

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON AGRICULTURE**

Call to Order: By **VICE CHAIRMAN RALPH LENHART**, on January 18,
2001 at 3:00 P.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Linda Holden, Vice Chairman (R)
Rep. Ralph Lenhart, Vice Chairman (D)
Rep. Darrel Adams (R)
Rep. Norma Bixby (D)
Rep. Gilda Clancy (R)
Rep. Rick Dale (R)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Verdell Jackson (R)
Rep. Jim Keane (D)
Rep. Larry Lehman (R)
Rep. Holly Raser (D)
Rep. Clarice Schrupf (R)
Rep. Frank Smith (D)
Rep. Butch Waddill (R)
Rep. Karl Waitschies (R)
Rep. Merlin Wolery (R)

Members Excused: Rep. Donald L. Hedges, Chairman (R)
Rep. Christopher Harris (D)

Members Absent: None.

Staff Present: Krista Lee Evans, Legislative Branch
Robyn Lund, Committee Secretary

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

Committee Business Summary:

Discussion on HB 246
Hearing(s) & Date(s) Posted: 280, 1/18/2001

Background information on HB 246:

Attorney Greg Petesch was introduced and invited to give some
background information on HB 246.

Greg Petesch stated that he would be able to answer questions stemming from the Larson/Murphy decision dealing with livestock vehicle collisions. He thought that the case was easy to describe in its resolve and that is that the standard of ordinary comparative negligence will now apply in all instances of collisions between motor vehicles and livestock, regardless of where they occur in Montana. That is a significant change in what most people thought the law was and that was that, in the absence of a statutory exception, there was no duty of a livestock owner to prevent his livestock from wandering on a highway. In the absence of that duty the livestock owner could not be held liable for a collision between a motor vehicle and a livestock. He stated that in reading the case it becomes clear that the court is sensitive to the consternation that this decision is going to cause because it is a detailed studious discussion of the entire law of open range. They did overrule some prior cases that left most people in the state with the impression that in the absence of a statutorily created exception, what most people thought of as the open range doctrine, there was a duty. Now the normal comparative negligence statute will apply for a motorist/livestock collision on a road.

Questions from Committee Members and Responses on HB 246:

REPRESENTATIVE VERDELL JACKSON said that he recognized that they used the low bar for negligence in the Larson/Murphy case, and that he felt that they didn't consider the case law and everything else adequately or they would have raised the bar up to gross negligence or they would have not found even the low bar sufficient. **Mr. Petesch** responded that guide of the court in this case is that they were comparing two activities. 1: a motorist preceding down a road, within the speed limit, occupying the driving lane of the road. 2: a black bull in the middle of a black highway, in the middle of the night. He thinks, from the court's perspective, there is absolutely no negligence on the part of the motorist. Without any negligence on the part of the motorist and because the bull was outside of the legal fence that there was possibly some negligence on the part of the livestock owner. In light of no negligence versus some potential negligence that was what the decision came from. They did use just plain negligence and comparative negligence.

{Tape : 1; Side : A; Approx. Time Counter : 8.2}

REPRESENTATIVE BUTCH WADDILL asked if Mr. Petesch was familiar with the legislation proposed to fix this problem. **Mr. Petesch** stated that he had seen the bill. **REP. WADDILL** said that he thought that it didn't seem to fix the problem for a couple of reasons. In the case itself it says that the open range doctrine

statutes have been misconstrued over time and misapplied in the context of the specific legal relationship issue, and it also said that the open range issue doesn't even apply in this case. He doesn't see that HB 246 fixes the problem, and he stated that he has doubts as to whether it will be found constitutional because it gives impunity to people who own livestock and have open range conditions. And yet another problem is that it gives two different definitions of open range within the law. **Mr.**

Petes replied that he doesn't see a constitutional defect possible in the legislation. As the court pointed out, legislatures in surrounding states have acted to explicitly clarify the relationship between the motorist and livestock owner. He felt that that was a hint to the legislature, if they wanted to step in and clarify this that it was acceptable. He feels that the court was also trying to show that the varying statutes that Montana has are confusing. They took great pains to discuss pure open range, herd districts and the responsibility of the state to maintain fences along certain highways; they tried to demonstrate that how those statutes interrelated is what had lead to the erroneous decisions that they overruled. He feels that it is within the legislature's prerogative to define the legal relationship between a motorist and a livestock owner, and he feels that the legislature can grant immunity to people.

