

EQC/LJIAC EMINENT DOMAIN SUBCOMMITTEE

April 12, 2000

Final Minutes

SUBCOMMITTEE MEMBERS PRESENT

Sen. Mack Cole, Chair
Rep. Kim Gillan
Rep. Gail Gutsche
Rep. Monica Lindeen
Rep. Dan McGee
Rep. Jim Shockley

Sen. Spook Stang
Rep. Bill Tash
Mr. Tom Ebzery
Ms. Julia Page
Mr. Jerry Sorensen

STAFF MEMBERS PRESENT

Krista Lee, EQC
Gordy Higgins, LJIAC
Greg Petesch, LSD
Judy Keintz, Secretary

VISITORS' LIST

Attachment #1

SUBCOMMITTEE ACTION

- Approved minutes of the March 23, 2000, Eminent Domain Subcommittee Meeting.
- Reviewed eminent domain issues and developed findings and draft recommendations on the issues.
- Set the next meeting date for May 4th in Helena.

I CALL TO ORDER AND ROLL CALL

CHAIRMAN COLE called the meeting to order at 9:00 a.m. Roll call was noted; all members were present (**Attachment #2.**)

▶ Adoption of Minutes

MS. PAGE requested name corrections on the public hearing minutes from March 23, 2000. In the first paragraph on page 3, the name should read "Jerry Sikorsky" and on page 5 the name "Smith" should be changed to "Schmitz".

Motion/Vote: SEN. STANG MOVED THAT THE MINUTES OF THE MARCH 23, 2000, EMINENT DOMAIN SUBCOMMITTEE MEETING AND PUBLIC HEARING BE APPROVED AS CORRECTED. THE MOTION CARRIED UNANIMOUSLY.

II ADMINISTRATIVE ITEMS

MS. LEE noted that additional public comment on the standard of evidence issue had been received and have been provided to subcommittee members, **Exhibits 1-5**.

MR. EBZERY provided a copy of the Uniform Eminent Domain Code, 1974, for members to review.

III MATRIX

▶ Reversion of Property

MS. LEE provided additional information regarding the Wyoming statute that addressed abandonment, **Exhibit 6**. Montana's abandonment statutes are found in § 70-9-803. With an easement, reversion of property is to the successor-in-interest or original owner. Five years of non-use is considered abandonment. Non-use occurs if the property is not used for the purpose for which it was condemned. The process for abandoning county roads is outlined in statute.

The Subcommittee's finding on this issue was that the current statutes are adequate.

▶ Mitigation Measures

MS. LEE provided information regarding bonding requirements in Colorado, **Exhibit 7**. The bonds are set at double the amount the court has determined would be necessary to reclaim the property.

REP. SHOCKLEY noted that the Subcommittee had heard testimony regarding the fact that the state and federal governments require certain standards of the condemnor. He questioned whether private property owners should require less protection.

MS. LEE noted that this would be a function under the Montana Environmental Policy Act (MEPA) and the associated permitting processes.

MS. PAGE added that this concern was identified by a number of persons presenting public comment. She questioned why governmental entities had a greater ability to protect their property and require mitigation measures. This ability should be extended to include private property owners.

MR. SORENSEN maintained that landowners had the ability to negotiate mitigation measures.

CHAIRMAN COLE noted that landowners could benefit from negotiating.

REP. TASH commented that negotiating on an individual basis would cause lengthy delays for the condemnor. What may work for one property owner may not be the best situation for the property owners in the rest of the corridor involved in the project.

REP. GILLAN claimed that many landowners stated that they did not have the opportunity to require mitigation measures.

Kae McCloy, Pompeys Pillar, remarked that mitigation measures stop when the condemnation begins. The landowner is tied to what is granted by the court.

REP. GUTSCHE suggested that a non-governmental entity could be required to negotiate a mitigation plan with the landowner subject to court approval.

REP. TASH noted that essential public services provided by rural electric cooperatives and the oil and gas entities may be hampered in providing services. He did not see a distinction between public and private entities in the condemnation process.

CHAIRMAN COLE stated that mitigation measures are covered under the MEPA process.

MS. PAGE requested a finding stating that some members of the public have stated that their ability to require mitigation measures is not adequate.

REP. TASH suggested that the handbook clarify mitigation measures.

REP. MCGEE remarked that a landowner can ask for mitigation measures but there are no guarantees for the landowner. MS. LEE noted that if a contract was in place, there would be opportunities for legal action if the agreed to mitigation measures were not completed as agreed.

