control warden, John Siders, has been making regular visits to the Kellogg ranch. Kellogg's attorney reportedly agreed to those visits after charges were filed against her.

In early October, the county attorney's office charged that Kellogg allegedly, "without justification, knowingly or negligently subjected approximately 368 horses to mistreatment and neglect by failing to provide (them) with proper food, drink and shelter..."

When the news first broke of the ongoing investigation of the condition of horses at the ranch, Police Chief Jim Connors said a number of the animals were in poor condition.

"The statement has been made that the horses' hipbones are sticking out so bad that you could hang a hat on them," Connors said at the time.

Subsequent visits to the ranch by a veterinarian have determined that some of Kellogg's horses are in good condition, while others "don't look so good," according to County Attorney Sherry Petrovich-Staedler.

Since the charges were filed, Siders has provided supplemental feed to the horses on occasion. After one such visit in early October, Siders said horses on the ranch "almost tore my truck apart" trying to get at feed he was delivering.

Grayson would not comment Tuesday about details of the county's case against Kellogg. He did say state law provides for a $500 fine and/or six months in the co jail as a maximum penalty f first offense of cruelty to anima

In addition, an animal owner victed of cruelty to animals " be required to forfeit to the co in which he is convicted any an affected," Grayson said, rea from state statutes.

Under the law, any forfeitur animals would be limited to t shown to have been mistreated said. Asked whether such a de mination would be made by a ve inarian, Grayson replied, " would be logical."

Unjust treatment of animals

I was shocked and appalled to read in *The Montana Standard* of horses, goats, dogs being starved to death in Anaconda-Deer Lodge County once again.

Why weren't these animals taken away from this party? Why didn't the animal warden check these animals out? Maybe these animals would still be around today.

There must be something done to stop this cruel and unjust treatment of these animals. How many more animals must suffer before something is done right?

I truly hope the Anaconda-Deer Lodge officials do something different and that justice is served.

I hope justice is served for the many animals who really suffered a needless, senseless death. — LEE ROY DeJOHN, 2523 George

Deferred sentence revoked

Mary Kellogg must serve 4 days in jail for violating terms

By Duncan Adams
Standard Staff Writer

An Anaconda justice of the peace decided Thursday to revoke a deferred sentence of a Galen-area woman for violations of court conditions accompanying a cruelty-to-animals conviction in December.

Justice Lorraine Biggs sentenced rancher Mary A. Kellogg, 44, of Yellowstone Trail to six months with all but four days in jail suspended for failure to comply with conditions of her deferred sentence.

Kellogg and her husband, William Kellogg, 52, also entered Alford pleas of guilty to more recent charges of cruelty to animals. Accepting a recommendation by Deputy County Attorney Michael Grayson, Biggs set sentencing for those charges for July 7, allowing the Kelloggs time to reduce their herd of som[illegible] horses to 100 head.

Biggs warned the Kelloggs that failure to comply with the herd reduction or with other court conditions could have serious consequences.

She told the Kelloggs that if they did not become "caring and responsible ranchers," her "next action just might include an auction sale and (an order) forbidding you to have any animals."

Grayson recently filed a motion to revoke Mary Kellogg's deferred sentence, citing allegations that she and her husband have continued to neglect animals on their ranch.

"According to Animal Warden John Siders, bodies of 10 horses (mostly colts), two calves, two dogs, and a goat were found by him on Feb. 12, 1992, during a court-approved check of the defendant's property," Grayson's motion alleged.

"Siders states that all of the animals are believed to have died since the court's judgment (in December)," the motion added, a judgment that directed Kellogg to comply with official recommendations for the care and feeding of her horses.

Grayson's motion included other grounds for his petition to revoke Mary Kellogg's deferred sentence:

- That she allegedly failed to comply with a court order to submit evidence by Feb. 11 to Biggs that Kellogg had participated in an evaluation of her mental health.
- That Kellogg has not been feeding her horses enough hay based on recommendations for supplemental feeding resulting from a range analysis of her property by MSU professor John Lacey.

