



Montana Districting and Apportionment Commission

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MINUTES

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of documents.**

Flathead County Commission Office
Kalispell MT
August 12, 2002

COMMITTEE MEMBERS PRESENT

Janine Pease Pretty On Top, Presiding Officer
Sheila Rice, Vice Presiding Officer
Joe Lamson
Jack D. Rehberg
Dean Jellison

STAFF PRESENT

Susan Byorth Fox, Research Analyst
John MacMaster, Attorney
Transcribed by Lois O'Connor, Secretary

VISITORS

Visitors' list (ATTACHMENT #1)

CALL TO ORDER AND ROLL CALL

The public hearing was called to order by Commissioner Pretty On Top, Presiding Officer, at 7:00 p.m. Attendance was noted, all Commissioners were present. (ATTACHMENT #2)

Susan Fox, Research Analyst, Legislative Services Division: provided an overview of the redistricting process. (EXHIBIT #1 and #2 respectively)

John MacMaster, Staff Attorney, Legislative Services Division, provided an overview of the mandatory and discretionary criteria and operational guidelines adopted by the Commission for the purposes of legislative redistricting. (EXHIBIT #3)

Ms. Fox provided an overview of the Western Region Plans (North). (EXHIBIT #4)

Ms. Fox: The way to get the "one person one vote" concept or the equal population requirement number is to take the total state population (902, 195) and divide it by 100 house districts equaling the 9,022 ideal population per district. The U.S. Supreme Court allows a plus or minus 5% deviation in population. Great population gain was experienced in this area. There has also been great population losses in other parts of the state. House districts were lost along the Hi Line in both the central and eastern parts of the state and one in southeastern Montana. Slightly more than one house district was picked up in Gallatin County, and with a shift of the districts, a district will come into play in Ravalli County and one in the Kalispell area.

Because of Old Person v. Brown, the Commission passed a resolution that discusses creating districts called "majority-minority districts". Under the Voting Rights Act, we try to gain equal opportunity to vote and participate in the electoral process by gaining districts of approximately 65% of a minority population, in this case, American Indian. We were able to do that only slightly. It is also very important to look at the voting age percentage. If we truly want a district that allows equal opportunity to participate, there needs to be at least 50% of the minority population that is of voting age--18 years of age. We have obtained that in all three plans in proposed districts #1 and #2. There are also Native Americans who do not reside in one of the proposed districts. That population is fairly low--between 24% and 28%. They can sometimes influence districts, but as you know, 28% of anybody in an election is not going to carry much weight. The Commission was asked to join in the 1990 litigation but chose not to do that. It adopted the resolution with the hope that it would help resolve the 1990 lawsuit which is still in litigation. The Commission has continued in good faith to draw these districts.

Proposed district 2 in both Plan 100 and 200 is the same as we adopted in the Northcentral Region. In Plan 300, proposed district #2 is amended somewhat and cleans up some boundaries that were left undone. Proposed district #1 in all three plans includes various portions of Glacier, Pondera, Lake and Flathead Counties. Plan 300 also includes a portion of Missoula County. Proposed district #1 in Plan 100 includes Pablo, portions of the northern Swan River Valley in Lake County, and crosses the Continental Divide and uses portions of Flathead County. Plan 200 goes further south and uses the Arlee school district line. Proposed district #1 in Plan 300 includes the Arlee school district and has the potential to assist the incumbent in that current district. Plan 100 and 200 do not do that and puts the incumbent into various other districts.

The far northwest corner covers the Lincoln County area. Plans 100 and 200 are very similar. They both keep Libby and Troy in two different district as they are today. Although Lincoln County gained almost 8% in population, it was a relative loss compared to the 13% average gain around the state. All

three plans pull in the rest of Lincoln County that was previously shared with Sanders County. The only difference between Plans 100 and 200 is the county boundary east of Libby. In Plan 300, Troy and Libby are placed together in a district, which makes sense because of their geographical proximity, along with the remainder of Lincoln County. Sanders County is maintained as one district and the boundaries are around Plains and Paradise. Plan 200 comes down further using a school district line as a boundary, but it basically put Hot Springs and Arratta back into the northern Sanders County districts, where they had been previously shared with district to the south. Plans 200 and 300 puts Plains and Paradise in different districts. Plan 100 puts Plains and Paradise in the same district. The next district to the south will be Mineral County, part of Missoula County, and the remainder of Sanders County in all three plans.

In Flathead County, Plans 100 and 200 are somewhat closer to existing districts, but there were many changes in those districts while Plan 300 has another variation. Part of the analysis that I do before creating the maps is to find out how many persons from each county are in each district. I want to bring this to the attention of the Commission because it may be something that you want to pay attention to. There has been population growth in the area but there has also been population loss on the other side of the (Continental) Divide. Proposed district #1 in all three plans can help mitigated some of the population loss. Plans 100 and 200 share close to 5,500 people in Lake County and across the Divide. Plan 300 shares closer to 6, 400 people. The difference is Flathead County. In Plans 100 and 200, there are approximately 100 people in Flathead County which may be easier for election administrators to deal with. Plan 300 includes only 10 persons. For voter anonymity, this may be an area that needs further review.

