EQC/LJIAC EMINENT DOMAIN SUBCOMMITTEE
December 1, 1999
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

SUBCOMMITTEE MEMBERS EXCUSED

None

STAFF MEMBERS PRESENT

Krista Lee, EQC
Gordy Higgins, LJIAC
Judy Keintz, Secretary

VISITORS' LIST
Attachment #1

SUBCOMMITTEE ACTION

- Approved minutes of the September 22, 1999, Eminent Domain Subcommittee Meeting held in Libby.
- Reviewed, edited, and adopted a final work plan.
- Approved holding the next two meetings in conjunction with the full EQC meetings to be held in Missoula and Billings. Meetings will be held in January and March.

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.)**

II CONCEPT DISCUSSION

MR. HIGGINS explained that there are concepts and terminology used when discussing eminent domain that can be interpreted in different ways. For example, the term “condemnation”

is the actual taking of the property. Oftentimes it is referred to as the process itself. He suggested that definitions be drafted for Subcommittee approval and use.

There is a distinction between public use/public benefit. A taking by a condemning authority must be for an established public use. Case law has developed public use to become more generalized to mean public benefit or general welfare.

The term “necessity” refers to what facts are necessary to allow a condemnation to move forward. An entity interested in pursuing an eminent domain proceeding needs to demonstrate that the interest they are proposing to be condemned is necessary for the public use. Necessity deals with the public use or benefit.

The term “takings” deals with the police powers of the state in terms of forcing some action or inaction. Regulatory takings should be distinguished from the exercising of eminent domain powers.

III ADOPTION OF MINUTES

Motion/Vote: MR. SORENSEN MOVED THAT THE MINUTES OF THE SEPTEMBER 22, 1999, EMINENT DOMAIN SUBCOMMITTEE MEETING BE APPROVED AS WRITTEN. THE MOTION CARRIED UNANIMOUSLY.

IV PIPELINE BONDING, MITIGATION MEASURES, AND STANDARDS

MS. LEE explained that Items No. 7 and 8 of the Subcommittee Work Plan address comparing mitigation measures that are used on public land versus private land and identifying and comparing the level of science that is used on public lands versus private land.

Tom Ring, Environmental Specialist, Department of Environmental Quality, reported that the Major Facility Siting Act (MFSA) regulates pipelines with diameters greater than 17 inches in diameter and 30 miles in length, electric transmission lines with capacities greater than 69 kilovolts, and energy diversion facilities greater than 250 megawatts. When the department receives an application for a major new pipeline facility, it reviews and considers the need for the facility, the nature of the probable environment impacts, the state of the available technology, and the nature and economics of the various alternatives. They need to determine that the location of the proposed facility conforms to state and local laws; that the facility will serve the public interest, convenience and necessity; and that the necessary decisions, opinions, orders, certifications, and permits have been issued. For linear facilities, the selection of the location for a facility that minimizes the environmental impact and cost effective mitigating measures appropriate for that facility are integral parts of the certification process. Typically, the

mitigating measures become requirements of the certificate issued by the Department. The MFSA allows the Department to require applicants to post performance bonds to guarantee successful reclamation or revegetation of the project lands.

Express Pipeline is a pipeline the Department has certified under the Major Facilities Siting Act. It is approximately 300 miles long and required two bonds. One bond was set at $1,000 per mile for reclamation and another was set at $1,000 per mile for revegetation. Generally surety bonds are posted rather than cash or property bonds. The bond is released within a year or two after completion of the project. Under the Department's administrative rules, the vegetation criteria holds that during the first complete growing season after construction the perennial plant cover should be 30% of the cover found on adjacent areas, excluding non-desirable species. After five years, the perennial plant cover should be 90% of that on adjacent areas with similar soils and topography.

During the certification hearings for the Express Pipeline, the Board struggled with an issue late in the process. This involved whether or not there would be adequate resources in the case of a future spill. Bonding statutory authority is not present in the law for spills. The Board did not take action on this issue.