According to court records, Lacey reportedly determined that Kellogg's ranch could support only 44 mature horses year-round without supplemental feeding. Records show veterinarian Phil Murphy counted approximately 275 horses during a recent visit to the Kellogg ranch.

Grayson alleges that calculations for supplemental feeding of Kellogg's horses suggest she should be supplying more than two tons of hay per day to properly feed her herd. But, Grayson's motion charged that Siders had "documented that the defendant is only feeding about one-half ton of hay per day total."

The Kelloggs were represented during their court appearance Thursday by attorney Kevin Vainio of Butte. Vainio argued that his clients attempted to comply with court conditions related to care of animals on their ranch.

"I would ask the court for leniency," Vainio said before sentencing. "They've tried to comply ... They've been working out there night and day trying to get these horses back into shape."

And Vainio argued that there are questions about why the horses on the ranch continue to be sick.

"We just don't have ade proof about what the problem out there with these animals said, noting theories that th mals could be suffering beca worms or because of "enviro tal toxicity" tainting the pa where they graze.

Grayson countered that oth pothetical issues notwithsta the Kelloggs still owned "a manageably large herd" f acreage available for grazing

Biggs agreed. She set thre lines for the Kelloggs to m reduction of their herd. By A Biggs said, the herd must b to 200 head; by May 30, dow head; and by July 7, dow head.

And Biggs told the Kello the problems on their ranc concern both to local peopl residents statewide.

"Your neighbors around are concerned about the w these animals," she said.

ANACONDA

3-5-93
HB 323

Area ranchers get jail time

For contempt in not caring for animals as ordered by court

By Tina Vander Veer
Standard Staff Writer

Two Galen ranchers who have been accused of cruelty to animals were given jail sentences Thursday for not complying with a court order to properly care for horses, dogs and rabbits on their property.

After a five-hour hearing, Anaconda-Deer Lodge Justice of the Peace Lorraine Biggs found Mary Kellogg, 44, and her husband William Kellogg, 52, both of 1180 Yellowstone Trail, guilty of criminal contempt of court, a charge that carries a maximum six-month jail sentence and $500 fine.

Monthly installments

Mary Kellogg was sentenced to five days in jail each month for the next six months, and William Kellogg was sentenced to three days in jail each month for the next six months.

They will have to pay the county $20 in advance for each night they spend in jail.

In a scathing speech from the bench, Biggs told the couple that she was impatient with their refusal to comply with court orders, and called their behavior "an absolute violation of humane treatment of animals."

'Sick to death'

"I'm sick to death of having to have you come in here," Biggs said.

Biggs ordered the Kelloggs to manage their range in a more effective way, reduce the number of horses on their property, and provide the court with a list of all the horses and owners of horses that are or have been on their ranch.

Biggs also set up a committee of interested groups, such as the Humane Society, to help the Kelloggs obtain adequate care for their animals.

Might lose rights

If the Kelloggs do not comply with the court's mandates, Biggs said she would consider stripping the couple of their right to own animals.

The Kelloggs and their lawyer, Kevin Vainio of Butte, argued that they have taken steps to decrease their herd size by taking about 30 head to Garrison and pasturing others in Gallatin County, leaving fewer than the mandated total of 100 horses on the Galen property.

But under cross-examination, Mary Kellogg said she did not know where in Gallatin County her horses are, nor how many horses were moved there. She said she had no bills of sale for the animals, and that they weren't examined by the brand inspector before the move.

'Playing games'

Judge Biggs said that by taking horses out of the county rather than selling them as the court ordered, the Kelloggs were "playing games" with the court.

"You have deliberately misconstrued the court's order to release animals under your care by moving them to other counties," she said.

Biggs added that the apparent reduction in the horses' numbers did not free the Kelloggs from responsibility in the court's eyes.

"It's not just the numbers of these horses," she said. "I'm concerned about the care of these horses."

Vet testifies

Biggs' decision came after testimony from the county animal warden, a Philipsburg veterinarian assigned by the court to inspect the animals on the ranch, Mary Kellogg herself, and a neighbor of the Kelloggs, Mark Jones.

