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BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES
STATE OF MONTANA

SEP 13 1999

ATTORNEY GENERALS OFFICE
HELENA, MONTANA

In the Matter of the)
Complaints Against)
Montanans for Common)
Sense Water Laws/Against)
I-122, Certain Affiliated)
Committees and Other)
Entities Opposing I-122)

SUMMARY OF FACTS
AND
STATEMENT OF FINDINGS

Complainant Karl Englund, on behalf of Northern Plains Resource Council (NPRC), filed a complaint against Montanans for Common Sense Water Laws/Against I-122 (MCSWL) and four other entities on May 20, 1997. The Englund complaint alleges that MCSWL and four entities who opposed I-122 failed to properly report certain contributions/expenditures opposing I-122.

Complainant Stan Frasier, on behalf of Montanans for Clean Water (MCW), filed a series of three complaints against MCSWL and numerous affiliated political committees and other entities that opposed I-122. The Frasier complaints were filed on June 13, June 19 and June 20, 1997.

The Englund and Frasier complaints contain the following basic claims:

CLAIM 1

Complainant Frasier alleges that two law firms (Gough, Shanahan, Johnson and Waterman of Helena and Poore, Roth and Robinson of Butte) contributed to MCSWL and failed to file the proper reports. Complainant Frasier further alleges that various other incidental political committees did not file proper reports after contributing to MCSWL.

CLAIM 2

Complainant Frasier alleges that numerous incidental political committees failed to timely file reports of contributions and expenditures to MCSWL. Complainant Frasier also alleges that MCSWL failed to timely report the contributions/expenditures of numerous incidental political committees.

CLAIM 3

Complainant Frasier alleges that the MCSWL and various incidental committees failed to report certain contributions. Complainant Frasier alleges that in some instances MCSWL listed contributions from incidental committees that were not separately reported by the incidental committees and vice versa.

CLAIM 4

Complainants Englund and Frasier allege that various organizations/groups contributed to MCSWL but did not file as political committees or timely and accurately disclose the amount and nature of their contributions. Complainants Englund and Frasier allege that the following organizations were political committees and failed to file appropriate reports: Scientists Concerned About Environmental Quality in Montana (SCEQM), Montana Association of Realtors (Realtors), Montana Stockgrowers Association (MSGA), Montana Taxpayers Association (MTA), the Western Education Foundation for Resources (WEFR), the Gold Institute and the Montana Mining Association (MMA). Complainants further contend that MCSWL did not timely and accurately report contributions made by these organizations/groups.

INTRODUCTION AND BACKGROUND

The Englund and Frasier complaints center on two main issues: what comprises a political committee and when must a political committee report contributions and expenditures? Section 13-1-101(18), MCA, defines a "political committee" as follows:

"Political committee" means a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:

- (a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination; or
- (b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or
- (c) as an earmarked contribution.

There are three types of political committees defined by administrative rule. The definitions of "principal," "independent" and "incidental" committees (ARM 44.10.327(2)) in effect during the 1996 election read as follows:

(a) A principal campaign committee is a committee which is specifically organized to support or oppose a particular candidate or issue.

(b) An independent committee is a committee which is not specifically organized to support or oppose any particular candidate or issue but one which is organized for the primary purpose of supporting or opposing various candidates and/or issues over a continuing period of time. For example, political party committees are independent committees.

(c) An incidental committee is an independent committee which is not organized or maintained for the primary purpose of influencing elections but which may incidentally become a political committee by reason of making a contribution or expenditure to support or oppose a candidate and/or issue. For example, a business firm or a partnership which makes an expenditure to support or oppose an issue is an incidental committee.

The reporting requirements vary for each type of political committee. Statutes and administrative rules specify the process and procedures for reporting. The Commissioner creates the reporting forms and provides technical assistance to those involved in the process. "Principal" committees like MCSWL and MCW file contribution/expenditure reports on a C-6 form. "Incidental" committees file contribution/expenditure reports on a C-4 form.

It is necessary at this point to discuss the recent history of incidental political committee reporting during the I-122 campaign. Incidental committees by definition and practice are not political entities organized for the primary purpose of influencing elections. A business, association or corporation generally becomes an incidental committee by making a contribution to support or oppose a ballot issue. The Commissioner's office usually becomes aware of the contribution when the ballot issue committee (the "principal" campaign committee) reports the contribution. Historically, the Commissioner's office then notifies the business, association or corporation that it has become an incidental committee and must file a separate C-4 report listing (confirming) its contributions/expenditures to the principal ballot issue committee.

After the November 1994 election, this Commissioner determined that separate C-4 reporting by an incidental committee after the principal campaign committee had already reported the contribution or expenditure was redundant and unnecessary. This Commissioner proposed a repeal of the incidental political committee reporting

rule (ARM 44.10.411) in March of 1996. During this period, incidental committees were not required by the Commissioner to report contributions or expenditures and most of the incidental committees supporting MCSWL and MCW did not file C-4 reports.

Based on comments received at the August 29, 1996 public hearing, the incidental committee reporting rule (ARM 44.10.411) was not repealed. Instead, an "interim policy" was adopted which consisted of sending notice of C-4 reporting requirements and reporting forms to businesses, corporations and associations that met the definition of an incidental committee. The interim policy was implemented in mid-September of 1996 and required incidental committees to file C-4 reports within five (5) days after receiving notice from the Commissioner (the interim policy was similar to the policy applied to the November 1994 and previous elections). Notices were sent to those incidental committees included in the September 1996 C-6 reports filed by MCW and MCSWL.

Virtually all of the incidental committees supporting MCSWL and MCW did not file C-4 reports until after the interim policy was implemented in mid-September of 1996. The initial C-4 reports filed by some of MCSWL's and MCW's incidental committees included contributions/expenditures made by the incidental committees from the beginning of the I-122 campaign. However, the Commissioner's office did not require incidental committees filing initial C-4 reports in September of 1996 to include contributions made in previous reporting periods.

Complainant Frasier correctly asserts that Section 13-37-

226(5) (a) (b), MCA, requires an incidental committee to file reports twelve days before and twenty days after an election in which the incidental committee makes a contribution or expenditure. Incidental committees who made contributions or expenditures during the I-122 campaign were required to file C-4 reports on October 24, 1996 for contributions or expenditures made through October 19, 1996. Even though the Commissioner's office did not waive this statutory reporting deadline for incidental committees participating in the November 1996 election, the Commissioner's interim policy and the Commissioner's compliance efforts after mid-September of 1996 focused on the filing of C-4 reports within five days after receipt of notice from the Commissioner and not on the statutory reporting deadline under Section 13-37-226(5) (a) (b), MCA.

The preceding events illustrate the confusion that existed about incidental committee reporting requirements during the I-122 campaign. This Commissioner has previously acknowledged his responsibility for creating much of that confusion (see, e.g., page 15 of the Commissioner's April 29, 1997 decision *In the Matter of the Complaint Against Montanans for Clean Water, Northern Plains Resource Council and Public Education for Water Quality Project* hereinafter "MCW/PEWQ Decision"). When MCW and MCSWL began filing complaints against each other, this Commissioner was advised by legal counsel that the September 1996 interim policy was unenforceable because it had not been adopted as a rule under the Montana Administrative Procedure Act. Accordingly, violations involving an incidental committee's failure to file a C-4 report

within five (5) days after receiving notice from the Commissioner or for failing to timely report contributions/expenditures made before mid-September of 1996 have not been pursued.

The controlling principle applied to this investigation and all previous I-122 complaint investigations is whether the public was timely and accurately advised of contributions and expenditures made to support or oppose I-122. Whatever confusion may have existed about when an incidental committee had to file a C-4 report, the principal I-122 committees, MCSWL and MCW, had a continuing and unambiguous obligation to timely and accurately report all contributions and expenditures. The I-122 campaign convinced this Commissioner that incidental political committee (C-4) reporting is an essential component of Montana's campaign finance and reporting laws. However, the severity of incidental committee reporting violations in this matter and previous I-122 investigations must be judged by the specific facts and whether the public was timely and accurately apprised of the contribution or expenditure. If the principal campaign committee timely and accurately reported a contribution or expenditure made by an incidental committee, then the public has been timely and accurately apprised of the incidental committee's involvement. If the incidental committee subsequently violates C-4 reporting requirements, the principal committee's timely and accurate reporting of the incidental committee's contribution may be a mitigating factor in determining whether to pursue a civil penalty action against the incidental committee.

It must be noted that this Commissioner has taken steps to eliminate any possible confusion about future incidental political committee reporting requirements. Comprehensive new rules imposing precise reporting requirements on incidental committees were adopted on September 12, 1997.

SUMMARY OF FACTS

1. MCW and MCSWL represented opposing interests in the November 1996 election on I-122. MCW was a principal campaign committee for the proponents of I-122 while MCSWL was a principal campaign committee for the opponents of the initiative. I-122 did not pass.

Montanans For Common Sense
Water Laws, Organization
and Strategy

2. MCSWL was run by a seventeen member Steering Committee comprised of the following:

Jerome Anderson
Campaign Director

Tom Daubert
Communications Director

Frank Crowley
Helena Attorney
representing ASARCO

John Fitzpatrick
Pegasus Gold Corporation

Tammy Johnson
Consultant for Golden
Sunlight Mines/MSCWL
Field Representative

Gary Langley
Montana Mining Association

David Owen
Montana Chamber of Commerce

Russ Ritter
Washington Corporations

Mike Schern
Seven-Up Pete Joint
Venture/McDonald Gold
Project

Peggy Trenk
WETA

Don Wilson
Golden Sunlight Mines

Rick Dale
Golden Sunlight Mines

Dave Young
ASARCO

Mark Cole
Dick Irvin, Inc.

Jim Liebetrau
AFFCO
Anaconda, Montana

Joe Danni
Placer Dome, Inc.

Jim Chiotti
Montana Tunnels Mine

3. MCSWL's Steering Committee first met in February of 1996. Meetings were held at least once a month throughout the I-122 campaign, but the Steering Committee met twice a month in July and August and four times in September of 1996. Steering Committee meetings often lasted at least half a day. MCSWL also attempted to hold weekly telephone conferences with some or all Steering Committee members beginning in July of 1996. MCSWL did not keep minutes of Steering Committee meetings or the weekly telephone conferences.

4. The following individuals were the key players in MCSWL's campaign decision-making:

A. Jerome Anderson, MCSWL's Campaign Director, was involved in every facet of the MCSWL campaign. Mr. Anderson also served as one of MCSWL's public spokesmen in press releases and public forums on I-122. MCSWL paid Mr. Anderson \$49,215 for his services during the I-122 campaign.

B. Tom Daubert, MCSWL's Communications Director, was responsible for writing most of MCSWL's communications. Mr. Daubert wrote, edited or was involved in the preparation of MCSWL's brochures, press releases, letters to the editors, editorial responses, I-122 fact sheets, newspaper, radio and television ads,

press kits and general campaign communications. Mr. Daubert also represented MCSWL at several public forums and debates on I-122. MCSWL's press releases were issued by Mr. Daubert. MCSWL paid Mr. Daubert \$111,798.98 for his services during the I-122 campaign.

C. John Fitzpatrick, Government Affairs Director for Pegasus Gold Corporation, was an integral part of the MCSWL strategy team. Mr. Fitzpatrick hired the consultants and collected much of the technical information used by MCSWL to oppose I-122. Mr. Fitzpatrick also appeared in numerous public debates as an opponent of I-122. One of Mr. Fitzpatrick's employees, Kay Baker, did the scheduling for MCSWL's staff.

D. Bob Henkel of Sage Advertising was one of MCSWL's media consultants. Mr. Henkel was involved in developing and implementing MCSWL's strategy. Sage Advertising was primarily responsible for preparing MCSWL's brochures and print advertising. MCSWL made total payments of \$555,181.59 to Sage Advertising during the I-122 campaign. Included in this amount were payments for the purchase of media advertising and payments to Woodward and McDowell (see Summary of Fact 4 (F)).

E. Bob Hoene of Fifth Avenue Advertising was another MCSWL media advisor. Mr. Hoene was involved in developing and implementing MCSWL's strategy. Fifth Avenue was primarily responsible for MCSWL's television and radio advertising. MCSWL made total payments of \$786,936.20 to Fifth Avenue Advertising during the I-122 campaign. Included in this amount were payments for the purchase of media advertising and payments to Woodward and

McDowell (see Summary of Fact 4 (F)).

F. Dick Woodward and Bill Hunter of Woodward & McDowell, a California media consulting firm, provided research, polling and survey analysis services to MCSWL. All work done by Woodward & McDowell was billed through Sage and Fifth Avenue. MCSWL paid Woodward & McDowell \$389,249.59 for its work on the I-122 campaign.

5. Other individuals who played significant roles in MCSWL's campaign included:

A. Eric Williams of Titan Environmental Corporation. Mr. Williams was responsible for reducing technical and scientific information about I-122 to understandable terms. Mr. Williams wrote, edited or reviewed much of the material produced by the MCSWL campaign. Mr. Williams was also a member of SCEQM and edited and/or reviewed the public documents produced by SCEQM.

B. MCSWL's Regional Campaign Staff, which was comprised of Tammy Johnson (Golden Sunlight Mines), Kathleen Benedetto (Western Resource Associates, Inc.), Nita Periman (Beal Mountain Mine), Peg Wagner (Montana Resource Providers Coalition), Bob Williams (Hobson, Montana), and Tryg Williams (Missoula, Montana).

6. MCSWL actively solicited individuals, businesses, membership organizations and other groups to oppose I-122. Jerry Anderson's application to be MCSWL's Campaign Director emphasized the need to immediately contact and "sign on organizations and groups we believe should be supporting our efforts against the initiative." The early months of MCSWL's campaign emphasized

contacts with membership associations and other groups to determine meeting dates, schedules and endorsement processes. MCSWL devoted considerable resources to obtaining support from membership organizations and businesses. MCSWL kept a weekly running tally of the membership associations, local governments, businesses and agricultural groups that opposed I-122. MCSWL's "Time and Events Schedule" targeted September 3, 1996 as the date on which a major effort could be made to include campaign materials in newsletters.

7. MCSWL's polling and focus group analysis in April of 1996 became the basis for MCSWL's campaign. Major polling and focus group conclusions were:

A. Developing a broad based coalition of farmers, ranchers, common Montana folks, state environmental departments and local ambassadors was essential to defeating I-122.

B. The public needed to be educated about existing water quality laws before arguments about the fairness of I-122 could be convincing. Special emphasis was to be placed on describing the stringency of existing water quality standards and regulations.

C. Credible arguments against I-122 had to be made by third parties, not the mining industry. Technical arguments had to be made by technical experts -- water experts, hydrogeologists, toxicologists and geologists.

D. Economic arguments, such as knowing that I-122 would curtail existing mines or eliminate new mines, and the tax and fiscal impacts of the initiative, had a significant impact on the voters.

E. Governor Racicot's opposition to I-122 would have a significant impact on the voters.

8. MCSWL prepared a "Friday Report" summarizing campaign activities, issues and upcoming events each week. The reports also included copies of I-122 news articles for the week. The Friday Reports were written by Bob Henkel of Sage Advertising based on input from MCSWL's campaign staff. The Friday Reports were distributed to a composite list of individuals and organizations, including the following organizations and individuals referenced in this decision:

- A. Jim Peterson,
Montana Stockgrowers Association;
- B. Dennis Burr,
Montana Taxpayers Association;
- C. Gary Langley,
Montana Mining Association;
- D. Sandy Stash,
ARCO; and
- E. All of the individuals referenced in Summary of Facts 2, 4, and 5 of this decision.

9. All of the individuals listed in Summary of Facts 4 and 5 were paid by MCSWL for MCSWL-related work, except as follows:

A. John Fitzpatrick was an employee of Pegasus Gold Corporation and was paid by Pegasus for his work on I-122 activities.

B. Tammy Johnson was paid both by MCSWL and Golden Sunlight Mines for work on I-122 activities.

C. Eric Williams, through his employer, Titan Environmental, was paid for his work on MCSWL activities by Pegasus Gold Corporation.

CLAIM 1

10. The law firm of Gough, Shanahan, Johnson and Waterman made a cash contribution of \$750 to MCSWL on May 17, 1996. This contribution was timely reported by MCSWL on its June 10, 1996 C-6 report.

11. The law firm of Poore, Roth and Robinson made a cash contribution of \$500 to MCSWL on May 2, 1996. This contribution was timely reported by MCSWL on its May 10, 1996 C-6 report.

12. Neither law firm received a notice from the Commissioner of Political Practices to file a C-4 report.

13. Neither law firm filed appropriate C-4 reports until the initial complaint in this matter was filed on June 13, 1997. Gough, Shanahan and Johnson filed a C-4 report on June 13, 1997. Poore, Roth and Robinson filed its C-4 report on June 25, 1997.

CLAIM 2

14. Archibald Co. contributed \$100 to MCSWL on September 11, 1996. This contribution was timely reported by MCSWL on its October 21, 1996 C-6 report. The Commissioner sent a notice of requirement to file a C-4 form to Archibald Co. on October 24, 1996. The Commissioner sent two additional notices to Archibald Co. on December 18, 1996 and on February 26, 1997. To date, the Commissioner has not received a C-4 report from Archibald Co.

15. Archibald Co. responded to a May 10, 1996 request from

Mark Cole on behalf of MCSWL and MMA for business-related economic information (e.g., number of jobs, taxes paid, etc.). Archibald Co. sent a letter to Jerry Anderson of MCSWL for use in MCSWL's campaign. Neither Archibald Co. nor MCSWL reported this in-kind contribution by Archibald Co.

16. Pro-Sport Productions contributed \$5 to MCSWL on November 26, 1996, thereby becoming an incidental committee. MCSWL timely reported this contribution on its March 10, 1997 C-6 report. Pro-Sport Productions was sent a notice to file a C-4 report on March 10, 1997. To date, Pro-Sport Productions has not filed a C-4 report with the Commissioner.