There is one new district in Ravalli County and one new district between Flathead and Missoula Counties. We do use the higher population deviation in most of the districts in the area. Where we do not use it, we do it to try to preserve county lines where possible. In Plan 100, proposed district 88 is the closest to what will be seen as a new district and it does stay all within Lake County. In Plan 200, it is also proposed district 88 but it is in a completely different place. It includes southwest Flathead County and the Rollins area of Lake County. Plan 300 is about the same as proposed district 91, but there is a whole district in the Finley Point and the Big Fork areas.

In Flathead County in Plan 100, there are eight districts and one shared. In Plan 200, there are seven districts in Flathead County and two shared. Plan 300 also has seven districts totally within Flathead County and three shared districts. In Lake County in Plan 100, two proposed districts are completely within Lake County and two that are shared. In Plan 200, there are two in the county and three that are shared. In Plan 300, there is one completely in the county and three that are shared. In Plans 100 and 200, Arlee is shared with a southern Missoula County district. Plan 100 includes Evaro and the Grant Creek area. Plan 200 does not include Grant Creek area. In Plan 300, Arlee is included in proposed district #1. Plans 100 and 200 include Finley Point and Polson. In Plan 300, Polson is in the east shore district and Finley Point another district.

In the past, there were two districts in Kalispell proper. That still remains in all plans. In Plans 100 and 200, the districts are split in a north-south boundaries and includes different portions. Evergreen is split in Plan 100 but not in Plan 200. In Plan 300, there is more of an east-west split. It also has a Whitefish district although a portion of Whitefish is shared with east Kalispell, using Highway 2 as the boundary.

PUBLIC TESTIMONY

Jerry O'Neil, Senator, Senate District #42: According to the Commission's criteria, compact and contiguous districts are constitutional requirements, although I am not quite sure where in the Constitution it comes from. On your discretionary criteria for legislative districts, you have kept communities of interest intact. Is this a statutory requirement or a statutory discretion and does the statutory discretion trump the constitutional requirement?

Mr. MacMaster: As to the compact and contiguous territory requirement, it comes from the section of the Montana Constitution that establishes the state's basics under which it operates. It states that "Each district shall consist of compact and contiguous territory". As to the discretionary criteria--these are criteria that the Legislature of each state, or the Commission of the few states that have a Commission, has the discretion to adopt or not adopt. In Montana, there is no statute stating any discretionary criteria or a list of discretionary criteria. These are just criteria that the Commission has looked at and has decided to adopt. The 1980 and 1990 Commissions also adopted these discretionary criteria.

Sen. O'Neil: Would that mean that it would be allowable to have a district that would have Blackfoot Indians in it and also Crow Indians in it, because that would be a community of like interest, even though they were not contiguous?

Mr. MacMaster: Whether or not the two tribes are communities of interest is open to discussion. In the 1990 Plan, there was a part of a first District Court opinion that was appealed to the Ninth Circuit Court and a second District Court opinion. The first District Court opinion said, in talking about the area between north Missoula and the Kalispell area over the Continental Divide via Highway 2 and ends in the Browning area, that "The presence of the Continental Divide proposed by the plaintiffs, House District #73, would not operate as a significant impediment to voting or campaigning because U.S. Highway 2 provides year-around travel across the Divide". Later on, the second Court stated that "Turning to American Indians residing on the Blackfeet and Flathead Indian Reservations, the Court finds that they are sufficiently large and geographically compact to constitute a majority in an additional single-member House District and Senate District". That part of the opinion was not overturned.

Sen. O'Neil: Is that part of the opinion still under appeal?

Mr. MacMaster: No, not that succinct part of the appeal.

Commissioner Lamson: Just for clarification, I don't know if you misspoke when you said putting the Blackfeet and Crow together. We couldn't connect the Crow Reservation with the Blackfeet Reservation because they are not contiguous. While they may have communities of interest, they don't have geographic contiguity.

Sen. O'Neil: Doesn't the Constitution require that they have functional compactness, such as travel, transportation, communication, and geography?

Commissioner Lamson: The Constitution just references compact and contiguous. "Functional compactness" is another term of redistricting that we try to obtain.

Commissioner Pretty On Top: It is kind of confusing in that the Crow Reservation is down by Billings. I don't know how you would combine them with the Blackfeet.

Sen. O'Neil: I am just pointing out that if you are talking about contiguous to mean "functionally contiguous", that would not apply between Browning and Arlee, Montana because there is no way to travel within that district from one end of it to the other and it is 160 miles through other districts to get from one place to the other. So it is obviously not functionally contiguous.