The warden, John Siders, produced photos of a horse with a large absess running with pus, dogs in a muddy kennel, and dog food covered with mold, all taken at the ranch.

He testified that he counted as many as 177 horses on the ranch as late as Oct. 27, and said conditions hadn't improved on the ranch since the December court order.

'Fair shape at best'

The vet, Dr. Mark Ransford, said that most of the horses were in "fair shape at best" and that many of the younger or weaker horses were in worse condition than that.

"You could see ribs, you could see pinbones," he said. He added that the animals were lethargic and unalert.

"These horses weren't broken, but I could walk right through them," he said.

Some horses had skin growths, infections or swollen limbs and were in need of veterinary care, he said. Others showed signs of stunted growth or needed a farrier.

Dogs have worms

An autopsy of one six-year-old horse showed that the animal probably died of malnutrition, he said.

When he inspected the ranch's 70-odd dogs in April, Dr. Ransford said he found them to be "thin to adequate," but infested with at least three kinds of worms.

The kennels were muddy, didn't provide shelter for the dogs and didn't provide adequate food and water for them, he said.

"The dogs were in the dirt and mud, with no way to get out of the dirt and mud," he said.

Barn called filthy

Dr. Ransford said the

collies had worms, claiming s
wormed them once a mont
Ivermectin.

But when the veteri
pointed out that Ivermectin,
stock dewormer, is often fa
collies, Kellogg said her dogs
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ceptible to the effects of Ive
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Neighbor defends

The Kellogg's neighbor,
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rabbits at the ranch were hi
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They were ordered to re
their 260-head

ANACONDA

Calendar

- AA meets at 8 p.m. Friday in the basement of St. Peter's Church, Fourth and Alder streets.
- Well child clinics are held once a month at the Anaconda/Deer Lodge public health office. No charge for immunizations and anyone is eligible. Call 563-7863 or stop by 115 W. Commercial for an appointment.
- AA meets at 9 a.m. Saturday in the Rarus Railroad Building

Justice court

Anaconda funerals

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"The dogs were in the dirt and mud, with no way to get out of the dirt and mud," he said.

Barn called filthy

Dr. Ransford said the animals that bothered him the most were the 80 rabbits housed in one of the ranch's barns.

The rabbits' hutches, stacked four deep, didn't have trays covering the bottoms of each cage, so that rabbits above could defecate on rabbits below, he said.

The barn itself also was filthy, he said. "When I walked into the room of the rabbits, I could hardly breathe, the smell of ammonia was so overpowering," he testified.

Mary Kellogg attempted to provide explanations for all the evidence persented aganist her.

Mary Kellogg speaks

She said the hutches smelled because they recently had been cleaned of waste; that the horse's abcess had been treated by a veterinarian and by herself; that her farrier had been injured and hadn't been able to attend to the horses for a year; that the stunted horses are actually naturally-occurring pony-sized American Saddlebred horses; that the dogs' kennels were covered with gravel twice a year and that the animals had adequate shelter; and the whitish material on the dog food was not mold, but goat's milk.

...Ivermectin.

But when the veterinarian pointed out that Ivermectin, a livestock dewormer, is often fatal to collies, Kellogg said her dogs were a special strain of collies not susceptible to the effects of Ivermectin.

Neighbor defends

The Kellogg's neighbor, Mark Jones, testified that many of the rabbits at the ranch were his, and that the Kelloggs adequately cared for their animals.

In closing arguments, Deputy County Attorney Mike Grayson noted that Mary Kellogg refused to accept the opinions of veterinary and range experts as valid, substituing her own authority instead.

"She thinks everything is fine," he said. "Mrs. Kellogg won't acknowledge this, and doesn't even see there's any problem."

Alford to cruelty

In December, Mary Kellogg entered an Alford plea to a charge of cruelty to animals. In an Alford plea, the plaintiff does not admit guilt, but concedes that there is enough evidence to convict him of a crime.

At that time, Biggs issued a court order, specifying that Mary Kellogg would have to feed and adequately care for all the animals on her property within six months.

Those conditions were bolstered after both Kelloggs entered Alford pleas to new charges of cruelty to animals in February.

