

HOUSE BILL 889

Introduced by O'Keefe, et al.

2/15	Introduced
2/15	Referred to Natural Resources
1/16	First Reading
2/16	Fiscal Note Requested
2/21	Fiscal Note Received
2/22	Fiscal Note Printed
3/08	Hearing
3/21	Committee Report--Bill Passed as Amended
4/03	2nd Reading Do Pass as Amended Motion Failed

HOUSE BILL NO. *889*

INTRODUCED BY *John Rankin Kedar Farny*
Yellowtail House near Timberley

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE *the*
Southworth Bank Act's with Amendments
METAL MINE RECLAMATION LAWS TO PROVIDE FOR PROTECTION OF
Revised WATER RESOURCES AND FOR THE RESTORATION AND REPLACEMENT OF
Kenedy WATER RESOURCES AND BENEFICIAL USES OF WATER THAT ARE

DIMINISHED OR DEGRADED BY PERMITTED MINING OPERATIONS;
ESTABLISHING A WATER RESTORATION AND REPLACEMENT FINANCIAL
ASSURANCE REQUIREMENT; ESTABLISHING ADMINISTRATIVE
PROCEDURES; REVISING MANDAMUS PROCEDURES; PROVIDING FOR
REVOCATION OF PERMITS; AMENDING SECTIONS 82-4-301, 82-4-302,
82-4-303, 82-4-311, 82-4-321, 82-4-322, 82-4-323, 82-4-335,
82-4-337, 82-4-339, 82-4-340, 82-4-341, 82-4-351, 82-4-352,
82-4-353, 82-4-354, 82-4-355, 82-4-360, AND 82-4-362, MCA;
AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN
APPLICABILITY DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill to
provide guidance to the department of state lands for the
adoption of rules to establish requirements for the content
of water protection plans, interpret the definition of
beneficial uses of water, define the types of department
expenses that may be included in calculating the water

resources assessment fee, and define the terms and
conditions of financial assurance mechanisms.

The department shall adopt rules that define the
specific subjects, types of data, and level of water
monitoring that an applicant for an operating permit must
include in the 2-year baseline study of water resources,
hydrology, and beneficial uses within a water protection
area. The information collected by the applicant must be
sufficient to allow the department to assess the cumulative
impacts of the proposed operations upon the hydrology,
quantity, and quality of water resources and upon beneficial
uses in the water protection area. The department's rules
must also identify the specific types of analyses an
applicant must prepare in order to provide an adequate
assessment of the consequences of proposed mining operations
on water resources and beneficial uses, the potential for
restoration or replacement of water resources and beneficial
uses that may be diminished or degraded by the proposed
operations, and the estimated costs of restoration and
replacement of the water resources and beneficial uses.

The department's rules must define the characteristics
of significant aesthetic values and significant wildlife
habitat that are defined in [section 3] as beneficial uses
of water resources. Significant wildlife habitat must
include habitat for state and federally designated



1 threatened and endangered species and all species of
2 wildlife and fish that are classified as game species and
3 for which licenses are required for hunting and fishing in
4 the state.

5 [Section 8(3)] authorizes the department to assess a
6 water resources assessment fee not to exceed the actual
7 amount of contractor and employee expenses of the department
8 to provide for timely and adequate review of the water
9 protection plan. The department's rules should authorize the
10 use of the money collected from the water resources
11 assessment fee for expenses, such as for hiring temporary
12 employees and contracted consultants and data collection and
13 analysis.

14 In adopting rules to set forth the specific terms and
15 conditions of financial assurance mechanisms authorized by
16 [section 10], the department shall consult and, to the
17 greatest extent practicable, rely upon concepts and
18 requirements contained in Rules 16.44.801 through 16.44.823,
19 Administrative Rules of Montana.

20
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

22 **Section 1.** Section 82-4-301, MCA, is amended to read:

23 **"82-4-301. Legislative findings.** (1) The extraction of
24 mineral by mining is a basic and essential activity making
25 an important contribution to the economy of the state and

1 the nation. At the same time, proper reclamation of mined
2 land and former exploration areas not brought to mining
3 stage is necessary to prevent undesirable land and surface
4 water conditions detrimental to the general welfare, health,
5 safety, ecology, and property rights of the citizens of the
6 state. Mining and exploration for minerals take place in
7 diverse areas where geological, topographical, climatic,
8 biological, and sociological conditions are significantly
9 different, and reclamation specifications must vary
10 accordingly. It is not practical to extract minerals or
11 explore for minerals required by our society without
12 disturbing the surface or subsurface of the earth and
13 without producing waste materials, and the very character of
14 many types of mining operations precludes complete
15 restoration of the land to its original condition. The
16 legislature finds that land reclamation as provided in this
17 part will allow exploration for and mining of valuable
18 minerals while adequately providing for the subsequent
19 beneficial use of the lands to be reclaimed.

20 (2) The legislature finds that beneficial uses of
21 surface water and ground water may be adversely affected by
22 mining and exploration for minerals and that requirements to
23 ensure the protection of the state's water resources are
24 necessary. The legislature finds that restoration or
25 replacement of water resources and restoration of beneficial

1 uses is necessary if those resources and beneficial uses are
 2 diminished or degraded as a result of mining and exploration
 3 for minerals and that the restoration or replacement should
 4 be accomplished at no increased cost to water users."

5 **Section 2.** Section 82-4-302, MCA, is amended to read:

6 **"82-4-302. Purpose.** (1) The purposes of this part are
 7 to provide:

8 (a) that the usefulness, productivity, and scenic
 9 values of all lands ~~and-surface-waters~~ involved in mining
 10 and mining exploration within the boundaries and lawful
 11 jurisdiction of the state will receive the greatest
 12 reasonable degree of protection and reclamation to
 13 beneficial use;

14 (b) authority for cooperation between private and
 15 governmental entities in carrying this part into effect;

16 (c) for the recognition of the recreational and
 17 aesthetic values of land as a benefit to the state of
 18 Montana; and

19 (d) protection to all waters within the boundaries and
 20 lawful jurisdiction of the state that may be adversely
 21 affected by mining;

22 (e) for restoration or replacement of the quantity and
 23 quality of waters that are diminished or degraded by mining;

24 (f) that water users do not incur increased costs in
 25 continuing beneficial uses of water resources in areas where

1 mining for minerals occurs; and

2 ~~(d)~~(g) priorities and values to the aesthetics of our
 3 landscape, waters, and ground cover.

4 (2) Although both the need for and the practicability
 5 of reclamation will control the type and degree of
 6 reclamation in any specific instance, the basic objective
 7 will be to establish, on a continuing basis, the vegetative
 8 cover, soil stability, water condition, and safety condition
 9 appropriate to any proposed subsequent use of the area."

10 **Section 3.** Section 82-4-303, MCA, is amended to read:

11 **"82-4-303. Definitions.** As used in this part, unless
 12 the context indicates otherwise, the following definitions
 13 apply:

14 (1) "Abandonment of surface or underground mining" may
 15 be presumed when it is shown that continued operation will
 16 not resume.

17 (2) "Beneficial uses" means those beneficial uses of
 18 water resources defined in 85-2-102(2) and other uses of
 19 water resources that include but are not limited to
 20 maintenance of minimum streamflows, public and private water
 21 leases, significant aesthetic values, and significant
 22 wildlife habitat.

23 ~~(2)~~(3) "Board" means the board of land commissioners or
 24 a state employee or state agency as may succeed to its
 25 powers and duties under this part.

1 (4) "Commissioner" means the commissioner of state
 2 lands provided for in 2-15-3202.

3 ~~(3)~~(5) "Cyanid~~e~~ ore-processing reagent" means cyanide
 4 or a cyanide compound used as a reagent in leaching
 5 operations.

6 ~~(4)~~(6) "Department" means the department of state
 7 lands.

8 ~~(5)~~(7) "Disturbed land" means that area of land or
 9 surface water disturbed, beginning at the date of the
 10 issuance of the permit, and it comprises that area from
 11 which the overburden, tailings, waste materials, or minerals
 12 have been removed and tailings ponds, waste dumps, roads,
 13 conveyor systems, leach dumps, and all similar excavations
 14 or covering resulting from the operation and which have not
 15 been previously reclaimed under the reclamation plan.

16 ~~(6)~~(8) "Exploration" means all activities conducted on
 17 or beneath the surface of lands resulting in material
 18 disturbance of the surface for the purpose of determining
 19 the presence, location, extent, depth, grade, and economic
 20 viability of mineralization in those lands, if any, other
 21 than mining for production and economic exploitation, as
 22 well as all roads made for the purpose of facilitating
 23 exploration, except as noted in 82-4-310.

24 ~~(7)~~(9) "Mineral" means any ore, rock, or substance,
 25 other than oil, gas, bentonite, clay, coal, sand, gravel,

1 phosphate rock, or uranium, taken from below the surface or
 2 from the surface of the earth for the purpose of milling,
 3 concentration, refinement, smelting, manufacturing, or other
 4 subsequent use or processing or for stockpiling for future
 5 use, refinement, or smelting.

6 ~~(8)~~(10) "Mining" commences when the operator first mines
 7 ores or minerals in commercial quantities for sale,
 8 beneficiation, refining, or other processing or disposition
 9 or first takes bulk samples for metallurgical testing in
 10 excess of aggregate of 10,000 short tons.

11 ~~(9)~~(11) "Ore processing" means milling, heap leaching,
 12 flotation, vat leaching, or other standard hard-rock mineral
 13 concentration processes.

14 ~~(10)~~(12) "Person" means any person, corporation, firm,
 15 association, partnership, or other legal entity engaged in
 16 exploration for or mining of minerals on or below the
 17 surface of the earth, reprocessing of tailings or waste
 18 materials, or operation of a hard-rock mill.

19 ~~(11)~~(13) "Placer deposit" means naturally occurring,
 20 scattered or unconsolidated valuable minerals in gravel or
 21 alluvium lying above bedrock.

22 ~~(12)~~(14) "Placer or dredge mining" means the mining of
 23 minerals from a placer deposit by a person or persons.

24 ~~(13)~~(15) "Reclamation plan" means the operator's written
 25 proposal, as required and approved by the board, for

1 reclamation of the land that will be disturbed. The proposal
2 shall include, to the extent practical at the time of
3 application for an operating permit:

4 (a) a statement of the proposed subsequent use of the
5 land after reclamation;

6 (b) plans for surface gradient restoration to a surface
7 suitable for the proposed subsequent use of the land after
8 reclamation is completed and the proposed method of
9 accomplishment;

10 (c) the manner and type of revegetation or other
11 surface treatment of disturbed areas;

12 (d) procedures proposed to avoid foreseeable situations
13 of public nuisance, endangerment of public safety, damage to
14 human life or property, or unnecessary damage to flora and
15 fauna in or adjacent to the area;

16 (e) the method of disposal of mining debris;

17 (f) the method of diverting surface waters around the
18 disturbed areas where necessary to prevent pollution of
19 those waters or unnecessary erosion;

20 (g) the method of reclamation of stream channels and
21 stream banks to control erosion, siltation, and pollution;

22 (h) maps and other supporting documents as may be
23 reasonably required by the department; and

24 (i) a time schedule for reclamation that meets the
25 requirements of 82-4-336.

1 ~~(14)~~(16) (a) "Small miner" means a person, firm, or
2 corporation that engages in the business of mining or
3 reprocessing of tailings or waste materials that does not
4 remove from the earth during any calendar year material in
5 excess of 36,500 tons in the aggregate, that does not hold
6 an operating permit under 82-4-335 except for a permit
7 issued under 82-4-335(2), and that conducts:

8 (i) an operation resulting in not more than 5 acres of
9 the earth's surface being disturbed and unreclaimed; or

10 (ii) two operations which disturb and leave unreclaimed
11 less than 5 acres per operation if the respective mining
12 properties are:

13 (A) the only operations engaged in by the person, firm,
14 or corporation;

15 (B) at least 1 mile apart at their closest point; and

16 (C) not operated simultaneously except during seasonal
17 transitional periods not to exceed 30 days.

18 (b) For the purpose of this definition only, the
19 department shall, in computing the area covered by the
20 operation, exclude access or haulage roads that are required
21 by a local, state, or federal agency having jurisdiction
22 over that road to be constructed to certain specifications
23 if that public agency notifies the department in writing
24 that it desires to have the road remain in use and will
25 maintain it after mining ceases.

1 ~~(15)~~(17) "Surface mining" means all or any part of the
 2 process involved in mining of minerals by removing the
 3 overburden and mining directly from the mineral deposits
 4 exposed, including but not limited to open-pit mining of
 5 minerals naturally exposed at the surface of the earth,
 6 mining by the auger method, and all similar methods by which
 7 earth or minerals exposed at the surface are removed in the
 8 course of mining. Surface mining does not include the
 9 extraction of oil, gas, bentonite, clay, coal, sand, gravel,
 10 phosphate rock, or uranium or excavation or grading
 11 conducted for on-site farming, on-site road construction, or
 12 other on-site building construction.

13 ~~(16)~~(18) "Underground mining" means all methods of
 14 mining other than surface mining.

15 ~~(17)~~(19) "Unit of surface-mined area" means that area of
 16 land and surface water included within an operating permit
 17 actually disturbed by surface mining during each 12-month
 18 period of time, beginning at the date of the issuance of the
 19 permit, and it comprises and includes the area from which
 20 overburden or minerals have been removed, the area covered
 21 by mining debris, and all additional areas used in surface
 22 mining or underground mining operations which by virtue of
 23 mining use are susceptible to erosion in excess of the
 24 surrounding undisturbed portions of land.

25 ~~(18)~~(20) "Vegetative cover" means the type of

1 vegetation, grass, shrubs, trees, or any other form of
 2 natural cover considered suitable at time of reclamation.

3 (21) "Water protection area" means the area proposed for
 4 mining that would be subject to an operating permit and the
 5 area that is 1 mile upgradient by 2 miles crossgradient by 3
 6 miles downgradient of the respective hydrologic slopes of
 7 surface water and ground water flowing through the proposed
 8 permitted area.

9 (22) "Water protection plan" means the operator's
 10 written proposal, as required and approved by the board, for
 11 the protection of water resources within the water
 12 protection area. The board shall adopt rules setting forth
 13 requirements for the content of the proposal, provided that
 14 the proposal must include the following elements:

15 (a) a list containing the names and addresses of all
 16 water users in the water protection area;

17 (b) a detailed assessment of the existing water
 18 resources, hydrology, and beneficial uses within the water
 19 protection area, including a 2-year baseline study
 20 sufficient to enable the department to assess the potential
 21 and probable cumulative impacts of the proposed operations
 22 upon the hydrology, quantity, and quality of water resources
 23 and upon beneficial uses in the water protection area;

24 (c) an assessment of the consequences of the proposed
 25 operations on the hydrology, quantity, and quality of water

1 resources in the water protection area, including the
 2 potential for diminishment or degradation of water resources
 3 and the potential for adverse effects on beneficial uses;

4 (d) an assessment of the potential for water resources
 5 and beneficial uses that may be diminished or degraded to be
 6 permanently restored or replaced to the approximate
 7 hydrologic characteristics, quantity, and quality that
 8 existed prior to the commencement of the proposed operations
 9 and the proposed methods of restoration or replacement of
 10 water resources and restoration of beneficial uses; and

11 (e) the estimated cost of restoring or replacing any
 12 water resources that may be diminished or degraded by the
 13 proposed operations and the estimated cost of ensuring the
 14 continuation of beneficial uses within the water protection
 15 area at no greater cost to water users than under conditions
 16 that existed prior to the commencement of the proposed
 17 operations.

18 (23) "Water resources" means all streams, lakes, wells,
 19 springs, irrigation systems, wetlands, watercourses,
 20 waterways, drainage systems, and other bodies of surface
 21 water and ground water, including natural and manmade water
 22 bodies regardless of ownership and any of these water bodies
 23 that are outside the state's boundaries but within the
 24 boundaries of a water protection area.

25 (24) "Water user" means a person or entity holding a

1 water right, as provided in Title 85, chapter 2, and a state
 2 or federal agency or unit of government with jurisdiction
 3 over water resources or beneficial uses."

4 **Section 4.** Section 82-4-311, MCA, is amended to read:

5 **"82-4-311. Hard-rock mining account.** All fees, fines,
 6 penalties, and other uncleared moneys ~~which money that~~ have
 7 been or will be paid to the department ~~of-state-lands~~ under
 8 the provisions of this part ~~shall~~ must be placed in the
 9 state special revenue fund in the state treasury and
 10 credited to a special account to be designated as the
 11 hard-rock mining and reclamation account. This account ~~shall~~
 12 be is available to the department by appropriation and ~~shall~~
 13 must be expended for the research, reclamation, and
 14 revegetation of land and the rehabilitation, restoration,
 15 and replacement of water resources affected by any mining
 16 operations. Any unencumbered and any unexpended balance of
 17 this account remaining at the end of a fiscal year ~~shall~~ may
 18 not lapse but ~~shall~~ must be carried forward for the purposes
 19 of this section until expended or until appropriated by
 20 subsequent legislative action."