REPRESENTATIVE MERLIN WOLERY asked about an amendment to HB 246 that would cover gross negligence, something that would allow liability to apply if a livestock owner was grossly negligent.

Mr. Petesch replied that that was certainly possible. He felt that you could clarify that a livestock owner who has a legal fence that is properly maintained is not liable for an injury caused by his livestock escaping from that fence. He stated that you can't be responsible, for example, if someone leaves your gate open. The problem with that is proving who left the gate open, and that's a fact question. He thinks that even within this decision the court was careful to say, each one of these cases involving and automobile/livestock collision is going to have to be a fact specific decision; that is because they are using the comparative negligent standard. Now when you raise the bar and would only have liability occur in a gross negligence, he thinks you would also want to include intentional conduct. An amendment could be crafted to achieve that. **REP. WOLERY** then said that it would have to address issues that don't have a fence. **Mr. Petesch** said that would be the difficulty in trying to draft a single statute to address this issue. There are too many varying types of roadways. He thinks that you would want to limit, for example, on a private roadway through an easement, he said that he didn't see a reason for the livestock owner to be liable. There is a distinction between a public road, primary or

secondary, and a private road. He thinks that one could identify the different areas and apply different standards.

REPRESENTATIVE DARRELL ADAMS asked what a legal fence actually is. **Mr. Petesch** responded that a legal fence is defined in statute. **Krista Lee Evans** cited the statute 81-4-101 MCA, it has to be more than 48 inches in height and longer than 44 inches, 3 barbed horizontal well stretched wires. She said that one point that was brought up in the hearing was that the legal fence may apply only between land owner to land owner, not land owner to motorist. **Mr. Petesch** responded that he believes that the requirement for maintaining a legal fence is a duty between land owner and land owner, but in response to Rep. Wolery's question he had tried to say that if the committee wanted to craft what the requirement was and when the duty of the land owner was met, you could put a provision in the bill for a land owner who has a well maintained legal fence.

REPRESENTATIVE HOLLY RASER said that roads, not including primary and secondary, are considered open range, and one of the problems within this is that because it is part of the open range then both the livestock and the motorist have a right to be there. Then the supreme court said that the highways passing through the herd districts are no longer part of the open range, so are they overturning the previous rulings on this. **Mr. Petesch** agreed that that was true. **REP. RASER** clarified that that was during those periods when the herd districts were in effect. **Mr. Petesch** added that the herd district law is different than open range because a herd district being created changes the open range general rule anyway. The duty in a herd district is to keep your livestock off of someone else's land. He added that we are starting to see subdivisions petition to become herd districts so that the livestock owner has a duty to keep his livestock out of the people's vegetable gardens and yards. He doesn't believe that this is what the herd district law was created to do. He stated that in that herd district designation, if the road is passing through it and there is no fence maintained there, then certainly both the livestock and the motorist have an equal right to be on that road. **REP. RASER** said that it seems that there is not a standard of roads in a herd district, and asked if we should define that. **Mr. Petesch** referred to an earlier response where he said it may be advisable that a single standard will not fit all, that the type of area, the type of road may prompt the committee to apply different standards to the various types of location and the types of roads passing through those locations. It may be impossible to craft a single solution that will please everybody. **REP. RASER** considered where the sponsor wants to go with HB 246, which is clearly to protect the legitimate and responsible livestock

owner, but not to protect the people who are irresponsible; she wondered if another approach would be, instead of saying there is no duty, but to instead grant limited liability or to look at, from that stand, that people who are doing things right are not liable. **Mr. Petesch** responded that it is certainly an option for the committee to consider. As he pointed out, there is limited liability for certain individuals in certain circumstances in many cases, for example, the Good Samaritan law.