They were ordered to reduce their 260-head herd to 200 by April 30, 150 head by May 30, and 100 head by July 9.

Mary Kellogg was sentenced to four days in jail for the offense.

ANACONDA

...lendar

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The Montana Standard

The Montana Standard

EXHIBIT 1
DATE 3-5-93
HB 323

JP, police chief named

Couple's lawyer files writ of habeas corpus

By Frank Hamilton
Leader Staff Writer

Attorney Kevin Vainio filed a writ of habeas corpus in the Anaconda-Deer Lodge County Clerk of the District Court's office this week on behalf of Mary and William Kellogg.

The writ names Chief of Law Enforcement Jim Connors and Justice of the Peace Lorraine Biggs as the respondents. According to the writ, the sentences imposed on the Kelloggs for contempt of court exceed the legal limit and thus the writ asks that the remaining time on the sentences be dismissed.

Mary and William Kellogg were each sentenced in Anaconda-Deer Lodge County Justice Court to six months in jail for criminal contempt for failure to abide by the conditions set by the court in November 1992 in connection with animal cruelty charges. Mary Kellogg was sentenced to serve her sentence five days at a time while William Kellogg was to serve his sentence three days at a time.

Biggs had ruled the Kelloggs to be in contempt of court for non-compliance with the conditions of their sentence. According to the court, the Kelloggs did not file the veterinary reports they were ordered to file.

In addition, they did not have a planned grazing system and they did not supply a list of the animals in their possession and the names of their owners. Animal Warden John Siders stated that there were 90-98 head of horses on the property at the last count.

The writ alleges that there was never any formal charge made against the petitioners charging them in writing as required by the Montana Criminal Code(MCA).

The writ also states that the three day and five day sentences per month are in excess of those contained in the section 3-10-404 of the MCA which states, "A justice may punish for contempts by fine or imprisonment or both; such fine not to exceed in any one case, $100 and such imprisonment, 1 day."

The writ goes on to say that the petitioners have served more than one day in jail which is the maximum sentence allowable for contempt by the Justice of the Peace.

Because of these circumstances, the writ is asking that the remaining jail sentences be dismissed, the court award petitioner's costs and attorney fees and grant any further re-

Holiday

Ranchers claim jail, fines assessed unconstitutional

Two Deer Lodge Valley ranchers sentenced to fines and jail time for contempt when they did not comply with a court order to properly care for their horses are claiming they were unconstitutionally imprisoned.

Mary Kellogg was sentenced to five days in jail every month for six months and $600 in fines. Her husband, William, was sentenced to three days in jail every month for six months and fined $360.

Justice of the Peace Lorraine Biggs sentenced them Nov. 12, when she found they had failed to follow a court order to decrease the herd or provide reports of monthly veterinarian reports on the animals' condition.

The case began more than a year ago, when the county animal control officer reported some of the horses on the Kellogg land were starving.

Kevin Vainio, attorney for the Kelloggs, filed a writ of habeas corpus in district court Thursday alleging they have been imprisoned illegally. The action names Biggs and Anaconda-Deer Lodge Chief of Law Enforcement Jim Connors.

The Kelloggs were scheduled to begin serving jail time in December, but that was delayed because of illness, Connors said Thursday.

Vainio's filing says his clients never received any formal charges in writing, and he quotes state statutes that limit contempt sentences from justice court: "Such fine not to exceed in any one case, $100 and such imprisonment, 1 day."

The Kelloggs have requested a hearing before a district court judge, and asked that the judge relieve them of "the unconstitutional and unlawful restraint on their liberty," and nullify the sentence.

Powell County court

TESTIMONY OF THE
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
ON HOUSE BILL 121, FIRST READING

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 3-5-93
BILL NO. HB121

BEFORE THE SENATE JUDICIARY COMMITTEE

MARCH 5, 1992

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A GROSS NEGLIGENCE LIABILITY STANDARD FOR CERTAIN DAM OWNERS; EXTENDING THE LIABILITY STANDARDS TO CERTAIN DAMS IN ADDITION TO PERMITTED DAMS; EXTENDING THE LIABILITY STANDARDS TO NONFEDERAL DAMS ON FEDERAL PROPERTY; ESTABLISHING A PENALTY; AMENDING SECTIONS 85-15-107 AND 85-15-305, MCA; AND REPEALING SECTION 85-15-501, MCA."