REP. SCHOCKLEY questioned whether a property bond could be used. **Mr. Ring** explained that the law did not specify the type of bond to be accepted. Surety bonds have been used in the past. Property bonds are allowed under the Hard Rock Mining Act and he did not believe that the Department would object to using a property bond.

MS. LEE requested information on pipeline safety standards. **Mr. Ring** maintained that Montana did not have statutes to regulate pipeline safety. Interstate pipelines are governed by the Federal Department of Transportation, Office of Pipeline Safety Regulations. After the Exxon accident in Alaska, the Oil Pollution Act of l990 was passed. This law establishes liabilities for companies and a trust fund to clean up damages. It applies to navigable waters and shorelines. He questioned whether this would apply to all areas of Montana or only the stream channels. The act mentions the ability to cover damages to groundwater.

At the time Express Pipeline was certified, the Board understood that a certificate of financial responsibility in the amount of $150 million would be provided. Express Pipeline maintains that Congress has removed that requirement.

CHAIRMAN COLE questioned the regulation of pipelines which did not fall under the MFSA (those less than 17 inches in diameter or less than 30 miles in length. **Mr. Ring** explained that

the project sponsor would need to apply for permits from the proper regulatory agency. These permits would include air quality, water quality, encroachment permits, etc. Local requirements would apply.

Terry Egenhoff, United States Forest Service, remarked that when the Forest Service grants a right-of-way for oil and gas pipelines across federal lands they use a special use permit which can include bonding, mitigation measures and standards that need to be met during construction as well as during the operation and maintenance phase of the project. He provided a handout which set out their authority under 30 USC Sec. 185, **Exhibit 1.**

The permit requirements usually do not extend beyond federal lands. They cannot require a bond to cover non-federal interests. Some mitigation measures required in federal permits may apply to private lands outside of federal jurisdiction. The regulations that implement this statute are being revised. Even though the mitigation measures are limited to federal lands, when there is an environmental analysis under the National Environmental Policy Act (NEPA) or Montana Environmental Policy Act (MEPA), for consideration of potential mitigation measures, they are required to look at the impacts of the entire project including impacts to non-federal lands. The EIS is a comprehensive review of the entire project but the terms and conditions in a permit apply only to federal lands. The Office of Pipeline Safety requires that the operation and maintenance plan, that pertains to the entire length of the pipeline, be submitted by the pipeline company to the Department of Transportation.

MS. PAGE questioned the recourse in terms of a spill. **Mr. Ring** explained that when the Express Pipeline was certified, they used the federal DOT requirements which stated that a spill contingency plan needed to be submitted to meet federal regulations. The DEQ added to these regulations. The MFSA requirements would apply to all lands.

MR. SORENSEN questioned the review of public necessity versus economic factors. **Mr. Egenhoff** maintained that if the necessity of the project is called in question during the NEPA process, they review the purpose and need of the project. As a matter of general policy, the project would need to benefit the public to rationalize the use of federal lands. Special use permits cannot be granted simply because they offer the holder a way to maximize their economic impact. There needs to be benefit to the public or federal resources.

MR. EBZERY inquired whether federal approval would constitute meeting a need for exercising eminent domain under the state statute. **Mr. Ring** remarked that in the instance of Express Pipeline, there was a condemnation proceeding in Billings. This case was Express Pipeline vs.

Luthhold OK Ranch. The court found that Express Pipeline had not shown need. There was an out-of-court settlement and the project moved forward.

Mr. Egenhoff clarified that the Federal Energy Regulatory Commission (FERC) has the general authority for all federal permitting and they issue a certificate of need for gas pipelines.

Art Compton, DEQ, explained that the need determination under the MFSA only remains for linear facilities. This need determination is generally for electric transmission facilities and addresses loads and resources in a regulated utility framework. For a pipeline facility, the state determination of need would review the information provided with responsibility and infrastructure necessary to serve the load.

