

# MACD LEGISLATIVE AD HOC COMMITTEE

## DRAFT MINUTES

from the

Friday, 16th October 2020 Zoom Meeting

1. In attendance: Jim Simpson; Greg Jergeson, Steve Schanaman, Bob Petermann, and Jeff Pattison. Others in attendance included MACD Executive Director Rebecca Boslough, MRCDC Coordinator Liv Stavak, Flathead Conservation District Resource Conservationist Hailey Graf, and Mark Bostrom and Laurie Zeller from DNRC. The zoom was staffed by Jeff Tiberi
2. The minutes of the 18th September 2020 LAHC conference call were approved.
  - a. Tasks follow up from those minutes:
    - i. **EQC follow up:** Tiberi drafted a letter for Rebecca's signature addressed to the three Congressional Delegates to express our interest in helping to move the Wilderness Study Area issue forward, but it might be better to wait until after the election so we know who is there. The Committee concurred.
    - ii. **Water Policy Interim Committee (WPIC) followup.** A message from Pat Riley: *"I had a long discussion regarding Geocodes and other WPIC proposals for Legislation and all that is being proposed is clean up and I advise that we either don't comment or send a letter of support to WPIC. My thoughts. Pat."* The LAHC does not want to comment on the Geocodes issue. Tiberi briefed the Committee about a conversation he had with Supervisor Ron Stoneberg from Valley County Conservation District, who delivered comments to the 13th October WPIC meeting (seen below under **COMMENTS TO THE WATER POLICY INTERIM COMMITTEE 10/13/20**). These comments are related to the MACD Resolution working its way through consideration by membership. Also, see DNRC's comments below under **COMMENTS FROM DNRC REF THE STOCKWATER RESOLUTION FROM VALLEY**. Supervisor Stoneberg informed Tiberi that the WPIC will place this issue on their schedule, but it was unclear if this would happen during the Session or at another time. Senator Welborn from the Beaverhead is interested in this issue, and may pursue something during the Session.
    - iii. **DNRC budget flowchart idea:** No action.

- iv. **Meet and Greet in 2021:** Tiberi is working with Montana Club ref details. Melissa found the file and Tiberi has all the details from 2019. Next task: Draft a letter to co-sponsors inviting participation.
- v. **Strategies if the Session is Electronic:** Quote from the August minutes: *“Personal relationships will be at a premium, thus making it imperative that individual Districts make a substantial effort to establish contacts with Legislators. Having the cell telephone numbers of your District’s members of the State Legislature is number one priority. Handwritten letters and postcards are effective. Tiberi was asked to prepare a one page document for the Districts that keynote these, as well as speaking points and our focus areas for the Session.”* In response to this idea, see the draft **2021 CONSERVATION DISTRICTS ISSUES PAPER** below. This was prepared in cooperation with DNRC. Tiberi was asked to send this in final draft form to the Committee for one last look, with a return date of 23rd October requested.
- vi. Nepotism issue (materials previously sent to LAHC) - This issue is dead for the time being unless we hear a rising interest from the Districts.

### 3. New Business:

- a. Area Meetings Update - all completed, MACD Convention awaits. Tiberi had no questions from participants about his presentation. Rebecca reported that she is looking into voting software to assure the integrity of voting that occurs during the MACD Convention.
- b. Session rumors - 1. Gavel in, go to recess immediately. 2. Democrats will not meet in person. Either or both scenarios - What are the implications for Districts? The Committee thought that if Legislators conduct the Session remotely from home that there would be more opportunity for interaction with their constituents in the Conservation Districts. Districts are urged to think about this and ways to interact with both Senators and Representatives. Jeff Pattison said that if they end up working from home, the “ball is in our court” to communicate and inform them of our issues. Hand delivering information about our issues, including the Issues Paper once finalized and the brochure once finalized will be important. Mark Bostrom suggested that a summary of the MACD Resolutions that have passed would be appropriate. Should Legislators work from home, the role of the membership becomes more important. Laurie Zeller suggested that LAHC meet on zoom with those Districts that conduct their meetings that way, to inform them about opportunities that this would open up. If we divided the 58 Districts by the number of LAHC members, that would mean about 8 meetings per LAHC member that would have to take place in the next two months. There are

considerable logistical problems and more thought would have to be put into the idea. It was stressed that Districts need to have the same message statewide for best results. It was also noted that some legislative districts cover 4 or 5 Conservation Districts.