The Department of Natural Resources and Conservation (DNRC) supports House Bill 121. It is the result of a thorough review of Montana's laws and regulations concerning the safety of dams by the Legislative Water Policy Committee. The DNRC participated in that review and concurs with the Water Policy Committee proposal.

This bill addresses the fact that little precedent has been established in the courts regarding the liability standard to be applied to owners of dams in Montana. Further, the Montana Dam Safety Act establishes a ***negligence*** liability standard for only those dams having operating permits from the DNRC. As such, it falls short in addressing a liability standard for many Montana dams since operating permits are issued only on high-hazard dams -- those larger than 50 acre-feet ***and*** where the loss of life is likely if the structure should fail

The Dam Safety Act was passed with the "*carrot*" of a negligence liability standard as an incentive to high-hazard dam owners to obtain operating permits. That is, high-hazard dam owners having obtained an operating permit become immune from damages unless found negligent. House Bill 121 proposes to extend this "*carrot*" to other types of dams as a means to better assure their safety. More specifically, it would apply a ***negligence*** liability standard to dams constructed, operated, and maintained under the supervision of an engineer, including private dams located on federal land.

This legislation also deals with the liability situation created when a landowner places a home or other structure downstream of an ***existing*** dam. Other states have wrestled with this encroachment problem which is certainly not unique to Montana. A few have provided powers to local governments to zone areas below an existing dam to exclude homes or to deny subdivisions of land below a dam. In contrast, House Bill 121 provides that, if such a dam subsequently fails, the downstream landowner must prove that the dam owner was ***grossly*** negligent before the dam owner can be found liable for

any damages. Under current law, if homes or other structures are placed below an existing dam, it results in the dam being classified as high-hazard and requires the dam owner to comply with established minimum state standards of configuration, operation, and maintenance. The proposed legislation serves to balance the increased cost to a dam owner of assuring the safety of a dam that, absent the new homes or structures, would not be subject to such costs.

The Department supports the proposed legislation and concurs with the amendments added during House action on the bill.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 3-5-93
BILL NO. HB121

HB121 Rep. Fagg Support X March 5, 1993

Jo Brunner, Executive Director, Montana Water Resources Association

Mr.Chairman, members of the committee, for the record, my name is Jo Brunner, and I am the Executive Director of the Montana Water Resources Association

Mr. Chairman, the Montana Water Resources Association is encouraged that this legislation, in Section 2 recognizes the benefits and importance of storage facilities, and that one great impediment to further construction to such facilities of any significant size is the liability related to the structures.

We appreciate the language stating that any structures below the dam ought to be responsible for such actions.

As you are well aware the definition of 'high hazard' (class 2) dam does not necessarily mean that the dam is structurally unsafe. Or that the owner is not complying with the laws relative to maintaining the dam. It means simply that a life could be lost should the dam be topped, or breached, or malfunction.

When a dam is defined as high hazard, the owner of a previously defined structurally safe dam, must make at his own expense, changes and improvements to be in compliance with high hazard dam safety standards.

However, even then, it is almost 100% impossible for dam owners within that classification to get liability insurance, no matter how structurally sound the dam is.

This bill may not increase the availability of insurance for the dams, but it will lessen the liability for the owner by requiring the downstream builder to accept responsibility for their actions.

Perhaps those words are the key --- to accept responsibility for ones actions.

Dam owners who have abided by the law in construction and maintenance of the dams must accept liability for the structure. They are not asking for a lessening of that liability.

Those who move below an existing dam, must take responsibility for their actions. Our society seems quite adept at blaming others for decisions made should that decision prove less than beneficial.

Owners of existing dams, safely constructed or rehabilitated, are put in the position of not having the protection of liability insurance because of actions over which they have no control. And, in essence, liable for the actions of those causing the liability.

