

**Montana Association of Counties
District 8, 9 and 12 Meeting
May 21, 2010**

Welcome and Introductions:

Lewis and Clark County Commissioner Andy Hunthausen called the meeting to order at 10:00 a.m., welcomed everyone to Helena and briefly reviewed the agenda.

Attendees:

District 8: Broadwater: Gail Vennes, Elaine Graveley, Laura Obert
 Jefferson: Dave Kirsch, Leonard Wortman
 Lewis & Clark: Mike Murray, Andy Hunthausen

District 9: Gallatin: None
 Meagher: None
 Park: Marty Malone, Randy Taylor

District 12: Anaconda-Deer Lodge: Mark Sweeney, Neal Warner
 Beaverhead: Garth Haugland, Tom Rice, Bill Louis, Intern UM-Western
 Granite: Maureen Connor
 Madison: Marilyn Ross, Jim Hart, Dave Schulz
 Powell: Rem Mannix, Donna Young, Cele Pohle

MACo: Harold Blattie, Executive Director
 Sheryl Wood, Associate Director
 Carl Seilstad, President-Fergus County Commissioner

Guests: Wayne Noem, Gary Larson, Jeff Ebert, MT Dept. of Transportation
 Susan Bomstad, Montana APCO
 Eric Bryson, CAO, Lewis & Clark County

Minutes: Rita Cortright, Secretary/Receptionist, Lewis & Clark County Commission

Approval of August, 2009, Meeting Minutes:

August 2009 minutes were not available; item postponed.

Carl Seilstad reported on attending most of the District meetings around the state.

MACo Legislative Report:

Sheryl Wood distributed the list of bill draft requests as of May 10, 2010, noting the Interim Committees and state agencies have begun work on legislation. Some broad titles were for place-holder bills. She reviewed the following bill drafts in more detail:

LC0011 – Abolish death penalty and replace with life in prison w/o parole. She noted at the Dist. 4-5 meeting, Commissioner Mike DesRosier, Glacier County, presented on behalf of the Montana Abolition Coalition. They requested that MACo consider a resolution.

LC0013 – General revision of Workers' Comp. Law. Sheryl reported the Economic Affairs Committee was wrapping up their interim study on Workers' Compensation. A number of items were under consideration regarding how to change Workers' Comp Laws: 1) HIPPA applicability. MACo has reviewed the bill draft and felt it was appropriate when someone filed a Workers' Comp. Claim - First Report of Injury, that a HIPPA release statement was included authorizing that a portion of the individual's health information be released to their employer. She said this information would help the employer know how to accommodate an injury and recovery and would help the employer make a better decision and get

the employees back to work sooner. 2) Claims Closure. Claims are open for the life of the individual and they are considering a close date. 3) Case management and utilization. They are evaluating if the treatment plan is the best plan.

Justice & Public Safety Committee: The Law and Justice Committee in-depth study on DUI Laws and how to work with the DUI issues. They are looking into the following: Penalties, placements, and funding for drug courts which includes DUI's. There are a number of bill drafts on their agenda that are not on this draft list.

Law Enforcement Issues: There are two proposals 1) That sheriffs would have complete control over the detention facility; complete administration and budget authority, and 2) That the sheriff should have full authority over hiring, discipline and termination of law enforcement and detention staff. Sheryl expressed concern with this and felt the sheriffs would need considerable training in the area of human resource management to avoid litigation.

Children & Families – Clarifying the commitment laws: HB 130, 131, and 132 were the three mental health commitment bills. Sheryl noted some problems with the wording regarding “admissions” vs. “commitment” and the use of the terms as they vary regarding the formula. DPHHS has asked for this clarification and also want to do a funding formula clarification. MACo also plans to pursue the new Lilly settlement with DOJ and the Attorney General's Office which may provide grant funding for CIT Training for law enforcement for counties whose grant proposals were not approved.

Medical Marijuana: Sheryl said an e-mail and memo regarding medical marijuana were going out from their legal counsel this morning that informs County Commissioners regarding what they can and cannot do. She said County Commissioners are the governing body with the least amount of authority do to anything about the issue. Children & Families will take a look at this issue. Sheryl said the Legislature has recognized there is a problem and Senator Lewis has introduced a bill to get it regulated and taxed in an effort to get some containment.

