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## **39 WATER RESOURCE SPECIALISTS TRAINED**

**by Dan Bushnell, DNRC Public Information Officer**

Characteristically crammed into two adjoining classrooms, 39 perfect strangers began a non-traditional "Boot Camp" training session for one of the most arduous tasks ever undertaken by the Montana Department of Natural Resources & Conservation (DNRC) and the Montana Legislature.

The two-week course, held at the Montana Regional Military Training Institute at Fort Harrison, qualified each of the attendees to perform DNRC's examination of some 57,000 water right claims in Montana. The recent HB 22 provides the funding to get those claims examined in the next 10 years (by 2015), and to have decrees issued in all basins in the next 15 years (by 2020).

The employees sit behind each desk stacked high with books, pamphlets, regulations and codes--the basis of water law in Montana. This information, in addition to the speakers, will provide them the background and knowledge necessary to address the remaining work load.

DNRC has been conducting claims examinations, assisting the Water Court with cases and providing information in district court enforcement actions with 12-full time employees in eight regional offices. This is down from the original staffing of over thirty that declined over the years due to budget cuts.

A water right claim examination involves a review of the claim, comparing all the supporting documents and a detailed analysis in accordance with the Supreme Court adjudication rules. Once all claims in a basin are examined, the DNRC issues a summary report to the Water Court. The court then issues a basin decree. Since the beginning of the adjudication program (1982) 56 decrees have been issued, 32 basins remain to be examined and decreed.

The fees generated by HB 22 allowed DNRC to hire an additional 39 full-time employees, 33 to examine the remaining 57,000 claims (there were 219,000 claims filed), and the other 6 employees as support staff.

"This is an exciting time for us as a department as well as for the state of Montana," explained Jack Stults, DNRC Water Resource Division Administrator. "We now have the staff and financial backing to accomplish this monumental workload," he explained. "There is no more important task for protecting and managing Montana's water," he said.

Upon completion of the training, the employees will head to their work areas and begin tackling the water right claims, one at a time.

## DRAFT CONFERENCE AGENDA

### SUNDAY, SEPTEMBER 25

3:00 pm Board of Directors Meeting  
6:00 pm President's Reception & Banquet

### MONDAY, SEPTEMBER 26

8:30 am Opening Session  
Colleen Landkammer  
NACo President-Elect  
Officers Reports  
Election Administration  
INTERCAP and STIP  
State Auditor John Morrison  
Nationwide Retirement System  
2:00 pm BOS Workforce Consortium  
3:00 pm JPA / JPIA Joint Meeting  
4:00 pm Hard Rock Mining Counties  
Oil, Gas and Coal Counties

### TUESDAY, SEPTEMBER 27

7:00 am Reservation Counties  
JPIA Trustees  
8:30 am MACo Committees  
10:30 am Committee Reports  
1:15 pm Workshops  
Medicaid  
Gravel Pits  
Workforce Development  
2:45 pm Workshops  
Economic Development  
Floodplain  
Federal Funds  
4:00 pm Fort Peck Lake Counties  
Coalition of Forest Counties

### WEDNESDAY, SEPTEMBER 28

8:00 am Northwest Area Foundation  
9:00 am Urban Counties  
1:00 pm General Session  
Department of Revenue  
Election of Officers  
2007 Convention Location  
3:00 pm JPA and JPIA Annual Meetings  
4:00 pm Board of Directors  
6:00 pm Installation Banquet and Dance

### THURSDAY, SEPTEMBER 29

8:30 am PHASE III  
Commissioner Certification

## MACo OFFICER NOMINATIONS

Three candidates have accepted nomination for MACo 2nd Vice President:  
Cynthia Johnson, Pondera County  
Mark Rehbein, Richland County  
Jean Curtiss, Missoula County.

One candidate has accepted a nomination for MACo Fiscal Officer:  
Allan Underdal, Toole County.

The MACo Board of Directors serves as the Nominating Committee. The Board / Nominating Committee will meet on Sunday of the Annual Conference to select at least two candidates for the office of Fiscal Officer. (ByLaw Article IV, 3,K)

### COULD THE SECOND CANDIDATE FOR MACo FISCAL OFFICER BE YOU?

- By-Laws Article IX reads:
- "a. The Nominating Committee shall make its nominations report to the membership in the opening general session of the annual conference.
  - b. The report shall not require a seconding motion, but shall be adopted along with additional nominations made from the floor.
  - c. All nominations will remain open until the time of election during the closing general session."