- c. Prepare a letter of introduction for each of the gubernatorial candidates? A suggestion was made on the MACD board zoom on Monday to tell the candidates what Conservation Districts do and to offer assistance with soil and water conservation issues, cabinet selections, policies, etc. Tiberi was asked to draft this. (UPDATE NOTE: The draft went to the LAHC late in the afternoon the day of this meeting. The draft also contains a request to discuss the distribution of any taxes collected for the marijuana initiative should it pass, with the idea of capturing some of those dollars. See “g” below.)
- d. Interim Committee Updates - None except the WPIC as noted above. Most should be done for the year.
- e. Conservation Districts Futures Committee Idea - Jim Simpson mentioned several weeks ago his concern about the future of funding for Conservation Districts, and the idea of a legislative resolution that studies the future of Conservation Districts. Greg Jergeson mentioned that study resolutions from the Legislature sometimes do not turn out as the initiators wanted. Another option could be a MACD Board of Directors appointed “Futures Committee” to take on this task. Tiberi mentioned that he had been part of one of these in the past and it was a large amount of work. Jim said that he would like to see the base amount available to each Conservation District be \$80,000. Jeff Pattison mentioned that unless coal sales increase, the tax dollars available would continue to decrease. He mentioned an effort afoot to increase coal sales overseas. The LAHC in general supported the idea of some sort of process that would look at the future, and recognized that it is a MACD Board decision to proceed or not. Some of the questions are: Why are CDs important to Montana? How do we show that we are the center for conservation in Montana? We need a detailed look at the laws on the books that address Conservation District affairs. (After the LAHC meeting thoughts from Tiberi - should the Board want to pursue this perhaps Laurie Zeller and/or Ray Beck could be engaged to lead this effort?)
- f. Important comment periods - What are some ideas for MACD to better manage this task? Currently open comment periods include the Nationwide US Army Corps of Engineers permit, the Keystone Pipeline, the Western Bumblebee potential listing, and the Montana Forest Action Plan. How do we capture all of

these, gather information from Districts, compile comments, etc? Tiberi mentioned that during his time with MACD, he was unable to keep up with the frequency of comment periods. At times comment periods directly related to a MACD Resolution fell through the cracks due to the workload in the Helena office. The LAHC suggested that MACD consider delegating these responsibilities to Districts that have a direct connection to the comment period in question. Tiberi suggested hiring a person out in the Districts who would be responsible for checking once per week what comment periods are open.

- g. Possible Funding Source if the Marihuana Initiative Passes. MACD has no direction from the Districts regarding this, but this is a one time opportunity. The proceeds may be locked in already. The Committee had a general discussion about this issue, but ultimately said to wait until after the election to see if they want to pursue it. They asked that this issue be included in the introductory letter to the gubernatorial candidates as noted above.
- h. Four (now six) documents update - Tiberi and Boslough. See below: **HINTS TO TALKING TO LEGISLATORS - FROM GAYLA IN CASCADE** and **IT ALL ADDS UP - From DNRC**. Tiberi was asked to move forward with these and get them finalized. We may need to make a “booklet” since there are so many documents now, and some graphics may be in order. The MACD Education Committee would like to see these on the MACD website. Jeff Pattison suggested getting graphics from Susan Fox in the Legislative Services Office. (After the LAHC meeting comments from Tiberi - In a zoom immediately following the LAHC meeting, Gayla requested that the names of the Legislators identified in the “HINTS” document be removed, as she did not have permission from them to include names.)
- i. Supervisor Election Law - See [https://leg.mt.gov/content/Committees/Interim/2019-2020/State-Administration-and-Veterans-Affairs/Meetings/Oct-2020/PD0007\\_SS.pdf](https://leg.mt.gov/content/Committees/Interim/2019-2020/State-Administration-and-Veterans-Affairs/Meetings/Oct-2020/PD0007_SS.pdf) This bill draft was sent to every District for their information. A couple of Districts wanted to know the history of this issue. See the information below: **SUPERVISOR ELECTION LAW BACKGROUND BY LAURIE ZELLER**
- j. 2020 MACD Resolutions Update - Jeff and Rebecca
  - i. Flathead Resolution Update - Flathead is working on contacting a local legislator interested in helping them with this issue.
  - ii. Pallid Sturgeon and NACD Northern Plains and MRRIC <https://www.nwo.usace.army.mil/mrrp/mrric/> - The Corps and MRRIC

are currently involved with the pallid sturgeon issue. Tiberi said that he was on the recent Northern Plains zoom and had mentioned that this resolution was winding its way through the MACD process. Tiberi agreed to let them know if it passes in November, but asked that the Corps not be informed until we know that it has passed.