REP. GILLAN questioned who would have jurisdiction for enforcement of mitigation measures. **Mr. Ring** remarked that in some cases, no one would have jurisdiction. The project sponsor oftentimes will view the mitigation measures as the right thing to do.

REP. GILLAN questioned what would trigger the use of a bond. **Mr. Ring** explained that under the MFSA they could require that mitigating measure be applied. For projects that do not fall under the MFSA, there are isolated permits but no comprehensive review of the entire project.

Jay Waterman, Montana Power Company (MPC), commented that MPC has approximately 2,000 miles of high pressure natural gas transmission line in Montana. They vary from two inches to 20 inches in diameter. The MPC serves 125 communities with natural gas and this includes approximately 150,000 customers. Within recent years, they have added pipelines to serve growing loads. In 1999, they built a pipeline near Absorkee. This project was completed under authority of various permits for state waters that were crossed. Recently compression was added to their compressor stations near Cut Bank and also near Augusta. Both of these projects were subject to the air quality permitting requirements.

Since the MPC pipeline system does not cross state boundaries and is not an interstate pipeline, it is not regulated by FERC. For the natural gas system, the federal safety regulations are granted to the state. The Montana Public Service Commission has been granted the authority to enforce these safety regulations.

REP. TASH remarked that it was his understanding that the MPC had used eminent domain powers infrequently for natural gas easement acquisition. **Mr. Waterman** explained that the Blackfeet and Absorkee projects did not include any condemnation proceedings and the

Missoula loop project involved one condemnation proceeding which was settled early in the process.

REP. LINDEEN questioned if safety regulations were adequate for projects which did not fall under the MFSA. **Mr. Waterman** commented that the MPC gas transmission system does not have any projects which have fallen under the MFSA. Their projects are all built to the federal safety specifications.

Bud Anderson, Manager of Land Acquisition for MPC, remarked that the MPC tries to settle all negotiations without the use of eminent domain powers. A letter is sent to the landowners with a 90-day response window. If a response is not received, their attorneys then sent out a letter with a 30-day window. If response is still not received, they then retain outside counsel.

V HISTORICAL USE OF EMINENT DOMAIN IN MONTANA

MS. LEE presented an update of historical use of eminent domain, **Exhibit 2**.

REP. MCGEE asked why the identity of the entities was not disclosed. MS. LEE believed the Subcommittee would receive more information if the identity of private entities was not disclosed. The government entities included are the Bonneville Power Administration, the Montana Department of Transportation, and the Department of Fish, Wildlife and Parks. She added that many of the entities she has talked to have explained that they do not maintain condemnation files. The files would be by property owner.

MS. PAGE maintained that it would be relevant to the discussion to know how many property owners are affected by entities that use eminent domain powers. The use of eminent domain is much broader than simply the cases that end up in court.

REP. TASH remarked that entities might be reluctant to divulge this information. This information could be subject to continued negotiations.

MR. EBZERY questioned how Montana's statutes compared to statutes in other states. MR. HIGGINS remarked that the entities in Montana that have the ability to exercise eminent domain are similar to those in other states. Distinctions are common in terms of specific associations, boards and commissions. The types of public use entities that have the power to exercise the authority of eminent domain are very similar, especially in the western part of the United States.

MS. LEE remarked that most states fall into general areas of exercising the power of eminent domain. Montana has the least amount of entities authorized to use eminent domain.

REP. SHOCKLEY questioned whether statutes in other states allowed any person to condemn for a public purpose. MS. LEE remarked that it would depend on the purpose of the condemnation action. The term “any person” was narrowed in statute.

MR. SORENSEN questioned whether the court cases would be included in the historical use of eminent domain. MR. HIGGINS remarked that it is critical to understand the powers of the courts and how they apply and administer the eminent domain process. The authority of eminent domain is tied to the public use. It will be necessary to review the court cases to observe how the public uses are interpreted.