REP. MCGEE questioned why the landowner who was being condemned should have to pay the legal costs. Since the benefit goes to the condemnor, the burden should be on the condemnor. He questioned whether there was anything in statute to provide for mitigation measures for the private landowner. He further commented that the state has a right of eminent domain and the individual has a right of private property. When these rights conflict, one way to

resolve the problem is with mitigation measures. If the private property right is being suspended on behalf of a public interest, why must the condemnee bear the burden of proof.

Mr. Petesch remarked that mitigation is addressed in current law under the just compensation concept. If a condemnor does not mitigate the damage to the remainder of the property or the future uses of the property and does not compensate the landowner, the landowner has the ability to challenge the compensation offer. If the landowner prevails, the condemnor pays costs and attorneys fees. Other types of mitigation are addressed through the permitting process for certain types of projects.

Aaron Browning, Northern Plains Resource Council (NPRC), questioned the process available where the landowner had already received the award of just compensation from the court. Would it be necessary to file another action if unforeseen damages occur at this point?

Mr. Petesch stated that if there was additional damage to the property outside of the interest taken, this would result in an additional taking for which the landowner is entitled to receive compensation.

REP. GILLAN requested that the finding state that some members of the public raised the concern that mitigation measures were not adequate. She agreed to draft a statement for Subcommittee review.

► **Possession of Property**

MR. SORENSEN stated that he believed the draft recommendation should state that the law was adequate on this issue. Lengthy delays for projects could result if the law was changed regarding this issue.

REP. SHOCKLEY disagreed and added that it was stated in testimony that the condemning party does not take possession of the property if an appeal is pending. He made a distinction between the rights of a public agency and a for-profit organization.

MS. LEE noted that this change would result in a constitutional amendment. The Constitution states that the party may take possession of the property upon payment at the discretion of the court.

MS. PAGE noted that when property is being condemned, the appeal is based on § 70-30-111. Compensation, public use, and mitigation measures are all included in the decision. The

landowner is at a disadvantage if the condemnor is allowed to take possession of the property before the appeals process is exhausted.

REP. SHOCKLEY asked for further clarification regarding the need for a constitutional change. **Mr. Petesch** noted that the Constitution states that the court may put the condemnor in possession of the property.

REP. SHOCKLEY did not believe Article II of the Constitution addressed the possession of property on appeal. **Mr. Petesch** noted that the statutory scheme for payment of compensation into court occurs after a preliminary condemnation order has been entered. To prohibit a private entity from taking property if the compensation had been paid to the court, would appear to be an attempt to circumvent the constitutional language.

REP. GUTSCHE suggested a finding stating that private property owners have expressed concerns regarding current law on this issue.

The Subcommittee decided on a draft recommendation stating that the current law is adequate.

▶ **Liability**

Mr. Petesch reviewed LC7031, **Exhibit 8**. This bill protects the condemnee to the greatest extent possible without imposing immunity on the condemnee. He used the language “gross negligence” and “intentional conduct”. Gross negligence is the highest negligence standard possible.

REP. SHOCKLEY remarked that in subsection (1), the fourth line contained the words “for a public use on property”. He believed this was another element which would need to be proven in court. He requested that the language be deleted.

Mr. Petesch noted that by using the term in the liability section, in the event that the entity was doing something outside their authorized use, the landowner may not be protected. The language could be stricken. He suggested review of the word “owned”.

Paul Miller, Holland & Hart, referred to his written comments (Exhibit 1). He raised a concern regarding the allowance for a person or entity to escape the consequences of their own negligence.

MR. EBZERY questioned whether there were other instances where the gross negligence standard was imposed. **Mr. Petesch** agreed to further research the issue.

Mr. Petesch further remarked that in regard to the word “owned” on line 12, page 1, the language could be changed to read, “Subject to (2), a condemnee or a condemnee’s successor-in-interest is not liable for damages that result in the construction, use, or maintenance of a project on property in which the condemnee or the condemnee’s successor-in-interest has an interest.”

Mike Foster, Montana Contractors’ Association, raised a concern in the instance where a landowner performed an act which could be an accident. It wouldn’t be gross negligence or intentional conduct.

Mr. Petesch stated that any intentional act damaging the condemnor’s property would not be protected.