### PLEASE SUPPORT MACo SUPPORTERS

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| COUNTY            | MACo<br>FY 2006<br>DUES | PILT<br>FY 2006<br>ASSESS. | NACo<br>2006<br>DUES |
|-------------------|-------------------------|----------------------------|----------------------|
| ANCNDA DEER LODGE | \$3,000                 | \$209                      | \$380                |
| BEAVERHEAD        | \$4,000                 | \$396                      | \$380                |
| BIG HORN          | \$4,500                 | \$6                        | \$380                |
| BLAINE            | \$3,500                 | \$286                      | \$380                |
| BROADWATER        | \$3,000                 | \$289                      | \$380                |
| BUTTE SILVER BOW  | \$8,000                 | \$223                      | \$726                |
| CARBON            | \$5,500                 | \$415                      | \$380                |
| CARTER            | \$3,500                 | \$85                       | \$380                |
| CASCADE           | \$9,000                 | \$209                      | \$1,660              |
| CHOUTEAU          | \$4,500                 | \$145                      | \$380                |
| CUSTER            | \$3,500                 | \$337                      | \$380                |
| DANIELS           | \$1,750                 | \$0                        | \$380                |
| DAWSON            | \$3,500                 | \$20                       | \$380                |
| FALLON            | \$3,500                 | \$9                        | \$380                |
| FERGUS            | \$5,000                 | \$489                      | \$380                |
| FLATHEAD          | \$9,000                 | \$967                      | \$1,266              |
| GALLATIN          | \$9,000                 | \$696                      | \$1,079              |
| GARFIELD          | \$1,750                 | \$86                       | \$380                |
| GLACIER           | \$4,000                 | \$416                      | \$380                |
| GOLDEN VALLEY     | \$1,750                 | \$31                       | \$380                |
| GRANITE           | \$3,000                 | \$100                      | \$380                |
| HILL              | \$6,000                 | \$39                       | \$380                |
| JEFFERSON         | \$5,000                 | \$423                      | \$380                |
| JUDITH BASIN      | \$3,500                 | \$131                      | \$380                |
| LAKE              | \$8,000                 | \$120                      | \$450                |
| LEWIS and CLARK   | \$8,500                 | \$963                      | \$1,016              |
| LIBERTY           | \$2,500                 | \$31                       | \$380                |
| LINCOLN           | \$6,000                 | \$249                      | \$380                |
| MADISON           | \$6,500                 | \$376                      | \$380                |
| McCONE            | \$1,750                 | \$126                      | \$380                |
| MEAGHER           | \$2,250                 | \$87                       | \$380                |
| MINERAL           | \$3,000                 | \$91                       | \$380                |
| MISSOULA          | \$9,000                 | \$490                      | \$1,683              |

| COUNTY       | MACo<br>FY 2006<br>DUES | PILT<br>FY 2006<br>ASSESS. | NACo<br>2006<br>DUES |
|--------------|-------------------------|----------------------------|----------------------|
| MUSSELSHELL  | \$2,250                 | \$77                       | \$380                |
| PARK         | \$6,500                 | \$612                      | \$380                |
| PETROLEUM    | \$750                   | \$35                       | \$380                |
| PHILLIPS     | \$3,500                 | \$174                      | \$380                |
| PONDERA      | \$3,500                 | \$102                      | \$380                |
| POWDER RIVER | \$1,750                 | \$85                       | \$380                |
| POWELL       | \$3,500                 | \$265                      | \$380                |
| PRAIRIE      | \$1,250                 | \$57                       | \$380                |
| RAVALLI      | \$8,000                 | \$1,056                    | \$535                |
| RICHLAND     | \$4,000                 | \$10                       | \$380                |
| ROOSEVELT    | \$5,500                 | \$1                        | \$380                |
| ROSEBUD      | \$8,500                 | \$46                       | \$380                |
| SANDERS      | \$6,000                 | \$130                      | \$380                |
| SHERIDAN     | \$3,000                 | \$0                        | \$380                |
| STILLWATER   | \$6,000                 | \$189                      | \$380                |
| SWEET GRASS  | \$3,500                 | \$235                      | \$380                |
| TETON        | \$3,500                 | \$275                      | \$380                |
| TOOLE        | \$3,500                 | \$38                       | \$380                |
| TREASURE     | \$1,250                 | \$0                        | \$380                |
| VALLEY       | \$5,500                 | \$369                      | \$380                |
| WHEATLAND    | \$3,000                 | \$63                       | \$380                |
| WIBAUX       | \$1,250                 | \$4                        | \$380                |
| YELLOWSTONE  | \$9,000                 | \$78                       | \$2,424              |

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# ATTORNEY GENERAL OPINIONS

Full texts are available at <http://www.doj.state.mt.us/resources/opinionsindex2005.asp>

## Volume 51 No. 3

**QUESTION:** Has at least \$2 Million been “appropriated in a line item” for each fiscal year from state sources other than the water adjudication account provided for in Section 7 of House Bill 22 passed by the 59th legislature for purposes of funding Montana’s water adjudication program?