Commissioner Pretty On Top: We have districts in the east that have 250 miles traveling between places and points. It is a relative term.

Sen. O'Neil: Are those districts already set up or have they just been set up this second?

Commissioner Pretty On Top: We had to make some even larger than they were. So, the distances are extended considerably.

Sen. O'Neil: I understand that there is a district in eastern Montana which includes two reservations that is a long distance between one end and the other. I thought that was just made with this group here.

Commissioner Pretty On Top: There is a district between the Northern Cheyenne and Crow Reservations that was established in the 1980's, at least the House Districts that are there. The 1990 Commission also made that commitment in Rosebud and Big Horn Counties.

Sen. O'Neil: Can they go from one end of the district to the other without leaving the district.

Commissioner Pretty On Top: There are roads all through the area.

Sen. O'Neil: Well in this district, there are not roads all through and they cannot go from one end of the district to the other.

Commissioner Pretty On Top: I believe that Mr. MacMaster read from the opinion of the Court and Highway 2 exists. People go back and forth all of time, as far as I am aware. We had considerable statements and testimony in Browning that there are people who share educational services and who shop in this area.

Commissioner Jellison: The Constitutional provision that requires this is Article V, section 15. I would like to clarify something else. Isn't it true that the Montana Supreme Court has not, in any decision, interpreted this language as "equal in population as is practicable"?

Mr. MacMaster: Yes, that is true.

Commissioner Jellison: Isn't it also true that the Legislature has not spoken at any point as to what the term means?

Mr. MacMaster: That is also true in the sense that there is no statute, resolution, or any other formal statement that I am aware of.

Commissioner Jellison: If either of those entities with which you speak interpret that, would the federal courts be bound by that interpretation?

Mr. MacMaster: In my opinion, yes, as long as the case does not somehow get removed or appealed to a federal court which can be a real problem in the sense that, when you challenge something like, for example, redistricting plans, there have been cases where you can appeal the

decision by the state Supreme Court to the federal court system even though it was decided only on state constitutional grounds while the federal constitutional grounds were claimed. They were not used to decide the case. In my opinion, the federal courts should not be taking such cases because they have no right to decide it. But, it has been done. It would be best, if it happens, to challenge it only under the Montana Constitution.

John Dudis, Chairman, Flathead County Republican Central Committee: I do think that the Montana Constitution that Mr. Jellison was speaking of and the federal decisions that have come down with the 5% variance are somewhat in conflict with the Montana Constitution. Automatically assuming that a 5% imposed by the judicial gloss of a federal decision may not be compatible as well as may not be in line with the view of the original drafters of our Montana Constitution when the voters approved it. I would think that perhaps a 1% or 2% variance would be more in compliance and be more constitutionally able to pass muster in light of the constitutional provisions under the state of Montana. I think that the biggest issue that you folks need to consider is to not automatically assume that the 5% judicial gloss of federal decisions are directly addressing the Montana Constitution. I think you should consider a lesser amount than the 5% variance.

Commissioner Lamson: Are you aware that all previous Montana Commissions have worked under the plus or minus 5%?

Mr. Dudis: Yes, and I think that they have also had the same potential for constitutional problems for the state.

Commissioner Lamson: Are you aware that 40 of the 41 states that have adopted their redistricting plans used the plus or minus 5%?

Mr. Dudis: I am not aware that all of the other constitutions mirrored the constitution of Montana word for word with the criteria set forth by Mr. Jellison.

Commissioner Jellison: I would like the record to show that Mr. Dudis is an expert in this area. He has had a research article that has been published in the Montana Law Review dealing with the history and procedure in redistricting.

Stan Fisher, Representative, House District #75: My current district is one of the districts that will take the largest part of the cut. I would like to speak to proposed district #1 under Plan 300. It seems inconceivable to me that you think in any manner of form that that thing is contiguous or falls under any of the other three criteria which fits into the requirements that you folks make. The Blackfeet Indians and the Confederated Salish and Kootenia Indians have very little, ancestrally or currently, in common. That plan jumps over the Continental Divide, the Mission Range, and the Swan Range and it totally isolates the people in the Swan Valley from any representation. Because of the geography involved, it isolates the people to the west of the Missions and to the east of the Continental Divide from ever being close together. I don't care what the Supreme Court has ruled on that, Highway 2 does not connect that organization.