21 **Section 5.** Section 82-4-321, MCA, is amended to read:

22 **"82-4-321. Administration.** The board is charged with
 23 the responsibility of administering this part. In order to
 24 implement its terms and provisions, the board shall from
 25 time to time promulgate such rules as the board shall deem

1 necessary. The board may delegate such powers, duties, and
 2 functions to the department as it deems necessary for the
 3 performance of its duties as administrator of this part. The
 4 board shall employ experienced, qualified persons in the
 5 field fields of mined-land reclamation and water protection,
 6 restoration, and replacement who, for the purpose of this
 7 part, are referred to as supervisors."

8 **Section 6.** Section 82-4-322, MCA, is amended to read:

9 "82-4-322. Investigations, research, and experiments.

10 The board ~~shall--have~~ has the authority to conduct or
 11 authorize investigations, research, experiments, and
 12 demonstrations in reclamation and water protection,
 13 restoration, and replacement and to collect and disseminate
 14 nonconfidential information relating to mining."

15 **Section 7.** Section 82-4-323, MCA, is amended to read:

16 "82-4-323. Interagency cooperation -- receipt and
 17 expenditure of funds. The board shall cooperate with other
 18 governmental and private agencies in this state and other
 19 states and agencies of the federal government and may
 20 reasonably compensate them for any services the board
 21 requests that they provide. The board may receive federal
 22 funds, state funds, and any other funds and, within the
 23 limits imposed by the grant, expend them for water
 24 protection, restoration and replacement of water resources,
 25 reclamation of land affected by mining or exploration, and

1 for purposes enumerated in 82-4-336."

2 **Section 8.** Section 82-4-335, MCA, is amended to read:

3 "82-4-335. Operating permit -- limitation -- fees. (1)

4 A person may not engage in mining, ore processing, or
 5 reprocessing of tailings or waste material, construct or
 6 operate a hard-rock mill, use cyanide ore-processing
 7 reagents, or disturb land in anticipation of those
 8 activities in the state without first obtaining an operating
 9 permit from the board. A separate operating permit is
 10 required for each complex.

11 (2) A small miner who intends to use a cyanide
 12 ore-processing reagent shall obtain an operating permit for
 13 that part of his operation where the cyanide ore-processing
 14 reagent will be used or disposed of.

15 (3) Prior to receiving an operating permit from the
 16 board, a person shall pay the basic permit fee of \$25 and a
 17 water resources assessment fee not to exceed the actual
 18 amount of contractor and employee expenses of the department
 19 that are necessary to provide for timely and adequate review
 20 of the water protection plan. The board may further define
 21 these expenses by rule.

22 (4) A person shall submit an application on a form
 23 provided by the board, which that must contain the following
 24 information and any other pertinent data required by rule:

25 (a) name and address of the operator and, if a

1 corporation or other business entity, the name and address
2 of its principal officers, partners, and the like and its
3 resident agent for service of process, if required by law;

4 (b) minerals expected to be mined;

5 (c) a proposed reclamation plan;

6 (d) a proposed water protection plan;

7 ~~(d)~~(e) expected starting date of operations;

8 ~~(e)~~(f) a map showing the specific area to be mined and
9 the boundaries of the land which that will be disturbed,
10 topographic detail, the location and names of all streams,
11 roads, railroads, and utility lines on or immediately
12 adjacent to the area, location of proposed access roads to
13 be built, and the names and addresses of the surface and
14 mineral owners of all lands within the mining area, to the
15 extent known to the applicant;

16 ~~(f)~~(g) types of access roads to be built and manner of
17 reclamation of road sites on abandonment;

18 ~~(g)~~(h) a plan which that will provide, within limits of
19 normal operating procedures of the industry, for completion
20 of the operation;

21 ~~(h)--ground-water--and--surface--water--hydrologic--data
22 gathered--from--a-sufficient-number-of-sources-and-length-of
23 time-to-characterize-the-hydrologic-regime;~~

24 (i) a plan detailing the design, operation, and
25 monitoring of impounding structures, including but not

1 limited to tailings impoundments and water reservoirs,
2 sufficient to ensure that the structures are safe and
3 stable;

4 (j) a plan identifying methods to be used to monitor
5 for the accidental discharge of objectionable materials and
6 remedial action plans to be used to control and mitigate
7 discharges to surface water or ground water; and

8 (k) an evaluation of the expected life of any tailings
9 impoundment or waste area and the potential for expansion of
10 the tailings impoundment or waste site.

11 ~~(4)~~(5) Except as provided in subsection ~~(6)~~ (7), the
12 permit provided for in subsection (1) for a large-scale
13 mineral development as defined in 90-6-302 must be
14 conditioned to provide that activities under the permit may
15 not commence until the impact plan is approved under
16 90-6-307 and until the permittee has provided a written
17 guarantee to the department and to the hard-rock mining
18 impact board of compliance within the time schedule with the
19 commitment made in the approved impact plan, as provided in
20 90-6-307. If the permittee does not comply with that
21 commitment within the time scheduled, the board, upon
22 receipt of written notice from the hard-rock mining impact
23 board, shall suspend the permit until it receives written
24 notice from the hard-rock mining impact board that the
25 permittee is in compliance.

1 ~~(5)~~(6) When the department determines that a permittee
 2 has become or will become a large-scale mineral developer
 3 pursuant to 82-4-339 and 90-6-302(4) and provides notice as
 4 required under 82-4-339, within 6 months of receiving the
 5 notice, the permittee shall provide the board with proof
 6 that he has obtained a waiver of the impact plan requirement
 7 from the hard-rock mining impact board or that he has filed
 8 an impact plan with the hard-rock mining impact board and
 9 the appropriate county or counties. If the permittee does
 10 not file the required proof or if the hard-rock mining
 11 impact board certifies to the board that the permittee has
 12 failed to comply with the hard-rock mining impact review and
 13 implementation requirements in Title 90, chapter 6, parts 3
 14 and 4, the board shall suspend the permit until the
 15 permittee files the required proof or until the hard-rock
 16 mining impact board certifies that the permittee has
 17 complied with the hard-rock mining impact review and
 18 implementation requirements.

19 ~~(6)~~(7) Compliance with 90-6-307 is not required for
 20 exploration and bulk sampling for metallurgical testing when
 21 the aggregate samples are less than 10,000 tons.

22 ~~(7)~~(8) A person may not be issued an operating permit
 23 if that person's failure to comply with the provisions of
 24 this part, the rules adopted under this part, or a permit or
 25 license issued under this part has resulted in the

1 forfeiture of a bond unless that person meets the conditions
 2 described in 82-4-360."

3 **Section 9.** Section 82-4-337, MCA, is amended to read:

4 "82-4-337. **Inspection -- issuance of operating permit**
 5 -- **modification.** (1) (a) The board shall cause all
 6 applications for operating permits to be reviewed for
 7 completeness within 30 days of receipt. The board shall
 8 notify the applicant concerning completeness as soon as
 9 possible. An application is considered complete unless the
 10 applicant is notified of any deficiencies within 30 days of
 11 receipt.

12 (b) Unless the review period is extended as provided in
 13 this section, the board shall review the adequacy of the
 14 proposed reclamation plan, water protection plan, and plan
 15 of operation within 30 days of the determination that the
 16 application is complete or within 60 days of receipt of the
 17 application if the board does not notify the applicant of
 18 any deficiencies in the application. If the applicant is not
 19 notified of deficiencies or inadequacies in the proposed
 20 reclamation plan, water protection plan, and plan of
 21 operation within such time period, the department shall
 22 issue a decision to approve the operating permit shall--be
 23 issued-upon-receipt-of-the-bond-as-required-in-82-4-338. The
 24 department shall promptly notify the applicant of the form
 25 and amount of bond which and water restoration and

1 replacement financial assurance that will be required.

2 (c) If, within 15 days of the date the department's
 3 decision is issued under subsection (1)(b) or (1)(e)(iii)
 4 the department does not receive a request for an informal
 5 conference or a petition to reconsider the decision pursuant
 6 to 82-4-353(6), the decision is final and the operating
 7 permit must be issued. No proceeding conducted pursuant to
 8 82-4-353(6)(c) may exceed 60 calendar days unless extended
 9 by the board for good cause.

10 (d) No permit may be issued until:

11 (i) sufficient bond has been submitted pursuant to
 12 82-4-338 and the financial assurance requirement of
 13 [section 10] has been satisfied;

14 (ii) the administrative requirements of 82-4-353 have
 15 been satisfied;

16 (iii) the department has found that the water protection
 17 plan is adequate to protect water resources in the water
 18 protection area, as demonstrated by the applicant for an
 19 operating permit; and

20 ~~(c)-(i)-(iv)~~ Prior--to--issuance--of--a--permit, the
 21 department ~~shall inspect~~ has inspected the site, unless the
 22 department has failed to act on the application within the
 23 time prescribed in subsection (1)(b). If the site is not
 24 accessible due to extended adverse weather conditions, the
 25 department may extend the time period prescribed in

1 subsection (1)(b) by not more than 180 days to allow
 2 inspection of the site and reasonable review.

3 (e) (i) The department must serve written notice of a
 4 time extension upon the applicant in person or by certified
 5 mail, and any such extension is subject to appeal to the
 6 board in accordance with the Montana Administrative
 7 Procedure Act.

8 (ii) If the department determines that additional time
 9 is needed to review the application and reclamation plan or
 10 water protection plan for a major operation, the department
 11 and the applicant shall negotiate to extend the period
 12 prescribed in subsection (1)(b) by not more than 365 425
 13 days in order to permit reasonable review. When an
 14 application and reclamation plan or water protection plan
 15 are reviewed under the provisions of this subsection, the
 16 department shall issue its decision to approve, approve with
 17 conditions, or deny the operating permit at least 60 days
 18 before the end of the negotiated extension period.

19 (iii) Failure of the board to act upon a complete
 20 application within the extension period constitutes approval
 21 of the application, and the permit shall be issued promptly
 22 upon receipt of the bond as required in 82-4-338 and
 23 certification that the applicant has complied with the
 24 financial assurance requirement established by [section 10].

25 (2) The operating permit ~~shall~~ must be granted for the

1 period required to complete the operation and ~~shall be~~ is
 2 valid until the operation authorized by the permit is
 3 completed or abandoned unless the permit is suspended or
 4 revoked by the board as provided in this part.

5 (3) The operating permit ~~shall~~ must provide that the
 6 reclamation plan and water protection plan may be modified
 7 by the board, upon proper application of the permittee or
 8 department, after timely notice and opportunity for hearing,
 9 at any time during the term of the permit and for any of the
 10 following reasons:

11 (a) to modify the requirements so they will not
 12 conflict with existing laws;

13 (b) when the previously adopted reclamation plan or
 14 water protection plan is impossible or impracticable to
 15 implement and maintain;

16 (c) when significant environmental problem situations
 17 are revealed by field inspection."

18 NEW SECTION. Section 10. Water restoration and
 19 replacement -- financial assurance -- release. (1) The
 20 applicant shall provide financial assurance sufficient to
 21 ensure the restoration or replacement of specific water
 22 resources and the restoration and continuation of beneficial
 23 uses within the water protection area at no greater cost to
 24 water users than under conditions that existed prior to the
 25 commencement of the applicant's proposed operations. The

1 department shall determine the amount of financial assurance
 2 that the applicant must provide based on an assessment of
 3 the water protection plan and the applicant's estimated cost
 4 of restoring or replacing water resources and restoring
 5 beneficial uses that may be diminished or degraded by the
 6 applicant's proposed operations.

7 (2) The applicant may satisfy the financial assurance
 8 requirement by:

9 (a) establishing a water restoration and replacement
 10 trust fund and making annual payments into the fund;

11 (b) filing with the department a bond that is payable
 12 to the state of Montana with surety satisfactory to the
 13 department, conditioned upon the faithful performance of the
 14 requirements of this part and the rules of the board;

15 (c) filing an irrevocable letter of credit with the
 16 department;

17 (d) obtaining water restoration and replacement
 18 insurance and submitting a certification of insurance to the
 19 department;

20 (e) filing with the department a cash deposit, an
 21 assignment of a certificate of deposit, or other surety
 22 acceptable to the board;

23 (f) demonstrating to the department that the applicant
 24 meets minimum financial worth and bond rating criteria that
 25 show that the applicant has adequate internal resources for

1 meeting the financial requirement established by subsection
2 (1); or

3 (g) a combination of financial assurance mechanisms
4 that are acceptable to the department and that may include a
5 trust fund, a surety bond guaranteeing payment into a trust
6 fund, a letter of credit, and insurance.

7 (3) The board may accept financial assurance from an
8 applicant for two or more operations. Financial assurance
9 for two or more operations must be adequate to ensure the
10 restoration or replacement of water resources and the
11 continuance of beneficial uses of water resources in the
12 water protection area or areas surrounding the operations at
13 no greater cost to water users than the users incurred under
14 conditions that prevailed prior to the commencement of the
15 permitted operations.

16 (4) The board shall adopt rules to specify the terms
17 and conditions of each financial assurance mechanism
18 authorized by this section that must be met before the board
19 may approve the use of that mechanism by the applicant for
20 purposes of satisfying the financial assurance requirement
21 established by this section.

22 (5) The amount of financial assurance approved by the
23 board may not be less than the estimated cost to the state
24 to restore or replace specific water resources and to ensure
25 the continuance of beneficial uses in the water protection

1 area at no greater cost to water users than under conditions
2 that prevailed prior to the commencement of the proposed
3 operations as set forth in the water protection plan.

4 (6) A public or government agency is not required to
5 provide financial assurance under the provisions of this
6 section.

7 (7) If the department determines that the level of
8 financial assurance provided for a permitted operation does
9 not represent the present costs of water restoration or
10 replacement or restoration of beneficial uses that may be
11 diminished or degraded by the operation, the department may
12 modify the financial assurance requirements of that permit.

13 (8) The department may not release an operator from the
14 financial assurance requirement and release funds or
15 terminate the funding mechanisms the operator relied upon to
16 fulfill the financial assurance requirement:

17 (a) for a minimum of 10 years after the release of the
18 performance bond as provided in 82-4-338;

19 (b) until the department determines that the quality
20 and quantity of water resources in the water protection area
21 have been permanently restored or replaced and that
22 beneficial uses in the water protection area are continuing
23 at no greater cost to water users than under conditions that
24 prevailed prior to the commencement of the permitted
25 operations; and

(c) until a public hearing has been held consistent with the provisions of 82-4-353(4). The department shall make all information that is relevant to the decision on whether to release an operator from the financial assurance requirement readily available to interested persons beginning no later than the date that notice of the public hearing is distributed as required by 82-4-353(4).

(9) A person may submit to the department information relevant to the department's decision to release an operator from all or any part of the financial assurance requirement for a period of 30 days after the date of the public hearing required by subsection 82-4-353(4).

(10) A person may request the department to reconsider its decision to release an operator from all or any part of the financial assurance requirement, based upon information the person submits to show that the permittee has not restored or replaced the quantity or quality of water resources or both or has not restored beneficial uses in the water protection area at no greater cost to water users than under the conditions that prevailed prior to the commencement of the permitted operations. The department's response to a request to reconsider its decision to release an operator from all or any part of the financial assurance requirement is the final agency decision.

Section 11. Section 82-4-339, MCA, is amended to read:

"82-4-339. Annual report of activities by permittee -- fee -- notice of large-scale mineral developer status. (1) Within 30 days after completion or abandonment of operations on an area under permit or within 30 days after each anniversary date of the permit, whichever is earlier, or at such later date as may be provided by rules of the board and each year thereafter until reclamation and restoration and replacement of water resources and restoration of beneficial uses is completed and approved, the permittee shall pay the annual fee of \$25 and shall file a report of activities completed during the preceding year on a form prescribed by the board which report shall:

(a) identify the permittee and the permit number;

(b) locate the operation by subdivision, section, township, and range and with relation to the nearest town or other well-known geographic feature;

(c) estimate acreage to be newly disturbed by operation in the next 12-month period;

(d) include the number of persons on the payroll for the previous permit year and for the next permit year at intervals that the department considers sufficient to enable a determination of the permittee's status under 90-6-302(4); and

(e) update any maps previously submitted or specifically requested by the board. Such maps shall show:

- 1 (i) the permit area;
- 2 (ii) the unit of disturbed land;
- 3 (iii) the area to be disturbed during the next 12-month
- 4 period;
- 5 (iv) if completed, the date of completion of operations;
- 6 (v) if not completed, the additional area estimated to
- 7 be further disturbed by the operation within the following
- 8 permit year; and
- 9 (vi) the date of beginning, amount, and current status
- 10 of reclamation, protection, restoration, and replacement of
- 11 water resources, and restoration of beneficial uses
- 12 performed during the previous 12 months.
- 13 (2) Whenever the department determines that the
- 14 permittee has become or will, during the next permit year,
- 15 become a large-scale mineral developer, it shall immediately
- 16 serve written notice of that fact on the permittee, the
- 17 hard-rock mining impact board, and the county or counties in
- 18 which the operation is located."