**HELD:** More than \$2 million has been appropriated in a line item from state sources other than the water adjudication account provided in HB 22, § 7, for the purposes of funding Montana’s water adjudication program. Accordingly, HB 22 is not void pursuant to its contingent voidness provision.

**REQUESTED BY:** Governor Brian Schweitzer

## Volume 51 No. 4

**QUESTION:** Does MCA 17-8-106 apply to limit the power of subsequent legislatures to appropriate funds by establishing a “cap” on expenditures in the 1981 budget biennium and for any future biennial budget cycles?

**HELD:** The enactment of MCA 17-8-106 by the 1981 legislature placed no enforceable limits on the spending power of a subsequent legislature.

**REQUESTED BY:** Douglas Kaercher,  
Hill County Commissioner

## Volume 51 No. 5

**QUESTION:** 1. Does the Montana Nonprofit Corporation Act permit the creation of a public benefit nonprofit corporation whose sole member is a public power authority created by interlocal agreement and whose purpose is the acquisition and operation of an electric and natural gas utility?

2. Does Montana law allow a self-governing local government to provide financial support to a Montana public power authority to facilitate the transaction, and if so, under what conditions?

**HELD:** 1. Under the Montana Nonprofit Corporation Act, an authority created pursuant to an interlocal agreement among self-governing municipalities may incorporate a public benefit nonprofit corporation to operate an electric and natural gas utility.

2. An authority created by interlocal agreement between self-governing municipalities may exercise only those powers that any of the municipalities might exercise.

3. Operation of an electric and natural gas utility is a public purpose for which a self-governing municipality may grant funds.

4. Debt incurred through corporate bonds issued by a public benefit non-profit corporation, incorporated by an authority created by interlocal agreement between self-governing municipalities, is not subject to laws regulating municipal debts or obligations, if the municipalities are not legally obligated to appropriate money to pay the debt and the debt is without recourse to the spending power of the municipalities.

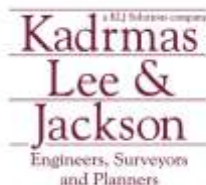
**REQUESTED BY:** Robert M. McCarthy  
Butte-Silver Bow County Attorney

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“No one would buy moonshine from a rank stranger, but that’s pretty much what we do if we believe everything we see on the Internet. The Internet is like moonshine: you have to know your bootlegger.” Elliott Brack, GwinnetForum.com

## LAKE COUNTY PUBLIC AUCTION

A parcel of land and buildings located in Ronan, MT, (commonly known as the Ronan Lake County Shop) will be auctioned at the Lake County Commissioner's Office in Polson on August 17 at 10:00 a.m. The minimum acceptable bid is \$285,000. The property will be vacated by February 2006 and some equipment may be purchased to leave on-site.

Lake County will bear the costs to provide EPA Satisfaction for any contaminants on-site and reserves the right of access for this.

For more information contact the Commissioners at 406-883-7204.

## QUARTERLY OIL AND GAS LEASES

DNRC has received nominations for the September 7th sale and is requesting comments. The only action proposed at this time is issuing leases for possible future exploration and production. The state Board of Oil and Gas must review and issue a permit before any activity can occur.

The September sale includes tracts in these counties: **Big Horn, Blaine, Carbon, Chouteau, Daniels, Gallatin, Hill, Musselshell, Phillips, Pondera, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Stillwater, Teton, Toole, and Valley.**

A map and a detailed list of tracts is available at: <http://www.dnrc.mt.gov/trust/mmbog.htm> or 444-2074.

## Registration Permit Project to Expand

Since last March, five dealerships around the state piloted the new motor vehicle temporary registration permit process. As soon as this September, new dealerships will be added to the web-based system, with July 1, 2006 as the goal for having all dealerships participating.

Montana state law requires owners to properly register and license vehicles before driving them on public roads or highways. Temporary registration permits traditionally have been placed in a vehicle's back window until the regular license plates are issued.

Over 2,000 of the distinctive new permits have been issued. The eight-character alpha-numeric format is in large print for better readability and the expiration date is clearly printed on the permit. The top half of the permit goes into a plastic sleeve and attaches where the vehicle's rear license plate normally goes. The new permits will be available from vehicle dealers, all county treasurer offices, participating financial institutions, the MVD Title and Registration Bureau in Deer Lodge, MT, and over the Internet.

