Exhibits

to Defendants' Response to Plaintiffs' Motion for Summary Judgment and Brief in Support of Defendants' Cross-Motion for Summary Judgment

Exhibit A

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

Montana Districting and Apportionment Commission

MINUTES

April 8, 2010

Room 152, State Capitol
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

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COMMITTEE MEMBERS PRESENT

Jim Regnier, Presiding Officer
Jon Bennion
Joe Lamson
Pat Smith
Linda Vaughey

STAFF PRESENT

Rachel Weiss, Research Analyst
Joe Kolman, Research Analyst
Lisa Mecklenberg-Jackson, Attorney
Dawn Field, Secretary

AGENDA & VISITORS' LIST

Agenda, Attachment #1.
Visitors' list, Attachment #2

COMMITTEE ACTION

The Districting and Apportionment Commission approved the September 24, 2009, meeting minutes and approved the proposed meeting date and location schedule, as revised.

CALL TO ORDER AND ROLL CALL

00:00:19 Commissioner Regnier called the meeting to order at 6:30 p.m. He welcomed all attendees, including those viewing the meeting via video conference from the Great Falls and Havre remote locations. The Secretary noted the roll, all members were present (ATTACHMENT 3).

FORMAL ADOPTION OF DATES/LOCATIONS FOR PUBLIC HEARINGS

00:05:58 The Commissioners reviewed the proposed meeting location and meeting date schedule **(EXHIBIT 1)**. Commissioner Vaughey said that she would like to allow additional time for public comment and to digest the written comments submitted. Commissioners Lamson, Smith, and Bennion agreed. It was agreed that Ms. Weiss would coordinate schedules and determine potential meeting dates for late May or early June. **Commissioner Bennion moved to adopt the meeting dates for Missoula and Billings and to postpone the final executive session until a later date. The motion passed on a unanimous voice vote. Rachel Weiss, Research Analyst, Legislative Services Division, (LSD),** suggested establishing the deadline for public comment as two weeks before the final meeting to adopt the criteria.

ADOPT WRITTEN MINUTES FROM SEPTEMBER 24, 2009, MEETING

00:11:13 Commissioner Vaughey **moved to approve the September 24, 2009, meeting minutes, as written. The motion passed on a unanimous voice vote.**

INTRODUCTION TO COMMISSION; PURPOSE OF MEETINGS

00:11:50 Commissioner Regnier explained that the purpose of the public hearings is to take public comment on the proposed districting criteria **(EXHIBIT 2)**, how the public comments would be used by the Commission, and the process and information with which the Commission would proceed with its work. He emphasized that the process would be transparent and that the Commission is committed to involving the public at every step.

OVERVIEW OF DISTRICTING CRITERIA MEMO

00:15:12 **Lisa Mecklenberg Jackson, Staff Attorney, LSD,** reviewed a legal memo outlining the requirements imposed by law for redistricting congressional and legislative districts in Montana **(EXHIBIT 3)**.

PUBLIC COMMENT ON DISTRICTING CRITERIA

- **HAVRE**

00:22:21 **Rep. Wendy Warburton, Havre, HD 34,** urged the Commission to consider communities of interest. She discussed how Havre has been split in half and the problems resulting from the split. She said that other communities have experienced similar problems from being split into separate districts and that constituents often feel isolated from their community of interest.

00:24:25 **Richard Cronk, Chair, Blaine County Republican Central Committee,** discussed his concerns regarding the splitting of towns and counties into multiple districts. He referenced a court case in Georgia relating to redistricting and the importance of population equality in districts and the occurrence of gerrymandering. Mr. Cronk urged the Commission to reunite Blaine County and other counties split by the last Commission. He said that population equality should be the first criteria to be considered, followed by compactness, existing political boundaries, and a combination of geographic boundaries and communities of interest boundaries, in that order. He asked that the Commission remain as nonpartisan as possible.

00:27:32 **Kris Hansen, Havre,** urged the Commission to make every effort to meet, as closely as possible, Montana's requirement of plus or minus 1% deviation from the ideal population of a district.

00:29:08 **Andrew Brekke, Chair, Hill County Central Republican Committee,** asked the Commission to maintain the federal standard of one person, one vote; to keep districts as concise and intact as possible and within the 1% deviation; and to keep traditional neighborhoods as intact as possible.

00:31:18 **Terry Schend, Havre**, said that population equality is achievable, that compactness is very important, and that the Commission must be nonpartisan in order to do what is best for the citizens.

- **GREAT FALLS**

00:32:48 **Steve Malicott, CEO, Great Falls Area Chamber of Commerce,** said it is important to keep neighborhoods intact and suggested using school districts or geographical and natural boundaries to establish districts. Mr. Malicott said it is important to honor traditional boundaries and to make districts inclusive of existing neighborhoods. He urged that there be as little population deviation as possible to keep legislative districts as equal in size as possible.

00:35:08 **Michael DesRosier, Glacier County Commissioner,** said that 80% of his constituents live on the Blackfeet Reservation. He encouraged the Commission to maintain continuity in districts and to protect minority voting rights.

00:36:29 **Rhonda Wiggers, Great Falls,** asked the Commission to be cognizant of communities and neighborhoods, and to draw districts accordingly. Ms. Wiggers said that computer technology will allow the Commission to create districts that fall within the 1% deviation. She said that growth and movement make it inevitable that district boundaries must change but that any changes must make sense for the affected district because citizens need to be truly represented by the people they elect.

- **HELENA**

00:39:48 **Barbara Spilker, 20 Carriage Lane, Helena,** read a statement into the record **(EXHIBIT 4)**. Points discussed by Ms. Spilker included the importance of creating districts made up of people of similar policy interests, designing districts with the

differences between county and city residents as a consideration, and using the knowledge and expertise of the legislative staff to the fullest extent possible.

00:43:32 **Dennis Taylor, 920 Strawberry Drive, Helena**, said that, with his experience as a city manager who worked closely with neighborhoods, it is very important that the Commission include smaller incorporated cities in a single district and in the larger jurisdictions, to respect the long and enduring neighborhoods. He suggested that the Commission ask cities what its citizens consider as their neighborhood, saying that it would fine tune districts. Mr. Taylor discussed his own neighborhood, saying that he feels disenfranchised within his own neighborhood under the current district line. He said that neighborhoods and how they define themselves should be a criterion in considering how to draw a district.

00:47:16 **Lorraine Peterson on behalf of Sen. Jim Peterson, SD 15, Buffalo,** read his testimony into the record **(EXHIBIT 5).** Sen. Peterson's testimony included a physical description of his large senate district, the importance of creating compact and contiguous districts while balancing the protection of minority voting rights, that race should not be the predominant factor is designing boundaries, the importance of balancing districts between rural and urban areas, and that with the availability of current technology, it is very possible to achieve a higher population equality standard. Sen. Peterson also requested that the Commissioners keep the process as nonpartisan as possible when analyzing the facts and making decisions.

00:50:30 **Sen. Dave Lewis, Helena, SD 42,** described his district, saying that it stretches from Missoula County to Yellowstone County. Sen. Lewis said there is no possible way to define a community of interest among the six counties he represents and that even though he has worked hard to cover all of his districts, it is an impossible task and is very expensive. He said he doesn't have a chance of meeting all of his constituents or to develop a relationship with them, and that it would be a kindness to put them into more compact districts. He urged the Commission to take a look at the big, long districts.

00:54:46 **Russ Cargo, professor of public administration and nonprofit management, Helena,** said that as a professor, he sees the tremendous responsibility of the Commission to establish a pattern or model in order to inject greater confidence in the political system. He said that students have become disillusioned with the current situation and that the Commission is in a position to make a difference. He suggested that the standard deviation be as low as possible, which would go a long way in restoring confidence in the system. He said that the Commission has not only a legal responsibility to follow the law but also a moral responsibility to bring confidence back into the system. He said that perceptions matter a great deal and asked the Commissions to set an example for the younger generation charged with continuing our democracy.

00:57:07 **Liane Johnson, Glacier County,** discussed House District 15, saying that the former Commission overlooked that traditional history of the Blackfeet, Salish, Kootenai, and the Pend d'Oreille tribes **(EXHIBIT 6).**

01:05:09 **Bowen Greenwood, Helena,** discussed a table listing the makeup of Montana House Districts for 2004, 2006, and 2008 **(EXHIBIT 7)**. He said that the table shows that in the past, partisan affiliation and election results seem to have played a role in how districts were designed. He said it would be better to have a system in which a candidate would have to work harder in order for the people get a fair voice.

01:07:41 Commissioner Lamson asked Mr. Greenwood if he was speaking on anyone's behalf. Mr. Greenwood said that he was speaking as the Executive Director of the Montana Republican Party. He said that Montana Republicans want fair districts for the people, rather than for political parties.

01:08:14 **Vince Vaccaro, Townsend,** asked the Commission to disregard current district borders and to form districts based on communities of interest. He said that HD 83 is an example of a district that would benefit from redrawing its lines and that his top priority is to keep to a 1% difference. Mr. Vaccaro discussed several other priorities, including consideration of population changes, communities of interest, using natural boundaries, and swing districts.

01:10:43 **Barbara Rush, Helena,** said that after the last redistricting commission, she has serious concerns about the fair and equal representation in the legislature. She asked that districts not be shaped by political interest and said that districts should be created based on what is best for the common interests of the electorate. Ms. Rush provided a copy of her testimony **(EXHIBIT 8)**.

01:12:48 **BREAK**

01:24:43 Back to order - continued public comment.

01:25:19 **Beth Ries, Chair, Lewis and Clark Republican Central Committee and resident of HD 78,** said that the current legislative districts in Lewis and Clark County don't meet Constitutional requirements. She agreed with previous testimony regarding a 1% population deviation for districts. Ms. Ries encouraged the Commission to design compact districts that take into consideration traditional and natural boundaries because cutting neighborhoods is not in the best interest of residents. She said that a legislator cannot properly represent a district that is not compact and that districts should not be designed upon the political leanings of a district.

01:27:33 **Jim Brown, attorney, Chair, Beaverhead County Republican Central Committee, and past candidate for HD 72,** said he is happy with his district because the criteria was properly followed and that he receives excellent representation. Mr. Brown said that SD 36 does have part of Jefferson County and suggested that that portion be placed back into a more representative district for them. Mr. Brown said that population equality must be the primary criteria for the Commission and that the deviation should not be more than 1%, considering current technology ability. He suggested that the Commission begin with the largest seven cities and then move on to counties and try to keep them as contiguous as possible. Mr. Brown suggested that party affiliation and

consideration of incumbency as criteria may be unconstitutional and should be disregarded. He asked that Beaverhead County be kept whole and contiguous as one house district and to keep Madison and Beaverhead Counties as one senate district.

01:32:07 **Mary Ann Harwood, Toole County Clerk and Recorder and Election Administration,** said that Toole County has two senate districts and three house districts, which means she has to prepare three different ballots for the different precincts. She said it has been difficult for residents to figure out where they vote and which ballot they use and suggested that the Commission consider that issue when making boundary decisions.

01:33:44 **Don Judge, Helena, candidate for HD 80,** said he didn't necessarily agree that urban and rural areas should be separated because there are communities of interest that exist between these two populations, and cited an example of a rural dweller who commutes to a larger city for employment or doing business. Mr. Judge said that the last Commission designed districts in which neither party has been able to maintain a majority, so one could argue that the redistricting was nonpartisan and successful; and he suggested that the issue of partisanship be set aside. Mr. Judge said Montana's growing population in the urban areas must be dealt with, that it is not always feasible to follow traditional or geographical boundaries and that while it is important that the Commission strive to adhere to the 1% population deviation, strict adherence to the deviation may actually cause harm in some situations.

01:40:06 **Scott Crichton, Executive Director, American Civil Liberties Union (ACLU) of Montana, Helena,** discussed his concerns regarding the Commission's proposed criteria **(EXHIBIT 9)**. Mr. Crichton suggested that the Commission include the racial fairness and nondilution provisions Section 2 of the Voting Rights Act and the Fourteenth Amendment. Complying with the Voting Rights Act should be secondary in importance to complying with the equal population standard. Mr. Crichton also discussed the issues of population equality, saying that the ACLU does not favor lowering the standard for state and local districting; compactness and contiguity; and discretionary criteria of existing political boundaries and communities of interest. He said that the ACLU does not support partisan line drawing and that while "communities of interest" is a vague concept, it still should be a consideration since one of the communities of interest identified in the past has been Indian communities.

01:45:01 **Kelly Flynn, Townsend, candidate for HD 68,** asked the Commission to look at existing political boundaries and to consider the difficulties created when towns are split into multiple districts. He discussed how HD 68 splits numerous towns and suggested using school district boundaries as guidelines.

01:46:14 **Rep. Mike Miller, Helmville, HD 84,** agreed with Sen. Lewis's testimony regarding how current districts are carved out, saying that one of the criteria should be to be able to drive a district without having to travel on Forest Service or gravel roads in order to move from one section of a district to another.

01:47:29 **Rep. Mike Menahan, Helena, HD 82,** urged the Commission to begin its redistricting process by using the current legislative districts as a starting point. He said that the plan crafted by the previous commission has resulted in much better representation for Montana's American Indian population in the legislature. He said that this is a very politically-charged process but that in looking at the makeup of the legislature, it is highly representative of the state's people and the diverse opinions of the citizenry. Rep. Menahan said that no district will be perfect but that they should be made as competitive as possible in order ensure that Montana's citizens are fairly represented.

01:51:38 **Lori Hamm, East Helena,** emphasized the main points testified to previously, saying that the Commission must maintain the federal requirement of one man, one vote; that current technology makes population equality very achievable; that in addition to creating compact and contiguous districts, communities of interest must be maintained; and to be careful when dealing with minority voting issues. She asked that the Commission take care to keep politics out of their deliberations.

01:56:02 **Cyndi Forbes, Helena,** said that the Commission has a strong and visible leadership role and she asked the Commission to keep politics out of the process. She asked that the Commission use modern technology to the extent possible, to take geographical boundaries into consideration, and to remember that the people of Montana are watching the Commission's work. She said the people want to be able to respect what the Commission has done.

01:58:49 **Chris Shipp, Carroll College student, Helena,** said that he and fellow students have studied gerrymandering and that students of all opinions believe that the previous Commission's decisions display several examples of gerrymandering and partisanship. He asked that the current Commission to scrap the current districts. He urged the Commission to draw districts that students can study and see as examples of fairness, bipartisanship, not partisanship and gerrymandering.

02:00:26 **Jon Rush, 720 Holter Avenue, Helena,** discussed the negative impact on his own neighborhood after being split by the last Commission. Additionally, Mr. Rush recalled that when he attended a districting meeting 10 years ago, at no time did any witness testify in favor of the boundaries of his district, including a Democrat legislator who represented the district. He said that communities of interest are important and should be taken into consideration.

02:04:46 Commissioner Regnier thanked everyone for their comments and assured the audience that the commissioners would give the comments serious consideration.

02:05:18 Commissioner Lamson thanked the audience for exercising their civic responsibility by coming to and participating in the hearing. As a member of the previous Commission, he responded to comments made about Havre being split into two districts and how American Indian voting rights were addressed by the last Commission. He stated that there was a great deal of support for the last

Commission's work and that it was "fair to a fault". He said that the current Commission is just beginning its work and will consider all ideas and information.

02:09:17 Commissioner Bennion thanked the audience for the comments made. He asked that, for future meetings, people be more specific in the location of their neighborhood or area being discussed, in order to give the Commissioners a clearer idea of the location being discussed.

02:10:05 Commissioner Smith thanked the audience for the comments and said it was helpful for him to hear the complexities and conflicting opinions.

02:10:45 Commissioner Vaughey thanked the audience for coming to the hearing and said that she hopes that the public will continue to be very involved with the Commission.

ADJOURNMENT

02:11:31 With no further business before the Districting and Apportionment Commission, the meeting was adjourned at 8:42 p.m. The Districting and Apportionment Commission's next meeting will be Monday, April 12, 2010, in Missoula, Montana.

*The Commissioners also received a packet of public comment submitted in advance of the meeting **(EXHIBIT 10)**. All public comment is available for viewing on the Commission's website:* http://leg.mt.gov/css/Committees/interim/2009_2010/districting/default.asp

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Exhibit B

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

Montana Districting and Apportionment Commission

MINUTES

April 12, 2010

Gallagher Business Building, Room 104
University of Montana
Missoula, Montana

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Dawn Field, Secretary

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CALL TO ORDER AND ROLL CALL

00:00:03 Commissioner Regnier called the hearing to order at 6:30 p.m. in Room 104, Gallagher Business Building, University of Montana, Missoula, Montana. The Secretary took roll, all members were present (Attachment #3).

00:00:46 Commissioner Regnier welcomed those in attending the hearing, including those attending via teleconference from the Kalispell remote location. He said that the Commission values all testimony and wants the process to be as open and transparent as possible. The Commissioners and LSD staff introduced themselves. Commissioner Regnier explained that the purpose of the hearing is for the Commissioners to take public comment on the proposed districting and apportionment criteria **(EXHIBIT 1).** He announced that there would be a short executive session following the public hearing in which the commissioners would discuss a final meeting date to adopt the proposed criteria.

PUBLIC COMMENT

- **MISSOULA**

00:07:05 **Fred Thomas, Stevensville,** said, as 2003 majority leader, he and the Senate Republicans felt abridged by the last commission and that the last Districting and Apportionment Commission failed its task because it did not meet the Constitutional requirements for districting. He provided copies of Article V of the Montana Constitution and read aloud from it to support his statement **(EXHIBIT 2)**. Mr. Thomas also distributed and discussed four maps showing past and current legislative districts to further illustrate his point **(EXHIBIT 3)**. Mr. Thomas discussed Ravalli County Census 2000 numbers **(EXHIBIT 4)** and Hamilton area legislative districts specifically **(EXHIBIT 5)**. He said that Montana voters want a fair deal and urged the Commissioners to create compact and contiguous districts as equal in population as practicable, as stated in the Constitution.

00:16:26 **Pat Williams, former United States Congressman and member of Montana's first Districting and Apportionment Commission, Missoula,** reviewed the history of redistricting in Montana since the process was first used in 1970s. Mr. Williams said that prior to 1970, the legislature redistricted itself, which did result in gerrymandering. He said that by looking at the past 40 years of apportionment results, it is obvious, with one exception in 1990, that the process has been very fair. Mr. Williams asked the current Commission to take care to protect the voting preferences of minorities and to uphold the standards set forth by the Supreme Court of the United States and of the State of Montana, which could mean slightly diminishing one standard in order to hold up another. He urged the Commissioners to do their best and to be fair but to remember that it would be impossible to please everyone.

00:22:43 **Sen. Ron Erickson, Missoula, SD 47,** discussed representation from his own personal perspective, being elected under two different districting plans during his tenure as an elected official. Sen. Erickson said that it was beneficial to him to have a strangely shaped and diverse district because he had the opportunity to meet all types of people from all walks of life and that when he gets to Helena,

he represents the whole state, not just his district. He begged the Commission to not return to the tight and compact districts of the past.

00:24:54 **Sen. Carolyn Squires, Missoula, SD 48,** said that she has been involved in three districting and apportionment processes and recognizes the difficulty of the job. She said the Commissioners must remember that the process is about the people, not the legislators, and that it is up to the Commission to present a good plan and that the census should be the primary driver of the process. Sen. Squires discussed her own experience as a legislator who has represented both a homogenous district and a diverse district. She concluded her testimony by saying that she does not support a smaller population deviation because representation of Montana's Native American population was significantly improved by the last redistricting. Sen. Squires said that without the 5% deviation used by the last Commission, that level of representation would not have occurred.

00:30:57 **Rep. Bob Lake, Hamilton, HD 88,** said that, given the huge technological improvements made in recent years, it is time to modernize the districting and apportionment process. He said that he has discussed this with Montana State University and was told that it would not be a major challenge to create a computer program that meet the requirements and guidelines, including the smallest of population deviations. Rep. Lake discussed several concerns, such as the differing needs of rural and urban communities, taking politics out of dealing with geographical barriers in the districting process, and the importance of striving for the lowest possible population deviation.

- **KALISPELL**

00:34:59 **Bob Keenan, Big Fork**, said that as a past President of the Montana Senate, he went through the last redistricting process. Mr. Keenan urged the Commissioners to utilize the legislative staff because, saying that they do good work and are nonpartisan. He said that it is very important that Commissioner Regnier, as the presiding officer, be fair and honest for the sake of the people of Montana.

00:36:51 **Sen. Bruce Tutvedt, Kalispell,** requested that the districting and apportionment process be a fair and open process and that the criteria be applied consistently and fairly across the state. He said that it is important to protect minority voting rights, that the use of political data should be prohibited, and that the LSD staff resources should be utilized to the fullest extent.

00:38:36 **Sen. Verdell Jackson, Kalispell,** discussed how his district was affected by the last districting process and said that many of his constituents felt disenfranchised and the Commission should guard against this.

00:39:39 **Rep. Scott Reichner, Big Fork, HD 9,** thanked the Commissioners for holding the public hearing. He discussed three points: the importance of keeping Native American representation intact, that the Seeley Swan valley should be given careful consideration because of the disenfranchised voter sentiment there, and that Flathead County was overpopulated by 5% in the last process. He said it must be fair to Democrats and Republicans across the state.

00:42:29 **Derek Skees, Flathead Valley resident,** said that the biggest issue is equality. Mr. Skees referenced Article V, section 4 of the Montana Constitution regarding the population equality standard and said that past Commissions have not applied the standard. Mr. Skees said it is very important that the current Commission pay close attention to population equality standards because of changes in federal case law regarding population standards, because of the ability to manipulate the makeup of a district when a plus or minus 5% deviation is allowed, and because the credibility of the previous Commission was undermined due to its decision to use a 5% deviation. He challenged Commissioner Regnier to be an unbiased voice for both sides of the aisle. Mr. Skees said the process must be fair to all and he challenged to Commission to use technology to create legislative districts using a 1% or less population deviation standard. He thanked the Commissioners for their service.

- **MISSOULA**

00:44:52 **Linda Frey, Missoula, resident of HD 94,** thanked the Commission for the opportunity to comment. She said that the "wagon wheel" approach used by the last Commission bifurcated neighborhoods, which has weakened voter turnout and undermined the democratic process. She said this has led to cynicism and disenfranchisement. She said that House Districts 94, 95, 96, and 97 are good examples of what political scientists call "cracking", which means the spreading out voters of a particular type among many districts in order to deny them a sufficiently large voting block in any district. She said she supports diversity but that such political practices should not be engaged in. She urged the Commission to work in a nonpartisan fashion and make impartial decisions. Finally, Ms. Frey said that the voters, not the Commission, should determine the outcome of elections.

00:48:03 **Pete Pettersen, Missoula,** distributed and discussed a map to illustrate the challenges facing the current redistricting process **(EXHIBIT 6)**. Mr. Pettersen said that for example, he passes through three different districts to get from his home to his office and that his example is indicative of how Missoula is divided up. Mr. Pettersen reviewed registered voter statistics for Missoula County and that there is a difference of about 3,300 voters difference between the districts. He said that equality in representation is not there and that having an equal number of Democrats and Republicans serving doesn't necessarily mean that the people are being properly represented. Mr. Pettersen discussed another point of interest, saying that eight of the area's ten House District representatives live within one mile of where this hearing is being held. He asked if that was fair representation for people in areas such as Condon or Seeley Lake. Fair representation must be considered not only in terms of minorities but also in terms of rural and urban people, Mr. Petterson said. He discussed several other concerns regarding legislative fairness and thanked the Commission for their time.

00:56:14 **James Steele, Jr., former Chair, Confederated Salish and Kootenai Tribe, and candidate for HD 15,** said he would provide written comments from Senator Carol Juneau later. He referenced comments made about the relationship between the Salish and Kootenai Tribes and the Blackfeet Tribe and said his

opinion is that the tribes have worked in unison on a variety of fronts, including legislative representation, water rights, energy development, hunting and fishing issues, family, political, and tribal events. Mr. Steele also said that the Salish and Kootenai tribes are minorities on their own reservation and that, in the past, they have had to rely on Indian legislators from other districts to sponsor bills for the Flathead Reservation. He listed several projects and legislation carried by other Indian legislators on behalf of the Salish and Kootenai Tribes. He encouraged the Commission to uphold voter rights efforts related to the Indian vote, saying that Indians are a part of the Montana society and fabric and just want the same opportunities for representation as other citizens. He said it has been a privilege to work the Native American legislators.

01:02:35 **Sen. Jim Shockley, Victor, SD 45,** said that as a legislator, he likes congenial districts but that the redistricting process isn't about individual likes and dislikes. He said that it is about the needs of the people and meeting the requirements of the law, both of which were ignored by the last Commission. Sen. Shockley provided several examples. He said this must be about the people and the law, not the parties.

01:05:28 **Rep. Ron Stoker, Darby, HD 87,** said that under the current districting plan, he has to cross part of HD 88 to get back into his district. He said that he actually gained votes but still does not agree with the boundaries. Rep. Stoker said that the Commission should ignore the political parties and design districts based on the requirements of compactness, contiguousness, and population equality.

- **KALISPELL**

01:07:55 **Dean Jellison, Kalispell,** said that he served as a substitute Districting and Apportionment Commissioner for the last few months of the 2000 redistricting process, so is very familiar with how political the last process was. He said that with modern technology, districts can be tailor-made to lean one way or the other politically. Mr. Jellison discussed the 5-1 rule, redistricting in other states, and how population equality was dealt with in districts formed under the Montana's 2000 Commission. He said that under that plan, then-Commissioner Lamson manipulated districts to ensure that Democrats were either elected or re-elected. Mr. Jellison also discussed the past chair of the 2000 Commission and said that she indicated that, as an activist member of the Democrat Party, it was her duty to support Democrat members of the Commission and ensure that Indian tribes were adequately represented. Commissioner Regnier interrupted Mr. Jellison's testimony because of objections by audience members in Missoula.

01:13:54 Sen. Carolyn Squires stated that she was discreet in her comments about who had caused problems with the past districting process and that the attack by Mr. Jellison was inappropriate. She said that statistics and facts should be placed before the Commission, not statements on one's personality.

01:14:25 Commissioner Regnier asked the audience to limit their comments to redistricting criteria and to refrain from comments that would stir up old arguments. He said the Commissioners need to hear relevant information. Commissioner Regnier asked Mr. Jellison to continue.

01:14:52 Mr. Jellison said that it is important that the Commission establish rules by which it will operate and stick to them. He said he supports using a 1% maximum deviation, rather than a 5% deviation because a 1% deviation would greatly reduce the influence of party politics. Mr. Jellison said that the role of the chair is to ensure impartiality and that he is confident that Commissioner Regnier, with his judicial experience, will meet that criteria.

01:16:56 Commissioner Regnier reminded the audience to limit their comments to 3-5 minutes and to relevant suggestions.

01:17:29 **Sandy Welch, Flathead Valley resident,** asked the Commission to keep population equality as narrow and tight as possible. She said that the definition of success would be when the voters look at the plan and agree that the district lines make sense, that they are being fairly represented, and that communities and neighborhoods are intact.

01:18:56 **Rep. Keith Regier, Kalispell, HD 5,** encouraged the Commissioners to remember not only minorities but also the most important minority in Montana: the individual. He said that giving preference to any group will create unequal representation. Rep. Regier encouraged the Commissioners to take advantage of available computer technology and to use the nonpartisan legislative staff to guide them through the process.

01:19:45 **Damon Pace, Flathead County,** suggested that the districting process be approached similarly to a mathematics algorithm. Mr. Pace said by doing so, it would eliminate the influence of politics and would be fair and honest for the entire state.

01:21:13 **Eric Hummel, Whitefish,** encouraged the commission members to come up with a plan that all five could agree on and be proud of. He said that a 3-2 vote should not be satisfactory and that the Commissioners shouldn't stop working until they have a 5-0 vote.

BREAK

- **MISSOULA**

01:35:04 **Rep. Pat Ingraham, Thompson Falls, HD 13, past Clerk and Recorder for Sanders County,** said that she went through the districting process as a Clerk and Recorder. She said geography, compactness, contiguousness, and a low population deviation all must be components of a district's design and that those elements will decrease costs to counties and lessen voter confusion. She said that the idea behind districting is to protect the integrity of the voter. She said it is important to create uniform districts that have something in common and continuity. She suggested that the Commissioners visit with the people whenever possible, saying that they know their areas well and can give good information.

01:39:16 **Rep. Gordon Hendrick, Superior, HD 14,** said he represents a very diverse district and has every type of person and political agenda mixed into his constituency. He said his opinion is that communities that have been divided up

are not being treated fairly. He agreed with Rep. Ingraham's suggestion to visit in local areas and talk with the residents to see what the needs are in each particular area. Rep. Hendrick described his travels through his own district and said that it is difficult to fairly represent all of the people in his district under the current boundaries. He asked the Commissioners to listen to county officials, legislators, and the people.

01:43:12 **William Selph, student, University of Montana,** read portions of a Billings Gazette (November 17, 2007) article written by Craig Wilson, Political Science professor at Montana State University, Billings, regarding the 2000 districting and apportionment process. He said that it is time for the current Commission to correct the inequities of the last process. He discussed the socio-economic structure of his home town of Billings and how the districts there are designed. He said that districts in Missoula are vastly different. He encouraged the Commission to come as close as it can to the 1% population deviation. He encouraged the Commission to be fair to the American Indian population as well. He said, that as a future teacher, he wants to be able to tell his students that the system is working well and that he has faith in his government. He asked the Commission to serve the people, not the party that appointed them.