We ask that you do pass this bill as printed and presented this day.

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March 5, 1993

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 3-5-93
BILL NO. HB121

Sen. Bill Yellowtail, Chair
Senate Judiciary Committee
Room 325, State Capitol
Helena, MT 59624

RE: HB 121

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's opposition to HB 121, which chaotically relaxes the standards of liability applicable to owners of high-hazard dams in Montana. MTLA opposes HB 121 because of several concerns:

1. The consequences of HB 121 extend far beyond the "reasonable and prudent landowner" identified in the bill's purpose clause (page 3, line 24). The bill encompasses victimized landowners, guests, even transient populations with no notice whatsoever of the potential risks they purportedly assume. Although the Water Policy Committee recommended a gross-negligence standard be applied only to victims who "encroach" upon an existing dam, HB 121 applies a gross-negligence standard indiscriminately. The bill extends far beyond the victim who, by locating downstream from an existing non-high-hazard dam, creates for the first time the potential for loss of human life and thus transforms that dam into a high-hazard dam. The bill extends even beyond victims who knowingly locate below existing high-hazard dams. In fact, as the diagram on page 4 of this testimony illustrates, the bill applies a gross-negligence standard to victims who are completely irrelevant to the high-hazard status of dams.

2. Even if the legislature <u>does</u>, consistent with the purpose clause (page 3, lines 16-18) find that potential liability impedes the construction of new dams, HB 121 does absolutely nothing to reduce that liability. Any dam <u>constructed</u> after the bill's effective date will still entail dam-owner liability to all existing property owners for negligence. And the engineers, contractors, consultants and similar entities which <u>build</u> dams for

dam owners gain no liability protection whatsoever from HB 121. Moreover, owners of existing dams will be no less liable for negligence on the bill's effective date than they were a day earlier. At best, the bill--if constitutional--merely limits additional liability exposure created by new landowners who arrive downstream. No insurance company will adjust its liability premiums on the basis of such imponderables. Not surprisingly, the State of Montana--which owns a quarter of all high-hazard dams--predicts that HB 121 will have no fiscal impact on expenditures (self-insurance, claims, etc.).

3. HB 121 leaves the interpretation of dam or reservoir "failure" (page 4, lines 18-19; page 5, line 1; page 5, line 6; page 5, line 9) to Montana courts and, by doing so, may actually subject owners to more, not less, liability. The structural "failure" of a dam or reservoir apparently differs from the operational failure of an owner. Consequently, a dam owner who is only liable now for negligently allowing flows of impounded water exceeding the 100-year floodplain may become, under HB 121, strictly liable for any flows of impounded water, regardless of magnitude, which are due to some cause other than structural "failure." This potential expansion of liability assumes enormous significance in a context which includes reservoirs as well as dams, where "failure" could mean not just the flash-flood of clean water following a dam collapse but also the slow underground seepage or above-ground leakage of pollutants.

4. HB 121 leaves the interpretation of "downstream" (page 5, line 7; page 5, line 10) to Montana courts and, by doing so, may actually subject dam owners to more, not less, liability. In the diagram attached as page 4 of this testimony, cabins A, B, and C are all located downstream from the dam. But HB 121 apparently treats the person who "placed" cabin A far outside the projected flood area no differently than the person who "placed" cabin B within the hydraulic shadow and the person who "placed" cabin C within the 100-year floodplain. A court forced to distinguish between the three, and also faced with HB 121's emphasis on the risks willingly accepted by victims, would likely apply "downstream" to only to cabin C and the well-publicized 100-year floodplain. Moreover, by confining the term "downstream" to dams, HB 121 ignores the potential application of the bill to underground seepage or above-ground leakage from reservoirs.

5. HB 121 will dramatically increase the litigation resulting from failure-related injuries or property damage because it gives Montana courts no guidance in determining whether victims were injured "as a result of a structure being placed downstream from the existing dam" (page 5, lines 11-12)--an enormously subjective determination, especially in the context of a bill which relies on the willing acceptance of risks by those victims, and especially since the term "structures" includes highways, stores, parks, campgrounds, and similar facilities designed to attract transient populations. Because a quarter of Montana's high-hazard dams are state-owned, and because the state's maximum liability is limited to $1.5 million, HB 121 will also force citizens victimized by a state-owned dam into fascinating new legal territory: How should courts divide a single sum among victims who were required to prove different degrees of fault?