17. A total of 57 incidental committees who contributed to MCSWL and received notice from the Commissioner did not file C-4 reports within five (5) days after receiving notice. Except for Archibald Co. and Pro-Sport Productions, the other 55 incidental committees eventually filed C-4 reports. MCSWL timely reported all of the incidental committee contributions by these 57 incidental committees.

18. Four of the 57 incidental committees that made contributions to MCSWL on or before October 24, 1996 did not file C-4 reports on or before the October 24, 1996 deadline established under Section 13-37-226(5)(a)(b), MCA. However, MCSWL timely reported the contributions made by these incidental committees before the October 24, 1996 deadline.

19. Golden Sunlight Mines (Golden Sunlight) made a series of in-kind contributions to MCSWL during the I-122 campaign, including a \$3,000 in-kind contribution in March of 1996. MCSWL failed to

report this \$3,000 in-kind contribution on its April 10, 1996 C-6 report. MCSWL ultimately reconciled the in-kind contributions made by Golden Sunlight on MCSWL's October 21, 1996 C-6 report (MCSWL overstated Golden Sunlight's in-kind contributions by \$3,000 in MCSWL's October 21, 1996 report).

20. MCSWL overstated the in-kind contributions made by Golden Sunlight by \$9,160.23 in MCSWL's October 26, 1996 C-6 report. A comparison of MCSWL's C-6 reports and Golden Sunlight's C-4 reports for the period of March 1996 through March 5, 1997 indicates that both committees reported total in-kind contributions by Golden Sunlight of \$42,347.32.

21. Golden Sunlight was notified by the Commissioner that it was obligated to file a C-4 report on September 13, 1996. The Commissioner sent a second notice to Golden Sunlight on October 24, 1996. Golden Sunlight did not file a C-4 report until November 6, 1996.

22. Seven-Up Pete Joint Venture/McDonald Gold Project (hereinafter collectively referred to as "Seven-Up Pete") made in-kind contributions of \$24,470.21 to MCSWL in September and October of 1996. These in-kind contributions were reported by Seven-Up Pete on its October 31, 1996 C-4 report. MCSWL reported these contributions on its October 26, 1996 C-6 report. Seven-Up Pete apparently reported most of its October 31, 1996 C-4 contributions again on its November 25, 1996 C-4 report. Specifically, the in-kind contribution of \$22,286.20 made by Seven-Up Pete for the October 17 through 26, 1996 period is identical to the in-kind contribution reported on the November 25, 1996 C-4 report. The two

C-4 reports contain identical expenditure amounts for postage (\$3,646.01) and printing (\$9,520.00).

23. MCSWL reported a \$1,215 in-kind contribution from ASARCO, Troy Unit, on November 10, 1996. ASARCO filed a C-4 report on January 8, 1997. This in-kind contribution involved services provided by Frank Crowley in representing MCSWL at I-122 debates in Missoula and Billings. Mr. Crowley also served as one of two ASARCO representatives on MCSWL's Steering Committee. ASARCO's C-4 report does not include an amount for services provided by Mr. Crowley and its other representative, Dave Young, in attending MCSWL Steering Committee Meetings. A third ASARCO employee, Doug Parker, began attending Steering Committee meetings in early September of 1996. Mr. Young asserts that he attended few MCSWL Steering Committee meetings and that Mr. Crowley was primarily responsible for representing ASARCO at Steering Committee meetings. There is evidence that Mr. Crowley, Mr. Young and Mr. Parker also provided other services to MCSWL on behalf of ASARCO. Those services were not included in ASARCO's C-4 report.

24. The Washington Corporations filed a C-4 report on March 12, 1998 concerning services provided by Russ Ritter in attending MCSWL Steering Committee meetings. The report includes six hours of time spent by Mr. Ritter attending six MCSWL Steering Committee meetings on May 12, May 21, September 18, October 9, October 18 and October 29, 1996. The amount reported for Mr. Ritter's services is \$128.64. The amount reported does not include reimbursement for travel expenses or other costs. There is also evidence that Mr.

Ritter attended other MCSWL Steering Committee meetings not included in the Washington Corporations' C-4 report. For example, Mr. Ritter attended MCSWL's organizational meeting in early February of 1996 and the August 13, 1996 Steering Committee meeting. Mr. Ritter received notices for all MCSWL Steering Committee meeting notices, MCSWL press releases and MCSWL's Friday Reports.

25. The Montana Chamber of Commerce did not report any in-kind contributions to MCSWL for services provided by David Owen in attending MCSWL Steering Committee meetings. Mr. Owen denies that he had any significant involvement in MCSWL's Steering Committee meetings. Mr. Owen had a meeting with Tom Daubert on March 15, 1996 and attended a focus group meeting on April 17, 1996. On March 28, 1996, Tom Daubert met with Mr. Owen to discuss "H₂O feedback on ...[Mr. Owen's] tour to date." Beginning in April of 1996, Mr. Owen asserts that he was involved in I-121 and I-125 activities, not I-122. However, this is some evidence of Mr. Owen's involvement in MCSWL activities after April of 1996. Mr. Owen FAXed John Fitzpatrick a memo on September 25, 1996 confirming that the Montana Chamber of Commerce had voted to oppose I-122 at its April 1996 Board meeting. The memo indicates that its members would be sent an election edition of its bulletin announcing the Chamber's position. The memo concludes by stating that if "there are other appropriate actions that should be taken to help defeat I-122, please do not hesitate to contact me."

26. Pegasus Gold reported total in-kind contributions to

MCSWL of \$217,951.91 for the I-122 campaign. Pegasus Gold reported at least 20 hours per month of Mr. Fitzpatrick's time as an in-kind contribution to MCSWL throughout the I-122 campaign. During September and October 1996, when Mr. Fitzpatrick was involved in I-122 debates on behalf of MCSWL, Pegasus Gold reported 61 and 82 hours, respectively, of Mr. Fitzpatrick's time as an in-kind contribution to MCSWL. A total of 321 hours of Mr. Fitzpatrick's time was reported as an in-kind contribution by Pegasus Gold for services provided by Mr. Fitzpatrick to MCSWL. Pegasus Gold also reported travel reimbursement expenses paid to Mr. Fitzpatrick.

27. Montana Tunnels Mine did not report any in-kind contributions to MCSWL for services provided by Jim Chiotti in attending MCSWL Steering Committee meetings or for serving as Treasurer of MCSWL.

28. Placer Dome, Inc., a partner in the Golden Sunlight Mines project, did not report any in-kind contributions to MCSWL for services provided by Joe Danni in participating in MCSWL Steering Committee meetings. There is evidence that Mr. Danni was also involved in other MCSWL activities. Golden Sunlight and MCSWL also did not report any in-kind services to MCSWL by Mr. Danni.

29. AFFCO did not report any in-kind contributions to MCSWL for services provided by Jim Liebetrau in attending MCSWL Steering Committee meetings and other services provided by Mr. Liebetrau to MCSWL.

30. Dick Irvin, Inc., did not report any in-kind contributions to MCSWL for services provided by Mark Cole in attending MCSWL Steering Committee meetings.

31. Don Wilson was MCSWL's initial Treasurer and an employee of Golden Sunlight Mines when he served on MCSWL's Steering Committee. Mr. Wilson believes he attended approximately four meetings. Golden Sunlight did not report an in-kind contribution for the services provided by Don Wilson.

32. Golden Sunlight Mines, Inc., reported total in-kind contributions to MCSWL of \$42,347.82 for the I-122 campaign. This amount includes the payments to Rick Dale and Tammy Johnson as described in this paragraph. Mr. Dale and Ms. Johnson represented Golden Sunlight on the MCSWL Steering Committee. Ms. Johnson was paid \$3,000 per month plus expenses by Golden Sunlight for her work on MCSWL's campaign. Ms. Johnson also served as a field representative for MCSWL and was paid \$1,595.95 by MCSWL in April of 1996. Golden Sunlight also included payments to Ray Lazuk, a Golden Sunlight employee, in its C-4 reports.

33. MCSWL and Seven-Up Pete reported total contributions of \$542,118.79 to MCSWL by Seven-Up Pete, including \$27,154.72 of in-kind contributions. The in-kind contributions included \$13,527.58 of salary and travel expenses for Mike Schern's attendance at MCSWL Steering Committee meetings and other MCSWL-related services. For example, Mr. Schern wrote a letter to Governor Racicot on August 7, 1996 responding to the DEQ "Briefing Paper" on I-122. However, MCSWL did not report any in-kind contributions by Seven-Up Pete until October 21, 1996. Seven-Up Pete did not file a C-4 report showing in-kind contributions until October 31, 1996.

34. MCSWL contracted with Montanans for Private Property Rights (hereinafter "MPPR"), a Montana non-profit corporation, to use MPPR's mailing list during the I-122 campaign. MCSWL's written

agreement with MPPR authorized MCSWL to use MPPR's mailing list for distribution of campaign material during the I-122 campaign. MPPR did not file a C-4 report.

35. MCSWL contracted with the Montana 4 x 4 Association (hereinafter "4 x 4 Association"), a Montana non-profit corporation, to use the 4 x 4 Association's mailing list during the I-122 campaign. MCSWL's written agreement with the 4 x 4 Association authorized MCSWL to use the Association's mailing list for distribution of campaign material during the I-122 campaign. The 4 x 4 Association did not file a C-4 report.

36. Montanans for Multiple Use, Mission Valley Chapter (hereinafter "MMU"), provided its mailing list to MCSWL. MCSWL apparently used MMU's mailing list to distribute its campaign material. MMU did not file a C-4 report.

37. Dr. Lindsay Norman, Chancellor of Montana Tech of the University of Montana, wrote Jerry Anderson on April 2, 1996. Dr. Norman, who was serving on the Pegasus Gold Board of Directors in 1996, wrote, in pertinent part, as follows:

Per my promise made last month, I am herewith providing names of Montana Tech "experts" who could be approached regarding providing objective, factual scientific and economic information, testimony or other comments related to the proposed water initiatives that will likely appear on the November ballot. If you and/or the steering group believe any of the following Tech people should participate in the public information effort, please coordinate all such participation through my office.

The letter lists ten Montana Tech experts and copies of the letter were sent to MCSWL's Treasurer and three other MCSWL Steering Committee members.

38. Following news media stories and public criticism of Dr. Lindsay Norman's offer to have Montana Tech independently analyze I-122, Dr. Norman wrote Jerry Anderson on April 29, 1996 as follows:

Is it safe to write you? I do so to clarify the position that I was forced to take for the college. Although I suspect that you have an idea of what has happened, I want to assure you and the other members of the coalition, that Montana Tech has only made a strategic retreat from our earlier offer of support.

Individual faculty and staff at Montana Tech continue to be free to exercise their rights of citizenship and to speak on issues that they may have specific knowledge. They will not be able to state that their views are those of Montana Tech nor that they are speaking in any official capacity.

39. ARCO made a \$50,000 cash contribution to MCSWL and MCSWL properly reported ARCO's cash contribution in June of 1996. ARCO also provided a list of vendors to the MMA and ARCO acknowledges that the MMA may have shared ARCO's vendor list with MCSWL. Sandy Stash of ARCO received MCSWL's Friday Reports and either Sandy Stash or Marci Kerner attended at least two MCSWL Steering Committee meetings. However, ARCO denies its attendance at MCSWL Steering Committee meetings was an in-kind contribution. ARCO asserts that it attended a few MCSWL Steering Committee meetings for the purpose of monitoring the progress of MCSWL's campaign and MCSWL's expenditure of ARCO's financial contribution. ARCO's C-4 report does not include any in-kind contributions to MCSWL and MCSWL did not report any in-kind contributions from ARCO.

40. MCSWL reported ASARCO's in-kind contribution of \$1,215

in MCSWL's November 10, 1996 report but MCSWL did not report any of ASARCO's other in-kind contributions described in Summary of Fact 23. MCSWL also reported the in-kind contributions described in Summary of Facts 17, 18, 20, 22, 26 and 32. MCSWL did not include in its C-6 reports any of the in-kind contributions described in Summary of Facts 14, 15, 16, 24, 25, 27, 28, 29, 30, 31, 33, 34, 35, 36, 37 and 39.

CLAIM 3

41. Nine companies who contributed to MCSWL in March, April, May, June and July of 1996 did not file C-4 reports (see pages 5 and 6 of Mr. Frasier's June 13, 1997 complaint). These contributors did not receive letters from the Commissioner under the interim policy established in mid-September of 1996. MCSWL timely reported the contributions from these companies on MCSWL's C-6 reports.

42. Seven-Up Pete reported in-kind contributions of \$22,286.20 to MCSWL on its November 25, 1996 C-4 report. MCSWL did not report this amount on its C-6 reports because it appears that Seven-Up Pete double reported in-kind contributions of \$22,286.20 on its October 31 and November 25, 1996 C-4 reports. An in-kind contribution of \$22,286.20 was not made to MCSWL during the November 25, 1996 reporting period.

CLAIM 4

Scientists Concerned About Environmental
Quality in Montana (SCEQM)

43. SCEQM's statement of organization (Form C-2) on file with the Commissioner's office is dated August 29, 1996. However, SCEQM did not FAX its statement of organization to the Commissioner

until September 30, 1996 and the original statement of organization was not received by the Commissioner's office until October 7, 1996.

44. SCEQM originally registered as a political action committee (PAC) but, after consultation with the Commissioner's office, SCEQM determined that a reclassification of the committee was necessary. On October 21, 1996 SCEQM requested that it be reclassified as a principal campaign committee to oppose I-122. Subsequently, SCEQM filed C-6 reports with the Commissioner.

45. SCEQM's initial membership consisted of approximately 45 individual scientists and engineers who were employed by 28 environmental consulting firms throughout Montana. Many of the environmental consulting firms who employ SCEQM's members do work for mining companies. However, none of SCEQM's members served on MCSWL's steering committee.

46. SCEQM asserts that it began informally in an effort to educate the public about the complexities of I-122. SCEQM's statement of purpose indicates that SCEQM's members "joined together to work to evaluate and provide public comment on [I-122]." Most of the letters, press releases and other documents produced by SCEQM expressly state that SCEQM opposed I-122.

47. During the I-122 campaign, SCEQM prepared letters to the Governor, the press and legislators, press releases, one-page fact sheets, a mailing to legislative candidates and a newspaper advertisement opposing I-122. SCEQM wrote its first letter to Governor Racicot expressing doubts about the technical feasibility

and economic merit of I-122 on June 19, 1996. SCEQM's initial letter to the Governor stated that its independent review of I-122 led SCEQM to oppose I-122. SCEQM sent at least three additional letters to Governor Racicot in July, August and September of 1996 expressing concerns about I-122 and stating that SCEQM opposed I-122.

48. SCEQM issued a press release stating its opposition to I-122 on October 4, 1996. SCEQM's C-6 report for the period ending October 16, 1996 reported postage and envelope costs of \$291.04 for the press release.

49. SCEQM's C-6 reports do not include any in-kind amount for services provided by SCEQM's members in preparing press releases, the letters to Governor Racicot, fact sheets or other documents distributed by SCEQM.

50. The October 4, 1996 press release issued by SCEQM urges interested persons to contact Terry Grotbo of Maxim Technologies, Inc., Dr. William Schafer of Schafer and Associates or Karen Barclay Fagg of MSE-HKM for more information. A work phone number for each individual was listed in the press release. Eric Williams of Titan Environmental edited and/or reviewed the press release.

51. SCEQM's one-page fact sheets on I-122 technical issues were prepared by SCEQM's individual members. The fact sheets were used in I-122 debates and made available to the press and any other person who requested a copy. The fact sheets included an appropriate disclaimer.

52. Karen Barclay Fagg served on SCEQM's steering committee

and was featured in many of MCSWL's commercials and advertisements opposing I-122. Ms. Fagg did not appear in MCSWL ads as a member of SCEQM or as President of MSE-HKM. Ms. Fagg appeared in MCSWL's ads opposing I-122 as a former Director of the Department of Natural Resources and Conservation. The MCSWL television ad featuring Ms. Fagg was shot on a Saturday in Billings, Montana, at her place of residence. Ms. Fagg was asked to participate in MCSWL's advertisements by Gary Langley, Executive Director of the MMA. Ms. Fagg was also featured in MCSWL's brochures opposing I-122.

53. Both SCEQM and Jerry Anderson repeatedly denied that there was any coordination between MCSWL and SCEQM until late in the I-122 campaign. SCEQM insists that it operated independently of MCSWL in order to provide technical information about I-122 to the public. Mr. Anderson states that MCSWL contacted SCEQM in the summer of 1996 to offer assistance in dealing with the media. SCEQM claims that it declined MCSWL's offer of assistance and insisted on running its own I-122 issue campaign.

54. John Fitzpatrick of Pegasus Gold Corporation asked one of SCEQM's members, MSE Technology Applications, Inc. ("MSE"), to "lead the effort to educate the public relative to Initiative I-122" in February of 1996. MSE declined Mr. Fitzpatrick's request because of its involvement with numerous government contracts. MSE did make a \$500 cash contribution to MCSWL on August 20, 1996 and MCSWL properly reported the contribution. An August 20, 1996 letter accompanying MSE's \$500 contribution notes that MSE's

"subsidiary company, MSE-HKM, is making a financial and in-kind contribution to the effort to defeat I-122."

55. Pegasus Gold Corporation paid the following amounts to members of SCEQM for MCSWL-related services during the period that SCEQM asserts it was running an independent campaign against I-122:

- A. Schafer and Associates, \$11,623.83;
- B. Hydrometrics, \$2,433.80;
- C. Energy Laboratories, \$5,786.01; and
- D. Titan Environmental, \$16,911.44.

56. Eric Williams of Titan Environmental worked on MCSWL's campaign as early as February 1, 1996. Tom Daubert discussed MCSWL's writing needs with Mr. Williams on February 1 and 9, 1996. Mr. Williams was reviewing and editing "Op-Ed" and "Your Turn" pieces with Tom Daubert on February 12, 13, and 15, 1996. Eric Williams wrote a memorandum to John Fitzpatrick about the I-122 brochure on March 26, 1996. Mr. Williams was primarily responsible for writing WEFR's arsenic brochure described in Summary of Fact 162 (E).