01:47:48 **Jason Smith, member of Salish and Kootenai tribes and descendent of Assiniboine-Sioux tribes,** said that as a former nonpartisan "Get out the Vote" coordinator and a former legislative staffer, he knows how important this process is. He asked the Commissioners to support the work of the last Commission because of the advancements made in Native American representation. Mr. Smith also addressed comments made at the April 8 hearing about the relationship between the Salish and Kootenai and the Blackfeet Tribes. Mr. Smith said that he does not agree with the comments and that his opinion is that the two tribes have a great deal in common and have worked collaboratively on many issues and projects, for the betterment of both. He listed a number of successful efforts undertaken by the two tribes. He asked that the Voters Rights Act continue to be upheld and to continue to maintain the 6% representation currently enjoyed by Montana's Native American population.

01:50:29 **Charles Robison, Missoula, student, University of Montana Law School and Business School,** said that the first three of the proposed criteria **(EXHIBIT 1)** are required by the Montana Constitution. He asked that the Commission treat these criteria very carefully, considering their importance. He said that the members of the Constitutional Convention were very wise to see the need for a separate body to design fair and impartial legislative districts. He encouraged the Commissioners to use as very small population deviation and to make use of mapping technology that considers compactness, contiguousness, communities of interest, and Montana's Indian communities. Mr. Robison said the interests of rural and urban areas should also be a consideration. He suggested that existing political and geographical boundaries and how they fit into communities of interest. He asked that the Commission give no consideration to party affiliation or to protecting incumbents. Mr. Robison discussed population equality and said that a 5% variation can result in certain districts having a greater voice than

another. He said that is not right or fair and that the legislature must represent all of the people equally.

- **KALISPELL**

01:55:29 **Carl Glimm, Kalispell,** said he has heard a similar theme in many of the comments in support of the Constitutional requirements for districting. He referred to comments made in support of diverse districts and said if that was the intent of the Constitution, there should be 100 at-large districts. He said that districts need to be compact and contiguous and that population equality must be a big consideration in order to provide fair representation. He encouraged the Commission to continue following the requirements of the Constitution.

01:57:28 **Dave Skinner, Kalispell,** said he agreed with the previous speakers. He said he thought that the previous districting process was a travesty. Mr. Skinner said that districts need to make sense and he warned the Commission that the people are watching to see what the current Commission will do.

01:58:28 **Pauline Sjordal, Kalispell,** discussed her concerns regarding the community of Essex and how representation was improved by the last districting process. She predicted that boundaries around Kalispell will be problematic in the next districting process and asked the Commissioners how they would handle that area.

02:00:02 **Denise Smith, Kalispell,** asked the Commission to strongly consider population equality, compactness, contiguousness, and to disregard party affiliation when establishing districts. She suggested that county commissioners and other elected officials who know their districts would be good resources to talk to when working on district boundaries.

- **MISSOULA**

02:01:12 Commissioner Regnier announced the Districting and Apportionment Commission's email address: districting@mt.gov. **Rachel Weiss, Research Analyst, Legislative Services Division (LSD),** said that the site would be available soon to take public comment. She said that until the site is up and working, people can email comments to her email address: rweiss@mt.gov.

02:03:19 **Terry Nelson, Corvallis,** said that as a citizen, he just wants the process to be fair and to have politics taken out of the process. He said that GIS technology would be very useful and that the use of computers would remove a great deal of the bias that has occurred in the past. He said that the 1990 Commission used political fairness as one of its discretionary criteria and recommended that the current Commission use it also. He said that working with local Clerks and Recorders would also help the process work more smoothly.

02:06:14 **Nick Kaufman, Missoula,** said that the different needs of rural and urban areas is a big issue facing legislators and that the redistricting process can play a key role in working towards equalizing the issues between the two areas. He implored the Commission to look at Montana as a whole and to work towards as

fair a representation as possible so that rural and urban areas can work together for the betterment of Montana.

02:07:23 **Sen. Carol Williams, Missoula, SD 46,** said that she had to respond to previous references about the unfairness of two House districts in the Missoula area. She said that it must be remembered that people don't live in compact patterns and that neighborhoods, towns, and rivers, for example, don't follow straight lines. She agreed that communities of interest are very important but asked that the Commission not be too rigid or narrow as to not consider other factors in designing a district. She said that broad issues that affect all citizens, such as taxes, education, services, or environmental concerns, must be considered also.

02:10:35 **Rep. Michele Reinhart, full time student, part time legislator, Missoula, HD 97,** encouraged the Commission to maintain diversity in urban and suburban-mixed districts. She described the makeup of her district and said that the mix requires her to learn more about her constituents so that she can respond to their needs. Regarding allegations that the last districting process was unfair, Rep. Reinhart said it was quite fair and maintained a great deal of competitiveness. She said that if population equality only is considered, it could create unbalanced districts and allow a minority to dominate over a majority. She emphasized the importance of diverse and mixed districts and said that such districts require a legislator to be more open-minded and sympathetic to the constituents than if they represented one particular demographic, and that representing diverse districts would help legislators become better communicators, collaborators, and mediators.

02:15:04 **Alex Beal, resident of Lolo, attorney in Hamilton,** asked that the Commission use equality as its number one criteria and to stick to as small a population variance as possible. He said that a big problem is that people don't feel like they are being heard or represented, which is causing cynicism and distrust of the government. He asked that the Commission do its best to be fair when drawing the maps, and that the less the process is manipulated, the fairer the outcome will be.

02:17:49 **Betsy Hands, Missoula, HD 99,** said that her district is a very diverse one and ranges from downtown Missoula to Evaro, but that she looks at it as the opportunity to represent the interests of Missoula County. She said that everyone who lives in her district utilizes Missoula, so there is a shared community of interest. She said her constituents include rural and urban residents, students, the elderly, retired workers, renters, home owners, the disabled, and Native Americans. Rep. Hands said she has heard a clear message from both sides that this process should be nonpartisan and should be fair and transparent. She said that technology is useful but that it must be remembered that machines are not fail safe, nor do they understand geography or the unique needs of people. She said that a certain amount of flexibility must be allowed for special needs or circumstances and said that she supports using a 5% population deviation. Rep. Reinhart suggested that the mapping process begin with the districts as they currently exist, that districts be competitive and fair, and that swing districts would

be a good thing for the citizens. She said that the Voter Rights Act must remain at the forefront of the Commission's work and must remain a mandatory criteria.

02:22:51 **Sen. David Wanzenried, Missoula, SD 49,** said that resourcefulness and the value of hard work must not be overlooked, and that if a candidate is willing to put in the effort to go out and meet the constituents, they deserve a chance to be elected. He said that if a legislator does the job right, he will listen to all of the people of the state, not just those in his district. Sen. Wanzenried said that it is the diversity of the state that is at issue of this discussion and that it is diversity that makes a better legislator. He implored the Commission to maintain diversity in order to allow him to do a better job. Sen. Wanzenried also asked the Commission to allow a certain amount of flexibility on the population standard to allow for special circumstances and to also continue to uphold the Voters Rights Act as mandatory criteria. Sen. Wanzenried discussed fair and competitive legislative districts **(EXHIBIT 7)** and an analysis of Montana House and Senate districts from 2004-2008 **(EXHIBIT 8)**. He said the information reflects the true nature of Montana voters and proves that no one political party has dominated during those years. He repeated the need to maintain diversity in Montana's voting districts.

02:31:58 **Dennis Hildebrand, Superior,** said that it doesn't matter how a district is lumped together or diced up because the bottom line is that there must be adequate representation for the individual. He said that the house district he resides in spans three different counties with very different demographics. He said it isn't fair to his representative to have to deal with that and that the diversity should happen when the legislators convene in Helena.

02:34:27 **Glen Wehe, Kalispell,** said he feels like he has watched a ping-pong game with all of the talk about diversity and continuity. He said that Constitution is very clear that continuity and the ability of a representative to reach his constituents is what is important and is what the Commission must consider.

02:36:11 **Derek Skees, Kalispell,** asked to add to his previous testimony. He said that using a 5% deviation standard could result in great differences in districts and would allow for disenfranchisement. He said that using a tighter standard would result in more exact representation.

02:37:12 **Hollis Poe, Missoula,** thanked commissioners for taking public comment early in the process, rather than later. He asked, that when it comes time for decision making, to please forget politics and to remember that there is a growing void being filled with voters who are increasingly unhappy with both political parties and who are watching this process closely.

02:39:47 The Commissioners thanked everyone for their comments. Commissioner Regnier said that a brief business meeting would be held to discuss the proposed hearing schedule and budget.

BUSINESS MEETING - DISCUSSION OF PROPOSED HEARING SCHEDULE AND BUDGET

02:43:31 Ms. Weiss asked the Commissioners for feedback and discussion regarding the proposed hearing schedule. She suggested that a preliminary budget could be formulated if the Commissioners would estimate the number of public hearings they wished to hold. She said that LSD staff is available to meet with clerks and recorders, central committees, and other election officials, if the Commissioners desire. Commissioner Regnier asked the other Commissioners to think about it and said that a decision would be made at the Billings hearing.

02:46:49 Commissioner Regnier said that a date for executive action would be set at the April 19, 2010, Billings meeting. Ms. Weiss distributed copies of the 2000 hearing schedule **(EXHIBIT 9 - 2000 meeting/hearing schedule and EXHIBIT 10 - proposed executive action meeting dates)**. Ms. Weiss said the highlighted dates show the available dates. After discussion, it was agreed that the Commissioners would consult their calendars and get back to Ms. Weiss.

ADJOURNMENT

02:52:21 With no further business before the Commission, the hearing was adjourned. The next meeting of the Districting and Apportionment Commission is scheduled for April 19, 2010, in Billings, Montana.

*The Commissioners also received a packet of public comment submitted in advance of the meeting **(EXHIBIT 11)**. All public comment is available for viewing on the Commission's website:* http://leg.mt.gov/css/Committees/interim/2009_2010/districting/default.asp

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Exhibit C

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

Montana Districting and Apportionment Commission

MINUTES

April 19, 2010

Montana State University - Billings
Billings, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

An electronic copy of these minutes and the audio recording may be accessed from the Legislative Branch home page at http://leg.mt.gov. On the left-side column of the home page, select *Committees*, then *Interim*, and then the appropriate committee.

To view the minutes, locate the meeting date and click on minutes. To hear the audio recording, click on the Real Player icon. Note: You must have Real Player to listen to the audio recording.

COMMITTEE MEMBERS PRESENT

Jim Regnier, Presiding Officer
Jon Bennion
Joe Lamson
Pat Smith
Linda Vaughey

STAFF PRESENT

Rachel Weiss, Research Analyst
Joe Kolman, Research Analyst
Lisa Mecklenberg-Jackson, Attorney
Dawn Field, Secretary

AGENDA & VISITORS' LIST

Agenda, Attachment #1.
Visitors' list, Attachment #2.

COMMITTEE ACTION

The Districting and Apportionment Commission approved May 28, 2010, as the next meeting date.

CALL TO ORDER AND ROLL CALL

00:00:05 Commissioner Regnier called the hearing to order at 6:30 p.m. The Secretary took roll, all members were present (Attachment 3).

00:01:13 Commissioner Regnier welcomed all attendees, including those viewing the meeting via video conference from the Miles City, Montana; remote location. He asked that comments be limited to 3-5 minutes and that any written testimony be turned into the secretary. He also announced the Districting and Apportionment Commission's (DAC) website and said that public comment could be submitted there: districting@mt.gov.

INTRODUCTION TO COMMISSION, PURPOSE OF HEARINGS

00:05:52 Commissioner Regnier asked the Commissioners and staff to introduce themselves. He explained that the purpose of the meeting is to take public comment on the DAC's proposed legislative redistricting criteria considerations **(EXHIBIT 1)**. He said that the Commission wants the process to be as open and transparent as possible, that private citizens have the right to participate in and observe the Commission's work, and that all comments would be recorded and considered by the Commissioners.

PUBLIC COMMENT ON DISTRICTING CRITERIA

- **BILLINGS**

00:07:27 **Sen. Kim Gillan, Billings Heights, SD 24,** welcomed the DAC and members of the public to Montana State University - Billings and commented on the districting criteria, saying that she thought the last redistricting was fair and represented communities of interest. She said that she does not favor lowering the population deviation to 1% because it would not allow for enough flexibility as growth occurs. She addressed comments made at previous hearings about large districts that span hundreds of miles, saying that these are rural districts and represent the low population density of eastern Montana. She said that because Billings is a regional trade center, district lines don't always follow county or community boundaries but that the cross-county boundaries do reflect communities of interest and trade areas. Sen. Gillan said that the process needs to move forward and that the citizens need to trust the Commission to do its job and that the makeup of the current legislature is indicative that the last process was fair.

00:10:46 **Jani McCall, Billings City Council, Ward 5,** handed out copies of her talking points **(EXHIBIT 2)** and discussed the following:

- the importance of communities of interest as a discretionary criteria;
- SD 29, SD 23, SD 22, and SD 21, and how they are split between urban and rural communities;

- the City of Billings' support for the criteria recommended by the Billings Gazette;
- a report by Larry Swanson, director of the O'Connor Center for the Rocky Mountain West at the University of Montana;
- the population of the City of Billings and of Yellowstone County population numbers and the number of people served by the regional trade, medical, and shopping area.

00:13:55 **Abe Ulledalen, Billings City Council,** discussed the importance of having compact voting districts. He said that a main concern of the nonpartisan Council is finding good people who will represent the city well at the legislature. He said that appearance is an issue and that he know it is very difficult to reach an ideal size of districts but pointed out that an issue is travel distance expense of serving. Mr. Ulledalen said that said it is difficult to get people to serve because of these two factors and that more compact districts would help alleviate this problem.

00:16:57 **Richard Clark, Billings City Council, Ward 5,** asked the Commission to take into consideration city limits, planning limits, county limits, the planning areas, and possibly even ward boundaries when drawing district boundaries. He provided a table showing the population of Yellowstone County and the incorporated area from 1890 through 2010 **(EXHIBIT 3),** a map displaying Billings area urban neighborhoods **(EXHIBIT 4)**, and a map showing neighborhood planning areas **(EXHIBIT 5)**.

00:17:47 **Tom Hanel, Mayor, Billings,** said that the definition of population equality is "one man, one vote" and that it is time to amend Montana's Constitution again because the process has moved away from citizen representation toward partisan politics. He said population equality is very important and that the 5% allowance should be reduced to a smaller percentage. He said that Billings citizens feel that districts are too broken up and that he doesn't feel that the current design doesn't serve the citizens as well as they should. Mayor Hanel thanked the Commission for coming to Billings.

- **MILES CITY**

00:21:58 **Gerry Devlin, citizen, Miles City,** said that his main concern is that last the Commission seemed to want to make districts long and narrow and did not take into consideration county lines or trade areas. He said that he hoped the current Commission would make the effort to be more cognizant of the these boundaries. He said he has been through three redistricting cycles and has never seen anything like the last one. Mr. Devlin asked that the Commission not split up counties and trade areas.

00:25:09 **Geraldine Custer, Rosebud County Clerk and Recorder and Election Administrator**, asked the Commission to please consider county and city lines when drawing districts because it makes elections much easier and less expensive to administer, as well as much more convenient for citizens who have to drive long distances to vote. She said that Rosebud County got chopped up in the last cycle and asked that it not be chopped up in the same manner again.

00:27:07 **Daniel Watson, Rosebud County Commissioner,** said that existing political boundaries need to be considered, primarily city and county boundaries. He said a second point is that the last three starting points have been in the northwest part of the state and suggested that the process begin in the southeast part of the state this time. He doesn't think party affiliation or protection of incumbents should a overriding issues but might deserve some consideration.

- **BILLINGS**

00:29:46 **Bruce Simon, citizen, Billings,** said that his comments were directed to Commissioner Regnier, as Commission Chair and that the commission chair is the key to how the process turns out. He said that as a newly-elected legislator 25 years ago, he was advised to treat the other side as fairly as he wished to be treated, because everything that comes around goes around. He said that the people of Montana won't be served well if one political party is seeking revenge against the other. Mr. Simon said that bitter partisan bickering has undermined the confidence of Montanans in the political process and he urged Commissioner Regnier to keep that in mind, as chair of the Commission. Mr. Simon also commented on the proposed districting criteria, saying that he is in support of using a 1% population deviation to achieve population equity because current technology makes it possible, that existing political boundaries are important, as are communities of interest. Mr. Simon said that in his tenure as a legislator, his district was compact and contiguous and that he knew his constituents and their needs. He said that the current long and narrow districts are very difficult to represent and that the whole idea of the neighborhood was lost. Mr. Simon emphasized the importance of the chair's impartiality and said that politics must be kept out of the process and that if it wasn't, a rift would occur that would be very difficult to repair.

- **MILES CITY**

00:35:59 **Marvin Quinlan, Jr. Chair, Rosebud County Democratic Central Committee, Forsyth,** said that the criteria consideration of compactness, contiguity, existing boundaries, and communities of interest are all very important. He agreed with previous comments that Rosebud County is getting short shrift as it is currently divided. He asked the Commission to please reunite Rosebud County into one district or to combine it with a similar county, such as Musselshell or Treasure County. He said that the 5% population deviation is acceptable to the Rosebud County Democrats.

00:38:32 **Gerry Devlin, Miles City,** commented that current districts are oddly shaped and that he hopes the current Commission won't disenfranchise areas by cutting them up again.

- **BILLINGS**

00:40:21 **Sheila Llewellyn, citizen, Billings,** said that her senator is from Roundup and that she feels that her interests, as an urban dweller, aren't represented because her issues of concern don't affect him. She asked that the Commission please do something that would make her vote count.

00:42:36 **Rep. Dennis Himmelberger, Billings, HD 47,** commented on the proposed districting criteria, saying that compactness is very important and that a district should be no longer than it is wide. He said that communities of interest are also very important and that previous districts were relatively square and did a better job of preserving communities of interest than the current plan. He said that as a legislator, he has found it difficult to serve a wide diversity of constituents with few communities of interest. He urged the Commission to consider communities of interest and to keep the population deviation as low as possible.

00:45:34 **Connie Wardell, resident of SD 29 and HD 57, Billings,** said that those districts extend into Carbon County and that her opinion is that those people are not being properly represented. She described her experience as a candidate for HD 57 and the difficulty she experienced in trying to get maps to determine who she would be representing and what precincts she should campaign in. She said that neither Yellowstone nor Carbon County officials seemed to know and that neither county had precinct lists available. Ms. Wardell said that someone needs be responsible for the precinct lists because voters and candidates have a difficult time finding out where to vote. Ms. Wardell strongly urged the Commission to draw boundaries using county lines.

00:48:10 **Jeff Laszloffy, former legislator, Laurel,** encouraged the Commission to do everything it can to lower the current level of cynicism against the government that exists right now. He said that the Commission must rise above politics to do what is right for the people to ensure that the next generation will have the same opportunities. He encouraged the Commission to stay as close to as 1% population deviation as possible so that there is equal representation for each citizen.

00:50:04 **Rep. David Roundstone, Busby, HD 41,** member of Northern Cheyenne Tribe, said it has been refreshing for Montana's Indian tribes to finally have a voice in the Montana Legislature. He said that the Commissioners may not be able to fully grasp how important that has been to the Indian people of Montana. Rep. Roundstone said his district has a wide array of citizens, which he thinks is good because it reflects the diversity that is typical of the rest of the state. He said that the current districts are working, that he believes voter rights are being met, and that he supports a 5% population deviation.

00:53:56 **Jack Rehberg, Billings,** discussed his observations of the redistricting process as a former member of two previous commissions. Mr. Rehberg said that the commission chair is the key to the process because the chair's actions will greatly affect how the commission works. He asked who would be doing the plans and said he hoped that this cycle would be less partisan than those in the past. He urged the Commission to utilize LSD staff as much as possible. Regarding the population deviation, Mr. Rehberg said that he supports a 1% deviation. He suggested that the process begin in the northeast corner of the state this time and to make districts as compact as possible. He said the process does not have to be partisan and he thanked the Commissioners for their service.

00:57:36 Commissioner Regnier clarified that this round of hearings is to approve the adoption of the discretionary criteria and that the Commission will be visiting many communities when a plan is ready for public comment.

00:58:59 **Rep. Cary Smith, Billings, HD 55,** said that his house district is suburban in nature and does the requirements for compactness and communities of interest but that the senate district he lives is does not. He said that it is much easier to represent a district that meets the criteria and that like other citizens who commented, he does not feel adequately represented by his senator, who lives in Roundup.

01:00:29 **Sen. John Esp, Big Timber, SD 31,** noted that he was speaking as a private citizen and not as a legislator. He said that communities of interest are very important but that they don't necessarily need to follow county lines and that trade areas can also be good boundaries to use. He discussed the trade route of the Yellowstone valley in senate districts 30 and 31 as a good example. Regarding the other proposed criteria, Sen. Esp said that a 1% population deviation is reasonable and will make districts more fair. He said that compactness is also important and discussed the 1 to 3 ratio used in subdivision law. He said above all, it is very important that the Commission be fair and to treat everyone as equally as possible.

01:03:29 **Adam Gilbertson, representing himself and Yellowstone County Young Republicans,** asked that the Commission use an open and up-front single software operating system, that a 1% population deviation be used where possible, and to make decisions be made irrespective of political affiliation. He said that candidates should be able to win elections based on their philosophy and values, not because of a redistricting decision that created a bullet-proof voting district.

01:05:38 **Sen. Taylor Brown, Huntley, SD 22,** discussed his senate district, which he said was over 140 miles long and in certain places, less than 10 miles wide. Regarding the criteria, he said his district has none of the criteria. He said that while he loves his district, it is extremely diverse and, in his opinion, does not have any sort of community of interest. Sen. Brown said that dividing cities just for the purpose of influencing party affiliation does not serve the citizens well and that doing so takes away the people's political voice. He said the system has been abused and that it is not the Commission's job to balance the state politically or to draw districts that will keep one party or the other in power. He said that is the voter's job and that the Commission should set aside partisan agendas and do what is right for the State of Montana.

01:09:23 **Rep. Ken Peterson, Billings, HD 46,** provided copies of his testimony **(EXHIBIT 6).** He thanked the Commission for allowing citizens to comment at the beginning of the process. Rep. Peterson discussed the following points:

- adjusting the 100 districts in order to make appropriate senate districts;
- that there is no role for politics in the redistricting process;
- Article V, Section 14 of the Montana Constitution;

- that many citizens think that the redistricting based on the 2000 census was skewed and politically motivated; and
- the proposed criteria for the 2010 census redistricting process.

01:19:17 **10 minute break**

01:37:07 **Theresa Keaveny, Montana Conservation Voter League, Billings,** said that the last redistricting cycle resulted in more competitive districts and better compliance with the Voter Rights Act. She asked that the current districts be used as a starting point for this districting cycle. She asked that the Commission continue to use the traditional 5% population deviation and to draw competitive and fair legislative districts.

01:39:44 **Randen Schoppe, Billings,** discussed SD 21 and the impact that the Big Horn County portion has on the Yellowstone County portion. He pointed out that within SD 21, the house districts divide Hardin practically right down the middle. He said Hardin should be put into one house district because it is a community of interest and would have the voice it needs. He said that the Crow Reservation and Northern Cheyenne Reservations should be kept together in a senate district in order to preserve the community of interest there, but that the lines for house districts need to be tweaked.

01:41:45 **Weldon Birdwell, Billings,** strongly encouraged the Commission to use a 1% population deviation, to create compact and contiguous voting districts, to honor existing geographic and political boundaries, and that communities of interest should be preserved. Mr. Birdwell said he believes that the last Commission ignored the criteria in 30-40% of the voting districts and discussed several examples. Mr. Birdwell said that party affiliation or incumbency should not be a consideration and that the criteria must be applied fairly and honestly across the board. He said that in the last districting process, three plans were prepared by LSD staff but were ignored in favor of a party plan, which was a waste of staff time and tax dollars. He asked that the current Commission not do that again. Regarding the placement of sitting state senators after the next process, Mr. Birdwell noted past Senator John Bohlinger of Billings as an example of a displaced senator and said that senators should be placed in a district in which they have received a majority of votes.

01:47:21 **Sen. Sharon Stewart-Peregoy, Crow Agency, SD 21,** asked that the Commission keep voting rights at the forefront of the process because of its importance to people of color or of poverty. She said it hasn't been that long since voter rights were violated and that while great progress has been made, it is often the least in society that get pushed aside. She said that the American Indians have had the opportunity to voice their concerns and that the senators and representatives of Indian heritage represent all tribes, even though they may not all share the same beliefs or philosophies. Sen. Stewart-Peregoy said she agrees with all those who asked that political affiliation be laid aside because it is more important that process be fair, and that people have equal access and an equal voice. She said that communities of interest and compactness of districts are important. She said that population shifts will be identified as the new census

numbers come out which will affect communities, and that while the effect is not always wanted, demographics must be considered.

01:52:38 **Rep. Carolyn Pease-Lopez, Billings, HD 42,** said that she testifies with a happy heart because for the last ten years, her people finally feel that their votes have counted. She said that the decisions of the former Commission changed the lives of the people in her area. Rep. Pease-Lopez said that voter apathy has disappeared and that her constituents don't take their right to vote for granted. She implored the Commission to uphold section 2 and section 4 of the Voter Rights Act, saying that the changes made in the last cycle made a huge difference to her people, that the right to vote is the heartbeat of America, and that Indians treasure their right to vote and knowing that their vote is heard.

01:56:15 **Earl Blakley, Billings,** emphasized that communities of interest and compactness are very important. He said that people will feel disenfranchised if the think their vote won't count. He said that many people who are apathetic think their vote won't count. He asked that the Commission rise to the occasion and do what is right for the people.

01:57:36 **Sen. Jeff Essmann, Billings, SD 28,** said he was speaking as a private citizen. He thanked the Commission for the opportunity to be heard at this point in the redistricting process. He discussed the proposed criteria **(EXHIBIT 1)** and said that party affiliation or incumbency should not be considerations, to start fresh and not use existing districts. Sen. Essmann agreed with Sen. Steward-Peregoy's comments about equality and said that a 1% population deviation should be followed. Regarding communities of interest, Sen. Essmann said that using communities of interest and existing political boundaries should be strongly considered. He suggested that, when drawing district lines, using existing elementary school boundaries would be a good place to start in urban communities. He said that trade areas and traditional neighborhoods also provide good boundaries. Regarding a starting point, Sen. Essmann encouraged the Commission to "think outside the box" when drawing district lines and suggested that a first step be to draw the majority-minority districts and compliance with the Voter Rights Act within that small deviation. Then go to the larger urban counties and cities and then to use geographic and trade center boundaries.

02:06:04 Commissioner Regnier thanked the public for their comments. Commissioner Regnier said that all comments would be duly considered by the Commission.

Commissioner Lamson said the comments provided a good cross section of all of the different views that the Commission will have to deal with. He said that he will keep an open mind and will listen to all points of view.

Commissioner Bennion said that participation is the best way to make sure that no one interest is in control and that everyone has an equal seat at the table. He urged the public to stay involved in the process and that this Commission wants to keep it an open and transparent process.

02:07:52 Commissioner Vaughey agreed with Commissioner Bennion's comments. She asked that any additional testimony be provided to the Commission before the mid-May deadline.

02:08:31 Commissioner Smith thanked everyone for participating. He said that he likes "out of the box" thinking and that the comments will be extremely valuable when the decision making begins. He encouraged everyone to submit written testimony and said that the outcome may not please everybody but that the process would be fair and open.

DISCUSSION AND ADOPTION OF DATE AND TIME FOR EXECUTIVE ACTION

02:10:09 **Commissioner Bennion moved to approve May 28, 2010, as the next meeting date of the DAC. The motion passed on a unanimous voice vote.** Ms. Weiss said that the minutes from the April hearings would not be complete transcripts but summary minutes. She said that copies of the minutes, along with other additional comments would be provided to the Commissioners. Commissioner Smith said sooner rather than later would be ideal.

02:12:01 Commissioner Vaughey asked if setting a deadline of May 14 to take public comment was reasonable. Ms. Weiss said it was.

ADJOURNMENT

02:13:04 With no other business before the Commission, the meeting was adjourned. The next meeting of the Districting and Apportionment Commission will be held on Friday, May 28, 2010, in Helena, Montana.

*The Commissioners also received a packet of public comment submitted in advance of the meeting **(EXHIBIT 7)**. All public comment is available for viewing on the Commission's website:* http://leg.mt.gov/css/Committees/interim/2009_2010/districting/default.asp

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Exhibit D

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

Montana Districting and Apportionment Commission

MINUTES

May 28, 2010

Room 137, State Capitol
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

An electronic copy of these minutes and the audio recording may be accessed from the Legislative Branch home page at http://leg.mt.gov. On the left-side column of the home page, select *Committees*, then *Interim*, and then the appropriate committee.

To view the minutes, locate the meeting date and click on minutes. To hear the audio recording, click on the Real Player icon. Note: You must have Real Player to listen to the audio recording.

COMMITTEE MEMBERS PRESENT

Jim Regnier, Presiding Officer
Jon Bennion
Joe Lamson
Pat Smith
Linda Vaughey

STAFF PRESENT

Rachel Weiss, Research Analyst
Joe Kolman, Research Analyst
Lisa Mecklenberg-Jackson, Attorney
Dawn Field, Secretary

AGENDA & VISITORS LIST

Agenda, Attachment #1.
Visitors' list, Attachment #2.

COMMITTEE ACTION

The Districting and Apportionment Commission:

- approved the minutes from the April 8, April 19, and April 28, 2010, hearings, as written;
- adopted mandatory criteria for congressional districts;
- adopted mandatory criteria for legislative districts; and
- adopted discretionary criteria for legislative districts.

