

HOUSE BILL 956

Introduced by O'Keefe, et al.

2/20	Introduced
2/20	Referred to Natural Resources
2/20	First Reading
2/20	Fiscal Note Requested
2/25	Fiscal Note Received
2/26	Fiscal Note Printed
3/08	Hearing
3/21	Committee Report--Bill Passed as Amended
4/03	2nd Reading Do Pass Motion Failed

1 HOUSE BILL NO. 956  
 2 INTRODUCED BY Rock Beaman  
 3 Hope Yellowtail  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE  
 5 STRIP-MINING AND UNDERGROUND-MINING RECLAMATION LAWS TO  
 6 PROVIDE FOR PROTECTION OF WATER RESOURCES AND FOR THE  
 7 RESTORATION AND REPLACEMENT OF WATER RESOURCES AND  
 8 BENEFICIAL USES OF WATER THAT ARE DIMINISHED OR DEGRADED BY  
 9 PERMITTED MINING OPERATIONS; ESTABLISHING A WATER  
 10 RESTORATION AND REPLACEMENT FINANCIAL ASSURANCE REQUIREMENT;  
 11 ESTABLISHING ADMINISTRATIVE PROCEDURES; REVISING MANDAMUS  
 12 PROCEDURES; AMENDING SECTIONS 82-4-202, 82-4-203, 82-4-205,  
 13 82-4-206, 82-4-221, 82-4-222, 82-4-223, 82-4-225, 82-4-227,  
 14 82-4-231, 82-4-237, 82-4-238, 82-4-239, 82-4-240, 82-4-241,  
 15 82-4-242, 82-4-251, 82-4-252, AND 82-4-253, MCA; AND  
 16 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY  
 17 DATE."  
 18

19 STATEMENT OF INTENT

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

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

3 The department shall adopt rules that define the  
 4 specific subjects, types of data, and level of water  
 5 monitoring that an applicant for a strip-mining or  
 6 underground-mining reclamation permit must include in the  
 7 2-year baseline study of water resources, the hydrologic  
 8 balance, and beneficial uses within a water protection area.  
 9 The information collected by the applicant must be  
 10 sufficient to allow the department to assess the cumulative  
 11 impacts of the proposed operations upon the hydrologic  
 12 balance, quantity, and quality of water resources and upon  
 13 beneficial uses in the water protection area. The  
 14 department's rules must identify the specific types of  
 15 analysis an applicant must prepare to provide an adequate  
 16 assessment of the consequences of proposed mining operations  
 17 upon water resources and beneficial uses, the potential for  
 18 restoration or replacement of water resources and beneficial  
 19 uses that may be diminished or degraded by the proposed  
 20 operations, and the estimated costs of restoration and  
 21 replacement of the water resources and beneficial uses.

22 The department shall also adopt rules to clarify how an  
 23 applicant should coordinate and integrate the collection and  
 24 presentation of information on water resources and  
 25 beneficial uses that is required in a water protection plan



1 pursuant to [section 6] with other water-related information  
2 and analysis that is required by other provisions of Title  
3 82, chapter 4, part 2.

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

13 [Section 7(1)] authorizes the department to assess a  
14 water resources assessment fee not to exceed the actual  
15 amount of contractor and employee expenses of the department  
16 to provide for timely and adequate review of the water  
17 protection plan. The department's rules should authorize the  
18 use of the money collected from the water resources  
19 assessment fee for expenses, such as for hiring temporary  
20 employees and contracted consultants and data collection and  
21 analysis.

22 In adopting rules to set forth the specific terms and  
23 conditions of financial assurance mechanisms authorized by  
24 [section 8], the department should 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 82-4-202, MCA, is amended to read:

6 **"82-4-202. Policy -- findings.** (1) It is the declared  
7 policy of this state and its people to:

8 (a) maintain and improve the state's clean and  
9 healthful environment for present and future generations;

10 (b) protect its environmental life-support system from  
11 degradation;

12 (c) prevent unreasonable degradation of its natural  
13 resources;

14 (d) restore, enhance, and preserve its scenic,  
15 historic, archaeological, scientific, cultural, and  
16 recreational sites;

17 (e) demand effective reclamation of all lands disturbed  
18 by the taking of natural resources and maintain state  
19 administration of the reclamation program;

20 (f) provide for the restoration or replacement of water  
21 resources and restoration of beneficial uses of water at no  
22 increased cost to water users if those resources and uses  
23 are diminished or degraded as a result of strip mining or  
24 underground mining of coal;

25 (g) require the legislature to provide for proper

1 administration and enforcement, create adequate remedies,  
 2 and set effective requirements and standards (especially as  
 3 to reclamation of disturbed lands) in order to achieve the  
 4 aforementioned objectives; and

5 ~~(g)~~(h) provide for the orderly development of coal  
 6 resources through strip or underground mining to assure the  
 7 wise use of these resources and prevent the failure to  
 8 conserve coal.

9 (2) The legislature hereby finds and declares that:

10 (a) in order to achieve the aforementioned policy  
 11 objectives, promote the health and welfare of the people,  
 12 control erosion and pollution, protect domestic stock and  
 13 wildlife, preserve agricultural and recreational  
 14 productivity, save cultural, historic, and aesthetic values,  
 15 and assure a long-range dependable tax base, it is  
 16 reasonably necessary to require, after March 16, 1973, that  
 17 all strip-mining and underground-mining operations be  
 18 limited to those for which 5-year permits are granted, that  
 19 no permit be issued until the operator presents a  
 20 comprehensive plan for land reclamation and restoration, a  
 21 water protection plan, and a coal conservation plan,  
 22 together with an adequate performance bond and water  
 23 restoration and replacement financial assurance, and the  
 24 plan-is plans are approved, that certain other things must  
 25 be done, that certain remedies are available, that certain

1 lands because of their unique or unusual characteristics may  
 2 not be strip-mined or underground-mined under any  
 3 circumstances, all as more particularly appears in the  
 4 remaining provisions of this part, and that the department  
 5 be given authority to administer and enforce a reclamation  
 6 program that complies with Public Law 95-87, the Surface  
 7 Mining Control and Reclamation Act of 1977, as amended;

8 (b) this part be deemed to be an exercise of the  
 9 authority granted in the Montana constitution, as adopted  
 10 June 6, 1972, and, in particular, a response to the mandate  
 11 expressed in Article IX thereof and also be deemed to be an  
 12 exercise of the general police power to provide for the  
 13 health and welfare of the people."

14 **Section 2.** Section 82-4-203, MCA, is amended to read:

15 **"82-4-203. Definitions.** Unless the context requires  
 16 otherwise, in this part the following definitions apply:

17 (1) "Abandoned" means an operation where no mineral is  
 18 being produced and where the department determines that the  
 19 operation will not continue or resume.

20 (2) "Alluvial valley floor" means the unconsolidated  
 21 stream-laid deposits holding streams where water  
 22 availability is sufficient for subirrigation or flood  
 23 irrigation agricultural activities; but the term does not  
 24 include upland areas which are generally overlain by a thin  
 25 veneer of colluvial deposits composed chiefly of debris from

1 sheet erosion, deposits by unconcentrated runoff or slope  
2 wash, together with talus, other mass movement accumulation,  
3 and windblown deposits.

4 (3) "Aquifer" means any geologic formation or natural  
5 zone beneath the earth's surface that contains or stores  
6 water and transmits it from one point to another in  
7 quantities which permit or have the potential to permit  
8 economic development as a water source.

9 (4) "Area of land affected" means the area of land from  
10 which overburden is to be or has been removed and upon which  
11 the overburden is to be or has been deposited and includes  
12 all land overlying any tunnels, shafts, or other excavations  
13 used to extract the mineral, lands affected by the  
14 construction of new railroad loops and roads or the  
15 improvement or use of existing railroad loops and roads to  
16 gain access and to haul the mineral, processing facilities  
17 at or near the mine site or other mine associated  
18 facilities, waste deposition areas, treatment ponds, and any  
19 other surface or subsurface disturbance associated with  
20 strip mining or underground mining, and all activities  
21 necessary and incident to the reclamation of such  
22 operations.

23 (5) "Bench" means the ledge, shelf, table, or terrace  
24 formed in the contour method of strip mining.

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

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

6 ~~(6)~~(7) "Board" means the board of land commissioners  
7 provided for in Article X, section 4, of the constitution of  
8 this state.

9 ~~(7)~~(8) "Coal conservation plan" means the planned  
10 course of conduct of a strip- or underground-mining  
11 operation to include plans for the removal and utilization  
12 of minable and marketable coal located within the area  
13 planned to be mined.

14 ~~(8)~~(9) "Coal preparation" means the chemical or  
15 physical processing of coal and its cleaning, concentrating,  
16 or other processing or preparation. The term does not mean  
17 the conversion of coal to another energy form or to a  
18 gaseous or liquid hydrocarbon, except for incidental amounts  
19 that do not leave the plant, nor does the term mean  
20 processing for other than commercial purposes.

21 ~~(9)~~(10) "Coal preparation plant" means a commercial  
22 facility where coal is subject to coal preparation. The term  
23 includes commercial facilities associated with coal  
24 preparation activities but is not limited to loading  
25 buildings, water treatment facilities, water storage

1 facilities, settling basins and impoundments, and coal  
2 processing and other waste disposal areas.

3 ~~(10)~~(11) "Commissioner" means the commissioner of state  
4 lands provided for in 2-15-3202.

5 ~~(11)~~(12) "Contour strip mining" means that strip-mining  
6 method commonly carried out in areas of rough and hilly  
7 topography in which the coal or mineral seam outcrops along  
8 the side of the slope and entrance is made to the seam by  
9 excavating a bench or table cut at and along the site of the  
10 seam outcropping with the excavated overburden commonly  
11 being cast down the slope below the mineral seam and the  
12 operating bench.

13 ~~(12)~~(13) "Degree" means from the horizontal and in each  
14 case is subject to a tolerance of 5% error.

15 ~~(13)~~(14) "Department" means the department of state  
16 lands provided for in Title 2, chapter 15, part 32.

17 ~~(14)~~(15) "Failure to conserve coal" means the nonremoval  
18 or nonutilization of minable and marketable coal by an  
19 operation, provided that the nonremoval or nonutilization of  
20 minable and marketable coal in accordance with reclamation  
21 standards established by the department shall not be  
22 considered failure to conserve coal.

23 ~~(15)~~(16) "Fill bench" means that portion of a bench or  
24 table which is formed by depositing overburden beyond or  
25 downslope from the cut section as formed in the contour

1 method of strip mining.

2 ~~(16)~~(17) "Imminent danger to the health and safety of  
3 the public" means the existence of any condition or practice  
4 or any violation of a permit or other requirement of this  
5 part in a strip- or underground-coal-mining and reclamation  
6 operation that could reasonably be expected to cause  
7 substantial physical harm to persons outside the permit area  
8 before such condition, practice, or violation can be abated.  
9 A reasonable expectation of death or serious injury before  
10 abatement exists if a rational person, subjected to the same  
11 conditions or practices giving rise to the peril, would not  
12 expose himself or herself to the danger during the time  
13 necessary for abatement.

14 ~~(17)~~(18) "Marketable coal" means a minable coal that is  
15 economically feasible to mine and is fit for sale in the  
16 usual course of trade.

17 ~~(18)~~(19) "Method of operation" means the method or  
18 manner by which the cut, open pit, shaft, or excavation is  
19 made, the overburden is placed or handled, water is  
20 controlled, and other acts are performed by the operator in  
21 the process of uncovering and removing the minerals that  
22 affect the reclamation of the area of land affected.

23 ~~(19)~~(20) "Minaable coal" means that coal which can be  
24 removed through strip- or underground-mining methods  
25 adaptable to the location that coal is being mined or is

1 planned to be mined.

2 ~~(20)~~(21) "Mineral" means coal and uranium.

3 ~~(21)~~(22) "Operation" means all of the premises,  
4 facilities, railroad loops, roads, and equipment used in the  
5 process of producing and removing mineral from and  
6 reclaiming a designated strip-mine or underground-mine area,  
7 including coal preparation plants, and all activities,  
8 including excavation incident thereto, or prospecting for  
9 the purpose of determining the location, quality, or  
10 quantity of a natural mineral deposit.

11 ~~(22)~~(23) "Operator" means a person engaged in strip  
12 mining or underground mining who removes or intends to  
13 remove more than 10,000 cubic yards of mineral or overburden  
14 or a person engaged in coal mining who removes or intends to  
15 remove more than 250 tons of coal from the earth by mining  
16 within 12 consecutive calendar months in any one location or  
17 a person engaged in operating a coal preparation plant.

18 ~~(23)~~(24) "Overburden" means all of the earth and other  
19 materials which lie above a natural mineral deposit and also  
20 means such earth and other material after removal from their  
21 natural state in the process of mining.

22 ~~(24)~~(25) "Person" means a person, partnership,  
23 corporation, association, or other legal entity or any  
24 political subdivision or agency of the state or federal  
25 government.

1 ~~(25)~~(26) "Prime farmland" means that land previously  
2 prescribed by the United States secretary of agriculture on  
3 the basis of such factors as moisture availability,  
4 temperature regime, chemical balance, permeability,  
5 surface-layer composition, susceptibility to flooding, and  
6 erosion characteristics and which historically has been used  
7 for intensive agricultural purposes and as defined in the  
8 Federal Register.

9 ~~(26)~~(27) "Prospecting" means the removal of overburden,  
10 core drilling, construction of roads, or any other  
11 disturbance of the surface for the purpose of determining  
12 the location, quantity, or quality of a natural mineral  
13 deposit.

14 ~~(27)~~(28) "Reclamation" means backfilling, subsidence  
15 stabilization, water control, grading, highwall reduction,  
16 topsoiling, planting, revegetation, and other work to  
17 restore an area of land affected by strip mining or  
18 underground mining under a plan approved by the department.

19 ~~(28)~~(29) "Remining" means conducting surface coal mining  
20 and reclamation operations that affect previously mined  
21 areas (for example, the recovery of additional mineral from  
22 existing gob or tailings piles).

23 ~~(29)~~(30) "Strip mining" means any part of the process  
24 followed in the production of mineral by the opencut method,  
25 including mining by the auger method or any similar method

1 which penetrates a mineral deposit and removes mineral  
 2 directly through a series of openings made by a machine  
 3 which enters the deposit from a surface excavation or any  
 4 other mining method or process in which the strata or  
 5 overburden is removed or displaced in order to recover the  
 6 mineral. For the purposes of this part only, strip mining  
 7 also includes remining and coal preparation. The terms  
 8 "remining" and "coal preparation" are not included in the  
 9 definition of "strip mining" for purposes of Title 15,  
 10 chapter 35, part 1.

11 ~~(30)~~(31) "Subsidence" means a vertically downward  
 12 movement of overburden materials resulting from the actual  
 13 mining of an underlying mineral deposit or associated  
 14 underground excavations.

15 ~~(31)~~(32) "Surface owner" means a person who holds legal  
 16 or equitable title to the land surface and whose principal  
 17 place of residence is on the land or who personally conducts  
 18 farming or ranching operations upon a farm or ranch unit to  
 19 be directly affected by strip-mining operations or who  
 20 receives directly a significant portion of his income, if  
 21 any, from such farming or ranching operations or the state  
 22 of Montana where the state owns the surface.

23 ~~(32)~~(33) "Topsoil" means the unconsolidated mineral  
 24 matter naturally present on the surface of the earth that  
 25 has been subjected to and influenced by genetic and

1 environmental factors of parent material, climate, macro-  
 2 and microorganisms, and topography, all acting over a period  
 3 of time, and that is necessary for the growth and  
 4 regeneration of vegetation on the surface of the earth.

5 ~~(33)~~(34) "Underground mining" means any part of the  
 6 process followed in the production of a mineral such that  
 7 vertical or horizontal shafts, slopes, drifts, or incline  
 8 planes connected with excavations penetrating the mineral  
 9 stratum or strata are utilized and includes mining by in  
 10 situ methods.

