



# 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.**

### PUBLIC HEARING, LEWISTOWN CENTRAL MONTANA COMMUNITY CENTER FEBRUARY 20, 2002

#### 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)

#### CALL TO ORDER AND COMMISSION PROCESS

Because Commission Pretty On Top was delayed, the public hearing was called to order by Commissioner Lamson at 3:15. p.m. Attendance was noted; all Commission members were present. (ATTACHMENT #2)

**Commissioner Lamson:** Montana's 14th amendment to the Constitution mandates a 1-person-1-vote process. As the Census changes, the Commission has to change borders to accommodate that.

**Susan Fox, Research Analyst, Legislative Services Division** provided an overview of the Commission's process for legislative redistricting. (Please refer to Ms. Fox's explanation of the Commission process in the February 19, 2002, public hearing minutes in Miles City.)

**John MacMaster, Staff Attorney, Legislative Services Division** provided an overview of the mandatory and discretionary criteria adopted by the Commission for legislative redistricting. (EXHIBIT #1)

**Commissioner Pretty On Top:** Our Commission has been meeting since 1999. This will be our 6th meeting in a series of 12 hearings across the state. As you are preparing to make your testimony, we would invite you to criticize or comment on a specific plan to help the Commission fine tune its work. We have had tremendous participation in our public hearings.

**Ms. Fox** provided a overview of the Central Region plans. (EXHIBIT #2)

**Plan 100:** Proposed district 5 is the same district 5 that was proposed in the Northcentral Region plans. Lewistown stays intact under proposed district 9 but an additional area had to be added in the southwestern portion of Fergus County. Proposed district 10 includes the remainder of Fergus County along with Petroleum, Musselshell, Golden Valley, and Wheatland Counties.

**Plan 200:** Proposed district 5 is basically the same. Proposed district 22 is slightly different than Plan 200 in the Northcentral Region. With a little "tweaking" and if the boundaries are more preferable, they could be worked back into Plan 200. The way we complete the district changes dramatically. It includes the remainder of Fergus County along with Petroleum, Garfield, McCone, and Prairie Counties, and part of Dawson County, not including Glendive, and part of Richland County, not including Fairview or Sidney. We are able to maintain the Native American majority districts in all of the plans, but there are variations on where we need to get additional population.

**Plan 300 A-Central Region:** Once we get out of Petroleum County and east, Plans 300A and 300B are identical. Plan 300A keeps Lewistown intact in proposed district 22. The remainder of the district is similar to what it was in Plan 300-Northcentral but it takes a greater portion of areas across the Missouri River. Proposed district 21 takes in the remainder of Chouteau County along with all of Judith Basin County, the remainder of Fergus County, all of Petroleum and Garfield Counties, and part of McCone County, not including the town of Circle. The Richland County district is shared with Roosevelt County. Proposed district 32 uses part of Powder River County and it brings the district lines down to the reservation lines. Proposed district 30 includes Musselshell County; northern Rosebud County, not including Forsyth; the northern one-half of Treasure County, which includes Hysham; and an area in Yellowstone County north of the Yellowstone River. Plan 300A keeps Lewistown intact.

**Plan 300B-Central Region:** Plan 300B shows how we split towns and use the population to mitigate the impact in the rural areas or what happens when we keep towns intact. Plan 300A keeps Lewistown intact while Plan 300B splits Lewistown and uses Highways 191 and 87 as dividing lines. It would create one house district with the remainder of Chouteau County, all of Judith Basin County, one-half of Lewistown, and the northern one-half of Fergus County.

Proposed district 21 continues with the remainder of Fergus County, Petroleum, Garfield, and McCone Counties, not including the Circle area. The difference between Plans 300A and 300B is in the Fergus County area.

**Plan 400:** Plans 400 is closer to Plan 200. It uses Musselshell County to complete proposed district 21 which allows the district to not go into Richland and McCone Counties. There is also a difference in the Native American district using Powder River County to complete the population. It also mitigates the impact in Yellowstone County.