VI “OTHER STATES” - ENTITIES W/AUTHORITY TO EXERCISE EMINENT DOMAIN

MS. LEE explained that this discussion pertains to Item No. 4 of the Subcommittee’s Work Plan - Define the entities that possess the authority to exercise the right of eminent domain in the 11 Western states and Alabama. She provided a handout entitled, “Entities Authorized to Exercise the Right of Eminent Domain”, **Exhibit 3**.

For further clarification of the document, MS. LEE explained that Montana is comparable to the State of Idaho in the number of government entities that use eminent domain powers. Certain agencies listed are not necessarily divisions of state governments. Montana and Alabama are the two states that have associations which are specifically identified. Alabama has a large number under the heading of “Authorities” and this relates to water issues and docks. California is the only state listed under “Conservancies”. The purpose of these conservancies would deal with open space. The heading “Any Person, Firm, Public Entity” includes statute specific authority. The Cooperatives identified are electric cooperatives. Alabama and Colorado specifically state the types of corporations in statute. The category of “Other” includes mine landowners and the purpose would be access to their claim.

MR. SORENSEN questioned whether eminent domain powers had been used in Montana for private roads leading to residences or farms. MR. HIGGINS added that §70-30-107, MCA, held that in regard to private roads, the necessity of the road and the amount of all damage to be sustained by the opening shall be determined by a jury and the amount shall be paid by the person receiving benefit. He speculated that the necessity to be proven might include economic considerations. The test might be that if this option is not available, the person is harmed in such a way that their livelihood might suffer.

MR. EBZERY noted a recent case in Sheridan County, Wyoming where land had been purchased and the person was unable to obtain access to same. A condemnation proceeding ensued and the person seeking condemnation needed to prove that there were no other

alternatives. The district court held against the plaintiff and the case was then appealed to the Supreme Court.

Steven Wade, Burlington Northern Railroad, added that Montana case law holds that necessity needs to show that there are no other alternatives to access the property.

MR. SORENSEN questioned whether eminent domain powers could be used in Montana to cross state trust lands. MR. EBZERY believed there would be no power of eminent domain to cross school trust lands.

REP. LINDEEN questioned whether this information was adequate or whether staff should do more research on this subject. The Subcommittee agreed that the information was adequate.

VII CASE STUDIES

MS. LEE explained that the MDOT had been contacted for information on a project wherein property owners felt threatened by eminent domain powers and the costs involved in the negotiation process. The Forestvale Interchange Project was used. Questionnaire were sent to all landowners involved. Each questionnaire narrowed the information. The first questionnaire involved landowners who simply negotiated; the second questionnaire included landowners who negotiated because of a threat of eminent domain action; and the third questionnaire included landowners who were involved in negotiations that failed and court proceedings followed. Out of 34 parcels, 16 questionnaires were returned. She provided a handout entitled, “Montana Department of Transportation Case Study on Eminent Domain”, **Exhibit 4**.

Nick Rotering, Staff Attorney for MDOT, reported that the Department has used eminent domain as a principal way of obtaining right-of-way for highway projects. Eminent domain is a legal theory founded in Montana’s Constitution. This legal theory conveys that certain entities of government have the right to take private property for just compensation for government use. The term “condemnation” is the legal process that requires the agency to file an action in the district courts to carry out the power of eminent domain.

When a highway project is being considered, it is referred to the Right-of-Way Section. Their initial task is to determine the property needed, the owners of the property, and the legal interest of the property owners as well as the legal interest needed by the Department. Until 1950, most of the land was obtained by highway easement. Under the interstate program, this was changed to ownership in fee simple. Following public hearings and consideration of the environmental process , the Transportation Commission authorizes the project to proceed. The property is

then appraised usually using the market approach. At this point in the process, each individual landowner is contacted.