Education & Local Government -- Budgeting Timeline Bill: Harold Blattie reported that Senator Dave Lewis carried SB-165 in 2009 at the request of County Superintendents of Schools, that set up the situation where schools were providing counties with the levies that they required after the levies were already set, which created an unworkable situation. The bill made it out of committee and was on the Senate floor; however, Senator Lewis asked the Senate to kill the bill, which they did. The Education and Local Government Interim Committee took it up and LC-9998 was presented to the full committee at their last meeting. In the end, it would have Counties moving the final budget adoption and fixing of levies to the second Monday in September. He said therein lies a policy decision and it works along with subsequent bills. Based upon comments to Legislative Services from schools and the DOR, two additional bills were drafted; LC-9996 and LC-9997. Harold distributed a handout that contained a side-by-side comparison of Current Law, LC-9996, LC-9997 and LC-9997. This information, plus the memo from Legislative Services Division and the three bills was e-mailed to counties by MACo this morning. At the June 10 meeting, the Education and Local Government Interim Committee will give the nod to one of the three drafts. Mr. Blattie encouraged everyone to review and discuss these three bill drafts and their effects on Treasurers and the schools. Three critical dates were noted: the Nov. 30th election, and then working back from there to the date values are certified and the date levies are set. All of the other dates involved have to work around those three dates. A policy decision needs to be made regarding how long a public entity should be allowed to spend money before they adopt a budget to spend it. The deadline used to be the first Monday in August; now it's the 4th Monday in August, and headed to the 2nd Monday in September. He closed by encouraging people to review the information and provide comments to the MACo office.

LC0057 - Exempt county from medical & dental expense for inmates with pre-existing conditions: Senator Hinkle, on behalf of the Sanders County Sheriff, has introduced this bill to get pre-existing medical and dental expenses excluded from the inmate medical statute. Sheryl said MACo had a conference call recently with CRS in Nashville, the new inmate medical insurance provider, about the ambiguity in the statutes; one section says if the injury is self-inflicted, pre-existing, results during the course of arrest, while fleeing arrest, etc., the hospital is statutorily obligated to pursue other means of payment through the inmate, third-party insurance, and then after 120 days they can bill the County.

There are certain responsibilities that are immediately the responsibility of the County. If an inmate becomes ill and needs hospitalization, the County is immediately responsible; there is no 120-day period.

In closing, Sheryl said they did not have any real firm issue legislatively at this point as everything was preliminary. After next week the Interim Committees would begin identifying bills they will carry forward as a committee bill and the agencies will be presenting their proposals. MACo will keep people posted as more information develops.

Andy Hunthausen asked if there were any significant land use proposals related to zoning or subdivision issues. Sheryl noted there was an inquiry regarding changing Planning Board authority, but had not seen any legislation yet. Gail Vennes asked for suggestions on what could be put in legislatively to enable local governments to address conflicting issues that come to them that they have no control over. Sheryl suggested getting with the Land Use Committee and developing a resolution that might provide relief through legislation, or requesting a conference call of the committee.

MACo Reports:

MACo FY2011 Budget: Sheryl provided the MACo FY 2010-11 Dues Schedule She explained that the Board of Directors has the authority per the Bylaws to implement a cost of living adjustment on the annual dues schedule. The Tax, Budget & Finance Committee has met and was making a recommendation to the Board of Directors that COLA be applied to the dues this year. Last year the increase was 3.8 percent. This year, the COLA was a -.4 percent and the dues were being adjusted by -.4 percent. Some of the tier levels would change because of the appraisal and valuation. There was not an overall significant change because of the valuation adjustments. This dues proposal will be presented to the Board of Directors on June 29 when they convene to adopt the final budget.

Sheryl reviewed the FY 2011 Projected Cash Balance Report", and reviewed conference and workshop revenue, as well as revenue from directory sales, Inmate Medical Royalty, Interest, Deferred Compensation, Pooled Investment Fees, Conference Room Rental, President's Scholarships and U.S. Communities.