#### **PUBLIC TESTIMONY**

**Joe Spika, Fergus County Commissioner:** Our first choice is Plan 300A, with some reservations. We work with Judith Basin, Fergus, and Petroleum Counties in our 911 and other law enforcement processes. We would like to keep these counties together. There is a natural boundary between Chouteau and Fergus Counties at the Arrow Creek Breaks. I am sure that Chouteau County would like to keep its county together because it is quite a distance from Fort Benton to McCone County. Our second choice is Plan 100.

**Ed Butcher, Senator, Senate District 47**, provided written comments urging the Commission to split the city of Lewistown similar to Plan 300B and replace Chouteau County with Wheatland County. (EXHIBIT #3)

**Ann Pasha Chairman, Chouteau County Republican Central Committee**, provided written comments in support of Plans 100, 200, or 400 and strongly opposed Plans 300A and 300B. (EXHIBIT #4)

Ms. Pasha also submitted a letter from Jon Tester, Senator, Senate District 45, urging the Commission to either re-evaluate all of the plans or scrap them all. (EXHIBIT #5)

**Marv Hoffer, Chair, Democratic Party Central Committee, Fergus County**, provided written comments recommending changes to proposed districts 12 and 30 and opposing any attempt to divide Lewistown proper. (EXHIBIT #6) These recommendations are not like but come closest to Plan 300A of the Southeast and Central Region plans.

**Bill Thomas, Representative, House District 93:** I would like the Commissioners to introduce themselves; and I would like to know their occupations, their political affiliations, and their legislative service history.

**Commissioner Barkus:** I am a stockbroker from Kalispell, I have had no legislative experience, and I am a Republican.

**Commissioner Rehberg:** I am a Republican from Billings. I started my occupation as a fry cook and ended up a banker. I have served in both the Montana House and Senate.

**Commissioner Pretty On Top:** I served as President of the Little Big Horn College for 18 years, and adult and higher education is my field. I now own my own business. Mr. Pease (Gerald), who is the Senator (from her district), is a very close cousin of mine. I have helped many legislators campaign. Always a campaigner, never a candidate. I am from Lodge Grass and I sway toward the Democrats. However, I was appointed by the Supreme Court, by a

unanimous decision, due to the fact that my fellow Commissioners were agreeing to disagree on a Presiding Officer.

**Commissioner Lamson:** I am from Helena, and I currently work for the Office of Public Instruction. I have also been involved in many legislative campaigns for the last 28 years including Ed Butcher when he was of a different persuasion. I am familiar with just about every part of the state in terms of where the districts are. I am a Democrat appointed by the House Democrats to serve.

**Commissioner Rice:** I am from Great Falls and was appointed by the Senate Democrats to serve. I work as a manager at Energy West--a utility company in Great Falls. I was elected as a legislator in 1990 and 1992.

**Representative Thomas:** I am very disappointed that only two out of five of you have had legislative experience, and there is no one representing rural Montana, except your Chairman. I am disappointed that there are not more people representing us because we are the people who are being affected the most. There is a misconception that you are elected, you go to Helena, and you do your job. The misconception is that the primary portion of your job is those four months while in Helena. This is not true. It could be one-half, if that much. Our job as a Representative or Senator is to be in touch with the people in our districts. There is absolutely no way that a district that stretches more than half way across the state of Montana can keep us in touch with our constituents. It just does not work that way. I, as a Representative, have worked on law enforcement issues, livestock taxes, school funding, recommendation letters for many of the young people who live in my district (I know them personally), and water issues. There is no way that I could know a young person half way across the state or further and write a letter of recommendation for them. I should be able to do that. I know my district. It is compact which is one of the prerequisites that we are talking about. A thing that looks like a stretched out piece of spaghetti is not compact. If there is anything, I would have supported Plan 100 but I am going to go with the Hoffer plan because that is what we are really looking at here.

**Commissioner Lamson:** We are all concerned about rural Montana which is one of the reasons we are doing our hearing process in rural eastern Montana because that is where most of the population loss has occurred. As Chairman Pretty On Top has said, we are going to have 12 hearings. Six of those hearing are in rural eastern Montana. If you are doing percentages, 50% will involve 30% of the legislative districts that we are drawing. We are very interested in hearing their views which is why we adjusted our hearing schedule accordingly.