19 **Section 12.** Section 82-4-340, MCA, is amended to read:

20 "82-4-340. Successor operator. When one operator

21 succeeds to the interest of another in any uncompleted

22 operation by sale, assignment, lease, or otherwise, the

23 board may release the first operator from the duties imposed

24 upon him by this part as to such operation, provided that

25 both operators have complied with the requirements of this

1 part and the successor operator assumes the duty of the

2 former operator to protect water resources and to complete

3 the reclamation of the land and the restoration or

4 replacement of water resources and restoration of beneficial

5 uses, in which case the board shall transfer the permit to

6 the successor operator upon approval of the successor

7 operator's bond and water restoration and replacement

8 financial assurance as required under this part."

9 **Section 13.** Section 82-4-341, MCA, is amended to read:

10 "82-4-341. Compliance with reclamation plan and water

11 protection plan -- reclamation and restoration of water

12 resources and beneficial uses by board. (1) Following

13 receipt of the permittee's report and at any other

14 reasonable time the board may elect, the board shall cause

15 the permit area to be inspected to determine if the

16 permittee has complied with the reclamation plan, the water

17 protection plan, and the board's rules.

18 (2) The permittee shall proceed with reclamation and

19 the protection of water resources and beneficial uses as

20 scheduled in his approved reclamation plan and water

21 protection plan. Following written notice by the board

22 noting deficiencies, the permittee shall commence action

23 within 30 days to rectify these deficiencies and shall

24 diligently proceed until the deficiencies are corrected,

25 provided that deficiencies that also violate other laws that

1 require earlier rectification shall be corrected in
 2 accordance with the applicable time provisions of such laws.
 3 The board may extend performance periods referred to in this
 4 section and in 82-4-336 for delays clearly beyond the
 5 permittee's control, but only when the permittee is, in the
 6 opinion of the board, making every reasonable effort to
 7 comply.

8 (3) Within 30 days after notification by the permittee
 9 and when, in the judgment of the board, reclamation of a
 10 unit of disturbed land area is properly completed, the
 11 permittee shall be notified in writing and his bond on said
 12 area shall be released or decreased proportionately to the
 13 acreage included within the bond coverage.

14 (4) If reclamation of disturbed land is not pursued in
 15 accordance with the reclamation plan or if protection of
 16 water resources and beneficial uses is not pursued in
 17 accordance with the water protection plan and the permittee
 18 has not commenced action to rectify deficiencies within 30
 19 days after notification by the board or if reclamation is
 20 not properly completed in conformance with the reclamation
 21 plan within 2 years after completion or abandonment of
 22 operation on any fraction of the permit area or such longer
 23 period as may have been authorized hereunder or if, after
 24 default by the permittee, the surety either refuses or fails
 25 to perform the work to the satisfaction of the board within

1 the time required therefor, the board may, with the staff,
 2 equipment, and material under its control or by contract
 3 with others, take such actions as are necessary for required
 4 reclamation of the disturbed lands and for restoration and
 5 replacement of water resources and restoration of beneficial
 6 uses. Such work shall be let on the basis of competitive
 7 bidding. The board shall keep a record of all necessary
 8 expenses incurred in carrying out the work or activity
 9 authorized under this section, including a reasonable charge
 10 for the services performed by the state's personnel and the
 11 state's equipment and materials utilized.

12 (5) The board shall notify the permittee and his surety
 13 by order. The order shall state the amount of necessary
 14 expenses incurred by the board in reclaiming the disturbed
 15 land and restoring and replacing water resources and
 16 restoring beneficial uses and a notice that the amount is
 17 due and payable to the board by the permittee and, if
 18 applicable, the surety. If the amount specified in the order
 19 is not paid within 30 days after receipt of the notice, the
 20 attorney general, upon request of the board, shall bring an
 21 action on behalf of the state in district court. The surety
 22 ~~shall be~~ is liable to the state for compliance with the
 23 reclamation plan to the extent of the reclamation
 24 performance bond and the permittee or the surety or both are
 25 liable to the extent of the financial assurance provided

1 pursuant to [section 10]. The permittee shall-be is liable
 2 for the remainder of the any cost not paid by the surety
 3 relating to either land reclamation or restoration and
 4 replacement of water resources and restoration of beneficial
 5 uses.

6 (6) In addition to the other liabilities imposed by
 7 this part, failure to commence action to remedy specific
 8 deficiencies in reclamation or restoration and replacement
 9 of water resources and restoration of beneficial uses within
 10 30 days after notification by the board or failure to
 11 satisfactorily complete reclamation work on any segment of
 12 the permit area within 2 years, or such longer period as the
 13 board may permit on permittee's application ~~therefor~~ or on
 14 the board's own motion, after completion or abandonment of
 15 operations on any segment of the permit area ~~shall~~
 16 ~~constitute~~ constitutes sufficient grounds for cancellation
 17 of a permit or license and refusal to issue another permit
 18 or license to the applicant; provided, however, that such
 19 action ~~shall~~ may not be effected while an appeal is pending
 20 from any ruling requiring the same."

21 **Section 14.** Section 82-4-351, MCA, is amended to read:

22 "82-4-351. Reasons for denial of permit. (1) A permit
 23 may be denied for any of the following reasons:

24 (a) the plan of operation or reclamation or water
 25 protection conflicts with Title 75, chapter 2, as amended,

1 Title 75, chapter 5, as amended, Title 75, chapter 6, as
 2 amended, or rules adopted pursuant to these laws;

3 (b) the reclamation plan does not provide an acceptable
 4 method for accomplishment of reclamation as required by this
 5 part; or

6 (c) the water protection plan does not provide an
 7 acceptable method for protecting water resources as required
 8 by this part.

9 (2) A denial of a permit ~~shall~~ must be in writing and
 10 state the reasons ~~therefor~~ for the denial."

11 **Section 15.** Section 82-4-352, MCA, is amended to read:

12 "82-4-352. Reapplication with new reclamation plan or
 13 water protection plan. A permit may be denied and returned
 14 to the applicant with a request that the application be
 15 resubmitted with a different plan for reclamation or water
 16 protection. The person making application for a permit may
 17 then resubmit to the board a new plan for reclamation or
 18 water protection."

19 **Section 16.** Section 82-4-353, MCA, is amended to read:

20 "82-4-353. Administrative remedies -- notice -- parties
 21 -- hearings -- public information. (1) Upon receipt of an
 22 application for an operating permit, the department shall
 23 provide notice of the application by publication in a
 24 newspaper of general circulation in the area to be affected
 25 by the operation. The notice shall be published once a week

1 for 3 successive weeks.

2 (2) All hearings and appeal procedures ~~shall~~ must be in
3 accordance with the Montana Administrative Procedure Act,
4 except for the informational hearing provided for in
5 subsection (4). Any person whose interests may be adversely
6 affected as a result of an action taken pursuant to this
7 part may become a party to any proceeding held hereunder
8 upon a showing that such person is capable of adequately
9 representing the interests claimed.

10 (3) As used in this section, "person" means any
11 individual, corporation, partnership, or other legal entity.

12 (4) The department shall hold at least one public
13 hearing prior to issuing its decision to approve,
14 conditionally approve, or deny a permit pursuant to 82-4-337
15 for the purpose of obtaining public comment on the adequacy
16 of the water protection plan and the water restoration and
17 replacement financial assurance to accomplish the purposes
18 of this part. The department may hold one hearing to satisfy
19 the requirements of this subsection and the requirements of
20 and rules adopted under Title 75, chapter 1, parts 1 and 2.
21 No less than 30 days prior to the hearing the department
22 shall:

23 (a) give notice of the hearing in newspapers of general
24 circulation in the area to be affected by the proposed
25 operation and in the county newspapers of the county or

1 counties that would be affected;

2 (b) mail written notices of the hearing to water users
3 in the water protection area, as identified in the water
4 protection plan; and

5 (c) take other appropriate actions to ensure broad
6 distribution of the hearing notice.

7 (5) The department shall ensure that the water
8 protection plan, the department's assessment of the water
9 protection plan, and information supporting the department's
10 determination of the amount of the water restoration and
11 replacement financial assurance are readily available for
12 public review at the time the department gives notice of the
13 hearing provided for in subsection (4).

14 (6) A person whose interests may be adversely affected
15 as a result of a decision to issue an operating permit
16 pursuant to 82-4-337 relating to the water protection plan
17 or the water restoration and replacement financial assurance
18 may:

19 (a) submit to the department information relating to
20 the adequacy of the water protection plan and the amount of
21 the water restoration and replacement financial assurance
22 for a period of 30 days after the date of the public hearing
23 provided for in subsection (4);

24 (b) request an informal conference with the permittee
25 and the department prior to the issuance of an operating

1 permit under this part for the purpose of attempting to
 2 resolve any disagreement related to the adequacy of a water
 3 protection plan or water restoration and replacement
 4 financial assurance; and

5 (c) petition the board to reconsider a decision to
 6 issue an operating permit, including requesting a hearing.

7 If a hearing is requested under this subsection, the board
 8 shall hold the hearing and shall follow the procedure
 9 provided in subsection (4) to give notice of the hearing.

10 Based on the information presented at the hearing, the board
 11 may reaffirm the decision to issue the permit, deny the
 12 permit, or modify the terms of the permit relating to the
 13 water protection plan and the amount of the water
 14 restoration and replacement financial assurance. The board's
 15 decision following a hearing conducted under this subsection
 16 is the final agency decision."

17 **NEW SECTION. Section 17.** Rights and obligations of
 18 **permittees and water users.** (1) Following completion or
 19 abandonment of permitted operations and completion of
 20 reclamation, the permittee shall restore or replace the
 21 quantity and quality of water resources and restore
 22 beneficial uses in the water protection area to the
 23 approximate conditions that prevailed prior to the
 24 commencement of the permitted operations at no greater cost
 25 to water users, except that a permittee is not required to

1 restore or replace the quantity of a water resource solely
 2 to provide for the continuance of a beneficial use if the
 3 permittee holds a water right that is senior to that
 4 beneficial use and the permittee has lawfully consumed or
 5 used only the water to which the permittee is entitled.

6 (2) For the purpose of enforcement of the water
 7 protection plan, the department shall presume that water
 8 resources and beneficial uses in the water protection area
 9 have been diminished or degraded by the permitted operation
 10 if the number, location, quantity, rate of flow, quality, or
 11 hydrologic characteristics of water resources in the water
 12 protection area is diminished or degraded or if water users
 13 in the water protection area are incurring higher costs in
 14 obtaining or maintaining water resources for beneficial uses
 15 than under the conditions that existed prior to the
 16 commencement of the permitted operations.

17 (3) A water user within the water protection area may
 18 notify the permittee and the department by telephone, in
 19 writing, or by both methods that a water resource or
 20 beneficial use in the water protection area has been
 21 diminished or degraded.

22 (4) The permittee shall restore or replace sufficient
 23 water on a temporary basis to provide for the continuation
 24 of a beneficial use within the water protection area that
 25 has been diminished or degraded until the water resource and

1 beneficial use are permanently restored or replaced or until
 2 the permittee shows, pursuant to the requirements of
 3 subsection (9), that the water resource, beneficial use, or
 4 both were not diminished or damaged by the permitted
 5 operations. Temporary restoration or replacement of water
 6 must be accomplished within the following timeframes after
 7 the water user has notified the permittee and the department
 8 as provided in subsection (3):

9 (a) 24 hours for purposes of providing water for
 10 livestock, domestic use, municipal use, or instream flow;

11 (b) 72 hours for irrigation; and

12 (c) 7 days for any other beneficial use.

13 (5) If the permittee fails to temporarily restore or
 14 replace a water resource, restore a beneficial use, or both,
 15 as provided in subsection (4), the department shall, with
 16 the staff, equipment, and material under its control or by
 17 contract with others, take necessary actions to restore or
 18 replace the water resource, restore a beneficial use, or
 19 both. The department shall keep a record of all necessary
 20 expenses incurred in carrying out the work or activity
 21 authorized by this subsection, including a reasonable charge
 22 for the services performed by the state's personnel and
 23 equipment and the materials used.

24 (6) The board by order shall notify the permittee and
 25 his surety, if applicable, of actions taken to temporarily

1 restore or replace a water resource, restore a beneficial
 2 use, or both. The order must state the amount of necessary
 3 expenses incurred by the department and a notice that the
 4 amount is due and payable to the department by the permittee
 5 and by the surety, if applicable. If the amount specified in
 6 the order is not paid within 30 days after receipt of the
 7 notice, the attorney general, upon request of the board,
 8 shall bring an action on behalf of the state in district
 9 court. The surety is liable to the state to the extent of
 10 the surety's financial participation in any water
 11 replacement and restoration financial assurance mechanism
 12 provided by the permittee pursuant to [section 10]. The
 13 permittee is liable for the remainder of the cost.

14 (7) Within 6 months of the date of notification by the
 15 water user as provided in subsection (3), unless a different
 16 time is negotiated with the water user or unless the
 17 permittee shows, pursuant to the requirements of subsection
 18 (9), that a water resource or beneficial use was not
 19 diminished or degraded by the permittee's operations, the
 20 permittee shall permanently restore or replace a diminished
 21 or degraded water resource and shall permanently restore a
 22 diminished or degraded beneficial use at the same location
 23 where the water was beneficially used at no greater cost to
 24 the water user than under conditions that prevailed prior to
 25 the commencement of the permitted operations.

1 (8) The permittee shall compensate water users for any
2 economic losses incurred by the diminishment or degradation
3 of a water resource, beneficial use in the water protection
4 area, or both that are not restored or replaced within the
5 time established pursuant to subsection (4).

6 (9) (a) The permittee may request a hearing subject to
7 the provisions of the Montana Administrative Procedure Act
8 and may provide evidence to show that the alleged
9 diminishment or degradation of a water resource or
10 beneficial use was not caused by the permitted operations.

11 (b) The permittee has the burden of showing by clear
12 and convincing evidence that the permitted operations did
13 not cause the diminishment or degradation of the water
14 resource or beneficial use.

15 (c) A record must be made of the hearing and of all
16 evidence presented and testimony taken.

17 (d) Based upon the hearing record, the department shall
18 determine whether the water resource, beneficial use, or
19 both were diminished or degraded by the permitted
20 operations.

21 (e) Either the permittee or the water user may request
22 that the department reconsider its determination. The
23 department's response to a request to reconsider is the
24 final agency decision.

25 (f) If the department finds that the diminishment or

1 degradation of a water resource or beneficial use was not
2 caused by a permitted operation under this part, the
3 department may find that the water user must reimburse the
4 permittee for the costs the permittee incurred in
5 temporarily or permanently restoring or replacing the
6 diminished or degraded water resource or restoring the
7 beneficial use. If the department determines that the
8 diminishment or degradation of a water resource or
9 beneficial use was caused by a permitted operation under
10 this part, the permittee shall reimburse the water user for
11 the costs the water user incurred to participate in the
12 hearing provided for in subsection (9)(a).

13 NEW SECTION. **Section 18.** Rights of water users outside
14 a water protection area. (1) At any time after receipt of
15 the application for an operating permit, the department may
16 expand water monitoring beyond the water protection area
17 boundaries proposed in the application. The permittee shall
18 pay the costs of any additional monitoring that the
19 department determines is necessary to ensure protection of
20 water resources that may be adversely affected by the
21 permitted operations.

22 (2) A water user who depends upon a water resource or
23 who has a beneficial use that is located outside the water
24 protection area boundaries proposed in the permit
25 application or the boundaries established by the board

1 through permit review and issuance may request that the
 2 department expand water monitoring beyond the water
 3 protection area boundaries to include that water resource,
 4 beneficial use, or both. The water user must provide a
 5 written statement of the reasons for the request, including
 6 supporting information to explain why the water user
 7 believes that the water resource, beneficial use, or both
 8 may be diminished or degraded by the proposed or permitted
 9 operations.

10 (3) The water user outside a water protection area has
 11 the burden of showing by clear and convincing evidence that
 12 water monitoring should be expanded beyond the water
 13 protection area boundaries, except that the permittee has
 14 the burden of showing that water monitoring should not be
 15 expanded if the water user demonstrates that the water
 16 resource or beneficial use in question has been diminished
 17 or degraded based upon a comparison of the characteristics
 18 of the water resource or beneficial use prior to and after
 19 the commencement of the permitted operations. The water user
 20 is not required to show that the permitted operations caused
 21 the diminishment or degradation of the water resource or
 22 beneficial use.

23 (4) Either the water user or the permittee may request
 24 that the department reconsider its decision on the water
 25 user's request that the department expand water monitoring.

1 The department's response to a request to reconsider is the
 2 final agency decision.

3 (5) Within 180 days after a decision to expand water
 4 monitoring beyond the boundary of a water protection area,
 5 the department shall decide whether to formally expand the
 6 boundaries of the water protection area to include the water
 7 resource, beneficial use, or both that were the subject of a
 8 water user's request pursuant to subsection (2), unless the
 9 water user agrees to an extension of time to allow
 10 additional monitoring to occur before the department makes
 11 its decision.