REPRESENTATIVE LINDA HOLDEN asked about the effects of the supreme court ruling has on the state now. **Mr. Petesch** said that he believed that the result of the decision would have to be on a case-by-case, they will examine comparative negligence of the motorist and the livestock owner to determine whether liability exists. **REP. HOLDEN** said that in her district there is tribal land, private land, state land, does this ruling affect people on tribal land. **Mr. Petesch** stated that the question interjects a jurisdictional issue that complicates things. The state has jurisdiction for traffic fences on highways. If the highway is passing through tribal land then the state probably does not have jurisdiction over the tribal land owner. Whether there would be a cause of action in state court for the motorist who was injured by a tribal member's cow wandering onto a state highway through a non-fenced area is one that he would want to ponder at great length before he can answer as to whether jurisdiction even lied in a state court. He added that if the motorist that was traveling through this area was aware of the situation and drove that road all the time and knew that there were not fences, there black cattle in the area and that that motorist should drive accordingly versus a tourist who had know idea that there might be cattle around; this is a factor that a court would look at. Did the motorist know, if so then the motorist may be negligent. **REP. HOLDEN** then asked if that meant that someone from out of state might have more opportunity for retribution than someone local. **Mr. Petesch** replied that that was true.

{Tape : 1; Side : A; Approx. Time Counter : 34.4}

REPRESENTATIVE KARL WAITSCHIES asked if one can ever legislate away liability for gross negligence. **Mr. Petesch** replied that you can provide immunity and that means that no matter what you do, you cannot be sued. He stated that yes, you may provide that, but when you provide immunity from suit you are also providing immunity from intentional conduct. Gross negligence would be where you knew your fence was down, you had been told your fence was down, you had been told that your cows were getting out, and yet you did nothing to repair your fence.

REPRESENTATIVE DARREL ADAMS asked if the fences that run parallel with the state highways are state fences. **Mr. Petesch** replied that was correct, for roads built or reconstructed after 1976, and there are not many roads that haven't been reconstructed within that definition since then. **REP. ADAMS** then asked that if cows get through that fence as a result of a hole in the fence, who is liable for that. **Mr. Petesch** said that it is very possible that the state would be joined in liability.

REPRESENTATIVE DAVE GALLIK said that he was concerned about the constitutionality of HB 246. He asked, under HB 246, was it true that if a cow gets out in a herd district onto the road, the motorist hitting him couldn't be liable, but the owner of that cow could have a suit against the motorist for killing the cow. **Mr. Petesch** said that he didn't believe that there would be a suit against the motorist for killing the cow if the motorist was driving on the highway within the applicable traffic laws. The reason for that is that the motorist has committed no negligent act, that was pointed out in the Larson/Murphy decision. **REP. GALLIK** then asked, would the livestock owner have a cause of action if the cow didn't get out on the road, but rather, got into the neighbor's area and ruined something. He stated that he wanted to get at equal protection. **Mr. Petesch** stated that there would be an equal protection problem if there is no rational basis for the legislative classification. The committee needs to clearly state the rational basis for any decisions that are made. As long as there is a legitimate reason for making the distinction, he thinks that the classification would pass muster. **REP. GALLIK** then asked that if the committee were to find some sort of a rational basis upon which to make a distinction, then it would pass constitutional muster; what about the constitutional provision that provides that for every wrong there is a right? **Mr. Petesch** said that the constitution merely provides access to the courts and as long as the legislature acts rationally and reasonable in limiting liability, he thinks that it would be fine.

REPRESENTATIVE JIM KEANE asked if he had a neighbor that he didn't like, and he also has a big black bull, he knows that the neighbor drives down the road at 10:00 at night; what happens if he puts his black bull on the road just as the car is coming, could he be held liable for that, under HB 246. **Mr. Petesch** said that that would be intentional conduct, and you would probably be guilty of a crime, even if you can't be sued civilly. He said that he doesn't believe that the bill was intended to relieve you from liability for intentional conduct.