CALL TO ORDER AND ROLL CALL

00:00:01 Commissioner Regnier called meeting to order at 10:00 a.m. The Secretary took roll, all members were present (ATTACHMENT 3).

Administrative Matters

00:01:54 **Commissioner Smith moved to adopt the April 8, April 12, and April 19, 2010, meeting minutes. The motion passed on a unanimous voice vote.**

Update on purchase of redistricting software

00:02:30 **Joe Kolman, Research Analyst, Legislative Services Division (LSD),** reported that after he and other DAC staff members completed a comparison process, the decision was made to purchase "Maptitude", as was demonstrated at the Austin conference. He said that the purchase includes software, three user licenses, and training.

Commission discussion and adoption of redistricting criteria

00:03:59 Commissioner Regnier thanked, on behalf of the Districting and Apportionment Commission, the many citizens of Montana who took the time to provide public and written comment on the redistricting process and on the mandatory discretionary criteria. He made additional comments regarding the process of districting and how, as Presiding Officer of the Commission, he planned to conduct the Commission's meetings and work plan. He said that he will focus on three areas: to follow the principles of the United States Constitution and federal court case decisions regarding the redistricting process, to follow Montana's Constitutional requirements for redistricting, and to remain cognizant of the obligations set forth in the Voter Rights Act of 1965.

00:10:39 Commissioner Lamson agreed with Commissioner Regnier's comments and said that the Commissioners received earlier and more thorough training than previous commissions and that the Commissioners already have a good sense of the diverse opinions in the state. He said that the Commission's goal is to mold the diverse opinions into a policy that reflects the State.

00:13:42 Commissioner Bennion said the current Commission is already on track to have the most open and transparent redistricting process, thanks to the comments received and public hearings. He said that even though very diverse opinions and ideas have been submitted, he is already coming up with ideas of how to meld them into a workable public policy for Montana.

00:15:17 Commissioner Vaughey said that because of the hearings, the public has a heightened awareness of what the Commission is doing and the importance of its

work. She said she looks forward to working with all of the Commissioners and will follow the Presiding Officer's lead in pursuing a collaborative and transparent approach.

00:17:06 Commissioner Regnier recognized Mary Craigle, Department of Commerce for her contributions and efforts to the process.

00:17:29 Commissioner Smith said he is strongly committed to an open, transparent, and fair redistricting process and that he takes compliance with the Voter Rights Act very seriously. He said it is not the job of the Commission to balance the state politically or to allow domination, but that the end result of the process should reflect the diversity of the state, including the vastness of its geography, its independent voters, and the changing dynamic of Montana's increasing suburban-rural interface.

00:27:18 Commissioner Regnier noted that Lisa Mecklenberg-Jackson, Staff Attorney, Legislative Services Division (LSD), prepared a checklist for selecting congressional and legislative redistricting criteria, as outlined by state and federal law **(EXHIBIT 1)**. It was agreed that the checklist would be used as the template for discussion and selection of the criteria.

MANDATORY CRITERIA FOR CONGRESSIONAL DISTRICTS

1. Population equality

00:28:49 **Commissioner Vaughey moved to adopt the mandatory criteria for congressional districts, as written.** Commission Vaughey read aloud the criteria (EXHIBIT 1). **The motion passed on a unanimous voice vote.**

MANDATORY CRITERIA FOR LEGISLATIVE DISTRICTS

1. Population equality

00:30:17 **Commissioner Vaughey moved to approve mandatory criteria for legislative districts as proposed in her document (EXHIBIT 2).** Commissioner Vaughey read her statement into the record. She said the motion, as written, clearly addresses the "one person, one vote" concerns as heard in the public hearings, and that the language would go along way to keeping the public confidence in the process, as well as reducing the risk of a lawsuit. The Commissioners discussed the motion at length.

00:34:16 Commissioner Bennion supported the motion, saying it clearly addresses concerns presented in the public hearings. He discussed the motion.

00:36:46 Commissioner Lamson thanked Commissioner Vaughey for offering the motion but said he has concerns about adopting a 1percent deviation standard. He discussed his concerns, saying that there are legitimate reasons to allow a certain amount of flexibility in the deviation standard.

00:40:57 Commissioner Smith said he also has concerns about adopting a 1 percent deviation standard. He said that the switch from a 5percent deviation standard to

a 1 percent deviation would be too huge and said he would be more comfortable with a 3 percent standard. He suggested that the 1 percent standard be considered for the next districting cycle. Commissioner Smith discussed several additional concerns with the motion.

00:43:39 Commissioner Regnier said Commissioner Vaughey's motion directs the Commission to focus on the importance of reducing the deviation percentage. He said that Montana's Constitution requires the standard to be nearly equal as practicable and that with the advancement of software, his instincts are that the 5 percent standard can be improved upon but that he has concerns about adopting a 1 percent deviation standard. He discussed the motion further and offered suggestions on how it could be modified to alleviate the concerns as discussed. The Commissioners continued to discuss the motion.

01:09:30 Commissioner Lamson asked Mary Craigle, Department of Commerce, to comment on the status of census in Montana.

01:10:12 **Mary Craigle, Census Bureau Chief, Department of Commerce,** reported on the specific activities and outreach efforts that the census workers have completed and commented briefly on the preliminary numbers.

01:13:11 Commissioner Bennion asked when preliminary and official numbers would be available. Ms. Craigle said that the initial numbers will be available in March of 2011 and the redistricting file is produced in April 2011. Commissioner Smith asked about home visits in which the resident was not at home. Ms. Craigle said that up to seven visits are allowed and that neighbors are allowed to give information on the residents. She said that the census workers will follow up until the information is obtained.

01:14:53 Commissioner Lamson thanked Ms. Craigle and her staff for their tremendous effort. Commissioner Regnier asked Commissioner Vaughey if she would consider withdrawing her motion and redraft it to reflect the Commission's discussion. **Commissioner Vaughey withdrew her motion.**

BREAK

01:38:32 Commissioner Regnier reconvened the meeting at 11:40 a.m. **Commissioner Vaughey moved to approve her redrafted motion and read it into the record (EXHIBIT 3).**

01:40:56 Commissioner Bennion said he has certain issues but thought they could be worked out and the process moves along. He said the Commission needs to discuss the actual process in more detail and suggested having a fall meeting to do so.

01:41:58 Commissioner Smith said he could support the language, so long as adjustments could be made when the official census numbers come in.

01:42:17 Commissioner Regnier said he was concerned that the language could be misinterpreted. **Joe Kolman, Research Analyst, LSD,** suggested alternative language, beginning with the third sentence: *"Any deviation may not exceed plus*

or minus 3 percent from this ideal population. Each deviation will be accompanied by an explanation of the mandatory or discretionary criteria justifying such deviation." (The last sentence to remain as written.)

01:44:25 **Commissioner Vaughey withdrew her motion and moved the language as stated by Mr. Kolman.** She read the amended statement into the record: "*Each legislative district shall be as nearly equal in population as is practicable. It is the goal of the Commission that each district have a population of _____. Any deviation may not exceed plus or minus 3 percent from this ideal population. Each deviation will be accompanied by an explanation of the mandatory or discretionary criteria justifying such deviation. An explanation for any deviation shall be articulated and made part of the written record that accompanies each district description in the Commission report".* Commissioner Regnier said the motion would be amended, not withdrawn. He asked if there was any additional discussion. There was none. **The motion passed on a unanimous voice vote.**

2. Compact and contiguous districts

01:45:56 Commissioner Regnier said this criteria's source is the Montana Constitution, Article V, section 14. He read the criteria into the record (EXHIBIT 1).

01:46:41 Commissioner Vaughey said that much testimony was given in hearings about the current senate districts not being compact. She asked if this criteria relates to just the senate, or to the house districts also. Commission Lamson said it applies to both.

01:48:57 **Lisa Mecklenberg-Jackson, Staff Attorney, LSD,** noted that just the first sentence is from the Montana Constitution, the remainder is from the 1990 and 2000 districting commissions. Commissioner Smith said that the mention of the Montana Constitution in the criteria is misleading and suggested deleting it from the criteria language.

01:50:15 Commissioner Bennion said the notion of a general appearance test is vague and that he is uncomfortable with it. He discussed his concerns and said he is open to additional discussion of what a "compact" district really looks like. Commissioner Regnier said an alternative would be to have the Constitutional language only in the criteria. Commissioner Smith said he liked the language and that it is consistent with the training the Commissioners have received.

01:52:29 Commissioner Lamson said that there are many ways to measure compactness and that experts have agreed that each measure has its own biases. Commissioner Regnier said he understood the concerns discussed by Commissioner Bennion.

01:53:17 Commissioner Vaughey asked if there is additional language that would clarify that Commission isn't bound to just what is listed in the criteria. Commissioner Bennion said that using a general appearance test may leave things too wide open. Commissioner Vaughey, in the second sentence, suggested inserting "*but not be limited to*" after "*The Commission will use*". Commissioner Lamson said

he would agree to that change. Commissioner Smith suggested changing *"will*" to "*may*".

01:57:26 **Commissioner Vaughey moved to amend the language in the compact and contiguous criteria, as discussed by the Commission.** She read the amended statement into the record: " *Each district shall consist of compact and contiguous territory. (MT Constitution). The Commission may use but not be limited to a general appearance test regarding the compactness of the district and consider the district's functional compactness in terms of travel and transportation, communication, and geography.*" **The motion passed on a unanimous voice vote.**

3. Protection of minority voting rights and compliance with the Voting Rights Act

01:58:37 Commissioner Regnier read the criteria language into the record and noted that the source of the criteria is 42 U.S.C. 1973 (EXHIBIT 1).

01:59:23 **Commissioner Bennion moved to adopt the criteria, as written. The motion passed on a unanimous voice vote.**

4. Race cannot be the predominant factor to which the traditional discretionary criteria are subordinated.

01:59:54 Commissioner Regnier read the criteria language into the record and noted the source of the criteria is Shaw v. Reno, 509 U. S. 630 (1993) (EXHIBIT 1). **Commissioner Bennion moved to adopt the criteria, as written. The motion passed on a unanimous voice vote.**

02:01:00 Commissioner Regnier recessed the Commission for a 15-minute break.

BREAK

02:17:03 Commissioner Regnier called the Commission back to order at 12:18 p.m.

DISCRETIONARY CRITERIA FOR LEGISLATIVE DISTRICTS

1. Following the lines of political units

02:17:41 Commissioner Regnier read the criteria into the record (Page 2, EXHIBIT 1).

02:18:00 Commissioner Vaughey said that she prepared alternative language for this criteria (EXHIBIT 4). **Commissioner Vaughey moved to adopt her proposed language as the first discretionary criteria.** She spoke to her motion, saying that the addition of "neighborhood commissions" in place of "voting precincts" was prompted by testimony received.

02:19:57 Commissioner Lamson said he did not object to the language but reminded the Commission that for the first time, many precincts took census data at the request of county clerks and recorders. The Commissioners discussed the motion.

02:23:39 Commissioner Regnier asked Mary Craigle to respond to the discussion regarding voting precincts. Ms. Craigle said it is true that census data will be

associated with voting precincts as boundaries and that the precinct lines will be redrawn after the legislative districts are drawn.

02:24:14 Commissioner Bennion supported the motion.

02:24:20 Commissioner Smith said he would support the motion but said he would prefer to keep voting precincts in the language. Commissioner Vaughey said that because precincts are redrawn after the legislative district, it is not appropriate to include them. Commissioner Lamson reiterated that he considers voting precincts other political units so would be part of the general consideration.

02:25:26 **Rachel Weiss, Research Analyst, LSD,** discussed staff concerns about the wording. She said that neighborhood commissions will not be reflected in the census' geographical database so the motion may need to be reworded. Mr. Kolman recommended placing a period after "political units" and deleting the remainder of the statement. The Commissioners discussed the staff suggestions.

02:28:00 **Commissioner Vaughey amended her motion to read, "The Commission will consider the boundary lines of counties, cities, towns, school districts, Indian reservations, neighborhood commissions, and other political units." The motion passed on a unanimous voice vote.**

2. Following geographic boundaries

02:29:17 Commissioner Regnier read the proposed criteria into the record (Page 2, EXHIBIT 1). Commissioner Lamson asked if the TIGER/Line files will be the same as those used in 2000. Mr. Kolman said yes.

02:30:08 **Commissioner Vaughey moved to adopt the second discretionary (to follow geographic boundaries) as written. The motion passed on a unanimous voice vote.**

3. Keeping communities of interest intact

02:30:51 Commissioner Regnier read the proposed criteria into the record (Page 2, EXHIBIT 1). Commission Vaughey said that she had prepared alternative language for the third discretionary criteria - keeping communities of interest intact . She read her proposed language into the record **(EXHIBIT 5)**. **Commissioner Vaughey moved to approve the language.** She said that she changed the order of entities listed to better reflect the hierarchy and also included language to address public comment received relative to keeping intact city, suburban, and rural residents intact. Commissioner Lamson and Commissioner Bennion both spoke in support of the motion.

02:33:51 **The motion to adopt Commissioner Vaughey's alternative language for the third discretionary criteria passed on a unanimous voice vote.**

02:34:09 The Commission discussed the addition of language to discretionary criteria 3. -- Keeping communities of interest intact. Ms. Mecklenberg-Jackson explained that the language (*"An attempt will be made to keep city residents and rural residents in separate districts to the extent possible."*) was added as a result of public

comment received. It was agreed that the additional language was not needed because Commissioner Vaughey's proposed and adopted language (EXHIBIT 5) incorporated that concern.

4. Consideration of existing district lines

02:37:04 Commissioner Regnier read the proposed criteria into the record (Page 2, EXHIBIT 1). **Commissioner Vaughey moved not to include consideration of existing district lines as a discretionary criteria.** After a brief discussion, it was agreed that the information would be helpful for review purposes but was not needed as criteria. **The motion passed on a unanimous voice vote.**

5. Political fairness

02:40:13 Commissioner Regnier read the proposed criteria into the record (Page 2, EXHIBIT 1).

02:40:41 Commissioner Lamson did not support adopting the language as formal criteria. Commissioner Bennion said he was uncomfortable with this criteria and did not want to adopt it. Commissioner Regnier also did not support adoption of the criteria. **Commissioner Lamson moved not to adopt political fairness as discretionary criteria. The motion passed on a unanimous voice vote.**

02:43:22 Commissioner Regnier asked if there were other criteria the Commissioners wished to add. There was none. Commissioner Bennion asked to add a fall meeting at which process would be discussed. The Commissioners discussed the date of their next meeting. It was agreed that the Commission would schedule a meeting for spring and that the date would be determined later.

02:50:18 Commissioner Lamson asked about the budget. Ms. Weiss said that unless directed to do otherwise, she would budget for the same number of meetings as the last Commission. Commissioner Regnier said that would be a good starting point on which to base budget projections. Commissioner Lamson suggested using video conference technology whenever possible.

02:52:08 The Commission discussed participation in the software training. Mr. Kolman discussed the plans for training.

PUBLIC COMMENT

02:55:28 **Sen. Jeff Essmann, SD 28, Billings,** thanked the Commissioners for holding the public hearings in advance of adopting mandatory and discretionary criteria. He commented specifically on the importance of elementary school district boundaries in defining neighborhoods, both in urban and rural areas of the state.

BREAK The Commission recessed briefly while Ms. Mecklenberg-Jackson prepared the revised criteria list.

03:06:55 Ms. Mecklenberg-Jackson distributed copies of the mandatory and discretionary criteria, as approved by the Commissioners **(EXHIBIT 6)**. Commissioner Regnier noted, for the record, a typographical error in the third discretionary criteria (Keeping communities of interest intact.) Ms. Mecklenberg-Jackson said, in the

second sentence, insert the word "be" between "can" and "based". (*Exhibit 6, as contained in the minutes and posted on the website, is the corrected version)*.

ADJOURNMENT

03:07:50 With no further business before the Districting and Apportionment Commission, Commissioner Regnier adjourned the meeting at 1:09 p.m.

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Exhibit E

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

Montana Districting and Apportionment Commission

MINUTES

July 12, 2011

Room 152, State Capitol
Helena, Montana

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.**

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

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To view the minutes, locate the meeting date and click on minutes. To hear the audio recording, click on the Real Player icon. Note: You must have Real Player to listen to the audio recording.

COMMITTEE MEMBERS PRESENT

Jim Regnier, Presiding Officer
Jon Bennion
Joe Lamson
Pat Smith
Linda Vaughey

STAFF PRESENT

Rachel Weiss, Research Analyst
Joe Kolman, Research Analyst
Julianne Burkhardt, Attorney
Dawn Field, Secretary

AGENDA & VISITORS' LIST

Agenda, Attachment #1.
Visitors' list, Attachment #2.

COMMITTEE ACTION

The Districting & Apportionment Commission:

- approved the May 16, 2011, meeting minutes as written;
- approved general operating guidelines;
- approved guidelines for initial public comment;
- approved guidelines for accepting publically submitted plans;
- approved using federal 2010 decennial census data as the exclusive and official database for the districting process;
- approved racial/ethnic data guidelines; and
- agreed by consensus on how to provide maps to entities and individuals.

CALL TO ORDER AND ROLL CALL

00:01:08 Commissioner Regnier called the meeting to order at 2:00 p.m. The secretary took roll, all members were present (Attachment 3). Commissioner Regnier welcomed all in attendance to the meeting.

00:03:57 **Commissioner Vaughey moved to approve the May 16, 2011, meeting minutes, as written. The motion passed on a unanimous voice vote.**

DRAFT OPERATING PROCEDURES DISCUSSION AND ADOPTION

Staff review of draft procedures

00:05:02 **Rachel Weiss, Research Analyst, Legislative Services Division (LSD),** reviewed the draft operating procedures (EXHIBIT 1). She noted that two decisions would be required of the commissioners: how to gather public comment before drawing maps and how to draw and present the maps to the public. She said the draft procedures offer two options of using either a statewide approach or a regional approach. Ms. Weiss also discussed an accompanying worksheet to help guide the commissioners through the decision process (EXHIBIT 2).

1. General operating guidelines

00:09:58 Ms. Weiss discussed the advantages and disadvantages of the statewide versus a regional approach. Ms. Weiss said that advantages of Option A - using a statewide approach - include getting comment on all of the maps from all corners of the state and more efficient use of staff resources. She said that Option B - the regional approach - would require more staff time because they would be doing multiple functions at once, rather than being able to concentrate on one step of the process at a time. She said that the public may get less time to review a map under Option B because some of the maps wouldn't be available until shortly before public hearings. Ms. Weiss explained the mapping and hearing process that would occur under each option.

00:15:16 Commissioner Regnier asked the commissioners to comment on or question the proposed draft options.

00:19:11 Commissioner Vaughey asked Ms. Weiss to restate the advantages of a statewide approach. Ms. Weiss said that the same maps would be used at all hearings, so while the public comment at a hearing may focus on a particular region, statewide concerns could be heard also because all citizens would be

viewing the same maps. The statewide approach would also allow staff workload to be divided up into more concrete stages. Commissioner Vaughey asked about staff outreach in developing and sharing information. Ms. Weiss said she did not anticipate that the number of staff visits would change under a statewide approach. Regarding the regional plan, Ms. Weiss said that there is a stronger chance of getting into a time crunch with taking public comment on maps.

00:22:01 Commissioner Vaughey asked if there would there be cutoff time for public comment under the state approach and if that might influence how maps will be drawn. Ms. Weiss said that is a consideration and discussed how a deadline of December 1, 2011, may be a timely deadline for taking public comment before the mapping process begins.

00:24:27 **Joe Kolman, Research Analyst, LSD,** added that with a regional approach, in the end, the regional maps need to be "stitched' together, which can be a complicated procedure and that using a statewide approach would make the end process easier.

00:25:02 Commissioner Smith said he is not familiar with the Maptitude software and asked to what extent is the software a factor in the decision. Mr. Kolman said that the Maptitude software is fairly intuitive and easy to use and isn't limiting to either approach.

00:27:32 Commissioner Bennion said he likes the statewide approach because it will give the public the same opportunity as the Legislature to comment on the same maps.

00:29:38 Commissioner Lamson said he, too, favors a statewide approach because of its efficiency. He discussed several advantages of using a statewide approach.

00:32:26 Commissioner Regnier said that while he recognizes that a statewide approach is different, the advantages are significant and would make the process more efficient and productive.

00:35:04 Commissioner Smith agreed that using a statewide mapping approach would be best. He said that all involved would benefit and will allow the public to fully participate. He discussed several reasons why he favors using the statewide approach.

2. Initial public comment

00:38:57 Ms. Weiss said it was suggested at the last meeting that the Commission should hold public hearings before mapping process. She said that regardless of whether the Commission holds hearings or not, the public will always be able to communicate their needs to the Commission through email or written communication and that staff has planned a very proactive approach to contact all 56 counties, election administrators, and other interested entities. She suggested that the Commissioners write another op/ed article because the previous article was well received and generated a lot of comment and response from the public. Ms. Weiss said that staff preference would be to proceed as

planned with staff visits, the mapping process, and then taking public comment. She noted that there are budgetary concerns to consider and that holding hearings before the mapping process could limit the number of hearings that could be held after the mapping process is completed.

00:43:31 Commissioner Vaughey said that at this point, the most important thing is to make certain that the public understands that criteria exist and will be used in judging the value of each map. She said that op/ed piece is only one avenue that can be used to educate the public and that other venues could be used also, such as public service announcements or brochures.

00:45:43 Commissioner Regnier suggested that the Commissioners speak to local groups in their regions and said that he has already given presentations to interested groups in his area.

00:46:28 Commissioner Lamson agreed with Commissioner Vaughey's comment that the public needs to be clear on the criteria established by the Commissioners.

00:47:35 Commissioner Bennion asked about staff visits to counties and communities and public hearings. Ms. Weiss said that staff intends to make contact with various interested parties in the counties. She said it was not realistic to visit all 56 counties but that population centers would be prioritized, as would achieving a regional balance to allow less populated areas to be heard.

3. Publically submitted plans

00:51:00 Commissioner Regnier reviewed the two options listed. Ms. Weiss clarified that the Commission should accept maps from the public but that if a publically submitted map is to be used as an official Commission map, that map should be moved by at least one or more of the commissioners. The number required would be left up to the Commission. Commissioner Regnier asked about what type of format should be required. Ms. Weiss said that a member of the public can submit any type of map that illustrating their local or regional concerns but that if the map is to be used to solicit public comment, it should looked at in the context of the whole state and be in an electronic format that is compatible with the Commission's software.

4. Population and geographic database

00:55:59 Ms. Weiss said this simply formalizes the use of the federal census data and makes clear the information sources for the Commission.

5. Racial/ethnic data

00:56:38 Ms. Weiss said that federal guidelines were established based on the Voting Rights Act and that staff recommends that they be adopted.

6. Copies of maps

00:57:21 Ms. Weiss explained that, as in the last cycle, copies of the maps will be provided to certain entities at no cost but that hard copies will also be available for cost of printing and mailing. She noted that maps will be posted online, as well.

00:58:49 Commissioner Smith, regarding where the process would start, asked that Indian reservations and Indian majority House Districts be looked at carefully. He discussed the necessity of recognizing Montana's Indian population in the redistricting process.

01:02:15 Commissioner Lamson said that past Commissions have created six Indian majority House Districts. The 2000 Commission was able to create three Indian majority Senate Districts. The goal of having 6 House Districts and 3 Senate Districts fulfills the Voting Rights Act. Having less than that number might weaken the legality of any plan.

01:03:14 BREAK
01:14:39 Commissioner Regnier called the meeting back to order.

Public comment on operating procedure

01:15:18 **Ed Bartlett, City of Billings, Billings Chamber of Commerce,** thanked the commissioners and staff for their work and encouraged the Commission to hold as many public hearings as possible before the mapping process is started. He discussed several concerns, such as the need to include cities in the plan in addition to counties and election officials and the problems created by splitting neighborhoods. Mr. Bartlett said he supported the op ed ideas discussed by the Commission.

01:24:20 **Bret Rutherford, Election Administrator, Yellowstone County,** said he is looking forward to helping the Commission. He agreed with Mr. Bartlett's comments on not splitting neighborhoods and schools, saying that it is very important to maintain communities of interest and that school district boundaries often shape a neighborhood.

01:25:43 **Sen. Jeff Essmann, SD 28, Billings,** encouraged the Commission to adopt the statewide mapping approach. He discussed his past experience in working with the previous two Redistricting Commissions and how his community was negatively impacted by being the last region to be mapped. He said a statewide approach would be a more fair approach to all regions.

01:30:27 Commissioner Regnier asked Sen. Essmann to discuss what his approach would be in offering alternative map options. Sen. Essmann agreed with Commissioner Smith's comments regarding reservation districts and discussed his preference and rationale for creating districts based on school district lines/political subdivisions.

01:33:33 **Leo Tanner, citizen,** referred to the statutory requirements of 5-1-115, MCA, and encouraged the Commissioners to be as fair as possible. He discussed his concerns about the last districting plan.

01:37:06 Commissioner Regnier said the Commission would vote on each operating guideline separately.

1. General operating guidelines

01:38:10 **Commissioner Smith moved to approve option A - using a statewide mapping approach. The motion passed on a unanimous voice vote**. Mr. Kolman discussed how the mapping process could be completed using different starting points and/or themes to create the maps. The Commissioners discussed how the mapping process should be executed. Each Commissioner also offered their ideas for different starting points and other considerations to be dealt with in the mapping process.

2. Initial public comment

02:04:03 The Commission briefly discussed how public comment should be addressed. **Commissioner Lamson moved that staff solicit public comment but not hold formal hearings.** He suggested that staff visits and meetings be noticed on the website and that the Commissioners write an op ed piece to educate the public regarding the criteria and the process to be followed, with an emphasis on the criteria. **The motion passed on a unanimous voice vote.**

3. Publically submitted plans

02:06:43 Commissioner Regnier said the commission will accept any plan submitted, but that if the plan is to be included as a statewide map to be included at public hearings, staff has recommended that the plan be submitted by a Commissioner. He asked the Commissioners to comment.

02:07:27 Commissioner Smith asked if a publically submitted plan should be required to be adopted by a Commission vote. The Commissioners discussed how publically submitted plans should be handled if chosen to be one of the Commission's statewide plans.

02:21:09 **Commissioner Bennion moved to allow a publically submitted plan to come forward with the sponsorship of one commissioner and also to reserve the ability of the Commission to narrow the number of plans before releasing for public comment. The motion passed on a unanimous voice vote.**

4. Population and geographic design

02:21:45 **Commissioner Smith moved to approve using the official 2010 federal decennial census as the population and geographic database. The motion passed on a unanimous voice vote.**

5. Racial/ethnic data

02:22:16 **Commissioner Smith moved to adopt the racial/ethnic data as recommended/written. The motion passed on a unanimous voice vote .**

6. Copies of maps

02:22:38 Ms. Weiss said that all maps will be available electronically on the website but that staff would like guidance on how to deal with printing and postage costs for groups or individuals wishing to receive a paper copy. She said the costs would not be astronomical but that it may be a good idea to set a policy.

02:26:27 After a brief discussion, it was agreed that because the maps will be available online and that hard copies will be available for viewing at all hearings, that maps will be provided to county clerks/recorders and election administrators, party central committees, and tribal officials; and that maps will be provided upon request to others at cost of printing and mailing.

PUBLIC COMMENT ON ANY TOPIC WITHIN THE JURISDICTION OF THE COMMISSION

02:28:58 There was no public comment.

DISCUSSION OF MEETING DATES, AGENDA ITEMS / DIRECTIONS TO STAFF

02:29:15 Commissioner Regnier said that the next meeting date would be set at a later date.

02:30:03 Commissioner Regnier emphasized the importance of public education at this point of the process. He urged the Commissioners to work within their local communities by giving presentations and making themselves available for questions.

02:31:17 Commissioner Lamson agreed that public outreach is vital to the districting process. He announced that the Democratic Party has hired Kendra Halvorsen as its Redistricting Director.

02:32:13 **Julianne Burkhardt, Staff Attorney, LSD,** said that as legal staff, she is available to research issues and/or provide legal analysis.

Commissioner Regnier thanked the staff for their work done in preparation of the meeting, saying that their recommendations were very helpful and well thought out. He also thanked the Commissioners for their hard work and careful consideration given to each of the action items.

ADJOURNMENT

02:33:17 Commissioner Bennion moved to adjourn the meeting at 4:33 p.m. The next meeting date of the Districting and Apportionment Commission will be announced at a future date.

The Commissioners also received a packet of public comment submitted in advance of the meeting (EXHIBIT 3). All public comment is available for viewing on the Commission's website: http://leg.mt.gov/css/Committees/interim/2011-2012/districting/public-comment.asp

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Exhibit F

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

Montana Districting and Apportionment Commission

MINUTES

February 17, 2012

Room 172, State Capitol
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. To the left of each section in these minutes is a time designation indicating the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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Hard copies of the exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.

COMMITTEE MEMBERS PRESENT

Jim Regnier, Presiding Officer
Jon Bennion
Joe Lamson
Pat Smith
Linda Vaughey

STAFF PRESENT

Rachel Weiss, Research Analyst
Joe Kolman, Research Analyst
Julianne Burkhardt , Attorney
Dawn Field, Secretary

AGENDA & VISITORS' LIST

Agenda, Attachment #1.
Visitors' list, Attachment #2.

COMMITTEE ACTION

The Districting and Apportionment Commission:

- approved the July 12, 2011, meeting minutes;
- approved the suggested public hearing schedule;
- did not approve a motion to revise plans to be identified by who requested and prepared them;
- approved a naming convention to clearly identify the preparer and theme of each plan; and
- approved putting forth five plans for public comment.