12 (6) Either the water user or the permittee may request
 13 that the department reconsider its decision on whether to
 14 expand the boundary of a water protection area. In instances
 15 when, pursuant to subsection (3), the water user has
 16 demonstrated that a water resource, beneficial use, or both
 17 have been diminished or degraded, the permittee has the
 18 burden of showing by clear and convincing evidence that the
 19 water protection area should not be expanded.

20 (7) A water user who depends upon a water resource or
 21 who has a beneficial use that is included within the
 22 expanded boundaries of a water protection area is entitled
 23 to all of the rights and obligations of water users included
 24 within the original boundaries of the water protection area.

25 **Section 19.** Section 82-4-354, MCA, is amended to read:

1 "82-4-354. Mandamus to compel enforcement. (1) Any A
2 resident of this state or a person having an interest that
3 is or may be adversely affected, with knowledge that a
4 requirement of this part or a rule adopted under this part
5 is not being enforced by a public officer or employee whose
6 duty it is to enforce the requirement or rule, may bring the
7 failure to the attention of the ~~public-officer-or-employee~~
8 commissioner and to the licensee or permittee by an
9 affidavit stating the specific facts of the failure.
10 ~~Knowingly--making--false--statements--or--charges---in---the~~
11 ~~affidavit--subjects--the-affiant-to-penalties-prescribed-for~~
12 ~~false-swearing,-as-provided-in-45-7-202-~~

13 (2) Within 10 days of receipt of the affidavit, the
14 department shall inspect the operation and location named in
15 the affidavit and, based upon the inspection, the
16 commissioner shall issue a written response to the person
17 who filed the affidavit stating whether the commissioner
18 agrees or disagrees that a violation has taken place and
19 provide a copy to the licensee or permittee.

20 ~~(3)~~ (3) If the ~~public--officer-or-employee-neglects-or~~
21 ~~refuses-for--an--unreasonable--time--after--receipt--of--the~~
22 ~~affidavit--to--enforce--the-requirement-or-rule~~ commissioner
23 determines that there is no violation, the affiant may
24 appeal the commissioner's determination to the board or
25 bring an action of mandamus in the district court of the

1 first judicial district of this state in and for the county
2 of Lewis and Clark or in the district court of the county in
3 which the land is located. If the commissioner fails to
4 respond within 10 days of receipt of the affidavit, the
5 affiant may either proceed with an appeal to the board or
6 bring an action of mandamus as though the commissioner had
7 decided that no violation occurred.

8 (4) If the court finds that a requirement of this part
9 or a rule adopted under this part is not being enforced, it
10 shall:

11 (a) order the ~~public-officer-or~~ commissioner employee
12 to perform his duties. If he fails to do so, the ~~public~~
13 ~~officer-or~~ commissioner employee must be held in contempt of
14 court and is subject to the penalties provided by law.

15 (b) require the commissioner to order the licensee or
16 permittee who was found to be in violation of this part or a
17 rule adopted pursuant to this part to reimburse the person
18 who brought the complaint for all of the costs the person
19 incurred in appealing the commissioner's decision, bringing
20 an action of mandamus, or both. If the department is unable
21 to secure reimbursement of the person's costs from the
22 licensee or permittee within 60 days of the date of the
23 board's decision on an appeal or the court's decision on an
24 action of mandamus, the department shall reimburse the
25 person, provided that the department may continue to attempt

1 to obtain reimbursement from the licensee or permittee.

2 ~~{3}--Any--person--having--an--interest--that--is--or--may--be~~
3 ~~adversely--affected--may--commence--a--civil--action--on--his--own~~
4 ~~behalf--to--compel--compliance--with--this--part--against--any~~
5 ~~person--for--the--violation--of--this--part--or--any--rule,--order,--or~~
6 ~~permit--issued--under--it.---However,--no--such--action---may~~
7 ~~commence.~~

8 ~~{a}--prior--to--60--days--after--the--plaintiff--has--given~~
9 ~~notice--in--writing--to--the--department--and--to--the--alleged~~
10 ~~violator,--or~~

11 ~~{b}--if--the--department--has--commenced--and--is--diligently~~
12 ~~prosecuting--a--civil--action--to--require--compliance--with--the~~
13 ~~provisions--of--this--part--or--any--rule,--order--or--permit--issued~~
14 ~~under--it.~~

15 {5} Any person having an interest that is or may be
16 adversely affected may intervene as a matter of right in any
17 such a civil action brought under this section.

18 ~~{4}{6}~~ Nothing in this section restricts any right of
19 any person under any statute or common law to seek
20 enforcement of this part or the rules adopted under it or to
21 seek any other relief."

22 **Section 20.** Section 82-4-355, MCA, is amended to read:

23 "82-4-355. Action for damages to water supply --
24 replacement. (1) An owner of an interest in real property
25 who obtains all or part of his supply of water for

1 beneficial uses, as defined in 85-2-102, ~~from-an-underground~~
2 ~~source--other-than-a-subterranean-stream-having-a-permanent,~~
3 ~~distinct,--and-known-channel~~ may sue the operator engaged in
4 a mining or exploration operation to recover damages for
5 loss in quality or quantity of the water supply resulting
6 from mining or exploration. The owner is required to exhaust
7 the administrative remedy under subsection (2) prior to
8 filing suit related to an operation permitted prior to
9 October 1, 1991. The provisions of [sections 1 through 24]
10 supersede the provisions of this section for operations
11 permitted after October 1, 1991.

12 (2) (a) An owner described in subsection (1) may file a
13 complaint with the department detailing the loss in quality
14 or quantity of water. Upon receipt of a valid complaint, the
15 department:

16 (i) shall investigate the statements and charges in the
17 complaint, using all available information, including
18 monitoring data gathered at the exploration or mine site;

19 (ii) may require the operator, if necessary, to install
20 monitoring wells or other practices that may be needed to
21 determine the cause of water loss, if there is a loss, in
22 terms of quantity and quality;

23 (iii) shall issue a written finding specifying the cause
24 of the water loss, if there is a loss, in terms of quantity
25 and quality;

1 (iv) shall, if it determines that the preponderance of
 2 evidence indicates that the loss is caused by an exploration
 3 or mining operation, order the operator, in compliance with
 4 Title 85, chapter 2, to provide the needed water immediately
 5 on a temporary basis and within a reasonable time replace
 6 the water in like quality, quantity, and duration. If the
 7 water is not replaced, the department shall order the
 8 suspension of the operator's exploration or operating permit
 9 until such time as the operator provides substitute water,
 10 except that nothing in this section preempts Title 85,
 11 chapter 2. The operator may not be required to replace a
 12 junior right if the operator's withdrawal or dewatering is
 13 not in excess of his senior right.

14 (b) If the department determines that there is a great
 15 potential that surface or subsurface water quality and
 16 quantity may be adversely affected by a mining or
 17 exploration operation, the operator shall install a water
 18 quality monitoring program, water quantity monitoring
 19 program, or both, which must be approved by the department
 20 prior to the commencement of exploration or mining."

21 **Section 21.** Section 82-4-360, MCA, is amended to read:

22 "**82-4-360. Activity prohibited if bond forfeited or**
 23 **reclamation laws violated** -- exception. (1) Except as
 24 provided in subsection (2), a person may not conduct mining
 25 or exploration activities in this state if that person or

1 any firm or business association of which that person was a
 2 principal or controlling member had a bond forfeited under
 3 this part or if the department determines, based on
 4 information supplied by any person, that the applicant is in
 5 violation of federal or state mine reclamation laws or
 6 rules.

7 (2) A person described in subsection (1) may apply for
 8 an operations permit or an exploration license or may
 9 conclude a written agreement under 82-4-305 if that person
 10 first pays to the department:

11 (a) the full amount of the necessary expenses incurred
 12 by the board under 82-4-341(5) for reclamation of the area
 13 for which the bond was forfeited or in which a violation of
 14 a federal or state mine reclamation law or rule occurred in
 15 the state;

16 (b) the full amount of any penalties assessed under
 17 this part; and

18 (c) interest on these amounts and penalties incurred at
 19 the rate of 6% per year."

20 **Section 22.** Section 82-4-362, MCA, is amended to read:

21 "**82-4-362. Suspension of permits -- hearing.** (1) If any
 22 of the requirements of this part, the rules adopted under
 23 this part, or the reclamation plan have not been complied
 24 with within the time limits set by the department or board
 25 or by this part, the department shall serve a notice of

1 noncompliance on the licensee or permittee or, if necessary,
 2 the commissioner shall order the suspension of the permit.
 3 The notice or order must be handed to the licensee or
 4 permittee in person or served by certified or-registered
 5 mail addressed to the permanent address shown on the
 6 application for a permit. The notice of noncompliance must
 7 specify in what respects the operator has failed to comply
 8 with this part, the rules adopted under this part, or the
 9 reclamation plan.

10 (2) If the licensee or permittee has not complied with
 11 the requirements set forth in the notice of noncompliance or
 12 order of suspension within the time limits set therein, the
 13 permit may be revoked by order of the board and the
 14 performance bond forfeited to the department. The licensee
 15 or permittee is entitled to a hearing before the department
 16 on the revocation of a permit or license or the forfeiture
 17 of a performance bond if a hearing is requested within 30
 18 days after service of notice as provided in subsection (1).
 19 The notice must state when those measures may be undertaken
 20 and must give notice of opportunity for a hearing. If a
 21 hearing is requested within the 30-day period, the permit or
 22 license may not be revoked and the bond may not be forfeited
 23 until a final decision is made by the department.

24 (3) If a permittee fails to pay the fee or file the
 25 report required under 82-4-339, the department shall serve

1 notice of this failure, by certified mail or personal
 2 delivery, on the permittee. If the permittee does not comply
 3 within 30 days of receipt of the notice, the commissioner
 4 shall suspend the permit. The commissioner shall reinstate
 5 the permit upon compliance.

6 (4) If the department determines that a permittee is in
 7 violation of a federal or state mine reclamation law or rule
 8 at any of the permittee's operations within the state, the
 9 department shall serve a notice of noncompliance on the
 10 permittee in accordance with the procedures specified in
 11 subsection (1). The notice must identify the provisions of
 12 federal or state mine reclamation laws that the permittee is
 13 violating, establish a time limit for correction of the
 14 violations, and state that the permittee has an opportunity
 15 to request a hearing. The permittee is entitled to a hearing
 16 if the permittee requests the hearing within 30 days after
 17 service of the notice as provided in subsection (1). Within
 18 15 days after the close of a hearing held under this
 19 subsection, the commissioner shall reaffirm or withdraw the
 20 notice of noncompliance, based upon the hearing record. If
 21 the commissioner reaffirms the notice, the permittee shall
 22 comply with the requirements set forth in the notice within
 23 the time limits set therein. If the permittee does not
 24 comply, all permits issued to the permittee under this part
 25 must be revoked by order of the board. The board shall

1 reinstate the permits upon submission of appropriate
 2 documentation from appropriate agencies of the state and
 3 federal government that establishes that the permittee has
 4 corrected the violations that caused the permits issued
 5 under this part to be revoked."

6 NEW SECTION. Section 23. Federal water protection and
 7 replacement legislation. If the U.S. congress approves
 8 federal legislation establishing water protection and
 9 replacement requirements for operations permitted under this
 10 part that supersede the requirements of this part and if the
 11 federal legislation authorizes state governments to assume
 12 primacy for administration of the federal water protection
 13 and replacement requirements, the department shall take the
 14 actions necessary to receive federal approval to administer
 15 the federal requirements.

16 NEW SECTION. Section 24. Rulemaking. The department
 17 shall adopt:

18 (1) interim rules to implement [sections 1 through 24]
 19 to be in place no later than October 1, 1991; and

20 (2) final rules to implement [sections 1 through 24] to
 21 be in place no later than July 1, 1992.

22 NEW SECTION. Section 25. Codification instruction.
 23 [Sections 10, 17, 18, 23, and 24] are intended to be
 24 codified as an integral part of Title 82, chapter 4, part 3,
 25 and the provisions of Title 82, chapter 4, part 3, apply to

1 [sections 10, 17, 18, 23, and 24].

2 NEW SECTION. Section 26. Severability. If a part of
 3 [this act] is invalid, all valid parts that are severable
 4 from the invalid part remain in effect. If a part of [this
 5 act] is invalid in one or more of its applications, the part
 6 remains in effect in all valid applications that are
 7 severable from the invalid applications.

8 NEW SECTION. Section 27. Applicability. [This act]
 9 applies to proceedings begun after October 1, 1991.

10 NEW SECTION. Section 28. Effective date. [This act] is
 11 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0889, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


An act to generally revise metal mine reclamation laws to provide for protection of water resources and for the restoration and replacement of water resources and beneficial uses of water that are diminished or degraded by permitted mining operations; establishing a water restoration and replacement financial assurance requirement; establishing administrative procedures; revising mandamus procedures; providing for revocation of permits.

ASSUMPTIONS:

1. HB0889 provides for the submission, evaluation, additional reporting and bonding of a water resources protection area, which are above and beyond the Department of State Lands' existing workload. This will require 2.00 FTE hydrologists and 1.00 FTE engineer, all at grade 15, step 12.
2. Permit maintenance, appeals and written findings will be the primary responsibility of 2.50 FTE in assumption 1.
3. The fees provided for in this bill would fund only 0.50 FTE.
4. Rapid response costs for water complaints would be funded from the Governor's environmental contingency account.
5. Volume of data to be analyzed would increase by a factor of about 25%.
6. One-time equipment will cost \$17,700 and include 3 computers @ \$3,000 each for modeling for hydrologic analysis, bond modeling and tracking, plus 3 desks, chairs, bookcases and dividers @ \$2,600 per office.
7. Contracted services will include: Hearings officer for 100 hours @ \$50/hour = \$5,000 per year. Reimbursement costs for appellant if permittee fails to pay = \$10,000 per year in spending authority. The department would pursue cost recovery from the permittee. Hearings officers would be required for one protracted hearing per year.
8. Operating expenses will be \$15,000 per year.
9. The department must reimburse a person for the cost of an appeal if the permittee fails to pay within 60 days.
10. Revenue will be generated by: Average 20 applications per year * 1 month application review (average)*\$1,000/month FTE cost = \$20,000/year; plus \$10,000/year cost recovery on appeals.

FISCAL IMPACT:

see next page


ROD SUNDSTED, BUDGET DIRECTOR 2-21-91 DATE
Office of Budget and Program Planning

MARK O'KEEFE, PRIMARY SPONSOR DATE

Fiscal Note for HB0889, as introduced

HB 889

Fiscal Note Request, HB0889, as introduced

Form BD-15

Page 2

FISCAL IMPACT:

Department of State Lands, Hard Rock:

	FY 92			FY 93		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Expenditures:</u>						
F.T.E.	0.00	3.00	3.00	0.00	3.00	3.00
Personal Services	0	112,740	112,740	0	112,740	112,740
Operating Expenses	0	15,000	15,000	0	15,000	15,000
Equipment	0	17,100	17,100	0	0	0
Total	0	144,840	144,840	0	127,740	127,740
<u>Funding:</u>						
General Fund	0	114,840	114,840	0	97,740	97,740
State Special	0	30,000	30,000	0	30,000	30,000
Total	0	144,840	144,840	0	127,740	127,740
<u>Revenue:</u>						
State Special Revenue (02)	0	30,000	30,000	0	30,000	30,000
General Fund Impact			(114,840)			(97,740)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Department expenditures for the implementation would be approximately \$127,740 per year.

HB 889

APPROVED BY COMM. ON
NATURAL RESOURCES

HOUSE BILL NO. 889

INTRODUCED BY O'KEEFE, BIANCHI, KADAS, RANEY, YELLOWTAIL,
HARPER, MEASURE, KIMBERLEY, DRISCOLL, COHEN, SOUTHWORTH,
BARNHART, DOHERTY, FRITZ, BARDANOUVE, STRIZICH, REAM, DOWELL,
WEEDING, PECK, ECK, HOCKETT, KENNEDY

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE
METAL MINE RECLAMATION LAWS TO PROVIDE FOR PROTECTION OF
WATER RESOURCES AND FOR THE RESTORATION AND OR REPLACEMENT
OF WATER RESOURCES AND RESTORATION AND CONTINUANCE OF
BENEFICIAL USES OF WATER THAT ARE DIMINISHED OR DEGRADED BY
PERMITTED MINING OPERATIONS; ESTABLISHING A WATER
RESTORATION AND REPLACEMENT FINANCIAL ASSURANCE REQUIREMENT;
ESTABLISHING ADMINISTRATIVE PROCEDURES; REVISING MANDAMUS
PROCEDURES; PROVIDING FOR REVOCATION OF PERMITS; AMENDING
SECTIONS 82-4-301, 82-4-302, 82-4-303, 82-4-311, 82-4-321,
82-4-322, 82-4-323, 82-4-335, 82-4-337, 82-4-339, 82-4-340,
82-4-341, 82-4-351, 82-4-352, 82-4-353, 82-4-354, 82-4-355,
82-4-360, AND 82-4-362, MCA; AND PROVIDING AN IMMEDIATE
EFFECTIVE DATE AND AN APPLICABILITY DATE DATES."

