



# Montana Districting and Apportionment Commission

PO BOX 201706  
Helena, MT 59620-1706  
(406) 444-3064  
FAX (406) 444-3036

## Commission members:

Janine Pease Pretty On Top  
Presiding Officer  
P.O. Box 447  
Lodge Grass, MT 59050

Joe Lamson  
612 Touchstone Circle  
Helena, MT 59601

Jack D. Rehberg  
2922 Glenwood Lane  
Billings, MT 59102

Sheila Rice  
913 3rd Ave.  
Great Falls, MT 59401

Gregory Barkus  
PO Box 2647  
Kalispell, MT 59903

## Staff:

Susan Byorth Fox  
Research Analyst  
John MacMaster  
Attorney

## 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.**

### EXECUTIVE SESSION Third Meeting of Interim Energy West Hospitality Room Great Falls MT November 13, 2001

#### COMMITTEE MEMBERS PRESENT

Janine Pease Pretty On Top, Presiding Officer  
Joe Lamson  
Jack D. Rehberg  
Sheila Rice  
Gregory Barkus

#### STAFF PRESENT

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

#### VISITORS

Visitors' list (ATTACHMENT #1)  
Agenda (ATTACHMENT #2)

#### COMMITTEE ACTION

- Approved to allow that written comments from the North Central region be accepted until three weeks after the Havre/Glasgow hearings
- Approved March 2003 as a target date to adopt the North Central and the North East Regional plans at its Executive Session

## **CALL TO ORDER AND ROLL CALL**

The Executive Session was called to order by Commissioner Pretty On Top at 3:05 p.m. Roll call was noted; all Commission members were present. (ATTACHMENT #3) Commission members and staff introduced themselves.

## **REPORT ON OLD PERSON V. BROWN**

**Susan Fox, Research Analyst, Legislative Services Division:** The 1990 redistricting plan was challenged at the federal District Court level. The finding of “no vote dilution” was appealed to the Ninth Circuit Court. The Court decided that there were errors in the decision and remanded it back to the federal District Court. The trial was held last week (November 5 and 6, 2001). Judge Phillip Pro from Las Vegas was the Judge appointed to the case and was the same Judge who heard the Blaine County Voting Rights Act case previously in October. The Judge instructed the parties to schedule their post-trial briefings which should be completed by December 21. Judge Pro realizes that both the Blaine County and the Old Person cases were, in a sense, linked and indicated that the decisions would be rendered very close together. Although he did not state when the Old Person decision would be made, Judge Pro realized that the remedy sought by the plaintiffs was that time is of the essence. He indicated that he would be attending to it very quickly over the Christmas season.

**Commissioner Lamson:** It was a very interesting hearing. Both sides presented their points amiably and I was also impressed with the Judge’s understanding of Montana’s situation. He was very up to date on the actions of this particular Commission in the passage of the Old Person resolution. He made references to it several times and it seemed like it might be as the Commission had hoped--a vehicle that may somehow resolve the situation. I introduced myself to the Judge and he personally complimented the fine work that our staff person, Susan Fox, did to provide information. It was a very good, no nonsense hearing. The Judge kept everybody right on the point and I am hopeful that he will give us a decision quickly.

**Commissioner Rehberg:** Is there any possibility that they will force a redistricting prior to this Commission?

**Ms. Fox:** That is the remedy that is sought, to have redistricting in place for the 2002 election, but what we are waiting on is the Judge to decide to what extent. If he finds both dilution and imposes a remedy, then we have a lot of decisions that we need instructions from the Court on as to what the extent of the remedy would be and which data the Court would use. If the Court imposed a remedy, the plaintiffs have sought this Commission to be joined to help assist in the remedy because traditionally, the state is allowed to follow its process in the remedy. This is one of the outcomes that could be amended by the Court.

**Commissioner Rehberg:** Which could mess up a lot of other districts wouldn’t it, or have an affect on them?

**Ms. Fox:** That was part of the issue in the Court of whether a remedy needs to be narrowly tailored or how far it would go from the area in question, which is current House Districts #85 and #73. So, it will be up to the Court to tell us.

**Commissioner Pretty On Top:** So it is obvious that as we go around the state, there are situations that will have a domino effect as Commissioner Rehberg is alluding to. The last we met, we were looking at a possible settlement. The Governor and Secretary of State were

making motions or working with the plaintiffs on a settlement. Obviously, they went to Court and that wasn't settled. Could you bring us up to date?