Rep. Fisher read written testimony provided by **Gregory Barkus, Candidate for Senate District #39 and Former Districting and Apportionment Commissioner.** (EXHIBIT #5)

Sue Haverfield, Flathead County Clerk and Recorder: Needless to say, we do have some concern about the proposal, particularly proposed district #1 in Plan 300. Coming across the Continental Divide, we have an area along Snow Sled Barrier, where in the information you sent out, you list that there are 10 people in Flathead County in that area. We have two registered electors in that area. I hardly think that we want to do a precinct for two registered electors. By the same token in Plan 300, Missoula County is only showing 55 residents in that area. I certainly would think that if you insist on doing this district the way that it is laid out, you could skip the population in Flathead County, remove Missoula County from it, and save us a lot of trouble because we cannot set up a precinct for 10 people. It is hard enough to do a precinct for the 89 people we now have in the precinct that votes at Essex that takes in part of this area. We set up an outlying precinct, they sort of do their own thing, and call us with the results. The smaller the precincts get, the less their votes are secret and the more disenfranchised they are going to be. We certainly appreciate what Susan (Fox) has done in her efforts to work with us and work with school district lines and precinct lines and some of the boundaries that we discussed when she was here. But this one does not make sense to us and we hope that you will change it.

Richard Kuhl, Kalispell: Last spring, I wanted to check on the boundaries of House District #75 which is a district that is split between Flathead and Lake Counties. I went to Flathead County and asked for a written description of the boundaries and there was none. I went to Lake County and asked them for a written description of the boundaries, there isn't any. I called up the Secretary of State's Office, there isn't any. I sent a letter to this Commission, there isn't any. I am beginning to wonder where all of the maps come from. I finally went back to the Flathead County office and was told that when the last Commission is done, they get a stack of material and from that from that, they calculate the boundary lines. I then checked on a boundary in House District #75 and found a mistake. My concern is that the Commission can do all of the job it wants to, but unless they leave clear directions to the County Clerks on what the lines are suppose to look like, we can end up with a larger deviation than 5%. Under plan 24 in House District #77, which is where I live, it is going to be split and proposed district #93 would have 9,470 people in it. If you make a slight slip in the boundary, you are over 5%. I think that it is absolutely critical that this Commission send clear direction to the County Clerks on how the boundaries are suppose to be. I do feel that just looking at the Flathead County boundaries, we do seem to be pushing the upper edge of 5% high. I am a little concerned because we are a growth area that it will only take a year or two that we will be out of the 5%. As a general rule, those districts that are growing in population should have a lower count compared to those districts that are losing population. Keeping all of the politics out of this, I think from a fairness standpoint that you try to do that as best you can.

Dale Williams, Chairman, Flathead County Commissioners: I would tell you with all ambiguity aside that Plan 300 is not acceptable. Plan 100 is the most acceptable followed closely by Plan 200, with the exception that proposed district #1, we believe to be not in the best interests of the mandatory

criteria for legislative districting. Chairman Pretty On Top made comments of the testimony that she has from east of the mountains as to the number of trips made over here by the Blackfeet Indians for shopping. Well, that is not in Arlee, Montana. That may be in Kalispell, but they don't leave Browning to shop in Arlee and I will double dog guarantee you on that. When we talk about compact and contiguous districts, proposed district #1 belies the fact of any reasonable man, in fact, Mayor Richard Daily must be doing flip-flops even for the gerrymandering that was done in Chicago, on this one.

The protection of minority voting rights and compliance with the Voting Rights Act, if you think about it, it simply says no district plan or proposal is acceptable if it affords members of a racial or language minority group "less" opportunity. If that statement is true then so is the opposite, that it should not provide or afford members of a racial or language minority group "more" opportunity. What you basically have in proposed district #1 is "more" opportunity without equal opportunity. I would submit to you that it is equal opportunity that we are striving for and not more or less as the mandatory criteria suggests. It seems to me that the discretionary criteria would come second place, if there is any second place, to the mandatory criteria. Thus, if you meet the objectives of the mandatory or gerrymander that around to meet objectives of the discretionary, then you have overridden your own basis for the compilation of the areas. I agree with Rep. Fisher and Mr. Kuhl. We have a high growth area in Flathead County. We suffered double digit in both the 1980s and 1990s. We have slowed down somewhat, but to have that at the upper echelon of deviation, at a 4.7% or a 4.8%, affords you the opportunity to be wrong in a very short order of time. What we do need is relief to the extent that the deviation is at 1% or less and those slow growth districts be at the upper end. That way, you would have deviations by percentage that catch up with one another rather than going further apart.

Commissioner Pretty On Top: Are you aware that there is 8% of our state that are Native American?

Mr. Williams: Correct. Actually, it is only 6% or 7%

Commissioner Pretty On Top: It is definitely 8%. There is actually another 3% who claim a membership in multiple groups, so you can add another 3% if you really wanted to. The number of House members in the work that we have done is six when it should be eight. Somehow it seems that it doesn't represent an over representation. Did I hear you say that?

Mr. Williams: No, I didn't say an over representation. I simply stated that if you are looking at the mandatory criteria for the protection of minority voting rights, the statement says, if indeed if its true, that if it affords members of a racial or language minority group less opportunity than other members of the electorate to participate in the political process, then the opposite is also true, that we should not be providing more opportunity. What we are looking at is equal, not more not less. Quite frankly, I consider myself American, first; Montanan, second; and French and English, third.