STATEMENT OF INTENT

A statement of intent is required for this bill to
provide guidance to the department of state lands for the
adoption of rules to establish requirements for the content

of water protection plans, ~~interpret--the--definition--of~~
~~beneficial---uses---of---water,~~ PROVIDE CRITERIA FOR THE
ESTABLISHMENT OF BOUNDARIES OF WATER PROTECTION AREAS,
define the types of department expenses that may be included
in calculating the water resources assessment fee, and
define the terms and conditions of financial assurance
mechanisms.

The department shall adopt rules that define the
specific subjects, types of data, and level of water
monitoring that an applicant for an operating permit must
include in the 2-year baseline study of water resources,
hydrology, and beneficial uses within a water protection
area. The information collected by the applicant must be
sufficient to allow the department to assess the cumulative
impacts of the proposed operations upon the hydrology,
quantity, and quality of water resources and upon beneficial
uses in the water protection area. The department's rules
must also identify the specific types of analyses an
applicant must prepare in order to provide an adequate
assessment of the consequences of proposed mining operations
on water resources and beneficial uses, the potential for
restoration or replacement of water resources and beneficial
uses that may be diminished or degraded by the proposed
operations, and the estimated costs of restoration and OR
replacement of the water resources and beneficial uses.

1 ~~The department's rules must define the characteristics~~
 2 ~~of significant aesthetic values and significant wildlife~~
 3 ~~habitat that are defined in (section 3) as beneficial uses~~
 4 ~~of water resources. Significant wildlife habitat must~~
 5 ~~include habitat for state and federally designated~~
 6 ~~threatened and endangered species and all species of~~
 7 ~~wildlife and fish that are classified as game species and~~
 8 ~~for which licenses are required for hunting and fishing in~~
 9 ~~the state.~~

10 [Section 8(3)] authorizes the department to assess a
 11 water resources assessment fee not to exceed the actual
 12 amount of contractor and employee expenses of the department
 13 to provide for timely and adequate review of the water
 14 protection plan, TO ENSURE COMPLIANCE WITH THE PLAN
 15 FOLLOWING PERMIT ISSUANCE, AND TO INVESTIGATE COMPLAINTS
 16 PURSUANT TO 82-4-355(3). The department's rules should
 17 authorize the use of the money collected from the water
 18 resources assessment fee for expenses, such as for hiring
 19 temporary employees and contracted consultants and, data
 20 collection and analysis, AND PERMIT COMPLIANCE INSPECTIONS
 21 AND MONITORING.

22 In adopting rules to set forth the specific terms and
 23 conditions of financial assurance mechanisms authorized by
 24 [section 10], the department shall consult and, to the
 25 greatest extent practicable, rely upon concepts and

1 requirements contained in Rules 16.44.801 through 16.44.823,
 2 Administrative Rules of Montana.

3
 4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

5 **Section 1.** Section 82-4-301, MCA, is amended to read:

6 "82-4-301. Legislative findings. (1) The extraction of
 7 mineral by mining is a basic and essential activity making
 8 an important contribution to the economy of the state and
 9 the nation. At the same time, proper reclamation of mined
 10 land and former exploration areas not brought to mining
 11 stage is necessary to prevent undesirable land and surface
 12 water conditions detrimental to the general welfare, health,
 13 safety, ecology, and property rights of the citizens of the
 14 state. Mining and exploration for minerals take place in
 15 diverse areas where geological, topographical, climatic,
 16 biological, and sociological conditions are significantly
 17 different, and reclamation specifications must vary
 18 accordingly. It is not practical to extract minerals or
 19 explore for minerals required by our society without
 20 disturbing the surface or subsurface of the earth and
 21 without producing waste materials, and the very character of
 22 many types of mining operations precludes complete
 23 restoration of the land to its original condition. The
 24 legislature finds that land reclamation as provided in this
 25 part will allow exploration for and mining of valuable

1 minerals while adequately providing for the subsequent
2 beneficial use of the lands to be reclaimed.

3 (2) The legislature finds that beneficial uses of
4 surface water and ground water may be adversely affected by
5 mining and exploration for minerals and that requirements to
6 ensure the protection of the state's water resources are
7 necessary. The legislature finds that restoration or
8 replacement of water resources and restoration of beneficial
9 uses is necessary if those resources and beneficial uses are
10 diminished or degraded as a result of mining and exploration
11 for minerals and that the restoration or replacement should
12 be accomplished at no increased cost to water users."

13 **Section 2.** Section 82-4-302, MCA, is amended to read:

14 **"82-4-302. Purpose.** (1) The purposes of this part are
15 to provide:

16 (a) that the usefulness, productivity, and scenic
17 values of all lands ~~and-surface-waters~~ involved in mining
18 and mining exploration within the boundaries and lawful
19 jurisdiction of the state will receive the greatest
20 reasonable degree of protection and reclamation to
21 beneficial use;

22 (b) authority for cooperation between private and
23 governmental entities in carrying this part into effect;

24 (c) for the recognition of the recreational and
25 aesthetic values of land as a benefit to the state of

1 Montana; and

2 (d) protection to all waters within the boundaries and
3 lawful jurisdiction of the state that may be adversely
4 affected by mining;

5 (e) for restoration or replacement of the quantity and
6 quality of waters that are diminished or degraded by mining;

7 (f) that water users do not incur increased costs in
8 continuing beneficial uses of water resources in areas where
9 mining for minerals occurs; and

10 ~~(d)~~(g) priorities and values to the aesthetics of our
11 landscape, waters, and ground cover.

12 (2) Although both the need for and the practicability
13 of reclamation will control the type and degree of
14 reclamation in any specific instance, the basic objective
15 will be to establish, on a continuing basis, the vegetative
16 cover, soil stability, water condition, and safety condition
17 appropriate to any proposed subsequent use of the area."

18 **Section 3.** Section 82-4-303, MCA, is amended to read:

19 **"82-4-303. Definitions.** As used in this part, unless
20 the context indicates otherwise, the following definitions
21 apply:

22 (1) "Abandonment of surface or underground mining" may
23 be presumed when it is shown that continued operation will
24 not resume.

25 (2) "Beneficial uses" means those beneficial uses of

~~water resources defined in 85-2-102(2) and other uses of water resources that include but are not limited to maintenance of minimum streamflows, public and private water leases, significant aesthetic values, and significant wildlife habitat.~~

~~(2)(3)~~ "Board" means the board of land commissioners or a state employee or state agency as may succeed to its powers and duties under this part.

~~(4)~~ "Commissioner" means the commissioner of state lands provided for in 2-15-3202.

~~(3)(5)~~ "Cyanide ore-processing reagent" means cyanide or a cyanide compound used as a reagent in leaching operations.

~~(4)(6)~~ "Department" means the department of state lands.

~~(5)(7)~~ "Disturbed land" means that area of land or surface water disturbed, beginning at the date of the issuance of the permit, and it comprises that area from which the overburden, tailings, waste materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, leach dumps, and all similar excavations or covering resulting from the operation and which have not been previously reclaimed under the reclamation plan.

~~(6)(8)~~ "Exploration" means all activities conducted on or beneath the surface of lands resulting in material

disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation, as well as all roads made for the purpose of facilitating exploration, except as noted in 82-4-310.

~~(7)(9)~~ "Mineral" means any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium, taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting.

~~(8)(10)~~ "Mining" commences when the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of aggregate of 10,000 short tons.

~~(9)(11)~~ "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard hard-rock mineral concentration processes.

~~(10)(12)~~ "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or waste

1 materials, or operation of a hard-rock mill.

2 ~~(11)~~(13) "Placer deposit" means naturally occurring,

3 scattered or unconsolidated valuable minerals in gravel or

4 alluvium lying above bedrock.

5 ~~(12)~~(14) "Placer or dredge mining" means the mining of

6 minerals from a placer deposit by a person or persons.

7 ~~(13)~~(15) "Reclamation plan" means the operator's written

8 proposal, as required and approved by the board, for

9 reclamation of the land that will be disturbed. The proposal

10 shall include, to the extent practical at the time of

11 application for an operating permit:

12 (a) a statement of the proposed subsequent use of the

13 land after reclamation;

14 (b) plans for surface gradient restoration to a surface

15 suitable for the proposed subsequent use of the land after

16 reclamation is completed and the proposed method of

17 accomplishment;

18 (c) the manner and type of revegetation or other

19 surface treatment of disturbed areas;

20 (d) procedures proposed to avoid foreseeable situations

21 of public nuisance, endangerment of public safety, damage to

22 human life or property, or unnecessary damage to flora and

23 fauna in or adjacent to the area;

24 (e) the method of disposal of mining debris;

25 (f) the method of diverting surface waters around the

1 disturbed areas where necessary to prevent pollution of

2 those waters or unnecessary erosion;

3 (g) the method of reclamation of stream channels and

4 stream banks to control erosion, siltation, and pollution;

5 (h) maps and other supporting documents as may be

6 reasonably required by the department; and

7 (i) a time schedule for reclamation that meets the

8 requirements of 82-4-336.

9 ~~(14)~~(16) (a) "Small miner" means a person, firm, or

10 corporation that engages in the business of mining or

11 reprocessing of tailings or waste materials that does not

12 remove from the earth during any calendar year material in

13 excess of 36,500 tons in the aggregate, that does not hold

14 an operating permit under 82-4-335 except for a permit

15 issued under 82-4-335(2), and that conducts:

16 (i) an operation resulting in not more than 5 acres of

17 the earth's surface being disturbed and unreclaimed; or

18 (ii) two operations which disturb and leave unreclaimed

19 less than 5 acres per operation if the respective mining

20 properties are:

21 (A) the only operations engaged in by the person, firm,

22 or corporation;

23 (B) at least 1 mile apart at their closest point; and

24 (C) not operated simultaneously except during seasonal

25 transitional periods not to exceed 30 days.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation, exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases.

{15}(17) "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining. Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium or excavation or grading conducted for on-site farming, on-site road construction, or other on-site building construction.

{16}(18) "Underground mining" means all methods of mining other than surface mining.

{17}(19) "Unit of surface-mined area" means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month

period of time, beginning at the date of the issuance of the permit, and it comprises and includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations which by virtue of mining use are susceptible to erosion in excess of the surrounding undisturbed portions of land.

{18}(20) "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation.

(21) "Water protection area" means the area proposed for mining that would be subject to an operating permit and the area that is 1-mile upgradient by 2-miles crossgradient by 3 miles downgradient of the respective hydrologic slopes of surface water and ground water flowing through the proposed permitted area WHERE THE QUALITY, QUANTITY, AND HYDROLOGIC BALANCE OF SURFACE WATER AND GROUND WATER MAY BE ADVERSELY AFFECTED BY CONTAMINATION, DIMINUTION, OR INTERRUPTION PROXIMATELY RESULTING FROM THE PROPOSED MINING OPERATIONS.

(22) "Water protection plan" means the operator's written proposal, as required and approved by the board, for the protection of water resources within the water protection area. The board shall adopt rules setting forth requirements for the content of the proposal, provided that the proposal must include the following elements:

1 (a) a list containing the names and addresses of all
2 water users in the water protection area;

3 (b) a detailed assessment of the existing water
4 resources, hydrology, and beneficial uses within the water
5 protection area, including a 2-year baseline study
6 sufficient to enable the department to assess the potential
7 and probable cumulative impacts of the proposed operations
8 upon the hydrology, quantity, and quality of water resources
9 and upon beneficial uses in the water protection area;

10 (c) an assessment of the consequences of the proposed
11 operations on the hydrology, quantity, and quality of water
12 resources in the water protection area, including the
13 potential for diminishment or degradation of water resources
14 and the potential for adverse effects on beneficial uses;

15 (d) an assessment of the potential for water resources
16 and beneficial uses that may be diminished or degraded to be
17 permanently restored or replaced to the approximate
18 hydrologic characteristics, quantity, and quality that
19 existed prior to the commencement of the proposed operations
20 and the proposed methods of restoration or replacement of
21 water resources and restoration of beneficial uses; and

22 (e) the estimated cost of restoring or replacing any
23 water resources that may be diminished or degraded by the
24 proposed operations and the estimated cost of ensuring the
25 continuation of beneficial uses within the water protection

1 area at no greater cost to water users than under conditions
2 that existed prior to the commencement of the proposed
3 operations.

4 (23) "Water resources" means all streams, lakes, wells,
5 springs, irrigation systems, wetlands, watercourses,
6 waterways, drainage systems, and other bodies of surface
7 water and ground water, including natural and manmade water
8 bodies, regardless of ownership, ~~and--any-of-these-water~~
9 ~~bodies-that-are-outside-the-state's--boundaries--but~~ within
10 the boundaries of a water protection area.

11 (24) "Water user" means a person or entity holding a
12 ~~water-right,~~ VALID RIGHT TO APPROPRIATE WATER as provided in
13 Title 85, chapter 2, ~~and-a-state-or-federal-agency--or--unit~~
14 ~~of--government--with--jurisdiction--over--water-resources-or~~
15 ~~beneficial-uses.~~"

16 **Section 4.** Section 82-4-311, MCA, is amended to read:

17 "82-4-311. Hard-rock mining account. All fees, fines,
18 penalties, and other uncleared ~~moneys-which~~ money that have
19 been or will be paid to the department ~~of-state-lands~~ under
20 the provisions of this part ~~shall~~ must be placed in the
21 state special revenue fund in the state treasury and
22 credited to a special account to be designated as the
23 hard-rock mining and reclamation account. This account ~~shall~~
24 be ~~is~~ available to the department by appropriation and ~~shall~~
25 must be expended for the research, reclamation, and

1 revegetation of land and the rehabilitation, restoration,
 2 and replacement of water resources affected by any mining
 3 operations. Any unencumbered and any unexpended balance of
 4 this account remaining at the end of a fiscal year ~~shall~~ may
 5 not lapse but ~~shall~~ must be carried forward for the purposes
 6 of this section until expended or until appropriated by
 7 subsequent legislative action."

8 **Section 5.** Section 82-4-321, MCA, is amended to read:

9 "82-4-321. Administration. The board is charged with
 10 the responsibility of administering this part. In order to
 11 implement its terms and provisions, the board shall from
 12 time to time promulgate such rules as the board shall deem
 13 necessary. The board may delegate such powers, duties, and
 14 functions to the department as it deems necessary for the
 15 performance of its duties as administrator of this part. The
 16 board shall employ experienced, qualified persons in the
 17 field fields of mined-land reclamation and water protection,
 18 restoration, and replacement who, for the purpose of this
 19 part, are referred to as supervisors."

20 **Section 6.** Section 82-4-322, MCA, is amended to read:

21 "82-4-322. Investigations, research, and experiments.
 22 The board ~~shall~~ has the authority to conduct or
 23 authorize investigations, research, experiments, and
 24 demonstrations in reclamation and water protection,
 25 restoration, and replacement and to collect and disseminate

1 nonconfidential information relating to mining."

2 **Section 7.** Section 82-4-323, MCA, is amended to read:

3 "82-4-323. Interagency cooperation -- receipt and
 4 expenditure of funds. The board shall cooperate with other
 5 governmental and private agencies in this state and other
 6 states and agencies of the federal government and may
 7 reasonably compensate them for any services the board
 8 requests that they provide. The board may receive federal
 9 funds, state funds, and any other funds and, within the
 10 limits imposed by the grant, expend them for water
 11 protection, restoration and replacement of water resources,
 12 reclamation of land affected by mining or exploration, and
 13 for purposes enumerated in 82-4-336."

14 **Section 8.** Section 82-4-335, MCA, is amended to read:

15 "82-4-335. Operating permit -- limitation -- fees. (1)
 16 A person may not engage in mining, ore processing, or
 17 reprocessing of tailings or waste material, construct or
 18 operate a hard-rock mill, use cyanide ore-processing
 19 reagents, or disturb land in anticipation of those
 20 activities in the state without first obtaining an operating
 21 permit from the board. A separate operating permit is
 22 required for each complex.

23 (2) A small miner who intends to use a cyanide
 24 ore-processing reagent shall obtain an operating permit for
 25 that part of his operation where the cyanide ore-processing

1 reagent will be used or disposed of.

2 (3) Prior to receiving an operating permit from the
 3 board, a person shall pay the basic permit fee of \$25 and a
 4 water resources assessment fee not to exceed the actual
 5 amount of contractor and employee expenses of the department
 6 that are necessary to provide for timely and adequate review
 7 of the water protection plan, TO ENSURE COMPLIANCE WITH THE
 8 PLAN FOLLOWING ISSUANCE OF A PERMIT, AND TO INVESTIGATE
 9 COMPLAINTS PURSUANT TO 82-4-355(3). The board may further
 10 define these expenses by rule.