**Jerome Kolar, Chairman, Judith Basin County Republican Central Committee:** Could you clarify the differences between Plans 300, 300A, and 300B? If I understand correctly, that will not change any of the districting into Cascade County. Will it alter it any?

**Ms. Fox:** No, the only county that it affected in the Northcentral Region is Chouteau County. Everything else in the Northcentral Region remains the same.

**Mr. Kolar:** Are we safe to say that Plan 300, as it was in November, still stands for everything except for the minor change in Chouteau County.

**Ms. Fox:** Yes

**Mr. Kolar:** What level of Court decided that the 1990 redistricting was okay? Is it being appealed and who is it being appealed by?

**Commissioner Lamson:** The case being referred to is commonly known as the Old Person case. The federal District Court recently ruled in favor of the 1990 redistricting plan and let the plan stay. It is now being appealed by the plaintiffs who are four citizens involving four different legislative districts in Glacier, Flathead, and Lake Counties. They are represented by the ACLU (American Civil Liberties Union).

**Mr. Kolar:** Has it been accepted for the appeal process into the Court of Appeals?

**Ms. Fox:** We have not received any information on whether it has been accepted or rejected.

**Mr. Kolar:** If it had not been appealed, would the plans have changed any?

**Ms. Fox:** This is a whole separate redistricting Commission. The Commission is free to make any changes to the plans, but there is nothing in the decision that makes the Commission change them.

**Commissioner Pretty On Top:** The data on Montana between the 2000 and 1990 Census has changed considerably. In our deliberations, we are very bound to look very carefully at the dynamics of our population. We cannot really say that our deliberations will look like the 1990 plan.

**Mr. Kolar:** I stand in opposition to Plan 300A and support Plans 100, 200, and 400. If you look at the maps, Judith Basin County melts into all of them in one way or another, but Plan 300A, from our aspect, is totally unacceptable. I look at this as an opportunity to push representation off on a group of rural voters who do not have the ability to contest what they will be left with under Plan 300A. Not only will voter of proposed district 21 in Plan 300A not be financially able to contest Plan 300A if it becomes reality, candidates wishing to represent this proposed district will find their campaigns financially draining and time consuming. Bear in mind, the state of Montana has 145,388 square miles. Under Plan 300A, it will be 14,867 square miles. Ten percent of Montana's land mass will be in one district if Plan 300A becomes reality.

Bear in mind, if Plan 300A becomes a reality and a candidate chooses to run for office in proposed district 21, they will deal with eight local and regional newspapers and five radio stations to get their message out. If we were to go with Plans 100, 200, or 400, the land mass would be cut in half. We would be down around 8,000 square miles. Can you imagine campaigning in a legislative district that stretches from Great Falls to Billings? Now, with this plan, it goes beyond Circle. It is 367 miles from Fort Benton to Vida Montana which are both in the proposed 300A district. What legislator can represent that and represent it fairly and decently?

Speaking from experience as a Central Committee Chairman, we have had to look long and hard for individuals wanting to represent the legislative district as it now stands, which is Judith Basin, Fergus, and Petroleum Counties, not including Lewistown. I can guarantee that there will be a time when we will see our County Commissioners appoint our legislator for proposed district 21 under Plan 300A if it becomes a reality. Is that fair representation? In conclusion, if Plan 300A does become the accepted plan, I feel that it will border upon taxation without representation; and once again, will the Courts have to decide? Unfortunately, it will be up to the Commission to decide whether it wants the Courts to once again decide the fate of Montanans.

**Commissioner Lamson:** Part of our difficulty is the tremendous land mass in these areas, and I am not happy with that either in many ways. That is why I took to heart the comments made in Great Falls. Do you think that Plan 300B would address your concerns even though you prefer Plans 100 or 200?

**Mr. Kolar:** Plan 300B would be acceptable to me. My thinking is with Chouteau County, I do not know as a county whether I would want to be divided. I have been quite surprised with some of the other cities that are clapping their hands that they will be represented by one person. I think it would be dandy, especially in rural Montana that is losing its legislative representation, to have two votes representing Chouteau County instead of one. So yes, Plan 300B would be an acceptable plan to me.