**Ms. Fox:** I wasn't part of those discussions but Attorney General McGrath came and asked the Commission to voluntarily join in to help with the settlement proceeds. As you indicated, they failed, and that is why we ended up at trial in November. I am unsure of all of the issues, but part of it was not having a Judge to replace Judge Hatfield which is why the trial took longer. I know that the resolution that the Commission has adopted was taken into consideration, but there has been numerous court cases that have also been settled around the country in the course of the last five months that I think may have influenced the settlement negotiations.

**Commissioner Lamson:** I was still urging both parties, as late as a week before the trial, to see if we could get something worked out. Both sides seemed to be amicable to it but neither side could agree on a solution.

**Ms. Fox:** The case currently before the Court is for the 1990 plan and not the current plan in front of us.

**Commissioner Barkus:** Could I get some clarification from Commissioner Lamson on the resolution that was passed? Was it used in the Courtroom as evidence or was it just referred to?

**Commissioner Lamson:** I believe it was actually introduced. The Judge is going to rule on whether it was relevant to this particular point, but it was certainly freely discussed by both parties, I believe.

**Ms. Fox:** The resolution was included as part of my expert report as an attachment. The new plans were what the Judge had received. So, he received, in essence, the same packet that you did but it was not accepted as an exhibit. He just took judicial notice of the new plans. The resolution, itself, was used as part my expert report to instruct the Judge on why a remedy may not need to be imposed in 2002 because this Commission had indicated its interest in pursuing districts that were similar to the ones at issue.

### **NORTH CENTRAL REGION PLANS**

Ms. Fox provided an overview and maps of the proposed Plans 100, 200, 300, and 400 regarding the North Central Region. (EXHIBITS #1 and #2 respectively) Ms. Fox: I will give a brief overview and then maybe we could have some dialogue. Since this is our first time that we have done this, I am unsure what I need to do or what would be the most helpful to you.

There are basically three plans even though we have four here. Plan 400 is a reiteration and slightly different than Plan #100. So it is not a completely different plan. Plans 100, 200, and 400 are the ones that I developed, and you will notice they are more similar in nature. Plan 300 was developed by Commissioner Lamson in his work around the state. But we both started with the same basic concept of two proposed districts--House Districts (HD) #1 and #2 which are the creation of majority-minority districts. HD 2 in Plan 300, HD 1, and the remainder of Plan 300 is the new HD 85--the current district represented by Carol Juneau. HD 2 is part of what is HD 73 in Lake County. As you can see, they all use different parts of Lake, Flathead, and Glacier Counties in this district. This district in Plan 100 goes from Browning, including East Glacier, Pablo, Ronan, St. Ignatius, and Arlee. I believe it is the same in Plan 400. Plan 200 doesn't go as far south. It only goes to St. Ignatius, so therefore, it uses more of Glacier County. Plan 300 uses parts of Lake, Flathead, Glacier Counties, and a bit of Pondera County to include the remainder

of the Blackfeet Reservation. One-half of the Blackfeet Reservation is in Pondera County so it includes the town of Heart Butte in with the southern part of Browning.

You can see the similarities but there are different ripple effects. Cut Bank is actually not in HD 1 or HD 2, so Cut Bank is in different districts. In Plans 100, 200, and 400, Cut Bank is with Shelby. In Plan 300, Cut Bank is with Conrad developing its own district with Liberty County and Fort Benton. Because we haven't visited what will be the Northwest region or the Northeast region, and some of the other areas, some of the outer counties are illustrated to give you an idea of how far we might have to go to go to complete these districts. But it anticipates the Commission not completing these districts until we are actually in those regions. This is a choice that you have to make. The regions were not as clean this time as they were in the past. We have a little more spill over, ripple effect.

As we move across the Hiline, we see the various ripple effects of which counties get split, which counties get shared, and which cities and towns are together. One of the major concerns of the Commission was Cascade County which is why we are here today. Plans 100 and 300 keep all of Cascade County's population intact and within Cascade County districts. This was a very important consideration. Plans 400 and 200 don't do that but they show some of the ripple effects of switching populations. My major issue there was that there was too much population in Teton County and the ripple that was left over from what we were doing up in this corner. This shows you that the Fairfield part of Teton County will be completed with the Lewis and Clark County district. Plan 300 illustrates it very well about how far we will have to go into Lewis and Clark County to complete that district, and it keeps it a rural district. The communities of interest work real well and there are some good transportation corridors. Plans 400 and 200 shows different parts of Teton County that might be shared if, in fact, they shared it with a Cascade County district. The difference is that Plan 400 doesn't give you much choice because we have landlocked that extra portion here. Plan 200, on the other hand, Cascade County could be, in essence, interchangeable in any of these plans--like a puzzle piece. You can do that with Cascade County in Plans 100, 200, or 300, but you cannot do that with Plan 400 without changes.

