EXHIBIT 1
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HB 9

STATUS OF SPECIAL NATURAL RESOURCE PROJECTS FUNDED FOR IRRIGATION RESEARCH BY THE 2007 LEGISLATURE

The 2007 Legislature directed DNRC to conduct two research projects regarding irrigation in Montana. A brief description of each project is provided below. For more information, or for printed copies, please contact Alice Stanley, DNRC Resource Development Bureau at 406-444-6687 or astanley@mt.gov

ECONOMIC ANALYSIS OF IRRIGATED AGRICULTURE

The purpose of the study is to provide decision makers with an evaluation of the economic benefits of irrigation in Montana, and economic impacts of investment in existing and new irrigation projects. The final product is a report entitled *Irrigation in Montana – A Program Overview and Economic Analysis.* This report includes the following elements:

- A description of existing financial and technical assistance to irrigators and the agricultural community
- An overview of Montana's irrigation systems.
- A description of the methodology and limitations of the economic analysis
- Results and implications of the analysis
- Conclusions and recommendations for government programs

Status: DNRC contracted with the economics consulting firm ECONorthwest to conduct the analysis and prepare a report. The final report was presented to the Water Policy Interim Committee September 2008. The report can be viewed and downloaded from the following webpage:
http://dnrc.mt.gov/cardd/publications/SummaryReportEconAnalysis.pdf

PRELIMINARY INVENTORY OF IRRIGATION INFRASTRUCTURE CONDITION

The purpose of the study is to provide state agency personnel and other decision makers with an understanding of the general condition of irrigation systems throughout Montana. The final product is a report entitled *Irrigation in Montana – An Inventory of Infrastructure Condition.* The report includes the following elements:

- Description of irrigation system management in general throughout Montana
- System inventory methods and results.
- A description of irrigation infrastructure condition and restoration needs in Montana
- Conclusions and recommendations
- A GIS database that will support an interactive map of irrigation systems for public use on the DNRC website.

Status: DNRC contracted with PBS&J, specializing in irrigation infrastructure development and permitting. The final report was presented to the Long Range Planning Joint Appropriations Subcommittee January 20, 2009. The report can be viewed and downloaded from the following webpage:
http://dnrc.mt.gov/cardd/ResDevBureau/irrigation_development/docs/InventoryIrrigationInfrastructureMontana.pdf

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MONTANA LEGISLATIVE BRANCH

Legislative Fiscal Division

Room 110 Capitol Building * P.O. Box 201711 * Helena, MT 59620-1711 * (406) 444-2986 * FAX (406) 444-3036

Legislative Fiscal Analyst
CLAYTON SCHENCK

January 27, 2009

Dear Mr. Petesch:

The members of the joint Long-Range Planning Subcommittee (LRP) have several questions related to an appropriation approved by the 59th Legislature in HB 540. In HB 540, the legislature authorized the issuance of bonds to fund state capital projects. The legislature also provided appropriations for the use of the bond proceeds. One of the appropriations included in Section 2, Appropriation of Bond Proceeds (all to the Department of Administration), was titled "Montana Historical Society Building". The LRP has the following questions related to this appropriation:

1) Can this appropriation be used to build a new Historical Society Building at a site other than the Capitol Hill Mall?
2) Can this appropriation be used to purchase the Capitol Hill Mall and land without planning to build the Historical Society Building on the land?
3) Can this appropriation be used to remodel the current Montana Historical Society Building?

The LRP would appreciate formal responses to the questions above as soon as possible, or by Friday, January 30, 2009.

Thanks you for your assistance in this matter.

Sincerely,

LRBP Chairman, Dave Kasten

Members of the Joint Long-Range Planning Subcommittee

Rep. Kasten	Sen. Barkus
Rep. Getz	Sen. Brueggeman
Rep. McNutt	Sen. Cooney
Rep. Sesso	Sen. Williams

Although this letter is on LFD letterhead, it is a request of the joint LRP subcommittee.