**Terry Gill, Chair, Fergus County Republican Central Committee:** I have horses and I have horse shoes and, working non-partisan, I certainly like the sound of Marv Hoffer's plan although I have not seen or heard of it until now. I think a common sense approach is to look at the Class C tournaments--basketball and football. Look at the geographic areas that we cover and the trade areas. All of the things that you folks are trying to do are covered by Class C tournaments. That is where people come to shop and go to church.

I do not understand how the Senate districts work in with this? Am I to understand that you would pick these legislative districts and then, later on, you would decide the Senate districts or that there would be a second hearing process on how the Senate districts apply after this? Would we have any say so in that process? How could we endorse anything without knowledge of that?

**Ms. Fox:** Part of the difficulty is that we adopt the House districts first. The same Commission adopts the Senate districts. After the elections and once we know who the 25 holdover Senators will be (Their terms cannot be shortened by the redistricting process.), whomever is elected will serve two years under the existing redistricting plan and two years under the new plan. The Commission will take as much information as it can under consideration and will have one or two different plans of Senate pairings. There will be one public hearing on the Senate district pairings in Helena. Ten years ago, there was considerable discussion about alternative pairings and a lot of ideas that came from the public hearing. Senate districts are required to be composed of two contiguous House districts. How the Commission will adopt the House districts will affect the ability to pair certain senate districts. After the public hearing on the Senate pairings, there will be one more hearing on all 150 House and Senate districts giving two opportunities for public comment.

**Commissioner Lamson:** The Senate pairing hearing will be held in Helena on November 21 to coincide with when the legislative caucuses meet so all of the Senators are in one place at the same time. It is certainly not just a Senator's hearing. It is for anyone who wants to come.

**Commissioner Pretty On Top:** The Commission's record on these plans is open for three weeks, and the plans that you see are our best representation of ideas that we think serve within the criteria that we have adopted. We are very open to whatever comments that you may have. I served for eight years as the Chairman of the Democratic Party in Big Horn County, and I know exactly how hard it is, up to the 11th-and-one-half hour, to find candidates in large districts. Our Commission is very sympathetic and very interested in that difficulty and looking at that as an overlay in all of the plans. Eastern and central Montana have some real challenges. There is just no way to cut it that is going to make everybody happy.

**John Witt, Representative, House District 89:** I would like the definition of "following the lines of political units"?

**Commissioner Pretty On Top:** Political units means voting precincts, counties, town, cities, school districts, and Indian reservations.

**Representative Witt:** Has everyone in Montana the right to come forward and come up with a plan? Can I have Plan 900?

**Commissioner Pretty On Top:** Yes, you can.

**Representative Witt:** If I can have Plan 900, I would like to put together a plan because I think we are discriminating against rural Montana. That is what this whole process is about and that is why we are doing it because we do not want to discriminate against anyone. But, we are shifting the load away from rural Montana and not giving them the opportunity to have representation, and we are giving it more to the populated areas. I understand the numbers but I do not think it is the correct way to do it. I think acres, distance, and mileage need to be weighed in. It is not fair. You, as a Native American, want to be fully represented in the House of Representatives, the state Senate, and Washington D.C. We, as rural Montana, want to be represented in all of those places too.

Plans 100, 200, 300, and 400 are diluting everything we have had in rural Montana. Agricultural is still number one in this country, and we are taking the representation away from agriculture by diluting these areas. In your deliberations, I think this is very important. Logically, as a Representative of HD89 and a former Chouteau County Commissioner, I definitely want to keep Chouteau County whole. As stated by the Chairmen of the Republican Parties in the Counties, we like Plans 100, 200, or 400. I will support that, but I am not sure that we are being represented under some of the plans. We want to represent the people within the contingency that we represent. Those folks are the ones that we deal with. You heard it over and over, how some people come to Fergus County, some go to Great Falls, and some go to Havre. That needs to drive redistricting too so that we keep the folks from these communities together rather than split them up. I do not want to say this for the record, but I will. If, because of the makeup of the Commission, we are forced into Plans 300A or 300B, I do believe that 300B is the best option for Chouteau County. From my perspective, I wish this Commission was weighted differently than it is but that is not the case.