Law enforcement and county treasurer offices have been able to access temporary registration permit information for the first time. The new permits are searchable through the Criminal Justice Information Network System in all 50 states, just as regular license plates are.

## COURT GRANTS EMINENT DOMAIN

In a five to four vote, the U.S. Supreme Court granted local governments the authority to use eminent domain for economic development.

The US Constitution says governments cannot take private property for public use without "just compensation." Governments have traditionally used their eminent domain authority to build roads, reservoirs and other public projects. The Court has been expanding the definition, such as allowing eminent domain to eliminate blight.

In the new ruling, the Court noted that states are free to ban the authority for local governments to take homes for private development.

Proposed legislation in Congress would ban the use of federal funds for any project getting the go-ahead through local government eminent domain. For example, Community Development Block Grants (CDBG) have often been used for infrastructure for development and could not be allowed under such proposals.

Montana and seven other states already forbid the use of eminent domain for economic development unless it is to eliminate blight.

22 states currently are proposing constitutional amendments or legislation to bar government from taking private property for economic development. The remaining 20 states either expressly allow private property to be taken for private economic purposes or have not addressed the issue.

## FROM DISTRICT TWO Mark Rehbein, Chair

In MACo District 2, Richland County welcomed ten new Volunteers In Service To America (VISTA) as part of a pilot project for the Corporation for National & Community Service. The project, Communities In Action, is researching how to create healthy communities in Eastern Montana, using an asset based approach.

The ten volunteers, recruited from around the country by project director Melissa Boyer of the Richland Health Network, are engaged in a variety of assignments. Sara Burnet, a native of Oregon, and Erica Shultz, North Dakota, are working with the Richland County Health Department. Anne Williams and Beth Cook, from Maryland and Missouri respectively, are volunteers with the Boys & Girls Club of Richland County. Curtis Heimbeck is serving with the MonDak Heritage Center while Shelby Chapman is at the Sidney Health Center. Both of them hail from Wyoming. Melissa Elgersma of Colorado is working on literacy programs at the Sidney Public Library. Ryan Sims, a New York native, is stationed with the Richland Health Network along with Alanna Maurais of Maine, who is involved with chronic disease management. Completing the Communities In Action team is Jenna Johnson, who is volunteering at the Richland County Coalition Against Domestic Violence and comes to Montana from the state of Michigan.

In addition to their individual assignments, Communities In Action has undertaken a broad community assessment. This assessment will be used to create a strategic plan for the area in order to clarify the needs and means for which a healthier community can be built.

### PRAIRIE COUNTY SEEKS COUNTY ATTORNEY

Half-time Position  
to complete current term  
ending December 31, 2006  
Annual salary \$37,334

Submit resume & cover letter:  
Prairie County Commissioners  
PO Box 125  
Terry, MT 59349



### INFORMATION REMINDER

1. Please send your approved 2005-2006 annual elected officials compensation increase and your FY 2006 health insurance levy to MACo.
2. When you submit your 2005-2006 Final Annual Budget Document to the Department of Administration, please send a copy to MACo, also. The budgets are used to prepare information and testimony for legislative sessions.

### EMPLOYERS AND NEW I-9 FORMS

The federal government is requiring employers to have all new workers fill out an Employment Eligibility Verification Form (Form I-9). Both citizens and non-citizens must fill out the form and provide copies of documents such as military ID, immigration papers, passport or Social Security card that show citizenship status.

The new I-9 forms removed outdated references to the now-defunct Immigration and Naturalization Service. Those functions were transferred to the US Department of Homeland Security by 2003 Congressional action.

Chris Bentley, speaking for the U.S. Citizenship and Immigration Services, assures employers that the forms currently on file do not need to be replaced. Older forms are still in compliance--even copies of the old form are useable. He suggests using all the old forms, then downloading the new version for a new supply.

# COUNTY NEWS

## COUNTY OFFICIALS

**BEAVERHEAD COUNTY** Commissioner Tom Rice replaces Donna Sevalstad, who resigned.

**GRANITE COUNTY** Commissioner Barry Carnahan replaces Joann Huffsmith, who died in March.

**PONDERA COUNTY** Clerk of District Court Kara Thompson replaces Anita Vandolah, who recently retired.

**FLATHEAD COUNTY** Superintendent of Schools is Marcia Sheffels. She replaces Donna Maddux who retired June 30.

**GALLATIN COUNTY** Chief Administrative Officer Randy Kuyath has resigned from his position with the County.

**PRAIRIE COUNTY** Attorney Dale Hubber is resigning after 22+ years of service. He plans to have more time for his private practice, title business and real estate office.