As we move across the Hiline, you can see Plan 300 has a different configuration of districts that has Shelby with Liberty County and the northwest part of Choteau County. It leaves one district completely within Hill County and includes part of Havre, basically west Havre. The eastern part of Havre is in within this district which includes Chinook , northern Blaine County, and it uses the Milk River as a natural dividing line. This district combines the Rocky Boy and Fort Belknap Reservations and continues its population in southern Phillips County and part of Valley County, not including Glasgow or Malta. This sets up, in essence, to connect a district, as proposed last time, a Senate District with Fort Peck. We have to be careful up here because I'm not sure how the population works, so there might have to be slight adjustments from Plan 300.

Plans 100, 200, and 400, because of the current HD 8 in those three plans, is the same district that exists now in HD 92 because its population is one of the few districts that was near the ideal population. It also maintained and enhanced the American Indian voting age percentages in that district. It is basically this portion of the Counties where the population is found in southern Phillips and Valley Counties.

The Lewistown district is slightly different in two of the plans depending on which boundary that you want to use. Most of the plans use the existing district boundary around this part--forest service boundaries, a river, or creek. Perhaps people from the Lewistown area can inform us which configuration suits them best. But, it does include the entire town of Lewistown. There is a census-designated place called the Lewistown Heights. It is not a part of the city limits of Lewistown but a suburb of Lewistown. The rest of this district is completed using Garfield County for population--about 1,800 people. This one in Plans 100, 200, and 400, because it has all of Choteau County and splits Fergus County, it attempted to use a precinct boundary to make it easier on the counties if, in fact, they have to redo their precinct boundaries. If we have Fergus County and Petroleum County, this district goes further east to Garfield County to complete the population, this shows you that you can use Wheatland, Golden Valley, and Musselshell Counties. Obviously, this district, if you look at the existing district, goes down into Broadview and Yellowstone County and is shared with a Senate district further east. This will have to come into consideration at a later date.

One of the concerns that we heard repeatedly from people in Cascade County, both in 1990 and continued today, was their concern that the existing districts split the rural Cascade County area, took pieces and parts, and shared them with everybody else for population. We had Belt with the Fergus, Judith Basin, and Petroleum County districts. We had Monarch and Neihart down with the Meagher district and Cascade down here with the Lewis and Clark district. This is something that Cascade County wanted the Commission to look at, and we were able to because of Cascade County's population growth. It did not have as high a growth as the rest of the state but it got to maintain its existing districts. There are nine House districts in Cascade County. All of the plans pulled Belt, Neihart, Monarch, and Cascade together into one district. Plan 300 takes the Fort Shaw-Simms area and includes it with the district that goes closer into Great Falls. This plan takes the Ulm area into Great Falls. This district is a little bit bigger, takes Ulm, and goes down toward Cascade.

Malmstrom Air Force Base switches places in different plans. I suspect we will hear from people tonight as to which district people on the Malmstrom Air Force Base may prefer to be in. There is also some difference in the northern district in the Great Falls area.

**Commissioner Rehberg:** I remember the discussion 10 years ago--the distance from Belt east 200 miles. Plan 300 extends it even further.

**Ms. Fox:** Correct, in the illustrations where we need population; but as we pointed out, we can look at some alternatives.

**Commissioner Rehberg:** It would really be a very difficult district to have. Where you get back over to this one, at least, you would change it into an area that is more contiguous.

**Ms. Fox:** Right. That district can be, even if you did desire to do Plan 300, something that we could look at is where do we find the other 1,800 people if we don't take it from Garfield County. Do we come further south or how do we do that? Also, there is some interest in the people from eastern Montana about how this affects the districts further east. Another issue brought up numerous times before is how big are the districts going to be.

**Commissioner Lamson:** Our big problem out in the eastern part is the lack of population in those areas. Those districts, by definition, are going to get larger even with Garfield County moving out. The districts on the other end of that side will not be quite as spread out which is

what Representative Kasten was concerned about. You can do it flat or you can do it round, but we still need use our basic criteria of getting 9,000 people into a district.