**Commissioner Rehberg:** I totally agree with you. The rural people are being left out unfortunately. The 1-person-1-vote that changed the Senate from being one Senator from each county, changed all of that. When we had that, we had the best of all worlds. But, we do not have that anymore so our hands are tied. I would like to do exactly what you are saying, but when you start looking for 9,000 people, that is when it becomes very difficult if you do not include some of the urban areas.

**Representative Witt:** An appropriate thing to me is to shift some of the power that comes from the reorganization that is going to happen by using population from Cascade County. I think it is appropriate to take some of those numbers and bring them into Chouteau County and include part of Chouteau County in Cascade County. The numbers are there to do that. If I were a Democrat, I would be very concerned about doing that because maybe they do not wind up with one seat that they have always controlled. I would be opposed to that. But, I think that is where it is at, to bring some of the areas, such as McCone and Garfield Counties. Talk about people being left in the dark. No matter what happens in Fergus, Judith Basin, and Petroleum Counties,

I certainly feel sorry for McCone and Garfield Counties. There are many readjustments that could be done, and I think that Mr. Hoffer's proposal had some merit.

**Commissioner Pretty On Top:** There are so many philosophies about how these lines get drawn. If cities are preserved as a donut hole, you leave people in the rural areas beating the bushes to fined 9,000 people. It is interesting to me why people in the rural areas are saying we want one-half of the town that is nearest us. Why is that not happening? I, as a Commissioner, think that somehow people in towns and the country side have a great deal in common. This is done only every 10 years. What we do is going to put us into a situation of establishing those lines, and for a whole 10 years, we are going to struggle with them.

**Mr. Gill:** The appeals are still going on from the 1990 redistricting. Are you anticipating that this Commission's plan will also be challenged, appealed, and go on for another 10 years? If we are going to be sued anyway, lets do the plans the way it works for everybody at large and not for a minor few. Lets just do it the way we want and just be sued for 10 years so it can end up being moot too.

**Commissioner Pretty On Top:** As a Commission, we are doing everything we can to address issues properly within our best conscience. With that as a guide, it will help us avoid the kind of litigation that hit the 1990 Commission. I am sure that there will be disagreement across the table, but I think we have the opportunity to do a very fine job.

**Joy Wicks, Lewistown:** Maybe one of the problems is that we are basing it on a wrong premise to start with-9,000 people. In Montana, 9,000 people is not a magic word. Maybe we have to mitigate that with area. It is a ridiculous number for the rural areas to remain compact and be of any value. It seems to me that the number has not come down from God On High.

**Commissioner Pretty On Top:** It may be close to God On High, but everything can be adjusted.

**Ms. Fox:** There is a plus or minus 5% or 10% overall population deviation. The U.S. Supreme Court has said we will give you that leeway in legislative districting. In Congressional districting, they do not allow that. As you get closer to local governments, the more leeway they give you to accommodate these issues. They just have never made any accommodation for land base or area. The 1-person-1-vote process is what the U.S. Supreme Court has deemed the law of the land. It is right, however, that it is hard to find 9,000 people.

**Ms. Wicks:** The western states should look into this because they (Supreme Court) have not a clue as to what it is like to live in rural Montana and how we live. To them, 9,000 people is nothing. I think we should take the chance and make the changes.

**Commissioner Barkus:** That would require a change in Montana's Constitution in order to do that. We cannot deviate from the mandatory criteria of the Constitution. We have some leeway in the discretionary criteria, but the mandatory criteria was cast in stone by the Constitutional Convention in 1972. We cannot deviate from those four criteria.

**Joe Trow, Winifred:** The two items in the criteria that absolutely amaze me are "following the lines of political units" (Somebody has to have and know those lines.) and "following the geographic boundaries of TIGER/Line files of the U.S. Bureau of the Census" which do not have county, city, or township boundaries. When they go to do this, we have a data base here and this there, but it all has to start from one point. No matter where you draw these lines, they have to

start from one point. If we use the TIGER/Line base, we cannot find them and they change whenever someone wants to change them. When the TIGER/Line Files came out, they were used by school districts that could not find their own school district boundaries by it. Now you are trying to put a whole bunch of things together to represent us. If I do not know where your boundaries are, you do not know where I am. I have asked this same question for 10 years and there is no answer yet.