**SHERIDAN COUNTY** Clerk and Recorder Milt Hovland retired at the end of May. June Johnson was appointed to the position.

## JAILS

**SWEET GRASS COUNTY** has been trying to determine if tax dollars are better spent for fees and transportation to house prisoners in other jails, or if construction / remodeling of a facility would be better. They found that the expense of renovating one proposed site would come close to paying for a new building.

**CASCADE COUNTY** is forming a citizen advisory committee to offer ideas for stronger fiscal responsibility at the regional jail.

**RAVALLI COUNTY**, following a rash of jail suicides in the last 18 months, hopes to address the need for more staff and to provide health-care training.

**MISSOULA COUNTY's** new jail has been overcrowded since one year after it opened. The County houses about 10% (close to 40) of its jail population in other jails.

## ROADS

**RAVALLI COUNTY** volunteers have been recording a public road inventory since 1994. A county road crew member, who had been injured, also has been working on the project.

**CASCADE COUNTY** has formed a new road advisory board to gather information on county roads and help the road department prioritize road repair projects.

**JEFFERSON and RAVALLI COUNTIES** are proposing county road standards for subdivisions.

## WATER

**MUSSELSHELL COUNTY** officials used a shotgun to shoot enough holes in the boards of canal overflow spillways to alleviate water pressure from overflow.

**RAVALLI COUNTY's** Mitchell Slough is site for a four-count lawsuit dealing with the conservation district's decision that the slough is not a natural or perennial stream for permitting purposes and whether the slough is subject to public access. **The case will set statewide precedent.**

**FORT PECK LAKE**, centered in six Montana counties, is still 2.5 feet lower than it was at this time last year and some 34 feet below normal.

## VARIETY

**SHERIDAN COUNTY** seventh graders submitted designs for a county seal in a recent competition. County commissioners served as judges and the contest entries will be displayed at the fair.

**CARTER and FALLON COUNTIES** are considering combining their county attorney offices into one.

**MISSOULA COUNTY's** Sorrel Spring subdivision was one of 100 developments nationwide that received a Firewise Community/USA award for its efforts to protect homes from wildfires.

**JEFFERSON COUNTY** adopted regulations for burials on private lands, after a casket was accidentally uncovered and a body was found on two different private lots.

**GLACIER COUNTY** proposed a 2¢ local option motor fuel tax on gasoline, not diesel or propane. Hearing was held June 30.

**POWDER RIVER COUNTY** requested **CARTER COUNTY's** airport Entitlement Funds and will reciprocate in 2006.

**GRANITE, ANACONDA-DEER LODGE, BEAVERHEAD AND BUTTE-SILVER BOW COUNTIES** are finalizing a public safety and interoperable communications plan.

**DAWSON COUNTY** is willing to forgive back taxes and give away two properties which need building demolition or preservation.

**VALLEY COUNTY** contracted with State Senator Sam Kitzenberg to determine the feasibility of developing an ethanol plant.

# 2005 EVALUATION of MACo

Response Rate: 27% of Commissioners and 8% of other officials  
Full ratings and individual comments available on MACo website (<http://maco.cog.mt.us>)

## 1. How often and how responsive / helpful were your contacts with any member of the MACo staff?

|                 |              |     |
|-----------------|--------------|-----|
| Commissioners   | Very Often   | 15% |
|                 | Often        | 57% |
|                 | Very Helpful | 63% |
| Other Officials | Very Often   | 11% |
|                 | Often        | 22% |
|                 | Very Helpful | 67% |

## 2. MACo currently provides an array of administrative services. These services are:

|                 |               |     |
|-----------------|---------------|-----|
| Commissioners   | Very Valuable | 63% |
|                 | Valuable      | 37% |
| Other Officials | Very Valuable | 33% |
|                 | Valuable      | 45% |

## 3. MACo currently provides legislative services for counties. These services are:

|                 |               |     |
|-----------------|---------------|-----|
| Commissioners   | Very Valuable | 65% |
|                 | Valuable      | 35% |
| Other Officials | Very Valuable | 44% |
|                 | Valuable      | 44% |

## 4. MACo endeavors to provide continuing county liaison with the Executive Branch and various State agencies. These services are:

|                 |               |     |
|-----------------|---------------|-----|
| Commissioners   | Very Valuable | 33% |
|                 | Valuable      | 61% |
| Other Officials | Very Valuable | 33% |
|                 | Valuable      | 33% |

## 5. The MACo newsletter (MACo News), which is published monthly, is

|                 |               |     |
|-----------------|---------------|-----|
| Commissioners   | Very Valuable | 35% |
|                 | Valuable      | 59% |
| Other Officials | Very Valuable | 11% |
|                 | Valuable      | 78% |