Federal law requires that landowners are provided an explanation of their rights in this process. He provided a sample of this booklet, “Questions & Answers On Buying Property for Montana Highways”, **Exhibit 5**. Temporary permits allow the contractor the right of access during construction. A more formal basis is to use a temporary easement which is extinguished following completion of work by the contractor. If the negotiator for the Right-of-Way Section is successful, two documents are prepared which include a bargaining sale deed, which is recorded, and a right-of-way agreement, which is not recorded. If negotiations fail at this point, the Right-of-Way Section requests an Order of Condemnation. This is an administrative order and is a process used to comply with the statute. It states the amount of property taken, the interest to be acquired, etc. Negotiations continue and the cost of litigation is also considered. In l972, the Montana Constitution added a provision that in addition to just compensation, the condemnor also pays the reasonable expenses of the landowner in a condemnation proceeding. If the case is not settled, a complaint is filed in district court where the landowner resides. A notice is filed to put others on notice that this parcel is subject to litigation.

Necessity is a legal determination by the court. If the landowner makes this an issue early in the process, it is not tried to a jury and is a legal determination of the judge. Necessity hearings may be asked for by the landowner and sometimes it is one more effort to stop the project. It is presumed that what the Department is doing is for the greatest public good with the least private injury. This is the legal standard the Department needs to meet. The landowner needs to rebut that presumption. Necessity can include safety issues. Once the court has determined that the state has met this burden, the court will enter a Preliminary Order of Condemnation, which puts the State in possession of the property. A sum of money needs to be deposited with the Court. The amount is usually the last written offer to the landowner. This money goes to the Office of the Clerk of Court and draws interest at 10% a year. This interest goes to the landowner and he has the right to withdraw up to 75% of that deposit at any time. The interest is stopped when this occurs.

Value of the property in terms of just compensation can become a very complex issue. Montana’s condemnation statutes address the value commission process. The burden of the value of the property rests with the landowner, who is entitled to a jury trial. The value commission process involves the State choosing a commissioner and the landowner choosing a commission. The two commissioners then agree on a third commissioner. The commissioners are usually residents in the area and cannot be employees of the MDOT. Both sides argue the value of the land by appraisal testimony to the value commission. The commission inspects the

property and determines the value of the property. Value can be no more than the landowners offer and no less than the State's offer. If the landowner or the state do not agree with the award from the value commission, the judge is notified and the process is then back in district court.

MR. EBZERY questioned when the court proceedings would be final and also the impacts to the MDOT if current statutes were revised. **Mr. Rotering** believed that the bill introduced last session would have provided that until the process was concluded and all appeals exhausted, the condemnor would not be in possession of the property. If the State is not in possession of the land, the Federal Highway Administration will not participate in the project. This would slow down or stop construction of highways for a long period of time.

MR. SORENSEN asked for more information regarding the payment of attorneys fees. **Mr. Rotering** gave an example of a situation where a jury trial had been scheduled to determine the value of the land. In this situation, the State may offer $70,000 and the landowner places the value at $200,000. At least ten days before the start of the trial and jury selection, the State may make a last offer of $100,000. If the case goes to trial and the jury awards $95,000, the landowner is not entitled to expenses. The State needs to beat the price by one dollar. Both parties know that this last written offer will be made and there is a risk to leaving the money on the table.

REP. SHOCKLEY remarked that under Rule 68 if the offer is not accepted in ten days and the award isn't larger than the offer, expenses are awarded. **Mr. Rotering** affirmed that the process they use is different than Rule 68 and is found in Title 70. Condemnation statues include Title 60 for the Department of Transportation and Title 70 for the power of eminent domain. The Montana Rules of Civil Procedure also need to be balanced in the process. He offered to share this information with the Eminent Domain Subcommittee Staff. The Department has copies of every condemnation case in the Supreme Court since l895. They also receive a publication entitled "Just Compensation" that reviews every major condemnation case in the United States that has gone to an appellate court.