Commissioner Pretty On Top: It is just that if you were looking literally at what you have said, 8% would provide close to eight members of the House. The work that we are doing here would provide six which is unequal. It seems to me that from the minority point of view, just a few numbers are very important. Do you see what I am saying?

Mr. Williams: I do, with the exception that if you have six members now. . .

Commissioner Pretty On Top: The plan that we are heading toward will be six, but we don't have six now.

Mr. Williams: What do you have now?

Commissioner Pretty On Top: Five.

Mr. Williams: Are they not afforded an equal opportunity to file for office, an equal opportunity to run for that office, and an equal opportunity to be elected to that office?

Commissioner Pretty On Top: But five Native Americans represent 8% of the population. That represent a serious under-representation. What it also represents is a serious over-representation of the majority.

Mr. Williams: We have different viewpoints on that. I appreciate your viewpoint, but I don't agree with it.

Commissioner Pretty On Top: But equals is equals. It is a simply elementary thing that we learn in the early years of school--five equals five.

Mr. Williams: Not necessarily in this case. The affordable opportunity to run and have the affordable opportunity to be elected is what counts, not a guarantee by number.

Commissioner Pretty On Top: Well, there is certainly no guarantee in the process.

Mr. Williams: You can't tell me that proposed district #1 doesn't guarantee a process and guarantee an outcome. Just by the predominance of numbers, it guarantees outcome.

Commissioner Pretty On Top: The Senate District where I live which is a combination of the Northern Cheyenne and Crow, we have had the situation where a majority of Indian voters have elected a non-Indian.

Mr. Williams: Sure, and that is great and so is the reverse. The reverse of that equally important and opportunistic as it stands now. You have that same opportunity.

Commissioner Lamson: We have been discussing for a couple of years and we have spent an inordinate amount of time on these particular districts because redistricting, by its nature, involves change. Change is a very uncomfortable thing for most people. The one thing that I found curious in the proceedings is that in Montana because of its geography and the way people are situated, we often find ourselves with districts that are very large. In fact under the current 1990 plan and in 1980, there always seems to be a district in the western part of the state that is quite large. In fact, right now, there is a district represented by Representative Doug Mood in Seeley Lake that stretches in three counties. That is also a very large district, but people don't seem to have problems with it. Just when we have the added aspect of trying to acknowledge some communities of interest that people within this part of Montana share, there seems to be problems. I don't understand for the life of me about how come its okay to have these districts that are very large that involve difference communities of interest, but when this one particular community of interest involving American Indians citizens of our state comes into play, all of sudden, we have all kinds of problems with why we can't do that. I am wondering why that might be?

Mr. Williams: If you look at proposed district #1, you have no real means of being able to adequately represent that district, simply from the sheer size of travel and the fact that you have to go nearly 200 miles outside of your way to get from one corner of the district to the other. That is simply

outrageous. Now, in counties like Fallon and Carter in the southeast corner that are combined in a district, the sheer population down there dictates that, where you have 800 people or a 1,000 people in a county, you are going to have to make those particular sacrifices. In this particular district, you don't have to make the sacrifice because the sheer geographic nature of this district allows it, at the Continental Divide, to be divided; and those that have the interest, whether it be the wheat-farming communities on the east side as opposed to the tourist-related communities on the west side, there is very little in common economically. There is very little in common from the standpoint of distance and geography and there is very little in common with the exception of one thing, and it stands out like a sore thumb. I think that you as being a reasonable Commissioner would notice that as much as the rest of us.

Commissioner Lamson: I traveled this part of the state a lot over the years. When I first visited here, it was a trip from Browning to Arlee in 1974 back before we had really good roads and vehicles. I didn't have a very good vehicle in those days, and I certainly made it.

Mr. Williams: Did you shop in Arlee?

Commissioner Lamson: I shopped in both place as a matter of fact.

Commissioner Rice: We have quite a few more people who may want to testimony. I think it would be advantageous for the Commissioners to limit the comments and listen to the public.

Bernie Olsen, Candidate, House District #76,: I have looked at this from the point of view from the people who live in my district. In Plan 100 and 300, the standard deviation is quite high. In fact, Plan 300 is close to the 5%. I just want to stress what some of the other people have said in that we are growing very fast on the west shore of Flathead Lake, and it will not take us very long to be well over the 5% deviation. In fairness to the concept of "one-person-one-vote", it would seem like the people in that district would suffer in the next three years of being under-represented. A side to the Commissioners' concern, if things were fair in politics, there would be 75 women in Helena running the show. But, it doesn't work that way. Voters tend to pick things differently than we would like.