Sheryl noted that registration will open soon for the Sept. conference in Billings and Sheryl requested that attendees RSVP to Karen regarding the Wednesday dinner to allow for accurate meal counts.

Andy Hunthausen requested that people update their directory information, in particular, e-mail addresses, as he found several were out-of-date.

FY 2011 MACo Proposed Budget: Sheryl reported that this budget was being projected as a reduction from FY 2010. Contracted services amount was reduced from last year as the previously budgeted classification and compensation survey for staff was currently under way. Results were expected soon, and no significant changes were expected. Dues Expense represents dues and expenses for WIR board members' travel and expenses. The WIR Conference was being hosted in Yellowstone County next week and Commissioner Mike Murray would be installed as president. MACo's health insurance is under the Lewis and Clark County Plan, and an increase is expected this year. Staff was notified to not anticipate any salary increases in FY 2011, and are very understanding of the current fiscal situation. Printing represented directory and conference printing. The FY 2011 budget request was -3.02% or from FY 2010. Carl Seilstad commended Harold Blattie and Sheryl Wood on preparing the draft proposed budget.

The entire MACo Budget was reviewed next. This is a zero base budget; staff reviews every expense and revenue line by line to determine the next year's budget. This included the following four entities: MACo, Health Care Trust, JPA-Work Comp. Trust and JPIA – Property & Liability Trust for a Total Budget of \$3,190,547 for FY 2011. The budget reflected a -3.9 percent decrease from FY 2010. The totals for each Trust will be the basis for not-to-exceed contracts.

MACo JPA FY 2011 Rates: The MACo JPA Workers' Compensation Class Code Rates and Modification Factors for FY 2011, was distributed and reviewed by Sheryl. There was no rate increase on the class codes at this point.

Energy Performance Block Grant Contracts: Harold Blattie referred to the email sent by DEQ this morning regarding insurance requirements for the Energy Efficiency Block Grants and asked Commissioners to please not sign what they were suggesting. MACo has proposed alternative language back to DEQ, which is the exact language that is in HB645 – Grants with Dept. of Commerce, the language that has been approved and accepted by a number of state agencies.

Property Reappraisal: Carl Seilstad noted the second half tax notice was printed in two places in their local paper, accompanied with an ad to pay second half taxes under protest, placed by the Farm Bureau and the Montana Taxpayers' Association. As a result, several people have paid taxes under protest. Discussion followed on the pending appraisal lawsuit. Garth Haugland explained the lawsuit dealt with implementation of an accelerated schedule; it was supposed to be a 6-year phased-in increase, but the contention is that it's an accelerated process with the full amount levied up front. Some property owners are questioning the appraisal amounts, as well.

Harold Blattie added that the Dept. of Revenue held a rules hearing a week ago that related to ag land; however, it affects only those parcels that saw only a change in value because of the different methodology used to determine the productivity value. This affects about 2,500 parcels. The Montana Farm Bureau Federation and the Montana Taxpayers' Association have filed a lawsuit alleging the Dept. of Revenue has not equitably addressed the issue. Currently, the status of the lawsuit is they are waiting for a determination of whether it will be certified with a class action. If it is a class action, then all similarly affected property owners would be included. The Dept. of Revenue hired an independent entity to review the residential property values and the results from that review showed that the DOR did an amazing job on accurately determining the values of residential properties. Harold Blattie said he felt the DOR might be leaning toward some corrective legislation in the next Session. With the phase in procedure you're always six years behind and always playing catch up. Harold said he was still working on getting DOR to provide counties with a June value that could be used to recalculate what the mill levies should have been had counties been given a correct number or at least the most recent correct number. What counties are authorized to levy this year becomes the basis of the beginning for what's authorized to levy next year. If this doesn't happen, there will be a gap that goes on forever.