Prepared by Cathy Duncan
At the request of the LRP subcommittee
January 27, 2009
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Montana Legislative Services Division

Legal Services Office

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Helena, MT 59620-1706
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FAX (406) 444-3036

January 30, 2009

Representative Dave Kasten
Presiding Officer
Long-Range Planning Subcommittee
Room 350
State Capitol
Helena, Montana 59620

Dear Representative Kasten:

I am writing in response to your request for a response to questions relating to House Bill No. 540 from the 2005 legislative session. House Bill No. 540 was enacted as Chapter 499, Laws of 2005. House Bill No. 540 authorized the creation of state debt through the issuance of general obligation bonds for specific capital projects and appropriated the proceeds of the bonds for those specific purposes. House Bill No. 540 was amended by the House Appropriations Committee on March 21, 2005, to include an authorization for the issuance of general obligation bonds in the amount of $7.5 million for a Montana Historical Society Building and the appropriation of those bond proceeds. Your questions relate to this provision.

Your first question asks whether the $7.5 million appropriation may be used to build a new Historical Society Building at a site other than the Capital Hill Mall. There is no reference in the bill to the Mall. The rules of statutory construction require the language of a statute to be construed according to its plain meaning. If the language is clear and unambiguous, no further interpretation is required. The Supreme Court will resort to legislative history only if legislative intent cannot be determined from the plain wording of the statute. Lovell v. State Compensation Mutual Insurance Fund, 260 Mont. 279, 860 P.2d 95 (1993). See also State v. Zabawa, 279 Mont. 307, 928 P.2d 151 (1996). If the plain meaning of a statute can be determined from the language used, the court is not at liberty to add or detract from the language, and absent ambiguity in the language, the court may not consider legislative history or other means of statutory construction. Glendive Medical Center, Inc. v. Department of Public Health and Human Services, 2002 MT 131, 310 Mont. 156, 49 P.3d 560 (2002). Based upon the plain meaning of the words, "Historical Society Building" in House Bill No. 540, there is no requirement that the building be constructed at the site of the Mall. However, if a court could be persuaded to consider the legislative history of House Bill No. 540, then a different result is likely.

When House Bill No. 540 was heard by the House Appropriations Committee on March 21, 2005, Arnie Olson, the Director of the Montana Historical Society, spoke as a proponent of an amendment to the bill that would add $7.5 million for the purchase of the Mall property. Mr. Olson provided the Committee with four exhibits, including conceptual sketches for the conversion of the Capital Hill Mall to a new Montana History Center, cost savings compared to new construction, and a proposal for the adaptive reuse of the Mall. That proposal was supported

by Betty Babcock, co-chair of the steering committee to purchase the Mall, Joe Mazurek, co-chair of the steering committee to purchase the Mall, Lee Rostad of the Montana Historical Society Board, and Amy Sullivan of the Montana History Foundation. Representative Ripley asked Mr. Olson about a statement that the Montana Historical Society would likely raise $20 million for the project and what would happen if House Bill No. 540 failed. Mr. Olson responded that if House Bill No. 540 failed, the Mall opportunity would go away. The House Appropriations Committee then amended House Bill No. 540, to include the $7.5 million bonding authority and an appropriation in that amount for the "Historical Society Building".

On April 5, 2005, the Senate Finance and Claims Committee heard House Bill No. 540. Arnie Olson appeared as a proponent and stated that the Montana Historical Society strongly supported House Bill No. 540, which provided $7.5 million toward the purchase of the Capital Hill Mall. Mr. Olson also provided the Committee with three of the exhibits presented to the House Appropriations Committee. The bill was supported by Amy Sullivan of the Montana History Foundation who stated that with the seed money in the bill, $30 million in private donations would be raised. She presented written testimony from Betty Babcock, Joe Mazurek, and Lee Rostad and stated that the Montana Tourism Coalition, the Montana Innkeepers Association, and the Montana Chamber of Commerce supported the bill. The bill was opposed by John Smart who felt that raising the $30 million was unlikely and raised several concerns related to the age, condition, and asbestos content of the Capital Hill Mall. In response to a question from Senator Tester, Mr. Olson indicated that the state architect had indicated that a hazardous materials survey and a structural analysis would be steps in the purchase process. Mr. Olson also stated that the seller would take responsibility for the elimination or restoration of any pre-existing conditions that would adversely affect the Historical Society's use of the property. In response to a question from Senator Stapleton, Ms. Sullivan stated that there was tremendous public support for the project and that a poll by the Helena Independent Record showed that 70% of the respondents supported the Capital Hill Mall project.