**Commissioner Pretty On Top:** When you were talking with the people in Cascade County, did you essentially have the drafts of the plans or have they developed since that time?

**Ms. Fox:** They have developed since that time. I didn't have much to share with them other than the population report that you received which showed how much the districts had changed. I discussed with the various parties different issues of, okay, if this district needs 1,500 people, where is the most likely place to get them? Part of issue is that even though you didn't adopt existing districts, and I made no attempt at maintaining existing district boundaries, I did use those as my starting point because I had the population deviancies. So, they will look more similar to existing districts, where as Plan 300 didn't find itself that way so they had more freedom to develop new district according to what the constituents wanted.

**Commissioner Pretty On Top:** In so far as our public hearing tonight, are we likely to have folks from all of these counties or is it hard to know?

**Ms. Fox:** It is hard to know. The legislators from these areas and the Central Committees have received the plans. I sent them to Lake and Flathead Counties as a courtesy, as well, so they would know what was coming. I tried to make it clear that since we were going to be in Browning, I would expect more people from this area at the meeting tomorrow night. There will be a meeting in Havre later, so I am not sure if we will get people from this area or not.

**Commissioner Pretty On Top:** It will be important to look at each plan with the people who are at the hearing this evening since they had the opportunity to see the plans prior. What kind of attendance did you have at the last Commission meeting?

**Commissioner Rehberg:** Very good turnout, especially in the Indian districts. There was better attendance at that point than at a lot of them. Better than the average.

**Commissioner Pretty On Top:** Commissioner Rice, do you have any comments?

**Commissioner Rice:** I have only been contacted by one or two people and they more or less just asked for an explanation. I haven't heard any specific issues that are likely to come up.

**Commissioner Barkus:** When are we going to hear from the public on the Flathead County issues. Could it be in Browning or Kalispell?

**Ms. Fox:** I expect that you will hear it on both sides. You may hear some tonight as well. Because both districts are in Glacier county, I would suspect that you will hear a great amount of testimony at Browning, but again, because we are affecting another region when we come around to Kalispell and probably even the Missoula hearing, additional testimony will be received.

**Commissioner Barkus:** What are the approximate populations involved east of the Continental Divide in all four of the plans--just the small piece in Glacier County?

**Ms. Fox:** The portion in Flathead County is very minimal because it is mostly wilderness area. The vast majority of the population is in Lake County that is on or near Highway 93. I'm sorry that I don't have the number.

### **DEBRIEFING ON STAFF VISITS**

**Ms. Fox:** I was asked by MACo to discuss County Commissioner redistricting in Glendive. Since, I was there, I decided to do my eastern Montana visit. I visited Glendive, Sidney, Malta, Poplar, Glasgow, and Lewistown and met with one group in each location, along with one subcommittee of the Fort Peck Tribal Council. I had Plan 300, or at least its beginning to show them. I also had some ideas about what needed to happen. We lost one house district and will

lose another house district in northeastern Montana. We discussed, if you are going to lose a house district in here, what is the combination going to look like. Basically, HD 98 needs to be extended. Because the Fort Peck Reservation continues into Valley County, the communities of Frazer and Oswego might share communities of interest with HD 98. Bill Whitehead shared with me the water project happening in that area and it gave me some new boundaries and ideas on communities of interest. They are not thrilled with being split in half but they also understand. I said to not be surprised if there will be a plan or two that will do that. Part of the issue is that there will be three house districts in this area and I have about 600 extra people that have to be dumped out into another district. I had showed them a plan that shared the Bainville area, crossing the Missouri River into Richland County. It was like that in the 1980s. They said to not do that. So they made it very clear that they like the Missouri River as a clean boundary. That was the benefit of Plan 300 because it works that population differently. If we stick with Plans 100, 200, or 400, they suggested that there are nice precincts that are outside of Fort Belknap. I haven't had a chance to look at the population in that area. Former Representative Betty Lou Kasten and now her husband Dave, who represents the district, followed from meeting to meeting and discussed how much bigger can a district get in order to be as big as Rhode Island. The Kastens believe that the population areas in Sidney and Glendive should be split to share populations. Jim Pasma of the last Commission was of that mind because they get represented by two people. Nobody else thought that was a good idea because the Yellowstone River made a perfect boundary and you don't split up the development on the other side of the river from Glendive.