11 (4) A person shall submit an application on a form
 12 provided by the board, which that must contain the following
 13 information and any other pertinent data required by rule:

14 (a) name and address of the operator and, if a
 15 corporation or other business entity, the name and address
 16 of its principal officers, partners, and the like and its
 17 resident agent for service of process, if required by law;

18 (b) minerals expected to be mined;

19 (c) a proposed reclamation plan;

20 (d) a proposed water protection plan;

21 ~~(d)~~(e) expected starting date of operations;

22 ~~(e)~~(f) a map showing the specific area to be mined and
 23 the boundaries of the land which that will be disturbed,
 24 topographic detail, the location and names of all streams,
 25 roads, railroads, and utility lines on or immediately

1 adjacent to the area, location of proposed access roads to
 2 be built, and the names and addresses of the surface and
 3 mineral owners of all lands within the mining area, to the
 4 extent known to the applicant;

5 ~~(f)~~(g) types of access roads to be built and manner of
 6 reclamation of road sites on abandonment;

7 ~~(g)~~(h) a plan which that will provide, within limits of
 8 normal operating procedures of the industry, for completion
 9 of the operation;

10 ~~(h)~~--ground-water--and--surface--water--hydrologic--data
 11 ~~gathered--from--a-sufficient-number-of-sources-and-length-of~~
 12 ~~time-to-characterize-the-hydrologic-regime;~~

13 (i) a plan detailing the design, operation, and
 14 monitoring of impounding structures, including but not
 15 limited to tailings impoundments and water reservoirs,
 16 sufficient to ensure that the structures are safe and
 17 stable;

18 (j) a plan identifying methods to be used to monitor
 19 for the accidental discharge of objectionable materials and
 20 remedial action plans to be used to control and mitigate
 21 discharges to surface water or ground water; and

22 (k) an evaluation of the expected life of any tailings
 23 impoundment or waste area and the potential for expansion of
 24 the tailings impoundment or waste site.

25 ~~(4)~~(5) Except as provided in subsection ~~(6)~~ (7), the

1 permit provided for in subsection (1) for a large-scale
 2 mineral development as defined in 90-6-302 must be
 3 conditioned to provide that activities under the permit may
 4 not commence until the impact plan is approved under
 5 90-6-307 and until the permittee has provided a written
 6 guarantee to the department and to the hard-rock mining
 7 impact board of compliance within the time schedule with the
 8 commitment made in the approved impact plan, as provided in
 9 90-6-307. If the permittee does not comply with that
 10 commitment within the time scheduled, the board, upon
 11 receipt of written notice from the hard-rock mining impact
 12 board, shall suspend the permit until it receives written
 13 notice from the hard-rock mining impact board that the
 14 permittee is in compliance.

15 ~~(5)~~(6) When the department determines that a permittee
 16 has become or will become a large-scale mineral developer
 17 pursuant to 82-4-339 and 90-6-302(4) and provides notice as
 18 required under 82-4-339, within 6 months of receiving the
 19 notice, the permittee shall provide the board with proof
 20 that he has obtained a waiver of the impact plan requirement
 21 from the hard-rock mining impact board or that he has filed
 22 an impact plan with the hard-rock mining impact board and
 23 the appropriate county or counties. If the permittee does
 24 not file the required proof or if the hard-rock mining
 25 impact board certifies to the board that the permittee has

1 failed to comply with the hard-rock mining impact review and
 2 implementation requirements in Title 90, chapter 6, parts 3
 3 and 4, the board shall suspend the permit until the
 4 permittee files the required proof or until the hard-rock
 5 mining impact board certifies that the permittee has
 6 complied with the hard-rock mining impact review and
 7 implementation requirements.

8 ~~(6)~~(7) Compliance with 90-6-307 is not required for
 9 exploration and bulk sampling for metallurgical testing when
 10 the aggregate samples are less than 10,000 tons.

11 ~~(7)~~(8) A person may not be issued an operating permit
 12 if that person's failure to comply with the provisions of
 13 this part, the rules adopted under this part, or a permit or
 14 license issued under this part has resulted in the
 15 forfeiture of a bond unless that person meets the conditions
 16 described in 82-4-360."

17 **Section 9.** Section 82-4-337, MCA, is amended to read:

18 "**82-4-337. Inspection -- issuance of operating permit**
 19 **-- modification.** (1) (a) The board shall cause all
 20 applications for operating permits to be reviewed for
 21 completeness within 30 days of receipt. The board shall
 22 notify the applicant concerning completeness as soon as
 23 possible. An application is considered complete unless the
 24 applicant is notified of any deficiencies within 30 days of
 25 receipt.

1 (b) Unless the review period is extended as provided in
 2 this section, the board shall review the adequacy of the
 3 proposed reclamation plan, water protection plan, and plan
 4 of operation within 30 days of the determination that the
 5 application is complete or within 60 days of receipt of the
 6 application if the board does not notify the applicant of
 7 any deficiencies in the application. If the applicant is not
 8 notified of deficiencies or inadequacies in the proposed
 9 reclamation plan, water protection plan, and plan of
 10 operation within such time period, the department shall
 11 issue a decision to approve the operating permit shall--be
 12 issued-upon-receipt-of-the-bond-as-required-in-82-4-338. The
 13 department shall promptly notify the applicant of the form
 14 and amount of bond which and water restoration and
 15 replacement financial assurance that will be required.

16 (c) If, within 15 days of the date the department's
 17 decision is issued under subsection (1)(b) or (1)(e)(iii)
 18 the department does not receive a request for an informal
 19 conference or a petition to reconsider the decision pursuant
 20 to 82-4-353(6), the decision is final and the operating
 21 permit must be issued. No proceeding conducted pursuant to
 22 82-4-353(6)(c) may exceed 60 calendar days unless extended
 23 by the board for good cause.

24 (d) No permit may be issued until:

25 (i) sufficient bond has been submitted pursuant to

1 82-4-338- and the financial assurance requirement of
 2 [section 10] has been satisfied;

3 (ii) the administrative requirements of 82-4-353 have
 4 been satisfied;

5 (iii) the department has found that the water protection
 6 plan is adequate to protect water resources in the water
 7 protection area, as demonstrated by the applicant for an
 8 operating permit; and

9 ~~(c)-(i)-(iv)~~ Prior--to--issuance--of--a--permit, the
 10 department ~~shall inspect~~ has inspected the site, unless the
 11 department has failed to act on the application within the
 12 time prescribed in subsection (1)(b). If the site is not
 13 accessible due to extended adverse weather conditions, the
 14 department may extend the time period prescribed in
 15 subsection (1)(b) by not more than 180 days to allow
 16 inspection of the site and reasonable review.

17 (e) (i) The department must serve written notice of a
 18 time extension upon the applicant in person or by certified
 19 mail, and any such extension is subject to appeal to the
 20 board in accordance with the Montana Administrative
 21 Procedure Act.

22 (ii) If the department determines that additional time
 23 is needed to review the application and reclamation plan or
 24 water protection plan for a major operation, the department
 25 and the applicant shall negotiate to extend the period

1 prescribed in subsection (1)(b) by not more than 365 425
 2 days in order to permit reasonable review. When an
 3 application and reclamation plan or water protection plan
 4 are reviewed under the provisions of this subsection, the
 5 department shall issue its decision to approve, approve with
 6 conditions, or deny the operating permit at least 60 days
 7 before the end of the negotiated extension period.

8 (iii) Failure of the board to act upon a complete
 9 application within the extension period constitutes approval
 10 of the application, and the permit shall be issued promptly
 11 upon receipt of the bond as required in 82-4-338 and
 12 certification that the applicant has complied with the
 13 financial assurance requirement established by [section 10].

14 (2) The operating permit ~~shall~~ must be granted for the
 15 period required to complete the operation and ~~shall be~~ is
 16 valid until the operation authorized by the permit is
 17 completed or abandoned unless the permit is suspended or
 18 revoked by the board as provided in this part.

19 (3) The operating permit ~~shall~~ must provide that the
 20 reclamation plan and water protection plan may be modified
 21 by the board, upon proper application of the permittee or
 22 department, after timely notice and opportunity for hearing,
 23 at any time during the term of the permit and for any of the
 24 following reasons:

25 (a) to modify the requirements so they will not

1 conflict with existing laws;

2 (b) when the previously adopted reclamation plan or
 3 water protection plan is impossible or impracticable to
 4 implement and maintain;

5 (c) when significant environmental problem situations
 6 are revealed by field inspection."

7 **NEW SECTION. Section 10. Water restoration and**
 8 **replacement -- financial assurance -- release.** (1) The
 9 applicant shall provide financial assurance sufficient to
 10 ensure the restoration or replacement of specific water
 11 resources and the restoration and continuation of beneficial
 12 uses within the water protection area at no greater cost to
 13 water users than under conditions that existed prior to the
 14 commencement of the applicant's proposed operations. The
 15 department shall determine the amount of financial assurance
 16 that the applicant must provide based on an assessment of
 17 the water protection plan and the applicant's estimated cost
 18 of restoring or replacing water resources and restoring
 19 beneficial uses that may be diminished or degraded by the
 20 applicant's proposed operations.

21 (2) The applicant may satisfy the financial assurance
 22 requirement by:

23 (a) establishing a water restoration and replacement
 24 trust fund and making annual payments into the fund;

25 (b) filing with the department a bond that is payable

1 to the state of Montana with surety satisfactory to the
2 department, conditioned upon the faithful performance of the
3 requirements of this part and the rules of the board;

4 (c) filing an irrevocable letter of credit with the
5 department;

6 (d) obtaining water restoration and replacement
7 insurance and submitting a certification of insurance to the
8 department;

9 (e) filing with the department a cash deposit, an
10 assignment of a certificate of deposit, or other surety
11 acceptable to the board; OR

12 ~~{f}--demonstrating--to-the-department-that-the-applicant~~
13 ~~meets-minimum-financial-worth-and-bond-rating-criteria--that~~
14 ~~show--that-the-applicant-has-adequate-internal-resources-for~~
15 ~~meeting-the-financial-requirement-established-by--subsection~~
16 ~~{f};-or~~

17 ~~{g}~~(F) a combination of financial assurance mechanisms
18 that are acceptable to the department and that may include a
19 trust fund, a surety bond guaranteeing payment into a trust
20 fund, a letter of credit, and insurance.

21 (3) The board may accept financial assurance from an
22 applicant for two or more operations. Financial assurance
23 for two or more operations must be adequate to ensure the
24 restoration or replacement of water resources and the
25 continuance of beneficial uses of water resources in the

1 water protection area or areas surrounding the operations at
2 no greater cost to water users than the users incurred under
3 conditions that prevailed prior to the commencement of the
4 permitted operations.

5 (4) The board shall adopt rules to specify the terms
6 and conditions of each financial assurance mechanism
7 authorized by this section that must be met before the board
8 may approve the use of that mechanism by the applicant for
9 purposes of satisfying the financial assurance requirement
10 established by this section.

11 (5) The amount of financial assurance approved by the
12 board may not be less than the estimated cost to the state
13 to restore or replace specific water resources and to ensure
14 the continuance of beneficial uses in the water protection
15 area at no greater cost to water users than under conditions
16 that prevailed prior to the commencement of the proposed
17 operations as set forth in the water protection plan.

18 (6) A public or government agency is not required to
19 provide financial assurance under the provisions of this
20 section.

21 (7) If the department determines that the level of
22 financial assurance provided for a permitted operation does
23 not represent the present costs of water restoration or
24 replacement or AND restoration of beneficial uses that may
25 be diminished or degraded by the operation, the department

1 may modify the financial assurance requirements of that
2 permit.

3 (8) The department may not release an operator from the
4 financial assurance requirement and release funds or
5 terminate the funding mechanisms the operator relied upon to
6 fulfill the financial assurance requirement:

7 (a) for a minimum of 10 years after the release of the
8 performance bond as provided in 82-4-338;

9 (b) until the department determines that the quality
10 and quantity of water resources in the water protection area
11 have been permanently restored or replaced and that
12 beneficial uses in the water protection area are continuing
13 at no greater cost to water users than under conditions that
14 prevailed prior to the commencement of the permitted
15 operations; and

16 (c) until a public hearing has been held consistent
17 with the provisions of 82-4-353(4). The department shall
18 make all information that is relevant to the decision on
19 whether to release an operator from the financial assurance
20 requirement readily available to interested persons
21 beginning no later than the date that notice of the public
22 hearing is distributed as required by 82-4-353(4).

23 (9) A person may submit to the department information
24 relevant to the department's decision to release an operator
25 from all or any part of the financial assurance requirement

1 for a period of 30 days after the date of the public hearing
2 required by subsection 82-4-353(4).

3 (10) A person may request the department to reconsider
4 its decision to release an operator from all or any part of
5 the financial assurance requirement, based upon information
6 the person submits to show that the permittee has not
7 restored or replaced the quantity or quality of water
8 resources or both or has not restored beneficial uses in the
9 water protection area at no greater cost to water users than
10 under the conditions that prevailed prior to the
11 commencement of the permitted operations. The department's
12 response to a request to reconsider its decision to release
13 an operator from all or any part of the financial assurance
14 requirement is the final agency decision.

15 **Section 11.** Section 82-4-339, MCA, is amended to read:

16 **"82-4-339. Annual report of activities by permittee --**
17 **fee -- notice of large-scale mineral developer status. (1)**
18 **Within 30 days after completion or abandonment of operations**
19 **on an area under permit or within 30 days after each**
20 **anniversary date of the permit, whichever is earlier, or at**
21 **such later date as may be provided by rules of the board and**
22 **each year thereafter until reclamation and restoration and**
23 **OR replacement of water resources and restoration of**
24 **beneficial uses is completed and approved, the permittee**
25 **shall pay the annual fee of \$25 and shall file a report of**

1 activities completed during the preceding year on a form
2 prescribed by the board which report shall:

- 3 (a) identify the permittee and the permit number;
- 4 (b) locate the operation by subdivision, section,
5 township, and range and with relation to the nearest town or
6 other well-known geographic feature;
- 7 (c) estimate acreage to be newly disturbed by operation
8 in the next 12-month period;
- 9 (d) include the number of persons on the payroll for
10 the previous permit year and for the next permit year at
11 intervals that the department considers sufficient to enable
12 a determination of the permittee's status under 90-6-302(4);
13 and
- 14 (e) update any maps previously submitted or
15 specifically requested by the board. Such maps shall show:
- 16 (i) the permit area;
- 17 (ii) the unit of disturbed land;
- 18 (iii) the area to be disturbed during the next 12-month
19 period;
- 20 (iv) if completed, the date of completion of operations;
- 21 (v) if not completed, the additional area estimated to
22 be further disturbed by the operation within the following
23 permit year; and
- 24 (vi) the date of beginning, amount, and current status
25 of reclamation, protection OF WATER RESOURCES, restoration

1 and OR replacement of water resources, and restoration of
2 beneficial uses performed during the previous 12 months.

3 (2) Whenever the department determines that the
4 permittee has become or will, during the next permit year,
5 become a large-scale mineral developer, it shall immediately
6 serve written notice of that fact on the permittee, the
7 hard-rock mining impact board, and the county or counties in
8 which the operation is located."

9 **Section 12.** Section 82-4-340, MCA, is amended to read:
10 "82-4-340. **Successor operator.** When one operator
11 succeeds to the interest of another in any uncompleted
12 operation by sale, assignment, lease, or otherwise, the
13 board may release the first operator from the duties imposed
14 upon him by this part as to such operation, provided that
15 both operators have complied with the requirements of this
16 part and the successor operator assumes the duty of the
17 former operator to protect water resources and to complete
18 the reclamation of the land and the restoration or
19 replacement of water resources and restoration of beneficial
20 uses, in which case the board shall transfer the permit to
21 the successor operator upon approval of the successor
22 operator's bond and water restoration and replacement
23 financial assurance as required under this part."

24 **Section 13.** Section 82-4-341, MCA, is amended to read:
25 "82-4-341. **Compliance with reclamation plan and water**

1 protection plan -- reclamation and restoration OR
 2 REPLACEMENT of water resources and beneficial uses by board.

3 (1) Following receipt of the permittee's report and at any
 4 other reasonable time the board may elect, the board shall
 5 cause the permit area to be inspected to determine if the
 6 permittee has complied with the reclamation plan, the water
 7 protection plan, and the board's rules.

8 (2) The permittee shall proceed with reclamation and
 9 the protection of water resources and beneficial uses as
 10 scheduled in his approved reclamation plan and water
 11 protection plan. Following written notice by the board
 12 noting deficiencies, the permittee shall commence action
 13 within 30 days to rectify these deficiencies and shall
 14 diligently proceed until the deficiencies are corrected,
 15 provided that deficiencies that also violate other laws that
 16 require earlier rectification shall be corrected in
 17 accordance with the applicable time provisions of such laws.
 18 The board may extend performance periods referred to in this
 19 section and in 82-4-336 for delays clearly beyond the
 20 permittee's control, but only when the permittee is, in the
 21 opinion of the board, making every reasonable effort to
 22 comply.