- iii. AIS and North Dakota and South Dakota and NACD Northern Plains - Steve Hedstrom's comments to NACD Northern Plains - On that same zoom Steve Hedstrom, who is the MACD representative to NACD, mentioned the pending MACD Resolution so that NACD would know it could be coming down the pike shortly.
- k. Beaverhead Legislative Candidate conversation ref WSAs, WSAs possible assignment to the Soils and Lands Committee. Rebecca and Tiberi had a telephone conversation with a candidate who wanted to know more about the MACD interest in Wilderness Study Areas. He said that he would be interested in this issue during the Session. Jim Simpson indicated that this issue may be assigned to the MACD Soils and Land Committee.
- l. Resolution Overload - need strategies for those resolutions that pertain to the Legislature. A general discussion was had about ideas regarding the number of MACD Resolutions on the books. The idea of a five year review by the appropriate Standing Committee, as well as the idea of the sponsoring District helping in some manner were explored, but no conclusions nor recommendations for the MACD Board of Directors were made.
- m. Legislative Panel for Convention - Tiberi was asked to contact Representative Zach Brown to see if he would help. Representative Greg Hertz has already agreed to participate. Tiberi will ask Representative Brown to speak to water issues in Montana, and Representative Hertz to speak to the future of the Coal Tax. The idea of a pre-recorded 5-8 minute presentation was discussed as a fall back should schedules change and impact their live participation.
- n. **WESTERN BUMBLEBEE ISSUE** See below for details. (NOTE: Immediately after the LAHC meeting, Heidi Fleury from Lake Conservation District was asked to play a leading role in preparing comments, as she has familiarity with the pollinator programs underway in the Districts. She agreed.)
- o. DNRC Retirements - implications for Districts regarding the Legislature and future directions. The list of imminent retirements at DNRC was discussed. Mark Bostrom detailed the people still on board and how duties and responsibilities

would be managed. He emphasised the overlap that was planned for Laurie's replacement, assuming the hiring process proceeds as planned.

- p. Forest Action Plan Comments - Tiberi researched and compiled comments ref this plan. See below: **FOREST ACTION PLAN DRAFT COMMENTS SENT TO MACD**
  - q. Area Meeting Procedures Comments - Tiberi added a few comments to the existing process document that details how to carry out Area Meetings. This document is in the hands of the MACD District Operations Committee.
  - r. Bill draft requests: 520+ See [http://laws.leg.mt.gov/legprd/LAW0217W\\$BAIV.return\\_all\\_bills?P\\_SESS=20211](http://laws.leg.mt.gov/legprd/LAW0217W$BAIV.return_all_bills?P_SESS=20211) Because of the Area Meetings, Tiberi has not been able to sort through all of these yet. The last time he looked there were 30 that had a title of interest, but that was when there were only 350 requests.
- 4. Comments from conference call participants not on the LAHC: None
  - 5. Open mic: Mark asked to start the weekly meetings with MACD and the LAHC agreed. The legislative resolution emanating from Lewis and Clark Conservation District was discussed.

## **COMMENTS TO THE WATER POLICY INTERIM COMMITTEE 10/13/20**

Ron Stoneberg, Valley County Conservation District Supervisor  
Member of the Badlands Grazing District of Valley County

First, a bit of history. The first water rights in the western U.S. were borrowed from the Spanish/Mexican laws that governed ranches in the southwest that were ceded to the U.S. in the early 1800's. They were modified to suit the needs of miners during the gold rush in California. The Act of 1866 formally recognized the "prior appropriation doctrine" for western water rights. The Act of 1890 codified that all lands west of the 100th meridian were prior appropriation doctrine states. The federal Desert Lands Act of 1877 separated the non-navigable surface water and the ground water from the federally owned lands and gave the water to the states. As a result, a water right only gives the holder a right to use the water, the state maintains ownership. In 1885, the Montana Constitution formally acknowledged that Montana was a prior appropriation doctrine state.

There are three rules or conditions in the prior appropriation doctrine that have been upheld by all the courts in the land:

1. First in time is first in right.
2. It does not matter who owns the land it is the user of the water that legally holds the water right. (this has been legally upheld for federally managed lands)
3. In order to get a water right the appropriator has to divert the water and put it to a beneficial use.