Leo Berry, Attorney, remarked that the draft legislation goes beyond the concerns raised. Providing protection to the landowner is a legislative decision. However, the proposed language would insulate the landowner unless he commits gross negligence. This is a step that should not be taken. He suggested using the ordinary negligence standard.

REP. SHOCKLEY noted that gross negligence is a high standard but since the landowner didn’t ask to have the project on his land, he should have the highest protection possible.

Rebecca Watson, Express Pipeline, stated that under the one call system, with one phone call an individual is able to find where lines are located so they are not ruptured when it is necessary to dig on the property. Would failure to use the one call system be gross negligence or simple negligence? People can cause tremendous damage when they dig without using this safety tool.

REP. MCGEE claimed that his intent is to protect the private property owner. If the standard were reduced to simple negligence, the property owner would be forced into court to defend himself.

Mr. Petesch clarified that if the landowner were joined as a party in the action seeking damages and is not found liable, the condemnor is responsible for the costs and fees.

Nick Rotering, Montana Department of Transportation (MDOT), raised a concern in the situation where a contractor is required to have traffic signs warning the public about the construction and a ranch hand moved the sign. The gross negligence standard would force the contractor or the state to deal with the resulting tort claim.

MS. PAGE maintained that the reason for the draft legislation is to protect the landowner from an unintentional act. Fires at night would be another situation where the landowner should be protected from liability.

Motion: REP. SHOCKLEY MOVED TO AMEND THE DRAFT LEGISLATION. UNDER SECTION 1. LIABILITY LIMITATION -- DEFENSE COSTS. 1. SUBJECT TO SUBSECTION (2) A CONDEMNEE OR A CONDEMNEE'S SUCCESSOR-IN-INTEREST IS NOT LIABLE FOR DAMAGES THAT RESULT FROM THE CONSTRUCTION, USE, OR MAINTENANCE OF A PROJECT ON PROPERTY IN WHICH THE CONDEMNEE OR THE CONDEMNEE'S SUCCESSOR-IN-INTEREST HAS AN INTEREST.

Mr. Mockler, Montana Coal Council, stated that the property owner who negotiated an easement would not enjoy the higher negligence standard. If this same property owner forced the entity to condemn the property, he would be held to a different standard.

REP. MCGEE noted that the private property owner who has gone through a condemnation process has not agreed or negotiated for the use of his property. This is the person who needs to be protected.

MS. LEE noted that a possible repercussion of this could be more condemnations. The protection would apply only if the property owner forced condemnation.

Barbara Ranf, US West, noted that the draft legislation did not address the situation wherein a third party damaged the condemnor's property. They believe the third party should be liable if they were responsible.

Mr. Petesch explained that the draft legislation only addressed the relationship between the condemnor and the condemnee. It does not address private negotiations.

Vote: The motion carried on roll call vote of 8 yes and 3 no. (Attachment #3)

Motion/Vote: REP. MCGEE MOVED TO AMEND THE DRAFT LEGISLATION TO SIMPLE NEGLIGENCE INSTEAD OF GROSS NEGLIGENCE. The motion carried.

▶ **Burden of Proof**

MS. LEE provided a copy of a memo from **Mr. Petesch** regarding clear and convincing evidence, **Exhibit 9**.

REP. TASH suggested a draft recommendation that the preponderance of evidence standard was sufficient.

REP. LINDEEN disagreed. She noted that in the memo prepared by **Mr. Petesch** regarding necessity and public interest in eminent domain proceedings, **Exhibit 10**, on page 7, the last paragraph stated that once a condemnor has introduced sufficient evidence to establish necessity, the burden shifts to the landowner to show by clear and convincing evidence that the condemnor's action is excessive or arbitrary. The landowner is held to a clear and convincing evidence standard.

Mr. Petesch stated that there is not a presumption of necessity for all condemnation actions. There is only a presumption of necessity in highway department actions where an order is issued. Under current law, if an entity shows by a preponderance of evidence that the use is necessary, the burden shifts for the property owner to show that the taking is excessive or arbitrary.

The Subcommittee decided to review public uses and then return to the burden of proof issue.

▶ **Public Uses**

Mr. Petesch noted that § 70-30-102 lists the public uses for which the right of eminent domain may be exercised. (LC7032 - **Exhibit 11**) Public interest is discussed in the introductory clause to this section.