**Commissioner Rehberg:** Can you try real hard to make Forsyth a district? I mean that County rather than divide it into three?

**Ms. Fox:** Rosebud County really took it last time. The issue is, which goes to what Commissioner Lamson was talking about in this district, if we don't make this a complete district by going into Rosebud County. There will probably be a plan that will try to be kinder to Rosebud County. Both HDs 5 and 6 need additional population so it will raise this up further. Hopefully, we can stay out of the Colstrip area because once we get into that population, it gets more difficult. We are creating a ripple effect which will bind the Commission to some decisionmaking. My next visits will be in the Miles City and Forsyth areas. I will try to have information to make Forsyth a district and I need to add population to HDs 5 and 6 creating a ripple effect in the east.

**Commissioner Pretty On Top:** Which map in particular was discussed with them?

**Ms. Fox:** The only one that they saw was Plan 300 and they didn't know about the others. I talked about this issue because I did see this as a fulcrum as an easy place to complete one set of districts. I told them about the conflicts and to expect a plan that started with this line and extended across. They know that there would be two variations. In Lewistown, they were the ones who brought up completing this district to go south. However, one of the legislators mentioned that he didn't want to be at the meeting in Harlowtown.

**Commissioner Pretty On Top:** How many visits have you already had across the entire state?

**Ms. Fox:** It has been a whirlwind tour. I went to Great Falls, Choteau, Conrad, Browning, East Glacier, Cut Bank, Shelby, Chester, Havre, Malta, Lewistown, Glasgow, Great Falls, and stopped at Glendive.

**Commissioner Pretty On Top:** Could you characterize your schedule?

**Ms. Fox:** Depending on how we structure our hearings, I have an idea of what I would like to do. In the middle of December, depending on the weather, I would go to Miles City and come down

the Yellowstone River Valley--Miles City, Forsyth, Hardin, and Crow Agency and come back through Billings.

### **MANDATORY AND DISCRETIONARY CRITERIA**

**John MacMaster, Staff Attorney, Legislative Services Division**, provided an overview of the mandatory and discretionary criteria adopted by the Commission in April 2001 for the purposes of legislative redistricting. (EXHIBIT #3)

**Ms. Fox:** In the last redistricting round, the Commission had John briefly go over the criteria for the audience at the public hearing in the evening. In light of John's comments, it might be good to ask the people who are testifying at the public hearing to use the criteria terms when testifying. It may help give you more information. In the trial, "communities of interest" was talked about a lot. They are subordinate to any mandatory criteria, but it does help, especially the communities themselves, are telling you what they consider their "communities of interest" to be. It is invaluable information.

**Mr. MacMaster:** Susan and I decided that the criteria and operational guidelines will be available at each Commission hearing. At the beginning of each hearing, I will state, not going into the depth I did just now, these are the criteria that we are using so that people will know. There are certain things that the Commission is bound by.

**Commissioner Barkus:** Are you stating then that these four plans follow the mandatory criteria.

**Mr. MacMaster:** No. I'm not stating that.

**Commissioner Pretty On Top:** We have to apply those tests as a Commission to find out if they do.

**Ms. Fox:** I developed the plans and reviewed them in light of the criteria. It is a balancing act. Whether one criteria is totally fulfilled in each plan, that is up to you to make that judgment.

**Commissioner Rice:** I just wanted to make a distinction that the mandatory criteria were imposed on us. We adopted the discretionary but I don't view the discretionary as discretionary in each and every district that we look at. To me, these are all items that we need to look at in order to adopt districts. The way the word discretionary is used might be confusing. These are the criteria that were adopted regardless of whether or not they mandated for us or discretionary for us.

**Commissioner Barkus:** You amended the discretionary criteria in a previous Commission meeting, am I correct?

**Commissioner Lamson:** We started with a blank slate and different people and different Commissioners proposed the discretionary criteria.

**Commissioner Pretty On Top:** And actually as a Commission, we voted on the criteria so that we established it by majority vote.

**Commissioner Barkus:** The mandatory criteria were adopted by the Montana Constitution rather than the Commission.

**Commissioner Pretty On Top:** There are also guidelines that we receive from the federal government with those mandatory criteria.