## 6. The MACo website (<http://maco.cog.mt.us>) is:

|                 |             |     |
|-----------------|-------------|-----|
| Commissioners   | Very Useful | 26% |
|                 | Useful      | 63% |
| Other Officials | Very Useful | 44% |
|                 | Useful      | 33% |

## 7. Workers' Compensation and Property/Casualty Insurance Programs

|               |                   |     |
|---------------|-------------------|-----|
| Commissioners | Valuable          | 83% |
|               | Somewhat Valuable | 6%  |

## Personnel Services

|               |                   |     |
|---------------|-------------------|-----|
| Commissioners | Valuable          | 68% |
|               | Somewhat Valuable | 8%  |

## Land Use Planning Programs

|               |                   |     |
|---------------|-------------------|-----|
| Commissioners | Valuable          | 39% |
|               | Somewhat Valuable | 22% |

## Risk Management Programs and Training

|               |                   |     |
|---------------|-------------------|-----|
| Commissioners | Valuable          | 52% |
|               | Somewhat Valuable | 31% |

## Nationwide Retirement Program

|               |                   |     |
|---------------|-------------------|-----|
| Commissioners | Valuable          | 10% |
|               | Somewhat Valuable | 28% |

## THE OTHER OFFICIALS HAD THESE SERVICES GROUPED IN ONE RATING

|               |     |
|---------------|-----|
| Very Valuable | 33% |
| Valuable      | 22% |

## 8. District Meetings

|               |                   |     |
|---------------|-------------------|-----|
| Commissioners | Valuable          | 61% |
|               | Somewhat Valuable | 39% |

## Annual Conference

|               |                   |     |
|---------------|-------------------|-----|
| Commissioners | Valuable          | 78% |
|               | Somewhat Valuable | 20% |

## Midwinter Meeting

|               |                   |     |
|---------------|-------------------|-----|
| Commissioners | Valuable          | 59% |
|               | Somewhat Valuable | 35% |

## DES Conference (held during Midwinter)

|               |                   |     |
|---------------|-------------------|-----|
| Commissioners | Valuable          | 24% |
|               | Somewhat Valuable | 50% |

## Orientation and Certification

|               |                   |     |
|---------------|-------------------|-----|
| Commissioners | Valuable          | 76% |
|               | Somewhat Valuable | 10% |

## THE OTHER OFFICIALS HAD THESE SERVICES GROUPED IN ONE RATING

|               |     |
|---------------|-----|
| Very Valuable | 0   |
| Valuable      | 56% |



## **UNDERGROUND STORAGE TANKS--PART ONE**

**by Bill Rule, Department of Environmental Quality**

The Underground Storage Tank Section (USTS) of the Department of Environmental Quality (DEQ) regulates underground petroleum and hazardous substance tanks. That includes fueling facilities, heating oil tanks, emergency generator tanks, waste oil tanks and more.

Our primary mission is groundwater protection. Leaks, spills and overfills from underground storage tanks (USTs) can ruin a lot of water in a hurry. But we protect people from explosions and vapor inhalation too. The Underground Storage Tank Section's job is prevention and early detection of petroleum releases.

The Petroleum Release Section of DEQ manages the cleanup of petroleum releases if we fail. That can be expensive, so UST regulations also require that a facility show they have enough money for remediation if their tank systems do leak. Facilities need \$1,000,000 in coverage in case they need to clean up a release. The Petroleum Tank Release Compensation Fund (PTRCF) provides much of that coverage if a facility has a valid operating permit. Operating permits are issued as a function of compliance inspections.

Compliance inspections are conducted by private-sector inspectors every three years. You hire them. You should have your compliance inspection conducted about six months before your operating permit expires.

If you can't find your operating permit, we need to talk. It's a valuable document to you.

### **A Recent History of UST Regulation ...**

...and it's all recent. In 1984 Congress directed the EPA to develop a comprehensive regulatory program for USTs. Those Federal regulations became effective in 1988. Beginning in 1988, Montana facilities had ten years to bring tank systems up to new standards or to remove them. These upgrade requirements mandated that UST systems provide leak detection, spill protection, overfill prevention and corrosion protection. From 1988 to 1998, Montana permanently closed over 20,000 USTs. Montana now regulates about 4,000 active USTs at 1,500 facilities.

During 1998, the UST program focus changed to ensuring that proper equipment was installed and turned attention to the O & M of that equipment. This change frustrated many owners. "We spent all this money on equipment. We were told it would do the monitoring for us." It doesn't; and, like any mechanical or electronic equipment, it must be tested and maintained as well.