MS. PAGE remarked that the assumption with the enumerated list is a blanket approval of public interest. If a landowner does not view a project as something in the public interest, that landowner is very limited in addressing this issue. Since the laundry list is very broad, the evidence standard should be the high standard of clear and convincing evidence.

REP. LINDEEN suggested a finding that certain enumerated public uses are archaic and legislative changes may be necessary.

MR. EBZERY remarked that the Subcommittee needed to discuss specific uses before making this finding. He suggested a finding that current law is adequate.

MS. PAGE maintained that a finding should state that the list includes some archaic language and out-of-date uses.

REP. TASH claimed that even though some language may be archaic, the reference in law needs to be considered.

Motion: MR. EBZERY MOVED THAT NO CHANGES BE MADE TO THE PUBLIC USES LISTED IN § 70-30-102.

REP. GUTSCHE questioned why coal mining was excluded from the statute.

Mr. Mockler stated that in the 1970s there was hysteria about hundreds of people moving into eastern Montana and numerous coal gasification plants being built. The legislation addressed this concern.

Mr. Petesch added that there was a challenge to the statute excluding surface mining of coal on an equal protection basis. The court found that the purposes stated in the statute for the exclusion were sufficient to establish a rational basis for the exclusion. This included the amount of land disturbed, the effect on the land use and economy in the areas overlying the coal tracts, and the size of the coal tracts. He suggested that Northern Plains Resource Council may be able to provide more insight into this issue.

Vote: The motion carried on roll call vote of 8 yes and 3 no. (Attachment 4)

▶ **Burden of Proof**

REP. TASH remarked that the preponderance of evidence standard should be sufficient. Raising the standard to clear and convincing evidence would place a chilling effect on many things that are needed and serve a public interest.

REP. LINDEEN questioned whether the preponderance of evidence standard should not also be the standard used for the landowner when the burden is shifted to them.

REP. TASH believed that the landowner would then have the authority to stall a project.

Mr. Petesch explained that the only burden of proof is the preponderance of evidence standard articulated in §70-30-111. The Supreme Court has held that once the statutory burden has been met, clear and convincing evidence is necessary to overcome the showing. In 1996, the Court stated that in reviewing the determination, clear and convincing proof is simply a requirement that the preponderance of the evidence be definite, clear, and convincing or the particular issue be established by a clear preponderance of the evidence or a clear preponderance of proof.

Mr. Miller noted that clear and convincing is not really a middle ground standard because the standard of beyond a reasonable doubt applies only to criminal matters. Since the legislature has made the determination that the power of eminent domain is in the public interest, it should be treated the same as every other lawsuit. Once a person has satisfied his burden, to overcome the burden a higher standard needs to be met.

Mr. Petesch added that once a burden had been met, there is a presumption that the issue is resolved. To overcome the presumption, a higher evidentiary standard is normally applied. In all civil cases, the original standard was a preponderance of the evidence. In 51 instances, the legislature has changed this standard. Under current eminent domain statutes, once a preponderance of evidence is introduced under § 70-30-111 to show that the public interest requires the taking, the burden shifts to the condemnee to introduce additional evidence that is clear and convincing to show that the taking is excessive or arbitrary.

MS. PAGE stated that the landowner has very little recourse when a project is not a good project. It may be appropriate that the enumerated public uses are broad. It is very easy for a condemnor to meet the requirements. Two requirements are automatic in that the condemnor needs to be on the laundry list and needs to make a written offer. The only requirement that can be disputed is whether the public interest is being served by the taking. The landowner needs a higher level of protection.

SEN. STANG raised a concern that if the evidentiary standard for the taking were raised, would this take away a remedy from the landowner.

Mr. Petesch remarked that the unintended consequences of this change should be considered. Changing the standard will give a clear message to the district courts that there is legislative intent that the showing is more than it had been in the past. The rebuttal would need to be a higher standard. The courts would need to develop a test to address this issue.

Motion: REP. TASH MOVED THAT THE BURDEN OF PROOF BY THE CONDEMNOR BE LEFT AS A PREPONDERANCE OF THE EVIDENCE.

REP. LINDEEN believed that the burden of proof for the landowner should also be a preponderance of the evidence.

Vote: The motion carried.

MS. LEE read the draft recommendation back to the committee for their approval, "after receiving public comment, make no changes to current law and leave the burden of proof for the condemnor at a preponderance of the evidence." The committee agreed this was the appropriate language for the draft recommendation.