DPHHS – Provider Rate Increase: Commissioner Murray asked Eric Bryson to address the recent Medicaid Hearing. Mr. Bryson provided an overview of the State's hearings process that resulted from DPHHS proposing a rule change that affects a legislatively authorized 2 percent rate increase for long-term care facilities. DPHHS issued an internal ruling taking away the increase based on the Governor's direction to implement budget cuts. The County had based its nursing home budget on receiving the 2 percent raise. Mr. Bryson attended the public hearing, which consisted of a staff person recording public comments; no DPHHS administrators attended. He said the reduction was problematic for places such as Cooney Nursing Home. This ruling affects private for-profit and non-profit providers who provide elderly care. There was still an ongoing public comment process, but he said it doesn't appear that anybody is listening internally at DPHHS. Mr. Bryson said the Medicaid reimbursement rate is about \$160/day. Depending on the number of clients, the costs for providing a level of service that is mandated for long-term care facilities ranges between \$170-\$200/day. The State runs a nursing home offset by general fund contributions and their average daily cost is \$220/day. He asked people to please provide comments during the public comment period.

Other Business: Chair Hunthausen asked attendees to address "hot button" issues in their counties.

A) Mark Sweeney and Neal Warner discussed the medical marijuana issue. Anaconda-Deerlodge passed a moratorium banning all caregivers; violators of the ban were in violation of a zoning ordinance. They were now assembling an 11-member panel consisting of care givers, law enforcement, legal counsel, patients and commissioners and will come back and amend the ordinance so that care givers already established can get back into business properly. Once the 6-month moratorium was up, they planned to pass a resolution. Some counties were addressing the issue through zoning and County Planning Boards. Because there are no statewide regulations dealing with medical marijuana, the sheriffs need guidelines. Cele Pohle noted that Powell County implemented a 90-day ordinance and it was now at their Planning Board. Sheryl closed the discussion by encouraging people to get on the Internet and provide comments to DPHHS.

B) Sheryl Wood pointed out that many copiers contain hard drives and every document scanned or sent to the machine was stored on the hard drive and retrievable. She urged people to take the appropriate steps to clear information from copier hard drives before donating or replacing copy machines. She also addressed cyber liability coverage for counties. Last session the Legislature passed House Bill 155 which imposed requirements on state agencies to have an identity theft protection plan, as well as a breach notification plan. When this was brought in 2007, MACo was able to defeat the bill because of the fiscal impact of development and implementation of the plan for counties and special districts. MACo wants to begin gathering information and building a model policy for Counties to use that will be posted on their website. They will work with the State CIO and ITSD to obtain their policies and gain ideas. She noted two parts to this issue: taking the protection against the release of the data and the implementation plan.

Lunch: Commissioner Andy Hunthausen announced that today's lunch was sponsored by Lewis and Clark County.

MISTI Discussion: Chair Hunthausen opened the floor to discussion. Leonard Wortman, Jefferson County Commissioner, provided background on the project which led to the decision by Jefferson County to file suit against DEQ, requesting they fulfill their obligations with coordination and asked for a restraining order to prevent the release of the EIS until coordination took place. Mr. Wortman listed the concerns Jefferson County had: 1) personal property rights being impacted; 2) health issues related to the preferred route over a 30-acre parcel owned by a man with a pacemaker; 3) projected property taxes in the amount of \$1.3 million for Jefferson County that may not be accurate based on how much Green Energy was employed in the line; and 4) no guarantee that the rates of ratepayers in Montana would not go up. He closed by urging every County to implement the coordination process and announced their work with BLM and DEQ in Jefferson County next Thursday.

Gail Vennes, Broadwater County, noted the MISTI project was basically an upgrade of an existing substation facility. Regarding the Coordination effort, he said it always comes back to State Law, the Montana Major Facility Siting Act, found in Title 75, Chapter 20-102. He said the substation in Broadwater County was exempted out of the Act, and can be affected by other input other than satisfying DEQ, which means it could be moved. As Commissioners, they were staying away from the Coordination process, which basically involved the use of public land, as there is very little public land in their county involved with the project. Elaine Graveley said she and Gail Vennes talked with the Broadwater County Attorney about Coordination and were advised that the Major Facility Siting Act would trump Coordination; therefore, the attorney saw no benefit in pursuing it. Laura Obert expressed concern with the misinformation and exaggerations in the weekly newspapers. There are three proposed routes in Broadwater County; the EIS will determine one. It will also address the tax benefits or ramifications and will provide facts so they will know what they are dealing with and can provide feedback to their community.