11 ~~(34)~~(35) "Unwarranted failure to comply" means the  
 12 failure of a permittee to prevent the occurrence of any  
 13 violation of his permit or any requirement of this part due  
 14 to indifference, lack of diligence, or lack of reasonable  
 15 care, or the failure to abate any violation of such permit  
 16 or this part due to indifference, lack of diligence, or lack  
 17 of reasonable care.

18 ~~(35)~~(36) "Waiver" means any document which demonstrates  
 19 the clear intention to release rights in the surface estate  
 20 for the purpose of permitting the extraction of subsurface  
 21 minerals by strip-mining methods.

22 (37) "Water protection area" means the area proposed for  
 23 mining that would be subject to a permit and the area that  
 24 is, at a minimum, 1 mile upgradient by 2 miles crossgradient  
 25 by 3 miles downgradient of the respective hydrologic slopes



1 of surface water and ground water flowing through the  
2 proposed permitted area.

3 (38) "Water protection plan" means the operator's  
4 written proposal, as required pursuant to 82-4-222(1)(m),  
5 for the protection of water resources within the water  
6 protection area.

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

14 (40) "Water user" means a person or entity holding a  
15 water right, as provided in Title 85, chapter 2, and a state  
16 or federal agency or unit of government with jurisdiction  
17 over water resources or beneficial uses.

18 ~~(36)~~(41) "Written consent" means such written statement  
19 as is executed by the owner of the surface estate, upon a  
20 form approved by the department, demonstrating that such  
21 owner consents to entry of an operator for the purpose of  
22 conducting strip-mining operations and that such consent is  
23 given only to such strip-mining and reclamation operations  
24 which fully comply with the terms and requirements of this  
25 part."

1 **Section 3.** Section 82-4-205, MCA, is amended to read:

2 **"82-4-205. Administration by department of state lands.**

3 The department:

4 (1) shall exercise general supervision, administration,  
5 and enforcement of this part and all rules and orders  
6 adopted under this part;

7 (2) shall examine and pass upon all plans and  
8 specifications submitted by the operator for:

9 (a) the method of operation, subsidence stabilization,  
10 water control, backfilling, grading, highwall reduction,  
11 topsoiling, and for the reclamation of the area of land  
12 affected by his operation; and

13 (b) the protection of water resources, restoration or  
14 replacement of water resources, and restoration of  
15 beneficial uses that may be diminished or degraded by his  
16 operation;

17 (3) shall order the suspension of any permit for  
18 failure to comply with this part or any rule adopted under  
19 this part;

20 (4) shall order the halting of any operation that is  
21 started without first having secured a permit as required by  
22 this part or order the cessation of operations not in  
23 compliance with this part in accordance with 82-4-251;

24 (5) shall make investigations and inspections necessary  
25 to insure compliance with this part;

1 (6) may encourage and conduct investigations, research,  
 2 experiments, and demonstrations and collect and disseminate  
 3 information relating to strip mining and to underground  
 4 mining and reclamation of lands, and waters restoration or  
 5 replacement of water resources, and restoration of  
 6 beneficial uses affected by strip mining and underground  
 7 mining;

8 (7) may adopt rules with respect to the filing of  
 9 reports, the issuance of permits, monitoring, and other  
 10 matters of procedure and administration;

11 (8) may conduct hearings under the provisions of this  
 12 part."

13 **Section 4.** Section 82-4-206, MCA, is amended to read:

14 "82-4-206. Procedure for hearings and appeals. All  
 15 hearings and appeal procedures shall be in accordance with  
 16 parts 6 and 7 of chapter 4, Title 2, except for the public  
 17 informational hearing required by 82-4-231(8)(f)."

18 **Section 5.** Section 82-4-221, MCA, is amended to read:

19 "82-4-221. Mining permit required. (1) An operator may  
 20 not engage in strip or underground mining without having  
 21 first obtained from the department a permit designating the  
 22 area of land affected by the operation, which designation  
 23 shall include all lands reasonably anticipated to be mined  
 24 or otherwise affected during the applicable 5-year period.  
 25 The permit shall authorize the operator to engage in strip

1 or underground mining upon the area of land described in his  
 2 application and designated in the permit for a period of 5  
 3 years from the date of its issuance. Such permit shall be  
 4 renewable upon each 5-year anniversary thereafter upon  
 5 application to the department at least 120 but not more than  
 6 150 days prior to the renewal date so long as the operator  
 7 is in compliance with the requirements of this part, the  
 8 rules hereunder, and the reclamation plan provided for in  
 9 82-4-231, and the water protection plan provided for in  
 10 82-4-222 and 82-4-231 and agrees to comply with all  
 11 applicable laws and rules in effect at the time of renewal.  
 12 Such renewal shall further be subject to the denial  
 13 provisions of 82-4-227, 82-4-234, and 82-4-251. On  
 14 application for renewal, the burden shall be on the  
 15 opponents of renewal to demonstrate that the permit should  
 16 not be renewed. A permit shall terminate if the permittee  
 17 has not commenced strip- or underground-mining operations  
 18 pursuant to the permit within 3 years of the issuance of the  
 19 permit. However, the department may grant reasonable  
 20 extensions of time upon a showing that such extensions are  
 21 necessary by reason of litigation precluding the  
 22 commencement or threatening substantial economic loss to the  
 23 permittee or by reason of conditions beyond the control and  
 24 without the fault or negligence of the permittee. With  
 25 respect to coal to be mined for use in a synthetic fuel

1 facility or specific major electric generating facility, the  
 2 permittee is considered to have commenced strip- or  
 3 underground-mining operations at such time as the  
 4 construction of the synthetic or generating facility is  
 5 initiated.

6 (2) As a condition to the issuance of every permit  
 7 issued under this part, an authorized representative of the  
 8 department shall, without advance notice, have the right of  
 9 entry to, upon, or through a strip- or underground-mining  
 10 operation or any premises in which any records required to  
 11 be maintained under this part are located and may, at  
 12 reasonable times and without delay, have access to copy any  
 13 records and inspect any monitoring equipment or method of  
 14 operation required under this part. When an inspection  
 15 results from information provided to the department by any  
 16 person, the department shall notify that person when the  
 17 inspection is proposed to be made and that person shall be  
 18 allowed to accompany the inspector during the inspection.

19 (3) During the term of the permit, the permittee may  
 20 submit an application for a revision of the permit, together  
 21 with a revised reclamation plan and a revised water  
 22 protection plan, to the department. The department may not  
 23 approve the application unless it finds that reclamation and  
 24 protection of water resources in accordance with this part  
 25 would be accomplished. Application for minor revision shall

1 be approved or disapproved within a reasonable time,  
 2 depending on the scope and complexity, but in no case longer  
 3 than 120 days. Applications for major revisions are subject  
 4 to all the permit application requirements and procedures."

5 **Section 6.** Section 82-4-222, MCA, is amended to read:

6 "82-4-222. Permit application. (1) An operator desiring  
 7 a permit shall file an application which shall contain a  
 8 complete and detailed plan for the mining, reclamation,  
 9 revegetation, and rehabilitation of the land and for the  
 10 protection and restoration or replacement of water resources  
 11 and beneficial uses to be affected by the operation. Such  
 12 plan shall reflect thorough advance investigation and study  
 13 by the operator and shall include all known or readily  
 14 discoverable past and present uses of the land and water to  
 15 be affected and the approximate periods of such use and  
 16 shall state:

17 (a) the location and area of land to be affected by the  
 18 operation, with a description of access to the area from the  
 19 nearest public highways;

20 (b) the names and addresses of the owners of record and  
 21 any purchasers under contracts for deed of the surface of  
 22 the area of land to be affected by the permit and the owners  
 23 of record and any purchasers under contracts for deed of all  
 24 surface area within one-half mile of any part of the  
 25 affected area;

1 (c) the names and addresses of the present owners of  
2 record and any purchasers under contracts for deed of all  
3 subsurface minerals in the land to be affected;

4 (d) the source of the applicant's legal right to mine  
5 the mineral on the land affected by the permit;

6 (e) the permanent and temporary post-office addresses  
7 of the applicant;

8 (f) whether the applicant or any person associated with  
9 the applicant holds or has held any other permits under this  
10 part and an identification of those permits;

11 (g) whether the applicant is in compliance with  
12 82-4-251 and, if known, whether every officer, partner,  
13 director, or any individual owning of record or  
14 beneficially, alone or with associates, 10% or more of any  
15 class of stock of the applicant is subject to any of the  
16 provisions of 82-4-251 and he shall so certify and whether  
17 any of the foregoing parties or persons have ever had a  
18 strip-mining or underground-mining license or permit issued  
19 by any other state or federal agency revoked or have ever  
20 forfeited a strip-mining or underground-mining bond or a  
21 security deposited in lieu of a bond and, if so, a detailed  
22 explanation of the facts involved in each case must be  
23 attached;

24 (h) whether the applicant has a record of outstanding  
25 reclamation fees with the federal coal regulatory authority;

1 (i) the names and addresses of any persons who are  
2 engaged in strip- or underground-mining activities on behalf  
3 of the applicant;

4 (j) the annual rainfall and the direction and average  
5 velocity of the prevailing winds in the area where the  
6 applicant has requested a permit;

7 (k) the results of any test borings or core samplings  
8 which the applicant or his agent has conducted on the land  
9 to be affected, including the nature and the depth of the  
10 various strata or overburden and topsoil, the quantities and  
11 location of subsurface water and its quality, the thickness  
12 of any mineral seam, an analysis of the chemical properties  
13 of such minerals, including the acidity, sulphur content,  
14 and trace mineral elements of any coal seam, as well as the  
15 British thermal unit (Btu) content of such seam, and an  
16 analysis of the overburden, including topsoil. If test  
17 borings or core samplings are submitted, each permit  
18 application shall contain two copies each of two sets of  
19 geologic cross sections accurately depicting the known  
20 geologic makeup beneath the surface of the affected land.  
21 Each set shall depict subsurface conditions at such  
22 intervals as the department requires across the surface and  
23 shall run at a 90-degree angle to the other set. The  
24 department may not require intervals of less than 500 feet.  
25 Each cross section shall depict the thickness and geologic

1 character of all known strata beginning with the topsoil. In  
 2 addition, each application for an underground-mining permit  
 3 shall be accompanied by cross sections and maps showing the  
 4 proposed underground locations of all shafts, entries, and  
 5 haulageways or other excavations to be excavated during the  
 6 permit period. These cross sections shall also include all  
 7 existing shafts, entries, and haulageways.

8 (l) the name and date of a daily newspaper of general  
 9 circulation within the county in which the applicant will  
 10 prominently publish at least once a week for 4 successive  
 11 weeks after submission of the application an announcement of  
 12 his application for a strip-mining or underground-mining  
 13 permit and a detailed description of the area of land to be  
 14 affected should a permit be granted;

15 (m) a comprehensive assessment of the effects of the  
 16 proposed operations on water resources and beneficial uses,  
 17 entitled "water protection plan", that must include the  
 18 following elements as necessary to supplement other water  
 19 resource related information and analysis required by this  
 20 part:

21 (i) a list containing the names and addresses of all  
 22 water users in the water protection area;

23 (ii) a detailed assessment of the existing water  
 24 resources, hydrologic balance, and beneficial uses within  
 25 the water protection area, including a baseline study that

1 the operator shall conduct for a minimum of 2 years and  
 2 collection of sufficient data to enable the department to  
 3 assess the potential and probable cumulative impacts of all  
 4 anticipated mining in the area upon the hydrologic balance,  
 5 quantity, and quality of water resources and upon beneficial  
 6 uses in the water protection area;

7 (iii) a determination of the probable hydrologic  
 8 consequences of coal mining and reclamation operations, both  
 9 on and off the mine site, with respect to the hydrologic  
 10 regime, quantity and quality of water in surface water and  
 11 ground water systems, including the dissolved and suspended  
 12 solids under seasonal flow conditions, the potential for  
 13 diminishment or degradation of water resources, and the  
 14 potential for adverse effects on beneficial uses and--the  
 15 collection---of---sufficient---data---for---the---mine---site---and  
 16 surrounding---areas,---so---that---cumulative---impacts---of---all  
 17 anticipated---mining---in---the---area---upon---the---hydrology---of---the  
 18 area---and---particularly---upon---water---availability---can---be---made.  
 19 However, this determination is not required until such time  
 20 as hydrologic information on the general area prior to  
 21 mining is made available from an appropriate federal or  
 22 state agency. The permit may not be approved until such  
 23 information is available and is incorporated into the  
 24 application.

25 (iv) an assessment of the potential for water resources

1 and beneficial uses that may be diminished or degraded to be  
 2 permanently restored or replaced to the approximate  
 3 hydrologic characteristics, quantity, and quality that  
 4 existed prior to the commencement of the proposed mining  
 5 operations and the proposed methods of restoration or  
 6 replacement of water resources and beneficial uses; and

7 (v) the estimated cost of restoring or replacing any  
 8 water resources that may be diminished or degraded by the  
 9 proposed mining operations and the estimated cost of  
 10 ensuring the continuation of beneficial uses within the  
 11 water protection area at no greater cost to water users than  
 12 under conditions that existed prior to the commencement of  
 13 the proposed operations;

14 (n) a coal conservation plan; and

15 (o) such other or further information as the department  
 16 may require.

17 (2) The application for a permit shall be accompanied  
 18 by two copies of all maps meeting the requirements of the  
 19 subsections below. The maps shall:

20 (a) identify the area to correspond with the  
 21 application;

22 (b) show any adjacent deep mining or surface mining and  
 23 the boundaries of surface properties and names of owners of  
 24 record of the affected area and within 1,000 feet of any  
 25 part of the affected area;

1 (c) show the names and locations of all streams,  
 2 creeks, or other bodies of water, roads, buildings,  
 3 cemeteries, oil and gas wells, and utility lines on the area  
 4 of land affected and within 1,000 feet of such area;

5 (d) show by appropriate markings the boundaries of the  
 6 area of land affected, any cropline of the seam or deposit  
 7 of mineral to be mined, and the total number of acres  
 8 involved in the area of land affected;

9 (e) show the date on which the map was prepared and the  
 10 north point;

11 (f) show the final surface and underground water  
 12 drainage plan on and away from the area of land affected.  
 13 This plan shall indicate the directional and volume flow of  
 14 water, constructed drainways, natural waterways used for  
 15 drainage, and the streams or tributaries receiving the  
 16 discharge.

17 (g) show the proposed location of waste or refuse area;

18 (h) show the proposed location of temporary subsoil and  
 19 topsoil storage area;

20 (i) show the proposed location of all facilities;

21 (j) show the location of test boring holes;

22 (k) show the surface location lines of any geologic  
 23 cross sections which have been submitted;

24 (l) show a listing of plant varieties encountered in  
 25 the area to be affected and their relative dominance in the

1 area, together with an enumeration of tree varieties and the  
 2 approximate number of each variety occurring per acre on the  
 3 area to be affected, and the locations generally of the  
 4 various kinds and varieties of plants, including but not  
 5 limited to grasses, shrubs, legumes, forbs, and trees;

6 (m) be certified as follows: "I, the undersigned,  
 7 hereby certify that this map is correct and shows to the  
 8 best of my knowledge and belief all the information required  
 9 by the mining laws of this state." The certification shall  
 10 be signed and notarized. The department may reject a map as  
 11 incomplete if its accuracy is not so attested.

12 (n) contain such other or further information as the  
 13 department may require.

14 (3) If the department finds that the probable total  
 15 annual production at all locations of any strip- or  
 16 underground-coal-mining operation applied for will not  
 17 exceed 100,000 tons, any determination of probable  
 18 hydrologic consequences that the department requires and the  
 19 statement of result of test borings or core samplings shall,  
 20 upon written request of the operator, be performed by a  
 21 qualified public or private laboratory designated by the  
 22 department. The department shall assume the cost of the  
 23 determination and statement to the extent that it has  
 24 received funds for this purpose.