MR. EBZERY queried whether the statute is adequate for the Department or whether the Department would like to see changes. **Mr. Rotering** remarked that the condemnation statutes were written in the 1870s. Minor amendments were made in the l980s. The statutory framework is very cumbersome and is not modern legislation. However, most of the major case law by the Montana Supreme Court has been decided using the old statute and the Department has a concern that if the condemnation law is rewritten, it would invite reinterpretation by the present Supreme Court.

MR. SORENSEN questioned whether the eminent domain process could be used to acquire wetlands. **Mr. Rotering** explained that the Department had the power of eminent domain for more than highway purposes. It could be used to acquire sites for weigh stations, maintenance sites, and sandpile storage sites. There is a process for exchange of wetlands.

MR. EBZERY asked for more information regarding using the fee simple process. **John Horton, MDOT,** affirmed that they prefer using the fee simple method. If there is a compelling reason, they will take an easement.

MR. EBZERY further questioned how abandonment was handled. **Mr. Horton** stated that abandonment was set by statute. **Mr. Rotering** added that an easement for highway purposes is a permanent easement. The construction permit is temporary.

CHAIRMAN COLE remarked that legislative changes were made recently in regard to public sale. **Mr. Rotering** explained that in the 1997 Legislative Session the Department asked for legislation to clean up situations that involved purchasing the total parcel of land. After construction was completed and someone was interested in purchasing the remaining land, there was a sealed bid process and the landowner or successor-in-interest could meet the bid. This was removed from the statute.

REP. SHOCKLEY remarked that the “Questions and Answers On Buying Property for Montana Highways” prepared by the MDOT did not point out to the landlord that the State would pay attorneys fees.

REP. TASH asked how damage to the remainder tract was addressed. **Mr. Rotering** explained that this would depend on the highest and best use of the property and the amount of land remaining. Moving fences and culverts could become a cost of cure. Usually the landowner will agree to the value of the take, but the damage to the remainder can involve difficult legal and appraisal issues.

REP. TASH maintained that the damage to the remainder included a lot of inconsistencies and this should be addressed and clarified by the study.

MS. LEE explained that in regard to the Non-Government Case Study, she had not been able to find a private entity that would agree to the study. It has been suggested that numerous entities representing different types of projects provide mailing lists of individuals to be contacted for the case study. This would not focus on one company or one type of project.

MR. EBZERY believed this would involve a lot of work and it may not be statistically valid information.

The Subcommittee members agreed.

REP. MCGEE questioned whether the statute should state that when it was determined that negotiations had failed, the process would move immediately to binding arbitration and thereby eliminate involvement of the court process. **Mr. Rotering** maintained that there is a provision in the Constitution which allows for the right of redress in a civil case. The landowner's constitutional right to a jury trial would be impeded. He added that within the judicial system, it is difficult to obtain a jury trial before a district court judge without mediation.

VIII REVERSION OF PROPERTY

MS. LEE explained that this item is noted on the work plan as Item No. 6 - Outline the process that is followed for reversion of property once the property is abandoned. This is defined in statute under §70-30-321 and 322, MCA. If there is a fee simple title interest, the property is sold to the highest bidder. The original owner or successor-in-interest then has the option of meeting this price. Interests other than fee simple allows that the property reverts to the original owner or the successor-in-interest. Fee simple allows the original owner or successor-in-interest to purchase for the auction sale price.

Mr. Rotering remarked that when dealing with highway property, the MDOT is not under the jurisdiction of the State Land Board. The language addressing the original landowner or the successor-in-interest meeting the high bid price was removed in the 1997 Legislative Session. This would be in Title 60.

MR. SORENSEN questioned whether the landowner who is negotiating a right-of-way with the MDOT could include that the property would revert back to him in the case of abandonment. **Mr. Rotering** commented that it would have been possible if the MDOT was not taking the fee simple. Due to the federal interstate program in the 1950s, the Department started to use fee simple instead of easements for highway purposes. There is a procedure in the highway code where the original landowner or the successor-in-interest can meet the best bid.