Carl Seilstad addressed "cooperating" and "coordinating." Harold Blattie provided some clarification by explaining that NEPA provides for cooperating agency status to be afforded to units of local government. There is no such thing under NEPA as a coordinating agency. He was not surprised that asking either agency for "coordinating agency" status was met with no response, because there is no such thing under NEPA. However, they could have responded with clarification on what steps could be taken. MACo hosted four cooperating agency workshops in Montana with representatives from the Forest Service and BLM back in 2003 or 2004 and Harold felt it might be time to host another workshop. He offered MACo's resources to help facilitate a meeting between the affected counties, including their county attorneys. Dave Schulz announced the upcoming Western Montana BLM/RAC meeting in Missoula, Wednesday, May 26, at the BLM offices on the west side of Missoula, and said he was confident this topic would be discussed.

Leonard noted that Jefferson County has one of the better coordination resolutions in the area and he referred people to Matt Johnson, county attorney, for more information. Resolution No. 41-2008 is available on Jefferson County's website.

Andy Hunthausen closed by thanking everyone for their comments and participation in the discussion.

Department of Transportation – Secondary Highways: Wayne Noem, MDT, distributed priority project lists to counties and gave kudos to Jeff Ebert, noting Jeff had projects ready to go when the Stimulus projects came around. He listed the projects that were funded and those upcoming. By the end of June they will begin field reviews in the Forest/Highway Program.

Montana Department of Transportation – STIP: Gary Larson, Project Analysis Bureau Chief, addressed the group regarding the Statewide Transportation Improvement Program (STIP), and the projects that MDT planned to work on in 2010 – 2014. He stressed that projects not included in the current document could not be worked on by MDOT, and must first be included in order for federal funds to be obligated. He cautioned that the project dates could change based on a variety of reasons. Gary announced plans to retire from the MDOT after a 30-year career and said it had been a pleasure working with County Commissioners.

Montana Chapter-Association of Public-Safety Communications Officials-Int'l., Inc.: Susan Bomstad, president of the Montana Chapter, provided a handout containing a legislative proposal providing for Montana's Public Safety Dispatchers to join the Sheriff's Retirement System, which offers a 20-year retirement. Most dispatchers in Montana are under the Public Employees' Retirement System, which requires 30 years of service to full retirement. This legislation was proposed as HB31 in the 2009 Session and there was strong support from the public safety community. MACo remained neutral and the only opponent to the bill was the Governor's Budget Director, based on the economy. This year Commissioner Jean Curtiss, Missoula, intends to submit a resolution to MACo for support. Susan also spoke about the future of Enhanced 9-1-1, which will have to accommodate items such as text messages and photos from phones. She said retaining more experienced people would lessen the risk factors and offered to assist individual counties in comparing the data and associated costs. Andy Hunthausen asked Ms. Bomstad to evaluate the resolution from Jean Curtiss and address it again at the August meeting.

Nomination of District Officers:

District 8: Gail Vennes was nominated as chair. Mike Murray was nominated as vice chair.

District 9: Randy Taylor was nominated as chair. Marty Malone was nominated as vice chair

District 12: Tom Rice and Mark Sweeney were nominated as chair. Jim Hart was nominated as vice chair.

Harold Blattie announced elections would be held at the August meeting and officers would assume their offices at the Thursday Board of Director's Meeting at the Annual Conference. The Sunday meeting would be the final meeting for the current Board of Directors.

Nomination of MACo 2nd Vice President: Sheryl Wood announced that Greg Chilcott from Ravalli County, was nominated by Districts 4 and 5 as Second Vice President. The Fiscal Officer is not being elected this year. Garth Haugland made a motion that District 12 endorses Greg Chilcott's nomination. Gail Vennes made a motion that District 8 support Greg Chilcott's nomination. Mike Murray moved that the nominations be closed. Dave Schulz seconded.