25 (4) In addition to the information and maps required

1 above, each application for a permit shall be accompanied by  
 2 detailed plans or proposals showing the method of operation,  
 3 the manner, time or distance, and estimated cost for  
 4 backfilling, subsidence stabilization, water control,  
 5 grading work, highwall reduction, topsoiling, planting,  
 6 revegetating, and a reclamation plan for the area affected  
 7 by the operation, which proposals shall meet the  
 8 requirements of this part and rules adopted under this part.  
 9 The reclamation plan shall address the life of the operation  
 10 and indicate the size, sequence, and the timing of the  
 11 subareas for which it is anticipated that individual permits  
 12 will be sought.

13 (5) Each applicant for a coal mining permit shall  
 14 submit as part of the application a certificate issued by an  
 15 insurance company authorized to do business in the state  
 16 certifying that the applicant has in force for the strip- or  
 17 underground-mining and reclamation operations for which the  
 18 permit is sought a public liability insurance policy, or  
 19 evidence that the applicant has satisfied other state or  
 20 federal self-insurance requirements. This policy shall  
 21 provide for personal injury and property damage protection  
 22 in an amount adequate to compensate any persons damaged as a  
 23 result of strip- or underground-coal-mining and reclamation  
 24 operations, including use of explosives, and entitled to  
 25 compensation under applicable provisions of state law. The

1 permittee must maintain the policy in full force and effect  
2 during the term of the permit and any renewal until all  
3 reclamation operations have been completed.

4 (6) Each applicant for a strip-mining or  
5 underground-mining reclamation permit shall file a copy of  
6 his application for public inspection with the clerk and  
7 recorder at the courthouse of the county where the major  
8 portion of mining is proposed to occur."

9 **Section 7.** Section 82-4-223, MCA, is amended to read:

10 "82-4-223. Permit fee and surety bond. (1) An  
11 ~~application fee of \$100 shall be paid before~~ Before the  
12 permit required in this part ~~shall~~ may be issued, ~~the~~  
13 operator shall pay a basic application fee of \$100 and a  
14 water resources assessment fee not to exceed the actual  
15 amount of contractor and employee expenses of the department  
16 that are necessary to provide for timely and adequate review  
17 of the water protection plan. The department may further  
18 define these expenses by rule.

19 (2) Before a permit may be issued, the operator shall  
20 file with the department a bond payable to the state of  
21 Montana with surety satisfactory to the department in the  
22 penal sum to be determined by the board, on the  
23 recommendation of the commissioner, of not less than \$200  
24 for each acre or fraction thereof of the area of land  
25 affected, with a minimum bond of \$10,000, conditioned upon

1 the faithful performance of the requirements set forth in  
2 this part and of the rules of the board. The operator may  
3 elect to deposit cash, negotiable bonds, or negotiable  
4 certificates of deposit of any bank organized or transacting  
5 business in the United States. The cash deposit or market  
6 value of such securities shall be equal to or greater than  
7 the amount of the bond required for the bonded area. The  
8 level of bonding shall be relative to the degree of  
9 disturbance projected by the original permit and the annual  
10 report. A political subdivision or agency of the state need  
11 not file a bond unless required to do so by the board. The  
12 board shall adjust the amount of bond required if the cost  
13 of reclamation changes.

14 (3) In determining the amount of the bond, the board  
15 shall take into consideration the character and nature of  
16 the overburden, the future suitable use of the land  
17 involved, and the cost of backfilling, grading, highwall  
18 reduction, subsidence stabilization, water control,  
19 topsoiling, and reclamation to be required, but in no event  
20 shall the bond be less than the total estimated cost to the  
21 state of completing the work described in the reclamation  
22 plan. Water restoration and replacement costs that are  
23 included in the amount of the bond required under this  
24 section may not be included in the amount of water  
25 restoration and replacement financial assurance required



1 pursuant to [section 8]."

2 NEW SECTION. Section 8. Water restoration and  
 3 replacement financial assurance -- release. (1) Before a  
 4 permit for strip mining or underground mining of coal may be  
 5 issued, the operator shall provide financial assurance  
 6 sufficient to ensure the restoration or replacement of  
 7 specific water resources and the restoration and  
 8 continuation of beneficial uses within the water protection  
 9 area at no greater cost to water users than under conditions  
 10 that existed prior to the commencement of the operator's  
 11 proposed operations. The board shall determine the amount of  
 12 financial assurance that the operator must provide based on  
 13 an assessment of the water protection plan and the  
 14 operator's estimated cost of restoring or replacing water  
 15 resources and restoring beneficial uses that may be  
 16 diminished or degraded by the operator's proposed  
 17 operations.

18 (2) The operator may satisfy the financial assurance  
 19 requirement by:

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

22 (b) filing with the department a bond that is payable  
 23 to the state of Montana with surety satisfactory to the  
 24 department, conditioned upon the faithful compliance with  
 25 the requirements of this part and the rules of the board;

1 (c) filing an irrevocable letter of credit with the  
 2 department;

3 (d) obtaining water restoration and replacement  
 4 insurance and submitting a certification of insurance to the  
 5 department;

6 (e) filing with the department a cash deposit, an  
 7 assignment of a certificate of deposit, or other surety  
 8 acceptable to the board;

9 (f) demonstrating to the department that the operator  
 10 meets minimum financial worth and bond rating criteria that  
 11 show that the operator has adequate internal resources for  
 12 meeting the financial requirement established by subsection  
 13 (1); or

14 (g) a combination of financial assurance mechanisms  
 15 that are acceptable to the board and that may include a  
 16 trust fund, a surety bond, a letter of credit, and  
 17 insurance.

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

24 (4) The amount of financial assurance approved by the  
 25 board may not be less than the estimated cost to the state

1 to restore or replace specific water resources and to ensure  
2 the continuance of beneficial uses in the water protection  
3 area at no greater cost to water users than under conditions  
4 that prevailed prior to the commencement of the proposed  
5 operations as set forth in the water protection plan.

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

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

15 (7) The permittee may file a request with the  
16 department for the release of all or part of the water  
17 restoration and replacement financial assurance requirement.  
18 Within 30 days after an application for financial assurance  
19 release has been filed with the department, the permittee  
20 shall:

21 (a) submit a copy of an advertisement notice placed at  
22 least once a week for 4 consecutive weeks in a newspaper of  
23 general circulation in the locality of the mining operation.  
24 The notice must contain a notification of the precise  
25 location of the water protection area, the permit and date

1 approved, the amount of financial assurance filed and, if  
2 applicable, the portion sought to be released, the type and  
3 appropriate dates of water restoration or replacement and  
4 beneficial uses restoration work performed, and a  
5 description of the results achieved as they relate to the  
6 permittee's approved water protection plan.

7 (b) mail a copy of the advertisement to water users in  
8 the water protection area, as identified in the water  
9 protection plan; and

10 (c) submit to the department a copy of the material the  
11 permittee has sent to water users.

12 (8) The department may not release a permittee from the  
13 water restoration and replacement financial assurance  
14 requirement and release funds or terminate the funding  
15 mechanisms the permittee relied upon to fulfill the  
16 financial assurance requirement:

17 (a) for a minimum of 10 years after the release of the  
18 performance bond as provided in 82-4-232;

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

1 (c) until the department holds a public hearing in the  
 2 locality of the permitted operation if a hearing is  
 3 requested by a resident of this state or any person having  
 4 an interest that may be adversely affected by the  
 5 permittee's request for release of all or a portion of the  
 6 financial assurance requirement. The department may  
 7 administer oaths, subpoena witnesses or written or printed  
 8 materials, compel the attendance of witnesses or the  
 9 production of materials, and take evidence. The department  
 10 shall:

11 (i) hold a hearing within 30 days of receiving a  
 12 request for a hearing;

13 (ii) advertise the date, time, and location of the  
 14 public hearing in a newspaper of general circulation and in  
 15 the county newspapers in the locality of the permitted  
 16 operation for 2 consecutive weeks;

17 (iii) make all information in the department's  
 18 possession that is relevant to the decision on whether to  
 19 release a permittee from the financial assurance requirement  
 20 readily available to interested persons beginning no later  
 21 than the date that notice of the public hearing is  
 22 distributed;

23 (iv) conduct a site inspection of the land affected and  
 24 of the work the permittee has done to replace or restore  
 25 water resources and to restore beneficial uses, as

1 applicable, and other operations carried on by the permittee  
 2 in the general vicinity of the area where release of  
 3 financial assurance has been requested; and

4 (v) keep a verbatim record of the hearing required by  
 5 this section and make a transcript available on the motion  
 6 of any party or by order of the department.

7 (9) A person may submit to the department information  
 8 relevant to the department's decision to release an operator  
 9 from all or a part of the financial assurance requirement  
 10 for a period of 30 days after the date of the public  
 11 hearing.

12 (10) Within 60 days after the public hearing is held,  
 13 the department shall notify the permittee in writing of its  
 14 decision to release or not to release all or part of the  
 15 water restoration and replacement financial assurance.

16 (11) A person may request the department to reconsider  
 17 its decision to release the permittee from all or part of  
 18 the financial assurance requirement, based upon information  
 19 the person submits to show that the permittee has not  
 20 restored or replaced the hydrologic balance, the quantity or  
 21 quality of water resources, or both or has not restored  
 22 beneficial uses in the water protection area at no greater  
 23 cost to water users than under the conditions that prevailed  
 24 prior to the commencement of the permitted operations.  
 25 Without prejudice to the rights of the persons who request

1 the department to reconsider its decision or the permittee  
 2 or the responsibilities of the department pursuant to this  
 3 section, the department may establish an informal conference  
 4 to resolve the matters raised in a request for  
 5 reconsideration. The department's response to a request to  
 6 reconsider its decision to release a permittee from all or  
 7 part of the financial assurance requirement is the final  
 8 agency decision.

9 **Section 9.** Section 82-4-225, MCA, is amended to read:

10 **"82-4-225. Application for increase or reduction in**  
 11 **permit area.** The department may increase or reduce the area  
 12 of land affected by an operation under a permit on  
 13 application by an operator, but an increase may not extend  
 14 the period for which an original permit was issued. An  
 15 operator may, at any time, apply to the department for an  
 16 amendment of the permit so as to increase or reduce the  
 17 acreage affected by it. The operator shall file an  
 18 application and map in the same form and with the same  
 19 content as required for an original application under this  
 20 part and shall pay an application fee of \$50 and shall file  
 21 with the department a supplemental bond in the amount to be  
 22 determined under 82-4-223 for each acre or fraction of an  
 23 acre of the increase approved. If the application is for an  
 24 increase in the permitted area, the operator shall pay a  
 25 supplemental water resources assessment fee not to exceed

1 the actual amount of contractor and employee expenses of the  
 2 department that are necessary to provide for timely and  
 3 adequate review of the water protection plan. The operator  
 4 shall also file with the department supplemental water  
 5 restoration and replacement financial assurance in an amount  
 6 to be determined pursuant to [section 8] for the additional  
 7 permitted area. All procedures of this part pertaining to  
 8 original applications apply to applications for the increase  
 9 of the area of land affected, except for incidental boundary  
 10 revisions. If the department approves a reduction in the  
 11 acreage covered by the original or supplemental permit, it  
 12 shall release the bond for each acre reduced, but in no case  
 13 shall the bond be reduced below \$10,000, except as provided  
 14 in 82-4-223."

15 **Section 10.** Section 82-4-227, MCA, is amended to read:

16 **"82-4-227. Refusal of permit.** (1) (a) An application  
 17 for a prospecting, strip-mining, or underground-mining  
 18 permit or major revision ~~shall~~ may not be approved by the  
 19 department unless, on the basis of the information set forth  
 20 in the application, an on-site inspection, and an evaluation  
 21 of the operation by the department, the applicant has  
 22 affirmatively demonstrated that:

23 (i) the requirements of this part and rules will be  
 24 observed;

25 (ii) ~~and--that~~ the proposed method of operation,

1 backfilling, grading, subsidence stabilization, water  
2 control, highwall reduction, topsoiling, revegetation, or  
3 reclamation of the affected area can be carried out  
4 consistently with the purpose of this part; and

5 (iii) water resources and beneficial uses in the water  
6 protection area will be protected and, if necessary,  
7 restored or replaced consistent with the purpose of this  
8 part at no greater cost to water users than under conditions  
9 that existed prior to the commencement of the proposed  
10 operation.

11 (b) The applicant for a permit or major revision has  
12 the burden of establishing that his application is in  
13 compliance with this part and the rules adopted under it.

14 (2) The department shall not approve the application  
15 for a prospecting, strip-mining, or underground-mining  
16 permit where the area of land described in the application  
17 includes land having special, exceptional, critical, or  
18 unique characteristics or that mining or prospecting on that  
19 area would adversely affect the use, enjoyment, or  
20 fundamental character of neighboring land having special,  
21 exceptional, critical, or unique characteristics. For the  
22 purposes of this part, land is defined as having such  
23 characteristics if it possesses special, exceptional,  
24 critical, or unique:

25 (a) biological productivity, the loss of which would

1 jeopardize certain species of wildlife or domestic stock;

2 (b) ecological fragility, in the sense that the land,  
3 once adversely affected, could not return to its former  
4 ecological role in the reasonable foreseeable future;

5 (c) ecological importance, in the sense that the  
6 particular land has such a strong influence on the total  
7 ecosystem of which it is a part that even temporary effects  
8 felt by it could precipitate a system-wide reaction of  
9 unpredictable scope or dimensions; or

10 (d) scenic, historic, archaeologic, topographic,  
11 geologic, ethnologic, scientific, cultural, or recreational  
12 significance. (In applying this subsection, particular  
13 attention should be paid to the inadequate preservation  
14 previously accorded Plains Indian history and culture.)

15 (3) The department may not approve an application for a  
16 strip- or underground-coal-mining permit or major revision  
17 unless the application affirmatively demonstrates that:

18 (a) the assessment of the probable cumulative impact of  
19 all anticipated mining in the area on the hydrologic balance  
20 has been made by the department and the proposed operation  
21 thereof has been designed to prevent material damage to the  
22 hydrologic balance and to the quantity and quality of water  
23 resources outside the permit area, except as provided in  
24 subsection (3)(b); and

25 (b) the proposed strip- or underground-coal-mining

1 operation would not:

2 (i) interrupt, discontinue, or preclude farming on  
3 alluvial valley floors that are irrigated or naturally  
4 subirrigated, excluding undeveloped rangelands that are not  
5 significant to farming on alluvial valley floors and those  
6 lands as to which the regulatory authority finds that if the  
7 farming that will be interrupted, discontinued, or precluded  
8 is of such small acreage as to be of negligible impact on  
9 the farm's agricultural production; or

10 (ii) materially damage the quantity or quality of water  
11 in surface water or underground water systems that supply  
12 these valley floors in subsection (3)(b)(i).

13 (4) Subsection (3)(b) does not affect those strip- or  
14 underground-coal-mining operations that in the year  
15 preceding the enactment of Public Law 95-87 produced coal in  
16 commercial quantities and were located within or adjacent to  
17 alluvial valley floors or had obtained specific permit  
18 approval by the department to conduct strip- or  
19 underground-coal-mining operations within alluvial valley  
20 floors. If coal deposits are precluded from being mined  
21 under this subsection, the commissioner shall certify to the  
22 secretary of interior that the mineral owner or lessee may  
23 be eligible for participation in coal exchange programs  
24 pursuant to section 510(5) of Public Law 95-87.