**Ken Evans, Chouteau County Commissioner:** I have a problem with Plan 300 because some of the districts are bigger than a lot of states on the east coast. Chouteau County can go along with Plans 100, 200, or 400. Most of our social events and recreational and church activities are held in either Fort Benton, Great Falls, or the Big Sandy areas. Our shipping for marketing cattle or livestock is Great Falls. With the 15,000 square-mile district in Plan 300A, we would not have representation. We would never see the representative of that area, and I would not even know how the representative would cover the area. With eight newspapers and 5 radio stations in that area, I do not know how you would ever make it all work. Chouteau County recommends Plans 100, 200, or 400.

**Monty Sealey, Central Montana RC and D, Roundup:** The mandated criteria of compactness does not exist where I am from except in Plan 100. Just across the Missouri River at Melstone in Rosebud County to Wibaux is about the same problem that you have in Plan 200 when you go from Winnett to Sidney, which is even farther. Plan 400, from Roundup to Circle, if just as far as it is from Great Falls to Billings. Compactness is not even close in those plans. It seems that there should be some way to cut down the size of the districts.

Coming from Musselshell County, I have to come to a meeting in Lewistown to see what plans Musselshell County is in. We are in Plans 100, 300, and 400 but are left out of Plan 200 so I have to go to the meeting in Billings to find out where Musselshell County is in those plans. We cannot show our preferred plan at this meeting because we cannot see rest of the district. The mandated criteria states that the districts have to be compact. These are not compact. Maybe Wibaux County could go in with Sidney to get some the size of the areas down.

Musselshell, Golden Valley, Wheatland, Judith Basin, Fergus, and Petroleum Counties feel, in some sense, that they are central Montana, recognizing that Lewistown is the geographic center of Montana. The Central Montana Resource Conservation and Development area, the 6-county health district, the Snowy Mountain Development Corporation are all included in the same six county boundaries that I mentioned. These are the people we do business with in the public sector. The people we do business with economically spreads in every direction. Plan 200, wherever Musselshell County ends up, I am not sure that we will end up with anyone that we do business with other than commerce in Billings. Plan 100 reflects where Musselshell County conducts quite a bit of its business. Plan 300 absolutely does not. we have zero in common in any business we conduct other than we share a border. Plan 400 reflects a little bit until we get to Garfield and McCone Counties, two counties that we have nothing in common with at all. If compactness and who we do business with are the mandated and elective criteria, the plans need to have a little more thought on for the rural areas. We need to gerrymander it a little differently.

**Commissioner Lamson:** Anyone can draw a plan as Mr. Hoffer did. That is part of the process.

**Lee Iverson, Petroleum County Commissioner:** Petroleum County would prefer Plan 100 for all of the reasons mentioned before. We hate the thought that Fergus County is split because Fergus, Petroleum, and Judith Basin Counties have been in one district for years. It has worked good for us. Plan 200 is a long way from Winnett to Fairview. Plan 400 is our second choice.

**Alan Olson, Representative, House District 8:** I agree with Mr. Sealy's comments about Plan 100. Wheatland, Golden Valley, and Musselshell Counties are a district, and the ties that tie the central part of Montana together are ties that cannot be ignored. It is the economic development organization, Snowy Mountain, RC and D, and HRDC all tie this area together. Senator Mack Cole wanted to go on record in support of Plan 200 and would be interested in moving proposed district 29 in Plan 200 down to the Northern Cheyenne Reservation boundary in Rosebud County and take any access population that they have because of that out of Yellowstone County. Plan 200 would be my second choice. Proposed district 29 in Plan 300 has parts and pieces of five counties. Proposed district 32 in Plan 300 has parts and pieces of three counties. This is not representation. Plan 300 definitely has to go. My third choice is Plan 400.

**Senator Butcher:** I do endorse Mr. Hoffer's proposal. I would like to suggest that you consider splitting Lewistown so that you have a east and west representative rather than a circle.

There being no further public comments, the public hearing adjourned at 4:50 p.m.

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