57. John Fitzpatrick received a draft memorandum from Max Botz of Hydrometrics on March 28, 1996. The memorandum analyzes Bruce Farling's I-122 paper prepared for Trout Unlimited. Pegasus Gold reported \$1,210 of Mr. Botz's time in preparing the draft Hydrometrics memorandum as an in-kind contribution to MCSWL. This amount is included in the Pegasus Gold payments to Hydrometrics listed in Summary of Fact 55.

58. John Fitzpatrick sent MCSWL's field staff copies of

letters mailed to Governor Racicot by Energy Laboratories and Maxim Technologies on June 28, 1996. Both letters to Governor Racicot questioned the feasibility and fairness of I-122. The Energy Laboratories letter was sent to Governor Racicot on February 2, 1996. Maxim's letter was dated January 23, 1996. Copies of both letters were sent to the MMA at the time of mailing.

59. Hydrometrics wrote a letter to Tom Daubert concerning "Review of Facts About the 'Water' Initiative 122" on April 11, 1996. Pegasus Gold reported the work done by Hydrometrics as an in-kind contribution to MCSWL (see Summary of Fact 55).

60. SCEQM's Steering Committee solicited membership in a FAX dated June 26, 1996. The SCEQM membership solicitation was FAXed the same day to Mike Schern of the Seven-Up Pete Joint Venture (McDonald Gold Project). Mike Schern, a MCSWL Steering Committee member, FAXed the solicitation to Jerry Anderson the next day (June 27, 1996).

61. An August 17, 1996 memo from John Fitzpatrick to Tom Daubert and Jerry Anderson included a copy of Governor Racicot's August 7, 1996 letter to SCEQM. Lisa Kirk of SCEQM had FAXed Governor Racicot's reply letter to John Fitzpatrick on August 8, 1996, the same day Ms. Kirk received Governor Racicot's letter. The remainder of Ms. Kirk's FAX to John Fitzpatrick includes SCEQM documents.

62. A September 30, 1996 FAX from Lisa Kirk of SCEQM to Tom Daubert contains a "Missoula Water Treatment Facility" fact sheet with data. Also included in the FAX are 10 pages of water analysis

performed by Energy Laboratories. Mr. Daubert indicates that he consulted with Lisa Kirk and Schafer and Associates during the summer of 1996.

63. In late October of 1996, after SCEQM's fact sheets were distributed at the I-122 debate sponsored by the Montana State University Water Center (Dorothy Bradley), MCSWL ultimately agreed to pay Fifth Avenue Advertising \$16,588.75 to publish SCEQM's newspaper ad. The ad included an appropriate disclaimer indicating that the advertisement was "Prepared by SCEQM" and paid for by MCSWL. MCSWL timely and accurately reported its payment for the SCEQM newspaper ad in MCSWL's October 31, 1996 C-6 report.

64. SCEQM's newspaper ad was prepared for publication and placed by Fifth Avenue Advertising, one of MCSWL's media consulting firms. SCEQM paid Fifth Avenue Advertising \$1,600 for work done on its advertising (see SCEQM's October 29, 1996 C-6 report).

65. SCEQM filed C-6 reports on October 23, October 29 and November 25, 1996. These reports show contributions of supplies totaling \$291.04 and cash contributions of \$2,950. These three C-6 reports do not include any in-kind contributions for services provided by SCEQM's members.

66. Twenty-one consulting firms and/or businesses listed as members or potential members of SCEQM deny that they contributed any personnel services, supplies or use of equipment (e.g., telephone and FAX machines) to SCEQM. The following consulting firms and/or businesses contributed services, supplies and/or equipment to SCEQM and in the following amounts:

A. QST Environmental, Butte/Joseph Griffin	\$ 20.00 ¹
B. Times Ltd., Bozeman	35.00
C. MSE, Butte	2.00
D. MSE-HKM, Billings	460.48
E. Energy Labs, Billings	135.00
F. Hydrometrics, Helena	340.12
G. Schafer & Assoc., Bozeman	2,536.48
H. Maxim Technologies, Missoula	614.73 ²
I. Unifield Engineering, Billings	<u>208.54</u>
TOTAL	\$4,352.35

67. The in-kind contributions to SCEQM of services, supplies and/or equipment listed in the preceding paragraph were not reported on SCEQM's C-6 reports. The consulting firms and/or businesses listed in the preceding paragraph did not file C-4 reports reporting the in-kind expenditures on behalf of SCEQM.

68. Titan Environmental of Bozeman, Montana filed C-4 reports indicating that it made \$681.90 in contributions to SCEQM. Two of Titan's employees were individual members of SCEQM. One of its employees, Eric Williams, was hired by ARCO and Pegasus Gold Corporation "to provide public advocacy support, some of which time was devoted to opposing I-122." Titan was paid the following amounts by ARCO and Pegasus Gold for public advocacy work by

¹QST Environmental's home office is located in Peoria, Illinois.

²Maxim Technologies was formerly Chen-Northern.

Mr. Williams from August 1996 through January 1997:

ARCO	\$ 4,984.12
Pegasus Gold	\$29,297.84

69. ARCO's contract with Titan Environmental required Titan to provide "public advocacy support services" involving the following:

- News release writing and editing;
- Assistance in preparing for media interviews, public meetings and presentations[;]
- Community relations;
- Liaison efforts with other natural resource industries and representatives;
- Assistance in Legislative research and strategies;
- Assistance in research and strategies regarding I-122[;]
- Assistance in effectively communicating the benefits of remedies to regulators and the public; and
- Anticipating issues which may need to be addressed from an advocacy standpoint.

70. Eric Williams of Titan analyzed the potential implications of I-122 for ARCO. ARCO reviewed the information prepared by Mr. Williams and determined that I-122 would not affect ARCO's Montana operations. ARCO did not use any of the information prepared by Mr. Williams to oppose I-122. ARCO also denies that it paid Mr. Williams to perform services for SCEQM. Sandy Stash of ARCO and Eric Williams did meet with Jerry Anderson and Tammy Johnson on June 21, 1996.

71. Pegasus Gold Corporation included \$16,911.44 of payments to Titan Environmental in its C-4 reports for work performed by Eric Williams on MCSWL-related activities. The amount reported by Pegasus Gold and MCSWL for work performed by Eric Williams does not

include Mr. Williams' work on WEFR's arsenic brochure (see Summary of Fact 162 (E)). Pegasus Gold denies that it paid for any services rendered by Eric Williams to SCEQM.

72. Larry Brown, an employee of Morrison-Maierle, Inc. of Helena, was a member of SCEQM. In January of 1996, before SCEQM was formed, John Fitzpatrick of Pegasus Gold asked Mr. Brown if he could access "municipal water quality data for certain cities in Montana." Mr. Brown analyzed available data and submitted it to Mr. Fitzpatrick and an employee of Maxim Technologies in early February of 1996. The information compiled consisted of 23 pages of raw monitoring and permit compliance data for the cities of Billings, Bozeman, Great Falls, Hamilton, Helena, Kalispell, Livingston and Missoula. Mr. Brown sent the same raw data to Jerry Anderson on February 14, 1996.

73. Larry Brown sent Tom Daubert and Jerry Anderson copies of two articles concerning arsenic and fluoride concentrations in the Upper Madison River on March 25, 1996.

74. Larry Brown was quoted in an MCSWL radio advertisement on May 17, 1996. The ad refers to Mr. Brown as an "environmental scientist and former State Water Quality Regulator."

75. Morrison-Maierle did not bill Pegasus Gold for its work. Pegasus denies it used any of the raw data or information supplied by Morrison-Maierle in advertisements or documents opposing I-122.³

³Larry Brown subsequently performed work for MCSWL as a consultant (J Bar D Environmental). Mr. Brown was paid for services rendered to MCSWL in July, September and October of 1996. MCSWL reported total payments of \$2,175.95 to J Bar D Environmental. A quote from Mr. Brown was also featured in one of MCSWL's brochures.

76. QST Environmental denied that it was aware that one of its employees was involved in SCEQM activities. QST's employee, Joseph Griffin, acknowledges that he worked on SCEQM-related activities, including SCEQM's newspaper ad. However, Mr. Griffin asserts that he volunteered his time and was not paid by QST for his SCEQM-related work. Mr. Griffin acknowledges that he used QST's FAX machine for some of his SCEQM-related work. Mr. Griffin estimates that total FAX charges were approximately \$20. Neither MCSWL, QST nor Mr. Griffin reported any in-kind contributions by QST or Mr. Griffin.

77. Terry Mudder and his wife, Dr. Karen Hagelstein, are the sole owners of Times Limited of Bozeman. They operate their business out of their home. Mr. Mudder asserts that his involvement in SCEQM activities was "volunteered" and that he received no compensation from his business or clients. Mr. Mudder's SCEQM-related activities included attending SCEQM Steering Committee meetings and making local phone calls. Mr. Mudder also wrote a \$35 check to the Montana Newspaper Association for distribution of SCEQM's press releases. Mr. Mudder acknowledges that the \$35 expenditure was not previously disclosed as a SCEQM expenditure. Dr. Hagelstein performed no SCEQM-related services although she did appear in an I-122 debate. Both Mr. Mudder and Dr. Hagelstein wrote letters-to-the-editor about I-122, but the letters were not written on behalf of SCEQM.

Montana Association of Realtors

78. The Realtors are a Montana nonprofit mutual benefit

corporation. The corporation's purpose is to provide programs that enable members "to conduct their real estate business successfully, with integrity and competence" The Realtors are governed by a Board of Directors representing sixteen Montana regions. The Board had 58 members in 1995 and over 90 in 1996. The Board has an executive committee comprised of its officers. Vicky Hammond of Missoula was the Realtors' President in 1995. Pierce Musgrove served as President in 1996.

79. The Realtors approved a "four-fold education plan" in August of 1995. The issues to be examined included the state budget, property taxes, the "circuit breaker" weatherization program and one environmental issue. I-122 was ultimately selected as the environmental issue to be studied by two of the Realtors' committees -- the Government Affairs Core Group and the Environmental Task Force.

80. The Realtors prepared "Montana Today" packets containing information on the state budget and property taxes. These packets were distributed to the Realtors' members. John Shontz, the Realtors' contract lobbyist in 1996, conducted continuing education meetings for the members throughout Montana on these two subjects. The Realtors did not complete a study of the "circuit breaker" weatherization issue and no packets were distributed or continuing education seminars held on this issue.

81. Tom Daubert wrote a memorandum to Jerry Anderson on February 9, 1996 discussing "bd. endorsement decision-making for various association...." The memorandum lists John Shontz as the

contact for the Realtors and indicates that Mr. Shontz "has already tentatively endorsed [the] campaign against [the] initiative [I-122]." Mr. Daubert also stated in a related "Coalition/Endorsement Contact Info" document that the Realtors were "waiting for our input."

82. Tom Daubert's MCSWL billing statements indicate that Mr. Daubert contacted the Realtors as part of his "association calls" work for MCSWL on February 21, 1996. On February 26, 1996, Mr. Daubert talked to John Shontz about "MAR position." Mr. Daubert also had discussions with Mr. Shontz on March 11 and April 8, 1996. The latter discussion involved the "realtors newsletter."

83. Mr. Shontz denies that he had any discussions with Mr. Daubert or MCSWL about I-122 in February, March or April of 1996. Mr. Shontz believes that if he had any discussions about I-122 with someone representing MCSWL, those discussions might have been with Peggy Trenk.

84. The Realtors' Government Affairs Core Group met on May 9, 1996. One of the items considered was a two-page draft resolution concerning I-122 which was being circulated for ballot signatures. The draft resolution was written by John Shontz and stated, in pertinent part, that:

A. I-122 would require mines to remove "naturally occurring molecules from the water they discharge...;"

B. The standards proposed in I-122 "do not apply to many metal mines in Montana that are or would contribute to the contamination of Montana waters...;"

C. The proposed I-122 standards "could apply to all Montana industrial and domestic water users under the due process provisions of the Montana and United States Constitutions;" and

D. Imposition of the I-122 standards "could lead to the destruction of Montana's wildlife and environment by removing necessary molecules from Montana's waters...."

85. The Government Affairs Core Group voted to adopt Mr. Shontz's draft resolution as the Realtors' policy because of the "impossible water quality standards" that would be imposed on certain Montana metal mines.

86. The Realtors' Government Affairs Core Group met to consider I-122 on September 11, 1996. Dave Lewis, Governor Racicot's budget director, discussed school funding, property taxes, Constitutional Amendment 30 and I-122. Collin Bangs, Chairman of the Environmental Task Force, presented information about CA-30, I-123, I-125 and I-122. Representatives of MCSWL and MCW did not attend the September 11, 1996 meeting. The Government Affairs Core Group passed a motion to "send the informational packet on Initiative I-122 to the entire MAR membership." The motion also stated that "Montanans for Common Sense Water Laws will pay for the mailing."

87. The Realtors' staff, President Pierce Musgrove and John Shontz were involved in writing five articles or letters opposing I-122. The documents included:

A. A September 18, 1996 letter from Mr. Musgrove to the Realtors' membership. Mr. Musgrove's letter was reviewed and

approved by the Government Affairs Core Group.

B. The August 1996 Realtors' newsletter, announced that the Realtors opposed I-122. The August newsletter included a one-paragraph description of problems with I-122.

C. The September 1996 monthly newsletter contained a more detailed statement of reasons why the Realtors opposed I-122. The same newsletter advertised six "educational meetings about Initiative 122" in six Montana cities. The "educational meetings" were sponsored and paid for by the MMA's affiliate group, the Associates of Montana Mining (see Summary of Fact 195). The Realtors did not conduct any continuing education seminars on I-122.

D. The October 1996 newsletter contained an article quoting the attorney for the proponents of I-122 alleging that passage of the initiative would result in future legislation "that would make it impossible for you to even flush a toilet." The same newsletter included a "Vote NO on I-122" window placard provided by MCSWL.

E. The November 1996 Realtors' newsletter included a one-quarter page statement, in large, bold-faced letters, urging its membership to vote against I-122. The statement included four reasons why a no vote was warranted.

88. Anne Alberts of the Realtors' staff attended the August 19, 1996 MCSWL Steering Committee meeting. This meeting was devoted to briefing groups who were supporting MCSWL on the progress of the MCSWL campaign. Tom Daubert indicates that the

briefing was held because groups supporting MCSWL were concerned that MCSWL was not doing enough. The briefing reassured the allied groups that the campaign was going well and explained MCSWL's campaign strategy. Notes of the meeting indicate that MCSWL obtained information about the allied groups' newsletter mailings from the attendees.

89. Jerry Anderson repeatedly denied during the course of this investigation that MCSWL paid for any mailings or distributions of MCSWL campaign material by the Realtors.

90. A September 16, 1996 two-page memorandum from Bob Henkel to Jerry Anderson and Bob Hoene discusses in detail the coordination of MCSWL's mailing to the Realtors. Mr. Henkel's memo indicates that he has a sample packet to review with Mr. Anderson "after lunch" on September 16, 1996. Mr. Henkel's memo also indicates that John Shontz was given 1,000 MCSWL brochures for distribution.

91. The Realtors and MCSWL prepared a "Montana Today" packet of information opposing I-122 for distribution to the Realtors' membership in September of 1996. The Realtors' staff and John Shontz worked with Bob Henkel of Sage Advertising on the "Montana Today" I-122 mailing.

92. The Realtors "Montana Today" packet opposing I-122 included the following:

A. The cover letter opposing I-122 signed by Pierce Musgrove, the Realtors' President (see Summary of Fact 87 (A)).

B. Bumper stickers, window signs, brochures and at

least twelve pages of fact sheets opposing I-122. All of the bumper stickers, window signs, brochures and fact sheets were provided by MCSWL and carried the appropriate MCSWL disclaimer.

C. An order form containing a 1-800 phone number for MCSWL and the names and addresses of MCSWL's field coordinators. The order form indicates that postcards, bumper stickers and full color brochures opposing I-122 could be obtained without cost. The order form was provided by MCSWL.

93. MCSWL paid for most of the costs associated with the preparation, distribution and mailing of the Realtors' "Montana Today" packet opposing I-122. The Realtors provided approximately 3,000 "Montana Today" packet covers and paid \$651.10 postage to mail the MCSWL I-122 packets. Sage Advertising paid Helena Industries to assemble the Realtors' I-122 packets which included Mr. Musgrove's cover letter and at least twelve pages of MCSWL documents described in Summary of Fact 92. MCSWL paid the following costs associated with distribution of the Realtors' "Montana Today" I-122 mailing:

Sage Advertising	\$2,870.94
Helena Industries	758.39
Copies of Musgrove letter	<u>173.90</u>
Total	\$3,803.23

94. All of the MCSWL payments listed in the preceding paragraph were included in MCSWL's C-6 reports as payments to Sage Advertising.

95. The Realtors received two FAXes from MCSWL. An August

27, 1996 FAX from Tom Daubert of MCSWL contains a statement made by the attorney for the proponents of I-122. The statement became the subject of the Realtors' October newsletter article opposing I-122. The Realtors also received a September 13, 1996 press release from MCSWL discussing mixing zones for sewage treatment plants and analyzing municipal discharges by the City of Missoula. The Realtors deny that they received any other press releases, correspondence or documents from MCSWL. The Realtors were not listed on the list of persons who received MCSWL's Friday Reports.

96. MCSWL paid \$294.12 for the insert included in the Realtors' September newsletter. This expenditure was included in MCSWL's C-6 reports as a payment to Sage Advertising.

97. MCSWL also reported the following payments for work done on MCSWL-related activities involving the Realtors:

Sage Advertising	7/20/96	\$30.00
Sage Advertising	10/11/96	<u>48.75</u>
Total		\$78.75

98. MCSWL's September 20, 1996 Friday Report stated that MCSWL "was represented by an informational booth and field staff at the Montana Association of Realtors state convention...." MCSWL paid \$350 for one booth space and \$150 for one convention registration.