► **Just Compensation**

MR. HIGGINS provided a report entitled, "Just Compensation and the Exercise of Eminent Domain", **Exhibit 12**. He explained that just compensation is guaranteed when property is being taken. This has been defined as the fair market value of the property in question. One way to arrive at a fair market value is to have an appraiser view the property and review it based on comparable sales in the region. There is also an income approach with deals with the estimation of future cash flow. The cost approach involves what would need to be paid to substitute the property or structure.

Following failed negotiations, the condemnor must provide a written offer. If the written offer is rejected by the landowner, the process moves forward with a preliminary condemnation order. The district court appoints commissioners to review the evidence and arrive at a value for the land. The commissions must determine:

- the fair market value of the property sought by the condemnor, including any improvements on the property;
- the depreciation, if the parcel being taken is part of a larger parcel, that would accrue to the remaining property;
- how much the portion not sought to be condemned will benefit, if at all, by the construction of the improvements proposed by the plaintiff, and
- if the property sought to be condemned is for a railroad, the cost of fences and cattle guards alone, the railroad.

Either party may appeal the decision. If the party receives a favorable judgment, costs can be recovered.

REP. MCGEE questioned whether the full extent of the loss would be covered by the fair market value.

Mr. Petesch noted that future uses can be taken into account and would be considered in the fair market value. Also, damage to the remainder is considered.

Ms. McCloy claimed that a problem they encountered was that the pipeline appraised 75 feet of land three miles in length. This amounted to approximately 30 acres. She does not believe that \$19,000 for three miles of easement for the next 50 years is adequate. The just compensation

covered the amount of acres that were affected and not necessarily the problems that were caused to the ranch. They asked for an annual fee for the use and this was not unreasonable.

Motion: MR. SORENSEN MOVED A FINDING THAT CURRENT LAW IS ADEQUATE AND A DRAFT RECOMMENDATION OF MAKING NO CHANGES TO THE CURRENT STATUTES.

REP. MCGEE maintained that when an amount is settled upon regarding the condemnation of the land plus the remainder, this is a fair exchange for the land being taken. He does not believe this includes the full extent of the loss which is stated in the Constitution. The way of life for people being condemned can be inexorably changed. The current statute may allow for this but he does not believe it is common practice.

REP. TASH noted that this is under the jurisdiction of the courts.

REP. MCGEE questioned whether the statutes limited the full extent of the loss by using the fair market value approach.

Mr. Petesch explained that there were statutory limitations. He referred to LC 7030, **Exhibit 13**. On page 24, line 3, the language states: “the property’s current fair market value as of that date is the measure of compensation for all property to be actually taken and the basis of depreciation in the current fair market value of property not actually taken but injuriously affected.”

REP. MCGEE questioned whether a condemnee could request non-economic damages.

Mr. Petesch believed the court would be limited by the statute. He added that the Constitutional Convention transcripts indicate that when using the language “to the full extent of the loss” the intent was the actual value of what was taken including the damage to the remainder.

Vote: The motion carried.

- **Necessity/Public Interest**

Mr. Petesch noted that the public uses statute, which includes the enumerated uses, includes private roads. Another enumerated use includes private roads leading to residences or farms and ranches. The court has held that the farm or ranch needs to be in existence. The only condemnation cases addressing private roads are for private roads leading to residences or farms and ranches. Section 70-30-107 provides that private roads can be opened under eminent domain. In every case, the necessity of the road must be first determined by a jury. This is the one instance where the question of necessity is decided by a jury.

Motion/Vote: REP. TASH MOVED THAT PRESENT LAW IS ADEQUATE. The motion carried.

- **Mitigation Measures**

Motion: REP. GILLAN MOVED THE FOLLOWING FINDING: PROPERTY OWNERS HAVE EXPRESSED DISSATISFACTION WITH THEIR LACK OF ABILITY TO NEGOTIATE MITIGATION MEASURES WITHIN THE CONTEXT OF EMINENT DOMAIN STATUTES OR PROCESS.

MR. EBZERY noted that during the public hearings many property owners expressed dissatisfaction with the eminent domain process but he did not believe that many of the persons commenting were dissatisfied with their ability to negotiate mitigation measures.

REP. TASH agreed to the finding but suggested that the draft recommendation be that mitigation measures should be covered by the MEPA Subcommittee.

REP. GUTSCHE maintained that this should not be tied to the MEPA process.