Ranchers homesteading in Montana used the adjacent public lands for livestock grazing and acquired water rights on these public lands. In 1934 Congress passed the Taylor Grazing Act which removed the remaining public lands from the public domain and allocated them to the adjacent ranchers. The ranchers received the right to graze the forage and recognition they owned **vested** water rights on their federal allotments.

On the dry federal ranges in eastern Montana the problem ranchers faced was storing the spring atmospheric water (rain and snow) that fell on their rangelands for use by their livestock during the dry summer months. This entailed building reservoirs and later pits. Remember, the ranchers only used the amount of water their livestock drank. Any excess was available to other users. No one contested the rancher's use of their water.

This was the situation for about 40 years with very few problems until the 1972 Constitution decided all water rights needed to be straightened out and adjudicated. The legislature then passed the Water Use Act in 1973 and everything changed, for the worse, for the federal grazing district ranchers.

The Constitution and the Act talked about adjudicating and protecting water rights that **existed** prior to July 1, 1973. In fact, the Act says, "existing water right means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973..." Unfortunately, they did not define what that law was. Prior to 1973 water rights in Montana were recognized as **vested** property rights. Even the Montana Water Court in 2005 (cases 40E-A and 41J-190) acknowledged that pre 1973 Montana water rights were **vested**. However, the DNRC bureaucrats and the recent Water Court judges have been playing a semantic game by replacing the word vested with existing. They are not interchangeable. Existing refers to something (i.e. it exists) while vested is a legal property right. For the last 50 years there has been a well orchestrated effort to interpret the Water Use Act of 1973 to separate the federal grazing district ranchers from their legally vested water rights.

The state civil servants responsible for the pre 1973 water rights adjudication have left the federal grazing district ranchers with two options. One is very expensive litigation, of which, the ranchers' case is solidly supported by the legal history. The other is for the Montana legislature to solve the problem.

You have to remember we are not talking about the water, only the use of the water. This is atmospheric water the most of which falls on the rancher's federal allotment. Most ranchers, or their predecessors, grazing livestock on their federal allotments have been continuously using this water for over 100 years and there were NO complaints or conflicts over the use of this

water. The adjudicators recognized this and in an effort to solve the log jam of filings recommended, and the Montana Senate passed in 1979, the exemption of stockwater filings. However, the Water Court later claimed that if you did not file you did not have a water right when your basin was adjudicated. Since no one else wanted to use this water and it was recognized the ranchers had to continue using the water for their livestock, the DNRC and the Montana Water Court are trying to give the ranchers' water rights to the BLM. This is illegal since the BLM does not divert the water or put it to a beneficial use.

We need the Montana legislature to codify the fact the BLM does not qualify for a Montana water right. Fortunately, Idaho faced the same problem in the late 1990's and after a successful, lengthy, expensive, legal challenge to the BLM acquiring Idaho water rights, the 2017 Idaho legislature finally codified the issue. The Montana legislature should use the Idaho House bill No. 592 which amended Chapters 2 and 5, Title 42, of the Idaho Code as a template to correct this problem.

## **COMMENTS FROM DNRC RE THE STOCKWATER RESOLUTION FROM VALLEY:**

- The concern is that certain ranchers have been grazing and watering stock on BLM allotments since before the Water Use Act was passed. The BLM filed claims in the adjudication for stock water rights. The ranchers argued that BLM was not the appropriator, but the ranchers instead had “vested water rights” that have been taken by BLM, or awarded to BLM by the DNRC (Assuming they mean through our claims examination process, but we are not sure on what basis DNRC could award anyone a statement of claim) and the Water Court. The Water Court and Supreme Court appear to have addressed the issue. The most substantive case is from 2016: *United States of Am., (Bureau of Land Mgmt.) Barthelmess Ranch Corp.* 386 Mont. 121, 131, 386 P.3d 952, 960. The resolution seeks to put the entire adjudication on hold until the legislation is passed that “recognizes the pre-1973 historic vested water rights and ensures these property rights are protected and upheld by all applications and interpretations of the Montana Water Use Act” and that “addresses surface stockwater rights on BLM administered allotments.” Even if that legislation was passed quickly this could delay the adjudication for years.
- With regard to DNRC’s role, it is unclear on what basis the proponents of the resolution claim that DNRC somehow divested ranchers of their vested historic water rights on their BLM administered allotments. The Water Court has exclusive jurisdiction to determine pre-1973 water rights. DNRC provides assistance to the Water Court in that effort, but has no jurisdiction over those existing rights.
- The Montana Supreme Court has weighed in at least two times on this issue in appeals of Water Court decisions. It is likely that the Water Court has ruled similarly in other challenges to BLM claims.