It is not enough to install leak detection monitoring equipment; you have to look at what that equipment tells you - and you have to prove you looked at it. It is not enough to install leak detectors; you have to test them once a year. And you have to prove that too.

In 1999, the Legislature privatized the inspection program and required that facilities be inspected every three years by a licensed private-sector compliance inspector. That same law mandated full compliance if facilities were to operate.

In the two subsequent legislatures, the laws were amended. DEQ still requires full compliance but we have less onerous enforcement mechanisms in place. In most cases, you can continue to operate your UST system while you correct deficiencies.

### **"We Don't Understand What You Want."**

We hear that a lot. One problem we encounter is that our outreach information goes to a main office, to the "owner" of the facility. Much of our technical outreach would be better if placed in the hands of the person actually managing the tank system.

Many counties own heating oil and emergency generator tanks. Regulations for these tanks are doubly complex. Supply and return lines generally have different properties, hence different requirements.

The UST Program is doing its best to demystify the requirements. We have O & M manuals, checklists and soon will have web-based training available. But even when the information is simplified, UST managers must keep up with a timetable of O & M and administrative requirements.

Next month I'll describe this in greater detail.

## SAFETY RAY SEZ:

### A GOOD PURSUIT POLICY SHOULD BE SUPPORTED WITH TRAINING Ray Barnicoat, MACo Risk Manager



A three-minute pursuit resulted in one person dead and two persons injured. The MACo Joint Powers Insurance Authority Trustees recently settled a law enforcement claim for a substantial sum of money. If this incident had gone to trial, there was a risk that the award could have been much higher. The MACo Attorneys felt the case left MACo with a weak defense because of a poor pursuit policy that was in place at the time of the incident and the lack of training regarding the policy. The MACo JPA attorney said that if the agency had been using the MACo Model Pursuit Policy and if the staff had been trained to the policy, it could have helped considerably in the defense of the case.

The Pursuit Policy that was in place at the time of the incident had a number of mandatory "SHALL" and "WILL" statements in it. Those directives left the officers with no room for independent judgment in a pursuit. A number of the directives were not or could not have been followed.

The lesson to learn from this case is simple! Policies that have mandates of "SHALL" and "WILL" are hard to defend and comply with. They cannot address every situation that occurs in the field. Officers need policies that give them room to make decisions based upon the law and the circumstances of the incident. The policies need to be supported with training and regular review. Plaintiff attorneys are only effective if the facts are favorable to their theory. If they can prove policy violations or lack of training they have a case to argue to the jury.

Montana law enforcement professionals and attorneys carefully designed the MACo Model Pursuit Policy. The policy is designed to give the officer the opportunity to make some independent judgments during a pursuit. Every word in the policy is carefully placed to meet the legal requirements and still give the officers and the agency room to make decisions based on the circumstances at the time.

If you are using our policies, THANK YOU. You made a good decision. If you are not using them, you need to re-think that issue. By

not using them, you could be exposing your agency, officers and the insurance pool to unnecessary risk. A tremendous amount of time, money and professional resources went into providing this tool for you. It was given to you at no charge. (Oh, by the way, the sheriff in this case is now using the MACo Model Policies.)

So, The big question is, "Are you using the MACo Model Pursuit Policy?" The Montana Law Enforcement Academy (MLEA) Risk Manager, Jerry Williams, has been doing a survey of Montana sheriffs and police chiefs to find out who is and is not using the Model Policies. As of this date, he has contacted 23 sheriffs, with the following results:

|   | YES | NO | OTHER           |
|---|-----|----|-----------------|
| 1. Do you have a copy of the Model Policy Guidelines? | 20  | 2  | 1               |
| 2. Do you have a policy manual?                       | 21  | 1  | 1               |
| 3. Have you integrated the full set of policies?      | 10  | 4  | 9 (some)        |
| 4. Does every member get a policy manual?             | 17  | 6  |                 |
| 5. Do you train by the policy?                        | 10  | 4  | 9 (review only) |
| 6. Do you document training                           | 18  | 4  | 1               |
| 7. Do you want copies?                                | 22  | 1  |                 |