IX DISCUSS PUBLIC HEARINGS

The Subcommittee approved the draft agenda for the public hearing set for 6:30 p.m.

X FINALIZE WORK PLAN

MS. LEE reviewed the Final Report Table of Contents, **Exhibit 6**. Chapter 1 covers the definitions used in the eminent domain process. Chapter 2 discusses how eminent domain is exercised. Chapter 3 covers the use of eminent domain. This will also include the case study.

MS. PAGE remarked that a narrative summary of the exercise and use of eminent domain in regards to entities authorized to exercise eminent domain in other states would be helpful. REP. LINDEEN agreed that some general analysis and interpretation would clarify the issue.

REP. GILLAN questioned whether the National Council of State Legislatures (NCSL) had been contacted for information on the topic. MS. LEE explained that she had contacted the NCSL, Council on State Governments and Unified Code Commissioners, and they did not have any current information to share on eminent domain issues.

MS. LEE continued that Chapter 4 addressed the different types of interest taken and also included liability issues as well as the sharing or resale of property taken. Chapter 5 included environmental concerns. The bonding and mitigation standards information would also be found in this chapter. Chapter 6 included a past, present, future view of eminent domain in Montana.

REP. CARLEY TUSS, HD 46, Cascade, thanked the Subcommittee for working on her study. She remarked that she was pleased to see that the issues are being approached from a broad base. Some of the eminent domain statutes have been in existence for over 100 years with very few changes since that time. The smallest change made deliberately using the analysis called for will have tremendous ramifications in this state.

- **Budget**

CHAIRMAN COLE explained that the EQC would request additional funding from the Legislative Council to fund the Subcommittee. The Subcommittee reviewed the budgeting information provided. No action was taken.

- **Goals of the Subcommittee**

The Subcommittee will study the adequacy of the statutes and the rights of both parties under existing statutes. Certain legislative changes may be necessary. The resolution sets out the goals of the study and care will be taken to make sure that the final report addresses all these issues. The subcommittee also feels that education will be an important outcome of the study.

- **Issues for Further Study**

MS. LEE remarked that issues 1-4 and 6-8 of the Work Plan, **Exhibit 7**, have been addressed today. She questioned whether staff should continue working on Items 5 and 10 of the Work Plan. The Subcommittee decided that both items should be kept in the Work Plan.

REP. LINDEEN referred to “Eminent Domain Study Points of Discussion”, **Exhibit 8**. She suggested adding arbitration and mediation to the list of study points.

REP. SHOCKLEY agreed with the statement made earlier that requiring arbitration could be unconstitutional. It would be better to have the courts handle the cases as is the present practice.

REP. LINDEEN emphasized studying just compensation and reviewing the appraisal process.

REP. TASH suggested an educational document be prepared by the Subcommittee.

MS. PAGE remarked that one of the things that concerns many people is the due process. It is important that the Subcommittee remain open to the discussion on the possession of property by the condemnor. The statute may need to be adjusted or it may need to be better understood.

REP. SHOCKLEY maintained that the use of an easement is a large issue in other states and should be thoroughly reviewed in the study.

Motion/Vote: REP. MCGEE MOVED THAT THE WORK PLAN BE ADOPTED WITH THE ADDITION OF THE "EMINENT DOMAIN STUDY POINTS OF DISCUSSION". THE MOTION CARRIED UNANIMOUSLY.

- **Review Time Line**

MS. LEE reminded the Subcommittee that May 6 - June 16 are the last dates to revise and distribute the draft report. Meetings are scheduled for January, March, April and May.

- **Next Meeting Date and Location**

The full EQC will meet on January 21st and March 24th and the Subcommittee meetings will be scheduled for the day before the EQC Meeting. Meeting locations will be in Missoula and Billings. The locations will be set by the full EQC at their next meeting.

XI ADJOURNMENT

There being no further business, the meeting adjourned at 4:45 p.m.

_____

SEN. COLE, Chairman