- In *United States of Am., (Bureau of Land Mgmt.) Barthelmess Ranch Corp.*, the Court held that the United States Bureau of Land Management perfected water appropriation claims to stockwatering rights in reservoirs it constructed on federal land for the use of grazing permittees; Bureau's storage of water in reservoirs constituted a beneficial use, water use on such lands by objectors' ancestral free grazers prior to Bureau's construction of reservoirs did not preclude the Bureau or any other person or entity from making a claim of water right in the same source, and the fact that the Bureau did not own livestock on land with reservoirs but rather used water for distribution to others did not preclude Bureau from perfecting claims.
- In response to the objecting ranchers' argument that BLM could not have a valid appropriation because it did not "use" the water itself, the Court also said: "Under the law established in *Bailey*, there is no "public service corporation rule," but only the recognition of a public policy of the state of Montana to allow and even encourage individuals and entities who are able to do so to appropriate water and make it available for use by others. *Curry*, ¶ 25. We also reject as being without support, the Objectors' argument that the BLM cannot appropriate water under Montana law because it does not separately charge grazers for the use of the reservoir water. Charging money for the water is not a requirement of perfecting a water right for "sale, rental or disposal to others." As long as the water is made available for sale, rental, or *distribution or disposal* to others, it is a valid appropriation under *Bailey*. As we recently held, Montana law "clearly shows a steadfast commitment to recognizing the ability to appropriate water for its ultimate use by a third party." *Curry*, ¶ 25. 2016 MT 348, ¶ 34, 386 Mont. 121, 131, 386 P.3d 952, 960. The Court found "there is no basis in fact or in law to assign ownership of the BLM claims to the Objectors."
- Also in the *Korman* case from 2018, the Court identified the issue: "This Water Court case arises from seventeen claims filed by the BLM in the ongoing Montana water rights adjudication process. The BLM claims, for stockwater and wildlife uses, arise from reservoirs on public lands along Beaver Creek, a tributary of the Milk River. Kormans graze livestock by permit on these public lands and claim that their ancestral free grazers perfected senior stockwater rights from the same sources by direct consumption from the streams. Kormans argue that the BLM therefore could not perfect any water rights in the reservoirs because of the prior stockwatering direct from the streams. Kormans also argue that the BLM could not perfect water rights because it never grazed its own livestock. Kormans also contend that the BLM claims are precluded by prior decisions by the Water Court in the Powder River Basin, and that the wildlife claims are precluded by the Taylor Grazing Act." The Court rejected the objections in this case for the same reasons it rejected the objections in *Barthelmess*.

## **DRAFT 2021 CONSERVATION DISTRICTS ISSUES PAPER:**

(Once finalized, this may be used as a handout for Legislators)

### **2021 CONSERVATION DISTRICTS ISSUES PAPER**

Below are the main issues that the Montana Association of Conservation District sees as key to the 2021 Session. Conservation Districts are interested in:

- An important funding source for getting conservation on the ground is through the Coal Tax. Among other services, these dollars help fund 40 + jobs in the smallest of Montana's communities, support Conservation District administration of 310 (which the Supervisors do for free), allows cooperation among conservation districts to work on locally-led river wide issues (river councils), and funds on the ground conservation projects. If this issue arises during the Session, we hope you will involve us in the conversation at the earliest possible time.
- One of our main responsibilities is administration of the 310 law for stream protection. We take great pride in carrying out these duties, both for the protection of our rivers, lakes, and streams, as well as serving all Montanans. Please include us in any conversation about the 310 law. It is working well, we are delivering timely and low cost services, and we've survived 4 Montana Supreme Court challenges of our ability to follow the intent of the Legislature and be fair to those Montanans involved as well as the water involved.
- The state agency we work most closely with is DNRC. They have requested \$160,000 over the biennium for providing technical assistance to Conservation Districts. These funds would be used to hire technicians for landowner conservation assistance, and include funds for the Milk River Conservation District Council at \$30,000 a year. Districts need technicians to help with on-the-ground projects, as NRCS cannot provide as much assistance as they have in the past. This would include providing technical work needed for fire and flood reclamation, soil health planning, and irrigation development. Funds could also be used to match federal funds, and could be used to hire area-wide technicians, allowing for cost savings.
- DNRC proposed legislation to clean up our Supervisor election laws. It was discussed at the State Administration and Veterans Affairs Interim Committee and came out as a committee bill. In a nutshell, the new law would fix a glitch when a Supervisor does not complete his/her term. Conservation Districts support this bill and we hope you'll consider voting in favor if it comes before you.
- The Montana Association of Conservation Districts (MACD) will adopt a number of resolutions this fall after statewide consideration and affirmative vote by a majority of Montana's 58 Conservation Districts. Assuming some or all of these are adopted, MACD will carry those that need attention by the Legislature forward to you for consideration.