CALL TO ORDER AND ROLL CALL

00:00:04 Commissioner Regnier called the meeting to order at 9:30 a.m. The Secretary took the roll, all members were present (ATTACHMENT #3)

Welcome and Announcements

00:02:03 Commissioner Regnier welcomed all to the meeting and reviewed meeting protocol.

Overview of Meeting Purpose

00:04:00 Commissioner Regnier reviewed the purpose of the meeting and emphasized that the Commission would discuss each map and take public comment but that no decisions would be made until much later in the process.

Approval of Minutes

00:05:13 **Commissioner Vaughey moved to approve the July 12, 2011, meeting minutes. The motion passed on a unanimous voice vote.**

2012 SUGGESTED PUBLIC HEARING AND MEETING SCHEDULE

00:05:34 **Rachel Weiss, Staff Research Analyst, Legislative Services Division (LSD),** reviewed the draft 2012 public hearing and meeting schedule (EXHIBIT 1).

00:08:31 **Commissioner Smith moved to adopt the draft 2012 public hearing and meeting schedule. The motion passed on a unanimous voice vote.**

REVIEW OF CRITERIA AND DRAFT LEGISLATIVE DISTRICTING PLANS

00:09:04 Ms. Weiss reviewed the map "themes" chosen by the Commissioners, as well as the mandatory and discretionary districting criteria adopted by the Commission (EXHIBIT 2). Ms. Weiss' presentation also included the review process that will be used.

00:14:02 **Joe Kolman, Research Analyst, LSD,** demonstrated how to use the Districting and Apportionment Commission (DAC) webpages to view the proposed maps. He also demonstrated how to use Google Earth to view maps and noted that the information on the DAC webages can interface with GIS technology as well. He said that the technology applications were developed by Mike Allen, Information Technology, LSD.

Plan Overview

- **Existing 100 Theme: Use Existing Districts as Starting Point for Redrawn Districts**

00:22:36 Mr. Kolman discussed an overview of the Existing 100 Theme Plan: use existing districts as a starting point for redrawn districts (EXHIBIT 2).

Commissioner questions

00:38:51 Commissioner Vaughey asked if at any time voting patterns or election results were taken into consideration. Mr. Kolman said no.

- **Urban Rural Plan 100 Theme: Emphasize Clear Lines Between Population Centers and Rural Areas**

00:39:35 Ms. Weiss discussed an overview of the Urban Rural 100 Theme Plan to emphasize clear lines between population centers and rural areas (EXHIBIT 2).

Commissioner questions

00:52:31 Commissioner Lamson asked if the maps submitted by the Billings Chamber of Commerce were incorporated into the plan. Ms. Weiss said they were to a certain extent and explained.

00:53:44 Commissioner Lamson asked if other city maps submitted were incorporated. Ms. Weiss said that other plans were submitted but were not encompassed. She explained further.

00:55:00 Commissioner Vaughey asked if staff has looked at programs that measure and quantify the compactness of a proposed district. Ms. Weiss said not yet but does intend to do so. Ms. Weiss read the compactness criteria aloud and discussed issues that must be considered when measuring compactness. She said staff could provide additional information on compactness.

00:59:37 Commissioner Regnier asked Ms. Weiss to clarify how the Billings Chamber of Commerce map was incorporated into staff maps. Ms. Weiss said that in visits to communities last fall, staff gathered regional and local information and also encouraged people to submit maps for consideration. She said the map submitted for the Billings area fit well into the Urban Rural Theme so it was incorporated.

01:01:26 Commissioner Lamson commented on biases that occur in the mapping process, particularly when measuring compactness.

01:02:27 Commissioner Bennion asked how staff dealt with larger urban areas. Ms. Weiss said that following city lines is a difficult task because they are not usually contiguous. She explained how staff attempted to follow city lines as much as possible and discussed obstacles or other considerations encountered in the mapping process.

01:05:25 Commissioner Smith asked how staff approached mapping suburban areas in the Urban Rural 100 Plan. Ms. Weiss said is it was very difficult to deal with the suburban areas in the Urban Rural 100 Plan maps and that challenges were encountered in all of the major city areas.

01:07:03 Commissioner Vaughey said that following actual neighborhoods would make it easier. Ms. Weiss agreed and said that staff also tried to use elementary school district lines. Commissioner Vaughey referred back the previous discussion of the compactness issue and recalled an article published by the League of Women Voters regarding using several different models to measure compactness. Ms. Weiss said staff would watch for that type of information.

01:09:38 Commissioner Regnier recessed Commission for 10-minute break at 10:44 a.m..

BREAK

01:20:26 Commissioner Regnier called the meeting back to order at 10:55 a.m. Staff continued their presentation of draft redistricting plans

- **Subdivision 100 Theme: Attempt to Keep Political Subdivisions Intact When Possible**

01:20:37 Ms. Weiss discussed an overview of the Subdivision 100 Theme Plan: attempt to keep political subdivision intact when possible (EXHIBIT 2).

Commissioner questions

01:30:58 In response to a question from Commissioner Lamson, Ms. Weiss discussed how districts were drawn and the trade-offs that were considered when drawing the lines.

01:33:10 Commissioner Vaughey asked for the total number of counties that were kept whole. Ms. Weiss said that 31 counties were kept whole in the Subdivision 100 Plan. Commissioner Vaughey said that the process of drawing maps ahead of time and being able to preview of the impacts will keep the Commission mindful of the ripple effects of changes.

01:35:22 Commissioner Regnier reminded everyone that the maps are just starting points and that they may look entirely different by the time voting takes place.

- **Deviation 100 Theme: Emphasize the Commission's Criterion on Relative Population Equality Between the Districts**

01:36:08 Mr. Kolman discussed an overview of the Deviation 100 Theme Plan: emphasize the Commission's criterion on relative population equality between the districts (EXHIBIT 2).

01:37:09 Commissioner Regnier said the deviation criteria was mandatory criterion and he asked if it was difficult to work with, compared to the other types of criteria used. Mr. Kolman said the deviation criteria was neither easier nor more difficult to work with. He explained how staff worked with the deviation criteria.

01:41:29 Mr. Kolman continued discussion of Deviation 100 Theme Plan.

01:42:18 Commissioner Regnier asked about deviation ranges.

01:42:36 Mr. Kolman continued his overview of the Deviation Theme Plan (EXHIBIT 2).

Commissioner questions

01:53:08 Commissioner Bennion commended staff on the draft maps. He asked about working with maps with very low deviation and the amount of flexibility in those maps as compared to a map with a larger deviation and perhaps more flexibility. Mr. Kolman explained that it is a matter of working with the numbers. Ms. Weiss noted that a change in one district can ripple through several districts before the effect of the change can be mitigated.

01:55:38 Commissioner Regnier said other plans could be presented at this time.

- **Communities 100 Theme Plan: Integrates Montana Communities of Interests within Multiple Criteria, developed by Commissioners Lamson and Smith**

01:58:09 Commissioner Lamson discussed the Communities 100 Plan: integrates Montana communities of interest within multiple criteria (EXHIBIT 3).

02:02:52 Commissioner Smith said the plan compliments work done by the staff and is meant to be used as a starting point for discussion. He discussed his focus on Indian majority districts, including the work of the 2000 Commission creating six House and three Senate districts, the undercount of American Indians in the 2010 census, and the Federal Voting Rights Act.

02:06:31 Commissioner Regnier asked about Commissioner Smith's comments regarding an undercount in Indian voting districts and the possible significance of the undercount. Commissioner Smith said the significance can't be known and said that the Communities Plan adds a cushion to lessen the effect of the undercount.

02:07:49 Commissioner Smith continued his discussion of Districts 15 and 16 (EXHIBIT 3).

02:09:19 Commissioner Bennion asked if population breakdown was done on either side of the Continental Divide. Commissioner Smith said he didn't have an exact number but could get the information. He continued his overview of the plan.

02:15:12 Commissioner Lamson discussed metropolitan areas, beginning with Billings.

02:25:38 Commissioner Regnier recessed the meeting for lunch until 1 p.m.

LUNCH BREAK

Commissioner Regnier called the meeting back to order at 1:06 p.m.

Committee Questions

03:31:27 Commissioner Vaughey asked if voter patterns and election results were used in creating the Communities Plan maps. Commissioner Lamson said yes, as well as a variety of other information sources.

03:33:49 Commissioner Bennion asked a series of questions of Commissioner Lamson regarding the Communities Plan. Questions included how the plan should be judged based on the criteria used to design the plan, components of the plan, data sources, concerns regarding how the Communities Plan divides his own community and county, and concern that malapportionment could occur under the Communities Plan. Commissioner Lamson responded to each of the questions.

03:43:44 Commissioner Bennion discussed his concerns about the Communities Plan and said that he is reluctant to put it forward as an official Commission plan.

03:48:11 Commissioner Regnier reiterated that all plans would be considered starting points and that no plan would be endorsed at this time. He reviewed the rules adopted by the Commission in judging and adopting a plan and said that the mandatory and discretionary criteria would be adhered to, regardless of which plan is chosen.

03:50:28 Commissioner Lamson voiced his objections to several of Commissioner Bennion's statements. He discussed his view of what the job, as a commissioner, requires in gathering information and how the information should be used in drafting maps. He also responded to several of Commissioner Bennion's concerns about the data used in the Communities Plan.

03:53:06 Commissioner Bennion formally requested that at future hearings that Commissioner Lamson provide the Democratic Party Quotient (DPQ) and the **NCECDPI** to the public to help the public evaluate the information properly.

03:54:01 Commissioner Vaughey commented that perhaps she was more naive about the process than she realized after studying failed districting efforts in other states. She briefly discussed another state's situation and said, given the skill set of the Montana Commissioners, that she had hoped this Commission would not encounter similar problems. She stated that she has not looked at voter patterns or election results and that she was disappointed that the Democrats have.

03:59:17 Commissioner Lamson said the goal of the Democrats has been to put out the best plan possible. He discussed the 1990 districting cycle and stated that "complete Republican domination of both houses of the legislature for the last ten years" was the result. He said that at least three of the staff plan continues that pattern and that political data is a part of all of the plans.

04:01:35 Commissioner Bennion commented on how the use of sophisticated computer technology has changed the process and has increased the danger of manipulating districts, which he said, the Commission should not be a part of. He said he would like see the rest of the 81 districts' numbers that Commissioner Lamson relied on to create the "fair and competitive" districts in the Communities Plan.

04:03:11 Commissioner Smith commented that he considers himself a student of politics with an emphasis on Native American interests, and that he has learned enough to realize that redistricting is inherently an incredibly partisan process. He said that while LSD staff approached the mapping process in a nonpartisan fashion, the fact is that no matter where lines are drawn, there will be political consequences. He said that any interest group can look at partisan or other types of data and that no one is precluded from considering that data in decisions. He agreed that the adopted criteria must be followed but reminded the Commissioners that they agreed that any person or entity could submit maps for the Commission's consideration based on whatever data they wished. He added

that it might be helpful to the public to be able to see what the partisan impacts of each particular plan might be. He discussed the positive attributes of the Communities Plan.

04:09:36 Commissioner Regnier discussed his view that his role on the Commission as being nonpartisan. He stated that while the Commissioners agreed to be inclusive of outside plans, those plans would be clearly identified as being submitted by individuals and not as drafted by LSD staff.

04:12:30 Commissioner Vaughey asked if staff could attach an addendum to the Communities Plan that explains more clearly what the directions were that resulted in that particular plan. Ms. Weiss said she would do so. Commissioner Regnier emphasized that the Communities Plan must be identified as Commissioner Lamson's and Commissioner Smith's plan. Commission Lamson said he would expect the same naming courtesy be used for plans submitted by the other Commissioners. The Commission discussed how the different plans should be named and/or identified.

04:15:50 Commissioner Bennion said that the other plans were prepared by staff, which is the distinction between the other plans and the Communities 100 Plan. He said it is a more an issue of who the preparer is, not the requestor. Commissioner Lamson disagreed and said that the staff-prepared plans were requested by specific Commissioners and should be noted as such.

04:17:24 Commissioner Vaughey commented that while she may have suggested a plan and did so without motive, and that the Chair of the Commission also suggested a particular plan.

04:19:29 Commissioner Regnier asked if the members wanted to vote on how plans would be identified. Commissioner Lamson said yes. He suggested that each plan be given a different number in order to more clearly differentiate them from one another.

04:22:21 Commissioner Regnier said, for the public's benefit, that he wanted a clear distinction to be made between plans prepared by Legislative Services and plans prepared by others. Commissioner Lamson suggested that each plan be labeled with the plan name, the requestor, and the preparer.

04:23:52 Commissioner Bennion said that a distinction is who requested the plans and that the Commission acted as a whole in requesting the original four plans.

04:25:28 **Commissioner Smith moved that plans be clearly transparent and that each plan would clearly state who requested the plan and clearly state who prepared each plan**. Commissioner Bennion asked for clarification on if the plan would be still be named the Communities Plan. Commissioner Smith said yes, but that it would have his name and Commissioner Lamson's name on it as requestors. Commission Bennion objected to naming it the Communities Plan. Commissioner Smith responded.

04:27:39 Commissioner Vaughey discussed her concern that the public may perceive that the Communities Plan was at the request of the Commission. She suggested that a different naming mechanism be used for plans not prepared by LSD staff in order to make clear that the plans prepared by staff were prepared on a nonpartisan basis. She recalled that Commission discussion on different themes for plans was done more as a "brainstorming" session and not as being requested individually by Commissioners. Commissioner Lamson disagreed and said the plans should be identified by who requested them and who prepared them. He dismissed that the notion that the staff-prepared plans are nonpartisan**. The motion failed on 2-3 roll call vote. Commissioners Bennion, Vaughey, and Regnier voted no. Commissioner Regnier moved that plans be identified as Legislative Services plans with the plan name following; and that the Communities 100 Plan be identified as being prepared by Commissioners Lamson and Smith.** Commissioner Vaughey asked if a short description of each plan could be included in the naming convention.

04:34:51 Ms. Weiss explained how she could identify the different plans. Commissioner Regnier supported Ms. Weiss's suggestions for identifying plans. Commissioner Lamson thought that a one-line explanation would be better. The Commissioners discussed the issue.

04:39:11 Ms. Weiss asked for clarification of the motion about how to name and identify each plan. Commissioner Regnier said he wanted each plan to be identified first by the preparer and then the plan name. Ms. Weiss said that when naming files, the names may have to be shortened. **The motion passed on a unanimous voice vote.**

04:41:16 Commissioner Regnier recessed the meeting for a short break.

BREAK

04:51:54 Commissioner Regnier called the meeting back to order. He asked that a formal motion be made regarding approval of the draft plans. **Commissioner Lamson moved that the Commission put forth all five plans for public comment.** Commissioner Vaughey said included is understanding each plan identified by author. **The motion passed on a unanimous voice vote.**

PUBLIC COMMENT

04:55:24 **Ed Bartlett, Billings, lawyer/lobbyist, representing Yellowstone County and Yellowstone County Election Administrator,** commented on the maps submitted *(at a previous meeting)* by the City of Billings and Yellowstone County, including the nonpartisan staff and entities who prepared them. He discussed several of the components of the Urban Rural 100 Plan and said that he strongly endorses the plan "as it applies to Yellowstone County". He discussed the plan.

05:05:19 Commissioner Lamson questioned Mr. Bartlett about his past history as a lobbyist on this issue and his party preference. Mr. Bartlett responded and noted that his party affiliation is not a part of his work as a lobbyist.

05:10:34 Commissioner Bennion discussed the subject of his own employment by the Montana Chamber of Commerce and his opinion that Commissioner Lamson's

frequent references to that could discourage local governments from participating in the districting process. Mr. Bartlett said that Commissioner Bennion made it clear when he met with the Billings Chamber of Commerce that he was there as a Commissioner, not as a Chamber of Commerce official; and that he encouraged the Chamber to participate in the process but did not offer guidance or suggestions to the Billings Chamber.

05:14:13 Commissioner Vaughey asked about the differentiation between the Billings Chamber of Commerce and the Montana Chamber of Commerce. Mr. Bartlett explained that there is no affiliation between the two entities. Commissioner Lamson commented that the Chamber organization is not as nonpartisan as Mr. Bartlett indicated.

05:16:00 **Bruce McCandless, City of Billings,** commented that a nonpartisan City Council unanimously approved the Billings/Yellowstone County maps.

05:16:47 Commissioner Lamson asked about the political composition of the Yellowstone County Commission. Mr. McCandless said he doesn't work for Yellowstone County. Commissioner Lamson questioned the capacity in which the Mayor of Billings has participated in community events. Mr. McCandless said that the Billings City Charter requires the Mayor to act in a nonpartisan capacity when fulfilling official duties.

05:17:56 **Bruce MacIntyre, Billings Chamber of Commerce,** said that the Chamber does not give political endorsements or candidate endorsements, and because the Chamber represents many different types of businesses, it tries to be as nonpartisan as possible. He said the maps submitted by the Billings and Yellowstone County were a collaborative effort, with input from many entities. He said his role was to take the maps out into the community for comment. Mr. MacIntyre listed a number of organizations to which he presented the maps and said that was the extent of his involvement. He said the Billings Chamber is getting criticism for ads being run by the U.S. Chamber and that he wanted there to be a clear distinction that there is no official affiliation between the groups.

05:20:48 **Ronda Wiggers, Great Falls Chamber of Commerce,** presented and discussed a districting plan designed by Cascade County and the City of Great Falls (EXHIBIT 4).

05:36:44 Commissioner Lamson asked if the other maps would be presented with the Cascade County maps, in order to allow the public to see all of the options. Ms. Wiggers said yes. Commissioner Lamson and Ms. Wiggers discussed legislative district boundaries in Teton County and around Seeley Lake.

05:39:23 **Leonard Wortman, Chair, Jefferson County Commission,** testified that Jefferson County is not a political subdivision to be divided up in order to benefit Butte-Silver Bow. He said that because the county is largely agricultural, it would be better to pair it with Madison County.

05:41:00 Commissioner Lamson said that the last Jefferson County Commission supported a plan that divided the county into multiple legislative districts. Mr. Wortman said that the current Jefferson County Commissioners have all expressed the opinion that Jefferson County needs to be represented as Jefferson County, and not as a part of Butte-Silverbow

05:42:29 **Nichole Brown, Broadwater County Planner,** submitted and discussed six maps representing Broadwater County as a whole (EXHIBIT 5). She read a letter from Broadwater County Commissioners requesting that Broadwater County be kept in one legislative district. Ms. Brown reviewed other documents included in the information submitted by the Broadwater County Commission.

05:45:02 Commissioner Regnier recessed the meeting for a short break.

BREAK

05:53:10 Commissioner Regnier reconvened the meeting.

05:53:22 **Sen. Jeff Essmann, SD 28, Billings,** thanked the Commission for having an open process and allowing public participation all throughout the process. He offered comments and suggestions on how to ensure that the districting process be open, fair, and transparent. Sen. Essmann requested, as hearings go forth, that the Commission place the issue of senate pairings and senate assignments on each hearing agenda, rather than just one hearing in the fall; in order to get a sense of what the public thinks.

06:00:18 Sen. Essmann responded to comments made earlier in the meeting regarding partisan plans and noted that the Republican Party has not requested or paid for a plan in the last three districting cycles. He also commented on minority-majority voting districts, saying that he questions the need to under-populate those districts and that there is no proof that there was an undercount in those districts.

06:05:22 Commissioner Lamson and Sen. Essmann discussed demographics of reservations, including Indian and non Indian population increases and other issues related to the districting process.

06:11:07 Commissioner Bennion thanked Sen. Essmann for his participation and diligence in attending the meetings. He said that every member of the Commission shares the mission of preserving majority-minority districts and that decisions will be based on sound information and facts.

06:11:52 Commissioner Smith said that his understanding is that there is no appeal that can affect the data that must be used by the Commission with the districting proceedings but that tribal government officials he has spoken with feel strongly that there were serious undercounts on reservations.

06:12:45 **Christine Kaufman, Democrat, Helena,** thanked the Commissioners for their service. She discussed her experience as a senator from an urban area having to also campaign in rural areas, saying that it gives her a better appreciation and understanding of issues and helps her provide a more balanced approach to legislating. She discussed the benefits of mixed districts, the role of partisan

politics in the districting process, her support of the Communities Plan, and her strong support for fair representation of minorities.

06:20:46 **Leo Tanner, Helena, citizen,** discussed his concerns regarding minority voting districts, specifically violations of *Shaw v. Reno* in stretching too far to gain minority votes. He discussed his objections to the Communities 100 Plan and his opinion of the last districting cycle.

06:23:42 Commissioner Lamson noted that he and Mr. Tanner have been emailing about the issues Mr. Tanner discussed. He asked Mr. Tanner how his proposal could be defended under the Voting Rights Act. Mr. Tanner explained how it would be covered under *Shaw v. Reno*.

06:26:43 Commissioner Smith and Mr. Tanner discussed the ruling by the Ninth Circuit Court regarding the Blackfeet-Flathead district.

INSTRUCTIONS TO STAFF & UPCOMING MEETINGS

06:30:05 Commissioner Regnier said he would like to discuss Sen. Essmann's suggestion about senate district pairings as agenda items at future meetings. Commissioner Lamson said people should be free to suggest senate pairings but that the house districts must be completed before senate districts can be drawn.

06:31:14 Commissioner Bennion agreed. He said it the public should be able to provide comment but would have to understand the process. Commissioner Regnier asked staff to note that in preparation of future agendas. Ms. Weiss asked if it should be a separate agenda item or just to notice the public that comment or suggestions would be taken on that topic. Commissioner Regnier said the latter. The issue of numbering the plans was discussed. It was agreed that Ms. Weiss would remove the numbers from the plans until later, when the amendment process begins.

ADJOURNMENT

06:33:28 With no further business before the Commission, **Commissioner Smith moved to adjourn. The motion passed on a unanimous voice vote.** The Districting and Apportionment Commission will meet on March 13 and 14, 2012, in Missoula, Pablo, and Kalispell, to hold hearings on the proposed maps.

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Exhibit G

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

Montana Districting and Apportionment Commission

MINUTES

August 13, 2012

Room 172, State Capitol
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. To the left of each section in these minutes is a time designation indicating the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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COMMITTEE MEMBERS PRESENT

Jim Regnier, Presiding Officer
Jon Bennion
Joe Lamson
Pat Smith
Linda Vaughey

STAFF PRESENT

Rachel Weiss, Research Analyst
Joe Kolman, Research Analyst
Julianne Burkhardt, Attorney
Dawn Field, Secretary

AGENDA & VISITORS' LIST

Agenda, Attachment #1.
Visitors' list, Attachment #2.

COMMITTEE ACTION

The Districting and Apportionment Commission:

- approved meeting minutes for February 17, 2012, March 13, 2012, March 14, 2012, March 27, 2012, March 28, 2012, April 12, 2012, April 13, 2012, April 18, 2012, April 19, 2012, May 8, 2012, May 9, 2012, May 15, 2012, and May 16, 2012;

- approved a motion to begin proceedings with the Indian majority-minority districts and then onto northwest Montana;
- adopted the Communities Plan for House Districts 1-13, 16, 31, 32, 41, 42, 58, and 100;
- did not approve a motion to adopt the Communities Plan for HD 15;
- approved a motion to deal with the northwest region of the state;
- adopted the Criteria Plan for Toole and Pondera Counties (HDs 17 and 26);
- adopted the Criteria Plan for Livingston (HD 59); and
- adopted an amended Communities Plan for Miles City (HD 39).

Note: Throughout the meeting, the commissioners viewed maps on a screen in the meeting room and discussed district lines. To view the official record of the meeting (the audio/video recordings) please visit leg.mt.gov/districting.

CALL TO ORDER AND ROLL CALL

00:00:00 Commissioner Regnier called the meeting to order at 10:02 a.m. The Secretary noted the roll, all members were present (Attachment 3). Commissioner Regnier reviewed the meeting agenda and protocol to be followed.

Adoption of Minutes

00:02:40 **Commissioner Vaughey moved approval of the February 17, 2012, March 13, 2012, March 14, 2012, March 27, 2012, March 28, 2012, April 12, 2012, April 13, 2012, April 18, 2012, April 19, 2012, May 8, 2012, May 9, 2012, May 15, 2012, and May 16, 2012, meeting minutes.** Commissioner Lamson noted that he had several minor changes and additions to make them more complete and said that he would provide his changes to staff. **The motion passed on a unanimous voice vote.**

Overview of Meeting Purpose and Districting Criteria

00:04:06 Commissioner Regnier explained the format of the week-long meeting, saying that the majority of each day would be used as an executive work session with a brief period of time allotted daily for public comment. He said that more public hearings would be scheduled later in the fall and again after the final plan is submitted to the Secretary of State.

00:05:11 Commissioner Regnier thanked the citizens of Montana for their genuine interest in the work of the Commission. He said the comments were well received and would be duly considered. He said that the process would likely involve tentative voting on different regions and that nothing would be final until later in the process. He encouraged all citizens to continue to submit comment.

00:06:30 Commissioner Regnier reviewed the mandatory criteria, as adopted by the Commission on May 28, 2010 (EXHIBIT 1).

00:08:26 Commissioner Smith reviewed the high points of the Federal Voting Rights Act (FVRA), including the lawsuit filed in Montana in 1984 (*Windy Boy v. Big Horn County*) and the creation of Montana's six Indian majority House Districts and three Indian majority Senate Districts (EXHIBIT 2).

00:14:29 Commissioner Regnier reviewed the discretionary criteria, as adopted by the Commission on May 28, 2010 (EXHIBIT 1).

00:15:32 Commissioner Regnier offered his personal comments on the public hearing process, which included political trends in Montana, the independent nature of Montanans, and the importance of qualified candidates. He said that while partisan members of the Commission need to understand the political landscape of Montana, their primary focus must be to protect the interests of all Montanans. He urged his fellow Commissioners to adopt a plan based on the criteria and said as the Chair, he would encourage compromises. He thanked his colleagues on the Commission for their work and dedication.

00:19:26 Commissioner Bennion said that he enjoyed the process very much, particularly hearing from citizens all across the state. He said that there will be opportunities to compromise on a number of issues but that the adopted criteria and Constitutional requirements must never be compromised. He said that the Commission's final product will work if the Commission can adhere to those things.

00:20:25 Commissioner Vaughey agreed that the great amount of interest from the public has been much appreciated and said that she appreciates the time citizens took to voice their concerns and opinions. She said she hopes to stay focused on the mandatory and discretionary criteria and that she is looking forward to creating a map that "looks like Montana".

00:22:00 Commissioner Lamson echoed the previous comments, saying that it has been a long process with lots of travel but that the opportunity to hear opinions from so many has been valuable.

00:22:39 Commissioner Smith said that he applauds all of the citizen involvement of this process and the effort of staff. He said that he really enjoyed working with all the Commissioners and that while he knew there would be disagreements, he knows that all have taken the process very seriously and want to create the best product possible.

00:23:20 Commissioner Regnier said that staff would provide a brief summary of each of the five plans submitted so far.

00:23:55 **Rachel Weiss, Research Analyst, Legislative Services Division (LSD),** explained that in July 2011, the Commissioners adopted themes for four maps for consideration and public comment: Existing Plan, Urban Rural Plan, Subdivision Plan, and the Deviation Plan. She briefly described each plan.

00:25:26 Commissioner Lamson said that a fifth plan, the Communities Plan, was submitted by Commission Smith and himself. He gave a brief summary of the Plan and said that he is glad to hear that there are areas for compromise where adjustments can be made to meet the needs of the citizens.

00:28:06 Commissioner Regnier recessed the meeting for five minutes to allow staff to deal with technical issues.

BREAK

00:39:11 Commissioner Regnier called the meeting back to order at 10:42 a.m. He said that Commissioner Bennion would present an additional plan.

00:39:37 Commissioner Bennion said that the Criteria Plan is based on aspects of each of the previous plans, with the exception of the Existing Plan, and suggestions from the public. He thanked Commissioner Vaughey and LSD staff for their assistance in developing the Criteria Plan. He stated that the Plan was not drawn by staff but that staff did assist him when needed. Commissioner Bennion noted that election results were not used in the development of the Plan and that he believes the Criteria Plan would be the best starting point for designing a final map.

00:42:05 Commissioner Bennion discussed the elements of Criteria Map. His discussion points included specific regions of the state as follows:

00:42:39 Missoula and surrounding area

00:43:48 Lake County and Pablo area

00:44:36 Flathead area and Kalispell

00:46:09 Ravalli County

00:46:49 Butte and southwestern Montana

00:48:00 Commissioner Lamson asked for clarification on the Whitehall district boundaries. Commissioner Bennion explained why he placed a portion of Broadwater County in with East Helena and Jefferson County, saying that Broadwater County, Lewis and Clark County, and Jefferson County have many things in common.

00:49:36 Lewis and Clark County

00:50:28 Lewistown and central Montana

00:51:20 Bozeman

00:52:47 Great Falls and Cascade County

05:53:49 Browning and Glacier County

00:55:08 Havre

00:56:54 Glasgow

00:57:47 Eastern Montana

00:58:41 Crow Agency

00:59:50 Billings and greater Yellowstone County area

01:00:32 Livingston

01:00:55 Commissioner Bennion provided copies of a summary of the Criteria Map (EXHIBIT 3).

01:05:05 Commissioner Vaughey discussed three points regarding the Criteria Plan:

- because the Plan was not drawn until the end of the process, it was possible to incorporate much of the public comment;
- the Criteria Plan keeps many counties whole, which is important to many Montanans; and
- at no time was consideration of election results a part of the process in drawing the Criteria Plan.