**Mr. MacMaster:** Discretionary comes in two senses. One sense is that, at your discretion, you can either adopt or not adopt a number of things up front before you even start looking at your first plans that you will choose to look at when you are drawing plans. They are also discretionary in the sense that for any given district, you can follow it or not follow it. It is your choice. What you should do in each district is at least consider each discretionary criteria with respect to each district. There are court cases that state that there are three or four districts out of 50 that you totally ignored certain discretionary criteria that you could have applied. You have to be careful. You have to at least look at the discretionary criteria with respect to every district. You don't have to apply any of them if you don't want to but you have to at least look at them.

**Commissioner Pretty On Top:** In spite of them being called discretionary, it seems that our Commission went through a considerable amount of dialogue in making the choices to distinguish those criteria, though they may be discretionary, from others that we did not choose. I also think they were made very serious. We specifically have chosen them and they are on the record and important to this Commission.

**Ms. Fox:** It is important that they are applied equally to all districts. You can't just say that I like this discretionary criteria over here but I don't like it over there. The trick is, and everybody acknowledges, that redistricting is a balancing of that criteria and some are going to receive greater weight than others. Obviously, the mandatory ones have to be followed. But, cutting a county line or cutting a town in half because of attempting to equalize population, it does not mean that you totally didn't consider it. It's just that it had to be subordinated to a mandatory criteria. I agree that you chose them, you adopted them specifically, and they are the guidelines that I use. I don't decide that I like this one for this plan and this for this plan. I try to maximize for as many of them as possible in each plan. But, it is not humanly possible to maximize for every criteria.

**Mr. MacMaster:** The mandatory criteria, if that is all you want to look at, is relatively easy to follow. The hard part is the discretionary criteria. Within the parameters of compact districts with equal population, that is what Susan is doing--trying to follow these discretionary criteria and trying to please everybody.

**Commissioner Barkus:** Just for one final clarification that the discretionary criteria cannot override the mandatory criteria.

**Mr. MacMaster:** That is right.

**Commissioner Pretty On Top:** One is clearly more important. It is ultimately important for the mandatory and the discretions can be subordinated.

#### **SCHEDULE FOR WRITTEN COMMENTS**

**Ms. Fox:** The last Commission allowed a 3-week period for written comment after a public hearing. We are in a different boat here because we are not completing the regional hearings all at once. So, I wasn't sure how you wanted to deal with that. The next question I get after they understand what our process is: When will you adopt a plan for this region?

**Commissioner Rehberg:** Why aren't we doing a specific area rather than a whole general area? Last time, we did a specific area and we knew what we were talking about, they knew what they were talking about, and there was a time frame. I don't how we can even talk about Flathead Lake until we have the Kalispell hearing which is scheduled for May and June. So, I'm

not really sure why we are doing it at this point. I thought what we would do is Great Falls this time and some of the Browning area.

**Commissioner Lamson:** Part of it was that we got pushed. Originally, we got thrown off with the untimely death of Rep. Sliter, and our original schedule was to do this area which we call the Old Person region, that was part of the resolution along with the Cascade area. Then we were going to do Havre and over to the other side. This got abbreviated with the schedule.

**Ms. Fox:** The resolution had different ramifications than we had before, plus, the population shifts haven't made for as clean of lines as we were lucky to have the last time. The Commission adopted a starting place and a way to go. If you preferred to stop where we are now, or you can finish the northeast and go back to the northwest so you could complete a district, you have the opportunity to change your mind.

**Commissioner Rehberg:** It would be a cleaner operation for the public to be involved that way.

**Commissioner Pretty On Top:** There are so many changes and shifts, this is a year in which we have changes all over the state that impact. It is such a domino effect--if you make a decision here, but yet its going to impact something over there, you might be cutting off the opportunity for discussion that could impact a good decision.

**Commissioner Rehberg:** That was argument against starting in one area here rather than starting or working around the state as was done in the past. Sheila definitely wanted to start in Great Falls. I'm not sure why. It would have made more sense to me to start in the northwest corner and complete it or somewhere else. But when you start in the middle, then you are trying to deal with the discrepancies and variations.

**Commissioner Lamson:** This isn't as difficult of a problem as its being made out to be. The only complicating part of it is including part of the Flathead, which is not a whole lot of Flathead. That is mostly Bob Marshall Wilderness area and part of the lake. What were again trying to do, was to help the state out and resolve a very thorny issue so that we don't have to go through redistricting twice. All four of these plans and what they do in Lake County have actually minimum ripple effect over in those particular areas because we have such large population over there in the census blocks, that you can move things around fairly easily. Secondly, when we adopt these particular plans, they are tentative plans and could very well be changed up until after the Legislature receives these plans. There is nothing written in stone. The reason that we were starting over there was to try to get Montana to avoid going through the very disruptive process of having two redistrictings done in a 2-year period and resolve this very thorny issue. Those parts of Lake County can be moved around very easy. The population census blocks give us maximum flexibility over in that area. Whereas in these other areas, we don't have quite the area because the population decreases. That is why we wanted to go there to try to move out and be responsive to the rural interests, try to hear their concerns, and get them ready for the possibility of losing some representatives.