REP. JACKSON said that the way he looks at this is that we need to look at two things: the farmer and the motorist. He feels

that in terms of the farmer/rancher that we should raise the bar, is there something in between ordinary negligence and gross negligence? He also stated that in order to protect the motorist we need to make sure the standards are defined, for example, the fence. **Mr. Petesch** said that normally there is no middle ground between ordinary negligence and gross negligence, those are standards that are usually articulated. It is possible to craft something in between, but he thought that the committee would have to be very specific if you are trying to do that because those are the standards that the courts are familiar with. What the committee would have to do is to craft a general rule, which they are comfortable with, that will protect most people in the way you want them protected, but there will always be situations that are aberrations to whatever rule they come up with.

REPRESENTATIVE KATHLEEN GALVIN-HALCRO asked how many states, especially the surrounding ones, have open range doctrines. **Mr. Petesch** said that he thought that most of the surrounding states, because of their common heritage with Montana, tend to have similar statutes and doctrines. **REP. GALVIN-HALCRO** asked if he could find out that information. **Mr. Petesch** replied that Ms. Evans could do that for her.

REP. HOLDEN said that when you talk about open range there aren't fences, is that correct? **Mr. Petesch** said that that was the traditional application of open range. However, now the right of way is fenced and that requirement has been in place since 1967.

REPRESENTATIVE GILDA CLANCY asked, regarding insurance, motor vehicles carry liability insurance and possibly comprehensive. Comprehensive insurance covers impact with an animal on the road, this means that the insurance company would have to slug it out to decide who was negligent, the motorist or the livestock owner. Is there some type of liability insurance that the livestock owners can carry? **Mr. Petesch** replied that you can insure virtually anything if you are willing to pay the premium, but he does not know how much it would cost.

REPRESENTATIVE MERLIN WOLERY asked if Mr. Petesch could construct a general rule dealing with gross negligence. **Mr. Petesch** said that he believed that Ms. Evans and himself could craft that for the committee.

REP. RASER asked, since there is not a clearly defined relationship between the livestock owner and the motorist, could something like that be added to the bill. **Mr. Petesch** believes that the title of HB 246 is probably broad enough that could be added. You could impose a duty on the livestock owner in the

areas that are described in the bill. You could impose additional liability, but that may be outside the scope of HB 246 and a committee bill may be needed to do that. **REP. RASER** then asked, since we have the Larson/Murphy case, what would have been the decision if HB 246 had been in effect. **Mr. Petesch** said that he believed that had this bill been in effect at the time, the livestock owner would have not been found liable.

REP. GALLIK said that in the bill the immunity sections indicate no liability for damages of person or property caused by an accident involving a motor vehicle and livestock if it occurs on the highway. Is accident defined anywhere in code? **Mr. Petesch** didn't believe that it was defined in code, however, the Webster's definition would be something that was not intentional.

REP. GALLIK thought that "accident" could possibly be define as nobody's fault. Then he asked, couldn't it be argued that it would have to be no negligence before there would be immunity and if there is no negligence before there is immunity then there would be no liability any way. **Mr. Petesch** said that he would never suggest that an attorney wouldn't argue, but he believes that accident in the context that it is used in the bill is intended to mean collision.

REPRESENTATIVE BUTCH WADDILL said, seeing as there are two definitions of open range in the statutes, we correct one in HB 246, is there a need to correct the other definition as well and try to put them in line with each other, or is that not necessary. **Mr. Petesch** thought that it would be less confusing to the public if there were a single definition of open range, and we clearly articulated what constituted open range and then what standards applied within that clearly defined area. **REP. WADDILL** said that he couldn't find a definition of herd district, is there a definition and if there is not, is there a need to define herd district. **Mr. Petesch** doesn't believe that it is defined, what it is is a petition process by land owners to create a herd district and then, once the petition is granted, there is a duty that is imposed on the livestock owner within the area that was petitioned for. It may help people to define it because there seems to be some confusion in the general public as to what constitutes a herd district.

REP. RASER asked, referring to legal fences, if there is a problem in saying that what may be a legal fence is not adequate for some animals. **Mr. Petesch** agreed, and said that depending on the definition of livestock there are certain fencing requirements for them. **REP. RASER** then asked for the definition of what type of fence is necessary in a herd district. **Mr. Petesch** replied that, absent some other statutory requirement, the only fences that are required are legal fences.