Proposed Resolutions & Discussion:

Bison – Park County

Marty Malone explained this was not a resolution, but a concern he has with the amount of time law enforcement has spent hazing buffalo out of Gardner. The Park Service had basically washed their hands of it; NPS law enforcement used to help haze animals. This past year the NPS and Federal Government rented land from the CUT for \$246/a.u. for ten months. Regarding the brucellosis issue, he said Montana was now a split state. This issue affects Gallatin, Madison, Beaverhead and Park Counties. Marty offered to bring a draft resolution forward at August meeting.

Sheryl Wood noted that any resolutions brought forward in August must be in the proper resolution format, including MCA citations, so that it minimizes the amount of time required by MACo staff. Mike Murray suggested people email draft resolutions to him ahead of the meeting.

Social Host – Lewis & Clark County

Andy Hunthausen addressed the Social Host ordinance taken from a bill presented last session. Youth Connections, formerly the Safe and Drug Free Schools program, is connected with the school district and brought this forward. Helena does have a social host ordinance and Andy noted that he spoke with the Police Chief regarding the ordinance. They haven't used it much, but felt it has been a reasonably good deterrent. When it is used a ticket is issued and the City Attorney takes it through the process. It has been changed from a civil offence to a criminal offense in several Montana cities because it allows them to issue a fine or put someone on probation. The bill to be presented this session would include the criminal language. Andy said counties are not required to have a social host ordinance, but it allows them to address under age drinking issue and parents hosting parties. He will bring a draft resolution forward at the August meeting. Sheryl Wood suggested contacting Rep. Minnehan to discuss the possibility of presenting this as committee bill.

GASB 45 – Beaverhead County

Tom Rice addressed the Draft #2 Resolution urging MACo to support efforts to have the GASB reconsider or repeal GASB Statement #45. He read the following paragraph, "WHEREAS, with GASB 45 there is no true liability because counties do not pay any portion of post-retirement benefits." He said this action would make it less complicated for people in Dillon, as they don't have any true liability involved and this was a step that didn't need to be taken as far as their county was concerned. Sheryl said DOA was looking into this because it was brought up at the Mid-Winter Conference. Conducting an actuarial evaluation for GASB #45 has two components: 1) the health care component to set rates, and 2) the post employment benefit, which takes a retirement system actuary. She stated there was no one in Montana who could provide this service. MACo checked with the actuary they use for the Health Care Trust, who provided an estimated cost of \$10,000 per county. Sheryl explained this was a GASB regulation, and auditors have to comply with this as a Federal requirement to retain their licenses. The question was how to get the auditors to not have to comply to ding counties for non-compliance. Some counties have said they planned to take the audit hit in lieu of complying; however, this could affect their bonding. The State of Texas had passed legislation and Sheryl planned to research the legislation and the applicability to Montana. Tom Rice closed by saying it was extremely important to pursue the issue.

Establishing Equitable Licensing Fees for Food Establishments

Mike Murray explained that funds counties get from business licenses have not kept pace with the cost of inspecting food establishments, resulting in some counties supplementing the license fees, thereby diverging local tax dollars from other public health programs. He proposed bringing a resolution forward at the August meeting to remove the fee from legislation and allow individual counties to establish equitable licensing fees. Sheryl suggested offering amendments to Resolution 2008-18, the Food Service Inspection Fees resolution.

Sheryl Wood said MACo had 50+ resolutions last Session which was a challenge for staff. MACo is considering incorporating all individual committee policy statements into a document that would help limit the number of resolutions and bill drafts and also provide clear direction on how to proceed at the Capitol. She cited the policy book developed by the Montana Farm Bureau as an example, and hoped to have a draft format by August that could be ready for use in September. Donna Young said Nancy Schlep would be helpful in reviewing the document.

Next Meeting: August, 2010, Powell County to Host: Sheryl Wood offered to work with the Chair on a meeting date and Powell County will host.

Andy Hunthausen thanked everyone for attending.

Adjourned at 3 pm.