01:07:28 Commissioner Vaughey said that she heard time and again from the public that the new districts should not be a reflection of partisanship but a reflection of the needs of the citizens. She said that the Criteria Plan, to a large extent, does that.

01:08:29 Commissioner Lamson commented on the Criteria Plan and said that the Communities Plan better represents the needs of the state.

01:11:55 Commissioner Smith asked for additional information on Indian voting age populations in the Criteria Plan. Commissioner Bennion said he would provide it after the next break. In response to a question from Commissioner Smith about the status of HD 15 in the Criteria Plan, Commissioner Bennion said that the Criteria Plan keeps the communities of Pablo and Ronan whole.

01:13:20 Commissioner Smith commented that there are areas to agree on in the Criteria Plan but that he also sees areas of major concern. He thanked Commissioners Bennion and Vaughey for their perspective and work.

Public Comment

01:14:34 **Leonard Wortman, Jefferson County Commissioner,** said that he likes the Criteria Plan but that he still has concerns about Whitehall and Cardwell being paired with Canyon Ferry. He said that Jefferson County residents share huge communities of interest with Madison County through school districts, local fairs, fire districts, and more and that he said he would still prefer being paired with Madison County.

01:16:07 **Dan Happel, Madison County Commissioner,** asked to have Madison County and its associated voting districts left whole. He said that he prefers the Criteria Plan over the others and would support it but that he shares many of Commissioner Wortman's concerns about the two counties being chopped up and moved into other districts. He said both counties are very rural with strong agricultural roots, which is a minority interest that is often overlooked.

01:22:00 Commissioner Regnier said that the Commission would recess for lunch and to give the Commissioners an opportunity to study the Criteria Plan. Commissioner Regnier recessed the meeting at 11:25 a.m. and said it would reconvene at 1:00 p.m.

LUNCH BREAK

03:00:20 Commissioner Regnier called meeting back to order at 1:04 p.m. He said he would like to discuss the process the Commissioners will follow for the remainder of the week. He said he would prefer to begin by dealing with the majority-minority districts first and then move on to northwest Montana, excepting Missoula. He explained why he thought it best to proceed in that manner.

03:03:25 **Commissioner Smith moved to begin with the Indian majority-minority districts and then onto northwest Montana. The motion passed on a unanimous voice vote.**

03:03:44 Commissioner Regnier emphasized that all votes would be tentative and that none will be considered final until the Plan is filed with the Secretary of State.

Discussion: Indian majority-minority Voting Districts

03:04:29 **Commissioner Smith moved adoption of the Communities Plan for all six Indian majority-minority districts.**

03:06:13 Commissioner Bennion opposed the motion, saying that while there are areas of agreement, he would prefer to discuss these districts in pairs so that specific issues and differences can be addressed. The Commissioners discussed how to best proceed.

03:09:10 Commissioner Smith spoke in support of his motion. He reviewed how the Communities Plan best complies with the FVRA, how it would benefit the political cohesiveness of tribal governments because all seven tribal governments testified in favor of the Communities Plan, and how the Plan meets mandatory and discretionary criteria.

03:16:25 Commissioner Regnier requested that the Communities Plan and the Criteria Plan both be displayed on the screen so Commissioner Smith could discuss a comparison. Commissioner Smith discussed HD 41 in the Communities Plan, which includes the Crow and Northern Cheyenne Reservations. He noted that a table listing the statistics for proposed American Indian majority-minority Districts had just been distributed to Commissioner members (EXHIBIT 4).

03:18:36 Commissioner Regnier said Criteria Plan did make some changes in the Indian majority-minority districts. Commissioner Bennion said that he fully agrees that the Native Americans made their case and that the Criteria Plan does nothing to disrupt that. He discussed further how carefully the Criteria Plan was constructed in order to uphold the intent of the FVRA and to incorporate public comment.

03:21:21 Commissioner Regnier said it appears that the two main areas affected are Colstrip and in the Powder River area. He asked Commissioner Smith to comment. Commissioner Smith said the area east of the Cheyenne Reservation

is a strong aboriginal area and that there is quite a bit of anticipated economic activity slated to begin there, which the Northern Cheyenne is very involved in. He said that the Northern Cheyenne identifies strongly with that area and that it is logical to connect them.

03:24:06 Commissioner Lamson agreed that the Northern Cheyenne have long-standing cultural ties to the area east of their reservation. He discussed the Otter Creek agreement signed with the State and its significance, saying a key part of the plan includes job training that would greatly benefit the Northern Cheyenne. He also discussed the communities of interest in the Powder River area with the Northern Cheyenne and cautioned against changes that could start a ripple effect.

03:26:27 Commissioner Regnier asked how Colstrip could be affected. Commissioner Lamson said that the Commission heard testimony that Colstrip is considered an "anchor" community in its district because of its heavy involvement with energy development and construction, and the associated trade. He said placing Colstrip in with the Northern Cheyenne Reservation would change the traditional character of the area and that other considerations, such as school districts, were also considered in the Communities Plan.

03:28:13 Commissioner Bennion said that the intent of the Criteria Plan was follow the criteria and to incorporate the strong testimony from the Powder River citizens to keep it as a community. He said the testimony strongly opposed splitting small counties because it divides communities. He said the Criteria Plan keeps that community and Colstrip mostly whole, while also respecting the FVRA and what the Communities Plan was trying to accomplish.

03:29:29 Commissioner Smith discussed HD 31 in the Communities Plan, which includes the Fort Peck Reservation. He explained the district line changes made and said that it was very similar to the current district. He said that the population decline in the region is mainly what necessitated the changes but that the district still includes the communities along the river. His discussion points included Indian voting age statistics for the area and district line changes in each affected county.

03:32:29 Commissioner Bennion discussed how the Criteria Plan would affect the area, including the Indian majority-minority districts and Indian voting age populations. He said the Criteria Plan is a better fit for Malta, based on the comment received, while maintaining the intent of the Communities Plan.

03:36:07 Commissioner Regnier asked Commissioner Smith to respond to Commissioner Bennion's comments about Malta. Commissioner Smith said one has to look at the whole picture and recalled testimony that certain areas did not want to be included in a reservation district, which they are, in the Criteria Plan. He also recalled not hearing much comment from Malta during the public comment period. Commissioner Smith commented on deviation and his concern about the changes in Indian voting age populations in the area under the Criteria Plan.

03:39:35 Commissioner Lamson commented that the Communities Plan keeps Glasgow whole as well as taking care of on-reservation and off-reservation needs.

03:40:29 Commissioner Bennion responded to Commissioner Smith's concerns about Indian voting age population and the potential for "packing" that district. He said that he, too, is sensitive to that possibility and that his goal was to achieve a balance while incorporating public comment. He said the intent was not to "pack" a district.

03:41:56 Commissioner Lamson said the comments should be construed only as a mild criticism of the Criteria Plan and that the main intent of the Criteria Plan is to deal with the comments of the off-reservation constituents. He said that there was overwhelming public comment in favor of the Communities Plan.

03:42:50 Commissioner Smith and Commissioner Bennion discussed keeping Glasgow intact. Commissioner Smith discussed the public comment received in favor of keeping it whole. Commissioner Bennion discussed the ripple effect of that decision.

03:45:01 Commissioner Regnier recessed the meeting for a short break.

BREAK

03:50:39 Commissioner Regnier called the meeting back to order at 1:49 p.m.

03:51:05 Commissioner Smith made an additional comment regarding the importance of Indian influence in voting districts and noted that under the Criteria Plan, the Indian voting age population in HD 29 of that Plan would decrease from 14% to 7%, which would be a drastic change.

03:52:10 Commissioner Smith discussed HD 16 in the Communities Plan, saying it is fairly similar to the existing district but doesn't extend as far into Toole County and includes the western part of Cut Bank. He referred to public comment from the Browning hearing given in support of that district. He noted that Cut Bank is the Glacier County seat and that there are strong ties between Cut Bank and the native community.

03:53:28 Commissioner Smith discussed the Indian voting age population in HD 16 and HD 15.

03:54:22 Commissioner Smith compared HD 15 boundaries in the Communities versus the Criteria Plan, and his concern about how the Indian voting age population would drop in the Criteria Plan.

03:57:34 Commissioner Regnier recalled public comment in Great Falls or Browning that Heart Butte should be connected to Browning. Commissioner Lamson said that in the Communities Plan, Heart Butte is in HD 15 with Browning. He noted that Browning is split into HD 15 and HD 16.

04:01:02 Commissioner Bennion said that there are the least amount of differences between the Communities and the Criteria Plans in this area. He said that he

thought HD 16 is the Communities Plan line for line in the Criteria Plan and discussed different options that were considered in drafting the Criteria Plan and why the lines were drawn as they were in the Criteria Plan.

04:04:07 Commissioner Regnier asked several questions about the placement of Ronan and Pablo in the Criteria Plan and the Communities Plan, including the population and the overall Indian voting age population in HD 15 and HD 16 under each proposed plan. Staff and other Commissioners responded to his questions.

Vote: Indian majority-minority Voting Districts

04:09:47 Commissioner Regnier said the vote would be taken on Commissioner Smith's motion to approve the Communities Plan for the six Indian majority-minority voting districts. **Commissioner Vaughey made a substitute motion to bifurcate the six districts for an individual vote for each.** Commissioner Smith said he would prefer to vote on all six at once, considering it has already been established that the votes are tentative and that changes can be made. He listed several reasons for his preference for a single vote on all six districts.

04:12:17 Commissioner Bennion spoke in support of Commissioner Vaughey's motion.

04:13:43 **Commissioner Vaughey's motion to bifurcate passed on a 3-2 voice vote. Commissioner Lamson and Commissioner Smith voted no.**

04:14:19 **Commissioner Smith moved adoption of the Communities Plan for HD 41. The motion passed on a 3-2 voice vote, Commissioner Bennion and Commissioner Vaughey voted no.**

04:15:30 **Commissioner Smith moved adoption of the Communities Plan for HD 42. The motion passed on a 3-2 voice vote, Commissioner Bennion and Commissioner Vaughey voted no.**

04:16:20 **Commissioner Smith moved adoption of the Communities Plan for HD 31.** The Commissioners discussed the motion. **The motion passed on a 3-2 voice vote, Commissioner Bennion and Commissioner Vaughey voted no.**

04:18:54 **Commissioner Smith moved adoption of the Communities Plan for HD 32. The motion passed on a 3-2 voice vote, Commissioner Bennion and Commissioner Vaughey voted no.**

04:19:20 **Commissioner Smith moved adoption of the Communities Plan for HD 16. The motion passed on a unanimous voice vote.**

04:20:12 **Commissioner Smith moved adoption of the Communities Plan for HD 15. The motion failed on a 2-3 voice vote, Commissioner Bennion, Commissioner Vaughey, and Commissioner Regnier voted no.** Commissioner Regnier discussed his concerns about HD 15. Commissioners Bennion and Lamson responded to his questions and concerns. Commissioner

Bennion offered to work with Commissioner Smith and staff to work out the differences and to address Commissioner Regnier's concerns.

04:23:58 After additional discussion, Commissioner Regnier compared the issue to a "puzzle of moving parts" and thought it would be good to take a short break in order to allow further consideration of the discussion points. He recessed the meeting for a 15-minute break.

BREAK

04:40:39 Commissioner Regnier called the meeting back to order at 2:43 p.m. **Commissioner Regnier moved to address the northwest region of the state. The motion passed on a unanimous voice vote.**

04:42:12 **Joe Kolman, Research Analyst, LSD,** explained the maps being shown on the screen.

04:42:45 **Commissioner Lamson moved adoption of the Communities Plan for the northwest region of the state, which included Flathead, Lincoln, Sanders, Mineral, and Lake Counties, with the exceptions of the House District just voted on.**

04:43:26 Mr. Kolman clarified that the motion included House Districts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 100. Commissioner Lamson said yes and spoke in support of his motion.

04:46:17 Commissioner Lamson discussed Columbia Falls, the Hungry Horse area, and Whitefish, and why the Communities Plan would be the most beneficial plan.

04:48:23 Commissioner Regnier and Commissioner Bennion discussed how the Criteria Plan would affect Whitefish.

04:50:36 Commissioner Regnier, Commissioner Lamson, and Commissioner Bennion discussed population deviations in both plans.

04:53:39 Commissioner Lamson asked to view the Kalispell area maps. He discussed 0% districts and the difficulties of working with Kalispell because of its many little blocks and non-contiguous areas. He commented on the Criteria Plan, saying it splits the very urban Flathead district and feathers it into parts of Kalispell.

04:56:11 Commissioner Lamson discussed Lake County and said that the Communities Plan lines were drawn as they were in consideration of the strong Indian majority-minority district.

04:58:11 Commissioner Lamson contrasted the lines of the Communities Plan with the Criteria Plan and commented that the Communities Plan creates a much more compact district and recognizes the uniqueness of the community as a strong mixture of American Indian and non Indian citizens.

05:00:08 Commissioner Lamson discussed Lincoln County, as drawn in the Communities Plan.

05:01:20 Commissioner Regnier asked about Sanders and Mineral Counties. Commissioner Lamson said that the connection was a little more difficult to make these areas but that they do share many similarities.

05:02:45 Commissioner Regnier asked Commissioner Bennion to discuss the Criteria Plan as it would apply to the northwest region. Commissioner Bennion discussed Lincoln County and noted that he used the Communities Plan almost line for line and that only 59 people were moved.

05:03:56 Commissioner Bennion discussed Whitefish and Hungry Horse, pointing out differences between the Criteria Plan and Communities Plan. He said common sense changes were made and explained how they improved the districts.

05:04:39 Commissioner Bennion discussed Kalispell and noted a number of significant differences between the Criteria Plan and Communities Plan. He said that this area in particular has experienced a significant amount of growth in the last ten years and the Criteria Plan would give Kalispell two majority districts, which differs from the Communities Plan.

05:06:13 Commissioner Bennion discussed the greater Flathead region, including Polson and Lakeside. He said that a major deficiency in the Communities Plan is the lack of contiguous districts, which was commented on at the public hearings. He said the Criteria Plan would give Lake County two majority districts and create districts that are more geographically easy to represent than does the Communities Plan.

05:07:59 Commissioner Bennion said that he was willing to discuss options regarding Sanders County and that he would be open to incorporating some of the Communities Plan lines.

05:08:49 Commissioner Regnier questioned Commissioner Bennion about Kalispell and its communities of interest, as drawn in the Criteria Plan.

05:10:16 Commissioner Lamson referred to the Communities Plan map on the screen to explain how the Plan divided up the Kalispell area. He pointed out that Evergreen was included in the Kalispell district and that the districts has an almost 0% deviation. Commissioner Bennion said that the goal of the Criteria Plan is to apportion correctly two districts and that the notion of diversity, which is not a criteria, was not a consideration.

05:12:03 Commissioner Regnier asked if the Communities Plan also creates two Kalispell districts. Commissioner Lamson discussed how districts can be shaped by geography and that diversity is a factor because it is a broad part of a category.

05:13:53 Commissioner Regnier asked to view both plans again. Commissioner Lamson discussed the differences between the northern part of Lake County and southern Lake County. He noted that the highest American Indian influence district in the state is in southern Lake County and that the Indian voting age population would be decreased significantly in the Criteria Plan, compared to the

Communities Plan. He said it is important to have two Lake County districts, one being a FVRA district.

05:16:27 Commissioner Smith said that he strongly agrees with Commissioner Lamson's point about the importance of having a FVRA district in Lake County. He said the impact of the Criteria Plan would be drastic. Commissioner Bennion and Commissioner Smith discussed placement of Arlee and its importance in an Indian influence district, and different options and trade-offs for placement.

05:23:02 Commissioner Regnier recessed the meeting for a 10-minute break at 3:25 p.m.

BREAK

05:36:58 Commissioner Regnier called the meeting back to order at 3:40 p.m. **Commissioner Lamson restated his motion to adopt the Communities Plan for districts in Flathead, Lincoln, Sanders, Mineral, and Lake Counties, excepting the district already voted on in Lake County.**

05:37:35 Ms. Weiss clarified that the motion would be for house districts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 100.

05:37:52 Commissioner Smith asked to explain why Arlee was placed as it was in the Communities Plan (HD 15), saying that it is more contiguous and compact and that the Indian voting age population stays strong.

05:38:35 **The motion failed on a 2-3 voice vote. Commissioner Bennion, Commissioner Vaughey, and Commissioner Regnier voted no.** Commissioner Regnier asked Commissioner Lamson to work on revisions to the Communities Plan to address some of the issues discussed. He said that the Commissioners would revisit this area the next morning for further consideration.

05:39:49 Commissioner Regnier said that the Commissioners would deal next with Carbon County. The Commissioners viewed maps showing the current districts, the Communities Plan, and the Criteria Plan. Commissioner Regnier commented that the proposed plans appear to be identical. Mr. Kolman said it was because both plans keep Carbon County whole.

05:41:36 **Commissioner Vaughey moved adoption of HD 58 in the Communities Plan, noting that it is identical to HD 57 in the Criteria Plan. The motion passed on a unanimous voice vote.**

05:42:34 Commissioner Regnier said that Toole and Pondera Counties would be dealt with next. He noted that the corresponding maps were displayed on the screen. Commissioner Bennion said that the Communities Plan lines were used in the Criteria Plan.

05:44:45 **Commissioner Vaughey moved approval of the Criteria Plan for Toole and Pondera Counties (HDs 17 and 26).** Commissioner Lamson asked to add for the record that both districts had good bipartisan support and show the value of complying with the FVRA. **The motion passed on a unanimous voice vote.**

05:46:35 Commissioner Regnier said that Miles City and Livingston would be addressed next. Mr. Kolman displayed maps of Livingston on the screen, noting that the Criteria Plan map has green lines and the Communities Plan map has blue lines.

05:47:58 Commissioner Bennion said that the deviation rates are almost the same in both plans.

05:48:50 Commissioner Lamson said that because of strong public support from Park County, he would move the Communities Plan.

05:49:53 Commissioner Bennion said that the Criteria Plan reduces the deviation even further. He stated that he is noticing a troubling trend that the Communities Plan is being pushed line for line for each district, even though Commissioners Lamson and Smith have repeatedly stated that the final map won't resemble the Communities Plan. He said he is curious when that might happen. Commissioner Regnier said, that as Chair, he could assure Commissioner Bennion that the final map would not look like the Communities Plan.

05:51:11 Commissioner Regnier asked about the differences in deviation between the Criteria Plan and the Communities Plan. Commissioner Bennion said it is less than 1% and said that adhering to small deviations early in the process will allow the Commission more freedom later, when having to make needed adjustments to the maps. He said he is not totally wedded to the Criteria Plan but is troubled because of the lack of movement from Commissioners Lamson and Smith.

05:52:10 Commissioner Lamson disagreed, saying that many changes have been agreed to. He discussed his opinion further.

05:52:55 Commissioner Vaughey said this particular adjustment would follow the highway and make a more compact and ideal district, which is a criteria.

05:54:00 **Commissioner Lamson moved adoption of the Communities Plan for Livingston (HD 60). The motion failed on a 2-3 voice vote, Commissioner Bennion, Commissioner Vaughey, and Commissioner Regnier voted no.**

05:54:50 **Commissioner Bennion moved adoption of the Criteria Plan for Livingston (HD 59). The motion passed on a 3-2 voice vote, Commissioner Lamson and Commissioner Smith voted no.**

05:55:44 **Commissioner Bennion moved adoption of the Criteria Plan for Miles City (HD 38).** Commissioner Regnier asked to see a comparison of the Communities Plan and the Criteria Plan. Mr. Kolman displayed both maps and said the Communities Plan has green lines and the Criteria Plan has blue lines. He pointed to where the two plans deviated from one another.

05:57:09 Commissioner Vaughey asked Mr. Kolman to explain each map's deviation percentage. Mr. Kolman said that the Communities Plan has a -.34% deviation and the Criteria Plan has a +.58% deviation.

05:57:50 **Commissioner Lamson made a substitute motion for Miles City and submitted a map outlining the changes he wished to make (EXHIBIT 5).** He explained how the map creates a more compact district and that the deviation is -.27%.

05:59:02 Commissioner Regnier asked Commissioner Bennion to discuss the rationale for the Criteria Plan lines. Commissioner Bennion said the intent was to achieve a balance in deviation, particularly from a statewide approach. He said that he did not have a great deal of concern about the amendment offered by Commissioner Lamson but stated that he would prefer that future amendments be created by legislative staff.

06:01:34 Commissioner Lamson restated his motion, calling it a "compromise plan" offered by the Democrats for Miles City (HD 39 in the Communities Plan and HD1 in the offered amendment) and that it creates a more compact district.

06:02:17 Mr. Kolman expressed concern about having only a paper copy of an amendment. Commissioner Lamson explained why he offered his amendment on paper and said he would provide an electronic copy later. Ms. Weiss said that staff is simply trying to clarify what will be voted on and what it is to draw. Commissioner Lamson and staff discussed the amendment and its effect. Commissioner Lamson corrected his statement and said he would provide an electronic copy, should the amendment be approved.

06:05:10 Ms. Weiss said the pending motion is for adoption of the Criteria Plan for HD 38. The substitute motion is for the amended Communities Plan.

06:06:01 Commissioner Regnier said the substitute motion vote would be taken first. **The motion passed on a unanimous voice vote.**

06:06:27 Commissioner Regnier briefly discussed how he envisioned the next day's meeting to progress. It was agreed that the remaining district in the northwestern part of the state would be dealt with, then work would proceed to Ravalli County and then Missoula.

06:08:45 Commissioner Regnier recessed the meeting at 4:10 p.m. He said that the Commission would reconvene the next morning (August 14, 2012) at 9:00 a.m.

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Exhibit H

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

Montana Districting and Apportionment Commission

MINUTES

August 17, 2012

Room 172, State Capitol
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. To the left of each section in these minutes is a time designation indicating the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

Access to an electronic copy of these minutes and the audio or video recording is provided from the Legislative Branch home page at http://leg.mt.gov. On the left-side menu of the home page, select *Committees*, then *Interim*. Once on the page for *Interim Committees*, scroll down to the appropriate committee. The written minutes summary, along with the audio and video recordings, are listed by meeting date on the interim committee's web page. You must have Real Player to listen to the audio recording or to view the video.

Hard copies of the exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.

COMMITTEE MEMBERS PRESENT

Jim Regnier, Presiding Officer
Jon Bennion
Joe Lamson
Pat Smith
Linda Vaughey

STAFF PRESENT

Rachel Weiss, Research Analyst
Joe Kolman, Research Analyst
Julianne Burkhardt, Attorney
Dawn Field, Secretary

AGENDA & VISITORS' LIST

Agenda, Attachment #1.
Visitors' list, Attachment #2.

COMMITTEE ACTION

The Districting and Apportionment Commission:

- did not approve Commissioner Lamson's motion to adopt the Communities Plan for the Hi-Line;
- approved a40_JR_0817 to amend the TCP to add Hi-Line districts;
- approved a22_JB_0816 to amend the TCP to add districts to southeast and central Montana;
- approved a41_JL_0817 to amend the TCP to include southern portion of Blaine County with remainder of county;
- approved a39_JB_0817 to amend the TCP for Yellowstone County and a portion of Musselshell County;
- approved a36_JL_0816 to amend the TCP for Gallatin County;
- approved a motion to segregate five Helena House districts 6, 7, 8, 9, and 10 from amendment a27_JL_0815;
- approved amendment a27_JL_0815 to amend the TCP for southwest Montana districts, including 76, 78, 77, 71, 70, 1, 2, 3 4, and 5;
- approved a42_JR_0817 to amend the TCP for Missoula districts;
- did not approve a19_JB_0816 to amend the TCP for five Helena districts;
- approved amendment a27_JL_0815 Helena House districts 6, 7, 8, 9, and 10;
- did not approve a11-JB_0814 to amend the TCP for central Great Falls districts;
- approved technical amendment s1_0815 to assign currently unassigned voters in Flathead County;
- approved technical amendment s2_0815 to assign currently assigned voters in Lake County;
- tentatively approved the TCP for 100 house districts; and
- approved a motion to vacate the meeting dates of September 17 and 18, 2012.

Note: Throughout the meeting, the commissioners viewed maps on a screen in the meeting room and discussed district lines. To view the official record of the meeting (the audio/video recordings) please visit leg.mt.gov/districting.

CALL TO ORDER AND ROLL CALL

00:00:01 Commissioner Regnier called the meeting to order at 9:00 a.m. The Secretary took roll, all members were present (Attachment 3).

00:01:21 Commissioner Regnier asked how many districts remain to be dealt with. **Joe Kolman, Research Analyst, Legislative Services Division (LSD),** reported that 51 districts remain. Commissioner Regnier said discussions would begin with central Montana.

00:03:07 Commissioner Bennion commented on his concerns about the potential for ripple effects along the Hi-Line, Hill County, Yellowstone County, and several others under the Communities Plan.

00:05:04 Commissioner Regnier and Commissioner Bennion discussed Fergus and Judith Basin Counties under the Criteria Plan. Commissioner Bennion also briefly reviewed the Musselshell River corridor counties of Wheatland, Golden Valley, Musselshell, and Meagher.

00:07:20 Commissioner Regnier asked how the Communities Plan would apportion Fergus County. Commissioner Lamson said that under the Communities Plan, Fergus County would be much more compact and would have two House districts. He noted that Lewistown would be kept whole, as would Wheatland County. He discussed a key concern of maintaining the Yellowstone River corridor between Billings and Miles City in order to have good representation for those people.

00:09:41 Commissioner Regnier said that public discussion would be held on the amendments worked on the previous evening and that no votes would be taken on maps that were not discussed on the record.

00:12:11 The Commissioners held a general discussion on how to proceed. After discussing several concerns and suggestions, Commissioner Regnier asked Mr. Kolman to display the Billings/Yellowstone County districts as proposed by various Commissioners the previous day. The discussion continued.

00:18:16 Commissioner Lamson discussed a map of the Billings districts as offered by Commissioner Bennion, noting that their appearance resembles that of a wagon wheel, which Commissioner Bennion objected to in Missoula districts.

00:21:47 Commissioner Regnier said that the Billings Heights districts are controversial and he discussed several of the issues.

00:23:12 Commissioner Bennion explained why the districts were drawn as they were and said that adjustments for compactness could be made, if needed. He said that staff could made adjustments down to the lowest possible population deviation once the process is complete.

00:24:57 Commissioner Smith said, in response to Commissioner Bennion's discussion, that he felt concessions have been made to accommodate Commissioner Bennion's concerns about odd-shaped districts. He didn't agree with Commissioner Bennion's suggestion to delegate the final population deviation adjustments to staff.

00:28:36 Commissioner Regnier asked for a final explanation of the maps going east of Billings. Commissioner Bennion responded and noted that the Criteria Plan maps would have less of a ripple effect than the Communities Plan. He explained where the ripple effects would occur.

00:31:56 Commissioner Regnier recessed the meeting for a short break.

BREAK

00:35:38 Commissioner Regnier reminded the commissioners that even though members and staff are getting weary after a long week, he expected the process to remain respectful to all involved.

00:38:42 Commissioner Regnier said that the Hill County/Havre districts have been controversial also and that additional discussion would be held on that area. He asked Commissioners Bennion and Vaughey to comment on their proposed

maps. Commissioner Bennion stated that, depending on if Havre is divided into one seat or two, there is the potential for significant ripple effects into other eastern and central Montana districts. He explained what the impacts could be, particularly for Richland, Dawson, and Wibaux Counties.

00:42:37 Commissioner Lamson explained the benefits of the Communities Plan, saying that key advantages are compactness and keeping communities of interest together. Commissioner Regnier and Commission Lamson discussed future growth of certain areas in eastern Montana and how it may affect districts, particularly those districts involving the Bakken oil field activity.

00:48:15 Commissioner Regnier asked Commissioner Vaughey, as former resident of Havre, to discuss her views of how the area should be apportioned. Commissioner Vaughey discussed a number of issues, including the relevance of past districting decisions and said that it may be time for a change from the past two districts for Havre to one. She also touched on the impact of the oil and gas activity in eastern Montana and the strong testimony from Richland County and other eastern Montana counties advocating for their districts.

00:53:15 Commissioner Lamson and Commissioner Smith commented additionally on their discussion points and in response to several of the issues discussed by Commissioners Bennion and Vaughey.

00:59:29 Commissioner Regnier asked to view maps of southeastern counties in reference to a comment by Commissioner Bennion about keeping certain counties in that area whole. He noted the Criteria Plan and the Communities Plan were displayed. He asked Commissioner Bennion to review how Powder River County would have been apportioned under the Criteria Plan, if it prevailed. Commissioner Bennion did so.

01:02:03 Commissioner Regnier asked to view the most recent version of the maps of the Bozeman/Gallatin County districts, again noting that both the Criteria Plan and the Communities Plan maps were displayed.

01:04:39 Commissioner Lamson reviewed the districts as proposed in the Communities Plan. He said that as a result of the compromises made both maps are now quite similar, with the exception of Belgrade and couple of other areas. He discussed the remaining different areas, noting that Big Sky is not included in the map either.

01:07:44 Commissioner Regnier said that Big Sky is still included in the Madison County district. Commissioner Lamson said that was correct but that he brought it up because of the potential ripple effect if it was moved into a Gallatin County district.

01:08:57 Commissioner Regnier recessed the meeting for a break, to resume at 10:30 a.m.