REPRESENTATIVE KARL WAITSCHIES asked if it was correct that there is no legal requirement to have a fence on any road other than interstate or a primary road. **Mr. Petesch** said that he believed that to be correct.

REPRESENTATIVE NORMA BIXBY said that she believed that the state owns the fences on tribal land. **Mr. Petesch** replied that the state owns, not only the road way, but the right of way.

REP. HOLDEN said that she hasn't seen fences along the roadway where there are farmers, who would not own cattle. **Mr. Petesch** said that there is a statute that requires the state to fence the right of way on interstate and primary roads, that has been in effect since 1967. He said that railroads are also required to fence their right of ways. **Krista Lee Evans** cited Title 60 Chapter 7 of the MCA that dealt with fencing and the requirements of the Department of Transportation. Any highway constructed or reconstructed after 1967 has to be fenced by the state. Also, that you can't graze, remain upon or occupy a part of the right of way. **REP. HOLDEN** asked for further clarification of the type of highway. **Ms. Evans** cited form MCA, a state highway running through cultivated areas or a part of the fenced right of way of a state highway, in either case the highway has been designated by agreement between the transportation commission and the secretary of transportation as part of the natural system of interstates.

REP. ADAMS said that there is damage to a vehicle and damage to an animal, but isn't the big problem with this the personal damage to the person that is involved in the collision. **Mr. Petesch** said that that was definitely where the major liability and the major damages occur. A vehicle and animal are a fixed cost, but the occupant of the vehicle who is injured is where the major liability is caused.

HEARING ON HB 280

Sponsor: REPRESENTATIVE DONALD HEDGES, HD 97, Antelope

Proponents: Clint Jacobs, Dry Prairie Rural Water
John Youngberg, City of Belgrade
Larry Marshall, Sky View Water and Sewer

Opponents: Bud Clinch, DNRC
Roy Andes, MonTrust

Opening Statement by Sponsor:

{Tape : 2; Side : A; Approx. Time Counter : 0.7}

REPRESENTATIVE DONALD HEDGES, HD 97, Antelope, submitted written testimony. **EXHIBIT (agh14a01)** HB 280 deals with reduced cost easements for infrastructure that increases the earning potential of state lands. In northeastern Montana there is one, of many, grouping of school trust land to be kept in good faith for our schools and institutions. The Montana constitution requires that we get the most money from those lands as they are capable of producing. As we move into the implementation of that, the code says that you, in Montana, will do your utmost to develop state lands to maximize the income from those state lands. He stated that, in the code, it says that we want to encourage and allow the development of state lands. Through the DNRC there are programs that help in funding the development of state lands. The conflict in state statute comes when it says that we are going to get the most that we can from state lands. He stated that the state land board may take in to consideration the improvements and enhanced value of the state land by the placement of an infrastructure. He then talked about Dry Prairie Rural Water System. They are going to cross 700 sections of state land in the installation of their water system. It will be very costly for the Dry Prairie Rural Water System to install rural water, thereby improving every acre of state land in Daniels county, if we do not find legislative relief for the encroachment or installation of the underground water pipes. For the improvement of the state of Montana state land for economic development and to enhance the value of these state acres of school trust property we have to have infrastructure relief in the cost of installing those items.

Proponents' Testimony:

Clint Jacobs, Dry Prairie Rural Water System, introduced two maps to help show the size and scope of the project.

EXHIBIT (agh14a02) EXHIBIT (agh14a03) This is the first regional project in the state of Montana; they were authorized by congress last October. This project will be a one point intake on the Missouri River. The water will be treated and sent through pipes for distribution in 14 communities. The current water systems in these communities are poor and the people are struggling with their water usage. These people want Dry Prairie to come. There will be 3200 miles of pipe line, 20 pump stations; then in the distribution system there will be 100 - 125 smaller pump station to keep the pressure up in the more remote areas. The cost of this system: On the Fort Peck Reservation the cost will be \$125 million that will be supplied, 100%, by the federal government.