Pauline Sjordal, Kalispell: We have growth, but we also have tremendous numbers of people who have to leave. All you have to do is see the number of returned, if you send out brochures in an election according to the last election, how many you get back in return "address unknown". We've got to remember that we balance out because we lose just as many that come in. We also have "trophy homes" where the people do not live here at all, so they don't shop here at all. But, I came up to the microphone basically to be honored.

It warms my heart to realize that the first Americans, "Buffalo People", are represented on this Commission. I also wish that we were educated enough to realize that you are not a minority--that Indians are not considered in any way, shape, or form from the federal government down--to be a minority. So, it is a misnomer and a total misrepresentation when we talk about the tribes as a minority because they do not represent. . . They do not get any status in America as a minority. They are considered a sovereignty and I am proud that we are recognizing that sovereignty. If that is what we

have to do to get more representation in Helena for the first Americans, then more power to us. Another thing we have to do is get behind Eloise Cobell and get you back your mineral rights--\$10 billion in arrears to the Indians? Think what the wealth could have been in Montana if they had been receiving their mineral rights since 100 years ago. So, let's stop trying to mince words. Let's call them a sovereignty, let's be proud that she (Commissioner Pretty On Top) is on this Commission and that they are going to have more representation in Helena. I like Plan 300, and part of it is listening to the folks that have been around for a long time and have been voting poll watchers for a long time, there is not much wrong with the plan in the 1990's. Basically, Plan 300 is going to let us go back to that.

Denise Cofer, Evergreen: Commissioner Lamson, you mentioned in your conversation with Dale Williams that Doug Mood serves three counties. That's three as opposed to five. Plan 300 would encompass five counties instead of three. There is the difference. I am a resident in Evergreen, and I would like to ask Susan Fox to further describe the Evergreen breakdown in Plan 300.

Ms. Fox: To the extent that I understand the census in that area, Evergreen is not incorporated so that is a designation that your county has submitted to the Census (Bureau). In the past, we used the Whitefish River as a split between existing districts. The split is no longer there, and under Plan 300, you now have a district that encompasses both Evergreen and part of north Kalispell.

Ms. Cofer: Now, I would like to go back to the statement read by Stan Fisher presented by Greg Barkus. Greg Barkus says in his statement that Plan 300 was submitted by Commissioner Lamson on behalf of the Democrat Party. I would like a further explanation of that so that it is a part of this record. How was that plan submitted and where did it come from?

Commissioner Rice: Any Commissioner can offer any plan, and Plan 300 was actually offered by Commissioner Lamson and I. Commissioners Jellison, Rehberg, and Pretty On Top would all have an opportunity. . .

Ms. Cofer: So, the two of you submitted Plan 300? Did you just sit around the kitchen table with brown paper bags and make this up or how did you develop this Plan 300?

Commissioner Rice: All of the plans are completely computerized this time around.

Ms. Cofer: So, you sat at a computer, the two of you, and came up with Plan 300? That is what I am trying to get at.

Commissioner Rice: That is correct.

Ms. Cofer: The two of you sat at a computer, ran the numbers, and came up with this?

Commissioner Rice: Yes.

Marianne Roos, Lincoln County Commissioner: The Lincoln County Board of Commissioners will be submitting our written testimony. In reading the verbiage in written description for proposed district #100, it includes the norther three-quarters of Lincoln County, including Troy to the south, and the north of Libby, and Rexford, Eureka, and Fortine to the north. Do I understand you to say that the borders would be the county lines? I was curious why you would use Fortine when, actually, Fortine is 15 miles north of our border, and we have two more towns, Stryker and Trego. Stryker is the community that voters use.

Commissioner Lamson: Fortine was just used. . . .The county line is the border.

Ms. Roos: Stryker is the border town that borders Flathead County so it is confusing to Lincoln County residents because when I read this, I was questioning if you were, in fact, chopping the district off to be part of Flathead County and part of Lincoln County.

Commissioner Lamson: Lincoln County is all contained within one area. I think Fortine was just referenced as more people tend to know Fortine than Stryker.

Ms. Fox: Both of your districts in all three plans are contained completely within Lincoln County, and there is not a part of Lincoln County that is shared with Flathead County.

Ms. Roos: I would like to address the gentleman that talked about a candidate running for a house district when we have two people who were interested in House District 81. They came to me because people have a tendency to think that the County Commissioners have all of the answers, and we don't. They were looking for the actual description of House District 81. I was having a hard time finding that verbiage for them. We worked closely with our Clerk and Recorder. So, I just think that this may be a little confusing to a candidate who is, in fact, looking for the description. You should use the last community that borders the county line.

Ms. Fox: Just to clarify. These are casual descriptions of the districts by a person who does not live in the area and who is attempting to describe 100 districts around the state. I basically look at the map and whatever census places are labeled, those are the one I try to use so that when you are looking at a map, you can look back and forth. Actual written legal descriptions of each district are required to be done within your county. It is your governing bodies responsibility that they be done. I acknowledge completely that what the Commission gave and what the staff of the Commission gave to the Secretary of State and to the counties the last time was very difficult to follow because I used census data instead of traditionally what you are used to in the areas of legal descriptions. This is an area that we do have to work on, but right now, that is a county responsibility. These are not intended to be written legal descriptions by any stretch of the imagination. They are very informal and are just trying to get people a general sense of where a district might be.