25 (5) If the area proposed to be mined contains prime

1 farmland, the department may not grant a permit to mine coal  
2 on the prime farmland unless it finds in writing that the  
3 applicant has the technological capability to restore the  
4 mined area, within a reasonable time, to equivalent or  
5 higher levels of yield as nonmined prime farmland in the  
6 surrounding area under equivalent levels of management and  
7 can meet the soil reconstruction standards of 82-4-232(3).  
8 Nothing in this subsection applies to any permit issued  
9 prior to August 3, 1977, or to any revisions or renewals  
10 thereof, or to any existing strip- or underground-mining  
11 operations for which a permit was issued prior to August 3,  
12 1977.

13 (6) If the department finds that the overburden on any  
14 part of the area of land described in the application for a  
15 prospecting, strip-mining, or underground-mining permit is  
16 such that experience in the state with a similar type of  
17 operation upon land with similar overburden shows that  
18 substantial deposition of sediment in streambeds,  
19 subsidence, landslides, or water pollution cannot feasibly  
20 be prevented, the department shall delete that part of the  
21 land described in the application upon which the overburden  
22 exists. The burden is on the applicant to demonstrate that  
23 any area should not be deleted under this subsection.

24 (7) If the department finds that the operation will  
25 constitute a hazard to a dwelling house, public building,

1 school, church, cemetery, commercial or institutional  
 2 building, public road, stream, lake, or other public  
 3 property, the department shall delete those areas from the  
 4 prospecting, strip-mining, or underground-mining permit  
 5 application before it can be approved. In no case may  
 6 strip- or underground-coal-mining be allowed within 300 feet  
 7 of any occupied dwelling, unless waived by the owner, nor  
 8 within 300 feet of any public building, school, church,  
 9 community, or institutional building, or public park; nor  
 10 within 100 feet of a cemetery; nor within 100 feet of the  
 11 outside right-of-way line of any public road, except where  
 12 mine access roads or haulage roads join such right-of-way  
 13 line. The department may permit such roads to be relocated  
 14 or the area affected to lie within 100 feet of the road if,  
 15 after public notice and opportunity for public hearing in  
 16 the locality, a written finding is made that the interests  
 17 of the public and the landowners affected will be protected.

18 (8) No strip- or underground-mining may be conducted  
 19 within 500 feet of active or abandoned underground mines in  
 20 order to prevent breakthroughs and to protect health or  
 21 safety of miners. The department shall permit an operator to  
 22 mine near, through, or partially through an abandoned  
 23 underground mine or closer to an active underground mine if:

24 (a) the nature, timing, and sequencing of specific  
 25 strip-mine activities and specific underground-mine

1 activities are jointly approved by the department and the  
 2 regulatory authority concerned with the health and safety of  
 3 underground miners; and

4 (b) such operations will result in improved resource  
 5 recovery, abatement of water pollution, or elimination of  
 6 hazards to the health and safety of the public.

7 (9) The department may not approve an application for a  
 8 strip- or underground-coal-mining operation if the area  
 9 proposed to be mined is included within an area designated  
 10 unsuitable for strip or underground coal mining or within an  
 11 area under review for this designation under an  
 12 administrative proceeding, unless in such an area as to  
 13 which an administrative proceeding has commenced pursuant to  
 14 this part, the operator making the permit application  
 15 demonstrates that prior to January 1, 1977, he made  
 16 substantial legal and financial commitments in relation to  
 17 the operation for which he is applying for a permit.

18 (10) No permit or major permit revision for a strip- or  
 19 underground-coal-mining operation may be issued unless the  
 20 applicant has affirmatively demonstrated by its coal  
 21 conservation plan that no failure to conserve coal will  
 22 occur. The department may require the applicant to submit  
 23 any information it considers necessary for review of the  
 24 coal conservation plan.

25 (11) Whenever information available to the department

1 indicates that any strip- or underground-coal-mining  
 2 operation owned or controlled by the applicant is currently  
 3 in violation of Public Law 95-87, as amended, or any state  
 4 law required by Public Law 95-87, as amended, or any law,  
 5 rule, or regulation of the United States or of any  
 6 department or agency in the United States pertaining to air  
 7 or water environmental protection, the department shall not  
 8 issue a strip- or underground-coal-mining permit or major  
 9 revision until the applicant submits proof that the  
 10 violation has been corrected or is in the process of being  
 11 corrected to the satisfaction of the administering agency.

12 (12) The department may not issue a strip- or  
 13 underground-coal-mining permit or major revision to any  
 14 applicant which it finds, after an opportunity for hearing,  
 15 owns or controls any strip- or underground-coal-mining  
 16 operation which has demonstrated a pattern of willful  
 17 violations of Public Law 95-87, as amended, or any state law  
 18 required by Public Law 95-87, as amended, of such a nature  
 19 and duration and with such resulting irreparable damage to  
 20 the environment to indicate an intent not to comply with the  
 21 provisions of this part.

22 (13) Subject to valid existing rights, no strip- or  
 23 underground-coal-mining operations except those which  
 24 existed as of August 3, 1977, may be conducted on private  
 25 lands within the boundaries of units of the national park

1 system, the national wildlife refuge systems, the national  
 2 wilderness preservation system, the wild and scenic rivers  
 3 system, including study rivers designated under section 5(a)  
 4 of the Wild and Scenic Rivers Act, or national recreation  
 5 areas designated by act of congress."

6 **Section 11.** Section 82-4-231, MCA, is amended to read:

7 **"82-4-231. Submission of and action on reclamation plan**  
 8 **-- water protection plan.** (1) As rapidly, completely, and  
 9 effectively as the most modern technology and the most  
 10 advanced state of the art will allow, each operator granted  
 11 a permit under this part shall reclaim and revegetate the  
 12 land affected by his operation, except that underground  
 13 tunnels, shafts, or other subsurface excavations need not be  
 14 revegetated. The operator shall restore or replace water  
 15 resources and restore beneficial uses adversely affected by  
 16 his operation. Under the provisions of this part and rules  
 17 adopted by the board, an operator shall prepare and carry  
 18 out a method of operation, plan of grading, backfilling,  
 19 highwall reduction, subsidence stabilization, water control,  
 20 topsoiling, and a reclamation plan for the area of land, and  
 21 a water protection plan for the water resources and  
 22 beneficial uses affected by his operation. In developing a  
 23 method of operation and plans of backfilling, subsidence  
 24 stabilization, water control, grading, highwall reduction,  
 25 topsoiling, and reclamation, and water protection, all



1 measures shall be taken to eliminate damages to landowners  
 2 and members of the public, their real and personal property,  
 3 public roads, streams water resources, and all other public  
 4 property from soil erosion, subsidence, landslides, water  
 5 pollution, water supply disruption, and hazards dangerous to  
 6 life and property.

7 (2) The reclamation plan shall set forth in detail the  
 8 manner in which the applicant intends to comply with this  
 9 section and 82-4-232 through 82-4-234, as amended, and the  
 10 steps to be taken to comply with applicable air and water  
 11 quality laws and rules and any applicable health and safety  
 12 standards.

13 (3) The application for permit or major revision of a  
 14 permit, which shall contain the reclamation plan and the  
 15 water protection plan, shall be submitted to the department.

16 (4) The department shall determine whether the  
 17 application is administratively complete. An application is  
 18 administratively complete if it contains information  
 19 addressing each application requirement in 82-4-222 and the  
 20 rules implementing that section and all information  
 21 necessary to initiate processing and public review. The  
 22 department shall notify the applicant in writing of its  
 23 determination no later than 90 days after submittal of the  
 24 application. If the department determines that the  
 25 application is not administratively complete, it shall

1 specify in the notice those items which the application must  
 2 address. The application shall be presumed administratively  
 3 complete as to those requirements not specified in the  
 4 notice.

5 (5) If the department determines that an environmental  
 6 impact statement on the application is required, it shall  
 7 notify the applicant in writing at the same time it gives  
 8 the applicant notice pursuant to subsection (4).

9 (6) After the applicant receives notice that the  
 10 application is administratively complete, he shall publish  
 11 notice of filing of the application once a week for 4  
 12 consecutive weeks in a newspaper of general circulation in  
 13 the locality of the proposed operation. The department shall  
 14 notify various local governmental bodies, planning agencies,  
 15 sewage and water treatment authorities, and water companies  
 16 in the locality in which the proposed mining will take place  
 17 of the application and provide a reasonable time for them to  
 18 submit written comments. Any person having an interest which  
 19 is or may be adversely affected or the officer or head of  
 20 any federal, state, or local governmental agency or  
 21 authority shall have the right to file written objections to  
 22 the proposed initial or revised application for permit or  
 23 major revision within 30 days of the applicant's published  
 24 notice. If written objections are filed and an objector  
 25 requests an informal conference, the department shall hold

1 an informal conference in the locality of the proposed  
 2 operation within 30 days of receipt of the request. The  
 3 department shall notify the applicant and all parties to the  
 4 informal conference of its decision and the reasons therefor  
 5 within 60 days of the informal conference. The department  
 6 may arrange with the applicant upon request by any party to  
 7 the administrative proceeding for access to the proposed  
 8 mining area for the purpose of gathering information  
 9 relevant to the proceeding.

10 (7) The filing of written objections or a request for  
 11 an informal conference shall not preclude the department  
 12 from proceeding with its review of the application as  
 13 specified in subsection (8).

14 (8) (a) The department shall review each  
 15 administratively complete application and determine the  
 16 acceptability of the application. During the review, the  
 17 department may propose modifications to the application or  
 18 delete areas from the application in accordance with the  
 19 requirements of 82-4-227. A complete application is  
 20 considered acceptable when the application is in compliance  
 21 with all of the applicable requirements of this part and the  
 22 regulatory program pursuant to this part.

23 (b) If the applicant significantly modifies the  
 24 application after the application has been determined  
 25 administratively complete in accordance with subsection (4),

1 the department shall under this section either deny the  
 2 application or conduct a new review, including an  
 3 administrative completeness determination, public notice,  
 4 and objection period.

5 (c) If an environmental impact statement is determined  
 6 to be necessary prior to making a permit decision, the  
 7 department shall complete and publish the final  
 8 environmental impact statement within 365 days of the date  
 9 of notice provided pursuant to subsection (5).

10 (d) Within 120 days after it determines that an  
 11 application is administratively complete, the department  
 12 shall notify the applicant in writing whether the  
 13 application is or is not acceptable. If the application is  
 14 not acceptable, the department shall set forth the reasons  
 15 why it is not acceptable, and it may propose modifications,  
 16 delete areas, or reject the entire application. All items  
 17 not specified as unacceptable in the department's  
 18 notification are presumed to be acceptable. If the applicant  
 19 revises the application in response to a notice of  
 20 unacceptability, the department shall review the revised  
 21 application and notify the applicant in writing within 120  
 22 days of the date of receipt whether the revised application  
 23 is acceptable. If the revision constitutes a significant  
 24 modification under subsection (8)(b), the department shall  
 25 conduct a new review, beginning with an administrative

1 completeness determination.

2 (e) When the application is determined to be  
3 acceptable, the department shall publish notice of its  
4 determination once a week for 2 consecutive weeks in a  
5 newspaper of general circulation in the locality of the  
6 proposed operation. Any person having an interest that is or  
7 may be adversely affected may file a written objection to  
8 the determination within 10 days of the department's last  
9 published notice. If a written objection is filed and an  
10 objector requests an informal conference, the department  
11 shall hold an informal conference in the locality of the  
12 proposed operation within 20 days of receipt of the request.  
13 The department shall notify the applicant and all parties to  
14 the informal conference of its decision and the reasons  
15 therefor within 10 days of the informal conference.

16 (f) The department shall:

17 (i) hold a public information hearing prior to issuing  
18 its decision to grant or deny a strip-mining or  
19 underground-mining reclamation permit or major revision  
20 application for the purpose of obtaining public comment on  
21 the adequacy of the water protection plan and the water  
22 restoration and replacement financial assurance to  
23 accomplish the purposes of this part if a hearing is  
24 requested by a resident of this state. The department may  
25 hold one hearing to satisfy the requirements of this

1 subsection and the requirements of and rules adopted under  
2 Title 75, chapter 1, parts 1 and 2.

3 (ii) no less than 30 days prior to the hearing required  
4 by subsection (8)(f)(i), publish notice of the hearing in  
5 newspapers of general circulation in the area to be affected  
6 by the proposed mining operation and in the county  
7 newspapers of the county or counties that would be affected;  
8 (iii) mail written notices of the hearing to water users  
9 in the water protection area, as identified in the water  
10 protection plan;

11 (iv) ensure that the water protection plan, the  
12 department's assessment of the water protection plan, and  
13 information supporting the department's determination of the  
14 amount of the water restoration and replacement financial  
15 assurance are readily available for public review at the  
16 time the department gives notice of the hearing provided for  
17 in this subsection.

18 (g) The department shall prepare written findings  
19 granting or denying the permit or major revision application  
20 in whole or in part no later than 45 days from the date the  
21 application is determined acceptable or from the publication  
22 of the final environmental impact statement, whichever  
23 occurs later. However, if lands subject to the federal lands  
24 program are included in the application for permit or major  
25 revision, the department shall prepare and submit written

1 findings to the federal regulatory authority. If the  
 2 department's decision is to grant the permit, the department  
 3 shall issue the permit on the date of its written finding  
 4 or, if any federal concurrence is necessary, on the date  
 5 when such concurrence is obtained. If the application is  
 6 denied, specific reasons for the denial must be set forth in  
 7 the written notification to the applicant.

8 (g)(h) If the department fails to act within the times  
 9 specified in this subsection (8), it shall immediately  
 10 notify the board in writing of its failure to comply and the  
 11 reasons for the failure to comply.

12 (9) The applicant, a landowner, or any person with an  
 13 interest that is or may be adversely affected by the  
 14 department's permit decision may within 30 days of that  
 15 decision submit a written notice requesting a hearing by the  
 16 board. The notice must contain the grounds upon which the  
 17 requester contends that the decision is in error. The  
 18 hearing shall be held within 30 days of the request. For  
 19 purposes of a hearing, the board may order site inspections  
 20 of the area pertinent to the application. The board shall  
 21 within 20 days of the hearing notify the person who  
 22 requested the hearing, by certified mail, and all other  
 23 persons, by regular mail, of the findings and decisions. No  
 24 person who presided at the informal conference may either  
 25 preside at the hearing or participate in the decision

1 thereon.

2 (10) In addition to the method of operation, grading,  
 3 backfilling, subsidence stabilization, water control,  
 4 highwall reduction, topsoiling, and reclamation requirements  
 5 of this part and rules adopted under this part, the  
 6 operator, consistent with the directives of subsection (1)  
 7 of this section, shall:

8 (a) bury under adequate fill all toxic materials,  
 9 shale, mineral, or any other material determined by the  
 10 department to be acid producing, toxic, undesirable, or  
 11 creating a hazard;

12 (b) as directed by rules seal off tunnels, shafts, or  
 13 other openings or any breakthrough of water creating a  
 14 hazard;

15 (c) impound, drain, or treat all runoff or underground  
 16 mine waters so as to reduce soil erosion, damage to grazing  
 17 and agricultural lands, and pollution of surface and  
 18 subsurface waters;

19 (d) remove or bury all metal, lumber, and other refuse  
 20 resulting from the operation;

21 (e) use explosives in connection with the operation  
 22 only in accordance with department regulations designed to  
 23 minimize noise, damage to adjacent lands, and water  
 24 pollution and ensure public safety and for other purposes;

25 (F) adopt measures to prevent land subsidence unless

1 the board approves a plan for inducing subsidence into an  
 2 abandoned operation in a predictable and controlled manner  
 3 with measures for grading, topsoiling, and revegetating the  
 4 subsided land surface. In order for a controlled subsidence  
 5 plan to be approved, the applicant must show that subsidence  
 6 will not cause a direct or indirect hazard to any public or  
 7 private buildings, roads, facilities, or use areas,  
 8 constitute a hazard to human life or health, or constitute a  
 9 hazard to domestic livestock or to a viable agricultural  
 10 operation, or violate any other restrictions the board may  
 11 consider necessary.