BREAK

01:27:42 Commissioner Regnier called the meeting back to order at 10:35 a.m. The Commissioners discussed the Bridger Mountain area. Commissioner Lamson said the Democrats' proposal recognizes commonalities between Park and Gallatin Counties in a compact district but that the Republican Plan would create a very large district. He discussed his concerns. Commissioner Smith also discussed his concerns about Gallatin County. Commissioner Lamson pointed out that under the current plan, Broadwater County is left whole and hooked with Meagher County.

01:33:11 Commissioner Bennion said there has already been considerable discussion of this area and that there has been give and take on both sides. He discussed several of the issues compromised on and why keeping Gallatin County contained within its county lines is a good thing.

01:36:33 Commissioner Smith said he still supports moving Big Sky into the Gallatin County districts. Commissioner Regnier recalled testimony from a Madison County Commissioner to keep the county intact. Commissioner Lamson said it will have to be connected with another county, regardless.

01:38:15 Commissioner Regnier said discussion will move on to southwestern Montana. Mr. Kolman noted the most recent maps were displayed, with the Communities Plan on the left and the Criteria Plan on the right.

01:40:26 Commissioner Regnier called a short break.

BREAK

01:45:04 Commissioner Regnier resumed the meeting at 10:51 a.m. He said discussion would focus on Granite, Deer Lodge, Powell, and Silver Bow Counties. He summarized the strong testimony received from Jefferson County to be left whole and Granite and Powell Counties' request to be paired. He asked Commissioner Lamson to discuss his position.

01:46:19 Commissioner Lamson said that the Democrats maintain that there is a very strong and unique community of interest between Butte, Anaconda, and Deer Lodge; and that within that area there are enough people for six districts. He said that testimony supports that and that it would also divide the area nicely for three senate districts. He said that this area is the heartland of the Democratic Party and is important to fight for. He pointed out that the Republican Plan allows only five house seats, which will create enormous conflict in trying to decide where the remainder of those people will be placed.

01:48:46 Commissioner Regnier asked how Jefferson County will be dealt with. Commissioner Lamson said that even though Jefferson County will not be left whole, it will dominate its district and will not be deprived of representation. He explained that the southern portion of the county will be hooked with Madison and Silver Bow Counties. He restated the Democrats' concerns that the Republican Plan under-represents the vital communities of interest that exist between Butte, Anaconda, and Deer Lodge.

01:50:16 Commissioner Bennion said that major compromises have been made for this area, pointing out that the Criteria Plan map originally proposed four house districts for this area, the Communities Plan proposed six, and that his current proposal offers five. He said that public input should matter and that the Criteria Plan map represents almost line for line what Jefferson County proposed. He said that Granite and Powell Counties also create an ideal district and would address concerns that Anaconda exerts too much influence over those two counties. He discussed his concerns further.

01:52:53 Commissioner Smith said that while Jefferson County is to be congratulated for its advocacy, strong testimony has also been heard in support of the community of interest between Silver Bow and Jefferson Counties. He said that the Democrats reluctantly let one district go and that he wanted to emphasize that there was strong testimony for the community of interest between Jefferson and Silver Bow, and that Jefferson County should not be unhappy with this result.

01:54:39 Commissioner Lamson agreed that this area is of major concern to Democrats and that he had no doubt people will be concerned about the loss of a district.

01:56:00 Commissioner Bennion pointed out that the Republicans are also losing a seat along the HiLine so when looking at apportionment, it is important to apply the criteria consistently and apportion correctly, regardless of politics.

01:58:52 Commissioner Regnier turned the discussion to Lewis and Clark County and the Helena area districts. He asked Commissioner Lamson to present the Democrats' proposal. Commissioner Lamson explained how geography played into the district lines, as well as factors such as growth in certain areas and communities of interest. He said that some of the districts may look a little funny because of the unusual growth patterns and that certain traditional boundaries were respected, so that a valley district remains in addition to the urban-suburban districts.

02:03:07 Commissioner Vaughey asked about the northern county line. Commissioner Regnier asked where HD 7 would be. Commissioner Lamson pointed it out on the map and said it is a good example of how a joint urban-suburban district can work together, allowing competing parties to get their points across.

02:04:08 Commissioner Vaughey asked how easily a representative could traverse that district. Commissioner Lamson explained, pointing out the Green Meadow Drive runs almost the entire length of the district.

02:06:06 Commissioner Regnier recalled testimony at the Helena hearing about if there should be separate districts for the Helena valley and East Helena. He asked Commissioner Bennion to respond. Commissioner Bennion said it is arguable that people in long skinny districts that stretch from the interior of the city out to the county line will have a great deal in common with one another and that while diversity is important in certain situations, it may actually be the antithesis to good representation. He said that there are appearance and compactness

concerns with the districts as proposed by the Democrats and that there has to be a way to address these concerns.

02:08:40 Commissioner Lamson and Commissioner Bennion continued to discuss their respective positions and the pros and cons of the proposed districts. Commissioner Bennion said districts should be drawn to be representative of their census areas. He said that currently they are all fractured and that there has to be a way to make them better in a manner that will be acceptable to both parties. Commissioner Lamson said he believes they will function very well as drawn.

02:11:43 Commissioner Regnier said that the configuration of the districts does beg the question that Commissioner Bennion asked, which is do the people have enough in common with one another. Commissioner Lamson said that, as a resident of Helena, he is very comfortable with how the districts are drawn.

02:13:36 Commissioner Vaughey asked to see Montana Avenue and discussed her concerns about the interstate exchanges and traffic concerns. She asked for further consideration of those areas. Commissioner Regnier asked to view that area. Commissioner Vaughey pointed out where her community of interest lies and how traffic concerns has impacted the area.

02:21:10 Commissioner Regnier recessed the meeting for a lunch break at 11:30 a.m. He said the meeting would resume at 12:30 p.m. *(The lunch break was later extended to 1:30 p.m.)*

LUNCH BREAK

04:29:37 Commissioner Regnier reconvened the meeting at 1:36 p.m.

04:30:55 Commissioner Vaughey expressed her concerns about the configuration of the Helena area districts and said it is incumbent upon the Commission to be able to defend their plan and be able to describe and maintain that it did its best to comply with all mandatory criteria. She said that the Republican commissioners have been accused of not acknowledging the value of diversity but would like to point out that in the beginning of the process, there was agreement that the Commission would work to create districts that would allow people to elect someone who truly represented them. She said that philosophy should apply to all residents and districts. She also discussed her grave concerns about how the Commission will explain the very odd shaped districts and that her opinion is that certain districts, as currently drawn, may violate the compactness criteria.

04:35:56 Commissioner Lamson responded to Commissioner Vaughey's comments, saying that the votes are still tentative at this point and that work remains to be done. He said that both sides want concessions and that differences of opinion may have to remain.

04:38:19 Commissioner Regnier said that discussion was complete and that he would proceed with votes for Havre and eastern Montana. He asked to view the Criteria Plan map and said that after a great deal of discussion and consideration, he would support the Criteria Plan for eastern Montana.

04:41:48 Commissioner Regnier said he also wished to revisit the Missoula area districts. He briefly reviewed the contentious discussions and compromises made by both sides. He said that his compromise amendment motion would keep Seeley separate from the Rattlesnake, deal with the Orchard Homes boundary, and create a rural district in Lolo and southwestern Montana, as well as keep the northwestern district as it was designed in the amended plan offered by the Democrats. **He moved his compromise amendment (a40_JR_0817 - EXHIBIT 1).**

04:46:37 Commissioner Bennion said he understood Commissioner Regnier's concerns about Missoula and said that bits of collaboration have taken place. He said the Great Falls districts remain of great concern to him and he would like to see work done there to make them more compact, as well as several districts in the Helena area.

04:48:10 **Commissioner Lamson offered a substitute motion for the adoption of the Communities Plan for the Hi-Line**. He spoke in support of his motion.

04:52:16 Commissioner Bennion said if Commissioner Lamson's substitute motion is to adopt Communities Plan, he would have to vote no. He said if Commissioner Regnier's amendment is approved, he would like to take a short break to consider several possible reconfigurations that may need to be made.

04:53:47 Commissioner Regnier said he realizes that this area of Montana is very important to the Republicans and may require some reconfiguration. He said it would an appropriate time to tweak the motion to deal with those issues, which would allow the Commission to move into central Montana and deal with those districts.

04:54:56 **Commissioner Lamson urged the Commissioners to support his substitute motion. The motion failed on a 2-3 voice vote, Commissioner Bennion, Commissioner Vaughey, and Commissioner Regnier voted no.**

04:55:44 Commissioner Regnier withdrew his motion, saying he would offer a new one after allowing staff time to redraft a plan. He recessed the meeting to allow staff time to work on his amendment.

BREAK

Hi-Line Districts

06:37:31 Commissioner Regnier called the meeting back to order at 3:44 p.m. **Commissioner Regnier moved to adopt amendment a40_JR_0817 (EXHIBIT 1) to amend the temporary commission plan (TCP) to add Hi-Line districts, including a Havre district.** He spoke to his amendment.

06:39:22 Ms. Weiss explained the amendment in detail and how it would affect a number of counties.

06:41:28 Commissioner Lamson said he could not support the amendment.

06:42:17 **Commissioner Regnier's amendment passed on a 3-2 voice vote, Commissioner Lamson and Commissioner Smith voted no.**

Southeast and Central Montana

06:42:41 **Commissioner Bennion moved to adopt amendment a22_JB_0816 (EXHIBIT 2) to amend the temporary commission plan to add districts for the southeast and central areas on Montana, excluding Billings and parts of Yellowstone County.** Commissioner Bennion spoke in support of his motion.

06:45:58 Commissioner Lamson discussed concerns about the loss of population in that area and the residents' fear of losing representation. He said a minor amendment may be needed, as requested by the Blaine County Clerk and Recorder. He asked to view the Indian majority-minority district involving Blaine County.

06:48:29 Commissioner Lamson discussed a portion of Blaine County that had been separated from the county. He said it has only 70 residents and asked that it be reunited with the rest of the county so that a separate ballot would not have to be prepared just for these residents.

06:49:32 **Commissioner Bennion's amendment passed on a 3-2 voice vote, Commissioner Lamson and Commissioner Smith voted no.** Commissioner Regnier recessed the meeting at 3:57 p.m. for a short break.

BREAK

07:00:19 Commissioner Regnier called the meeting back to order at 4:07 p.m. **Commissioner Lamson moved to adopt amendment a41_JL_0817 (EXHIBIT 3) to amend the tentative commission plan to include the southern portion of Blaine County (72 people) into HD 32. The motion passed on a unanimous voice vote.**

Billings and Yellowstone County

07:04:09 Commissioner Bennion discussed an amendment that would amend the temporary commission plan to add Billings districts. He noted that the amendment will cause a slight overlap with Musselshell County but that the overlap could be easily fixed. Commissioner Bennion discussed his amendment in detail. Commissioner Regnier said he did not want to have a vote on the amendment until an electronic version was available for viewing and discussion.

07:09:45 Commissioner Regnier recessed the meeting at 4:18 p.m. to allow the amendment to be produced electronically.

BREAK

07:39:36 The Commission reconvened briefly at 4:45 p.m in order to Commissioner Regnier to announce that the Commission would stand in recess until 6:30 p.m. to allow for staff preparation of amendments.

BREAK

09:40:22 Commissioner Regnier reconvened the meeting at 6:47 p.m. **Commissioner Bennion moved adoption of amendment a39_JB_0817 (EXHIBIT 4) for Yellowstone County and the affected Musselshell district.** He explained the changes that would be made by the amendment.

09:43:08 Commissioner Lamson and Commissioner Smith both spoke in favor of the amendment.

09:45:29 **Commissioner Bennion's motion passed on a unanimous voice vote.**

Bozeman and Gallatin County

09:46:42 Commissioner Lamson discussed a proposed amendment to add Bozeman districts, saying that Gallatin County is a dynamic area with a robust political atmosphere. He said his amendment incorporates parts of both plans and should take care of many of the concerns discussed previously. He noted that Big Sky remains in the Madison County district, which he regrets, but that the amendment does follow the Gallatin County Clerk and Recorder's map and keeps boundaries intact.

09:50:55 **Commissioner Lamson moved to adopt a36_JL_0816 (EXHIBIT 5) to amend the TCP for Gallatin County. The motion passed on a unanimous voice vote.**

Southwest Montana

09:51:38 **Commissioner Bennion moved to adopt a27__JL_0815 (EXHIBIT 6) for southwest Montana. A subsequent motion was made to segregate the five Helena districts (House districts 6, 7, 8, 9, and 10), which passed on a unanimous voice vote.**

09:52:33 Commissioner Bennion said this area has had a great deal of discussion and both parties likely feel they have made concessions. He said that while he would like to keep Granite and Powell Counties together, he feels the proposed plan apportions correctly.

09:53:37 Commissioner Regnier said it was a difficult pill for Butte to swallow in losing one House seat but that the proposal is a compromise in offering five House seats. He said it also respects the tremendous amount of public comment received from Jefferson County residents to keep that county intact and that he would like to personally commend Commissioner Bennion for his tenacity in defending the views of Jefferson County.

09:55:04 Commissioner Lamson said he did not think there was a legitimate apportionment issue here because the proposed area has over 60,000 people, which is more than enough for six districts. He said that denying it a representative is unacceptable to Democrats and that he could not vote for the amendment.

09:56:39 Commissioner Smith agreed that there are enough residents for six districts. He said that while he understands there must be give and take, this was too bitter a pill to swallow and that he would not vote the amendment either.

09:59:33 Commissioner Vaughey said that both sides agreed to concessions and that she was particularly sad for the Granite and Powell County residents, and that while she wasn't completely happy with the amendment, she would support it.

10:00:44 Mr. Kolman said, for the record, that the motion would not include House Districts 6, 7, 8, 9, and 10.

10:02:32 **Commissioner Bennion moved to approve amendment a27_JL_0815 amendment (EXHIBIT 6) for House districts 76, 78, 77, 4, 5, 71, 1, 70, 3, and 2.**

10:03:28 **The motion passed on a 3-2 voice vote, Commissioner Lamson and Commissioner Smith voted no.**

Missoula

10:03:46 Commissioner Regnier asked to view his proposed amendment for Missoula. He asked to also view the original Communities and Criteria Plans.

10:07:56 Commissioner Regnier said that there has been a great deal of heated discussion regarding various Missoula area districts, including connecting the Rattlesnake area in Missoula to Seeley Lake, the Orchard Homes district extending into interior Missoula, southwest districts extending from central Missoula out into Lolo, and comments about the "wagon wheel" effect of the current Missoula districts. Commissioner Regnier reviewed the amendment offered by the Democrats and the amended Criteria Plan ultimately adopted by the Commission on Wednesday (a5_LV_0814) and said that he wished to offer another amendment to the Missoula districts that better address his concerns. He explained how his amendment would change those districts, mainly districts 8 and 9.

10:14:55 Commissioner Bennion said that while it is an improvement over the current plan, the original Criteria Plan better apportioned the districts. He said it represents a small step backwards and he could not support the amendment.

10:16:55 Commissioner Lamson thanked for Commissioner Regnier for the amendment and acknowledged that Missoula does provide a big core of Democrats. He said that difficult decisions were made and that there was give and take on both sides, and that the amendment represents an improvement.

10:18:47 Commissioner Smith said that there has been a lot of collaboration and give and take; he wasn't completely happy with the plan as shaped but could support the amendment.

10:19:42 Commissioner Vaughey agreed with Commissioner Bennion that the amendment is a step back, in spite of the improved appearance. She said she would have difficulty supporting it in its present form.

10:21:14 **Commissioner Regnier moved to adopt amendment a42_JR_0817 (EXHIBIT 7) to amend Missoula districts in the TCP. The motion passed on a 3-2 voice vote, Commissioner Bennion and Commissioner Vaughey voted no.**

Helena and Great Falls

10:22:52 Commissioner Regnier recessed the meeting for 30 minutes to allow staff time to update the maps. He said the meeting would resume at 7:30 p.m.

BREAK

11:47:34 Commissioner Regnier called the meeting back to order at 8:54 p.m. **Commissioner Bennion moved to adopt amendment a19_JB_0816 (EXHIBIT 8) to amend the TCP for Helena area districts.** He explained the adjustments it would make and said it improves the appearance of the districts and is consistent with public testimony.

11:54:05 Commissioner Lamson said that he appreciates the changes the Republicans made but that there was also a great deal of public testimony in support of the Communities Plan. He discussed the history of competitive districts in Helena and said he would oppose Commissioner Bennion's motion.

11:57:35 Commissioner Smith said he would not support the motion either.

11:58:21 Commissioner Vaughey said that the Communities Plan would once again dilute the vote of certain areas in Helena and that voters should be able to elect a representative who will best represent their district. She said it is really a stretch to do that in the Democrat-proposed districts and that while Commissioner Bennion's proposal may not be perfect, it is better than the alternative.

12:05:07 The Commissioners discussed the proposed amendment. Commissioner Bennion said that he could continue to mitigate and improve the odd-shaped districts. He also said in his opinion, the seats favor Democrats and that if competitive seats is the goal, the districts should be designed to allow either party to win.

12:08:01 Commissioner Vaughey said her strongest criticism is that the Democrat plan districts are not compact and look too much like the current districts. She said they don't pass the appearance test.

12:09:19 Commissioner Regnier and Ms. Weiss discussed the importance of allowing public comment on Commissioner Bennion's amendment. Ms. Weiss said that the website is updated nightly so the public will have the opportunity to view and comment on the proposal.

12:12:47 **Commissioner Bennion's motion failed on a 2-3 voice vote. Commissioner Lamson, Commissioner Smith, and Commissioner Regnier voted no.**

12:13:21 **Commissioner Lamson moved to adopt a27_JL_0815 (EXHIBIT 9) for Helena House districts 6, 7, 8, 9, and 10. The motion passed on 3-2 voice vote. Commissioner Bennion and Commissioner Vaughey voted no.**

Great Falls

12:14:20 **Commissioner Bennion moved to adopt amendment a11_JB_0814 (EXHIBIT 10) to amend the tentative commission plan for central Great Falls districts.** He noted that no ideas from the Criteria Plan have been adopted and that the districts in his amendment come almost line for line from the Communities Plan.

He said they adhere more closely to the mandatory criteria while taking into account the public comment. He said that he strongly feels that the Great Falls districts likely violate criteria and definitely fail the appearance test.

12:17:12 Commissioner Bennion explained how his amendment would fix the “guitar” district involving Malmstrom Air Force Base.

12:18:36 Commissioner Bennion said the districts have ridiculously low deviations and that they are a much better alternative for Great Falls. Commissioner Lamson responded to Commissioner Bennion’s comments, saying that many Republican ideas have been considered and that the plan has been modified to incorporate Republican ideas. He said he also is trying to make sure representatives accurately reflect their community.

12:22:59 Commissioner Regnier asked to view the Malmstrom district in Commissioner Bennion’s amendment.

12:24:29 Commissioner Vaughey said she thinks the amendment captures the neighborhoods very accurately and that the districts pass the general appearance test.

12:25:45 Commissioner Smith commented that the public testimony in Great Falls was very strongly in support of the Communities Plan. He said that accommodations have been made for the Republicans and that he will not support Commissioner Bennion’s amendment.

12:27:03 Commissioner Vaughey and Commissioner Bennion both commented further on their position that while other areas of the state have been revisited and adjusted, Great Falls and Helena have not been. They expressed their strong opinion that their ideas have been ignored for these two areas. Commissioner Bennion said that his amendment took as many ideas from both sides as possible, while maintaining the objectives of each side. Commissioner Lamson said that Great Falls has traditionally been a Democratic stronghold. He rebutted statements that the Republican ideas have been ignored.

12:31:00 **Commissioner Bennion’s motion failed on a 2-3 voice vote. Commissioner Lamson, Commissioner Smith, and Commissioner Regnier voted no.**

12:31:17 Commissioner Regnier said that 100 districts have been approved. He thanked the staff for their work over the past week and for the duration of the process. Ms. Weiss said that a public hearing will be held in December for the entire plan but that a public hearing on Senate pairings must be held in November. She said that other hearings may be scheduled as well.

12:33:15 Commissioner Regnier said that it has been an arduous process but that he thought the work of the Commission has been outstanding in creating the 100 districts. He thanked the Commissioners for their hard work and dedication.

12:34:21 Ms. Weiss noted that some districts would need minor adjustments and/or clean up work.

12:34:51 **Commissioner Smith moved to adopt technical amendment s1_0815 to amend the tentative commission plan to assign currently unassigned block in Flathead County (EXHIBIT 11).**

12:35:57 Mr. Kolman explained how the amendment would take care of unassigned people in HD 18 and HD 15.

12:37:52 **Commissioner Smith's motion passed on a unanimous voice vote**.

12:38:26 **Commissioner Smith moved to adopt technical amendment s2_0815 (EXHIBIT 12) to amend the tentative commission plan to assign currently unassigned blocks in Lake County.** Ms. Weiss explained why the amendment was needed to deal with unassigned residents in HD 15 and HD 18.

12:39:44 **Commissioner Smith's motion passed on a unanimous voice vote.**

12:40:15 Commissioner Regnier said that he recognizes that there are many objections on the record, but that it is important that the Commissioners have on the record an official vote for the entire plan. He said that staff could then begin the process of identifying areas where adjustments may be needed.

12:41:22 Commissioner Bennion said he would vote yes with the understanding that he will continue to pursue additional changes in the Helena and Great Falls districts. He said he still wants more ideas from the Republicans to be incorporated and that they currently favor the other party.

12:42:08 Commissioner Lamson said that the Democrats have problems with certain areas as well and may also ask to revisit them. He commended Commissioner Regnier for his skill and effort in mediating and guiding the entire process. He suggested that the Commission "just call it good for now" and not take an official vote.

12:44:33 Commissioner Smith said that it has been a tough process and that everyone is exhausted. He recalled statements made at the beginning of the process stating that the finished product would not look like any of the original plans, which he said, is the case "in spades". He said that both sides gave on tough issues and that it truly was a collaborative process. He thanked his colleagues and staff for their work.

12:46:40 Commissioner Vaughey thanked Commissioner Regnier for his leadership and her colleagues and staff for their good humor through out a difficult week.

12:47:58 **Commissioner Regnier moved to adopt the Tentative Commission Plan for 100 districts. The motion passed on a unanimous voice vote, with the caveat that certain districts may be revisited.**

12:48:33 At the request of Commissioner Regnier, **Commissioner Lamson moved to vacate the meeting dates of September 17 and 18, 2012, due to staff and commissioner conflicts. The motion passed on a unanimous voice vote.**

ADJOURNMENT

12:50:04 Commissioner Regnier adjourned the meeting at 9:57 p.m.

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Exhibit I

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

Montana Districting and Apportionment Commission

MINUTES

November 15, 2012

Room 303, State Capitol
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. To the left of each section in these minutes is a time designation indicating the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

Access to an electronic copy of these minutes and the audio or video recording is provided from the Legislative Branch home page at http://leg.mt.gov. On the left-side menu of the home page, select *Committees*, then *Interim*. Once on the page for *Interim Committees*, scroll down to the appropriate committee. The written minutes summary, along with the audio and video recordings, are listed by meeting date on the interim committee's web page.

Hard copies of the exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.

COMMITTEE MEMBERS PRESENT

Jim Regnier, Presiding Officer
Jon Bennion
Joe Lamson
Pat Smith
Linda Vaughey

STAFF PRESENT

Rachel Weiss, Research Analyst
Joe Kolman, Research Analyst
Julianne Burkhardt , Attorney
Dawn Field, Secretary

AGENDA & VISITORS' LIST

Agenda, Attachment #1.
Visitors' list, Attachment #2.

COMMITTEE ACTION

The Districting and Apportionment Commission took no official action.

CALL TO ORDER AND ROLL CALL

00:00:03 Commissioner Regnier called the meeting to order at 6:31 p.m. The Secretary took roll, all members were present (Attachment 3).

WELCOME AND ANNOUNCEMENTS

00:01:01 Commissioner Regnier introduced the Legislative Services Division staff and Commissioners Bennion, Vaughey, Smith, and Lamson.

OVERVIEW OF ADOPTED DISTRICTING CRITERIA, HEARING PURPOSE, THE PROCESS TO COMPLETE THE PLAN, AND PUBLIC COMMENT GUIDELINES

00:02:07 Commissioner Regnier discussed the purpose of the meeting, which was to take public comment and suggestions for House district pairings to create Senate districts; the ground rules for testimony and submitting comment; and meeting protocol to be followed.

00:05:18 Commissioner Regnier briefly reviewed the mandatory and discretionary criteria adopted by the Commission.

PUBLIC COMMENT AND SUGGESTIONS FOR SENATE DISTRICTS

00:08:16 **Sen. Tom Facey, SD 48, Missoula,** asked to pair House Districts 84 and 95.

00:08:53 **Nichole Brown, Broadwater County Planner,** asked, on behalf of the Broadwater County Commission (EXHIBIT 1), to pair House Districts 75 and 74.

00:09:49 **Sen. Jim Peterson, SD 15, Buffalo,** asked to pair House Districts 40 and 43.

00:11:05 **Sen. David Wanzenried, SD 49, Missoula,** asked to pair House Districts 96 and 97.

00:12:26 **Sen. Terry Murphy, SD 39, Cardwell,** asked that the new senate district be kept as similar as possible to the current one and noted that Jefferson County has traditionally been paired with another district that also lies east of the continental divide.

00:13:08 **JP Pomnichowski, Bozeman,** Representative-elect, HD 66, asked to pair House Districts 59 and 63.

00:14:43 **Rep. Carlie Boland, HD 23, Great Falls,** asked to pair House Districts 24 and 25.

00:15:14 **Rep. Dick Barrett, HD 93, Missoula,** (Senator-elect, SD 47) asked to pair House Districts 82 and 83.

00:16:33 **Rep. Bill McChesney, HD 40, Miles City,** asked to pair House Districts 38 and 39.

00:17:23 **Rep. Matt Rosendale, HD 38, Glendive,** (Senator-elect, SD 19) asked to pair House Districts 35 and 36. He listed a number of reasons for his preference.

00:18:29 **Sen. John Brenden, SD 18, Scobey,** discussed concerns about pairing House Districts 33 and 34 because those two districts, if combined, would create a very large senate district.

00:21:45 **Sen. Eric Moore, SD 20, Miles City,** asked to pair House Districts 37 and 39. He also discussed concerns about the difficulty of representing a very large district.

00:23:39 **Rep. Mike Miller, HD 84, Helmville,** asked that House Districts 17 and 84 not be paired in a senate district. He said a better choice would be to pair House Districts 84 and 85.

00:24:31 **Sue Malek, Missoula,** Senator-elect, SD 46, asked to pair House Districts 99 and 100.

00:25:42 **Rep. Dan Salomon, HD 12, Ronan,** asked to keep Lake County in one Senate district, which would contain House Districts 14 and 18.

00:26:56 **Greg Hertz, Polson,** Representative-elect, HD 11, agreed with Rep. Salomon's comments and asked to keep Lake County whole.

00:27:19 **Rep. Janna Taylor, HD 11, Dayton,** (Senator-elect, Senate District 6), stated her agreement with Mr. Hertz' and Rep. Salomon's comments and to leave Lake County as whole as possible.

00:28:10 **Rep. Bob Mehlhoff, HD 26, Great Falls,** asked to pair House Districts 27 and 28.

00:29:05 **Ed Lieser, Whitefish,** Representative-elect, HD 4, asked to pair House Districts 4 and 6.

00:29:53 **Greg Jergeson, Chinook,** Senator-elect, SD 17, asked to pair House districts 30 and 33. He said he also shares many of the same concerns discussed previously regarding pairing House Districts 33 and 34 and the difficulty in representing very large districts. He said a better choice would be to pair House Districts 30 and 33.

00:33:21 **Scott Sales, Bozeman,** Senator-elect, SD 34, asked to pair House Districts 64 and 74.

00:34:50 **Tom Jacobson, Great Falls,** Representative-elect, HD 25, asked to pair House Districts 27 and 28.

00:36:00 **Reilly Neill, Livingston,** Representative-elect, HD 62, asked to pair House Districts 59 and 63.

00:36:59 **Jim Keane, SD 38, Butte,** discussed the significance of the Boulder Batholith and mining as the economic driver of Jefferson and Silver Bow Counties. He asked to pair House Districts 75 and 76.

00:38:32 **Ed Walker, SD 29, Billings and Laurel,** opposed pairing Laurel with Red Lodge and said Laurel should be put back in a Yellowstone County Senate district, as it has been in the past.

00:39:38 **Sen. Jeff Essmann, SD 28, Billings,** commented on the proposed 14 whole and 2 partial House districts in Yellowstone County and asked the Commission to pair the two partial House districts together, which would allow seven whole senate districts within Yellowstone County. He also asked that the Commission not create open seats in areas that just had senate seat elections because it disenfranchises voters.

00:41:50 **Bowen Greenwood, State Republican Party,** submitted written comment on behalf of Republican constituents. He said that, as a resident of Helena, he would like the Commission to reconsider a Helena valley district and he asked that the new district pairings be kept as similar to the current ones as possible.

00:42:36 **Jennifer Fielder, Thompson Falls,** Senator-elect, SD 7, asked to pair House Districts 13 and 19 and not to pair 13 and 14.

00:43:58 **Rep. Pat Noonan, HD 73, Butte,** asked to pair House Districts 75 and 76. He also expressed disappointment with the sacrifices already made by Butte-Silver Bow in the districting process. He discussed his opinion further.

00:45:26 **Rep. Austin Knudsen, HD 36, Culbertson,** asked to pair House Districts 33 and 34. He said he also advocates a Senate pairing for Richland, Dawson, and Wibaux Counties.