Commissioner Rehberg: You said that there would be a written statement or an opinion (from the Lincoln County Commissioners). Do you want to give us a hint?

Ms. Roos: The Board of Commissioners hasn't had time to discuss the plans. Quite frankly, we have been so busy working on budgets that we haven't had time. So, I don't think that we have any great concern, but we want to be sure to get our opinion written.

John Brueggeman, Representative, House District #74: After having reviewed all three of the plans, I have no particular quarrel with the proposed plans in 100, 200, or 300. By I can only speak to the area surrounding Flathead Lake and particularly in Polson on the south and western sides of Flathead Lake. I do hear some concerns from my constituents as to the nature of proposed district #1. There are many people with some questions about that, how it was drawn, and the reasons that it was drawn. But, with respect to Polson and the east shore-west shore of Flathead Lake and south, I do not have any particular problems or prejudices with the three plans presented.

George Everett, Representative, House District 84: Greg Barkus and Dale Williams expressed my views in their statements. I would support Plan 100. I also don't see the connection between the geographic areas east of the mountains and the westside of the mountains down through the Lake area. What is meant by the 65% voting right? I didn't understand what you were talking about.

Commissioner Pretty On Top: Susan (Fox) was talking about needing to have 65% Native American population in a district because so many Native Americans are under the age of 18. The Blackfeet estimate that one-half of their people are under 25 years of age. Their enrollment is 16, 000, so you can imagine the number of people that are very young. In other words, they are not voters.

Rep. Everett: Are these registered voters that you are talking about?

Commissioner Pretty On Top: No, this would be total population. But, your goal is to achieve a majority of registered voting age population. They may not be registered but voting age.

Rep. Fisher: The latest number that I received on statewide Native Americans was 6.2%--5% were voting age. I don't dispute your numbers. Yours may be more accurate than mine. In my district, there is 11% Native Americans. That will be wiped out with the new plan. I don't think I will have 1%. I would once again stress that the proposed district #1 that you contemplate splits those people up into three distinct populations--the Browning area being Blackfeet. The Swan Valley has over 240 voters, and they have nothing in common with the Browning people because geographically, there totally separated as are the people in the Salish and Kootenai area. I was at the Browning hearing, and I can appreciate what was said about being educationally bound. I don't agree with that either because the schools are totally separate and enrollment is totally separate, so there are no ties educationally between the two.

I lived in the eastern part of the state for five years and traveled the area from Wyoming to Canada and from North Dakota into Glasgow. The (Northern) Cheyenne Reservation was part of my territory at that time. Do you have the (Northern) Cheyenne and Crow Reservations in the same district?

Commissioner Pretty On Top: They are in the same Senate District. You can ask the Commissioner from the 1990 Commission.

Rep. Fisher: Did you put the (Northern) Cheyenne and the Crow in the same house district?

Commissioner Pretty On Top: No, the Crow people are 65% of the population of Big Horn County. Actually, the Crow population is shared with Rosebud County for another house district. There is two house districts--one each with an Indian majority. One with a Crow Indian majority and one with a Northern Cheyenne majority.

Rep. Fisher: When you put these two districts together, did you put the (Northern) Cheyenne and the Crow in the same district?

Commissioner Rehberg: In the same Senate District.

Rep. Fisher: No, not the same Senate District, the same House District?

Commissioner Pretty On Top: There is a House District that has both Northern Cheyenne and Crow voters in it currently and under the new plans. The 1990 Commission adopted a plan that put Crow Indian voters from the Gerryowen area, all the voters along Highway 212, and by the Little Big Horn River east into the Northern Cheyenne Reservation. They are combined.

Adam Graham, Independent Correspondent, Montana News Association: As I understand the law in the state of Montana, if you live within a county, you don't have to live within a House District to run for election for a district in that county. Would it be correct that you could, because there are those two voters in Flathead County, that if you lived in Kalispell, you could run in proposed district #1?

Commissioner Lamson: The law in Montana is if the district is totally within a county, any member of the county can run in the district. If the district includes more than one county, you have to live in the district. With respect to your question, could a person living in Kalispell run in that district (proposed district #1), no, because they do not live in the district and it is a multi-county district.

Commissioner Rehberg: You heard this several times. I would like to point out that many of us . . . I guess our big disappointment on proposed district #1 is that it was determined long before there was a public hearing. It came about as a result of our Attorney General asking the Commission if they would draft a resolution to placate the ACLU and the Earl Old Person lawsuit that has been pending since the Apportionment Commission of 10 years ago. Unfortunately, it was a three to two vote. Elaine Sliter and I voted in opposition to it because we felt that you were entitled to a hearing prior to the time that the boundaries were set for proposed districts #1 and #2. As a result of it, Susan Fox has included those districts in everything that she has proposed because the resolution was passed.