Off the reservation the cost is \$68 million, and the federal government will supply 76% of the cost. The remaining 24% is born equally by the state and the local users. In 10 years, when the system is complete, it will probably cost somewhere in the area of \$193 million. The project must go through appropriations each year, for the next 10 years, for construction costs. Regarding planning, there have been preliminary environmental studies, wet lands studies, cultural and historical studies, and a final engineering report that are all completed. He reminded that \$50 million of the cost will go toward construction wages. These wages are badly needed in a severely depressed area, one of the poorest areas in the state. There will also be supplies that will be purchased in Montana. This infrastructure will lay the ground work for value added agriculture; you can't process anything unless you have decent water to do it with.

John Youngberg, Belgrade City Counsel, wanted to show his support for this bill. Belgrade is the second fastest growing area in the state of Montana. The city counsel faces many challenges because of this, one of those was an inadequate sewer system. In order to expand the system it would cost \$5 - \$8 million. Some of the system is on state land that can be used for nothing else. He stated that they are the highest and best use for that land. However, in order to make the necessary improvements they had to put in IP beds; an easement was needed to do that. The cost of those easements was \$51,000 plus change. It was a significant amount for a small community. This bill would have been a God send.

{Tape : 2; Side : A; Approx. Time Counter : 18.2}

Larry Marshall, Sky View Water and Sewer District, has been trying to obtain a right of way across state lands for over a year. Under the statute 7-13-220 says that for a sewer district the right of way is given, dedicated and set apart to locate construct and maintain district works over and through any lands which are the property of the state, and the district has the same rights over the right of way as are granted to municipalities. The mission of DNRC is to help ensure Montana's land and water resources, and provide benefits for present and future generations. He has not been able to get that benefit even though he is a recognized entity. They are located directly across from state land and are running a state of the art treatment system. They are asking for an easement of one acre of state land that he feels is not usable. This bill would be a benefit to any sewer district in the state of Montana because it gives the state land board the opportunity to help the districts that are in financial straights.

Opponents' Testimony:

{Tape : 2; Side : A; Approx. Time Counter : 22.7}

Bud Clinch, Department of Natural Resources and Conservation, introduced a map of the state of Montana that shows school trust lands. **EXHIBIT (agh14a04)** School trust lands were granted to the state of Montana in the enabling act at the time Montana became a state. They were granted with specific beneficiaries, such as common schools grades K-12. There are places in the state where school trust lands are lumped together forming a larger area. The reason for that is that, at the time these lands were granted, the federal government had all ready set aside certain areas for use that were therefore not available for school trust lands. This precluded a consistent spread of school trust land, but the state was still granted the total acreage of land. Each tract of land has a specific beneficiary. Last year the DNRC generated about \$65 million off of these lands for the trust beneficiaries through different fees. These lands are managed by the DNRC, who makes sure that the money they generate goes to the beneficiary. Mr. Clinch also talked about the permanent trust, which came because our forefathers were smart enough to say, let's not spend every dollar that we get off of these lands. Specific language said that when you get revenues from the permanent disposition of the land or asset, that should go in a permanent trust and only spend the interest. This interest bearing account is managed by the Board of Investments. Only the interest off of that can be distributed back to the proper beneficiary. Revenues from a nonrenewable resource go into that fund as well. Currently the permanent fund for the school trust is \$380 million. This fund can be borrowed out of, with collateral being a mortgage on land. Through this means the state has received title to foreclosed parcels of land that would be considered school trust. All of this shows 100 years of school trust land management and this gets us to where we are today. The enabling act says, the state may also, upon such terms as it may be prescribed grant such easements or rights in any of these lands granted in this act as may be acquired in privately owned lands. However, that none of such lands nor any estate or interest therein shall ever be disposed of except in pursuance of general laws provided for such disposition and unless the full market value of the estate or interest is disposed of. That is the foundation of school trust law that drives the activities that we do for all school trust laws. Shortly following the enabling act was the adoption of the Montana constitution. In the constitution it says, no such land or any estate or interest therein shall ever be disposed of except in pursuance of general laws or until the full market value of the estate or interest disposed of to be ascertained in