00:47:39 **Sen. Art Wittich, SD 35, Bozeman and Gallatin County,** discussed his concerns regarding how the urban core of Bozeman was divided into five house districts. He said that such districts divide and disenfranchise voters, and that it seems illogical to divide Bozeman into so many districts. He asked if the Commission's legacy is to reapportion based on population changes and maintaining communities of interest, or if it will be to enhance Democratic partisan power through the redistricting process. He said he hoped it was the former.

00:51:16 **Leonard Wortman, Chair, Jefferson County Commission**, asked to pair House Districts 72 and 73 and House Districts 74 and 75. He emphasized that many Jefferson County Commission meetings were held to take public comment and that residents of Jefferson County very strongly support being paired with Broadwater County in a senate district. Mr. Wortman submitted a packet of public comment into the record, as well as a letter from the Jefferson County Commission (EXHIBIT 2).

00:53:41 **David Halvorson, Sidney,** Representative-elect, HD 37, asked to pair House Districts 35 and 36, as requested by Rep. Rosendale and Rep. Knudsen.

00:54:34 **Alan Doane, Bloomfield,** Representative-elect, HD 38, asked to pair House Districts 35 and 36.

00:55:14 **Sen. Debby Barrett, SD 36, Dillon,** asked to pair House Districts 72 and 73, and House Districts 74 and 75.

00:55:59 **Rep. Jean Price, HD 21, Great Falls,** asked to pair House Districts 22 and 23.

00:56:41 **Sen. Ron Arthun, SD 31, Park and Sweetgrass Counties,** asked to pair House Districts 44 and 59.

00:57:21 **Daniel Zolnikov, Billings Heights,** Representative-elect, HD 47, asked to pair House Districts 47 and 54 and House Districts 48 and 49.

00:58:00 **Sen. Brad Hamlett, SD 10, Cascade County,** said that he likes the current pairings because they make sense and are a good fit for the area. He discussed how the districts have been carved up in the proposed Commission plan and asked that the Commission reconsider the district boundaries. He discussed a number of specific concerns, particularly the "guitar" shaped district (HD 24). He suggested pairing House Districts 20 with House District 22, 23, 24, or 25; and pairing House District 21 with House District 22 or 28.

01:01:40 **Sen. Ed Buttrey, SD 13, Great Falls,** agreed with Sen. Hamlett's concerns and questioned how the Commission came up with the Great Falls districts. He said he joins with others in asking that the Commission reconsider the Great Falls district boundaries. He suggested pairing House Districts 27 and 28, should no changes be made.

01:03:23 **Rep. Edie Mcclafferty, HD 75, Butte,** asked to pair House Districts 75 and 76.

01:04:09 **Amanda Curtis, Butte,** Representative-elect, HD 76, asked to pair House Districts 75 and 76.

01:05:01 **Rep. Brian Hoven, HD 24, Great Falls,** agreed with Sen. Hamlett's and Sen. Buttrey's concerns about the boundaries of the proposed Great Falls house districts. He discussed several of his own concerns and proposed that House Districts 25 and 27 be paired in a Senate district.

01:06:41 **Roger Hagan, Great Falls,** Representative-elect, HD 19, Cascade County, agreed with Sen. Hamlett's concerns and discussed several of his own regarding south Cascade County. He said that residents of Belt and Cascade are very concerned about the proposed pairings and encouraged the Commission to restore and pair current House Districts 19 and 20.

01:10:05 **Kelly Mccarthy, Yellowstone County,** Representative-elect, HD 51, asked to pair House Districts 53 and 54.

01:10:50 **Rep. Ryan Lynch, HD 74, Butte,** agreed with comments made by Rep. Noonan and Sen. Keane and said he shares their concern. He asked to pair House Districts 75 and 76 and House Districts 77 and 78.

01:11:28 **Sen. Taylor Brown, SD 22, Huntley,** submitted written comment into the record regarding the proposed Yellowstone County districts (EXHIBIT 3). He asked to pair House Districts 38 and 46.

01:13:06 **Kimberly Dudik, Missoula,** Representative-elect, HD 99, asked to pair House Districts 18 and 98.

01:14:40 **Douglas Coffin, Missoula,** Representative-elect, HD 93, discussed his current district and how it will be divided up in the proposed plan, which he opposes. He made several suggestions for boundary changes. Mr. Coffin submitted written comment into the record (EXHIBIT 4).

01:18:11 **Rep. Wendy Warburton, HD 34, Hill County**, asked to pair House Districts 33 and 34.

01:20:24 **Rep. Roy Hollandsworth, HD 28, Brady,** discussed his concerns about the proposed House district pairings, particularly how the "Golden Triangle" area is currently paired.

01:21:49 **Rep. Kris Hanson, HD 33, Havre,** commended the Commission for putting Havre into a single district. She asked to pair House Districts 29 and 30.

01:23:32 **Ray Shaw, Sheridan,** Representative-elect, HD 71, discussed why his district should be left as is (paired with Madison County). He suggested pairing northern Jefferson County with Broadwater County.

01:24:36 **Rep. Virginia Court, HD 52, Billings,** asked to pair House Districts 55 and 56, House Districts 57 and 60, and House Districts 61 and 62.

01:25:15 **Rep. Jon Sesso, HD 76, Butte,** (Senator-elect, SD 37), said that it makes the most sense to pair Butte-Silver Bow with Jefferson County and spoke in support of pairing House Districts 75 and 76.

01:27:56 **Fred Thomas, Stevensville,** Senator-elect, SD 45, said he was very critical of the 2000 redistricting plan and while this one is much better, there are improvements to be made. He discussed several improvements that could be made to the Hamilton district, saying that the map submitted by locals was much better than the plan drawn by the Democrats.

01:30:05 **Tom Lythgoe, Jefferson County Commissioner,** complimented the Commissioners on their work and said it is a tough job. He agreed with Chairman Wortman's comments in support of pairing House Districts 74 and 75. He said that the Jefferson County Commissioners listen to their constituents and that there is very strong support for being paired with Broadwater County and very

strong opposition to being paired with Butte-Silver Bow. He said he supports pairing House Districts 74 and 75.

01:32:54 **Rose Hanser, Mayor, Colstrip,** asked to pair House Districts 38 and 46. She discussed her opposition to dividing Colstrip into two house districts.

01:34:43 Commissioner Regnier recessed the meeting for a short break.

BREAK

01:46:41 Commissioner Regnier called the meeting back to order.

01:46:51 **Rep. Duane Ankney, HD 43, Colstrip,** discussed his opposition to splitting Colstrip into two districts and his support for pairing House Districts 38 and 47.

01:49:03 **Dave Kirsch, Jefferson County Commissioner,** asked to pair House Districts 74 and 75 and discussed his concerns about Jefferson County being paired with Butte-Silver Bow. He noted that no legislators or citizens from Butte-Silver Bow attended any of the public hearings held in Jefferson County.

01:50:53 **Kerry White, Bozeman,** Representative-elect, HD 70, discussed the proposed pairings for Gallatin County and his concerns that rural residents will lose their voice as a result, particularly in House District 71. He said he agreed with the pairings suggested by Senator-elect Scott Sales.

01:54:56 **Rep. Joanne Blyton, HD 59, Carbon County,** thanked the Commissioners for their hard work and for keeping Carbon County intact. She said that she supports the proposed pairing of her district.

01:56:12 **Charles Wideman, Jefferson County,** said that the Jefferson County Commission was very proactive in working on behalf of its citizens. He discussed the proposed pairings and agreed with previous testimony that Butte-Silver Bow did not attend public hearings but that Broadwater County Commissioners and residents did. He asked that House Districts 74 and 75 be paired.

01:58:11 **Colleen Teeling, Jefferson County,** said that she supports the position of the Jefferson County Commissioners and strongly supports a Jefferson-Broadwater County pairing.

01:59:21 **Tom Woods, Bozeman,** Representative-elect, HD 64, said that he could give only "lukewarm support" for pairing House Districts 59 and 63.

02:00:39 **Rep. Chuck Hunter, HD 79, Helena,** spoke in support of the proposed pairings for the Helena/Lewis and Clark County districts. He said there are certain concerns, but that overall, he would support the districts as proposed.

General Public Comment

02:02:30 **Jennifer Fielder, Missoula,** Senator-elect, SD 7, discussed the geographical barriers in proposed HD 14. She said it would make more sense to adjust the district boundaries in order to allow easier access to the district.

02:04:18 **Richard Dunbar, Phillips County Commissioner,** asked the Commission to consider moving Malta into HD 33 and discussed why it would be a good move. He submitted into the record a packet of public comment from Malta citizens in favor of the move.

02:05:15 **Mike Lang, Malta,** Representative-elect, HD 35, discussed his concern about Malta's placement and asked that it be moved into a district similar to the one proposed in the Criteria Plan.

02:06:11 **Rep. Wayne Stahl, HD 35, Malta,** discussed several concerns about the proposed house districts in his area and how the boundaries could impact the Native American vote. He said that districts should be more balanced and that he also agreed with previous comments about certain districts being too large to provide adequate representation.

02:10:36 **Sen Taylor Brown, SD 22, Huntley,** discussed his displeasure and disappointment with the boundaries drawn for his district, pointing out that his home had been moved just out of his traditional district and placed in a district lying mostly in Big Horn County. He stated that the move "smacks of gerrymandering" and that such moves will force Republican legislators to run in predominantly Democratic districts. He said that the decision completely defies the goals of the Commission, is highly political, and will fragment a compact little community. Sen. Brown submitted a letter listing his objections into the record (EXHIBIT 5).

02:14:33 **Jennifer Fielder, Missoula,** Senator-elect, SD 7, asked that Frenchtown be left as is.

02:15:08 **Rep. Dan Salomon, HD 12, Ronan,** said that the proposed district to replace his current one places his home 100 feet outside of the current HD 12, where he has lived his entire life. He asked the Commission to review the proposed district and change it back because he would like to remain in his current district.

02:16:30 Commissioner Regnier concluded the public testimony.

02:16:41 Commissioner Regnier asked the commissioners if they had any remarks to add. They did not.

02:16:59 Commissioner Regnier thanked everyone for attending the meeting and submitting their comments. He reminded the Commissioners that November 23, 2012, is the deadline for submitting senate pairings and that all submissions would be posted after the deadline. He also reminded the Commission of upcoming meeting dates, scheduled for November 30, 2012, and December 19, 2012.

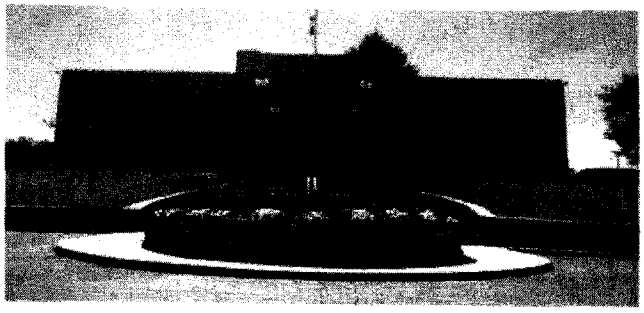
ADJOURN

02:18:02 Commissioner Regnier adjourned the hearing at 8:49 p.m. The Districting and Apportionment Commission will meet next on December 19, 2012, in Helena.

Cl0429 3022dfxb.

Exhibit J

Dave Miller,
Commission Chairman
Ben Ober,
Commissioner
Allan Underdal,
Commissioner
Merle Raph,
County Attorney
Donna Whitt,
Sheriff
Dan B. Whitted,
Coroner
Commissioners
Office# 406-424-8310
tccomm@toolecountymt.gov



Treva Nelson,
Clerk & Recorder
Sandra Peers,
Clerk of Court
Boyd Jackson,
Treasurer/Assessor
Supt. Of Schools
Helen I. Schnee,
Public Administrator
Sherrie Murphy,
Justice of the Peace
Clerk & Recorders Office#
406-424-8300
Fax# 406-424-8301
tcclerk@toolecountymt.gov

COUNTY OF TOOLE

226 1ST Street South
Toole County Courthouse, Shelby, MT 59474

October 2, 2012

Districting and Apportionment Commission
Legislative Services Division
PO Box 201706
Helena, MT 59620-1706

To Whom It May Concern:

It has come to our attention that the newly proposed boundary between HD 26 and HD 17 removes Senator Llew Jones from his home community of Conrad by the length of his residence's driveway. What makes this omission particularly confusing is that the new boundary leaves the city of Conrad substantially whole, while linking Senator Jones' residence with a population area (Choteau) over 25 miles away. Additionally, the proposed boundary removes the local airport, golf course, and shooting club from the district containing Conrad's population.

As you are aware, Senator Jones has a long history of distinguished public service in the Golden Triangle region. He has served the cities of Conrad, Shelby, Valier, and Cut Bank as their Representative for three terms and, with the addition of Chester, Big Sandy, and Fort Benton, as their Senator for one term.

We understand that the commission's constitutionally defined priority is to equalize the population in each new house district. In support of this requirement, it is important to note that there are fewer than six individuals who would be impacted by the boundary change we are proposing. Therefore, the commission should find that neither the inclusion nor the exclusion of the proposed geographical area will appreciably alter the final population statistics in either of the affected house districts.

Furthermore, while we agree that the location of a boundary should not be based upon the residence of any existing legislator, we do believe that the commission should be especially cognizant of a boundary's impact in rural districts. A rural legislator does not

share the same advantage as an urban legislator in regards to the location of their home. This occurs because an urban legislator can often run in any legislative district within their county of residence, while a rural legislator can only run in the district in which they actually reside. The debilitating potential of this inequality requires that the commission be particularly careful when locating a boundary in rural areas.
The commission's proposed boundary, when viewed within the framework of the residency statutes controlling rural districts, stands to completely exclude Senator Jones from participation in the 2014 legislative elections. By accepting the minor change we are proposing, the commission would at least be providing the Senator with an opportunity to run for the House seat that contains the communities he has served so well in the past.

As elected officials and community leaders, we recommend that the commission accept our change to the proposed boundary. We are certain that this change best represents the needs and desires of the Golden Triangle region, as well as, those of the state of Montana.

Respectfully,

Toole County Commissioners

Dave Miller, Chairman
Commissioners

Ben Ober
Commissioner

Allan Underdal
Commissioner

CONRAD PUBLIC SCHOOLS

www.conradschools.org

GREG JENSEN, Principal
Meadowlark Elementary School (K-2)
Phone: (406) 278-5620
Fax: (406) 278-5621
Prairie View School (3-5)
Phone : (406) 271-5251

SCHOOL DISTRICT NO. 10

CRAIG BARRINGER, Superintendent

AFTON C. LAMOREAUX, Clerk/Business Manager

215 SOUTH MARYLAND STREET
CONRAD, MONTANA 59425-2017
PHONE: (406) 278-5521
FAX: (406) 278-3630

TARA THIELMAN, Principal
Utterback Middle School (6-8)
Phone: (406) 278-3227
Fax: (406) 278-3228

KEN LARSON, Principal
Conrad High School (9-12)
Phone: (406) 278-3285
Fax: (406) 278-3806

Districting and Apportionment Committee Members:

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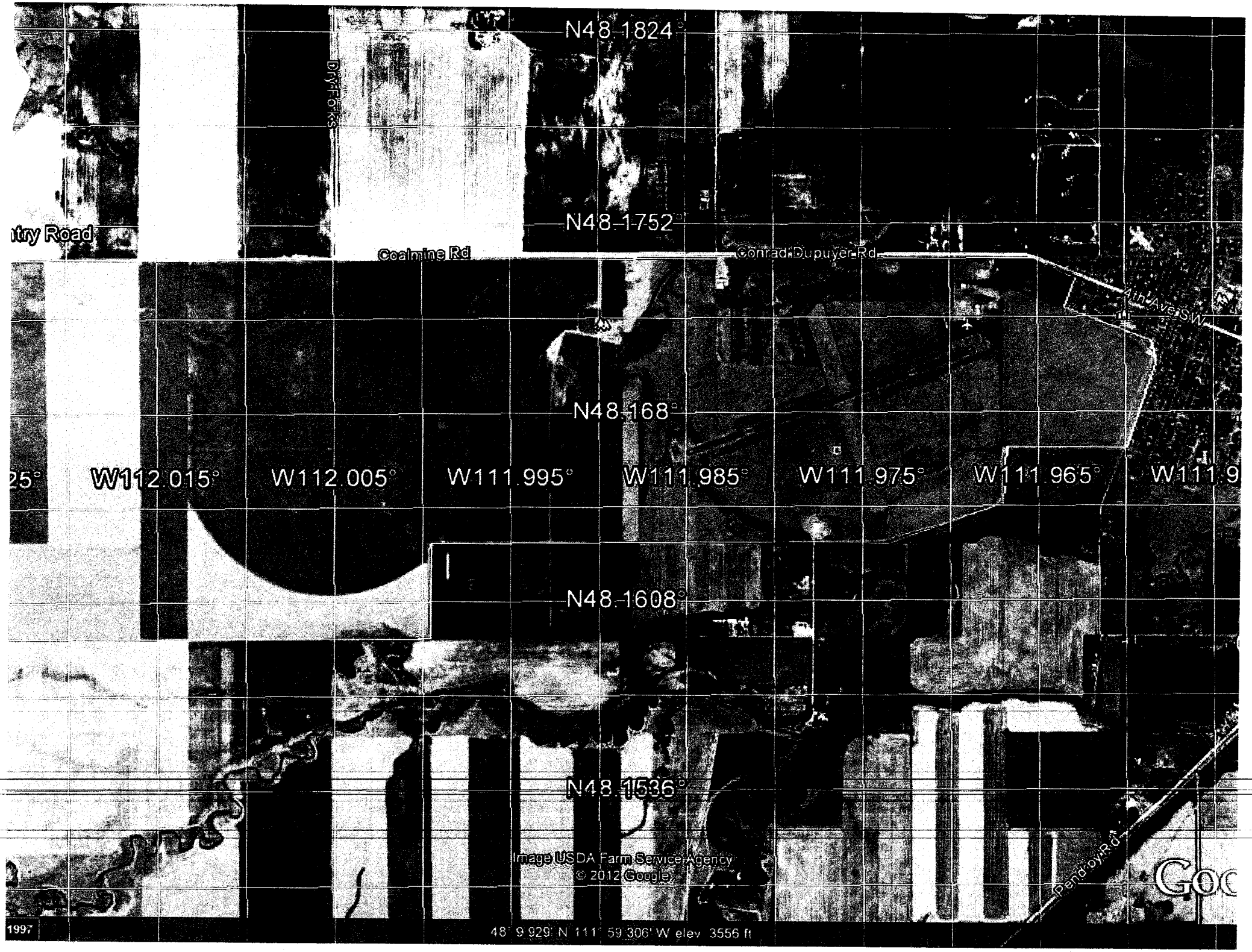
As a Superintendent of Schools and community leader, I recommend that the commission accept my change to the proposed boundary. I am certain that this change best represents the needs and desires of the Golden Triangle region, as well as, those of the state of Montana.

Respectfully,

Craig Barringer

Craig Barringer
Conrad Schools Superintendent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W112.005°
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W111.9
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N48.1536°
Image USDA Farm Service Agency
© 2012 Google
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1997
48° 9.929' N 111° 59.306' W elev 3556 ft

GLACIER COUNTY COMMISSIONERS

512 E. Main
Cut Bank, Mt 59427
Phone (406) 873-5063 • Fax (406) 873-3613

Michael J. DesRosier	Ron R. Rides At The Door	Tony Sitzmann	Recording Desk
Chairman	Vice Chairman	Member	
Ext. 3603	Ext. 3601	Ext. 3602	Ext. 3606

October 2, 2012

Districting & Apportionment Commission
Legislative Services Division
PO Box 201706
Helena, MT 59620-1706

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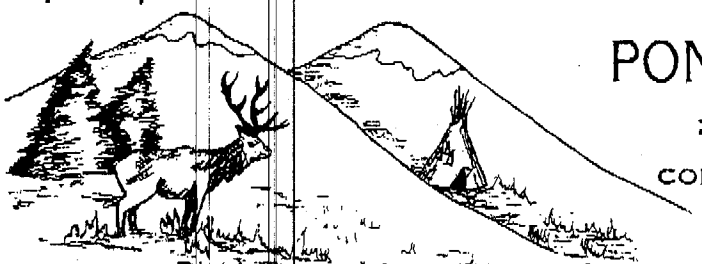
The commission's proposed boundary, when viewed within the framework of the residency statutes controlling rural districts, stands to completely exclude Senator Jones from participation in the 2014 legislative elections. By accepting the minor change we are proposing, the commission would at least be providing the Senator with an opportunity to run for the House seat that contains the communities he has served so well in the past.

As elected officials and community leaders, we recommend that the commission accept our change to the proposed boundary. We are certain that this change best represents the needs and desires of the Golden Triangle region, as well as, those of the state of Montana.

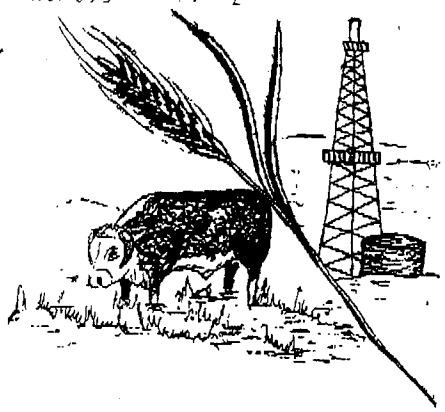
Sincerely,
Glacier County Commissioners

Michael J. DesRosier	Ron Rides At The Door	Tony Sitzmann
Chairman	Vice Chairman	Member



PONDERA COUNTY

20 4TH AVENUE S.W.
CONRAD, MONTANA 59425



Districting and Apportionment Commission
Legislative Services Division
PO Box 201706
Helena, MT 59620-1706

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Respectfully,

Pondera County Commissioners

Cynthia A. Johnson, Chairman

Joseph Christiaens, Vice-Chairman

Sandra J. Broesder, Member

CITY of CUT BANK

221 West Main • (406) 873-5526 • Fax: (406) 873-2455 • Cut Bank, MT 59427

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Respectfully,

Emmet D Embody

WENDY JUDISCH
Mayor

AGNES FOWLER
Finance Officer

V.A. FARNSTROM
City Judge

GARY DENT
Police Chief

CITY OF CONRAD

411 1/2 SOUTH MAIN
CONRAD, MONTANA 59425
PHONE: 406-271-3623 FAX 406-271-5602

KARLA BREDING
DREW LESNIK
RICK MOSS
RONALD WIDHALM
Aldermen

October 3, 2012

Dear Committee;

It has come to my attention that the newly proposed boundary between HD 26 and HD 17 removes Senator Llew Jones from his home community of Conrad by the length of his residence's driveway. What makes this omission particularly confusing is that the new boundary leaves the city of Conrad substantially whole, while linking Senator Jones' residence with a population area (Choteau) over 25 miles away. Additionally, the proposed boundary removes the local airport, golf course, and shooting club from the district containing Conrad's population.

As you are aware, Senator Jones has a long history of distinguished public service in the Golden Triangle region. He has served the cities of Conrad, Shelby, Valier, and Cut Bank as their Representative for three terms and, with the addition of Chester, Big Sandy, and Fort Benton, as their Senator for one term.

I understand that the commission's constitutionally defined priority is to equalize the population in each new house district. In support of this requirement, it is important to note that there are fewer than six individuals who would be impacted by the boundary change I am proposing and the map of which is attached for your review. Therefore, the commission should find that neither the inclusion nor the exclusion of the proposed geographical area will appreciably alter the final population statistics in either of the affected house districts.

Furthermore, while I agree that the location of a boundary should not be based upon the residence of any existing legislator, I do believe that the commission should be especially cognizant of a boundary's impact in rural districts. A rural legislator does not share the same advantage as an urban legislator in regards to the location of their home. This occurs because an urban legislator can often run in any legislative district within their county of residence, while a rural legislator can only run in the district in which they actually reside. The debilitating potential of this inequality requires that the commission be particularly careful when locating a boundary in rural areas.

The commission's proposed boundary, when viewed within the framework of the residency statute controlling rural districts, stands to completely exclude Senator Jones from participation in the 2014 legislative elections. By accepting the minor change I am proposing, the commission would at least be providing the Senator with an opportunity to run for the House seat that contains the communities he has served so well in the past.

As an elected official and community leader, I recommend that the commission accept my change to the proposed boundary. I am certain that this change best represents the needs and desires of the Golden Triangle region, as well as, those of the state of Montana.

Respectfully,

Wendy Judisch, Mayor

City of Conrad

Encl.

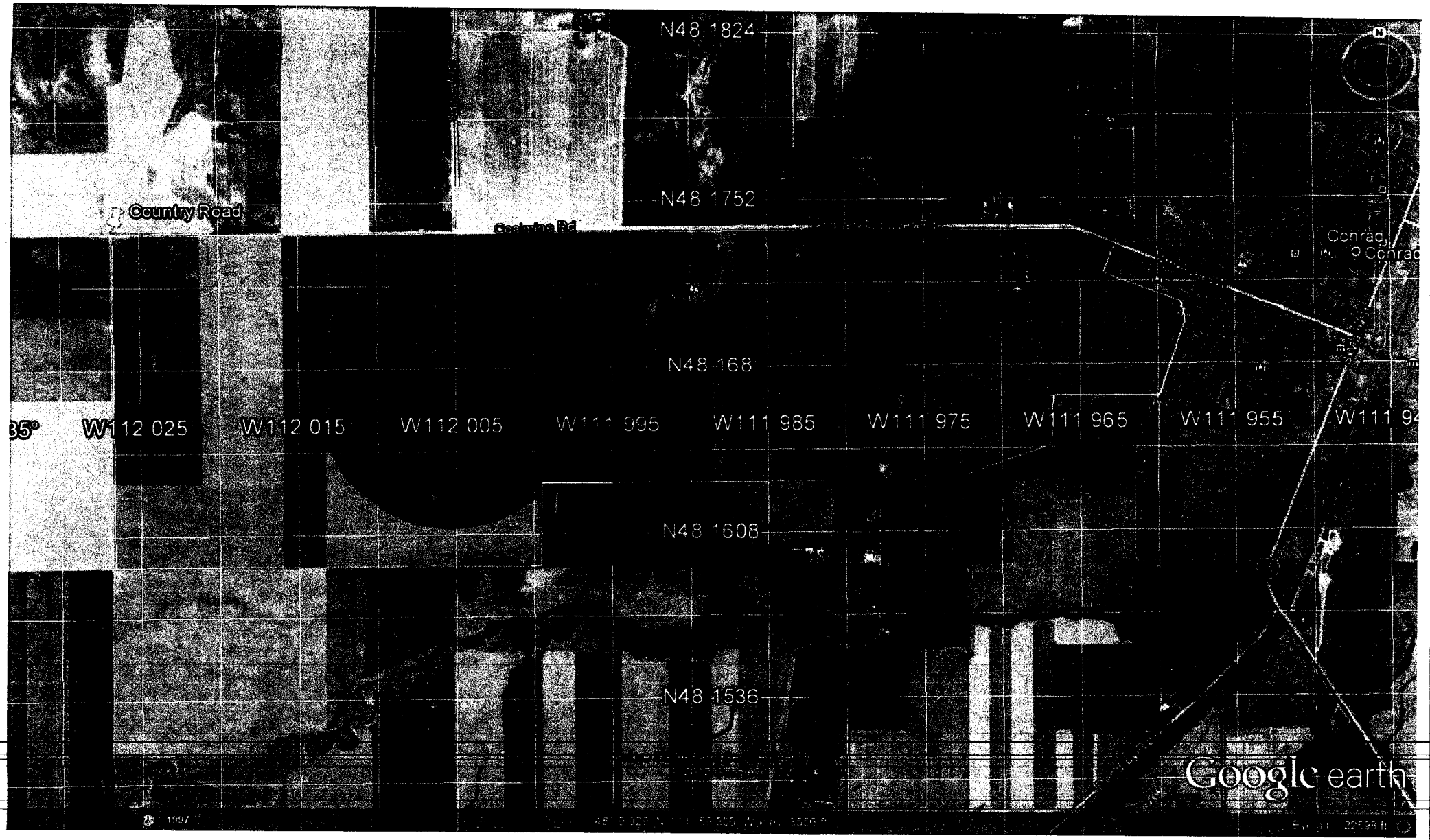
N48 1824
N48 1752
Country Road
Conrad
N48 168
W112 025
W112 015
W112 005
W111 995
W111 985
W111 975
W111 965
W111 955
N48 1608
N48 1536
Google earth

Exhibit K

Population Summary Report

Plan Name:
2010_House_adopted_021213

Run Date/Time: 2/13/2013 10:36 a.m.