23 (3) Within 30 days after notification by the permittee
 24 and when, in the judgment of the board, reclamation of a
 25 unit of disturbed land area is properly completed, the

1 permittee shall be notified in writing and his bond on said
 2 area shall be released or decreased proportionately to the
 3 acreage included within the bond coverage.

4 (4) If reclamation of disturbed land is not pursued in
 5 accordance with the reclamation plan or if protection of
 6 water resources and beneficial uses is not pursued in
 7 accordance with the water protection plan and the permittee
 8 has not commenced action to rectify deficiencies within 30
 9 days after notification by the board or if reclamation is
 10 not properly completed in conformance with the reclamation
 11 plan within 2 years after completion or abandonment of
 12 operation on any fraction of the permit area or such longer
 13 period as may have been authorized hereunder or if, after
 14 default by the permittee, the surety either refuses or fails
 15 to perform the work to the satisfaction of the board within
 16 the time required therefor, the board may, with the staff,
 17 equipment, and material under its control or by contract
 18 with others, take such actions as are necessary for required
 19 reclamation of the disturbed lands and for restoration and
 20 OR replacement of water resources and restoration of
 21 beneficial uses. Such work shall be let on the basis of
 22 competitive bidding. The board shall keep a record of all
 23 necessary expenses incurred in carrying out the work or
 24 activity authorized under this section, including a
 25 reasonable charge for the services performed by the state's

1 personnel and the state's equipment and materials utilized.
 2 (5) The board shall notify the permittee and his surety
 3 by order. The order shall state the amount of necessary
 4 expenses incurred by the board in reclaiming the disturbed
 5 land and restoring and OR replacing water resources and
 6 restoring beneficial uses and a notice that the amount is
 7 due and payable to the board by the permittee and, if
 8 applicable, the surety. If the amount specified in the order
 9 is not paid within 30 days after receipt of the notice, the
 10 attorney general, upon request of the board, shall bring an
 11 action on behalf of the state in district court. The surety
 12 ~~shall--be~~ is liable to the state for compliance with the
 13 reclamation plan to the extent of the reclamation
 14 performance bond and the permittee or the surety or both are
 15 liable to the extent of the financial assurance provided
 16 pursuant to [section 10]. The permittee ~~shall-be~~ is liable
 17 for the remainder of the any cost not paid by the surety
 18 relating to either land reclamation or restoration and OR
 19 replacement of water resources and restoration of beneficial
 20 uses.
 21 (6) In addition to the other liabilities imposed by
 22 this part, failure to commence action to remedy specific
 23 deficiencies in reclamation or restoration and OR
 24 replacement of water resources and restoration of beneficial
 25 uses within 30 days after notification by the board or

1 failure to satisfactorily complete reclamation work on any
 2 segment of the permit area within 2 years, or such longer
 3 period as the board may permit on permittee's application
 4 therefor or on the board's own motion, after completion or
 5 abandonment of operations on any segment of the permit area
 6 ~~shall--constitute~~ constitutes sufficient grounds for
 7 cancellation of a permit or license and refusal to issue
 8 another permit or license to the applicant; provided,
 9 however, that such action ~~shall~~ may not be effected while an
 10 appeal is pending from any ruling requiring the same."
 11 **Section 14.** Section 82-4-351, MCA, is amended to read:
 12 "82-4-351. Reasons for denial of permit. (1) A permit
 13 may be denied for any of the following reasons:
 14 (a) the plan of operation or reclamation or water
 15 protection conflicts with Title 75, chapter 2, as amended,
 16 Title 75, chapter 5, as amended, Title 75, chapter 6, as
 17 amended, or rules adopted pursuant to these laws;
 18 (b) the reclamation plan does not provide an acceptable
 19 method for accomplishment of reclamation as required by this
 20 part; or
 21 (c) the water protection plan does not provide an
 22 acceptable method for protecting water resources as required
 23 by this part.
 24 (2) A denial of a permit ~~shall~~ must be in writing and
 25 state the reasons ~~therefor~~ for the denial."

1 **Section 15.** Section 82-4-352, MCA, is amended to read:

2 "**82-4-352. Reapplication with new reclamation plan or**
3 **water protection plan.** A permit may be denied and returned
4 to the applicant with a request that the application be
5 resubmitted with a different plan for reclamation or water
6 protection. The person making application for a permit may
7 then resubmit to the board a new plan for reclamation or
8 water protection."

9 **Section 16.** Section 82-4-353, MCA, is amended to read:

10 "**82-4-353. Administrative remedies -- notice -- parties**
11 **-- hearings -- public information.** (1) Upon receipt of an
12 application for an operating permit, the department shall
13 provide notice of the application by publication in a
14 newspaper of general circulation in the area to be affected
15 by the operation. The notice shall be published once a week
16 for 3 successive weeks.

17 (2) All hearings and appeal procedures ~~shall~~ must be in
18 accordance with the Montana Administrative Procedure Act,
19 except for the informational hearing provided for in
20 subsection (4). Any person whose interests may be adversely
21 affected as a result of an action taken pursuant to this
22 part may become a party to any proceeding held hereunder
23 upon a showing that such person is capable of adequately
24 representing the interests claimed.

25 (3) As used in this section, "person" means any

1 individual, corporation, partnership, or other legal entity.

2 (4) The department shall hold at least one public
3 hearing prior to issuing its decision to approve,
4 conditionally approve, or deny a permit pursuant to 82-4-337
5 for the purpose of obtaining public comment on the adequacy
6 of the water protection plan and the water restoration and
7 replacement financial assurance to accomplish the purposes
8 of this part. The department may hold one hearing to satisfy
9 the requirements of this subsection and the requirements of
10 and rules adopted under Title 75, chapter 1, parts 1 and 2.
11 No less than 30 days prior to the hearing the department
12 shall:

13 (a) give notice of the hearing in newspapers of general
14 circulation in the area to be affected by the proposed
15 operation and in the county newspapers of the county or
16 counties that would be affected;

17 (b) mail written notices of the hearing to water users
18 in the water protection area, as identified in the water
19 protection plan; and

20 (c) take other appropriate actions to ensure broad
21 distribution of the hearing notice.

22 (5) The department shall ensure that the water
23 protection plan, the department's assessment of the water
24 protection plan, and information supporting the department's
25 determination of the amount of the water restoration and

1 replacement financial assurance are readily available for
 2 public review at the time the department gives notice of the
 3 hearing provided for in subsection (4).

4 (6) A person whose interests may be adversely affected
 5 as a result of a decision to issue an operating permit
 6 pursuant to 82-4-337 relating to the water protection plan
 7 or the water restoration and replacement financial assurance
 8 may:

9 (a) submit to the department information relating to
 10 the adequacy of the water protection plan and the amount of
 11 the water restoration and replacement financial assurance
 12 for a period of 30 days after the date of the public hearing
 13 provided for in subsection (4);

14 (b) request an informal conference with the permittee
 15 and the department prior to the issuance of an operating
 16 permit under this part for the purpose of attempting to
 17 resolve any disagreement related to the adequacy of a water
 18 protection plan or water restoration and replacement
 19 financial assurance; and

20 (c) petition the board to reconsider a decision to
 21 issue an operating permit, including requesting a hearing.
 22 If a hearing is requested under this subsection, the board
 23 shall hold the hearing and shall follow the procedure
 24 provided in subsection (4) to give notice of the hearing.
 25 Based on the information presented at the hearing, the board

1 may reaffirm the decision to issue the permit, deny the
 2 permit, or modify the terms of the permit relating to the
 3 water protection plan and the amount of the water
 4 restoration and replacement financial assurance. The board's
 5 decision following a hearing conducted under this subsection
 6 is the final agency decision."

7 NEW SECTION. Section 17. Rights and obligations of
 8 permittees and water users. (1) Following completion or
 9 abandonment of permitted operations and completion of
 10 reclamation, the permittee shall restore or replace the
 11 quantity and quality of water resources and restore
 12 beneficial uses in the water protection area to the
 13 approximate conditions that prevailed prior to the
 14 commencement of the permitted operations at no greater cost
 15 to water users, except that a permittee is not required to
 16 restore or replace the quantity of a water resource solely
 17 to provide for the continuance of a beneficial use if the
 18 permittee holds a water right that is senior to that
 19 beneficial use and the permittee has lawfully consumed or
 20 used only the water to which the permittee is entitled.

21 (2) For the purpose of enforcement of the water
 22 protection plan, the department shall presume that water
 23 resources and beneficial uses in the water protection area
 24 have been diminished or degraded by the permitted operation
 25 if the number, location, quantity, rate of flow, quality or

1 hydrologic characteristics of water resources in the water
2 protection area is diminished or degraded or if water users
3 in the water protection area are incurring higher costs in
4 obtaining or maintaining water resources for beneficial uses
5 than under the conditions that existed prior to the
6 commencement of the permitted operations.

7 (3) A water user within the water protection area may
8 notify the permittee and the department by telephone, in
9 writing, or by both methods that a water resource or
10 beneficial use in the water protection area has been
11 diminished or degraded.

12 (4) The permittee shall restore or replace sufficient
13 water on a temporary basis to provide for the continuation
14 of a beneficial use within the water protection area that
15 has been diminished or degraded until the water resource and
16 beneficial use are permanently restored or replaced or until
17 the permittee shows, pursuant to the requirements of
18 subsection (9), that the water resource, beneficial use, or
19 both were not diminished or damaged by the permitted
20 operations. Temporary restoration or replacement of water
21 must be accomplished within the following timeframes after
22 the water user has notified the permittee and the department
23 as provided in subsection (3):

24 (a) 24 hours for purposes of providing water for
25 livestock, domestic use, municipal use, or instream flow;

1 (b) 72 hours for irrigation; and
2 (c) 7 days for any other beneficial use.
3 (5) If the permittee fails to temporarily restore or
4 replace a water resource, restore a beneficial use, or both,
5 as provided in subsection (4), the department shall, with
6 the staff, equipment, and material under its control or by
7 contract with others, take necessary actions to restore or
8 replace the water resource, restore a beneficial use, or
9 both. The department shall keep a record of all necessary
10 expenses incurred in carrying out the work or activity
11 authorized by this subsection, including a reasonable charge
12 for the services performed by the state's personnel and
13 equipment and the materials used.

14 (6) The board by order shall notify the permittee and
15 his surety, if applicable, of actions taken to temporarily
16 restore or replace a water resource, restore a beneficial
17 use, or both. The order must state the amount of necessary
18 expenses incurred by the department and a notice that the
19 amount is due and payable to the department by the permittee
20 and by the surety, if applicable. If the amount specified in
21 the order is not paid within 30 days after receipt of the
22 notice, the attorney general, upon request of the board,
23 shall bring an action on behalf of the state in district
24 court. The surety is liable to the state to the extent of
25 the surety's financial participation in any water

1 replacement--and--restoration--financial--assurance--mechanism
2 provided--by--the--permittee--pursuant--to--{section--10};--The
3 permittee--is--liable--for--the--remainder--of--the--cost;

4 {7}--Within--6--months--of--the--date--of--notification--by--the
5 water--user--as--provided--in--subsection--{3};--unless--a--different
6 time--is--negotiated--with--the--water--user--or--unless--the
7 permittee--shows,--pursuant--to--the--requirements--of--subsection
8 {9};--that--a--water--resource--or--beneficial--use--was--not
9 diminished--or--degraded--by--the--permittee's--operations;--the
10 permittee--shall--permanently--restore--or--replace--a--diminished
11 or--degraded--water--resource--and--shall--permanently--restore--a
12 diminished--or--degraded--beneficial--use--at--the--same--location
13 where--the--water--was--beneficially--used--at--no--greater--cost--to
14 the--water--user--than--under--conditions--that--prevailed--prior--to
15 the--commencement--of--the--permitted--operations;

16 {8}--The--permittee--shall--compensate--water--users--for--any
17 economic--losses--incurred--by--the--diminishment--or--degradation
18 of--a--water--resource;--beneficial--use--in--the--water--protection
19 area;--or--both--that--are--not--restored--or--replaced--within--the
20 time--established--pursuant--to--subsection--{4};

21 {9}--(a)--The--permittee--may--request--a--hearing--subject--to
22 the--provisions--of--the--Montana--Administrative--Procedure--Act
23 and--may--provide--evidence--to--show--that--the--alleged
24 diminishment--or--degradation--of--a--water--resource--or
25 beneficial--use--was--not--caused--by--the--permitted--operations;

1 {b}--The--permittee--has--the--burden--of--showing--by--clear
2 and--convincing--evidence--that--the--permitted--operations--did
3 not--cause--the--diminishment--or--degradation--of--the--water
4 resource--or--beneficial--use;

5 {c}--A--record--must--be--made--of--the--hearing--and--of--all
6 evidence--presented--and--testimony--taken;

7 {d}--Based--upon--the--hearing--record;--the--department--shall
8 determine--whether--the--water--resource;--beneficial--use;--or
9 both--were--diminished--or--degraded--by--the--permitted
10 operations;

11 {e}--Either--the--permittee--or--the--water--user--may--request
12 that--the--department--reconsider--its--determination;--The
13 department's--response--to--a--request--to--reconsider--is--the
14 final--agency--decision;

15 {f}--If--the--department--finds--that--the--diminishment--or
16 degradation--of--a--water--resource--or--beneficial--use--was--not
17 caused--by--a--permitted--operation--under--this--part;--the
18 department--may--find--that--the--water--user--must--reimburse--the
19 permittee--for--the--costs--the--permittee--incurred--in
20 temporarily--or--permanently--restoring--or--replacing--the
21 diminished--or--degraded--water--resource--or--restoring--the
22 beneficial--use;--if--the--department--determines--that--the
23 diminishment--or--degradation--of--a--water--resource--or
24 beneficial--use--was--caused--by--a--permitted--operation--under
25 this--part;--the--permittee--shall--reimburse--the--water--user--for

~~the costs the water user incurred to participate in the hearing provided for in subsection (9)(a);~~

NEW SECTION. **Section 18.** Rights of water users outside a water protection area. (1) At any time after receipt of the application for an operating permit, the department may expand water monitoring beyond the water protection area boundaries proposed in the application. The permittee shall pay the costs of any additional monitoring that the department determines is necessary to ensure protection of water resources that may be adversely affected by the permitted operations.

(2) A water user who depends upon a water resource or who has a beneficial use that is located outside the water protection area boundaries proposed in the permit application or the boundaries established by the board through permit review and issuance may request that the department expand water monitoring beyond the water protection area boundaries to include that water resource, beneficial use, or both. The water user must provide a written statement of the reasons for the request, including supporting information to explain why the water user believes that the water resource, beneficial use, or both may be diminished or degraded by the proposed or permitted operations.

(3) The water user outside a water protection area has

the burden of showing by clear and convincing A PREPONDERANCE OF evidence that water monitoring should be expanded beyond the water protection area boundaries, ~~except that the permittee has the burden of showing that water monitoring should not be expanded if the water user demonstrates that the water resource or beneficial use in question has been diminished or degraded based upon a comparison of the characteristics of the water resource or beneficial use prior to and after the commencement of the permitted operations. The water user is not required to show that the permitted operations caused the diminishment or degradation of the water resource or beneficial use.~~

(4) Either the water user or the permittee may request that the department reconsider its decision on the water user's request that the department expand water monitoring. The department's response to a request to reconsider is the final agency decision.

(5) Within 180 days after a decision to expand water monitoring beyond the boundary of a water protection area, the department shall decide whether to formally expand the boundaries of the water protection area to include the water resource, beneficial use, or both that were the subject of a water user's request pursuant to subsection (2), unless the water user agrees to an extension of time to allow additional monitoring to occur before the department makes

1 its decision.

2 (6) Either the water user or the permittee may request
3 that the department reconsider its decision on whether to
4 expand the boundary of a water protection area. In instances
5 when, pursuant to subsection (3), the water user has
6 demonstrated that a water resource, beneficial use, or both
7 have been diminished or degraded, the permittee has the
8 burden of showing by ~~clear-and-convincing~~ A PREPONDERANCE OF
9 evidence that the water protection area should not be
10 expanded.

11 (7) A water user who depends upon a water resource or
12 who has a beneficial use that is included within the
13 expanded boundaries of a water protection area is entitled
14 to all of the rights and obligations of water users included
15 within the original boundaries of the water protection area.