12 (g) stockpile and protect from erosion all mining and  
 13 processing wastes until these wastes can be disposed of  
 14 according to the provisions of this part;

15 (h) deposit as much stockpiled waste material as  
 16 possible back into the mine voids upon abandonment in such  
 17 manner as to prevent or minimize land subsidence. The  
 18 remaining waste material shall be disposed of as provided by  
 19 this part and the rules of the board.

20 (i) seal all portals, entryways, drifts, shafts, or  
 21 other openings between the surface and underground mine  
 22 workings when no longer needed;

23 (j) to the extent possible using the best technology  
 24 currently available, minimize disturbances and adverse  
 25 impacts of the operation on fish, wildlife, and related

1 environmental values and achieve enhancement of such  
 2 resources where practicable;

3 (k) minimize the disturbances to the prevailing  
 4 hydrologic balance at the mine site and in associated  
 5 offsite areas and to the quality and quantity of water in  
 6 surface water and ground water systems both during and after  
 7 strip- or underground-coal-mining operations and during  
 8 reclamation by:

9 (i) avoiding acid or other toxic mine drainage by such  
 10 measures as, but not limited to:

11 (A) preventing or removing water from contact with  
 12 toxic-producing deposits;

13 (B) treating drainage to reduce toxic content which  
 14 adversely affects downstream water upon being released to  
 15 water courses;

16 (C) casing, sealing, or otherwise managing boreholes,  
 17 shafts, and wells and keeping acid or other toxic drainage  
 18 from entering ground and surface waters;

19 (ii) (A) conducting strip- or underground-mining  
 20 operations so as to prevent, to the extent possible using  
 21 the best technology currently available, additional  
 22 contributions of suspended solids to streamflow or runoff  
 23 outside the permit area but in no event shall contributions  
 24 be in excess of requirements set by applicable state or  
 25 federal law;

1 (B) constructing any siltation structures pursuant to  
2 (ii)(A) of this subsection prior to commencement of strip-  
3 or underground-mining operations, such structures to be  
4 certified by a qualified registered engineer to be  
5 constructed as designed and as approved in the reclamation  
6 plan;

7 (iii) cleaning out and removing temporary or large  
8 settling ponds or other siltation structures from drainways  
9 after disturbed areas are revegetated and stabilized and  
10 depositing the silt and debris at a site and in a manner  
11 approved by the department;

12 (iv) restoring recharge capacity of the mined area to  
13 approximate premining conditions;

14 (v) avoiding channel deepening or enlargement in  
15 operations requiring the discharge of water from mines;

16 (vi) preserving throughout the mining and reclamation  
17 process the essential hydrologic functions of alluvial  
18 valley floors in the arid and semiarid areas of the country;  
19 and

20 (vii) such other actions as the department may  
21 prescribe;

22 (1) conduct strip- or underground-mine operations in  
23 accordance with the approved coal conservation plan;

24 (m) stabilize and protect all surface areas, including  
25 spoil piles, to effectively control air pollution;

1 (n) seal all auger holes with an impervious and  
2 noncombustible material in order to prevent drainage except  
3 where the department determines that the resulting  
4 impoundment of water in such auger holes may create a hazard  
5 to the environment or the public health and safety;

6 (o) develop contingency plans to prevent sustained  
7 combustion;

8 (p) refrain from construction of roads or other access  
9 ways up a streambed or drainage channel or in such proximity  
10 to such channel so as to seriously alter the normal flow of  
11 water;

12 (q) meet such other criteria as are necessary to  
13 achieve reclamation in accordance with the purposes of this  
14 part, taking into consideration the physical,  
15 climatological, and other characteristics of the site;

16 (r) with regard to underground mines, eliminate fire  
17 hazards and otherwise eliminate conditions which constitute  
18 a hazard to health and safety of the public;

19 (s) locate openings for all new drift mines working  
20 acid-producing or iron-producing coal seams in such a manner  
21 as to prevent a gravity discharge of water from the mine.

22 (11) An operator may not throw, dump, pile, or permit  
23 the dumping, piling, or throwing or otherwise placing any  
24 overburden, stones, rocks, mineral, earth, soil, dirt,  
25 debris, trees, wood, logs, or any other materials or

1 substances of any kind or nature beyond or outside of the  
 2 area of land which is under permit and for which a bond has  
 3 been posted under 82-4-223, as amended, or place the  
 4 materials described in this section in such a way that  
 5 normal erosion or slides brought about by natural physical  
 6 causes will permit the materials to go beyond or outside of  
 7 that area of land. An operator shall conduct the strip- or  
 8 underground-mining operation in such a manner as to protect  
 9 areas outside the permit area."

10 **Section 12.** Section 82-4-237, MCA, is amended to read:

11 **"82-4-237. Operator to file annual reports.** (1) An  
 12 operator shall file an annual report with the department  
 13 within 30 days of the anniversary date of each permit. In  
 14 lieu of an annual report for each permit, the department may  
 15 allow the operator to file an annual report for each  
 16 operation on a date determined by the department. Included  
 17 within an annual report shall be:

18 (a) the name and address of the operator and permit  
 19 number or numbers;

20 (b) a report in such detail as the department shall  
 21 require, supplemented with maps, cross sections, or other  
 22 material indicating the extent to which mining operations  
 23 have been carried out, the progress of implementation of the  
 24 water protection plan, and the progress of all reclamation  
 25 work, including the type of planting or seeding, mixture and

1 amount of seed, date of planting or seeding, and area of  
 2 land planted, the extent to which expectations and  
 3 predictions made in the original application have been  
 4 fulfilled and any deviation therefrom, and the number of  
 5 acres affected; and

6 (c) a revised schedule or timetable of operations, and  
 7 reclamation, protection, restoration or replacement of water  
 8 resources, and restoration of beneficial uses and an  
 9 estimate of the number of acres to be affected during the  
 10 next 1-year period.

11 (2) Upon receipt of the annual report, the department  
 12 may make further inquiry and request further information  
 13 and, if it does so, shall allow a reasonable opportunity for  
 14 the operator to respond.

15 (3) When problem situations are revealed by review of  
 16 new information or as a result of field inspections, the  
 17 department may order such changes in the mining and  
 18 reclamation plans and the water protection plan as are  
 19 necessary to insure compliance with this part."

20 **Section 13.** Section 82-4-238, MCA, is amended to read:

21 **"82-4-238. Successor operator.** Where one operator  
 22 succeeds another at an uncompleted operation, either by  
 23 sale, assignment, lease, or otherwise, the department may  
 24 release the first operator from all liability under this  
 25 part as to that particular operation if both operators have

1 been issued a permit and have otherwise complied with the  
 2 requirements of this part, and the successor operator  
 3 assumes, as part of his obligation under this part, all  
 4 liability for the reclamation of the area of land and the  
 5 restoration or replacement of water resources and  
 6 restoration of beneficial uses affected by the former  
 7 operator."

8 **Section 14.** Section 82-4-239, MCA, is amended to read:

9 "**82-4-239. Reclamation and restoration or replacement**  
 10 **of water resources and beneficial uses by board.** (1) The  
 11 board may have reclamation, restoration or replacement of  
 12 water resources, and restoration of beneficial uses work  
 13 done by its own employees or by employees of other  
 14 governmental agencies, soil conservation districts, or  
 15 through contracts with qualified persons. The board may  
 16 construct, operate, and maintain plants for the control and  
 17 treatment of water pollution resulting from mine drainage.

18 (2) Any funds or any public works programs available to  
 19 the board shall be used and expended to reclaim and  
 20 rehabilitate lands that have been subjected to strip mining  
 21 or underground mining and to restore or replace water  
 22 resources and restore beneficial uses that have been  
 23 adversely affected by mining operations that have not been  
 24 reclaimed, and rehabilitated, or restored or replaced in  
 25 accordance with the standards of this part. The board shall

1 cooperate with federal, state, and private agencies to  
 2 engage in cooperative projects under this section.

3 (3) Agents, employees, or contractors of the department  
 4 may enter upon any land for the purpose of conducting  
 5 studies or exploratory work to determine whether such land  
 6 has been strip- or underground-mined and not reclaimed and  
 7 rehabilitated and whether water resources and beneficial  
 8 uses have been restored or replaced in accordance with the  
 9 requirements of this part and to determine the feasibility  
 10 of restoration, reclamation, abatement, control, ~~or~~  
 11 prevention of any adverse effects of past coal-mining  
 12 practices, or replacement of water resources. Upon request  
 13 of the commissioner, the attorney general shall bring an  
 14 injunctive action to restrain any interference with the  
 15 exercise of the right to enter and inspect granted in this  
 16 subsection.

17 (4) If the department makes a finding of fact that:

18 (a) land, or water resources, or beneficial uses have  
 19 been adversely affected by past coal-mining practices; and

20 (b) the adverse effects are at a stage where in the  
 21 public interest action to restore, reclaim, abate, control,  
 22 replace, or prevent should be taken; and

23 (c) the owners of the land or water resources where  
 24 entry must be made to restore, reclaim, abate, control, ~~or~~  
 25 prevent the adverse effects of past coal-mining practices,



1 or replace water resources are not known or readily  
 2 available or the owners will not give permission for the  
 3 department or its agents, employees, or contractors to enter  
 4 upon such property to restore, reclaim, abate, control, or  
 5 prevent the adverse effects of past coal-mining practices,  
 6 or replace water resources;

7 then agents, employees, or contractors of the  
 8 department, after giving notice by mail to the owner, if  
 9 known, and any purchaser under contract for deed, if known,  
 10 or, if neither is known, by posting notice upon the premises  
 11 and advertising in a newspaper of general circulation in the  
 12 county in which the land lies, may enter upon property  
 13 adversely affected by past coal-mining practices and any  
 14 other property necessary for access to such mineral property  
 15 to do all things necessary or expedient to restore, reclaim,  
 16 abate, control, or prevent the adverse effects of past  
 17 coal-mining practices, or replace water resources. This act  
 18 is not an act of condemnation of property or of trespass but  
 19 rather an exercise of the power granted by sections 1 and 2,  
 20 Article IX of the Montana constitution.

21 (5) (a) Within 6 months after the completion of  
 22 projects to restore, reclaim, abate, control, or prevent  
 23 adverse effects of past coal-mining practices, or replace  
 24 water resources on privately owned land, the department  
 25 shall itemize the money so expended and may file a statement

1 thereof in the office of the clerk and recorder of the  
 2 county in which the land lies, together with a notarized  
 3 appraisal by an independent appraiser of the value of the  
 4 land before the restoration, reclamation, abatement,  
 5 control, or prevention of adverse effects of past  
 6 coal-mining practices, or replacement of water resources if  
 7 the money so expended shall result in a significant increase  
 8 in property value. Such statement constitutes a lien upon  
 9 the land. The lien may not exceed the amount determined by  
 10 the appraisal to be the increase in the market value of the  
 11 land as a result of the restoration, reclamation, abatement,  
 12 control, or prevention of the adverse effects of past  
 13 coal-mining practices, or replacement of water resources. No  
 14 lien may be filed against the property of any person, in  
 15 accordance with this subsection, who owned the surface prior  
 16 to May 2, 1977, and who neither consented to nor  
 17 participated in nor exercised control over the mining  
 18 operation which necessitated the reclamation, restoration or  
 19 replacement of water resources, or restoration of beneficial  
 20 uses performed under this part.

21 (b) The landowner may petition within 60 days of the  
 22 filing of the lien to determine the increase in the market  
 23 value of the land as a result of the restoration,  
 24 reclamation, abatement, control, or prevention of the  
 25 adverse effects of past coal-mining practices, or

1 replacement of water resources. The amount reported to be  
 2 the increase in value of the premises constitutes the amount  
 3 of the lien and shall be recorded with the statement herein  
 4 provided. Any party aggrieved by the decision may appeal as  
 5 provided by law.

6 (c) The lien provided in this section shall be recorded  
 7 at the office of the county clerk and recorder. The  
 8 statement constitutes a lien upon the land as of the date of  
 9 the expenditure of the money and has priority as a lien  
 10 second only to the lien of real estate taxes imposed upon  
 11 the land.

12 (6) The board may acquire the necessary property by  
 13 gift or purchase or, if the property cannot be acquired by  
 14 gift or purchase at a reasonable cost, proceedings may be  
 15 instituted in the manner provided in Title 70, chapter 30,  
 16 against all nonaccepting landholders if:

17 (a) the property is necessary for successful  
 18 reclamation, restoration or replacement of water resources,  
 19 or restoration of beneficial uses;

20 (b) the acquired land after restoration, reclamation,  
 21 abatement, control, or prevention of the adverse effects of  
 22 past coal-mining practices, or replacement of water  
 23 resources will serve recreation and historic purposes or  
 24 conservation and reclamation purposes or provide open space  
 25 benefits; and

1 (c) permanent facilities such as treatment plants or  
 2 relocated stream channels will be constructed on the land  
 3 for the restoration, reclamation, abatement, control, or  
 4 prevention of the adverse effects of past strip- or  
 5 underground-coal-mining practices, or replacement of water  
 6 resources; or acquisition of coal refuse disposal sites and  
 7 all coal refuse thereon will serve the purposes of this part  
 8 in that public ownership is desirable to meet emergency  
 9 situations and prevent recurrences of the adverse effects of  
 10 past coal-mining practices."

11 **Section 15.** Section 82-4-240, MCA, is amended to read:

12 **"82-4-240. Reclamation of lands after bond forfeited --**  
 13 **restoration or replacement of water resources after**  
 14 **financial assurance forfeited.** In keeping with the  
 15 provisions of this part, the board may reclaim any affected  
 16 lands with respect to which a bond has been forfeited and  
 17 may restore or replace any affected water resources and  
 18 restore any affected beneficial uses with respect to which  
 19 water restoration and replacement financial assurance has  
 20 been forfeited."

21 **Section 16.** Section 82-4-241, MCA, is amended to read:

22 **"82-4-241. Receipts paid into general fund.** Except for  
 23 bond and water restoration and replacement financial  
 24 assurance forfeiture moneys, all fees, penalties, and other  
 25 moneys available or paid to the department under the

1 provisions of this part shall be placed in the state  
2 treasury and credited to the general fund."

3 **Section 17.** Section 82-4-242, MCA, is amended to read:

4 **"82-4-242. Funds received by board.** The board may  
5 receive any federal funds, state funds, or any other funds  
6 for the reclamation of land, the restoration and replacement  
7 of water resources, and restoration of beneficial uses  
8 affected by strip mining or underground mining."

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

24 (2) For purposes of enforcement of the water protection  
25 plan, the department shall presume that water resources and

1 beneficial uses in the water protection area have been  
2 diminished or degraded by the permitted operation if the  
3 number, location, quantity, rate of flow, quality, or  
4 hydrologic characteristics of water resources in the water  
5 protection area are diminished or degraded or if water users  
6 in the water protection area are incurring higher costs in  
7 obtaining or maintaining water resources for beneficial uses  
8 than under the conditions that existed prior to the  
9 commencement of the permitted operations.

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

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

1 provided in subsection (3):

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

4 (b) 72 hours for irrigation; and

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

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

17 (6) The board shall by order notify the permittee and  
18 his surety, if applicable, of actions taken to temporarily  
19 restore or replace a water resource, restore a beneficial  
20 use, or both. The order must state the amount of necessary  
21 expenses incurred by the department and a notice that the  
22 amount is due and payable to the department by the permittee  
23 and by the surety, if applicable. If the amount specified in  
24 the order is not paid within 30 days after receipt of the  
25 notice, the attorney general, upon request of the board,

1 shall bring an action on behalf of the state in district  
2 court. The surety is liable to the state to the extent of  
3 the surety's financial participation in a water restoration  
4 and replacement financial assurance mechanism provided by  
5 the permittee pursuant to [section 8]. The permittee is  
6 liable for the remainder of the cost.

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

20 (8) The permittee shall compensate water users for any  
21 economic losses incurred by the diminishment or degradation  
22 of a water resource, beneficial use, or both in the water  
23 protection area that is not restored or replaced within the  
24 time established pursuant to subsection (4).

