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EXHIBIT 6
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March 6, 2013

To: Joint Appropriations Subcommittee on Natural Resources and Transportation
From: Julie Johnson, Legislative Staff Attorney
Re: Wheat and Barley Account

QUESTIONS PRESENTED

You asked me to review the wheat and barley laws and to consider the following questions:

1. Can the wheat and barley account, established in 80-11-210, MCA, be used to fund the Schutter Diagnostic Lab (HB 348)?
2. Can the account be used to fund food and agricultural development centers as proposed in HB 420?

BRIEF ANSWERS

1. Given that the Schutter Diagnostic Lab has focused on wheat-related issues, including outreach and diagnosis of stripe rust in wheat and wheat streak mosaic virus, funding the lab from the Wheat and Barley Account is appropriate.
2. Given that the food and agricultural development centers only minimally deal with either wheat or barley, funding the programs with the Wheat and Barley Account is probably not appropriate.

LAW

As you are aware, the Montana Constitution, in Article XII, section 1, provides:

Agriculture. (1) The legislature shall provide for a Department of Agriculture and enact laws and provide appropriations to protect, enhance, and develop all agriculture.
(2) Special levies may be made on livestock and on agricultural commodities for disease control and indemnification, predator control, and livestock and commodity inspection, protection, research, and promotion. Revenue derived shall be used solely for the purposes of the levies.
(Emphasis added).

The statutes on wheat and barley are located in Title 80, chapter 11, part 2. Section 80-11-202, MCA, sets forth a "declaration of policy" with regard to wheat and barley in the state of Montana:

In the presence of the facts that wheat and barley are the principal grain crops produced in Montana and as such are agricultural resources of the first magnitude in the economy of the inhabitants of Montana, prime factors in the production of wealth and the development and stabilization of property values and of activities and enterprises that are bases and sources of important contributions by taxation to the public revenues, and that Montana wheat and barley are commodities that enter a world market highly competitive in character, it is hereby declared to be the public policy of the state of Montana to protect and foster the health, prosperity, and general welfare of its people by encouraging and promoting intensive, scientific, and practical research into all phases of wheat and barley culture and production, marketing, and use and into the development of markets for wheat and barley grown in Montana by the department.

Section 80-11-210 establishes the Wheat and Barley Account and its uses:

Wheat and barley account -- sources -- use -- expenditures. (1) There shall be an account in the state special revenue fund known as the wheat and barley account. The following shall be placed in the account:

- (a) the proceeds of all millage levies collected under this part; and
 - (b) the proceeds from all gifts, grants, or donations to the department for research authorized under this part.
- (2) The account shall be maintained for the purposes of this part and shall be separate from all other accounts of the department.
- (3) The department may direct the board of investments to invest funds from the account pursuant to the provisions of the unified investment program for state funds. The income from such investments shall be credited to the wheat and barley account.

In an Attorney General Opinion by Mike Greely, the former Attorney General concluded that the Legislature may control appropriations from the Wheat and Barley Account, but that the appropriations are subject to the statutorily stated purpose of the account. 39 A.G. Op. 3 (1981).

BRIEF ANALYSIS AND CONCLUSION

Schutter Diagnostic Lab (HB 348)

According to information from the Schutter Diagnostic Lab, wheat growers saved tens of millions of dollars "through diagnosis and outreach based on stripe rust samples submitted" to the lab, and "wheat streak mosaic virus samples and recommendations during a field visit saved growers in Pondera County \$540,000 in crop replacement costs and realized yields." Given the direct benefits the lab yields to wheat growers, funds in the Wheat and Barley Account may be appropriated to the lab.

Food and Agricultural Development Centers (HB 420)

The connection between these centers and the promotion and development of wheat and barley is minimal. Therefore, funding for the centers as proposed in HB 420 from the Wheat and Barley Account is not recommended.

Please let me know if you have any followup questions.