such a manner as may be provided by law. He also stated that there is a variety of case law in Montana and many other western states that have school trust lands as well. There are at least half a dozen cases that dealt with the issue before us. In Irvine v. US the supreme court ruled that school trust lands must be utilized for the purpose which the lands were placed in trust; trust lands established by a state's enabling act cannot be utilized for the enjoyment of the general public or other state agencies without paying the full market value of such use. Other cases supporting this decision are Lassen v. Arizona, Skamania v. Washington, Rider v. Cooney. The most recent supreme court decision was in 1999, with the MonTrust decision. In an earlier session of the legislature a bill was crafted called the historic easement bill of the 1995 legislative session. This developed from a concern about all of the roadways on state land that don't have an easement. They tried to develop an argument about how these roads provided benefits for the development of Montana and how the state encouraged the development of those lands. They established a process to tie this to a historic period; they said that the 1972 convention was really when Montanas were awakened to this trust land concept and the obligation of this. They wanted to establish a process whereby activities that occurred on the landscape prior to 1972 could be issued a historic easement at 1972 land values. The bill passed, but shortly thereafter it was litigated by MonTrust. The bill was overturned at both the district court level and the supreme court level. Mr. Clinch wanted to offer some ideas for a solution with the Dry Prairie Rural Water System. First, the DNRC doesn't have to require an easement for some activity, they may issue a license. An easement is for the land user to protect his investment by an actual encumbrance on the land. Another idea that he put forth was a very narrow, perhaps 10 feet, easement. This would reduce some of the cost to approximately \$80,000. This is a very small portion of the cost of a \$200 million project. They could get a general fund appropriation to pay for the purchase of the easement. Mr. Clinch felt that this is the most appropriate way to deal with this problem. Most of all he wanted emphasize that HB 280 is unconstitutional and illegal.

{Tape : 2; Side : B; Approx. Time Counter : 9.4}

Roy Andes, MonTrust, submitted written testimony.
EXHIBIT (agh14a05)

Questions from Committee Members and Responses:

{Tape : 2; Side : B; Approx. Time Counter : 16.1}

REPRESENTATIVE FRANK SMITH asked if, in the 8 years that the Dry Prairie project had been going on, has Mr. Andes sat down and tried to work with them. **Mr. Andes** said that he, personally, wasn't aware of the project. **REP. SMITH** said that it was in the legislature last session. **Mr. Andes** replied that he wasn't here. **REP. SMITH** asked how he would solve this bill. **Mr. Andes** said that within the boundaries of the constitution, if you can quantify how state lands are benefitting, then you can have an offsetting reduction in the amount that they pay. If you can't quantify it then you have to pay full market value. **REP. SMITH** stated that he thought he had a statistic that the state would gain \$169,000 in income tax, \$147,000 in property tax. He asked if Mr. Andes could work with these guys to solve this. **Mr. Andes** said that the fact that the general fund gains from this project doesn't help the beneficiaries unless that money is dedicated directly to them by appropriate legislation. He said that he thought that the narrow easement that was offered by Mr. Clinch made the cost very reasonable in light of the full scale of the project.

Chairman Lenhart said that, in light of the hour, questions for Mr. Clinch or Rep. Hedges could be held for executive session.

Closing by Sponsor:

{Tape : 2; Side : B; Approx. Time Counter : 19.2}

REP. HEDGES said that he would be indeed surprised if Teddy Roosevelt, when he was president and signed off on the papers that granted this trust land to the state of Montana, would have intended this kind of a roundabout way to develop and increase the value of that gift that he gave us. He would indeed be surprised if the framers of the Montana constitution had intended that we would have to walk down this narrow aisle. There was testimony today that the cost of putting in a water line could be mitigated if you only took a ten foot tract, that's on this one. That is living, in an economic development day, in shackles of the 19th century, and he is sure that was not intended by our forefathers. If this bill is indeed unconstitutional, then he challenges the committee to draft a constitutional amendment that makes the state land board really be the board. On the board sits the governor, the superintendent of public instruction, the attorney general; what more qualified people can we have on a board of management, the directors of our state lands. Let's give them the tools to manage the trust the way that it should be managed in the 20th century.

ADJOURNMENT

Adjournment: 5:30 P.M.

REP. RALPH LENHART , Chairman

ROBYN LUND, Secretary

RL/RL

EXHIBIT (agh14aad)