The Subcommittee changed the wording to the following: During the public hearings, some property owners expressed concern with the ability to negotiate mitigation measures within the context of the eminent domain process.

Vote: The motion carried.

REP. LINDEEN suggested another finding: In public hearings some landowners expressed concern about different mitigation standards on public land versus private land.

MR. EBZERY believed this was selectively picking out an item that was addressed during a public hearing. This could be in the report but should not be a finding of the Subcommittee.

Motion: REP. LINDEEN MOVED THAT THE SUBCOMMITTEE RECOMMEND THAT LEGISLATION BE DRAFTED TO ALLOW PRIVATE LANDOWNERS TO HAVE THE SAME PROTECTIONS FOR THEIR LAND AS THERE IS FOR PUBLIC LANDS UNDER THE CONDEMNATION PROCESS.

MR. SORENSEN noted that as a landowner he would want the maximum flexibility to negotiate and not be held to a government standard.

Leo Berry, Attorney, remarked that as a former state land commissioner he dealt with easements. Quite often there are mitigation measures included in the terms of the contracts. He

suggested that rather than adopting items to be placed into statute, the handbook could serve as a guide for landowners to review the types of measures utilized by the state and federal government. He could not imagine that a judge would not allow the same mitigation measures as the state and federal government.

REP. SHOCKLEY questioned whether the mitigation measures would be included as a part of the compensation. **Mr. Petesch** clarified that failure to include mitigation measures probably reduces the value of the remainder that is not taken. Additional just compensation would be necessary because the mitigation measures were not included.

Mr. Browning stated that the draft legislation could be crafted so that the landowner would have the option of using the same mitigation measures as apply to state or federal lands. If it is reasonable for a judge to allow the same mitigation measures, whether the land is private or government owned, then it would be reasonable for the legislature to have this guidance in statute.

CHAIRMAN COLE believed this would hinder landowners. Currently, landowners can negotiate anything they choose to negotiate.

REP. TASH believed this would limit the landowner's opportunity to negotiate a settlement.

Substitute Motion: REP. LINDEEN MOVED THAT AT THE OPTION OF THE LANDOWNER, THE CONDEMNING ENTITY MUST CONSTRUCT PROJECTS AT THE SAME STANDARDS ON PRIVATE AND PUBLIC LANDS.

Rep. Sylvia Reinecke , HD 71, stated that on state lands and forest service lands the easement width is narrower than through private land.

REP. SHOCKLEY noted that in the Missoula public hearing it was mentioned that different standards were held across state and federal land as compared to private land.

REP. LINDEEN amended her motion to state "that the condemning entity must construct and mitigate measures".

Don Allen, WETA, noted that the timber industry has worked very hard on best management practices (BMPs). The EQC went along with BMPs because a base would be limiting. History has proven that the standard has increased through education and a cooperative effort.

Vote: The motion failed on roll call vote 4-5. (Attachment 5)

MR. EBZERY questioned whether a preliminary condemnation order contained mitigation. **Mr. Berry** stated that he is aware of cases where the judge would only grant the order of condemnation if certain conditions and requirements were met.

REP. MCGEE questioned why those condemnation orders would have had mitigation measures included. **Mr. Berry** claimed that the party being condemned had the knowledge to ask the court to put the conditions into the order.

Motion: REP. TASH MOVED THAT A DRAFT RECOMMENDATION THAT MITIGATION MEASURES BE INCORPORATED IN THE HANDBOOK. THE LANDOWNER HAS THE RESPONSIBILITY AND THE LEGAL RECOURSE TO NEGOTIATE SETTLEMENT AND MITIGATION.

REP. MCGEE questioned whether there was a statutory need for authorization or clarification that a landowner may incorporate mitigation measures as part of their negotiations. He further questioned whether it is inherent in code that the landowner could do so.

Mr. Petesch stated that there could be a provision placed in statute that requires that the project be constructed in a manner that has the greatest public good and least private injury. The least private injury may be determined as to whether or not mitigation measures have been incorporated that will provide the least private injury and still fulfill the greatest public good.

Vote: The motion carried.

IV SUMMARY OF MEETING

CHAIRMAN COLE remarked that the remainder of the draft legislation and the handbook would be reviewed at the next meeting. The next meeting was set for May 4th at 1:00 p.m. in Helena.

V ADJOURNMENT

There being no further business, the meeting was adjourned.

SEN. COLE, Chairman