25 (9) The permittee may request a hearing subject to the

1 provisions of the Montana Administrative Procedure Act and  
 2 may provide evidence to show that the alleged diminishment  
 3 or degradation of a water resource, beneficial use, or both  
 4 was not caused by the permitted operations.

5 (a) The permittee has the burden of showing by clear  
 6 and convincing evidence that the permitted operations did  
 7 not cause the diminishment or degradation of the water  
 8 resource, beneficial use, or both.

9 (b) A record must be made of the hearing and of all  
 10 evidence presented and testimony taken.

11 (c) Based upon the hearing record, the department shall  
 12 determine whether the water resource, beneficial use, or  
 13 both were diminished or degraded by the permitted  
 14 operations.

15 (d) Either the permittee or the water user may request  
 16 that the department reconsider its determination. The  
 17 department's response to a request to reconsider is the  
 18 final agency decision.

19 (e) If the department finds that the diminishment or  
 20 degradation of a water resource, beneficial use, or both was  
 21 not caused by a permitted operation under this part, the  
 22 department may order the water user to reimburse the  
 23 permittee for the costs the permittee incurred in  
 24 temporarily or permanently restoring or replacing the  
 25 diminished or degraded water resource or in restoring the

1 beneficial use. If the department determines that the  
 2 diminishment or degradation of a water resource, beneficial  
 3 use, or both was caused by a permitted operation under this  
 4 part, the permittee shall reimburse the water user for the  
 5 costs the water user incurred to participate in the hearing  
 6 provided for in this subsection.

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

16 (2) A water user who depends upon a water resource or  
 17 who has a beneficial use that is located outside the water  
 18 protection area boundaries proposed in the permit  
 19 application or the boundaries established by the board  
 20 through permit review and issuance may request that the  
 21 department expand water monitoring beyond the water  
 22 protection area boundaries to include that water resource,  
 23 beneficial use, or both. The water user must provide a  
 24 written statement of the reasons for the request, including  
 25 supporting information to explain why the water user

1 believes that the water resource, beneficial use, or both  
2 may be diminished or degraded by the proposed or permitted  
3 operations.

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

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

21 (5) Within 180 days after a decision to expand water  
22 monitoring beyond the boundary of a water protection area,  
23 the department shall decide whether to formally expand the  
24 boundaries of the water protection area to include the water  
25 resource, beneficial use, or both that were the subject of a

1 water user's request pursuant to subsection (2), unless the  
2 water user agrees to an extension of time to allow  
3 additional monitoring to occur before the department makes  
4 its decision.

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

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

18 **Section 20.** Section 82-4-251, MCA, is amended to read:

19 "82-4-251. **Noncompliance -- suspension of permits.** (1)  
20 The commissioner or an authorized representative of the  
21 department shall, if he determines on the basis of an  
22 inspection that any condition or practices exist or that the  
23 permittee is in violation of any requirement of this part or  
24 any permit condition required by the part that creates an  
25 imminent danger to the health or safety of the public or is

1 causing or can reasonably be expected to cause significant  
 2 and imminent environmental harm to land, air, or water  
 3 resources, immediately order cessation of the operation or  
 4 the portion thereof relevant to the condition, practice, or  
 5 violation. The cessation order remains in effect until the  
 6 commissioner or his authorized representative determines  
 7 that the condition, practice, or violation has been abated  
 8 or until modified, vacated, or terminated by the  
 9 commissioner or his authorized representative pursuant to  
 10 subsection (5). If the commissioner or his authorized  
 11 representative finds that the ordered cessation of the  
 12 operation, or any portion thereof, will not completely abate  
 13 the imminent danger to the health or safety of the public or  
 14 the significant and imminent environmental harm to land,  
 15 air, or water resources, he shall in addition to the  
 16 cessation order impose affirmative obligations requiring  
 17 whatever steps the commissioner or his authorized  
 18 representative considers necessary to abate the imminent  
 19 danger or the significant environmental harm.

20 (2) When, on the basis of an inspection, the department  
 21 determines that any permittee is in violation of any  
 22 requirement of this part or any permit condition required by  
 23 this part which does not create an imminent danger to the  
 24 health or safety of the public or cannot be reasonably  
 25 expected to cause significant and imminent environmental

1 harm to land, air, or water resources, the commissioner or  
 2 authorized representative shall issue a notice to the  
 3 permittee or his agent fixing a reasonable time, not  
 4 exceeding 90 days, for the abatement of the violation and  
 5 providing opportunity for public hearing. If, upon  
 6 expiration of the period of time as originally fixed or  
 7 subsequently extended, for good cause shown and upon the  
 8 written finding of the commissioner or his authorized  
 9 representative, the commissioner or his authorized  
 10 representative finds that the violation has not been abated,  
 11 he shall immediately order a cessation of the operation or  
 12 the portion thereof relevant to the violation. Such  
 13 cessation order remains in effect until the commissioner or  
 14 his authorized representative determines that the violation  
 15 has been abated or until modified, vacated, or terminated by  
 16 the commissioner or his authorized representative pursuant  
 17 to subsection (5). In the order of cessation issued under  
 18 this subsection, the commissioner shall determine the steps  
 19 necessary to abate the violation in the most expeditious  
 20 manner possible and shall include the necessary measures in  
 21 the order.

22 (3) When, on the basis of an inspection, the  
 23 commissioner or his authorized representative determines  
 24 that a pattern of violations of any requirements of this  
 25 part or any permit conditions required by this part exists

1 or has existed and if the commissioner or his authorized  
 2 representative also finds that such violations are caused by  
 3 the unwarranted failure of the permittee to comply with any  
 4 requirements of this part or any permit conditions or that  
 5 such violations are willfully caused by the permittee, the  
 6 commissioner or his authorized representative shall  
 7 forthwith issue an order to the permittee to show cause as  
 8 to why the permit should not be suspended or revoked and  
 9 shall provide opportunity for a public hearing. If a hearing  
 10 is requested, the commissioner shall inform all interested  
 11 parties of the time and place of the hearing. Upon the  
 12 permittee's failure to show cause as to why the permit  
 13 should not be suspended or revoked, the commissioner or his  
 14 authorized representative shall forthwith suspend or the  
 15 board shall revoke the permit. When a permit has been  
 16 revoked, the board may order the performance bond or the  
 17 water restoration and replacement financial assurance, or  
 18 both, forfeited.

19 (4) Any additional permits held by an operator whose  
 20 mining permit has been revoked shall be suspended and the  
 21 operator is not eligible to receive another permit or to  
 22 have the suspended permits reinstated until he has complied  
 23 with all the requirements of this part in respect to former  
 24 permits issued him. An operator who has forfeited a bond or  
 25 water restoration and replacement financial assurance or has

1 violated federal or state mine reclamation laws or rules, as  
 2 determined by the department based on information supplied  
 3 by any person, is not eligible to receive another permit  
 4 unless:

5 (a) the land where a violation occurred in this state  
 6 or the land for which the bond was forfeited has been  
 7 reclaimed or the water resources affected by the violation  
 8 or for which the financial assurance was forfeited have been  
 9 restored or replaced without cost to the state; or

10 (b) the operator has paid into the reclamation account  
 11 a sum together with the value of the bond the board finds  
 12 adequate to reclaim the lands or the value of the water  
 13 restoration and replacement financial assurance the board  
 14 finds is adequate to restore or replace the water resources  
 15 and any additional expenses incurred by the board that the  
 16 bond or financial assurance is insufficient to cover.

17 (5) Notices and orders issued pursuant to this section  
 18 shall set forth with reasonable specificity the nature of  
 19 the violation and the remedial action required, the period  
 20 of time established for abatement, and a reasonable  
 21 description of the portion of the operation to which the  
 22 notice or order applies. Each notice or order issued under  
 23 this section shall be given promptly to the permittee or his  
 24 agent by the department or the commissioner or his  
 25 authorized representative who issues the notice or order.



1 All such notices and orders must be in writing and be signed  
 2 by the authorized representatives. Any notice or order  
 3 issued pursuant to this section may be modified, vacated, or  
 4 terminated by the commissioner or his authorized  
 5 representative, provided that any notice or order issued  
 6 pursuant to this section that requires cessation of mining  
 7 by the operator expires within 30 days of actual notice to  
 8 the operator unless a public hearing is held at the site or  
 9 within such reasonable proximity to the site that any  
 10 viewings of the site can be conducted during the course of  
 11 public hearing.

12 (6) A person issued a notice or an order of cessation  
 13 pursuant to this section or any person having an interest  
 14 that is or may be adversely affected by an order or by  
 15 modification, vacation, or termination of an order may apply  
 16 to the department for review of that order within 30 days of  
 17 its issuance or within 30 days of its modification,  
 18 vacation, or termination. Upon receipt of the application,  
 19 the department shall make an investigation. The  
 20 investigation shall provide an opportunity for public  
 21 hearing at the request of the applicant or the person having  
 22 an interest who is or may be adversely affected to enable  
 23 the applicant or the person to present information relating  
 24 to the issuance and continuance of the notice or order or  
 25 the modification, vacation, or termination of it. The filing

1 of an application for review under this subsection may not  
 2 operate as a stay of any order or notice. The department  
 3 shall make findings of fact and issue a written decision  
 4 incorporating an order vacating, affirming, modifying, or  
 5 terminating the order.

6 (7) Whenever an order is issued under this section or  
 7 as the result of any administrative proceeding under this  
 8 part, at the request of any person, a sum equal to the  
 9 aggregate amount of all costs, expenses, and attorney fees  
 10 as determined by the department to have been reasonably  
 11 incurred by such person for or in connection with his  
 12 participation in such proceedings, including any judicial  
 13 review of agency actions, may be assessed against either  
 14 party as the court, resulting from judicial review, or the  
 15 department, resulting from administrative proceedings,  
 16 considers proper.

17 (8) In order to protect the stability of the land, the  
 18 commissioner or his authorized representative shall order  
 19 cessation of underground coal mining under urbanized areas,  
 20 cities, towns, and communities and adjacent to industrial or  
 21 commercial buildings, major impoundments, or permanent  
 22 streams if he finds imminent danger to inhabitants of the  
 23 urbanized areas, cities, towns, and communities."

24 **Section 21.** Section 82-4-252, MCA, is amended to read:

25 "82-4-252. **Mandamus.** (1) A resident of this state or

1 any person having an interest which is or may be adversely  
 2 affected, with knowledge that a requirement of this part or  
 3 a rule adopted under this part is not being enforced or  
 4 implemented by a public officer or employee whose duty it is  
 5 to enforce or implement the requirement or rule, may bring  
 6 the failure to enforce to the attention of the public  
 7 ~~officer-or-employee~~ commissioner and to the permittee by a  
 8 written statement under oath that shall state the specific  
 9 facts of the failure to enforce the requirement or rule.  
 10 ~~Knowingly---making---false---statements---or---charges---in---the~~  
 11 ~~affidavit-subjects-the-affiant-to-penalties-prescribed-in~~  
 12 ~~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 written statement and, based upon the inspection, the  
 16 commissioner shall issue a written response to the person  
 17 who filed the written statement and provide a copy to the  
 18 permittee, stating whether the commissioner agrees or  
 19 disagrees that a violation has taken place.

20 (3) ~~If the public-officer-or-employee-neglects-or~~  
 21 ~~refuses-for-an-unreasonable-time-after-receipt-of-the~~  
 22 ~~statement-to-enforce-or-implement-the-requirement-or-rule~~  
 23 commissioner determines that there is no violation, the  
 24 resident or person having an interest which that is or may  
 25 be adversely affected may appeal the commissioner's

1 determination to the board or bring an action of mandamus in  
 2 the district court of the first judicial district of this  
 3 state, in and for the county of Lewis and Clark, or in the  
 4 district court of the county in which the land is located.  
 5 If the commissioner fails to respond within 10 days of  
 6 receipt of the written statement, the resident or person  
 7 having an interest that is or may be adversely affected may  
 8 either proceed with an appeal to the board or bring an  
 9 action of mandamus as though the commissioner had decided  
 10 that no violation occurred.

11 (4) The court, if it finds that a requirement of this  
 12 part or a rule adopted under this part is not being  
 13 enforced, shall:

14 (a) ~~order the public-officer-or-employee-whose-duty-it~~  
 15 ~~is-to-enforce-the-requirement-or-rule~~ commissioner to  
 16 perform his duties. If he fails to do so, the ~~public-officer~~  
 17 ~~or-employee-shall~~ commissioner must be held in contempt of  
 18 court and is subject to the penalties provided by law.

19 (b) require the commissioner to order the permittee who  
 20 was found to be in violation of this part or a rule adopted  
 21 pursuant to this part to reimburse the person who brought  
 22 the complaint for all of the costs the person incurred in  
 23 appealing the commissioner's decision, bringing an action of  
 24 mandamus, or both. If the department is unable to secure  
 25 reimbursement of the person's costs from the permittee

1 within 60 days of the date of the board's decision on an  
 2 appeal or the court's decision on an action of mandamus, the  
 3 department shall reimburse the citizen, provided that the  
 4 department may continue to attempt to obtain reimbursement  
 5 from the permittee.

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

12 ~~{a}--prior--to--60--days--after--the--plaintiff--has--given~~  
 13 ~~notice-in-writing-to--the--department--and--to--the--alleged~~  
 14 ~~violator,or~~

15 ~~{b}--if--the--department--has--commenced--and--is--diligently~~  
 16 ~~prosecuting-a-civil-action-to-require--compliance--with--the~~  
 17 ~~provisions-of-this-part-or-any-rule,order,or-permit-issued~~  
 18 ~~hereunder.~~

19 {5} Any person may intervene as a matter of right in  
 20 any such a civil action brought under this section.

21 {6} Nothing in this section restricts any right that  
 22 any person may have under any statute or common law to seek  
 23 enforcement of this part or the rules adopted hereunder or  
 24 to seek any other relief.

25 {4}{7} Any person who is injured in his person or

1 property through the violation by any operator of any rule,  
 2 order, or permit issued pursuant to this part may bring an  
 3 action for damages (including reasonable attorney and expert  
 4 witness fees) only in the county in which the strip- or  
 5 underground-coal-mining operation complained of is located.  
 6 Nothing in this subsection affects the rights established by  
 7 or limits imposed under chapter 71 of Title 39.

8 {5}{8} The court, in issuing any final order in any  
 9 action brought pursuant to subsection {3}, may award costs  
 10 of litigation (including attorney and expert witness fees)  
 11 to any party whenever the court determines such award is  
 12 appropriate. The court may, if a temporary restraining order  
 13 or preliminary injunction is sought, require the filing of a  
 14 bond or equivalent security in accordance with the Montana  
 15 Rules of Civil Procedure."

16 **Section 22.** Section 82-4-253, MCA, is amended to read:

17 **"82-4-253. Suit for damage to water supply.** (1) An  
 18 owner of an interest in real property who obtains all or  
 19 part of his supply of water for domestic, agricultural,  
 20 industrial, or other legitimate use from ~~an underground~~  
 21 ~~source--other-than-a-subterranean-stream-having-a-permanent,~~  
 22 ~~distinct,--and-known-channel~~ may sue an operator to recover  
 23 damages for contamination, diminution, or interruption of  
 24 the water supply, proximately resulting from strip mining or  
 25 underground mining.

1 (2) Prima facie evidence of injury in a suit under this  
 2 subsection is established by the removal of coal or  
 3 disruption of overlying aquifer from designated ground water  
 4 areas as prescribed in Title 85, chapter 2, part 5. If the  
 5 area is not a designated ground water area, a showing that  
 6 the coal or overlying strata is an aquifer in that  
 7 geographical location and that the coal or the overlying  
 8 strata has been removed or disrupted shifts the burden to  
 9 defendant (operator) to show that plaintiff's (owner's)  
 10 water supply was not injured thereby.