The draft resolutions that may come before you currently include requesting a study of river bank erosion, Pallid Sturgeon and the Milk River (including the St. Mary Canal), and vested surface stock water rights.

· One of our long term concerns is the viability of the Coal Tax as a primary funding source for Conservation Districts. MACD is considering a “Futures Committee” that would look into the next decade and suggest ideas to help us continue to serve the people of Montana by conserving soil and water and other natural resources.

· There will no doubt be other issues that arise during the Session that pertain to Conservation Districts. We hope you will turn to us for ideas and comments as you consider your position.

## **HINTS TO TALKING TO LEGISLATORS - FROM GAYLA IN CASCADE:**

- Always introduce yourself and who you represent.
- Let them know where you are from, some minor statistics might be good (i.e. acres, farmers, 310 permits, etc)
- Be concise and brief
- Let them instigate more discussion through questions
- Do NOT fake your way through it; be SURE of your material
- When you say you are going to follow-up on something – DO IT ASAP!
- Do your research to find out best ties to approach; committees, bills, voting records, etc.
- Do not offer your opinion on something you are not affiliated with
- NEVER argue with them – it is not personal, it is their job
- Be light, be fun ... SMILE!
- Fine common ground (something other than politics) – something like fishing, family, books
- ALWAYS thank them for their time
- ALWAYS ask what you can do for them

## **COMMENTS DIRECTLY FROM LEGISLATORS:**

- “Know where your bread is buttered! Stick to conservation issues. Call your legislators in the evening to talk to them. Call them. Ask them to come to a meeting to make them aware! It’s important to make a connection.”
- “Communicate with them as soon as possible. Most communication comes through e-mail—they see these and noon or night. Keep it short and concise; they don’t read every bill, so be thorough when writing to them; include the bill number and exactly what you want them to do. Form letters are out! They all say the same thing – they are not original. Give them time to think about stuff—don’t hit them cold”
- “Protect your finances. I don’t like the phone, but I will take calls. Make a point to know them and they know you. It is a mistake not to do this. Call them or e-mail—find out what they prefer. Where does the CD authority come from? Authority comes from the legislature: it’s good to remember this. Work to remain non-partisan. THE TRUTH STILL MATTERS! Don’t be disingenuous. Make sure you stay on conservation issues if you are representing CDs. Think about political ramifications. Know the issues! For instance: clean water vs litigation about water. STUDY THE ISSUES--Don’t get involved with those things that are irrelevant to you. Don’t be “sorry” to call your legislator.”
- “The earlier you communicate with your legislators the better. Remember they are citizen legislators” and they are really busy from election on. Be patient with their rate of response; they get a lot of communications so follow up. Make an appointment to see them. Craft a relationship with your legislators. Be judicious, but use that relationship. Don’t assume what legislators know or don’t know. Don’t make enemies! Be polite; their bills are their baby so don’t shut someone out. Don’t be afraid to approach them if they have a bill you oppose, but be honest and forthright and respectful. Tell them what the problem is with the bill and offer a solution or some change that might make it work...” Question to Rep Brown: “Who do you want to hear from, MACD or CD supervisor?” Answer: “CD supervisor if they have built a relationship.”
- Governor’s Nat’l Resource Advisor: “If you need money, say that ‘you need increased revenues to do the job you’ve been elected to do...’

## **IT ALL ADDS UP - From DNRC**

- \* 58 conservation districts covering almost all lands in Montana, including 76 cities and towns.
- \* Conservation districts are autonomous political subdivisions of state government governed by a non-paid board of supervisors elected in the general election or appointed by cities or towns.