99. The Realtors' newsletters and the "Montana Today" packet opposing I-122 were sent only to the Realtors' members. The Realtors paid for the mailing of August, September, October and November newsletters to its members.

100. The Realtors did not file any C-4 reports concerning its

I-122 activities during the 1996 election.

Montana Stockgrowers Association

101. The MSGA is a Montana agricultural nonprofit corporation. The MSGA was formed to advance the interests of Montana's stockgrowers.

102. The MSGA is governed by a ten-member Board of Directors, who represent five Montana regions. George Hammond of Hardin, Montana served as MSGA's President in 1995 and 1996. None of MSGA's officers or directors served on MCSWL's Steering Committee.

103. The MSGA has twelve standing committees. MSGA's Water Committee considered arguments for and against I-122 at its May 6, 1996 meeting. Paul Hawks, Dan Frasier and Dennis Olson (NPRC) represented MCW at the Water Committee meeting. Tom Daubert and Alan Josclynn represented MCSWL at the same meeting. A motion that MSGA remain neutral on I-122 failed on a 5 - 5 vote. The Water Committee decided to defer another vote on the issue until the MSGA's mid-year meeting in June of 1996.

104. Tom Daubert met with MSGA's attorney, John Bloomquist, on March 25 and April 22, 1996. Mr. Bloomquist denies that Mr. Daubert or anyone representing MCSWL asked MSGA to take a position on I-122. Mr. Bloomquist does not recall the meetings with Mr. Daubert.

105. MSGA's Water Committee convened on June 6, 1996 to consider a number of water issues, including I-122. Following presentations by John Bloomquist and Senators Chuck Swysgood and Tom Beck, a motion "to adamantly oppose I-122" passed.

106. The Water Committee's motion was considered at the MSGA's June 7, 1996 Board meeting. The Board voted to oppose I-122 and recommended "that a strong message on the issue be presented to MSGA members...."

107. The MSGA published five articles discussing I-122 in its "Montana Stockgrower Newsletter":

A. The February 1996 newsletter analyzes the proposed initiative and asks "Who's Next?"

B. The June 14, 1996 newsletter announced that MSGA's Water Committee had voted to "adamantly oppose I-122...."

C. The August 16, 1996 newsletter contained a two-page "MSGA Briefing Paper" explaining why MSGA opposed I-122.

D. The September 27, 1996 newsletter discussed Governor Racicot's decision to oppose I-122 and reiterated MSGA's opposition to I-122.

E. The October 25, 1996 newsletter reminded members that the MSGA membership had voted to oppose I-122 at its mid-year meeting.

108. MSGA's I-122 newsletter articles were written by MSGA staff, including John Bloomquist. Mr. Bloomquist wrote the August newsletter insert. Mr. Bloomquist denied that MSGA consulted or sought advice from MCSWL or anyone representing MCSWL in preparing its newsletter articles opposing I-122.

109. An August 7, 1996 memo/FAX from John Bloomquist to John Fitzpatrick, the MCSWL campaign office, and Alan Joselyn (MCSWL's legal counsel) is entitled "I-122 Mt. Stockgrowers Newsletter

Insert." Mr. Bloomquist's cover memorandum states:

"Folks -- attached is a draft of an insert for the Stockgrower Newsletter to be distributed 8/15/96. Please review. If I made any errors, etc., please advise. Thnx. JB"

110. Mr. Bloomquist attended the August 19, 1996 meeting of the MCSWL Steering Committee. Mr. Bloomquist attended the meeting as the representative of MSGA.

111. MCSWL's Friday Reports were sent to MSGA's President, Jim Peterson. The Friday Reports were forwarded to MSGA's attorney, John Bloomquist. Mr. Bloomquist also received MCSWL's Friday Reports from his law partner and MCSWL Steering Committee member, Frank Crowley.

112. MCSWL's June 21, 1996 Friday Report included an announcement that the MSGA had voted to "adamantly oppose" I-122. A copy of MSGA's June 11, 1996 press release announcing its decision to oppose I-122 was attached to MCSWL's Friday Report.

113. MCSWL's July 26, 1996 Friday Report states that MCSWL "provided material to the Montana Stockgrowers for a two page Q and A flyer to be mailed to 3,800 members next Thursday." John Bloomquist denies that MCSWL provided any material for insertion in MSGA's August 1996 newsletter.

114. MCSWL's September 2, 1996 Friday Report included a copy of a letter to Governor Racicot and a resolution opposing I-122 signed by MSGA and five other agricultural organizations. The resolution was dated July 24, 1996.

115. MSGA's President, Jim Peterson, does not recall that he received any press releases from MCSWL. The September 13, 1996

press release referenced in Summary of Fact 95 indicates that Mr. Peterson received a copy of the MCSWL press release. If the MSGA received MCSWL's press releases, they were forwarded to Mr. Bloomquist.

116. MSGA's newsletters were prepared for and distributed to its membership, the media and other selected association executives. MSGA denies that it distributed campaign material from either the proponents or opponents of I-122 to its members.

117. The MSGA denies that it used fair booths to distribute information opposing I-122. MCSWL and Pegasus Gold Corporation did report numerous expenditures for fair booths in the summer of 1996.

Montana Taxpayers Association

118. The MTA is a Montana nonprofit corporation. MTA's Articles of Incorporation state that the Association exists to "bring about the greatest economy in the expenditures of public moneys and funds" through "non-partisan and non-political means, in the interests of all taxpayers in the State of Montana" MTA was originally organized in 1921.

119. MTA's Board of Directors consisted of 25 members in May of 1996. State Representative Chase Hibbard was MTA's Board Chairman in 1996. Directors represented a variety of economic interests, including accounting, banking, lumber, manufacturing, real estate, sheep and wool and utilities. John Fitzpatrick of Pegasus Gold Corporation was the mining industry's representative on the MTA Board.

120. Dennis Burr was MTA's President in 1996 and Mr. Burr was responsible for writing MTA's newsletters during the 1996

elections. Mr. Burr was not a member of MCSWL's Steering Committee but he did attend the August 19, 1996 MCSWL Steering Committee meeting for allied groups. Mr. Burr personally contributed \$100 to MCSWL on September 28, 1996 and MCSWL timely reported the contribution. Mr. Burr and MTA received MCSWL's Friday Reports.

121. MTA's May 1996 newsletter included a two-part analysis of I-122. Dennis Burr wrote an editorial entitled "Water Quality or Anti-Mining Initiative?" The editorial contained Mr. Burr's analysis of the regulatory impacts of I-122. The newsletter also analyzed the tax implications of I-122 but did not specifically oppose I-122. The tax analysis concluded that the initiative "has the potential of closing some mining operations...." The MTA article then discussed the tax implications for Jefferson County, the Montana School Foundation Program and the University System if I-122 forced the Jefferson County hardrock mines to close. MTA's May newsletter printed the entire text of I-122 and included a comparison of taxes levied on Pegasus Gold Corporation's mining operations in Montana, Idaho and Nevada.

122. MTA denies that it was asked by MCSWL or anyone representing MCSWL to take a position on I-122 before or after publication of MTA's May 1996 newsletter. Mr. Burr states that he made the decision to analyze I-122 in May of 1996 because of the controversy surrounding the measure. Mr. Burr believed it was best to do an analysis early in the I-122 debate and "get it over with." Mr. Burr was solely responsible for the content of MTA's May 1996 analysis of I-122.

123. MCSWL's April 5, 1996 Friday Report includes a March 28, 1996 one-page memo from Dennis Burr to John Fitzpatrick written on MTA stationery. The memo contains a brief fiscal analysis of the potential impact of I-122 on state revenues. Mr. Burr's memo is based on information provided by Mr. Fitzpatrick. The memo assumes an average fifteen-year mine life for "three active and four proposed mines." The memo predicts significant adverse fiscal impacts on the school foundation program and the state general fund if the existing mines ceased to operate and the proposed mines were not opened. Mr. Burr's memo cautions, however, that the memo does not contain a total accounting.

124. John Fitzpatrick recalls that the origin of Dennis Burr's March 28, 1996 memorandum was a request by Mr. Burr for confidential tax information. Mr. Burr indicated that Mr. Fitzpatrick made the request for an analysis of I-122 based on information (list of mines, number of employees, taxes paid, etc.) provided by Mr. Fitzpatrick. Both Mr. Fitzpatrick and Mr. Burr deny that their discussions involved a request that MTA issue a newsletter article opposing I-122.

125. Mr. Burr asked MTA Board member John Fitzpatrick to read the May 1996 newsletter before it was published. Mr. Fitzpatrick and Mr. Burr disagreed on Mr. Burr's interpretation of the possible regulatory impacts of I-122. Mr. Burr and Mr. Fitzpatrick both assert that Mr. Burr refused to make any changes in the draft I-122 editorial and tax impact analysis.

126. MCSWL's May 24, 1996 Friday Report announced that the

"Montana Taxpayers Association devoted their [sic] entire May newsletter to the tax impact of metal mines in Montana." A copy of MTA's May newsletter was attached to the Friday Report.

127. Francis Bardanouve, a former Montana legislator and Co-Chair of MCW, wrote Mr. Burr on June 19, 1996. Mr. Bardanouve questioned MTA's analysis of I-122 and explained why he believed Mr. Burr's analysis was erroneous. Mr. Bardanouve also asked Mr. Burr to print Mr. Bardanouve's letter in MTA's next newsletter. Mr. Burr declined Mr. Bardanouve's request but offered to "help publicize an authoritative explanation of the effects of I-122, should one arise."

128. Pegasus Gold Corporation paid \$157.74 to MTA for 1,500 copies of MTA's May 1996 newsletter article analyzing the tax implications of I-122. This expenditure was made by Pegasus Gold on July 3, 1996. Pegasus Gold and MCSWL reported this expenditure in reports filed with the Commissioner.

129. MCSWL paid \$324 to MTA for 2,000 copies of MTA's May 1996 newsletter article analyzing the tax implications of I-122. This expenditure was made by MCSWL on August 14, 1996 and was timely and accurately reported by MCSWL in its September 10, 1996 C-6 report.

130. MTA's May newsletter was used and quoted extensively by MCSWL during the I-122 campaign. Mr. Burr, as MTA's Executive Director, was quoted in most of MCSWL's brochures.

131. MTA's September 1996 newsletter included a brief analysis of all the 1996 ballot issues. The September 1996 analysis of I-122 consisted of three paragraphs and summarized the

competing arguments of MCW and MCSWL.

132. MTA invited proponents and opponents of I-122 to speak at its October 23, 1996 membership meeting. Francis Bardancouve spoke in favor of I-122 and John Fitzpatrick made a presentation against the initiative. MTA voted to oppose I-122 at its October 23, 1996 membership meeting. MTA also voted to oppose I-121 and I-125 at the same meeting.

133. MTA has historically analyzed and, in some instances, taken positions on ballot issues. See, for example, the November 1994, September/October 1994, August 1994, June/July 1994, April 1993, September 1992 and October 1991 MTA newsletters.

134. Dennis Burr denies that he appeared at public forums as an opponent of I-122. Mr. Burr did speak to several service clubs and summarized the arguments for and against the various ballot measures in the 1996 election. Mr. Burr's comments on I-122 and other ballot issues were similar to the summaries contained in MTA's September 1996 newsletter.

135. MTA's 1996 newsletters were mailed to its membership and subscribers, the press, legislators and other nonprofit associations.

Western Education Foundation for Resources, Inc., and
Western Environmental Trade Association

136. WEFR was established in 1984. It is a 501(C)(3) corporation. WEFR's articles of incorporation state its purpose "is to provide for research and review of all areas regarding natural resources and to provide education and information in such areas." While WEFR maintained its standing with the IRS and the

Montana Secretary of State, it was inactive until 1994. The WEFR Board met only once in 1994 for the purpose of electing officers.

137. WEFR's 1995 expenditures totaled \$1,900, but increased to \$123,000 in 1996. WEFR's 1997 expenditures were \$4,700 as of October 7, 1997.

138. WEFR is administered by a Board of Directors generally comprised of seven or eight members.

139. Tom Daubert, MCSWL's Communications Director, began serving on WEFR's Board in late 1994. Mr. Daubert was WEFR's Treasurer in 1995 and most of 1996. He was elected President of WEFR in September of 1996.

140. WEFR's Board met eight times in 1995 and 1996. The four 1995 meetings concentrated on revising WEFR's bylaws and articles and discussing possible projects for funding. The four 1996 WEFR Board meetings involved more specific discussions of projects, how those projects would be funded and what criteria would be used to allocate funding. The WEFR Board considered a "mission statement" for its research and educational programs at its November 7, 1996 meeting.

141. WEFR's Board discussed I-122 at a WEFR Board meeting on March 8, 1996. WEFR's staff gave the Board an update on the "status of the proposed 'water quality' initiative" and noted that a separate campaign committee would be formed to address the ballot issue. The Board also discussed the need to continue WEFR's "own independent water and environmental education efforts ... as

contemplated prior to the emergence of the initiative." Tom Daubert offered to assist WEFR's staff in preparing fundraising materials.

142. Administrative staff for WEFR is provided by the Western Environmental Trade Association (WETA). WEFR reimburses WETA for staff services based on a contractual formula involving the amount of funds raised by WEFR. Peggy Trenk served as Executive Director for WETA from 1989 until the end of 1996. Ms. Trenk was an employee of WETA during this period. Ms. Trenk also served as staff for WEFR during 1996.

143. The President of WETA in 1996 was Jerome Anderson, MCSWL's Campaign Director. Two other members of MCSWL's Steering Committee, John Fitzpatrick and Gary Langley, were also 1996 members of WETA's Board.

144. WETA's Board met on March 8, 1996, the same date as WEFR's Board meeting. WETA's Board received an "in-depth briefing on the proposed water quality initiative and its potential impact on Montana's economy and job opportunities." The briefing was given by John Fitzpatrick. Tom Daubert also attended a portion of the meeting. Following Mr. Fitzpatrick's presentation, WETA's Board adopted a resolution opposing I-122.

145. At the same WETA Board meeting, the Board voted to "send a special fundraising letter to its members and contacts for purposes of assisting in our own water education efforts." Peggy Trenk reported that WETA's educational foundation, WEFR, had already initiated a weekly radio program titled "Enviro Talk" on

the Northern Ag Network. WETA asserts that no special fundraising letters were ever sent despite the Board's March 8, 1996 motion.

146. Jerry Anderson denies that there was any "connection" between MCSWL and WEFR other than WEFR's authorization for MCSWL to copy and distribute certain publications with an appropriate disclaimer.

147. Peggy Trenk was featured in several of MCSWL's advertisements and brochures opposing I-122 and was a member of MCSWL's Steering Committee. MCSWL's ads and brochures listed Ms. Trenk as the Executive Director of WETA. Ms. Trenk did not appear in the ads as a representative or employee of WEFR. WETA filed C-4 reports on September 20, 1996 and November 15, 1996 indicating that a total of \$240 of personnel time had been contributed to MCSWL. MCSWL reported \$240 of "Personnel Services" as in-kind contributions from WETA on MCSWL's September 10, October 21 and October 31, 1996, C-6 reports.

148. Peggy Trenk attended most MCSWL Steering Committee meetings including MCSWL's organizational meeting. Ms. Trenk also attended or participated in numerous meetings/conferences with Tom Daubert, Jerry Anderson, Bob Henkel or Bob Hoene.

149. Tom Daubert edited John Fitzpatrick's "draft arsenic brochure" on February 22, 1996. Mr. Daubert reviewed the arsenic brochure copy with Eric Williams on February 29, 1996. Eric Williams was primarily responsible for writing the text of WEFR's arsenic brochure. Mr. Daubert did review and edit the final brochure.

150. MCSWL's April 19, 1996 Friday Report stated that 200 copies of MCSWL's brochure had been distributed to WETA "for mailing to its members."

151. Tom Daubert had at least 15 meetings/conferences with Peggy Trenk and/or WETA in February, March and April of 1996. Topics included I-122 questionnaires (February 9), polls (February 12), scheduling for Cary Hegreberg (February 20), review of draft brochures (March 18), the "ag initiative" (April 2), "Q & A" preparation (April 10 and 16), focus groups (April 16) and "mixing zone paper" (April 22).

152. Mr. Daubert met with Jerome Anderson on April 24, 1996 to specifically discuss the "WETA mixing zones paper." Mr. Daubert wrote a memorandum to Mr. Anderson concerning "needed mixing zone research" on March 22, 1996.

153. On or about August 14, 1996, Peggy Trenk wrote a memorandum to Tom Daubert concerning a proposed "allied group briefing" to be conducted by MCSWL. Ms. Trenk's memo indicates that she didn't know whether all of the groups to be invited to MCSWL's August 19, 1996 Steering Committee meeting had taken a position opposing I-122. Ms. Trenk suggests that the "allied group" invitation list should be updated to include such groups as the MTA.

154. An August 27, 1996 memorandum from Tom Daubert to Jerry Anderson approves a draft WETA press release concerning the appearance of Dr. Marvin Goldman at WETA's annual convention on September 5, 1996. Mr. Daubert's memo indicates Dr. Goldman has

already approved the draft WETA press release. Mr. Daubert urged Jerry Anderson give his OK to the release so that Peggy Trenk "can follow up any coverage with an announcement about his speech."

155. MCSWL issued a "News Media Alert" concerning Dr. Marvin Goldman's speech at the WETA convention on September 5, 1996. Tom Daubert scheduled media interviews for Dr. Goldman during his September 5, 1996 appearance in Montana.

156. MCSWL's September 6, 1996 Friday Report indicated that Jerome Anderson spoke at the WETA convention on September 5, 1996 and "discussed I-122 and the campaign's status." Two other members of MCSWL's campaign staff, Kathy Benedetto and Tammy Johnson, attended the WETA convention.

157. MCSWL's September 6, 1996 Friday Report included Dr. Marvin Goldman's appearance at the WETA convention in its list of campaign activities for the week. Dr. Goldman spoke to WETA about "arsenic risk factors."