6. HB 121 violates constitutional principles of equal protection if it discriminates irrationally between victims who "place" a "structure" before the construction of a high-hazard dam and victims who "place" a "structure" below an existing high-hazard dam,

even though both categories of victim produce identical results vis a vis owner duties. HB 121 also violates constitutional principles of equal protection if it irrationally discriminates between victims who "place" a "structure" below an existing high-hazard dam before the bill's effective date and victims who do so after the bill's effective date, even though both categories of victims produce identical results vis a vis owner duties. HB 121 also violates constitutional principles of equal protection if it irrationally discriminates between property owners and victims who merely visit property. And there is simply no rational possibility that HB 121, by introducing such discrimination, will contribute to lower liability premiums or new construction of dams.

Example: Victim A builds his home within the 100-year floodplain before construction of the dam--which, because of Victim A, is denominated a high-hazard dam. Victim B builds her home "downstream" from the existing dam but well outside the 100-year floodplain.

Example: Victim A buys property "downstream" from an existing high-hazard dam and moves into a home which was built before the effective date of HB 121, perhaps even before construction of the dam. Victim B long ago bought property "downstream" from an existing high-hazard dam but only builds her home there after the bill's effective date.

Example: Victim A buys recreational property "downstream" from an existing dam and visits that property often but never "places" a structure on that property. Victim B, an out-of-state motorist, drives on a highway which was "placed" below an existing dam and stops at a similarly "placed" store for food and gasoline. The same dam "failure" kills them both.

7. HB 121, by unilaterally shifting the financial risks of negligence from dam owners to current property owners, would reduce the value of downstream property owners. In this regard, note the complaints of dam owners in amending House Bill 84 that the mere connotations of the term "high-hazard" scare away potential buyers.

More than 80 high-hazard dams in Montana face a July 1, 1995, deadline for meeting safety standards. The projected cost of rehabilitating state-owned dams alone exceeds $200 million. Few current owners of high-hazard dams insure the actual risks those dams pose. The Water Policy Committee publicly worried about the apparent inability of DNRC to enforce inspection requirements. Current DNRC policies tolerate substandard spillways. Alerted by these warning signs, and confronted by dam owners who seek to insulate themselves from liability for negligence, this committee should demand clear objectives and precise language from the proponents of HB 121. MTLA believes that the bill needs more of both.

Thank you for considering these comments. If I can provide additional information or assistance, please notify me.