### MACo Risk Management and Training

**Ray Barnicoat**  
and  
**Emelia McEwen**

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# NACo INFORMATION



## NATIONWIDE RETIREMENT PROGRAM PARTICIPATION

| COUNTY           | ASSETS               | MEMBERS    |
|------------------|----------------------|------------|
| ANCN.-DEER LODGE | \$ 145,536           | 15         |
| BEAVERHEAD       | 237,247              | 10         |
| BLAINE           | 253,061              | 20         |
| BROADWATER       | 57,894               | 5          |
| CARTER           | 223,159              | 9          |
| CASCADE          | 1,875,341            | 93         |
| CHOUTEAU         | 292,751              | 11         |
| CUSTER           | 506,927              | 27         |
| DAWSON           | 555,962              | 31         |
| FERGUS           | 240,807              | 14         |
| GALLATIN         | 2,001,476            | 100        |
| GLACIER          | 19,282               | 3          |
| GRANITE          | 49,705               | 7          |
| HILL             | 287,534              | 21         |
| JEFFERSON        | 330,809              | 14         |
| LEWIS & CLARK    | 1,863,274            | 93         |
| LIBERTY          | 69,693               | 11         |
| LINCOLN          | 291,188              | 23         |
| MADISON          | 243,097              | 21         |
| McCONE           | 15,169               | 1          |
| MEAGHER          | 59,209               | 7          |
| MUSSELSHELL      | 98,356               | 12         |
| PONDERA          | 221,569              | 21         |
| POWDER RIVER     | 18,114               | 4          |
| POWELL           | 149,677              | 8          |
| PRAIRIE          | 211,934              | 9          |
| RAVALLI          | 457,564              | 37         |
| ROOSEVELT        | 382,237              | 17         |
| ROSEBUD          | 160,452              | 15         |
| SANDERS          | 43,813               | 5          |
| STILLWATER       | 140,370              | 18         |
| TETON            | 435,459              | 18         |
| TOOLE            | 320,960              | 22         |
| VALLEY           | 550,363              | 31         |
| WIBAUX           | 54,869               | 9          |
| YELLOWSTONE      | 2,716,352            | 126        |
| <b>TOTALS</b>    | <b>7,274,157,605</b> | <b>888</b> |

## NACo GRANT TO CASCADE COUNTY

Cascade County's Sun River Watershed Group was one of thirteen nationwide recipients in the NACo 2005 Five Star Restoration Challenge Grant Program. 224 applicants competed for funding.

The Sun River Watershed Group will receive \$10,000 to restore three miles of riparian area. Volunteers will remove over 100 car bodies along the bank of the riparian area, place erosion matting on the raw banks, and plant 2,000 willow and cottonwood trees. Education activities will include organizing an annual river day, involving students in planting and monitoring in the spring and fall, and engaging volunteers in the water quality monitoring aspect of the project.

Major funding for this program comes from the U.S. Environmental Protection Agency. Matching contributions will be provided by local restoration partners in the form of funding, labor, materials, equipment, or in-kind services.

"A growing number of counties across the nation are taking the lead to restore America's wetlands through their participation in the Five Star Restoration Challenge Grant Program. The establishment of diverse community-based wetland restoration partnerships and the inclusion of youth and adult volunteers in this program foster the type of environmental stewardship that is vital to our country," said NACo President Angelo Kyle, Lake County, Illinois.



The National Association of Counties (NACo), in partnership with Nationwide Retirement Solutions (NRS) and state associations of counties, provides county employees with a Section 457 Deferred Compensation Program.

Since its inception in 1980, NACo's 457 Deferred Compensation Program has grown to become the largest supplemental retirement income program available to county employees.

# Innovations in Government Awards

Innovations in American Government Award Program, with the Ash Institute for Democratic Governance and Innovation (a branch of the John F. Kennedy School of Government at Harvard University), is administered in partnership with the Council for Excellence in Government.

Since its inception in 1986, Innovations has accepted applications in all policy areas, such as Management and Governance; Health Care and Social Services; Community and Economic Development; Transportation, Public Works and Environment; Criminal Justice and Public Safety; and Education. All units of government - federal, state, local, tribal, and territorial - within the United States are eligible for recognition and awards under the following guidelines:

- Program must be administered and submitted by the governmental entity responsible for the innovation.
- Program must be implemented 12 months prior to the date of submission - e.g. for a 2006 Award, the program must have been launched prior to September 15, 2004.
- Programs must be in current operation.

While Innovations in American Government encompasses all levels of American government, it focuses on domestic programs, such as job training, base conversion, procurement reform, energy conservation, environmental protection, etc.

Applications for an Innovations Award are evaluated according to the following criteria:

- Its novelty--the degree to which the program demonstrates a leap in creativity
- Its effectiveness--the degree to which the program has achieved tangible results
- Its significance--the degree to which the program successfully addresses an important problem of public concern
- Its transferability--the degree to which the program, or aspects of it, shows promise of inspiring successful replication by other governmental entities.

For information and application forms, go to: <http://www.innovationsaward.harvard.edu>

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