In executive action on House Bill No. 540, Senator Cooney stated that he had served for 12 years on the Board of Examiners and that if an examination of the Capital Hill Mall proved that it was not a good purchase or there were problems beyond what they were financially able to deal with, the project would not go further and the bonds would not be issued. Senator Stapleton raised concerns about the project and Senators Tester, Brueggeman, Cooney, and Gallus spoke in favor of the project. House Bill No. 540 was then approved on an 18-1 vote.

The entire legislative history of the $7.5 million bonding authority and an appropriation in that amount for the "Historical Society Building" contained in House Bill No. 540 indicate that the bonds and the appropriation were for the purchase of the Capital Hill Mall. There is no indication in the legislative history that the bonding authority and the appropriation were intended to be used for another purpose if the Capital Hill Mall was not purchased.

Your second question asks if the $7.5 million appropriation can be used to purchase the Capital Hill Mall and the land occupied by the Capital Hill Mall without planning to build the Historical

Society Building on the land. Section 2 of House Bill No. 540 appropriates money from the proceeds of the general obligation bonds authorized under section 3 of House Bill No. 540 for the capital projects authorized in section 2. The "Montana Historical Society Building" is the first capital project listed in section 2 of House Bill No. 540. Section 1 of House Bill No. 540 defines a "capital project" as "the acquisition of land or improvements or the planning, capital construction, renovation, equipping, furnishing, or major repair projects authorized in [sections 1 through 6]". General obligation bonds of the state, including those authorized in House Bill No. 540, are issued pursuant to the terms of Title 17, chapter 5, part 8, MCA. Section 17-5-801, MCA, defines "costs" as including those expenses related to acquiring land and the planning, design, and construction of capital projects and of buildings as defined in section 18-2-101, MCA, or any other administrative expenses of the department, including legal fees, incurred in the performance of its duties under Title 18, chapter 2, MCA. Pursuant to these definitions, the appropriation of the bond proceeds in House Bill No. 540 may be used to purchase the Capital Hill Mall and associated land. However, because the appropriation of the bond proceeds is for the "Montana Historical Society Building" capital project, the Capital Hill Mall and land may not be purchased unless the purchase is made for the purpose of building the Montana Historical Society building on that site.

Your third question is whether the appropriation of the bond proceeds in House Bill No. 540 may be used to remodel the current Montana Historical Society building. As pointed out in response to your second question, the term "capital project" is defined in House Bill No. 540 as including "renovation". As pointed out in response to your first question, the plain meaning of the term "Montana Historical Society Building" in conjunction with the definition of "capital project" would allow the appropriated bond proceeds to be used to renovate the current Montana Historical Society building. However, as with my response to your first question, if a court could be persuaded to consider the legislative history of House Bill No. 540, then a different result is likely.

In addition, like all other statutes, the appropriation of the bond proceeds authorized in House Bill No. 540 may be amended at any time before contracts are entered into for the capital project. For example, see section 13, House Bill No. 928, Laws of 1985, which amended section 7, House Bill No. 833, Laws of 1983, in order to designate a location for the Mansfield Center for Pacific Affairs for which funds were appropriated in 1983.

I hope I have adequately answered your questions. If you have other questions or if I can provide additional information, please feel free to contact me.

Sincerely,

Gregory J. Petesch

Gregory J. Petesch
Cl0429 9030gpxa.

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Cl0429 9030gpxa.