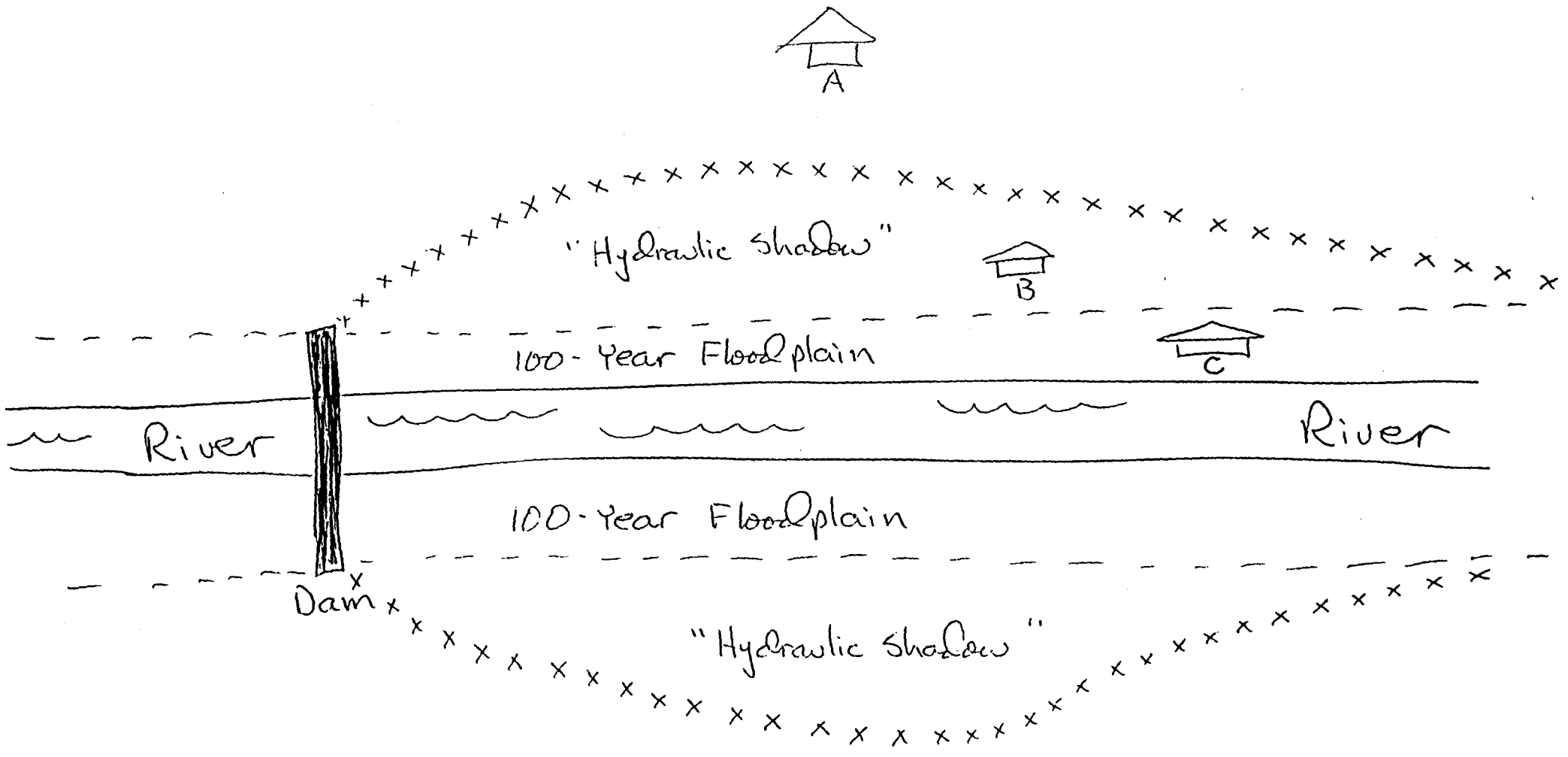
Respectfully,

Russell B. Hill, Executive Director

4
3-5-93
HB 121.

EXHIBIT 4
DATE 3-5-93
HB 121

"Downstream"



DATE 3-5-93

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 121 Fagg HB 323 McCarthy HB 429 Stryjak HB 582 Brown

Name	Representing	Bill No.	Check One Support	Oppose
Elmer G Beaudette	Ana-DL County	323	✓	
Gary Fritz	DNRC	HB121	✓	
Laurence Siroky	DNRC	HB121	✓	
Mark Ransford	Flint Cr Valley Vet Clinic	323	✓	
Dave Brown	Sponsor - HD#72	582	✓	
Serge Myers	Self	582	✓	
~~[illegible]~~				
Russell B Hill	Mont Trial Lawyers Assn	HB121		✓
A. M. (Bud) Elwell	WCSM + NWWC	HB582	✓	
Dave Gulkle	Anaconda MT	323	✓	
John Sickens	Anaconda MT	323	✓	
Mike Grayson	Anaconda, MT	HB 323	✓	
[illegible]	MMRA	121	✓	
Bryan Lockerby	Mont. Police Assoc	HB429	✓	
Mike Batista	Dept of Justice	HB429	✓	
John Connor	MT County Atty Assn	HB429	✓	

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F10

DATE 3-5-93

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: HB 121, 323, 429, 582

Name	Representing	Bill No.	Check One Support	Oppose
Sen Tom Beck	Self	HB323	✓	

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