158. WETA filmed Dr. Marvin Goldman's speech at its September 5, 1996 convention for possible use by MCSWL.

159. MCSWL paid Dr. Goldman \$10,372.40 (\$1,500 per day) for services rendered in June of 1996. Dr. Goldman's June services included a meeting with Governor Racicot. MCSWL paid Dr. Goldman an additional \$10,930.40 in August and September of 1996. These payments by MCSWL included Dr. Goldman's appearance at the WETA convention.

160. A September 24, 1996 memorandum from Tom Daubert to Mark Cole, Peggy Trenk and Tammy Johnson lists major arguments against I-122 to be made in upcoming radio talk show appearances.

161. Peggy Trenk received MCSWL's Friday Reports and press releases.

162. WEFR produced documents on the following issues in 1995 and 1996:

A. "Protecting Property Rights in Montana," by Art Wittich (September, 1995). This publication contains a discussion of the "taking" issue under the United States and Montana Constitutions. Page 1 of the document contains WEFR's logo and address, is designated "Issue Paper No. 1," and lists Peggy Trenk as the Editor.

B. "Montana's Water Quality Laws Fully Protect Water Uses," by Steve Ackerland and M.K. Botz (October, 1995). This publication contains a discussion of the changes made by the 1995 Montana Legislature to Montana's Water Quality Act. The document contains a general analysis of the 1995 legislative changes, including new standards, health risks, nondegradation, drinking water standards and temporary water quality standards. The publication does not discuss mining or mining-related water quality issues. Page 1 of the document contains WEFR's logo and address, is designated "Issue Paper No. 2," and lists Peggy Trenk as the Editor.

C. "Water Law Changes Don't Harm Public Health," by Dr. Ken Brown (January, 1996). This publication contains a discussion of Montana's new water quality standards for arsenic, certain underlying health studies and the potential impact on public health. The publication does not discuss mining or mining-related activities. Page 1 of this document contains WEFR's logo and

address, is designated as "Issue Paper No. 3," and lists Peggy Trenk as the Editor.

D. "The Use of Mixing Zones in Montana," by Raymond Lazuk (June, 1996). This publication contains a general discussion of surface and ground water mixing zones for agricultural, industrial, municipal and residential dischargers in Montana. The document asserts that mixing zones are a necessary component of Montana's regulatory system but there is no discussion of mining or mining-related activities. Page 1 of this document contains WEFR's logo and address, is designated as "Issue Paper No. 4," and lists Peggy Trenk as the Editor.

E. "Arsenic and Montana's Waters" was published by WEFR in June of 1996. The publication contains a general discussion of Montana's new arsenic standards and background information about the existence of arsenic in the environment. The document does not contain a discussion of mining or mining-related activities. This document is a full-color brochure with numerous color pictures. WEFR is not mentioned until the final page of the document. The document lists WEFR's address along with references for the brochure text, but the document is not designated as a WEFR issue paper.

F. "Let's Clear the Air on SO₂" was published in the spring of 1996 as part of a television/media campaign on SO₂ issues in Billings, Montana.

163. WEFR asserts that the water quality publications described in Summary of Facts 162 (B), (C), (D) and (E) were produced in response to controversies which arose during the 1995

Legislature. WEFR insists that its water quality issue papers were part of an ongoing project to provide "information about environmental and resource management topics" and were not produced to influence I-122.

164. WEFR asserts that its arsenic publication was also produced in response to discussions at WETA's September 7, 1995 annual meeting. An expert on arsenic, Dr. Kenneth Brown, was the featured speaker at the September 1995 annual meeting and Montana's newspapers provided extensive coverage of the presentation. Dr. Brown also wrote the WEFR issue paper described in Summary of Fact 162 (C).

165. An April 17, 1996 FAX from Peggy Trenk to Tom Daubert contains the following cover message:

"Tom: This is a draft WEFR Brief on mixing zones -- It needs to undergo further technical review, but I'd appreciate your thoughts."

166. Tom Daubert subsequently sent WEFR's draft mixing zone paper to Jerry Anderson with a note indicating "Peggy [Trenk] can use feedback through the end of this week."

167. Arsenic and mixing zones were major issues in the I-122 campaign. MCSWL's polling showed that arsenic was a "loaded word" for the proponents and that the voters needed to understand the existing mixing zone regulations. MCSWL addressed the arsenic and mixing zone issues throughout the campaign, as illustrated by the following:

A. MCSWL's "press kit" contained a full page on the "arsenic example" and three pages on mixing zones.

B. John Fitzpatrick's slide show script contained a detailed discussion of the arsenic and mixing zone issues.

C. MCSWL's September 1996 "Montana Today" mailing to the Realtors contained fact sheets on mixing zones and arsenic.

D. An October 2, 1996 mailing to legislators and associations included fact sheets on mixing zones and arsenic.

E. MCSWL paid Dr. Marvin Goldman \$21,302.80 to discuss the arsenic issue with Governor Racicot and WETA.

168. John Fitzpatrick wrote Peggy Trenk on May 15, 1996 requesting that WEFR authorize MCSWL to use, with appropriate disclaimers, the WEFR documents described in Summary of Facts 162 (B), (C) and (D). Mr. Fitzpatrick did not include a request to use WEFR's arsenic brochure in his letter. Mr. Fitzpatrick's letter was written on MCSWL stationery.

169. Peggy Trenk responded to Mr. Fitzpatrick's request to use the WEFR documents described in Summary of Facts 162 (B), (C) and (D) in MCSWL's campaign on May 28, 1996. Ms. Trenk responded on behalf of WEFR and authorized MCSWL to use the requested documents with a proper disclaimer and other conditions.

170. Pegasus Gold Corporation paid \$2,094.80 to print 10,000 copies of WEFR's mixing zone paper. The WEFR mixing zone paper was printed between May 29 and June 6, 1996. MCSWL took 9,500 copies of WEFR's mixing zone paper and left 500 copies for WEFR. Pegasus Gold reported this printing expenditure as an in-kind contribution to MCSWL in Pegasus' C-4 report for the September 1 through October 16, 1996 reporting period. MCSWL reported Pegasus' in-kind

contribution for WEFR's mixing zone paper in MCSWL's October 31, 1996 C-6 report.

171. Fifth Avenue Advertising billed WETA \$5,223.68 for preparation and printing of 10,000 copies of WEFR's arsenic brochure on June 10, 1996. WEFR in turn billed Pegasus Gold Corporation for a "Sustaining Grant, Educational Program - Brochure" in the amount of \$5,223.68 on June 14, 1996. Pegasus paid WEFR the amount requested and reported a \$5,223.68 in-kind contribution to MCSWL for the September 1 through October 31, 1996 reporting period. MCSWL reported Pegasus' in-kind contribution for WEFR's arsenic brochure in MCSWL's October 31, 1996 C-6 report. Pegasus took 9,500 copies of the arsenic brochure for use by MCSWL and WEFR kept 500 copies.

172. WEFR paid for a series of four radio commercials in September of 1996 which ran under the title "Kids Care." The "Kids Care" radio ads were produced by 5th Avenue Advertising, one of MCSWL's media consultants. All of the radio ads dealt with water quality as follows:

A. "Those Laws Work" was an ad stating that pollution laws protect the environment and Montana has the cleanest rivers in the United States. Mining and mining-related activities were not mentioned. The only reference to a specific source of pollution was a statement that "we plant way more trees than we cut down."

B. "Field Trip" was an ad stating that new forest management practices and technology minimize erosion and pollution problems. Mining and mining-related activities were not mentioned.

C. "Cows and Clean Water" was a radio ad telling how ranchers are using good management practices to prevent pollution and protect fish. The ad states that Montana has the "cleanest waters in the country, and we all aim to keep it that way -- ranchers and farmers, loggers and miners ... Everybody protects our water and follows the same laws...."

D. "Who Owns the Water" states that everyone owns the water and everyone takes care of it. The ad indicates that the water has flowed "by a mine and several logging operations, and irrigated crops like Grandpa's," but that fish and bugs still thrive in the water.

173. Tom Daubert edited and revised the "Kids Care" radio commercials as part of his "volunteer" work as a WEFB Board member. Mr. Daubert denies that he billed MCSWL for his work on the "Kids Care" commercials.

174. WEFB paid for 21 radio editorials throughout Montana in June, July, August and September of 1996. The editorials were entitled "Enviro Talk" and were represented to be a "common sense discussion of Montana's environmental issues." The editorials dealt with a variety of topics such as timber management, oil and gas leasing on the Rocky Mountain Front and use of recreational vehicles on public lands. None of the editorials referenced I-122 or specifically discussed mining-related water quality issues. Two of the editorials were delivered by State Senator Lorents Grosfield and discussed Montana's water quality standards and the assertion that Montana's surface and ground water standards are more

stringent than the standards in other western states. One of Senator Grosfield's editorials asserted that Montana's surface and ground water standards were two-and-one-half times more stringent than Montana's drinking water standards. This editorial concluded with the assertion that "when water that is used in a mine, a feedlot, or a home is mixed back into the environment, it must be two-and-a-half times cleaner than the drinking water regulations." Senator Grosfield's statements about Montana's stringent water quality standards were used in MCSWL's brochures and fact sheets.

175. Tom Daubert denies that he edited or reviewed the "Enviro Talk" radio commercials.

176. Tom Daubert worked on an "outline of lead ideas" for Senator Grosfield on March 31, 1996. Senator Grosfield had a lunch meeting with Tom Daubert, Jerome Anderson, Bob Henkel and Bob Hoene on April 26, 1996. Mr. Daubert worked on and conferred with Peg Warner about the "Grosfield essays" on April 29, 1996.

177. Eleven other "Enviro Talk" radio commercials were given by the following individuals with ties to MCSWL:

- A. Tammy Johnson;
- B. Kathy Benedetto;
- C. David Owen;
- D. Peg Warner; and
- E. Peggy Trenk.

178. WEFR paid for a series of SO₂ television education tapes for use in addressing the Billings SO₂ debate.

179. WEFR's 1996 expenditures on the activities described in Summary of Facts 162, 172, 174 and 178 were:

A. Water Quality-Related Publications	\$ 6,498.38
B. SO ₂ Publication	1,174.60
C. Kids Care Radio Ads	42,010.46
D. Enviro Talk Editorials	14,945.00
E. SO ₂ TV Tapes	46,373.37

180. WEFR mailed copies of the documents described in Summary of Fact 162 to WETA's members, legislators, other associations and other interested persons.

181. Neither WEFR, WETA nor MCSWL filed reports for the time spent by Ms. Trenk on MCSWL-related activities except as specified in Summary of Fact 147.

Gold Institute

182. The Gold Institute has its headquarters in Washington, D.C. and is a Section 501(c)(6) corporation. The Gold Institute was formed in 1976 and has 63 corporate members, including some mining companies. One of the Gold Institute's purposes is to educate the public about the benefits and values of gold, including the economic benefits of the gold industry.

183. The Gold Institute launched its planning efforts for a public education effort in 1995. Four gold mining states (Montana, Nevada, Idaho and California) and Washington, D.C. were selected as markets for the first year of the Institute's educational program.

184. The Gold Institute produced 30-second TV spots in late 1995. The television ads were run in the Billings, Butte, Helena and Great Falls markets from March 18 to April 14, 1996. The TV ads also ran concurrently in the other target jurisdictions (Nevada, Idaho, California and Washington, D.C.).

185. The Gold Institute spent \$3,000 on a print advertisement that was part of a "Montana Mining Week" newspaper insert during the week of April 28 through May 4, 1996. The newspaper insert ad lauded the importance of gold in today's high tech world and gold's economic value to the national economy. The ad did not mention environmental regulations or water quality issues.

186. The Gold Institute suspended its public education campaign in Montana for 1996 after the March-April-May advertising. The decision to suspend the Montana portion of the Institute's public education campaign was made because:

- A. The Institute became aware of the I-122 campaign; and
- B. Controversy surrounding the New World Mine posed unique communication challenges in Montana.

187. The Institute's public education campaign continued in the other target jurisdictions in 1996.

188. The TV and newspaper ads run by the Gold Institute in March, April and May of 1996 were not aimed at any particular jurisdiction, initiative or legislation. The ads did not mention, directly or indirectly, any ballot issue, regulation or law. The ads describe the role and use of gold in modern life and the economic importance of gold.

189. The Gold Institute resumed its public education campaign in Montana in early February of 1997.

190. The Gold Institute denies that it conferred with or consulted MCSWL regarding the content, timing or placement of the TV spots. However, Tom Daubert did review several FAXes and a Fed

Ex package from the Gold Institute on April 23 and 24, 1996. Neither the Gold Institute nor Mr. Daubert could produce copies of the FAXes or Fed Ex documents. Mr. Daubert asserts he contacted the Gold Institute to get background on the gold industry and to better understand its domestic and foreign operations. Mr. Daubert believes the information received was the Gold Institute's standard "press kit."

Montana Mining Association

191. The MMA is a trade association with 501(c)(6) IRS status. The MMA is a Montana corporation. The MMA's "mission statement" states that the Association exists to help "mining companies, small miners and allied trade members succeed, understand, comply and function in a complex business and regulatory world." MMA's "primary purpose" is to "protect and promote the mining industry" in Montana.

192. Gary Langley served as the MMA's Executive Director for approximately 14 years. Mr. Langley resigned as Executive Director effective October 1, 1996. Mr. Langley was a member of MCSWL's Steering Committee during the I-122 campaign.

193. The MMA is governed by a Board of Directors consisting of at least 20 to 25 members. Many Board members in 1995 and 1996 were employees/officers of mining companies who made significant contributions to MCSWL. Don Wilson, an officer of Golden Sunlight Mines and MCSWL's initial treasurer, served as the MMA's president in 1995. Dave Rovig of Billings was president in 1996-97. Dave Young of ASARCO was vice president in 1996-97.

194. The following MMA Board members in 1995 and 1996 served on the MCSWL Steering Committee:

David Young
ASARCO

Don Wilson
Golden Sunlight Mine

Mark Cole
Dick Irvin Trucking

Mike Schern
McDonald Gold Project

Jim Liebetrau
AFFCO, Inc.

195. One category of MMA membership is the Associates of Montana Mining ("AMM"). AMM membership includes the businesses who supply equipment and services to mining companies. The AMM has a separate Board of Directors but the AMM is administered by the MMA. The chair of the AMM Board also serves on the MMA Board. The AMM President in 1996 was Mark Cole who also served on MCSWL's Steering Committee. Mr. Cole attended "more than half" of the MCSWL Steering Committee meetings.

196. The MMA has several standing committees. The Environmental and Education Committees discussed and acted on I-122 matters in 1996. Members of the MMA's Environmental Committee in 1996 included the following participants in MCSWL-related or SCEQM-related activities:

Max Botz
Terry Grotbo
Alan Joscelyn
David King
Dave Young
Peggy Trenk

Sandy Stash
Larry Brown
Doug Parker
Ray Lazuk
Rick Dale

Members of the MMA's Education Committee included the following participants in MCSWL-related or SCEQM-related activities:

Tammy Johnson
Rick Dale

Eric Williams
Kathy Benedetto

197. An undated update of the MMA's "Strategic Plan" prepared in early 1996 indicates that the MMA participated in a "public attitudes" survey about 1995 environmental legislation in conjunction with MCSWL. The same document indicates that the MMA was helping MCSWL develop a "press kit" for use in the initiative campaign.

198. Tom Daubert attended the February 15, 1996 MMA meeting and gave a report on the formation of MCSWL.

199. Gary Langley had numerous meetings/conferences with Tom Daubert and Jerome Anderson during the MCSWL campaign.

200. Tom Daubert edited a "Mining Assn. Op-Ed" on February 22, 1996.

201. MCSWL's April 19, 1996 Friday Report indicates that 1,000 MCSWL brochures were mailed out in the MMA's newsletter. Gary Langley denies that such a mailing occurred.

202. Bob Henkel sent Jerry Anderson a memorandum on April 24, 1996 which discusses in detail the MMA's proposed "Mining Week" advertising. Mr. Henkel's memo includes the text of the MMA's proposed newspaper insert and indicates that it will run on April 29, 1996. The text of the MMA's TV commercial was also included. Mr. Henkel indicates that "per instructions" the MMA television commercial added the words "gold mined in Montana." Mr. Henkel stresses the value of the MMA's advertising as follows:

"The above mentioned educational advertising is timely now, as spelled out in your focus study memo. It is important that Montanans appreciate and understand the mining industry."

203. Tom Daubert denies that he reviewed, edited or approved the Montana Mining Week advertisements.

204. Jerry Anderson attended the MMA's April 29, 1996 meeting and "reported on the campaign to defeat I-122."

205. MCSWL attended the MMA annual convention in early May of 1996. Pictures of Jerome Anderson and Tammy Johnson in attendance at the convention appeared in the MMA's May 1996 newsletter.

206. The MMA ran newspaper and television ads in Montana during Montana Mining Week (April 28 through May 4, 1996). The MMA's TV ad described the use of minerals (lead, copper, molybdenum and gold) in consumer products used by Montanans. The MMA's newspaper insert described what must be done to bring a mine into existence, how minerals are used in everyday life and the economic value of mining.

207. The MMA spent \$10,957.80 on TV advertising during Montana Mining Week (April 28 through May 4, 1996). A total of \$24,649.95 was spent on newspaper advertising, including production costs, during this same week. Among the businesses and persons who paid for the MMA's Montana Mining Week ad campaign were many of the mining companies who were MCSWL's largest contributors and several of the consulting firms who employed the individual members of SCEQM.

208. None of the MMA's Montana Mining Week advertising mentioned or discussed I-122.

209. The MMA also prepared and distributed a tabloid newspaper insert to commemorate "mining week" in 1991 and 1994.

210. Sage Advertising prepared the Montana Mining Week

advertising for the MMA. Sage has proposed continuing a Montana Mining Week newspaper insert in 1998.

211. The MMA Winter, July and August newsletters included editorials opposing I-122. The editorials were written by Gary Langley.