## GENERAL ADMINISTRATION

- \* 400 supervisors' time donated x 15 hours a month = 6,000 hours  
6000 hours x \$50/hr. = \$300,000 a month  
\$300,000 x 12 = \$3,600,000 a year in donated time
- \* District mill levy covering general operations and 310 support = \$2,500,000
  - \* rough estimate
  - \* revenue varies widely based on population with lowest district receiving \$2,300 to highest \$353,000
- \* 77 conservation district employees
- \* administrative grants support 35 general operations and helps employee 35 employees
- \* number of district employees without insurance

### 310 ADMINISTRATION

37,740 applications processed since 1992  
 12,815 average number of applications processed in last 10 years  
 1,281 average per year based on last ten years  
 15 is the average number of hours per permit by supervisors (reading, driving, inspecting, reporting, meeting)  
 19,215 is the average number of hours supervisors donate each year on 310 permits -- 15 hours x 1,281 = 19,215  
 \$960,750 is the average donated worth of donated time per year -- 19,215 x \$50/hr. = \$960,750  
 \$28,305,000 donated time since 1992 – 37,740 x 15 = 566,100 x \$50/hr = \$28,305,000

## **SUPERVISOR ELECTION LAW BACKGROUND BY LAURIE ZELLER**

*This is a clean up bill. Over the last two or three sessions, there was a major change in the way local elections are held and this is a remnant of old CD law that causes a lot of confusion among CDs and election administrators.*

*Currently, when a supervisor vacancy occurs mid-term, the supervisors appoint someone to fill that position until the next general election, at which time the position would be on the ballot to fill the remainder of the term (2 years).*

*This bill is important for two reasons:*

*First, the current law makes no sense. If the vacancy occurs during the first 14.5 months of the term, a candidate would have to fill out an oath of candidacy prior to the end of the nominating period (about the third weekend in March) to run for a two-year term in the general election. If the vacancy occurs 15 months after the start of the term (too late to file an oath of candidacy), the supervisors can appoint until the end of the term. Odd.*

*Currently, supervisors (and other local officials) can appoint someone to fill the entire term if less than 2 people file for a supervisor position, so this odd extra step when a vacancy occurs makes no sense at all.*

*Secondly, every election year, we spend a lot of time backtracking with conservation districts to try to figure out why they have all 5 supervisors up for election at once. It is always because this confusing extra step gets overlooked.*

*I just thought it would be nice to get it cleaned up since I won't be around to explain the oddness of this law.*

*This is probably more than you wanted to know, but I hope it explains why we proposed it – 10 simple words in the existing law, must be explained with 200 words, which is a good reason to change it.*

## **FOREST ACTION PLAN DRAFT COMMENTS SENT TO MACD:**

TO: Montana's Conservation Districts  
FROM: Rebecca Boslough, Executive Director  
SUBJECT: Montana's Forest Action Plan  
DATE: 6th October 2020

Board Chairs and Administrators:

Steve Hedstrom, along with other members of the Council <https://www.montanaforestactionplan.org/pages/council>, has been working on developing a Forest Action Plan. Steve represented Montana's Conservation Districts on the Council.

The plan is accepting comments until 23rd October, 2020. To submit comments go to: <https://www.montanaforestactionplan.org/pages/community>

SPECIAL NOTE: Our understanding, taking into account that our information may not be up to date, is that the authority that manages a timber sale also has to prepare the sale, including: mark sale boundaries, mark time, and engineer roads. The USFS completes the environmental assessment, and then State of Montana timber sale contracts are used. In addition, the managing entity has to have sufficient deep pockets to pay for all of the preparation costs and administer the sale. Timber sale receipts compensate the manager for costs and then any money left over applies to the preparation of future sales. Please take this into account as you consider the opportunities this presents.

MACD had a couple of comments that may be seen below, but we encourage individual Districts to comment.

- Participation means that an entity is willing to administer a forest fuels reduction project which also includes the harvest of merchantable trees. A qualified field person would need to be identified to administer a contract that was competitively bid.
- MACD wishes that Conservation Districts were identified in this paragraph:

***"LOCAL GOVERNMENT ENGAGEMENT AND MONTANA FORESTS Local governments across Montana play a key role in working with agencies, landowners, and stakeholders across all lands within their jurisdiction. The DNRC's Local Government Program provides additional grant funding and capacity to support County Commissioners and their staff when they engage on federal land management and cross-boundary forestry issues. The Forest Advisor, funded in part by the USDA Forest Service, has increased capacity and support to local governments and County Commissioners to help ensure forest restoration and management actions are aligned with local priorities and county plans. These deliberate engagements have strengthened project proposals and increased local government support for active forest restoration and management activities.***

- The plan encourages cooperation as seen below, and there may be some Districts who want to follow up on this.