16 **Section 19.** Section 82-4-354, MCA, is amended to read:
17 **"82-4-354. Mandamus-to-compel--enforcement ENFORCEMENT**
18 **-- ADMINISTRATIVE REVIEW -- MANDAMUS.** (1) Any A resident of
19 this state or a person having an interest that is or may be
20 adversely affected, with knowledge that a requirement of
21 this part or a rule adopted under this part is not being
22 enforced by a public officer or employee whose duty it is to
23 enforce the requirement or rule, may bring the failure to
24 the attention of the public-officer-or-employee commissioner
25 and to the licensee or permittee by an affidavit stating the

1 specific facts of the failure. ~~Knowingly--making--false~~
2 ~~statements-or-charges-in-the-affidavit-subjects-the--affiant~~
3 ~~to--penalties--prescribed-for-false-swearing,-as-provided-in~~
4 ~~45-7-202.~~

5 (2) Within 10 days of receipt of the AN affidavit THAT
6 ALLEGES FACTS DEMONSTRATING PROBABLE CAUSE THAT A VIOLATION
7 OF THIS PART OR A RULE ADOPTED UNDER THIS PART HAS OCCURRED,
8 the department shall inspect the operation and location
9 named in the affidavit and, based upon the inspection, the
10 commissioner shall issue a written response to the person
11 who filed the affidavit, stating whether the commissioner
12 agrees or disagrees that a violation has taken place OR
13 STATING THAT SUPPLEMENTAL INVESTIGATION IS NECESSARY, and
14 provide a copy to the licensee or permittee. IF THE
15 DEPARTMENT DETERMINES THAT SUPPLEMENTAL INVESTIGATION IS
16 NECESSARY, THE COMMISSIONER SHALL INCLUDE IN THE WRITTEN
17 RESPONSE A STATEMENT OF THE REASONS AND A SPECIFIC
18 TIMEFRAME, NOT TO EXCEED 30 DAYS UNLESS THE COMMISSIONER
19 DEMONSTRATES GOOD CAUSE THAT MORE TIME IS NEEDED, FOR
20 COMPLETION OF THE INVESTIGATION AND ISSUANCE OF THE
21 COMMISSIONER'S STATEMENT AGREEING OR DISAGREEING THAT A
22 VIOLATION HAS TAKEN PLACE.

23 ~~(3) If the public-officer-or-employee neglects-or~~
24 ~~refuses-for--an--unreasonable--time--after--receipt--of--the~~
25 ~~affidavit--to--enforce--the--requirement--or--rule commissioner~~

1 determines that there is no violation, the affiant may
 2 appeal the commissioner's determination to the board REQUEST
 3 AN ADMINISTRATIVE HEARING or, IF THE COMMISSIONER'S DECISION
 4 IS ARBITRARY, CAPRICIOUS, OR AN ABUSE OF DISCRETION, bring
 5 an action of mandamus in the district court of the first
 6 judicial district of this state in and for the county of
 7 Lewis and Clark or in the district court of the county in
 8 which the land is located. If the commissioner fails to
 9 respond within 10 days of receipt of the affidavit, the
 10 affiant may either proceed with an appeal to the board or
 11 bring an action of mandamus as though the commissioner had
 12 decided that no violation occurred OR BRING AN ACTION OF
 13 MANDAMUS.

14 (4) If the court finds that a requirement of this part
 15 or a rule adopted under this part is not being enforced, it
 16 shall:

17 (a) order the public officer or commissioner employee
 18 to perform his duties. If he fails to do so, the public
 19 officer or commissioner employee must be held in contempt of
 20 court and is subject to the penalties provided by law.

21 (b) require the commissioner to order the licensee or
 22 permittee who was found to be in violation of this part or a
 23 rule adopted pursuant to this part to reimburse the person
 24 who brought the complaint for all of the costs the person
 25 incurred in appealing the commissioner's decision, bringing

1 an action of mandamus, or both, if the department is unable
 2 to secure reimbursement of the person's costs from the
 3 licensee or permittee within 60 days of the date of the
 4 board's decision on an appeal or the court's decision on an
 5 action of mandamus, the department shall reimburse the
 6 person, provided that the department may continue to attempt
 7 to obtain reimbursement from the licensee or permittee.

8 (3) Any person having an interest that is or may be
 9 adversely affected may commence a civil action on his own
 10 behalf to compel compliance with this part against any
 11 person for the violation of this part or any rule, order, or
 12 permit issued under it. However, no such action may
 13 commence:

14 (a) prior to 60 days after the plaintiff has given
 15 notice in writing to the department and to the alleged
 16 violator; or

17 (b) if the department has commenced and is diligently
 18 prosecuting a civil action to require compliance with the
 19 provisions of this part or any rule, order or permit issued
 20 under it:

21 (5) THE COURT, IN ISSUING A FINAL ORDER IN ANY ACTION
 22 BROUGHT PURSUANT TO SUBSECTION (3), MAY AWARD COSTS OF
 23 LITIGATION, INCLUDING ATTORNEY AND EXPERT WITNESS FEES, TO
 24 ANY PARTY WHENEVER THE COURT DETERMINES SUCH AWARD IS
 25 APPROPRIATE. THE COURT MAY, IF A TEMPORARY RESTRAINING ORDER

1 OR PRELIMINARY INJUNCTION IS SOUGHT, REQUIRE THE FILING OF A
 2 BOND OR EQUIVALENT SECURITY IN ACCORDANCE WITH THE MONTANA
 3 RULES OF CIVIL PROCEDURE.

4 (6) A PERSON HAVING AN INTEREST THAT IS OR MAY BE
 5 ADVERSELY AFFECTED MAY COMMENCE A CIVIL ACTION ON HIS OWN
 6 BEHALF TO COMPEL COMPLIANCE WITH THIS PART AGAINST ANY
 7 PERSON FOR THE VIOLATION OF THIS PART OR ANY RULE, ORDER,
 8 PERMIT, OR LICENSE ISSUED UNDER IT. HOWEVER, AN ACTION MAY
 9 NOT COMMENCE:

10 (A) PRIOR TO 60 DAYS AFTER THE PLAINTIFF HAS GIVEN
 11 NOTICE IN WRITING TO THE DEPARTMENT AND TO THE ALLEGED
 12 VIOLATOR; OR

13 (B) IF THE DEPARTMENT HAS COMMENCED AND IS DILIGENTLY
 14 PROSECUTING A CIVIL ACTION TO REQUIRE COMPLIANCE WITH THE
 15 PROVISIONS OF THIS PART OR ANY RULE, ORDER, PERMIT, OR
 16 LICENSE ISSUED UNDER IT.

17 (5)(7) Any person having an interest that is or may be
 18 adversely affected may intervene as a matter of right in any
 19 such a civil action brought under this--section- SUBSECTION
 20 (6).

21 (8) A PERSON WHO IS INJURED IN HIS PERSON OR PROPERTY
 22 THROUGH THE VIOLATION BY ANY PERMITEE OR LICENSEE OF A
 23 RULE, ORDER, PERMIT, OR LICENSE ISSUED PURSUANT TO THIS PART
 24 MAY BRING AN ACTION FOR DAMAGES, INCLUDING REASONABLE
 25 ATTORNEY AND EXPERT WITNESS FEES, AGAINST THE PERMITEE OR

1 LICENSEE ONLY IN THE COUNTY IN WHICH THE EXPLORATION OR
 2 MINING OPERATION COMPLAINED OF IS LOCATED. NOTHING IN THIS
 3 SUBSECTION AFFECTS THE RIGHTS ESTABLISHED BY OR LIMITS
 4 IMPOSED UNDER TITLE 39, CHAPTER 71.

5 (4)(6)(9) Nothing in this section restricts any right
 6 of any person under any statute or common law to seek
 7 enforcement of this part or the rules adopted under it or to
 8 seek any other relief."

9 **Section 20.** Section 82-4-355, MCA, is amended to read:
 10 "82-4-355. Action for damages to water supply --
 11 replacement. (1) An owner of an interest in real property
 12 who obtains all or part of his supply of water for
 13 beneficial uses, as defined in 85-2-102, ~~from-an-underground~~
 14 ~~source--other-than-a-subterranean-stream-having-a-permanent~~
 15 ~~distinct-and-known-channel~~ may sue the operator PERMITEE
 16 OR LICENSEE engaged in a mining or exploration operation to
 17 recover damages for loss in quality or quantity of the water
 18 supply PROXIMATELY resulting from mining or exploration. The
 19 owner is required to exhaust the administrative remedy under
 20 subsection ~~(2)~~ (3) prior to filing suit ~~related-to--an~~
 21 ~~operation-permitted-prior-to-October-17-1991--the-provisions~~
 22 ~~of--(sections-1-through-24)--supersede-the-provisions-of-this~~
 23 ~~section-for-operations-permitted-after-October-17-1991.~~

24 (2) PRIMA FACIE EVIDENCE OF INJURY IN A SUIT UNDER THIS
 25 SECTION IS ESTABLISHED BY A SHOWING THAT THE ORE BODY OR

1 OVERLYING STRATA IS AN AQUIFER IN THAT LOCATION AND THAT THE
 2 ORE BODY OR THE OVERLYING STRATA HAS BEEN REMOVED OR
 3 DISRUPTED. A PRIMA FACIE SHOWING SHIFTS THE BURDEN TO THE
 4 DEFENDANT PERMITTEE OR LICENSEE TO SHOW THAT THE PLAINTIFF
 5 OWNER'S WATER SUPPLY WAS NOT INJURED BY THE REMOVAL OR
 6 DISRUPTION.

7 ~~f2~~(3) (a) An owner described in subsection (1) may
 8 file a complaint with the department detailing the loss in
 9 quality or quantity of water. Upon receipt of a valid
 10 complaint, the department SHALL:

11 (i) ~~shall~~ investigate the statements and charges in the
 12 complaint, using all available information, including THE
 13 WATER PROTECTION PLAN AND monitoring data gathered at the
 14 exploration or mine site AND WITHIN THE WATER PROTECTION
 15 AREA;

16 (ii) may require the operator, if necessary, to install
 17 monitoring wells or other practices that may be needed to
 18 determine the cause of water loss, if there is a loss, in
 19 terms of quantity and quality;

20 (iii) ~~shall~~ issue WITHIN 90 DAYS a written finding
 21 specifying the cause of the water loss, if there is a loss,
 22 in terms of quantity and OR quality;

23 (iv) ~~shall, if it determines that the preponderance of~~
 24 ~~evidence indicates that the loss is caused by an exploration~~
 25 ~~or mining operation,~~ order the operator, in compliance with

1 Title 85, chapter 2, to provide the needed water immediately
 2 on a temporary basis and within ~~a reasonable~~ time 45 DAYS
 3 replace the water in like quality, quantity, and duration;
 4 ~~if~~;

5 (V) IF the water is not replaced, PURSUANT TO
 6 SUBSECTION (3)(A)(IV), ~~the department shall~~ order the
 7 suspension of the operator's exploration or operating permit
 8 until such time as the operator provides substitute water,
 9 except that nothing in this section preempts Title 85,
 10 chapter 2. The operator may not be required to replace a
 11 junior right if the operator's withdrawal or dewatering is
 12 not in excess of his senior right.

13 (b) If the department determines that there is a great
 14 potential that surface or subsurface water quality and
 15 quantity may be adversely affected by a mining or
 16 exploration operation, the operator shall install a water
 17 quality monitoring program, water quantity monitoring
 18 program, or both, which must be approved by the department
 19 prior to the commencement of exploration or mining."

20 **Section 21.** Section 82-4-360, MCA, is amended to read:

21 "**82-4-360. Activity prohibited if bond forfeited or**
 22 **reclamation laws violated -- exception.** (1) Except as
 23 provided in subsection (2), a person may not conduct mining
 24 or exploration activities in this state if that person or
 25 any firm or business association of which that person was a

1 principal or controlling member had a bond forfeited under
 2 this part or if the department determines, based on
 3 information supplied by any person, that the applicant is in
 4 violation of federal or state mine reclamation laws or rules
 5 AT AN OPERATION WITHIN THE STATE.

6 (2) A person described in subsection (1) may apply for
 7 an operations permit or an exploration license or may
 8 conclude a written agreement under 82-4-305 if that person
 9 first pays to the department:

10 (a) the full amount of the necessary expenses incurred
 11 by the board under 82-4-341(5) for reclamation of the area
 12 for which the bond was forfeited or in which a violation of
 13 a federal or state mine reclamation law or rule occurred in
 14 the state;

15 (b) the full amount of any penalties assessed under
 16 this part; and

17 (c) interest on these amounts and penalties incurred at
 18 the rate of 6% per year."

19 **Section 22.** Section 82-4-362, MCA, is amended to read:

20 "82-4-362. **Suspension of permits -- hearing.** (1) If any
 21 of the requirements of this part, the rules adopted under
 22 this part, or the reclamation plan have not been complied
 23 with within the time limits set by the department or board
 24 or by this part, the department shall serve a notice of
 25 noncompliance on the licensee or permittee or, if necessary,

1 the commissioner shall order the suspension of the permit.
 2 The notice or order must be handed to the licensee or
 3 permittee in person or served by certified ~~or~~ registered
 4 mail addressed to the permanent address shown on the
 5 application for a permit. The notice of noncompliance must
 6 specify in what respects the operator has failed to comply
 7 with this part, the rules adopted under this part, or the
 8 reclamation plan.

9 (2) If the licensee or permittee has not complied with
 10 the requirements set forth in the notice of noncompliance or
 11 order of suspension within the time limits set therein, the
 12 permit may be revoked by order of the board and the
 13 performance bond forfeited to the department. The licensee
 14 or permittee is entitled to a hearing before the department
 15 on the revocation of a permit or license or the forfeiture
 16 of a performance bond if a hearing is requested within 30
 17 days after service of notice as provided in subsection (1).
 18 The notice must state when those measures may be undertaken
 19 and must give notice of opportunity for a hearing. If a
 20 hearing is requested within the 30-day period, the permit or
 21 license may not be revoked and the bond may not be forfeited
 22 until a final decision is made by the department.

23 (3) If a permittee fails to pay the fee or file the
 24 report required under 82-4-339, the department shall serve
 25 notice of this failure, by certified mail or personal

1 delivery, on the permittee. If the permittee does not comply
2 within 30 days of receipt of the notice, the commissioner
3 shall suspend the permit. The commissioner shall reinstate
4 the permit upon compliance.

5 (4) If the department determines that a permittee is in
6 violation of a federal or state mine reclamation law or rule
7 at any of the permittee's operations within the state, the
8 department shall serve a notice of noncompliance on the
9 permittee in accordance with the procedures specified in
10 subsection (1). The notice must identify the provisions of
11 federal or state mine reclamation laws that the permittee is
12 violating, establish a time limit for correction of the
13 violations, and state that the permittee has an opportunity
14 to request a hearing. The permittee is entitled to a hearing
15 if the permittee requests the hearing within 30 days after
16 service of the notice as provided in subsection (1). Within
17 15 days after the close of a hearing held under this
18 subsection, the commissioner shall reaffirm or withdraw the
19 notice of noncompliance, based upon the hearing record. If
20 the commissioner reaffirms the notice, the permittee shall
21 comply with the requirements set forth in the notice within
22 the time limits set therein. If the permittee does not
23 comply, all permits issued to the permittee under this part
24 must be revoked by order of the board. The board shall
25 reinstate the permits upon submission of appropriate

1 documentation from appropriate agencies of the state and
2 federal government that establishes that the permittee has
3 corrected the violations that caused the permits issued
4 under this part to be revoked."

5 NEW SECTION. Section 23. Federal water protection and
6 replacement legislation. If the U.S. congress approves
7 federal legislation establishing water protection and
8 replacement requirements for operations permitted under this
9 part that supersede the requirements of this part and if the
10 federal legislation authorizes state governments to assume
11 primacy for administration of the federal water protection
12 and replacement requirements, the department shall take the
13 actions necessary to receive federal approval to administer
14 the federal requirements.

15 NEW SECTION. Section 24. Rulemaking. The department
16 shall adopt:

17 (1) interim rules to implement [sections 1 through 24]
18 to be in place no later than October 1, 1991; and

19 (2) final rules to implement [sections 1 through 24] to
20 be in place no later than July 1, 1992.

21 NEW SECTION. Section 25. Codification instruction.
22 [Sections 10, 17, 18, 23, and 24] are intended to be
23 codified as an integral part of Title 82, chapter 4, part 3,
24 and the provisions of Title 82, chapter 4, part 3, apply to
25 [sections 10, 17, 18, 23, and 24].

1 NEW SECTION. Section 26. Severability. If a part of
2 [this act] is invalid, all valid parts that are severable
3 from the invalid part remain in effect. If a part of [this
4 act] is invalid in one or more of its applications, the part
5 remains in effect in all valid applications that are
6 severable from the invalid applications.

7 NEW SECTION. Section 27. Applicability. [This act]
8 applies to proceedings-begun:

9 (1) PROPOSED OPERATIONS FOR WHICH AN APPLICATION FOR AN
10 OPERATING PERMIT IS FILED OR FOR WHICH AN APPLICATION FOR AN
11 AMENDED OR REVISED PERMIT TO EXPAND OPERATIONS IS FILED
12 after October 1, 1991; AND

13 (2) OPERATIONS FOR WHICH AN APPLICATION FOR AN
14 OPERATING PERMIT WAS FILED PRIOR TO [THE EFFECTIVE DATE OF
15 THIS ACT] AND FOR WHICH THE OPERATING PERMIT HAS NOT BEEN
16 ISSUED OR FOR WHICH THE OPERATING PERMIT HAS BEEN ISSUED AND
17 THE OPERATOR HAS NOT COMMENCED MINING PRIOR TO OCTOBER 1,
18 1992.

19 NEW SECTION. Section 28. Effective date. [This act] is
20 effective on passage and approval.

-End-