212. Dan Jones and Associates, Inc. did a focus group survey on I-122 on April 16, 17 and 18, 1996. The focus group report prepared by Dan Jones and Associates indicates that it was prepared for the MMA. Both MCSWL and MMA deny that the MMA paid for the April focus group analysis. MCSWL reported payments of \$18,405 to Dan Jones and Associates for the reporting period ending May 5, 1996.

213. The MMA provided MCSWL with a list of vendors for use in MCSWL's campaign. The list of vendors was supplied by ARCO, Pegasus Gold and other mining companies who contributed to MCSWL. MCSWL used the MMA's vendor list to solicit contributions and other campaign information.

214. The MCSWL Steering Committee meeting agenda for May 9, 1996 indicates that Gary Langley gave a report on the MMA convention.

215. On or about May 10, 1996, Mark Cole wrote a letter to AMM members asking them to estimate the economic impact of their businesses (e.g., number of jobs, taxes paid, etc.) and send their responses directly to Jerry Anderson at MCSWL. MCSWL's files contain responses from several AMM members (AFPCO, Energy Laboratories, and the Archibald Co.).

216. An undated memorandum from Jerry Anderson to MCSWL's field staff, probably prepared in May of 1996, discusses MCSWL's "Radio Talent Search." MCSWL staff was asked by Mr. Anderson to identify individuals who would record radio ads for MCSWL. The staff was directed to send the names to Mark Cole of AMM.

217. A July 12, 1996 FAX from Mark Cole to the AMM Board announces that the AMM is meeting on July 24, 1996 "to discuss the initiative and finalize a plan of action."

218. AMM sponsored the I-122 forums publicized in the Realtor's September 1996 newsletter (see Summary of Fact 87 (C)). Mr. Cole believes that only two of the six planned forums were actually held. The purpose of the forums was to explain to AMM members why I-122 should be defeated.

219. A September 24, 1996 memorandum from Tom Daubert to Mark Cole, Peggy Trenk and Tammy Johnson discusses important points to be made by Mr. Cole in upcoming radio talk show appearances.

220. The MMA's newsletters are sent to members, legislators, the Montana Congressional delegation and federal and state mining regulators.

221. The MMA and MCSWL did not file any campaign finance reports showing in-kind contributions by MMA to MCSWL.

STATEMENT OF FINDINGS

The investigations in this matter and the three previous I-122 complaints have been the most exhaustive and expensive ever undertaken by this office. The four I-122 complaints reflect the bitterness and divisiveness of the I-122 campaign. There is no

doubt that the I-122 complainants -- Jon Motl, Jerry Anderson, Tom Daubert, Karl Englund and Stan Frasier -- filed complaints with the Commissioner in an attempt to increase the political advantage that might be gained from a finding that MCW and/or MCSWL violated Montana's campaign finance reporting laws. Regardless of the "spite complaint" mentality that generated the I-122 complaints, my job as Commissioner of Political Practices is to thoroughly investigate allegations that Montana's campaign finance reporting laws have been violated. It is also my responsibility to apply the laws and rules as written to the facts uncovered. I do not have the authority nor do I intend to ignore the plain meaning of the laws passed by the Montana Legislature or applicable campaign finance reporting rules.

Within the preceding context, four legitimate I-122 complaints filed with my office have raised serious questions about the reporting or nonreporting of certain campaign-related contributions and expenditures during the I-122 election. My three previous I-122 decisions have attempted to address obvious violations. This decision will address in greater detail the fundamental reporting obligations that govern political committee reporting in ballot issue campaigns until a court or the Montana Legislature changes those requirements. (This decision will not address I-125 issues because I-125 was not in effect during the I-122 campaign.) Regardless of custom and past practice, the Commissioner and participants in ballot issue campaigns are bound by the laws in effect during the initiative campaign.

CLAIM I

Two law firms, Gough, Shanahan and Johnson of Helena and Poore, Roth and Robinson of Butte, did not timely file C-4 reports for their May 1996 contributions to MCSWL. However, MCSWL did timely and accurately report both contributions so the public was timely and accurately apprised of the contributions made by these two law firms.

Both law firms made their contributions at a time when this Commissioner was not asking incidental committees to report contributions already reported by a principal campaign committee. When the Commissioner's "interim policy" was implemented in mid-September of 1996, incidental committees were notified and asked to report within five days if they made additional contributions/expenditures after mid-September 1996.

The failure of Gough, Shanahan and Johnson and Poore, Roth and Robinson to file timely C-4 reports is a violation, but mitigating circumstances do not warrant pursuit of a civil penalty. The contributions of both law firms were timely and accurately reported by MCSWL.

This conclusion is consistent with the MCW/PEWQ Decision which involved, in part, an allegation that NPRC had violated applicable reporting requirements by not reporting in-kind contributions made to MCW until NPRC filed its first C-4 report in October of 1996. NPRC had made in-kind contributions to MCW beginning in February of 1996 but NPRC did not file a C-4 form reporting its February through September 1996 in-kind contributions until October 24,

1996. This Commissioner declined to find that NPRC's failure to file C-4 reports for the months of February through September of 1996 constituted a violation of campaign finance reporting requirements (see pp. 15 and 16 of the MCW/PEWQ Decision).

It must be emphasized that this conclusion does not excuse the principal I-122 campaign committees, MCSWL and MCW, from timely and accurately reporting all contributions and expenditures made by supporting incidental committees during the 1996 election. Similarly, incidental committees that failed to accurately report all contributions and expenditures during the 1996 election will be subject to civil penalty actions.

CLAIM 2

The same rationale in the Claim 1 findings applies generally to those incidental committees that did not file C-4 reports within five days after receiving notice from the Commissioner (see Summary of Fact 6). That is especially true for 53 of the 57 incidental committees whose contributions were timely and accurately reported by MCSWL and who ultimately filed accurate C-4 reports confirming their contributions to MCSWL. There are, however, four incidental committees whose conduct deserves special attention.

Pro-Sport Productions failed to file a C-4 report despite receiving several notices from the Commissioner. Pro-Sport Productions has violated ARM 44.10.411 and Section 13-37-226(5), MCA. However, it must be noted that Section 13-37-128, MCA, authorizes a County Attorney or the Commissioner to bring an action for collection of a civil penalty in an amount up to \$500 or three

times the amount of the illegal contribution, whichever is greater. The maximum civil penalty that could be collected from Pro-Sport is \$500. This civil penalty limit and the fact that MCSWL timely and accurately reported the Pro-Sport contribution must be considered in deciding whether to pursue a civil penalty action against Pro-Sport Productions.

The rationale of the preceding paragraph also applies to Archibald Co., which failed to file a C-4 report. MCSWL timely reported the \$100 monetary contribution from Archibald Co. MCSWL did not report the in-kind contribution from Archibald Co. described in Summary of Fact 15. Imposition of a civil penalty against MCSWL for this violation should be addressed in a civil penalty action addressing all of the MCSWL violations described in this decision. However, a decision to pursue a civil penalty action against Archibald Co. must involve a consideration of the same issues described in the preceding paragraph.

Golden Sunlight Mines was a major contributor to MCSWL during the I-122 campaign. Golden Sunlight's April 17, 1997 C-4 report shows that it contributed \$392,347.82 to MCSWL beginning in March of 1996. A portion of Golden Sunlight's initial in-kind contribution was not reported by MCSWL until later in the I-122 campaign. Golden Sunlight made a \$3,000 in-kind contribution to MCSWL in March of 1996 that was one in a series of monthly \$3,000 consulting fee contributions by Golden Sunlight. MCSWL did not report the March 1996 in-kind contribution on its April 10, 1996 C-6 report but MCSWL did timely and accurately report subsequent consulting

fee in-kind contributions made by Golden Sunlight. MCSWL ultimately "caught-up" on the reporting of Golden Sunlight's March 1996 in-kind contribution in MCSWL's October 21, 1996 C-6 report. Nevertheless, MCSWL under-reported the in-kind contributions made by Golden Sunlight by \$3,000 for the C-6 reports filed in April, May, June, July, August and September of 1996. The public was not timely and accurately apprised of Golden Sunlight's total in-kind contributions to MCSWL for six months during the I-122 campaign. MCSWL violated Section 13-37-226, MCA, by not timely and accurately disclosing the \$3,000 in-kind contribution made by Golden Sunlight in March of 1996.

It must be noted, however, that MCSWL's violation does not appear to be intentional. MCSWL accurately and timely reported over \$389,000 of contributions by Golden Sunlight during the I-122 campaign. In fact, less than two weeks before the November 6, 1996 election, MCSWL had over-stated Golden Sunlight's in-kind contributions by \$9,160.23. MCSWL accurately reconciled the amount of in-kind contributions made by Golden Sunlight on April 17, 1997, more than a month before the Englund and Frasier complaints were filed. These facts do not lead to the conclusion that MCSWL was trying to hide Golden Sunlight's substantial involvement in the campaign against I-122.

Both Golden Sunlight and MCSWL failed to timely and accurately report in-kind contributions involving services provided by Don Wilson to MCSWL.

Golden Sunlight, like other incidental committees, was not asked to file a C-4 report until mid-September of 1996. The Commissioner sent Golden Sunlight written notices that it was

obligated to file C-4 reports on September 13 and October 24, 1996. Golden Sunlight did not file an initial C-4 report until election day (November 6, 1996) but has since filed C-4 reports in compliance with applicable reporting schedules. For the reasons previously discussed in this decision and based on the facts recited in this finding, Golden Sunlight's failure to file timely responses to the Commissioner's notices will not be pursued.

Seven-Up Pete reported most of its in-kind contributions for the September 6 through October 26, 1996 reporting periods twice (Summary of Fact 22). Most of the \$24,470.21 in-kind contribution reported on Seven-Up Pete's October 31, 1996 C-4 report was reported again on its November 25, 1996 C-4 report. Accordingly, MCSWL did not fail to report \$22,286.20 of in-kind contributions made by Seven-Up Pete during the 20-day post-election period because Seven-Up Pete did not actually make these in-kind contributions. MCSWL's October 26, 1996 C-6 report correctly stated Seven-Up Pete's in-kind contributions for the period.

It is necessary to discuss at this point in-kind contributions and the reporting requirements of Montana law. Section 13-1-101(6)(a)(iii), MCA, includes in the definition of "contribution" the "payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee." However, "services provided without compensation by individuals volunteering a portion or all of their time on behalf of a

candidate or political committee ..." are not a contribution (Section 13-1-101(6)(b)(i), MCA). An "individual" is defined as a "human being" and does not encompass businesses, corporations, membership associations, partnerships or clubs (Section 13-1-101(15), MCA). These unambiguous statutory definitions make it clear that an employer who pays his or her employees or independent contractors to serve on campaign steering committees, stuff campaign envelopes, write campaign brochures, conduct scientific studies for the campaign or raise campaign funds is making a reportable in-kind campaign contribution.

Not all in-kind contributions are as clear-cut as the examples cited in the preceding paragraph. Rules have been adopted by my predecessors to address more complex issues. ARM 44.10.321 was first adopted in 1976 and last amended in 1979. ARM 44.10.321(2) defines the term "in-kind contribution" to mean "the furnishing of services, property, or rights without charge or at a charge which is less than fair market value" to a candidate or political committee (third party payments of compensation to campaign participants and individuals who volunteer their time are specifically excluded from the rule definition). Applying this definition and the statutory definitions cited in the preceding paragraph, the following rules apply:

1. Only an individual (a human being) may escape reporting an in-kind contribution by volunteering his or her time (Section 13-1-101(6)(b)(i), MCA). If the campaign-related work by a human being also involves the use of equipment (FAX machines, telephones, etc.)

or property (the use of office space), the fair market value of the equipment and property must be reported.

2. Entities, other than a human being, may not volunteer time and escape reporting in-kind contributions. If a business, corporation, membership association, partnership, club, union, committee, firm, or group makes an employee, officer, board member or independent contractor available for campaign-related services, the fair market value of those services must be reported by the entity as an in-kind contribution.

3. Entities, including a human being, who provide equipment or property for campaign-related activities, must report the fair market value of the equipment and property. For example, the fair market value of providing phones, FAX machines, membership lists and similar items for use in a campaign must be determined and reported.

4. ARM 44.10.513 and 44.10.533 define how in-kind contributions and expenditures must be valued and reported. These rules and the pertinent statutory definitions have been in place for 20 years!

This Commissioner acknowledges that such factors as how an employee or independent contractor is paid (hourly fee v. annual salary) and when and where campaign-related work is performed may affect the amount of the in-kind contribution to be reported. However, the basic rules are that if an employee, officer, board member or independent contractor is paid by an employer or third party to perform campaign-related services, such services

constitute an in-kind contribution to the candidate or political committee. Any work done at the employer's offices and any use of the employer's equipment or property must be reported as an in-kind contribution. If an employee or independent contractor writes a campaign report after work hours or films a campaign commercial on Sunday and receives no compensation from his or her employer or third party, then the services fall under the "volunteer" exception. There is no reportable in-kind contribution. Conversely, if an employee or independent contractor writes a campaign report after work hours but receives compensation (salary, overtime or comp time pay) for such services, it is a reportable in-kind contribution. If an employer's office or equipment is used for campaign activities, it is also reportable under Montana's definition of contribution. Allowing a candidate or political committee to use office telephones, FAX machines, copiers, paper and stamps for campaign purposes has substantial value to the candidate or political committee.

Based on the preceding discussion, numerous businesses, membership associations and incidental political committees and MCSWL failed to timely and accurately report certain in-kind contributions of services. The most obvious omission involved the failure to report service on MCSWL's Steering Committee as an in-kind contribution. MCSWL named a distinguished group of Steering Committee members to guide the campaign. These individuals used their knowledge of mining, politics and Montana to run a successful campaign against I-122. Most Steering Committee meetings were held

during working hours on weekdays. All of the Steering Committee members were being paid either by MCSWL or their employers. MCSWL payments to Steering Committee members working for MCSWL were properly reported by MCSWL. The employers of the other Steering Committee members did not properly report service by their employers as an in-kind contribution and neither did MCSWL.

The Montana Chamber of Commerce, AFFCO, Dick Irvin, Inc., ARCO and Placer Dome, Inc., failed to file C-4 reports or filed C-4 reports that did not include any in-kind contributions. MCSWL failed to report in-kind contributions for these Steering Committee participants.

ASARCO reported services provided by Frank Crowley in representing MCSWL at two debates on I-122. However, ASARCO's C-4 report was not timely filed and did not include other in-kind services provided by Frank Crowley, Doug Parker and Dave Young to MCSWL. For example, ASARCO wrote letters to Governor Racicot opposing I-122 and shared permit information with MCSWL about its Montana operations for use in the MCSWL campaign. ASARCO also failed to report the in-kind services provided by Mr. Crowley, Mr. Young and Mr. Parker at MCSWL Steering Committee meetings. MCSWL failed to timely and accurately report ASARCO's in-kind contributions.

Seven-Up Pete and MCSWL did not timely report in-kind contributions made to MCSWL by Seven-Up Pete (Summary of Fact 33).

ARCO's C-4 report does not include any in-kind contributions

to MCSWL. ARCO officials attended several MCSWL Steering Committee meetings and meetings with MCSWL campaign officials. Neither ARCO nor MCSWL reported the value of these in-kind contributions to MCSWL.

ARCO asserts that attendance by its employees at MCSWL Steering Committee meetings is not an in-kind contribution. ARCO claims that its employees only attended MCSWL's Steering Committee meetings to monitor MCSWL's campaign and MCSWL's expenditure of ARCO's \$50,000 cash contribution. The relevant facts are that ARCO attended MCSWL's Steering Committee meetings after ARCO had already made a significant cash contribution to MCSWL and for the purpose of monitoring MCSWL's campaign activities. ARCO was not attending MCSWL's Steering Committee meetings to determine if ARCO should support MCSWL. ARCO's decision to support MCSWL's campaign had already been made. ARCO's decision to monitor how MCSWL was spending ARCO's \$50,000 cash contribution is the essence of campaign coordination. MCSWL used its Steering Committee meetings to make campaign decisions and provide crucial information about campaign efforts to the attendees. The ARCO officials who attended the MCSWL Steering Committee meetings were privy to MCSWL's strategy. ARCO could voice its opinions about campaign strategy to MCSWL's campaign decision-makers. Even if ARCO's employees said nothing at such meetings, ARCO's silence constitutes acquiescence to the campaign decisions made at the MCSWL Steering Committee meetings.

This Commissioner understands that political campaigns involve

requests for support ranging from financial contributions to passage of resolutions. Consideration of requests for support from political committees or candidates, absent other evidence of coordinated campaign activity, does not become a reportable in-kind contribution by the person receiving the solicitation of support. However, once a person or membership organization makes a decision to support the campaign of a political committee or candidate, attendance at the political committee's or candidate's decision-making meetings is a reportable in-kind contribution unless otherwise exempted by law or rules. The sharing of campaign strategy and information and the acquiescence of the attendees, whether by vote or silence, is one of the most valuable commodities in a campaign. That is especially true where the attendees, like Sandy Stash of ARCO and the executives representing the corporations and membership organizations discussed in this decision, have vast experience dealing with state government, mining regulations and public opinion.

Dr. Lindsay Norman, Chancellor of Montana Tech, engaged in coordinated campaign activity with MCSWL. Dr. Norman supplied MCSWL with a list of Montana Tech professors who could provide valuable campaign information. However, it does not appear that the plan to involve Montana Tech in the MCSWL campaign was implemented. In addition, Dr. Norman has resigned as Montana Tech's Chancellor and he will leave office in June. Accordingly, this Commissioner will not pursue this violation against Montana Tech. MCSWL, however, had an obligation to determine the fair

market value of Montana Tech's contribution and include the amount in its C-6 reports as an in-kind contribution.