**Commissioner Rice:** I would like to propose a **motion** that we adopt the North Central region plan three weeks after the completion of the Havre/Glasgow hearings.

**Commissioner Lamson:** Are you talking about stopping the public comment? It is about a 4-week period in between the various meetings.

**Commissioner Rice** withdrew her motion and rephrased it to allow that written comments from the North Central region plans be accepted until three weeks after the Havre/Glasgow hearings.

**Commissioner Barkus:** The North Central plan obviously includes Flathead Lake and there is not going to be any public comment regarding that area--west and south of the Continental

Divide. I do not know how you can possibly adopt this district plan or any plan for this region without having public comment.

**Commissioner Lamson:** One, you are assuming that we wouldn't hear anything in Browning or this evening from some folks over there. And again, when we go back and adopt these other regions, when we get into that particular area, we are going to hear a lot from the folks over there. When we have our Executive Session, any motion is in order and at that time, anybody can say we believe that this particular district, which was tentatively adopted last February needs to be adjusted. That is part of the process.

**Commissioner Barkus:** Just for clarification. Are we tentatively adopting these plans and at what stage are they finally adopted?

**Commissioner Pretty On Top:** We present them to the Legislature and then the Legislature approves the plan in 2003.

**Commissioner Rehberg:** But you are not likely to make any changes. Once you have adopted what you are doing right here, you are not going to be very willing to go back and make any changes. The last Commission made only one change, if I recall, around the Rocky Boy Reservation. You are not kidding anybody if you think that you are going to approve this and then come back and review it because you are not going to do it. And, you are disenfranchising those people the opportunity for a hearing.

**Commissioner Pretty On Top:** Well, Commissioner, I am not sure. It is a new process and I think there is the possibility that we will find information that will impact our decisions.

**Commissioner Rehberg:** I think that the decision has been made right now.

**Commissioner Lamson:** Yes, the bulk of the plan that is presented to the Legislature will not be changed dramatically, though it can be. There is nothing that prohibits that. The 1980 Commission had quite a few changes that was adjusted by the Legislature. There were problems with Senator Kolstad's district in that he lived in an area that was no longer in his district and it was a multi-county area and changes were made along with Rep. Ramirez's district in Yellowstone County. Changes can be made and the plans are not in stone.

**Commissioner Barkus:** Does the Legislature approve the plans or just make recommendations to us?

**Ms. Fox:** The Legislature is allowed to make comments and recommendations. They could disapprove of the plans but that doesn't happen. The plan stands. As soon as they return it to you, you have 30 days to do whatever you wish.

**Commissioner Barkus:** I still think it would be inappropriate to approve a plan prior to having a public hearing. There are probably 8,000 people that live in the affected areas in Flathead and Lake Counties who will not have an opportunity to go to a public hearing unless they want to travel over the Continental Divide to Browning.

**Commissioner Rice:** Commissioner Barkus, would you like to schedule a public hearing in Kalispell to solve the "sticky wicket" that we are working on?

**Commissioner Barkus:** Perhaps, we could just begin the process by rescheduling a public hearing with Kalispell to start the redistricting process in the northwest corner. Obviously, this is the North Central plan, maybe we could go there next and work across the state as stated in the recommendation that we start in a corner of state and work around in a circle, which would fulfill that recommendation.

**Commissioner Lamson:** We have begun the process. It started in Great Falls, MT, on the 13th of November and will move on into Browning. It is not a question of starting the process over in the northwest corner.

**Commissioner Barkus:** I think you are now recognizing the problem with starting in the central part of the state. This is one of the problems--the ripple effect that goes out from areas that probably don't even know that they are being talked about today.

**Commissioner Pretty On Top:** What kind of communication do we have with folks in Lake County about our hearings today and tomorrow?