***"How can partners use the Forest Action Plan? The Montana Forest Action Plan sets a framework for coordinated, targeted actions and investments that will be critical to reducing wildfire risk and improving forest health conditions across the nearly 4 million acres identified to benefit from management actions. We hope that local land managers and collaboratives use the Montana Forest Action Plan to refine their analyses and start a dialogue about how to leverage resources and staff to meaningfully address the most pressing concerns facing our forests. The Montana Forest Action Plan will help land managers and local decision makers sequence programs of work and collaborate across jurisdictional boundaries to address wildfire risk and forest health issues while ensuring the safety and resilience of our communities and infrastructure."***

- The plan has so much information in it that it should have had an executive summary.

- Not enough recognition of grazing on forested lands. Grazing was mentioned in a few places but not to the degree it deserved. Multiple-use covered this but we believe it is not specific enough. Conservation Districts that have ranchers with forest permits will have an interest in this.
- We suggest that the Soil and Land Committee take a look at it, they may have thoughts.
- The deadline for comments will arrive quickly.

## WESTERN BUMBLEBEE ISSUE

The U.S. Fish and Wildlife Service (Service) is responsible for identifying species in need of protection under the Endangered Species Act of 1973, as amended (Act). In 2015, the Service was petitioned to list the western bumble bee (*Bombus occidentalis*) as an endangered species. The western bumble bee range in the United States includes northern California, Oregon, Washington, Alaska, Idaho, Montana, western Nebraska, western North Dakota, western South Dakota, Wyoming, Utah, Colorado, Arizona, and New Mexico; in Canada the range includes the Canadian provinces of Alberta, British Columbia, Saskatchewan, and the Yukon Territory. The western bumble bee is a generalist pollinator and one of the most widespread native bumble bee species.

We are currently initiating a Species Status Assessment (SSA), which will inform our decision on whether or not the species will be proposed for listing under the Act. The SSA framework is an analytical approach that characterizes a species' ability to sustain populations over time based on the best scientific understanding of current and future abundance and distribution, taking into consideration any threats, stressors, or conservation efforts that could influence or affect the species' status. As we develop the SSA, we encourage all interested parties to provide any new information regarding the status and potential threats to the western bumble bee.

In an effort to ensure early coordination with our conservation partners we are specifically seeking information on the following:

- Recent and historical observations of western bumble bee that minimally include locational coordinates, the date of observation, number of bees observed, and if those observations have already been submitted to a public data repository;



- Historical and current species distribution, population sizes, population trends, and any updates to the species' range;
- The distribution, magnitude, and severity of diseases affecting western bumble bee;
- Genetic or ecological variation across the species' range;
- The potential effects of climate change on western bumble bee and its habitat;
- Any updates to laws, regulations, policies, or plans that may apply to the species; and
- Ongoing or planned conservation efforts for western bumble bee and its habitat.

We will accept new information throughout this entire SSA development process but we request responses to this data call by November 30, 2020. If you submit information, we request you support it with documentation, such as quantitative or spatial data, maps, methods used to gather and analyze data, copies of pertinent publications, reports, or letters by knowledgeable sources. Information should be submitted to [westernbb@fws.gov](mailto:westernbb@fws.gov). All data and information submitted to us, including names and addresses, will become part of the administrative record. We recognize the time and effort it may take for you to collect the information and data for this request and we are greatly appreciative of any information submitted to us.

We will ultimately provide a public notification of our finding in the *Federal Register*. Any associated proposed rulemakings would include an opportunity for the public to review and comment on the proposal(s). At this time, we expect the notification will be delivered to the *Federal Register* in March of 2023.

We appreciate your willingness to participate in the rulemaking process. If you would like additional information or have any questions about the western bumble bee, please contact Amy Nicholas at the Wyoming Field Office at [Amy\\_Nicholas@fws.gov](mailto:Amy_Nicholas@fws.gov) or (307) 757-3716, or Jeff Everett at the Oregon Fish and Wildlife Office at [Jeff\\_Everett@fws.gov](mailto:Jeff_Everett@fws.gov) or (503) 231-6952.

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