Overall Range: 5.44 **Percent** 538 **Persons**

Largest District: 10,136 **Deviation:** 2.45 **Percent** 242 **Persons**

Smallest District: 9,598 **Deviation:** -2.99 **Percent** -296 **Persons**

Ideal District: 9,894 **Mean Deviation:** 0.91 **Percent** 90.01 **Persons**

Standard Deviation: 121 120.92 **Persons**

District	Population	Deviation	% Devn.	[18+_Pop]	AP_Ind	[18+_AP_Ind]	% 18+ AP_Ind
1	9,838	-56	-0.57 %	7,897	264	199	2.52 %
2	9,849	-45	-0.45 %	7,894	221	168	2.13 %
3	9,981	87	0.88 %	7,690	323	236	3.07 %
4	9,915	21	0.21 %	7,547	250	171	2.27 %
5	9,869	-25	-0.25 %	7,949	168	111	1.40 %
6	9,953	59	0.60 %	7,644	169	121	1.58 %
7	9,955	61	0.62 %	7,745	346	233	3.01 %
8	9,989	95	0.96 %	7,156	254	163	2.28 %
9	9,999	105	1.06 %	7,514	325	209	2.78 %
10	9,890	-4	-0.04 %	7,991	171	131	1.64 %
11	9,988	94	0.95 %	7,510	147	109	1.45 %
12	9,886	-8	-0.08 %	7,674	1,899	1,198	15.61 %
13	9,987	93	0.94 %	7,860	238	171	2.18 %
14	9,981	87	0.88 %	8,007	780	565	7.06 %
15	9,600	-294	-2.97 %	6,522	6,159	3,821	58.59 %
16	9,604	-290	-2.93 %	6,575	6,808	4,408	67.04 %
17	9,901	7	0.07 %	7,685	390	294	3.83 %
18	9,903	9	0.09 %	7,731	768	530	6.86 %
19	9,919	25	0.25 %	7,713	400	295	3.82 %
20	9,956	62	0.63 %	7,584	266	173	2.28 %
21	9,894	0	0.00 %	7,578	563	374	4.94 %
22	9,859	-35	-0.35 %	7,549	773	508	6.73 %
23	9,868	-26	-0.26 %	7,984	982	633	7.93 %
24	9,791	-103	-1.04 %	7,514	864	524	6.97 %
25	9,834	-60	-0.61 %	7,579	722	473	6.24 %
26	10,076	182	1.84 %	7,600	623	445	5.86 %

Plan: 2010_House_adopted_021213

District	Population	Deviation	% Devn.	[18+_Pop]	AP_Ind	[18+_AP_Ind]	% 18+ AP_Ind
27	9,900	6	0.06 %	7,661	207	122	1.59 %
28	9,975	81	0.82 %	7,447	1,587	917	12.31 %
29	10,029	135	1.36 %	8,029	219	174	2.17 %
30	9,957	63	0.64 %	7,819	164	119	1.52 %
31	9,837	-57	-0.58 %	6,627	6,845	4,140	62.47 %
32	9,800	-94	-0.95 %	6,445	6,731	4,057	62.95 %
33	9,766	-128	-1.29 %	7,561	786	521	6.89 %
34	9,882	-12	-0.12 %	7,721	558	339	4.39 %
35	9,746	-148	-1.50 %	7,463	277	176	2.36 %
36	9,983	89	0.90 %	7,897	266	179	2.27 %
37	10,131	237	2.40 %	7,947	125	68	0.86 %
38	9,890	-4	-0.04 %	7,644	289	184	2.41 %
39	9,960	66	0.67 %	7,616	355	204	2.68 %
40	9,909	15	0.15 %	7,527	318	190	2.52 %
41	9,598	-296	-2.99 %	6,348	6,098	3,606	56.81 %
42	9,601	-293	-2.96 %	6,547	5,913	3,589	54.82 %
43	9,833	-61	-0.62 %	7,280	488	276	3.79 %
44	9,873	-21	-0.21 %	7,395	535	309	4.18 %
45	9,865	-29	-0.29 %	7,003	521	297	4.24 %
46	9,873	-21	-0.21 %	7,945	178	114	1.43 %
47	9,826	-68	-0.69 %	8,144	772	510	6.26 %
48	9,751	-143	-1.45 %	7,723	491	300	3.88 %
49	9,734	-160	-1.62 %	7,802	973	674	8.64 %
50	9,846	-48	-0.49 %	7,625	597	374	4.90 %
51	9,844	-50	-0.51 %	7,547	922	565	7.49 %
52	9,832	-62	-0.63 %	7,552	850	481	6.37 %
53	9,898	4	0.04 %	7,000	165	102	1.46 %
54	9,904	10	0.10 %	7,803	235	153	1.96 %
55	9,875	-19	-0.19 %	7,400	309	171	2.31 %
56	9,894	0	0.00 %	7,228	570	318	4.40 %
57	9,636	-258	-2.61 %	7,405	154	105	1.42 %
58	10,078	184	1.86 %	8,092	152	105	1.30 %
59	9,632	-262	-2.65 %	7,795	132	98	1.26 %

Plan: 2010_House_adopted_021213

District	Population	Deviation	% Devn.	[18+_Pop]	AP_Ind	[18+_AP_Ind]	% 18+ AP_Ind
60	9,666	-228	-2.30 %	7,621	199	146	1.92 %
61	9,829	-65	-0.66 %	7,794	89	62	0.80 %
62	9,908	14	0.14 %	8,090	79	70	0.87 %
63	9,896	2	0.02 %	8,690	393	276	3.18 %
64	9,924	30	0.30 %	7,787	160	124	1.59 %
65	9,815	-79	-0.80 %	7,915	160	116	1.47 %
66	9,727	-167	-1.69 %	8,278	150	110	1.33 %
67	9,952	58	0.59 %	7,322	177	122	1.67 %
68	9,958	64	0.65 %	6,892	171	96	1.39 %
69	9,974	80	0.81 %	7,575	111	82	1.08 %
70	9,934	40	0.40 %	7,673	275	179	2.33 %
71	10,104	210	2.12 %	8,249	163	118	1.43 %
72	10,136	242	2.45 %	8,102	228	155	1.91 %
73	10,049	155	1.57 %	7,729	287	187	2.42 %
74	10,048	154	1.56 %	8,214	575	424	5.16 %
75	9,887	-7	-0.07 %	7,544	291	196	2.60 %
76	10,056	162	1.64 %	7,928	162	99	1.25 %
77	10,058	164	1.66 %	8,220	304	220	2.68 %
78	10,049	155	1.57 %	8,177	597	499	6.10 %
79	9,914	20	0.20 %	7,703	318	211	2.74 %
80	9,893	-1	-0.01 %	7,591	253	189	2.49 %
81	9,866	-28	-0.28 %	7,829	307	224	2.86 %
82	9,882	-12	-0.12 %	7,606	385	281	3.69 %
83	9,911	17	0.17 %	7,662	451	284	3.71 %
84	9,918	24	0.24 %	7,477	464	270	3.61 %
85	10,115	221	2.23 %	8,162	227	151	1.85 %
86	9,990	96	0.97 %	7,913	202	129	1.63 %
87	10,057	163	1.65 %	7,590	239	168	2.21 %
88	10,050	156	1.58 %	7,723	188	138	1.79 %
89	9,869	-25	-0.25 %	8,040	300	227	2.82 %
90	9,845	-49	-0.50 %	7,799	416	256	3.28 %
91	9,722	-172	-1.74 %	8,408	220	182	2.16 %
92	10,121	227	2.29 %	8,029	373	241	3.00 %

Plan: 2010_House_adopted_021213

District	Population	Deviation	% Devn.	[18+_Pop]	AP_Ind	[18+_AP_Ind]	% 18+ AP_Ind
93	9,904	10	0.10 %	7,235	2,852	1,813	25.06 %
94	9,821	-73	-0.74 %	7,552	771	489	6.48 %
95	9,708	-186	-1.88 %	8,195	683	490	5.98 %
96	9,976	82	0.83 %	7,509	315	199	2.65 %
97	9,979	85	0.86 %	7,385	285	180	2.44 %
98	9,819	-75	-0.76 %	7,905	437	288	3.64 %
99	9,845	-49	-0.50 %	7,657	310	202	2.64 %
100	9,797	-97	-0.98 %	8,352	379	275	3.29 %

State Total: **989,415**

Population Summary Report

Plan Name: 2010_Senate_adopted_021213

Run Date/Time: 2/14/2013 11:13 a.m.

Overall Range: 5.26 Percent 1,041 Persons

Largest District: 20,240 **Deviation:** 2.28 Percent 452 Persons

Smallest District: 19,199 **Deviation:** -2.98 Percent -589 Persons

Ideal District: 19,788 **Mean Deviation:** 0.76 Percent 150.62 Persons

Standard Deviation: 207 207.25 Persons

District	Population	Deviation	% Devn.	[18+_Pop]	AP_Ind	[18+_AP_Ind]	% 18+ AP_Ind
1	19,687	-101	-0.51 %	15,791	485	367	2.32 %
2	19,896	108	0.55 %	15,237	573	407	2.67 %
3	19,822	34	0.17 %	15,593	337	232	1.49 %
4	19,944	156	0.79 %	14,901	600	396	2.66 %
5	19,889	101	0.51 %	15,505	496	340	2.19 %
6	19,874	86	0.43 %	15,184	2,046	1,307	8.61 %
7	19,968	180	0.91 %	15,867	1,018	736	4.64 %
8	19,204	-584	-2.95 %	13,097	12,967	8,229	62.83 %
9	19,804	16	0.08 %	15,416	1,158	824	5.35 %
10	19,875	87	0.44 %	15,297	666	468	3.06 %
11	19,753	-35	-0.18 %	15,127	1,336	882	5.83 %
12	19,659	-129	-0.65 %	15,498	1,846	1,157	7.47 %
13	19,910	122	0.62 %	15,179	1,345	918	6.05 %
14	19,875	87	0.44 %	15,108	1,794	1,039	6.88 %
15	19,986	198	1.00 %	15,848	383	293	1.85 %
16	19,637	-151	-0.76 %	13,072	13,576	8,197	62.71 %
17	19,648	-140	-0.71 %	15,282	1,344	860	5.63 %
18	19,729	-59	-0.30 %	15,360	543	355	2.31 %
19	20,021	233	1.18 %	15,591	414	252	1.62 %
20	19,869	81	0.41 %	15,143	673	394	2.60 %
21	19,199	-589	-2.98 %	12,895	12,011	7,195	55.80 %
22	19,706	-82	-0.41 %	14,675	1,023	585	3.99 %
23	19,738	-50	-0.25 %	14,948	699	411	2.75 %
24	19,577	-211	-1.07 %	15,867	1,263	810	5.10 %
25	19,580	-208	-1.05 %	15,427	1,570	1,048	6.79 %
26	19,676	-112	-0.57 %	15,099	1,772	1,046	6.93 %

Plan: 2010_Senate_adopted_021213

District	Population	Deviation	% Devn.	[18+_Pop]	AP_Ind	[18+_AP_Ind]	% 18+ AP_Ind
27	19,802	14	0.07 %	14,803	400	255	1.72 %
28	19,769	-19	-0.10 %	14,628	879	489	3.34 %
29	19,714	-74	-0.37 %	15,497	306	210	1.36 %
30	19,298	-490	-2.48 %	15,416	331	244	1.58 %
31	19,737	-51	-0.26 %	15,884	168	132	0.83 %
32	19,820	32	0.16 %	16,477	553	400	2.43 %
33	19,542	-246	-1.24 %	16,193	310	226	1.40 %
34	19,910	122	0.62 %	14,214	348	218	1.53 %
35	19,908	120	0.61 %	15,248	386	261	1.71 %
36	20,240	452	2.28 %	16,351	391	273	1.67 %
37	20,097	309	1.56 %	15,943	862	611	3.83 %
38	19,943	155	0.78 %	15,472	453	295	1.91 %
39	20,107	319	1.61 %	16,397	901	719	4.38 %
40	19,807	19	0.10 %	15,294	571	400	2.62 %
41	19,748	-40	-0.20 %	15,435	692	505	3.27 %
42	19,829	41	0.21 %	15,139	915	554	3.66 %
43	20,105	317	1.60 %	16,075	429	280	1.74 %
44	20,107	319	1.61 %	15,313	427	306	2.00 %
45	19,714	-74	-0.37 %	15,839	716	483	3.05 %
46	19,843	55	0.28 %	16,437	593	423	2.57 %
47	19,725	-63	-0.32 %	14,787	3,623	2,302	15.57 %
48	19,684	-104	-0.53 %	15,704	998	689	4.39 %
49	19,798	10	0.05 %	15,290	722	468	3.06 %
50	19,642	-146	-0.74 %	16,009	689	477	2.98 %

State Total: **989,415**

Exhibit L

MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

BOB BROWN, in his official capacity as the Montana Secretary of State, Plaintiff, v. MONTANA DISTRICTING AND APPORTIONMENT COMMISSION, Defendant, and JOE MACDONALD, JEANNINE PADILLA, CAROL JUNEAU, JONATHAN WINDY BOY, GERALD PEASE, FRANK SMITH, NORMA BIXBY, VERONICA SMALL EASTMAN, JOEY JAYNE, MONTANA WYOMING TRIBAL LEADERS COUNCIL, JAY ST. GODDARD, GERRI SMALL, D. FRED MATT, ALVIN WINDY BOY, RAY EDER, BEN SPEAKTHUNDER and CARL VENNE, Intervenors.	Cause No. ADV-2003-72 **DECISION AND ORDER**

Several motions are currently before the Court. Plaintiff and Defendant have filed cross motions for summary judgment. Intervenors have filed a motion to dismiss or for summary judgment. A hearing on the motions was held May 15, 2003. Plaintiff Bob Brown, Secretary of State was represented by Robert Cameron; Defendant Montana Districting and Apportionment Commission (Commission) was represented by Brian Morris; and Intervenors were represented by Beth Brennaman. The motions have been fully briefed and are submitted for decision.

BACKGROUND AND UNDISPUTED FACTS

This case arises out of recent legislation pertaining to legislative districting. On January 6, 2003, the Commission submitted its plan for legislative districts to the 2003 legislature. The legislature appointed the Joint Select Committee on Districting and Apportionment to receive and consider testimony on the Commission's plan. After testimony, House Resolution No. 3 and Senate Resolution No. 2 were passed on February 4, 2003, which requested the Commission to reconvene and adopt a new plan. On that same day, Governor Martz signed HB 309, which was the basis for the legislative resolutions. The Commission met on February 5, 2003, where it considered the resolutions and ultimately adopted its original plan. The Commission tendered its plan to the Secretary of State for filing, but the Secretary refused to file it.

The Secretary of State filed a complaint for declaratory judgment, asking the Court to rule: (1) whether the Commission's plan is unconstitutional under Article V, Section 14, of the Montana Constitution; (2) whether the Commission's plan is unenforceable under HB 309; and (3) whether the Secretary of State's refusal to file the Commission's plan is valid under Montana law. All parties filed motions for summary

judgment, and Intervenors also filed a motion to dismiss.

/////

LEGAL STANDARD

Summary judgment will only be granted when the record discloses no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *See* Rule 56(c), M.R.Civ.P.; ***Dillard v. Doe***, 251 Mont. 379, 382, 824 P.2d 1016, 1018 (1992). The moving party must establish both the absence of genuine issues of material fact and entitlement to judgment as a matter of law. ***Hadford v. Credit Bureau of Havre, Inc.***, 1998 MT 179, ¶ 14, 289 Mont. 529,¶14, 962 P.2d 1198, ¶14. Once the moving party has met its burden, the opposing party must present material and substantive evidence, rather than mere conclusory or speculative statements, to raise a genuine issue of material fact. ***Id.***

With respect to a motion to dismiss, the allegations of the complaint must be viewed in a light most favorable to plaintiffs, admitting and accepting as true all facts well-pleaded. ***United States Nat'l Bank of Red Lodge v. Montana Dep't of Rev.***, 175 Mont. 205, 207, 573 P.2d 188, 190 (1977), citing ***Bd. of Equalization v. Farmers Union Grain Terminal Ass'n***, 140 Mont. 523, 531, 374 P.2d 231, 236 (1962). A complaint will not be dismissed for failure to state a claim unless it appears beyond any doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.

DISCUSSION

The motions raise several legal issues, none of which involve disputed issues of material fact.

A. **Whether HB 309 constitutes an impermissible conflict with Article V**

Section 14 of the Montana Constitution.

Article V Section 14 of the Montana Constitution provides:

Districting and apportionment. (1) The state shall be divided into as many districts as there are members of the house, and each district shall elect one representative. Each senate district shall be composed of two adjoining house districts, and shall elect one senator. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.

(2) In the legislative session following ratification of this constitution and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative districts and a plan for redistricting the state into congressional districts. The majority and minority leaders of each house shall each designate one commissioner. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall select him.

(3) Within 90 days after the official final decennial census figures are available, the commission shall file its final plan for congressional districts with the secretary of state and it shall become law.

(4) The commission shall submit its plan for legislative districts to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendations. Within 30 days thereafter, the commission shall file its final plan for legislative districts with the secretary of state and it shall become law.

(5) Upon filing both plans, the commission is then dissolved.

House Bill 309 included new sections, and amended Section 5-1-111, MCA. The pertinent portions of the bill read as follows:

Section 1. Redistricting criteria. (1) In the drawing of legislative districts, the districting and apportionment commission shall comply with the following criteria:

(a) the districts must be compact and contiguous; and

(b) the districts must be as equal as practicable.

(2) For the purposes of this section, "as equal as practicable" means within a plus or minus 1 % relative deviation from the ideal population of a district as calculated from information provided by the federal decennial census.

Section 5-1-111, MCA, as amended, reads in pertinent part:

> **Final plan – dissolution of commission.** (1) Within 90 days after the official final decennial census figures are available, the commission shall file its final plan for congressional districts with the secretary of state and it shall become law.
>
> (2) Within 30 days after receiving the legislative redistricting plan and the legislature's recommendations, the commission shall file its final legislative redistricting plan with the secretary of state. The secretary of state may not accept any plan that does not comply with the criteria in section 1. Upon acceptance of a plan by the secretary of state, the plan is considered filed and becomes law.
>
> (3) Upon the acceptance and filing of both plans, the commission is dissolved.

The bill also contained a provision making it retroactive "to any legislative redistricting plan of the districting and apportionment commission that was not filed with the secretary of state on [the effective date of this act]."

In addressing this issue, the Court is mindful of well settled rules of law. One pertinent rule provides that in addressing a constitutional challenge to any statute, the statute is presumed constitutional, and the challenging party has the burden of establishing the statute's unconstitutionality. ***Harper v. Greely***, 234 Mont. 259, 269, 763 P.2d 650, 656 (1988). If a doubt exists with respect to a finding of unconstitutionality, it must be resolved in favor of the legislation. ***Id.*** Another rule provides that the legislature can expand, but may not restrict rights guaranteed by the state or federal constitution. See ***Marbury v. Madison***, 1 Cranch 137 (1803); ***Noll v. City of Bozeman***, 166 Mont 504, 506, 534 P.2d 880, 881 (1975); ***Shroyer v. Sokol***, 550 P.2d 309, 311 (Colo. 1976). Finally, in interpreting provisions of the constitution, the Court is constrained and guided by various rules of construction applicable to interpreting legislation. ***Great Falls Tribune Co. v. Great Falls Public Sch. Bd. of Trustees***, 255 Mont. 125, 129, 841 P.2d 502, 504 (1992).

Accordingly, the Court must construe Article V, Section 14, of the Montana Constitution according to the plain meaning of the language therein. ***State ex rel. Woodahl v. Dist. Ct.***, 162 Mont. 283, 511 P.2d 318 (1973). When the language of the provision is plain, unambiguous, direct and certain, the provision speaks for itself and there is nothing left for the court to construe. ***Hammill v. Young***, 168 Mont. 81, 85-86, 540 P.2d 971, 974 (1975).

Article V, Section 14, of the Montana Constitution requires the Commission to create legislative districts that are "as nearly equal in population as is practicable." This section lacks any more specific language. The Secretary of State argues that the legislature, using its "plenary power," can "implement" this provision by enacting specifics, such as Section 1(2) of HB 309, which defines "as equal as practicable" as "a plus or minus 1% relative deviation from the ideal population of a district . . . ."

The Court finds no ambiguity in the language of Article V, Section 14, in this respect, and is therefore constrained from looking beyond the constitutional provision to interpret it.

The Secretary of State contends that this constitutional provision is intended to be implemented by the legislature. The Court disagrees, finding the provision to be self-executing, and needing no implementation by the legislature. A provision is self-executing if it supplies a sufficient rule by which the right given may be enjoyed and protected, or the duty imposed enforced; and is not when it merely indicates principles without laying down rules by which they may be given force of law. ***State ex rel. Bennett v. State Bd. of Examiners***, 40 Mont. 59, 64, 104 P. 1055, 1057 (1909). Put another way, a constitutional provision is self-executing when it can be given effect without the aid of the legislature and there is nothing to indicate that the legislation is contemplated in order to

render it operative. ***State ex re. Stafford v. Fox-Great Falls Theatre Corp.***, 114 Mont. 52, 73, 132 P.2d 689, 700 (1942).

A reasonable and logical reading of the constitutional provision reveals that the Commission created pursuant to that provision is charged with the responsibility to designate the legislative districts, and in doing so, to exercise its own discretion and expertise in determining the equal as practicable factor. The language of Article V, Section 14, does not indicate an intent to involve the legislature in this process other than its selection of four commissioners pursuant to subsection (2), and its recommendations to the Commission pursuant to subsection (4). Counsel cited no authority that validates the legislature seizing discretionary authority from a constitutional body such as the districting and apportionment commission. To the extent that HB 309 authorizes the legislature to preempt the Commission in determining the equal as practicable factor, the bill is void.

B. Whether HB 309 is a Valid Implementation of Article IV, Section 3, of the Montana Constitution

Article IV, Section 3, of the Montana Constitution provides:

> **Elections.** The legislature shall provide by law the requirements for residence, registration, absentee voting, and administration of elections. It may provide for a system of poll booth registration, and shall insure the purity of elections and guard against abuses of the electoral process.

The Secretary of State argues that HB 309 is valid because its purpose is to insure the purity of the elections and guard against abuses of the electoral process. In making this argument, the Secretary of State asserts that the legislation removes partisan influence from the Commission, thereby protecting the redistricting process.

Again, in interpreting this provision, the Court is guided by the pertinent

rules of statutory construction. ***Great Falls Tribune Co.***, 255 Mont. at 129, 841 P.2d at 504. A fundamental rule of construction requires the words of a statute to be read in their context and with a view to their place in the overall statutory scheme. ***Davis v. Mich. Dep't of Treasury***, 489 U.S.803 (1989), citing ***United States v. Morton***, 467 U.S. 822, 828 (1984). Each statute should be read as a whole. ***Dover Ranch v. Yellowstone County***, 187 Mont. 276, 283, 609 P.2d 711, 715 (1980). Applying these rules of construction, the Court concludes that Article IV, Section 3, of the Montana Constitution pertains to the mechanics of elections and not to the legislative redistricting process.

With respect to the Secretary of State's contention that legislative interference is needed to protect the redistricting process from political influence, the legislature is already substantially involved: Article V, Section 14(2), of the Montana Constitution provides that the majority and minority leaders of the legislature appoint four of the five members of the Districting and Apportionment Commission, who then select the fifth member. At the hearing on the motions for summary judgment, it became apparent that the members of the Commission constituted a good representation of the state population. The language of this constitutional provision indicates that the drafters of the constitution intended to protect the integrity of the redistricting process by requiring equal participation of both political parties in appointing the commissioners, and by prohibiting the commissioners from being public officials.

The argument that HB 309 is needed to protect the redistricting process is without merit.

C. Whether the Secretary of State's Refusal to File the Commission's Plan was Legal

The Secretary of State refused to file the Commission's plan when he determined that it did not comply with HB 309. That legislation requires the Secretary of State to determine whether the Commission's plan provides for districts that are (1) compact and contiguous, and (2) are as equal as practicable. Article V, Section 14(3) and (4), of the Montana Constitution require the Commission to file its plan with the Secretary of State " and it shall become law." This constitutional provision does not give the Secretary of State discretion to refuse to file the Commission's plan. Thus, the statute and the constitution are in conflict.

If a constitutional provision and statute are in conflict, the constitutional provision prevails. ***State ex rel. Nagle v. Stafford***, 97 Mont. 275, 289, 34 P.2d 372, 378 (1934).

The Montana Supreme Court has long recognized the limited office of the Secretary of State as primarily a ministerial one. ***State ex rel. Lloyd v. Rotwit***, 15 Mont. 29, 37, 37 P. 847, 847-48 (1894). Indeed, the duties of the office, which are set forth in Section 2-15-401, MCA, appear to be purely ministerial ones. The responsibility of the Secretary of State with respect to filing the Commission's plan is clearly a ministerial one. The ministerial character of the Secretary of State's role in the redistricting process is further illustrated by, and is consistent with, the rigid time lines for filing the plan as set forth in Article V, Section 14 (3) and (4). On the other hand, HB 309 charges the Secretary of State with the responsibility of determining whether the Commission's plan complies with the bill's substantive requirements, thus converting the Secretary of State's responsibilities from ministerial to discretionary.

Since the constitution does not contemplate discretionary involvement of the

Secretary of State, the legislature's attempt to do so is in conflict with the constitution and is void.

D. Whether the Secretary of State Has Standing to Seek a Declaratory Judgment on the Constitutionality of the Plan Adopted by the Commission

Intervenors assert that the Secretary of State lacks standing to seek a declaratory judgment on the constitutionality of the plan adopted by the Commission and have moved to dismiss that portion of the complaint. The Commission raises the same issue in its answer to the complaint. As discussed above, the Secretary of State's role with respect to filing the commission's plan pursuant to Article V, Section 14, of the Montana Constitution is ministerial, and he therefore has no basis to exercise discretion in the process of filing the plan. In other words, when the Commission presents the plan to the Secretary of State, he must file it, and he has no authority to refuse to do so. The language of the constitutional provision is clear in this respect.

Intervenors assert that the Secretary of State's legal rights are not affected by the enactment of HB 309. However, the Court acknowledges that the enactment of HB 309 placed the Secretary of State between a rock and a hard place. On one hand, the constitution required him to file the plan upon presentation by the Commission, while on the other hand, HB 309 required him to refuse to file the plan if it did not comply with the terms of the bill. On this basis, a controversy clearly exists for the Secretary of State, but only to the extent that the Court should determine which provision the Secretary of State must follow. Upon such determination by the Court, the Secretary of State is bound by law to follow that provision as a ministerial officer, and he has no legal interest in further legal challenges to the Commission's plan.

The test for the existence of a judicial controversy is: (1) that the parties have existing and genuine, as distinguished from theoretical, rights or interests; (2) the controversy must be one upon which the judgment of the court may effectively operate, as distinguished from a debate or argument invoking a purely political, administrative, philosophical or academic conclusion; and (3) the controversy must be one the judicial determination of which will have the effect of a final judgment in law or decree in equity upon the rights, status or legal relationships of one or more of the real parties in interest, or lacking these qualities, be of such overriding public moment as to constitute the legal equivalent of all of them. ***Gryczan v. State***, 283 Mont. 433, 442, 942 P.2d 112, 117 (1997). The Secretary of State as a ministerial officer has neither a legal right nor interest in a declaratory judgment as to the constitutionality of the Commission's plan. On this basis, the Secretary of State has no standing to seek a judgment as to the constitutionality of the plan.

The Secretary of State argues that his duty as the chief election officer to obtain and maintain uniformity in the application, operation and interpretation of the election laws provides sufficient basis to give him standing to request a declaratory ruling on the constitutionality of the Commission's redistricting plan. He asserts that his standing arises from his interest in the effective discharge of his official duties and points to ***Missoula City-County Air Pollution Control Bd. v. Bd. of Envtl. Review***, 282 Mont. 255, 937 P.2d 463 (1997), in support of this assertion. However, the Court finds that case distinguishable for two reasons. First, as noted above, the Secretary of State's duty with regard to the redistricting process is strictly ministerial, and he has no regulatory authority over this constitutionally mandated process, nor does it impact the manner in which he

1 performs his duties to oversee the election laws. Second, although this issue is
2 undoubtedly one of importance to the general public of Montana, the interest of the
3 Secretary of State is not distinguishable from or greater than the interest of the public
4 generally.

5 The Secretary of State also argues that his standing arises from his sworn
6 duty to support, protect and defend the Montana Constitution. He asserts that this position
7 is supported by ***Judge v. Legislative Fin. Comm.***, 168 Mont. 470, 543 P.2d 1317 (1975).
8 Again, the Court finds that case distinguishable. ***Judge*** did not involve a general
9 challenge to a statute based on an executive officer's duty to protect the constitution; the
10 governor in that case was arguing that the statute at issue was an infringement on the
11 separation of powers doctrine by allowing the legislature to exercise discretion exclusively
12 reserved to the executive branch, thus directly impacting the manner in which he fulfilled
13 his discretionary duties. Here, as already discussed, the Secretary of State's role is
14 ministerial only and the redistricting plan does not affect the discharge of his discretionary
15 duties. Furthermore, there was no discussion at all of standing in that case. The only
16 discussion of the governor's duty to uphold the Constitution arose in the context of
17 whether the governor was estopped from challenging the acts because he had signed them.

18 **SUMMARY**

19 HB 309 impermissibly conflicts with Article V, Section 14, of the Montana
20 Constitution, and is void on that basis. HB 309 is not a valid implementation of Article V,
21 Section 14, because that constitutional provision is self-executing, and because Article IV,
22 Section 3, of the Montana Constitution does not authorize the legislature to interfere with
23 the redistricting process beyond the express authority given to it in Article V, Section 14.

24

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The Secretary of State was required to file the Commission's plan, and his refusal to do so was therefore in violation of the Montana Constitution. Finally, the Secretary of State does not have standing to seek a declaratory judgment on the constitutionality of the Commission's plan.

ORDER

Intervenors' motion to dismiss the Secretary of State's request for declaratory judgment on the constitutionality of the Commission's plan is GRANTED. The motions for summary judgment are GRANTED and DENIED in accordance with this decision.

DATED this __ day of July, 2003.

DOROTHY McCARTER
District Court Judge

pc. Ward A. Shanahan/Robert Cameron
Mike McGrath/Brian M. Morris
Beth Brenneman
Laughlin McDonald

T/DMc/BROWN V DISTRICTING D&O.WPD