**Ms. Fox:** I did have some people on the mailing list who had expressed an interest in what we are doing right now and they have received a full packet. The legislators and Clerks and Recorders for both Counties have also received a full packet. I had hoped to but have not had the time to discuss this with either of the Clerks and Recorders from Flathead or Lake Counties nor have I had much discussion with anybody but a couple of parties from that area. My contact in that area has been fairly limited.

**Commissioner Lamson:** One potential solution is that we could adopt this particular plan and leave out what is the Lake County part of that plan. The other point is that Lake County, when you look at how many people are there, uses basically the eastern portion of the County and there are three house districts in Lake County. We could tentatively adopt district numbers XY through there and leave that one off until we are back over in that area.

**Commissioner Barkus:** At least there would be some public comment to that affect and notification. It would be more palatable.

**Ms. Fox:** I will look this up for you and find out how many people you are potentially affecting on this side. What you are suggesting is to adopt districts that are wholly contained in the North Central region. This would apply also to some of the other plans that have gone into Phillips, Valley, Garfield, Musselshell, and Golden Valley Counties. It is the same philosophy that any of these districts that need to go out of that region will be excluded from whatever motion you adopted. You're right, you do end up with a ripple effect and it does limit it but, as you can see, there is at least three different ways of using population in Lake County. It had always been my intention that these were illustrations, but that once we did get to discuss more of the plan, the lines could be cleaned up. If I get you that information tonight, it may help you to know what you are left with--what the gap is that you have to fill in the counties that you won't be adopting.

**Commissioner Lamson:** I think we have found an opportunity to adopt those districts that are wholly within the North Central region and, of course, leave off the parts that are outside of the region.

**Commissioner Rice:** I just want to clarify that the motion is only talking about public comment. We have a separate motion to deal with the adoption.

**Commissioner Barkus:** Does that mean that public comment on the Flathead area is terminated because it is in the North Central region?

**Ms. Fox:** On the top of your document (Montana Districting and Apportionment Commission--North Central Region (See Exhibit #1)), I listed the counties that I considered the North Central region. It doesn't include Flathead or Lake Counties. If you accept and adopt that definition of North Central region, and as suggested, districts wholly within the North Central region, it doesn't preclude further comment for any of these people who are affected at this point in time. When we get to their region, they will get a lot of comment time.

**Commissioner Pretty On Top:** A point of clarification on your motion. The public hearing in Havre is tentatively scheduled for sometime in the week of January 14th--the 3-week period would follow the Havre meeting.

**Commissioner Rice:** Three weeks following the completion of the Havre/Glasgow series because they are in the same week. Regardless of when we schedule them, the closure for comments under my motion would be three weeks after that.

Commissioner Rice's motion passed unanimously.

**Commissioner Pretty On Top:** Is the adoption of the North Central region plans an action that we need to take at this Executive Session?

**Ms. Fox:** People are asking me when am I going to visit and when am I going to have public hearings. If you want to go through the future meeting schedule and, if in fact you are going to meet in February, the Commission did do this the last time, is that in this afternoon meeting adopt one region and then hear the plans for the next region that evening. It would be after your 3-week written comment period. You would have a week to digest the written comments.

### **FUTURE MEETING SCHEDULE**

The Commission discussed its future meeting schedule and decided the following:

- Commissioner Rehberg **moved** that March 2003 be the target date to adopt the North Central and the North East Regional plans at its Executive Session. Motion passed unanimously.
- Agreed that maps and information for the hearings be received between 10 days to two weeks ahead of each hearing;
- Agreed that its next meeting be held on January 16 and 17, 2002, with a 3:p.m. Executive Session and 7:00 p.m. public hearing in Havre on the 16th and a 1:00 p.m. public hearing in Glasgow on the 17th;
- Agreed that its February meeting be held on February 19 and 20, 2002, with afternoon public hearings to be held in Miles City and Lewistown respectively; and
- Agreed that the Commission's March 2002 and subsequent meetings dates be kept as proposed but not be finalized until its Executive Session in January.

**Ms. Fox:** We will be completing the Yellowstone River Valley and I will target those areas. We won't have to target a specific town to visit.

**Commissioner Rehberg:** I think a visit to the Crow Agency is a good idea.

**Ms. Fox:** I will do that when I'm visiting the area and find out where a good place might be to hold the hearings.

**Commissioner Rehberg:** I would like to reiterate what Mr. MacMaster said about the Commission being very careful about what it says at the public hearings. Some comments the last time were not taken well.

There being no further business, the Commission recessed at 5:05 p.m.

CI2255 1330loxa.