Russ Ritter represented the Washington Corporations on the MCSWL Steering Committee and was involved in other MCSWL activities. The Washington Corporations filed a C-4 report on March 12, 1998 indicating that Mr. Ritter spent six hours at MCSWL Steering Committee meetings. It appears that the Washington Corporations' C-4 report understates the time spent by Mr. Ritter on MCSWL activities. The Washington Corporations did not timely or accurately report its in-kind contributions to MCSWL. MCSWL did not timely or accurately report the Washington Corporations' in-kind contribution.

Four membership associations (Montanans for Private Property Rights, the Montana 4 X 4 Association, Montanans for Multiple Use - Mission Valley Chapter and the Montana Mining Association) provided MCSWL with their membership lists for use in MCSWL's campaign. Providing a principal campaign committee like MCSWL with a membership list is an in-kind contribution that has great value to a campaign. None of these organizations filed C-4 reports. MCSWL did not report the value of these membership lists as in-kind contributions.

CLAIM 3

The issue of contributions being reported on MCSWL's C-6 report but not timely reported on incidental committee C-4 forms has been discussed extensively on pages 3 through 7 of this

decision and Statement of Findings 1 and 2. The remaining Frasier allegation in Claim 3 is that Seven-Up Pete made contributions that were not reported by MCSWL.

Seven-Up Pete's contributions to MCSWL are addressed in Summary of Fact 22. Seven-Up Pete double-reported contributions in its November 25, 1996 C-4 report. Most of the November 1996 in-kind contributions reported had been made and reported in the previous reporting period. MCSWL had no obligation to report contributions that had not been made.

CLAIM 4

The allegations against MTA, WEFB, MSGA, the Realtors, SCEQM, MMA and the Gold Institute require an analysis of certain free speech and freedom to associate issues. The First Amendment protects political association as well as political expression (*Buckley v. Valeo*, 424 U. S. 1, 15, 96 S. Ct. 612, 46 L.Ed.2d 659 (1976)). But *Buckley* also clearly establishes that freedom of speech, the right to associate and the right to participate in political activities are not absolute (see, e.g., *Buckley*, *supra*, at pp. 25, 29 and 38). Mr. Frasier and Mr. Englund allege that MTA, WEFB, MSGA, the Realtors, MMA and the Gold Institute became political committees subject to campaign finance reporting requirements because of their activities during the I-122 campaign. Mr. Frasier and Mr. Englund allege that SCEQM, which did register as a political committee, did not properly report all expenditures and contributions.

Montana law defines a "political committee" in pertinent part

as "any combination of two or more individuals or a person other than an individual who makes a contribution or expenditure...to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue..." (Section 13-1-101(18), MCA). The term "person" includes corporations and associations such as MTA, WEFR, MSGA, the Realtors, MMA and the Gold Institute (see Section 13-1-101(17), MCA). The definitions of "contribution" and "expenditure" encompass a "payment, or distribution of money or anything of value to influence an election" (Sections 13-1-101(6) and (10), MCA).⁴

The first determination to be made is whether the actions of MTA, WEFR, MSGA, the Realtors, SCEQM, MMA and the Gold Institute during the I-122 campaign constituted contributions or expenditures to influence the I-122 election, thus making these organizations incidental political committees. This Commissioner fully understands that laws which regulate speech and association must be narrowly applied to avoid the unconstitutional chilling of protected First Amendment rights. In the absence of Montana court decisions specifically addressing the First Amendment issues raised by the Frasier/Englund complaints, the Commissioner must look to federal court cases construing similar language under the Federal Election Campaign Act.

Numerous federal cases interpreting and applying *Buckley* have narrowly construed the phrase "payment, or distribution of money or

⁴Montana's definitions of "contribution" and "expenditure" are, in pertinent part, virtually identical to the definitions of the same terms in the Federal Election Campaign Act, 2 U.S.C. §431(8)(A)(i) and (9)(A)(i).

anything of value to influence an election" to avoid infringing on protected speech (see, e.g., *New York Civil Liberties Union v. Acito*, 459 F. Supp. 75 (1978); *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 107 S. Ct. 616 (1986); and *Akins v. FEC*, 101 F. 3d 731 (D.C. Cir. 1996)). The extent to which First Amendment rights may be subject to campaign reporting requirements is dependent on whether the campaign activity is an "independent expenditure" or a "coordinated expenditure."

An independent expenditure is entitled to the greatest First Amendment protection "because ...[it is] closest to pure issue discussion and therefore farthest removed from the valid goal of preventing election corruption" (*Akins, supra*, at p. 741). An independent expenditure is made without solicitation by, direction from or coordination or consultation with any candidate or the candidate's committee and/or campaign (*Id.*; and *Montana Chamber of Commerce v. Argenbright*, CV-976-H-CCL, Opinion and Order, February 18, 1998).⁵ An organization's independent expenditure only loses its expansive First Amendment protection from campaign finance disclosure if its spending becomes "so extensive that the organization's major purpose may be regarded as campaign activity ..." or the expenditure involves "express advocacy" of the election or defeat of a candidate (*Akins, supra*; *NCFL, supra*, at p. 249; *FEC*

⁵Montana's campaign finance reporting rules include a definition of "independent expenditure" but the term only references campaigns involving candidates. ARM 44.10.323(3) defines the term to include "an expenditure for communications advocating the success or defeat of a candidate which is not made with the cooperation or prior consent of or in consultation with, or at the request or suggestion of, a candidate or an agent of a candidate or committee...."

v. *Central Long Island Tax Reform*, 616 F. 2d 45 (2d Cir. 1980); and *FEC v. Furgatch*, 807 F. 2d 857 (9th Cir. 1987)).

A payment or expenditure made in coordination or consultation with a candidate or political committee raises fewer constitutional concerns and may be subject to more exacting campaign finance reporting requirements (*Akins, supra*, at pp. 742 and 743). Coordinated expenditures are contributions under federal law and the organization or person making the coordinated expenditure will be subject to political committee reporting obligations (*Id.*).

Montana's commitment to full disclosure of contributions and expenditures in political campaigns began with an initiative in 1912. When Montana enacted a sweeping revision of its campaign finance reporting laws in 1975, the Montana Legislature clearly embraced full disclosure of campaign-related spending:

It is the purpose of this act to establish clear and consistent requirements for the full disclosure and reporting of the sources and disposition of funds used in Montana to support or oppose candidates, political committees, or issues....(Section 1, Chapter 480, Laws of 1975.)

The Ninth Circuit Court of Appeals affirmed Montana's right to require the public disclosure of contributions in ballot issue campaigns in *C & C Plywood Corp. v. Hanson*, 583 F. 2d 421 (9th Cir. 1978); see also 420 F. Supp. 1254 (1976)). *C & C Plywood* involved the 1975 Montana Legislature's enactment making it unlawful for a corporation "to pay or contribute" to a ballot issue campaign. The Ninth Circuit declared that Montana's total ban on corporate payments or contributions in support of or in opposition to ballot

issues was unconstitutional and violated corporate First Amendment rights (*Id.*, at p. 425). But the Court cited Buckley for the proposition that disclosure of the sources of contributions "was the least intrusive means of curbing potential corruption" (*Id.*). The decision expressly recognized that Montana had the right to enact campaign disclosure requirements for payments or contributions made in ballot issue campaigns (*Id.*).

Within the context of the preceding discussion, it is clear that a membership association or corporation that expressly advocates the passage or defeat of an initiative, or coordinates an expenditure with a ballot issue committee, falls within the definition of a political committee under Montana law (Section 13-1-101(18), MCA). Membership associations are generally comprised of two or more individuals (human beings). Most membership associations are also non-profit corporations (e.g., MSGA, MTA, the Realtors, the Gold Institute, the MMA and WEPR). Montana's "political committee" definition includes two or more individuals or a person other than an individual (e.g., a corporation, association or firm) who makes a contribution or expenditure to support or oppose a ballot issue.

Montana law deals with the First Amendment implications of the broad definitions of political committee, contribution and expenditure, in part, by exempting certain organizational communications from campaign reporting requirements. Sections 13-1-101(6)(b)(iii) and 13-1-101(10)(b)(iv), MCA, exempt communications by a membership organization or corporation with its members, stockholders or

employees from the definition of contribution and expenditure.⁶ The Frasier and Englund complaints against MTA, WEFR, MSGA, the Realtors, MMA and the Gold Institute require a determination of just how expansive the organizational communication exemptions are when applied to the facts of this matter.

The rules of statutory construction require that the plain meaning of the words in a statute be applied (Section 1-2-206, NCA; *Lovell v. State Fund*, 260 Mont. 279, 860 P.2d 95 (1993); and *Tongue River Electric Co-op, Inc. v. Montana Power Co.*, 195 Mont. 511, 636 P. 2d 862 (1981)). The courts and this Commissioner do not have the power to insert language that the Legislature has omitted or to omit what the Legislature has inserted (*Gaub v. Milbank Ins. Co.*, 220 Mont. 424, 715 P. 2d 443 (1986); *State ex rel. Palmer v. Hart*, 201 Mont. 526, 655 P. 2d 965 (1982)). The Montana Legislature has unambiguously defined the scope of the organizational communication exemptions as follows:

1. The cost "of any communication by any membership organization or corporation to its members or stockholders or employees" does not have to be reported as a contribution or expenditure under Montana law. The exemptions apply only to the costs incurred by the membership organization or corporation. If a membership organization or corporation coordinates its membership, shareholder or employee communication with a candidate or principal campaign committee, the candidate and/or the principal

⁶Montana's organizational communication exemptions from campaign reporting requirements are similar to the exemptions under the Federal Election Campaign Act (see 2 USC §431(9)(B)(iii) and 431(8)(B)(vi)).

campaign committee must timely and accurately report its costs and expenditures.

2. The organizational communication exemptions are absolute. They apply to "any communication," even if there is coordination with a candidate or principal political committee. The statutory language makes no distinction between organizational communications prepared solely by or at the expense of the corporation or membership organization and organizational communications prepared in coordination with or by a candidate or a principal campaign committee.

3. The organizational communication exemptions only apply if the communication is limited to the membership, shareholders or employees of the membership organization or corporation. This does not mean that the exemptions are forfeited if the organization or corporation honors requests for copies of the communication from someone other than a member, shareholder or employee. (The First Amendment requires a narrow application to avoid free speech issues.) But the exemptions do not allow unsolicited distribution of campaign-related membership communications to the press, legislators, other membership associations or the public at large unless the corporation or membership association is prepared to report its expenditures as in-kind contributions.

This interpretation is consistent with previous rulings of the Commissioner. This Commissioner and his predecessor have ruled that distribution of a membership organization's communication to persons other than the members of the organization subjects the organization to the registration and reporting requirements of

Montana's campaign finance laws.

In the Matter of the Complaint Against Project 94 HEAL Montana, Summary of Facts and Statement of Findings, September 30, 1994 ("Project HEAL Decision"), involved a complaint about Project HEAL's distribution of a legislative candidate's brochure in a membership mailing. The complainant had requested that Project HEAL include him in its membership mailings even though he did not intend to become a member of Project HEAL. This Commissioner ruled that the complainant could not request copies of the membership mailing and then argue that Project HEAL's compliance with his request violated the organizational communication exemption. The decision makes it clear, however, that if Project HEAL was making unsolicited distributions of its organizational communications to legislators or groups other than its members, such distributions would subject the Project to political committee reporting requirements.

Commissioner Dolores Colburg ruled on the organizational communication exemptions in a 1988 letter to the Montana Education Association ("MEA"). The MEA wanted to make copies of a campaign tape prepared by Nancy Keenan, who was a candidate for Superintendent of Public Instruction. MEA intended to show the tape to its local chapters. MEA was concerned that it would become a political committee if it engaged in such activity. Commissioner Colburg advised in a February 4, 1988 letter that the organizational communication exemptions applied so long as the MEA only played the tape for its members at local MEA chapter meetings. Ms.

Colburg made it clear that distribution or use of the tapes by MEA outside of MEA membership meetings would subject the MEA to political committee reporting requirements.

It must be noted that the organizational communication exemptions do not apply if the corporation or membership organization is a "primary political committee" (Sections 13-1-101(6)(b)(iii) and 13-1-101-(10)(b)(iv), MCA). Unfortunately, the term "primary political committee" is not defined in Montana's campaign finance laws and rules. The Federal Election Campaign Act's organizational communication exemption states that the exemption does not apply if the corporation or organization is organized primarily for the purpose of influencing the nomination or election of a federal candidate (2 USC §431)(9)(B)(iii)). It would be logical to assume that the Montana Legislature intended to adopt a similar exception to Montana's membership communication exemptions. However, because the facts of this matter do not require resolution of the "primary political committee" issue, it is not necessary to address this legislative anomaly at this time. (The Project HEAL Decision contains a discussion of possible interpretations of the term "primary political committee.")

The alleged violations at issue under Claim 4 involve the least intrusive First Amendment inquiry. Did the membership associations in question fail to report certain expenditures opposing I-122 as in-kind contributions to MCSWL? This inquiry does not require the disclosure of membership lists. The source of the funds used to pay for the expenditures (membership dues v.

grants) is not an issue except as it relates to possible coordination with MCSWL or any of the other incidental political committees who supported MCSWL. This inquiry does not involve limits on expenditures from corporate general treasuries under I-125 or subsequent acts of the Legislature (see *Montana Chamber of Commerce, supra*). This inquiry does not involve prohibitions or limits on political committee expenditures or a prohibition against election day expenditures (*Montana Right to Life Association, Cause No. 96-165-BLG-JDS, Order, February 3, 1998*). The issue is whether the membership organizations and corporations in question should have reported independent expenditures expressly advocating the defeat of I-122 or expenditures made in coordination, consultation or concert with MCSWL.

The importance of this inquiry goes to the heart of Montana's campaign finance disclosure law. Preventing corruption or the appearance of corruption in the election process is essential to maintaining citizen confidence in our political system (*Montana Chamber of Commerce, supra, at p. 21*). Full and complete disclosure of all expenditures and contributions made to influence the I-122 election is essential to maintaining public confidence in Montana's initiative process. My job is to determine whether there has been full and complete disclosure of all expenditures and contributions by MCSWL, MTA, MSGA, the Gold Institute, SCEQM, MMA, WEFR, WETA and other businesses, membership associations and groups that opposed I-122.

THE GOLD INSTITUTE

The Gold Institute did not become a political committee subject to Montana's campaign finance reporting requirements by virtue of its 1996 activities in Montana. While there is evidence of some interaction between the Gold Institute and MCSWL in late April of 1996, the Gold Institute had already run its television ads in Montana (the ads ended April 14, 1996). The Gold Institute's ad in the early May 1996 *Montana Mining Week* newspaper insert did not mention mining regulations, ballot issues or water quality. The Gold Institute did not engage in express advocacy opposing I-122. There is insufficient evidence to conclude that the Gold Institute engaged in coordinated campaign activity with MCSWL. The Gold Institute and MCSWL did not violate Montana's campaign finance reporting laws by failing to report the Gold Institute's Montana expenditures as an in-kind contribution.

MONTANA STOCKGROWERS ASSOCIATION

The MSGA expressly advocated the defeat of I-122. It is also clear that the MSGA coordinated its actions against I-122 with MCSWL. The MSGA became an incidental political committee because its newsletters were sent unsolicited to the media and other selected associations. MSGA became an incidental political committee subject to C-4 reporting requirements during the I-122 campaign. MSGA failed to report the cost of preparing and distributing its newsletter communications.

John Bloomquist attended the August 19, 1996 MCSWL Steering Committee meeting for "allied groups." Even though this meeting

was primarily devoted to briefing allied groups about the status of the I-122 campaign, the value of Mr. Bloomquist's time in representing the MSGA at the meeting must be reported. Because the MSGA became a political committee subject to campaign finance reporting requirements for the reasons stated in the preceding paragraph, MCSWL-related activities involving the MSGA Board or its staff should have been reported.

MCSWL failed to report as in-kind contributions the MSGA activities described in the preceding two paragraphs. Neither MCSWL nor MSGA reported any in-kind contributions to MCSWL.

WEFR and WETA

The interrelationship and interaction between WETA and MCSWL is well documented (see Summary of Facts 141 through 171). Jerry Anderson was both the President of WETA and MCSWL's Campaign Director in 1996. Three other WETA Board members served on the MCSWL Steering Committee. Peggy Trenk, WETA's Executive Director, was a vigorous participant in MCSWL's campaign. WETA and MCSWL reported \$240 of personal services by Ms. Trenk for filming MCSWL TV ads as an in-kind contribution to MCSWL. However, WETA and MCSWL did not report any other MCSWL-related services by Ms. Trenk during the campaign. She was a regular attendee at MCSWL Steering Committee meetings, wrote WETA press releases involving MCSWL-financed activities, appeared on radio talk shows as an opponent of I-122 and helped coordinate MCSWL's "allied group" activities. Ms. Trenk had numerous meetings with Tom Daubert and MCSWL staff to discuss everything from draft campaign brochures to focus groups.

Neither MCSWL nor WETA reported these significant in-kind contributions by Ms. Trenk.

MCSWL did properly report expenditures for certain activities that were represented to be WETA activities. Although WETA issued press releases indicating that Dr. Marvin Goldman's appearance at WETA's September 5, 1996 annual convention was sponsored by WETA, Dr. Goldman's appearance was actually paid for by MCSWL. MCSWL timely and accurately reported the payments for Dr. Goldman's appearance at the 1996 WETA convention. However, neither MCSWL nor WETA timely or accurately reported any services provided by Ms. Trenk in writing the press releases.

WEFR's interrelationship and interaction with MCSWL was also extensive. The primary WEFR issue is whether any of WEFR's resource education efforts in 1996 constituted political committee activity or whether the organizational communication exemptions apply. This determination requires a careful examination of the facts.

WEFR's primary purpose is resource education. The actions of the 1995 Legislature spurred WEFR and WETA into producing issue papers explaining why the 1995 water quality law revisions were necessary and justified. Some WEFR issue papers were produced as legitimate resource education tools before I-122 became the overriding issue. Issue Papers 2 and 3 ("Montana's Water Quality Laws Fully Protect Water Uses" and "Water Law Changes Don't Harm Public Health") were prepared before MCSWL was formally organized and before the language of I-122 had been approved. However,

Summary of Facts 149, 151, 152, 165, 166, 167, 168, 169, 170 and 171 indicate that other WEFR documents were prepared to influence the I-122 election. In particular, there was extensive coordination and consultation between WEFR and MCSWL about the mixing zone issue paper and the arsenic brochure.