11 (3) An owner of water rights adversely affected may  
 12 file a complaint detailing the loss of his water in quality  
 13 and quantity with the department. Upon receipt of this  
 14 complaint the department shall:

15 (a) investigate the complaint using all available  
 16 information including monitoring data gathered at the mine  
 17 site;

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

22 (c) issue within 90 days a written finding specifying  
 23 the cause of the water loss, if there is a loss, in terms of  
 24 quantity or quality;

25 (d) order the mining operator in compliance with

1 chapter 2 of Title 85 to replace the water immediately on a  
 2 temporary basis to provide the needed water and within a  
 3 reasonable time, replace the water in like quality,  
 4 quantity, and duration, if the loss is caused by the surface  
 5 coal mining operation; and

6 (e) order the suspension of the operator's permit for  
 7 failure to replace the water, until such time as the  
 8 operator provides substitute water.

9 (4) A servient tract of land is not bound to receive  
 10 surface water contaminated by strip mining or underground  
 11 mining on a dominant tract of land, and the owner of the  
 12 servient tract may sue an operator to recover the damages  
 13 proximately resulting from the natural drainage from the  
 14 dominant tract of surface waters contaminated by strip  
 15 mining or underground mining on the dominant tract.

16 (5) This section and 82-4-252 do not create, modify, or  
 17 affect any right, liability, or remedy other than as  
 18 expressly provided.

19 (6) The provisions of [sections 1 through 23] supersede  
 20 the provisions of this section for operations permitted  
 21 after October 1, 1991."

22 NEW SECTION. Section 23. Rulemaking. The department  
 23 shall adopt:

24 (1) interim rules to implement [sections 1 through 22]  
 25 to be in place no later than October 1, 1991; and

1 (2) final rules to implement [sections 1 through 22] to  
2 be in place no later than July 1, 1992.

3 NEW SECTION. **Section 24.** Codification instruction.  
4 [Sections 8, 18, 19, and 23] are intended to be codified as  
5 an integral part of Title 82, chapter 4, part 2, and the  
6 provisions of Title 82, chapter 4, part 2, apply to  
7 [sections 8, 18, 19, and 23].

8 NEW SECTION. **Section 25.** Severability. If a part of  
9 [this act] is invalid, all valid parts that are severable  
10 from the invalid part remain in effect. If a part of [this  
11 act] is invalid in one or more of its applications, the part  
12 remains in effect in all valid applications that are  
13 severable from the invalid applications.

14 NEW SECTION. **Section 26.** Applicability. [This act]  
15 applies to proceedings begun after October 1, 1991.

16 NEW SECTION. **Section 27.** Effective date. [This act] is  
17 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 HB0956, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


An act to generally revise strip-mining and underground-mining 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.

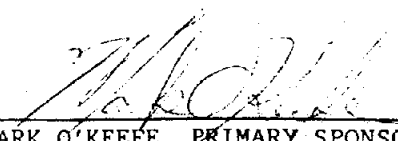
ASSUMPTIONS:

1. The 5.00 FTE required for the current workload and recommended by the appropriations subcommittee will be approved.
2. HB0956 would require an additional 1.00 FTE hydrologist (grade 15) and 1.00 FTE economist (grade 15).
3. HB0956 provides for the submission, evaluation, additional reporting and bonding of a water protection area. The two staff would provide the additional services associated with the increased baseline data, the additional reports, the special bond and assurance documents and citizen complaint responses. All the work these FTE would perform is above and beyond what is currently required for hydrologic review and bond tracking.
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 greatly increase (double for baseline and about 20 additional years for bond release).
6. Hearings officers would be required for one protracted hearing per year.
7. The department must reimburse a person for the cost of an appeal if the permittee fails to pay within 60 days.
8. The department will recover \$16,000 per year from mining applicants for "contractor and employee expenses of the department that are necessary to provide for timely and adequate review of the water protection plan.

FISCAL IMPACT:

see next page

  
ROD SUNDSTED, BUDGET DIRECTOR      3-23-91      DATE  
Office of Budget and Program Planning

  
MARK O'KEEFE, PRIMARY SPONSOR      2/26/91      DATE  
Fiscal Note for HB0956, as introduced

HB 956

FISCAL IMPACT:

Department of State Lands:

	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>						
FTE	0	2.00	2.00	0	2.00	2.00
Personal Services	0	68,086	68,086	0	68,086	68,086
Operating Costs	0	20,600	20,600	0	20,600	20,600
Equipment	0	<u>11,080</u>	<u>11,080</u>	0	<u>0</u>	<u>0</u>
Total	0	99,766	99,766	0	88,686	88,686
<u>Funding:</u>						
General Fund	0	25,130	25,130	0	21,806	21,806
Mining App. Fees (02)	0	16,000	16,000	0	16,000	16,000
Federal Special	0	<u>58,636</u>	<u>58,636</u>	0	<u>50,880</u>	<u>50,880</u>
Total	0	99,766	99,766	0	88,686	88,686
<u>Revenues:</u>						
Mining App. Fees (02)	0	16,000	16,000	0	16,000	16,000
General Fund Impact			(25,130)			(21,806)

LONG RANGE EFFECTS OF PROPOSED LEGISLATION:

Department expenditures for the implementation would remain relatively constant for the program in future years.

HB 956

APPROVED BY COMM. ON  
NATURAL RESOURCES

HOUSE BILL NO. 956

INTRODUCED BY O'KEEFE, PECK, REAM, HARPER, YELLOWTAIL

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE STRIP-MINING AND UNDERGROUND-MINING RECLAMATION LAWS TO PROVIDE FOR PROTECTION OF WATER RESOURCES AND FOR THE RESTORATION AND OR REPLACEMENT OF WATER RESOURCES AND RESTORATION AND CONTINUATION 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; AMENDING SECTIONS 82-4-202, 82-4-203, 82-4-205, 82-4-206, 82-4-221, 82-4-222, 82-4-223, 82-4-225, 82-4-227, 82-4-231, 82-4-237, 82-4-238, 82-4-239, 82-4-240, 82-4-241, 82-4-242, 82-4-251, 82-4-252, AND 82-4-253, 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, 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 a strip-mining or underground-mining reclamation permit must include in the 2-year baseline study of water resources, the hydrologic balance, 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 hydrologic balance, quantity, and quality of water resources and upon beneficial uses in the water protection area. The department's rules must identify the specific types of analysis an applicant must prepare to provide an adequate assessment of the consequences of proposed mining operations upon 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.

The department shall also adopt rules to clarify how an applicant should coordinate and integrate the collection and





1 presentation of information on water resources and  
 2 beneficial uses that is required in a water protection plan  
 3 pursuant to [section 6] with other water-related information  
 4 and analysis that is required by other provisions of Title  
 5 82, chapter 4, part 2.

6 ~~The department's rules must define the characteristics  
 7 of significant aesthetic values and significant wildlife  
 8 habitat that are defined in [section 2] as beneficial uses  
 9 of water resources. Significant wildlife habitat must  
 10 include habitat for state and federally designated  
 11 threatened and endangered species and all species of  
 12 wildlife and fish that are classified as game species and  
 13 for which licenses are required for hunting and fishing in  
 14 the state.~~

15 [Section 7(1)] authorizes the department to assess a  
 16 water resources assessment fee not to exceed the actual  
 17 amount of contractor and employee expenses of the department  
 18 to provide for timely and adequate review of the water  
 19 protection plan AND TO INVESTIGATE COMPLAINTS PURSUANT TO  
 20 82-4-253(3). The department's rules should authorize the use  
 21 of the money collected from the water resources assessment  
 22 fee for expenses, such as for hiring temporary employees and  
 23 contracted consultants and data collection and analysis.

24 In adopting rules to set forth the specific terms and  
 25 conditions of financial assurance mechanisms authorized by

1 [section 8], the department should consult and to the  
 2 greatest extent practicable rely upon concepts and  
 3 requirements contained in rules 16.44.801 through 16.44.823,  
 4 Administrative Rules of Montana.

5  
 6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

7 **Section 1.** Section 82-4-202, MCA, is amended to read:

8 **"82-4-202. Policy -- findings.** (1) It is the declared  
 9 policy of this state and its people to:

10 (a) maintain and improve the state's clean and  
 11 healthful environment for present and future generations;

12 (b) protect its environmental life-support system from  
 13 degradation;

14 (c) prevent unreasonable degradation of its natural  
 15 resources;

16 (d) restore, enhance, and preserve its scenic,  
 17 historic, archaeological, scientific, cultural, and  
 18 recreational sites;

19 (e) demand effective reclamation of all lands disturbed  
 20 by the taking of natural resources and maintain state  
 21 administration of the reclamation program;

22 (f) provide for the restoration or replacement of water  
 23 resources and restoration of beneficial uses of water at no  
 24 increased cost to water users if those resources and uses  
 25 are diminished or degraded as a result of strip mining or

1 underground mining of coal;

2 (g) require the legislature to provide for proper  
3 administration and enforcement, create adequate remedies,  
4 and set effective requirements and standards (especially as  
5 to reclamation of disturbed lands) in order to achieve the  
6 aforementioned objectives; and

7 (g)(h) provide for the orderly development of coal  
8 resources through strip or underground mining to assure the  
9 wise use of these resources and prevent the failure to  
10 conserve coal.

11 (2) The legislature hereby finds and declares that:

12 (a) in order to achieve the aforementioned policy  
13 objectives, promote the health and welfare of the people,  
14 control erosion and pollution, protect domestic stock and  
15 wildlife, preserve agricultural and recreational  
16 productivity, save cultural, historic, and aesthetic values,  
17 and assure a long-range dependable tax base, it is  
18 reasonably necessary to require, after March 16, 1973, that  
19 all strip-mining and underground-mining operations be  
20 limited to those for which 5-year permits are granted, that  
21 no permit be issued until the operator presents a  
22 comprehensive plan for land reclamation and restoration, a  
23 water protection plan, and a coal conservation plan,  
24 together with an adequate performance bond and water  
25 restoration and replacement financial assurance, and the

1 ~~plan--is~~ plans are approved, that certain other things must  
2 be done, that certain remedies are available, that certain  
3 lands because of their unique or unusual characteristics may  
4 not be strip-mined or underground-mined under any  
5 circumstances, all as more particularly appears in the  
6 remaining provisions of this part, and that the department  
7 be given authority to administer and enforce a reclamation  
8 program that complies with Public Law 95-87, the Surface  
9 Mining Control and Reclamation Act of 1977, as amended;

10 (b) this part be deemed to be an exercise of the  
11 authority granted in the Montana constitution, as adopted  
12 June 6, 1972, and, in particular, a response to the mandate  
13 expressed in Article IX thereof and also be deemed to be an  
14 exercise of the general police power to provide for the  
15 health and welfare of the people."

16 **Section 2.** Section 82-4-203, MCA, is amended to read:

17 "82-4-203. **Definitions.** Unless the context requires  
18 otherwise, in this part the following definitions apply:

19 (1) "Abandoned" means an operation where no mineral is  
20 being produced and where the department determines that the  
21 operation will not continue or resume.

22 (2) "Alluvial valley floor" means the unconsolidated  
23 stream-laid deposits holding streams where water  
24 availability is sufficient for subirrigation or flood  
25 irrigation agricultural activities; but the term does not

1 include upland areas which are generally overlain by a thin  
2 veneer of colluvial deposits composed chiefly of debris from  
3 sheet erosion, deposits by unconcentrated runoff or slope  
4 wash, together with talus, other mass movement accumulation,  
5 and windblown deposits.

6 (3) "Aquifer" means any geologic formation or natural  
7 zone beneath the earth's surface that contains or stores  
8 water and transmits it from one point to another in  
9 quantities which permit or have the potential to permit  
10 economic development as a water source.

11 (4) "Area of land affected" means the area of land from  
12 which overburden is to be or has been removed and upon which  
13 the overburden is to be or has been deposited and includes  
14 all land overlying any tunnels, shafts, or other excavations  
15 used to extract the mineral, lands affected by the  
16 construction of new railroad loops and roads or the  
17 improvement or use of existing railroad loops and roads to  
18 gain access and to haul the mineral, processing facilities  
19 at or near the mine site or other mine associated  
20 facilities, waste deposition areas, treatment ponds, and any  
21 other surface or subsurface disturbance associated with  
22 strip mining or underground mining, and all activities  
23 necessary and incident to the reclamation of such  
24 operations.

25 (5) "Bench" means the ledge, shelf, table, or terrace

1 formed in the contour method of strip mining.

2 (6) "Beneficial uses" means those beneficial uses of  
3 water resources defined in 85-2-102(2) and other uses of  
4 water resources that include but are not limited to  
5 maintenance of minimum streamflows, public and private water  
6 leases, significant aesthetic values, and significant  
7 wildlife habitat.

8 (6)(7) "Board" means the board of land commissioners  
9 provided for in Article X, section 4, of the constitution of  
10 this state.

11 (7)(8) "Coal conservation plan" means the planned  
12 course of conduct of a strip- or underground-mining  
13 operation to include plans for the removal and utilization  
14 of minable and marketable coal located within the area  
15 planned to be mined.

16 (8)(9) "Coal preparation" means the chemical or  
17 physical processing of coal and its cleaning, concentrating,  
18 or other processing or preparation. The term does not mean  
19 the conversion of coal to another energy form or to a  
20 gaseous or liquid hydrocarbon, except for incidental amounts  
21 that do not leave the plant, nor does the term mean  
22 processing for other than commercial purposes.

23 (9)(10) "Coal preparation plant" means a commercial  
24 facility where coal is subject to coal preparation. The term  
25 includes commercial facilities associated with coal

1 preparation activities but is not limited to loading  
2 buildings, water treatment facilities, water storage  
3 facilities, settling basins and impoundments, and coal  
4 processing and other waste disposal areas.

5 ~~(10)~~(11) "Commissioner" means the commissioner of state  
6 lands provided for in 2-15-3202.

7 ~~(11)~~(12) "Contour strip mining" means that strip-mining  
8 method commonly carried out in areas of rough and hilly  
9 topography in which the coal or mineral seam outcrops along  
10 the side of the slope and entrance is made to the seam by  
11 excavating a bench or table cut at and along the site of the  
12 seam outcropping with the excavated overburden commonly  
13 being cast down the slope below the mineral seam and the  
14 operating bench.

15 ~~(12)~~(13) "Degree" means from the horizontal and in each  
16 case is subject to a tolerance of 5% error.

17 ~~(13)~~(14) "Department" means the department of state  
18 lands provided for in Title 2, chapter 15, part 32.

19 ~~(14)~~(15) "Failure to conserve coal" means the nonremoval  
20 or nonutilization of minable and marketable coal by an  
21 operation, provided that the nonremoval or nonutilization of  
22 minable and marketable coal in accordance with reclamation  
23 standards established by the department shall not be  
24 considered failure to conserve coal.

25 ~~(15)~~(16) "Fill bench" means that portion of a bench or

1 table which is formed by depositing overburden beyond or  
2 downslope from the cut section as formed in the contour  
3 method of strip mining.

4 ~~(16)~~(17) "Imminent danger to the health and safety of  
5 the public" means the existence of any condition or practice  
6 or any violation of a permit or other requirement of this  
7 part in a strip- or underground-coal-mining and reclamation  
8 operation that could reasonably be expected to cause  
9 substantial physical harm to persons outside the permit area  
10 before such condition, practice, or violation can be abated.  
11 A reasonable expectation of death or serious injury before  
12 abatement exists if a rational person, subjected to the same  
13 conditions or practices giving rise to the peril, would not  
14 expose himself or herself to the danger during the time  
15 necessary for abatement.

16 ~~(17)~~(18) "Marketable coal" means a minable coal that is  
17 economically feasible to mine and is fit for sale in the  
18 usual course of trade.