I find it very interesting that there is a lot of commentary tonight about minority and protections. In case you haven't guessed, the Republican minority on this Commission has been totally ignored all through the entire process. We are used to it right now, but nevertheless, it is there. It also should be apparent to you that there is an agenda item by the three on the majority of the Commission that, at all costs, are going to increase Native American voting rights. I have no problem with that, if in fact, we were doing it according to the criteria that was established. But they use a lot of definitions of their own to determine what criteria or how they determine what the criteria is. Now, tonight, I have only heard one person speak in favor of Plan 300. I can guarantee you that between now and when the letters are in, the majority will make every effort that they can to get as many petitioners and signers to say "Yes, we really are in favor of Plan 300", although they didn't show up at the hearing. I can also guarantee you, most of you who have made presentations, what you had to say will not be considered very seriously as the majority of this Commission makes their determination.

Commissioner Rice: I think it has to be responded to when accusations, such as the ones that were just made, are made. There are two Republicans--a Senate member and a House member, John Esp and Lorents Grosfield--who came to the Commission and said that these are the changes that we would like to have. They were able to work with this Commission and offer amendments that the majority members of this Commission adopted. I might mention that the minority members, who are also Republican, voted against the very amendments that their own Senator and Representative members brought forward.

I think that it is an insult to say that we haven't listened in the public hearings. We have made dozens of amendments to these plans--from the proposal until they were adopted. We encourage you to work

with us and talk to us about what is needed. We can't please everybody. This is an incredible balancing act, but I pledge that I have written down everyone's name tonight, I've written down every comment, and we read every single piece of paper that comes across our desks. We do not ignore anyone. With the balancing act, we cannot please everyone. But, it is totally unfair to say that these hearings don't result in changes to the plans.

Commissioner Jellison: We have not voted in favor of any of the amendments that have been proposed because we don't want to ruin the perfect record that the other side has. Besides which, when the amendments are offered, we are unsure what the details are so we just won't vote for them unless we know. I would also like to indicate that there has been very little acrimony among the members of the Commission. It's gotten a little tense in the last couple of meetings. But, by in large, these are folks who are doing their job as they see from the appointments that they received to be on the Commission. They are sincere in what they are doing. I think that all of them are fine people, even us, and it has been a pleasure working with them. I don't want you to get the impression that when we criticize what they do that we are criticizing them personally. I like them, they just happen to think wrong. They probably also feel maybe that I think wrong.

Commissioner Lamson: We do have our disagreements, but at the end of the day, we have to draw a line. There have been numerous amendments. We have listened to Clerks, independents, Republicans, Democrats, and all kinds of people. My phone and vehicle have gotten much use in the last two years doing this because that is part of the process. Just for clarification of the record, former Commissioner Barkus, on a couple of occasions, voted with the Democrats because we were supporting amendments that were supported by local Republicans and because they were in the interest of both parties in those areas. We appreciated the openness in working with Commissioner Barkus in the past.

There has been comments made tonight, and I think we can clarify the little problem here in Flathead County. It makes perfect sense, and we have done that in numerous places. We are waiting to hear from the Lincoln County people. Lincoln County has some interesting things. When they did census blocks, they did some very peculiar ones. There is a census block that runs under the Kootenai River so there is not a lot of population there. Sometimes you look on a map and things look different or really odd. Many times that can be easily explained if you look at the exact composition of those census blocks which is what we have to go by when we are putting the districts together. We will be making decisions all the way through March (2003), so this isn't finished until then.

Commissioner Pretty On Top: I would like to point out that the Commissioners are here this evening with the possibility of having no support to come here. As you well know, our Legislature has second and third thoughts about the support for this activity. But, we are very interesting in being here in this part of the state. It is of the utmost importance to understand what is going on and what people are thinking. We have all come at the risk that we may never be reimbursed for this trip.

Rep. Fisher: I would like to clarify that for you. The House passed the bill to take your money away from you. But, the good Senators put it back for you. So, you have plenty of money.

Vince Woodhouse, Candidate, House District 84: I am the Democratic candidate for House District 84. We do have diverse opinions and that causes change. Change is the essence that makes us all different, but it allows us to make decisions and allows us to stretch. It also allows us to step out of comfort zones. I challenge you all tonight to put the parties aside. Don't think party. Look at the plan, find what you see in the plan, but put parties aside. Remember to step out of you comfort zone and don't be afraid to change. Let's look at change. If it fits, let's use it. If it doesn't, let work with these people and create something that will work.

There being no further testimony, the public hearing adjourned at 8:40 p.m.

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