Peggy Trenk was an active participant in the MCSWL campaign. She was also the editor of WEFR's issue papers and the arsenic brochure.

Tom Daubert, MCSWL's Communications Director, served as WEFR's Treasurer in 1995-96 and became its President in 1996. Mr. Daubert reviewed and edited the mixing zone issue paper. Mr. Daubert billed MCSWL for performing these services and MCSWL paid him. Peggy Trenk sent Mr. Daubert a draft of this mixing zone paper soliciting his thoughts seven weeks before the paper was published. Mr. Daubert discussed WEFR's mixing zone paper with Jerry Anderson on April 24, 1996.

Eric Williams was paid by Pegasus Gold Corporation, one of MCSWL's biggest contributors, to write the arsenic brochure. Mr. Williams' work on the arsenic brochure was not reported as an in-kind contribution to MCSWL by either Pegasus Gold or MCSWL. Tom Daubert reviewed and edited the arsenic brochure. MCSWL paid Mr. Daubert to perform these services.

On May 15, 1996, three weeks before WEFR's mixing zone paper was printed and copied, John Fitzpatrick asked WEFR's permission to use the mixing zone paper in MCSWL's campaign. Pegasus Gold paid to have 10,000 copies of the mixing zone paper printed. Copying

was completed on June 7, 1996. Pegasus Gold took 9,500 copies for use in the I-122 campaign and left 500 copies for use by WETA. The timing of these actions substantiates that MCSWL knew the mixing zone paper was a valuable campaign document before it was printed.

Similar facts exist for the arsenic brochure. One of MCSWL's media consultants, Fifth Avenue Advertising, designed and printed the arsenic brochure. Fifth Avenue billed WEFR for 10,000 copies of the arsenic brochure on June 10, 1996. WEFR, in turn, billed Pegasus Gold for Fifth Avenue's design and copying costs on June 14, 1996. Pegasus took 9,500 copies of the arsenic brochure for use in the MCSWL campaign and left 500 copies for WETA. This action confirms that MCSWL knew the arsenic brochure was a valuable campaign document before it was printed.

My conclusion that WEFR's arsenic brochure was designed to be an MCSWL campaign document also arises out of the design of the brochure itself. Unlike the other three water quality issue papers, the arsenic brochure was not printed on WEFR letterhead, designated as an "issue paper" or assigned a number. The arsenic brochure was a campaign-style brochure, complete with full color printing and photographs.

Mixing zones and arsenic were major issues throughout the I-122 campaign. MCSWL paid Marvin Goldman \$1,500 per day to lobby Governor Racicot and address the WETA convention on arsenic risk factors. MCSWL's polling and focus group analysis emphasized the importance of educating the public about Montana's existing water quality regulations. Mixing zones are the key component of

Montana's regulations. The same polling and focus group analysis stressed that the "arsenic" issue was being successfully used by the proponents of I-122. The WEFR mixing zone paper and arsenic brochure were designed and written to become important elements of MCSWL's I-122 campaign.

The final reason for concluding that WEFR's mixing zone issue paper and arsenic brochure were campaign documents lies in the distribution of the documents by WEFR. WEFR did not limit its distribution of the 500 copies it retained to WEFR/WETA members. The documents were distributed unsolicited to legislators, other associations and other interested persons. Such unsolicited distribution to nonmembers falls outside of the organizational communication exemptions.

There is insufficient evidence of consultation and coordination between WEFR and MCSWL to conclude that any other 1996 WEFR communications or activities should have been reported as in-kind contributions to MCSWL.

WEFR states that it spent \$6,498.38 on water quality-related publications in 1996. Most of this amount should have been reported as an in-kind contribution to MCSWL. Time spent by Peggy Trenk editing and/or working on the mixing zone issue paper and the arsenic brochure should have been reported as an in-kind contribution to MCSWL.

MCSWL failed to report the in-kind contribution by WEFR described in the preceding paragraph. MCSWL and Pegasus Gold did properly report the copying and printing costs incurred by Pegasus

Gold for the three WEPR issue papers used by MCSWL in the I-122 campaign.

THE REALTORS

The Realtors coordinated and consulted with MCSWL in preparing communications to the Realtors' membership. The Realtors' newsletters and "Montana Today" mailing expressly advocated the defeat of I-122. However, there is no evidence that the Realtors' membership communications about I-122 were distributed unsolicited to anyone but its members. In the absence of evidence that the Realtors' I-122 communications were distributed to nonmembers, the organizational communication exemptions apply and the Realtors are not required to report the cost of such communications.

A Realtors' staff member attended the August 19, 1996 MCSWL Steering Committee meeting for "allied groups." The value of the Realtors' staff time spent attending the MCSWL Steering Committee meeting should have been reported as an in-kind contribution by both MCSWL and the Realtors.

The Realtors received two FAXes from MCSWL. The FAXes were used to write newsletter articles opposing I-122, but the Realtors' newsletters were only distributed to members. Absent evidence that the Realtors used the MCSWL FAXes for I-122 activities other than communicating with the Realtors' membership, this activity does not constitute an in-kind contribution to MCSWL.

SCEOM

Sections 13-37-201 and 207, MCA, require a political committee to file a statement of organization within five days after making

an expenditure. SCEQM was sending letters to Governor Racicot about I-122 in June and July, 1996 and issuing press releases as early as August 15, 1996. These documents were printed on SCEQM letterhead. SCEQM's statement of organization is dated August 29, 1996 but it was not FAXed to the Commissioner's office until September 30, 1996 (the original was filed on October 7, 1996). SCEQM violated Sections 13-37-201 and 207, MCA, by failing to timely file a statement of organization.

SCEQM correctly states that it was consulting with the Commissioner's office during the summer of 1996 about its obligations to register as a political committee. Based on representations made by SCEQM about the independent nature of its I-122 activities, SCEQM first registered as a PAC and ultimately reclassified itself as a ballot issue committee. It is now apparent that SCEQM was not acting independently of MCSWL and that SCEQM was coordinating and consulting with MCSWL throughout its involvement in the I-122 campaign. SCEQM should have registered as a principal campaign committee as early as June of 1996. SCEQM should have filed its first C-6 report in July of 1996. SCEQM failed to timely report its contributions and expenditures in opposition to I-122.

SCEQM failed to timely and accurately report at least \$4,352.35 of in-kind contributions made by its individual members (Summary of Facts 66 and 67). It is likely that the amount of unreported in-kind services is understated.

The following businesses and/or corporations failed to timely

and accurately report in-kind contributions to SCEQM as set forth in Summary of Fact 66:

Times Ltd., Bozeman (Terry Mudder)
MSE, Butte
MSE-HKM, Billings
Energy Laboratories, Billings
Hydrometrics, Helena
Schafer and Associates, Bozeman
Maxim Technologies, Missoula
Unifield Engineering, Billings

QST Environmental denied that it was aware that one of its employees was involved in SCEQM activities. QST's employee, Joseph Griffin, reported that he was not compensated by QST for his time spent on SCEQM activities. Mr. Griffin did use QST's FAX machine for SCEQM-related work and estimates that the FAX charges were less than \$20. Mr. Griffin's use of QST's FAX machine should have been reported by Mr. Griffin and SCEQM as an in-kind contribution to SCEQM. Neither Mr. Griffin nor SCEQM timely and accurately reported the value of this \$20 in-kind contribution. Mr. Griffin and SCEQM are not obligated to report the value of Mr. Griffin's time because it falls under the volunteer exception of Section 13-1-101(6)(b)(i), MCA.

Terry Mudder, one of the co-owners of Times Limited of Bozeman, indicated that he "volunteered" personal time to SCEQM. Mr. Mudder acknowledges that he attended several SCEQM Steering Committee meetings and made several local calls on behalf of SCEQM. Mr. Mudder also confirmed that he wrote a check for \$35.00 to the Montana Newspaper Association on behalf of SCEQM. SCEQM used the Association to distribute its press releases. Absent evidence that Mr. Mudder received compensation from his business or a client for

SCEQM-related services, the volunteer time spent by Mr. Mudder is not reportable under Section 13-1-101(6)(b)(i), MCA. Mr. Mudder and SCEQM were obligated to report the \$35 SCEQM-related expenditure to the Montana Newspaper Association. Neither SCEQM nor Times Limited timely and accurately reported the \$35 monetary contribution made by Times Limited and/or Terry Mudder.

The services provided by Morrison-Maierle to Pegasus Gold and MCSWL require an analysis of ARM 44.10.321(2). This rule governs the provision of services to a candidate or a political committee "without charge or at a charge which is less than fair market value" This rule was adopted to deal with situations where a business provides a service to a candidate or political committee at reduced rates. For example, a catering business which caters a political committee's fund-raising dinner and charges half its going rate is making an in-kind contribution in the amount of the 50% reduced rate. An art gallery or sports equipment store that donates merchandise to a political committee raffle is making an in-kind contribution equal to the value of the merchandise donated. A law firm or accounting firm that donates services to a political committee is making an in-kind contribution in the amount of the donated services. The purpose of the rule is to "level the reporting field" when it comes to fully disclosing campaign contributions and expenditures. ARM 44.10.321(2) recognizes the unfairness of requiring a political committee with sufficient monetary contributions to report that it paid \$100,000 to its law firm while the opposing political committee reports nothing if a

law firm donates \$100,000 of legal services.

Morrison-Maierle prepared municipal discharge data for Montana's major cities and provided the data to both Pegasus Gold and MCSWL. Although Pegasus Gold denied that the information was actually used in the I-122 campaign, the information was clearly prepared for possible campaign use. The municipal discharge data was submitted directly to Jerry Anderson. Morrison-Maierle is an environmental consulting firm and the services provided had value to Pegasus Gold and MCSWL even though the services were apparently donated by Morrison-Maierle. MCSWL should have reported the value of Morrison-Maierle's services as an in-kind contribution by Pegasus Gold. Pegasus Gold also had an obligation to report the fair market value of Morrison-Maierle's services as an in-kind contribution to MCSWL.

It must be noted that the services provided by Morrison-Maierle were provided early in the I-122 campaign (February of 1996). Although the first principal committee reports were not due until March 10, 1996, the initial MCSWL report had to include "...all contributions received or expenditures made...prior to the time that a person became a...political committee" (Section 13-37-228(1), MCA). MCSWL's initial C-6 report should have included Morrison-Maierle's in-kind contribution.

The final SCEQM issue to be addressed is whether MCSWL should have reported SCEQM's expenditures as an in-kind contribution. The answer is "yes." Despite repeated representations to the contrary, there was coordination, collaboration and consultation between

MCSWL and SCEQM and/or its founding members very early in the I-122 campaign. John Fitzpatrick asked MSE of Butte "to lead the effort to educate the public" about I-122 in February of 1996. Mr. Fitzpatrick's employer, Pegasus Gold, was paying SCEQM's founding firms to collect information for use in the I-122 campaign in the spring of 1996. Eric Williams was working on MCSWL-related communications as early as February of 1996. The June 26, 1996 FAX from the SCEQM Steering Committee was FAXed to the Seven-Up Pete Joint Venture the same day and sent on to Jerry Anderson the next. SCEQM's correspondence with Governor Racicot was being FAXed by Lisa Kirk of SCEQM to John Fitzpatrick. Tom Daubert worked with one of SCEQM's founding firms, Schafer and Associates, on I-122 issues throughout the summer of 1996. Any claim that SCEQM was independently lobbying Governor Racicot or working on municipal mixing zone issues is not supported by the facts. MCSWL failed to report these coordinated expenditures by SCEQM as in-kind contributions.

MONTANA MINING ASSOCIATION

If any Montana membership association had a direct vested interest in the outcome of the I-122 election, it was the MMA. It is difficult to understand why MCSWL did not report any in-kind contributions from the MMA in light of the extensive coordination, consultation and interaction between MCSWL and the MMA. The MMA's Executive Director, Gary Langley, attended the organizational MCSWL Steering Committee meeting and was intimately involved in MCSWL's activities. Five MMA Board members served on MCSWL's Steering Committee in addition to Mr. Langley. The MMA's interaction and

coordination with MCSWL included sponsoring forums opposing I-122, recruiting supporters to do MCSWL radio ads, developing an MCSWL press kit, providing a list of vendors and suppliers to MCSWL, and helping MCSWL collect useful economic information about its members. Neither the MMA nor MCSWL timely or accurately reported the value of these in-kind contributions.

The MMA published three articles in its newsletter expressly opposing I-122. The MMA's newsletters were distributed to its members and legislators, Montana's Congressional delegation and federal and state mining regulators. Based on this distribution to nonmembers, the organizational communications exemptions do not apply. The cost of preparing and distributing the MMA's newsletters expressly opposing I-122 should have been reported as an in-kind contribution to MCSWL. Neither the MMA nor MCSWL timely or accurately reported these in-kind contributions.

The third MMA issue is whether the Montana Mining Week advertising was a coordinated expenditure constituting an in-kind contribution to MCSWL. There is evidence that the Montana Mining Week began as an educational effort unrelated to I-122. The February 15, 1996 MMA Board meeting minutes indicated that a newspaper insert would run on April 29, 1996 and that the Mining Week celebration would coincide with the MMA's annual convention in Butte. However, it is not possible to conclude that the Mining Week advertising message delivered in late April and early May of 1996 was not a part of the coordinated MCSWL strategy in light of the overwhelming coordination between MCSWL and the MMA.

There is extensive evidence of interlocking membership and activity between the MCSWL Steering Committee, the MMA Board, the AMM Board and the MMA's Education Committee (see Summary of Facts 193 through 196). One of MCSWL's chief media advisors, Bob Henkel, wrote and developed the MMA Mining Week campaign. Tom Daubert briefed the MMA Board on MCSWL campaign plans on February 15, 1996. Jerry Anderson attended the MMA Board's April 29, 1996 meeting and reported on the I-122 campaign. Bob Henkel sent Jerry Anderson copies of the MMA's Mining Week advertising on April 24, 1996. Mr. Henkel's memo advises that the MMA's "educational advertising is timely now, as spelled out in ... [MCSWL's] focus study memo." MCSWL and MMA should have reported the \$35,607.75 spent by the MMA on Montana Mining Week advertising as an in-kind contribution to MCSWL.

The final MMA issue is whether the MMA actually paid for any portion of MCSWL's polling or focus group work. Even though the Dan Jones and Associates focus group analysis indicates the work was performed for the MMA, MCSWL paid for and properly reported this activity. There is no evidence that the MMA paid any money to Dan Jones and Associates for the April 1996 focus group work.

MONTANA TAXPAYERS ASSOCIATION

The essence of coordinated campaign activity involves the opportunity to review in advance of publication or public distribution copies of advertising scripts, newsletter articles or other campaign-related messages. Even if the principal campaign committee makes no changes in the documents or advertisements

reviewed, the advance review and/or approval is coordination and consultation. It is clear that MTA and MCSWL were coordinating and consulting before the May MTA newsletter was published. Dennis Burr's March 28, 1996 memorandum to John Fitzpatrick was included in MCSWL's April 5, 1996 Friday Report, only one week after the memo was written. Mr. Burr allowed John Fitzpatrick to review the draft of the May 1996 newsletter before it was published. The significance of this lies in the fact that only Mr. Fitzpatrick, a key MCSWL decision-maker and the mining industry's representative on the MTA Board, got the opportunity to review the draft MTA newsletter. No other MTA Board members were asked to review the article. The importance of Mr. Burr's conclusions to MCSWL is reinforced by MCSWL's extensive use of Mr. Burr's quotes and the newsletter itself throughout the I-122 campaign.

Even if there was coordination between MCSWL and MTA before the May 1996 MTA newsletter was published, the second determination to be made is whether MTA limited distribution of its newsletters to members. MTA sent its 1996 newsletters to the press, legislators and other nonprofit associations. Unsolicited distribution of MTA's newsletters to nonmembers means that the organizational communication exemptions do not apply. MTA's coordinated expenditure should have been reported as an in-kind contribution to MCSWL by both MTA and MCSWL.

MCSWL did properly report the copying costs incurred to make 3,500 copies of the MTA's May 1996 newsletter for distribution during the I-122 campaign. MCSWL and MTA failed to report as an

in-kind contribution the MTA's preparation, publication and mailing costs incurred for the May 1996 newsletter.

CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings, there is substantial evidence to conclude that the following entities violated Montana's campaign finance reporting and disclosure laws and that a civil penalty action under Section 13-37-128, MCA, is warranted:

Montanans for Common Sense Water Laws/Against I-122;

Archibald Co.;

Pro-Sport Production;

ASARCO;

AFFCO;

Golden Sunlight Mines;

Washington Corporations;

Montana Chamber of Commerce;

Placer Dome, Inc.;

Dick Irvin, Inc.;

Pegasus Gold Corporation;

Seven-Up Pete Joint Venture/McDonald Gold Project;

Montanans for Private Property Rights;

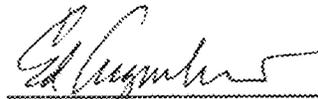
Montana 4 X 4 Association;

Montanans for Multiple Use, Mission Valley Chapter;

ARCO;

Scientists Concerned About Environmental Quality in Montana
(SCEQM);

Times Limited/Terry Mudder;
MSE;
MSE-HKM;
Energy Labs;
Hydrometrics;
Schafer & Associates;
Maxim Technologies;
Unifield Engineering;
Joseph Griffin;
Montana Association of Realtors;
Montana Stockgrowers Association;
Montana Taxpayers Association;
Western Education for Foundation Resources, Inc. (WEFR);
Western Environmental Trade Association (WETA); and
Montana Mining Association.
DATED this 30th day of April, 1998.



Ed Argenbright, Ed.D.
Commissioner