19 ~~(18)~~(19) "Method of operation" means the method or  
20 manner by which the cut, open pit, shaft, or excavation is  
21 made, the overburden is placed or handled, water is  
22 controlled, and other acts are performed by the operator in  
23 the process of uncovering and removing the minerals that  
24 affect the reclamation of the area of land affected.

25 ~~(19)~~(20) "Minaable coal" means that coal which can be

1 removed through strip- or underground-mining methods  
 2 adaptable to the location that coal is being mined or is  
 3 planned to be mined.

4 ~~(20)~~(21) "Mineral" means coal and uranium.

5 ~~(21)~~(22) "Operation" means all of the premises,  
 6 facilities, railroad loops, roads, and equipment used in the  
 7 process of producing and removing mineral from and  
 8 reclaiming a designated strip-mine or underground-mine area,  
 9 including coal preparation plants, and all activities,  
 10 including excavation incident thereto, or prospecting for  
 11 the purpose of determining the location, quality, or  
 12 quantity of a natural mineral deposit.

13 ~~(22)~~(23) "Operator" means a person engaged in strip  
 14 mining or underground mining who removes or intends to  
 15 remove more than 10,000 cubic yards of mineral or overburden  
 16 or a person engaged in coal mining who removes or intends to  
 17 remove more than 250 tons of coal from the earth by mining  
 18 within 12 consecutive calendar months in any one location or  
 19 a person engaged in operating a coal preparation plant.

20 ~~(23)~~(24) "Overburden" means all of the earth and other  
 21 materials which lie above a natural mineral deposit and also  
 22 means such earth and other material after removal from their  
 23 natural state in the process of mining.

24 ~~(24)~~(25) "Person" means a person, partnership,  
 25 corporation, association, or other legal entity or any

1 political subdivision or agency of the state or federal  
 2 government.

3 ~~(25)~~(26) "Prime farmland" means that land previously  
 4 prescribed by the United States secretary of agriculture on  
 5 the basis of such factors as moisture availability,  
 6 temperature regime, chemical balance, permeability,  
 7 surface-layer composition, susceptibility to flooding, and  
 8 erosion characteristics and which historically has been used  
 9 for intensive agricultural purposes and as defined in the  
 10 Federal Register.

11 ~~(26)~~(27) "Prospecting" means the removal of overburden,  
 12 core drilling, construction of roads, or any other  
 13 disturbance of the surface for the purpose of determining  
 14 the location, quantity, or quality of a natural mineral  
 15 deposit.

16 ~~(27)~~(28) "Reclamation" means backfilling, subsidence  
 17 stabilization, water control, grading, highwall reduction,  
 18 topsoiling, planting, revegetation, and other work to  
 19 restore an area of land affected by strip mining or  
 20 underground mining under a plan approved by the department.

21 ~~(28)~~(29) "Remining" means conducting surface coal mining  
 22 and reclamation operations that affect previously mined  
 23 areas (for example, the recovery of additional mineral from  
 24 existing gob or tailings piles).

25 ~~(29)~~(30) "Strip mining" means any part of the process

1 followed in the production of mineral by the opencut method,  
 2 including mining by the auger method or any similar method  
 3 which penetrates a mineral deposit and removes mineral  
 4 directly through a series of openings made by a machine  
 5 which enters the deposit from a surface excavation or any  
 6 other mining method or process in which the strata or  
 7 overburden is removed or displaced in order to recover the  
 8 mineral. For the purposes of this part only, strip mining  
 9 also includes remining and coal preparation. The terms  
 10 "remining" and "coal preparation" are not included in the  
 11 definition of "strip mining" for purposes of Title 15,  
 12 chapter 35, part 1.

13 ~~(30)~~(31) "Subsidence" means a vertically downward  
 14 movement of overburden materials resulting from the actual  
 15 mining of an underlying mineral deposit or associated  
 16 underground excavations.

17 ~~(31)~~(32) "Surface owner" means a person who holds legal  
 18 or equitable title to the land surface and whose principal  
 19 place of residence is on the land or who personally conducts  
 20 farming or ranching operations upon a farm or ranch unit to  
 21 be directly affected by strip-mining operations or who  
 22 receives directly a significant portion of his income, if  
 23 any, from such farming or ranching operations or the state  
 24 of Montana where the state owns the surface.

25 ~~(32)~~(33) "Topsoil" means the unconsolidated mineral

1 matter naturally present on the surface of the earth that  
 2 has been subjected to and influenced by genetic and  
 3 environmental factors of parent material, climate, macro-  
 4 and microorganisms, and topography, all acting over a period  
 5 of time, and that is necessary for the growth and  
 6 regeneration of vegetation on the surface of the earth.

7 ~~(33)~~(34) "Underground mining" means any part of the  
 8 process followed in the production of a mineral such that  
 9 vertical or horizontal shafts, slopes, drifts, or incline  
 10 planes connected with excavations penetrating the mineral  
 11 stratum or strata are utilized and includes mining by in  
 12 situ methods.

13 ~~(34)~~(35) "Unwarranted failure to comply" means the  
 14 failure of a permittee to prevent the occurrence of any  
 15 violation of his permit or any requirement of this part due  
 16 to indifference, lack of diligence, or lack of reasonable  
 17 care, or the failure to abate any violation of such permit  
 18 or this part due to indifference, lack of diligence, or lack  
 19 of reasonable care.

20 ~~(35)~~(36) "Waiver" means any document which demonstrates  
 21 the clear intention to release rights in the surface estate  
 22 for the purpose of permitting the extraction of subsurface  
 23 minerals by strip-mining methods.

24 (37) "Water protection area" means the area proposed for  
 25 mining that would be subject to a permit and the area that

~~is, at a minimum, 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.

(38) "Water protection plan" means the operator's  
written proposal, as required pursuant to 82-4-222(1)(m),  
for the protection of water resources within the water  
protection area.

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

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

~~(36)~~(41) "Written consent" means such written statement

as is executed by the owner of the surface estate, upon a  
form approved by the department, demonstrating that such  
owner consents to entry of an operator for the purpose of  
conducting strip-mining operations and that such consent is  
given only to such strip-mining and reclamation operations  
which fully comply with the terms and requirements of this  
part."

**Section 3.** Section 82-4-205, MCA, is amended to read:

**"82-4-205. Administration by department of state lands.**

The department:

(1) shall exercise general supervision, administration,  
and enforcement of this part and all rules and orders  
adopted under this part;

(2) shall examine and pass upon all plans and  
specifications submitted by the operator for:

(a) the method of operation, subsidence stabilization,  
water control, backfilling, grading, highwall reduction,  
topsoiling, and for the reclamation of the area of land  
affected by his operation; and

(b) the protection of water resources, restoration or  
replacement of water resources, and restoration of  
beneficial uses that may be diminished or degraded by his  
operation;

(3) shall order the suspension of any permit for  
failure to comply with this part or any rule adopted under

1 this part;

2 (4) shall order the halting of any operation that is  
3 started without first having secured a permit as required by  
4 this part or order the cessation of operations not in  
5 compliance with this part in accordance with 82-4-251;

6 (5) shall make investigations and inspections necessary  
7 to insure compliance with this part;

8 (6) may encourage and conduct investigations, research,  
9 experiments, and demonstrations and collect and disseminate  
10 information relating to strip mining and to underground  
11 mining and reclamation of lands, and-waters restoration or  
12 replacement of water resources, and restoration of  
13 beneficial uses affected by strip mining and underground  
14 mining;

15 (7) may adopt rules with respect to the filing of  
16 reports, the issuance of permits, monitoring, and other  
17 matters of procedure and administration;

18 (8) may conduct hearings under the provisions of this  
19 part."

20 **Section 4.** Section 82-4-206, MCA, is amended to read:

21 **"82-4-206. Procedure for hearings and appeals.** All  
22 hearings and appeal procedures shall be in accordance with  
23 parts 6 and 7 of chapter 4, Title 2, except for the public  
24 informational hearing required by 82-4-231(8)(f)."

25 **Section 5.** Section 82-4-221, MCA, is amended to read:

1 **"82-4-221. Mining permit required.** (1) An operator may  
2 not engage in strip or underground mining without having  
3 first obtained from the department a permit designating the  
4 area of land affected by the operation, which designation  
5 shall include all lands reasonably anticipated to be mined  
6 or otherwise affected during the applicable 5-year period.  
7 The permit shall authorize the operator to engage in strip  
8 or underground mining upon the area of land described in his  
9 application and designated in the permit for a period of 5  
10 years from the date of its issuance. Such permit shall be  
11 renewable upon each 5-year anniversary thereafter upon  
12 application to the department at least 120 but not more than  
13 150 days prior to the renewal date so long as the operator  
14 is in compliance with the requirements of this part, the  
15 rules hereunder, and the reclamation plan provided for in  
16 82-4-231, and the water protection plan provided for in  
17 82-4-222 and 82-4-231 and agrees to comply with all  
18 applicable laws and rules in effect at the time of renewal.  
19 Such renewal shall further be subject to the denial  
20 provisions of 82-4-227, 82-4-234, and 82-4-251. On  
21 application for renewal, the burden shall be on the  
22 opponents of renewal to demonstrate that the permit should  
23 not be renewed. A permit shall terminate if the permittee  
24 has not commenced strip- or underground-mining operations  
25 pursuant to the permit within 3 years of the issuance of the



1 permit. However, the department may grant reasonable  
 2 extensions of time upon a showing that such extensions are  
 3 necessary by reason of litigation precluding the  
 4 commencement of threatening substantial economic loss to the  
 5 permittee or by reason of conditions beyond the control and  
 6 without the fault or negligence of the permittee. With  
 7 respect to coal to be mined for use in a synthetic fuel  
 8 facility or specific major electric generating facility, the  
 9 permittee is considered to have commenced strip- or  
 10 underground-mining operations at such time as the  
 11 construction of the synthetic or generating facility is  
 12 initiated.

13 (2) As a condition to the issuance of every permit  
 14 issued under this part, an authorized representative of the  
 15 department shall, without advance notice, have the right of  
 16 entry to, upon, or through a strip- or underground-mining  
 17 operation or any premises in which any records required to  
 18 be maintained under this part are located and may, at  
 19 reasonable times and without delay, have access to copy any  
 20 records and inspect any monitoring equipment or method of  
 21 operation required under this part. When an inspection  
 22 results from information provided to the department by any  
 23 person, the department shall notify that person when the  
 24 inspection is proposed to be made and that person shall be  
 25 allowed to accompany the inspector during the inspection.

1 (3) During the term of the permit, the permittee may  
 2 submit an application for a revision of the permit, together  
 3 with a revised reclamation plan and a revised water  
 4 protection plan, to the department. The department may not  
 5 approve the application unless it finds that reclamation and  
 6 protection of water resources in accordance with this part  
 7 would be accomplished. Application for minor revision shall  
 8 be approved or disapproved within a reasonable time,  
 9 depending on the scope and complexity, but in no case longer  
 10 than 120 days. Applications for major revisions are subject  
 11 to all the permit application requirements and procedures."

12 **Section 6.** Section 82-4-222, MCA, is amended to read:

13 **"82-4-222. Permit application.** (1) An operator desiring  
 14 a permit shall file an application which shall contain a  
 15 complete and detailed plan for the mining, reclamation,  
 16 revegetation, and rehabilitation of the land and for the  
 17 protection and restoration or replacement of water resources  
 18 and beneficial uses to be affected by the operation. Such  
 19 plan shall reflect thorough advance investigation and study  
 20 by the operator and shall include all known or readily  
 21 discoverable past and present uses of the land and water to  
 22 be affected and the approximate periods of such use and  
 23 shall state:

24 (a) the location and area of land to be affected by the  
 25 operation, with a description of access to the area from the

1 nearest public highways;

2 (b) the names and addresses of the owners of record and  
3 any purchasers under contracts for deed of the surface of  
4 the area of land to be affected by the permit and the owners  
5 of record and any purchasers under contracts for deed of all  
6 surface area within one-half mile of any part of the  
7 affected area;

8 (c) the names and addresses of the present owners of  
9 record and any purchasers under contracts for deed of all  
10 subsurface minerals in the land to be affected;

11 (d) the source of the applicant's legal right to mine  
12 the mineral on the land affected by the permit;

13 (e) the permanent and temporary post-office addresses  
14 of the applicant;

15 (f) whether the applicant or any person associated with  
16 the applicant holds or has held any other permits under this  
17 part and an identification of those permits;

18 (g) whether the applicant is in compliance with  
19 82-4-251 and, if known, whether every officer, partner,  
20 director, or any individual owning of record or  
21 beneficially, alone or with associates, 10% or more of any  
22 class of stock of the applicant is subject to any of the  
23 provisions of 82-4-251 and he shall so certify and whether  
24 any of the foregoing parties or persons have ever had a  
25 strip-mining or underground-mining license or permit issued

1 by any other state or federal agency revoked or have ever  
2 forfeited a strip-mining or underground-mining bond or a  
3 security deposited in lieu of a bond and, if so, a detailed  
4 explanation of the facts involved in each case must be  
5 attached;

6 (h) whether the applicant has a record of outstanding  
7 reclamation fees with the federal coal regulatory authority;

8 (i) the names and addresses of any persons who are  
9 engaged in strip- or underground-mining activities on behalf  
10 of the applicant;

11 (j) the annual rainfall and the direction and average  
12 velocity of the prevailing winds in the area where the  
13 applicant has requested a permit;

14 (k) the results of any test borings or core samplings  
15 which the applicant or his agent has conducted on the land  
16 to be affected, including the nature and the depth of the  
17 various strata or overburden and topsoil, the quantities and  
18 location of subsurface water and its quality, the thickness  
19 of any mineral seam, an analysis of the chemical properties  
20 of such minerals, including the acidity, sulphur content,  
21 and trace mineral elements of any coal seam, as well as the  
22 British thermal unit (Btu) content of such seam, and an  
23 analysis of the overburden, including topsoil. If test  
24 borings or core samplings are submitted, each permit  
25 application shall contain two copies each of two sets of

1 geologic cross sections accurately depicting the known  
 2 geologic makeup beneath the surface of the affected land.  
 3 Each set shall depict subsurface conditions at such  
 4 intervals as the department requires across the surface and  
 5 shall run at a 90-degree angle to the other set. The  
 6 department may not require intervals of less than 500 feet.  
 7 Each cross section shall depict the thickness and geologic  
 8 character of all known strata beginning with the topsoil. In  
 9 addition, each application for an underground-mining permit  
 10 shall be accompanied by cross sections and maps showing the  
 11 proposed underground locations of all shafts, entries, and  
 12 haulageways or other excavations to be excavated during the  
 13 permit period. These cross sections shall also include all  
 14 existing shafts, entries, and haulageways.

15 (l) the name and date of a daily newspaper of general  
 16 circulation within the county in which the applicant will  
 17 prominently publish at least once a week for 4 successive  
 18 weeks after submission of the application an announcement of  
 19 his application for a strip-mining or underground-mining  
 20 permit and a detailed description of the area of land to be  
 21 affected should a permit be granted;

22 (m) a comprehensive assessment of the effects of the  
 23 proposed operations on water resources and beneficial uses,  
 24 entitled "water protection plan", that must include the  
 25 following elements as necessary to supplement other water

1 resource related information and analysis required by this  
 2 part:

3 (i) a list containing the names and addresses of all  
 4 water users in the water protection area;

5 (ii) a detailed assessment of the existing water  
 6 resources, hydrologic balance, and beneficial uses within  
 7 the water protection area, including a baseline study that  
 8 the operator shall conduct for a minimum of 2 years and  
 9 collection of sufficient data to enable the department to  
 10 assess the potential and probable cumulative impacts of all  
 11 anticipated mining in the area upon the hydrologic balance,  
 12 quantity, and quality of water resources and upon beneficial  
 13 uses in the water protection area;

14 (iii) a determination of the probable hydrologic  
 15 consequences of coal mining and reclamation operations, both  
 16 on and off the mine site, with respect to the hydrologic  
 17 regime, quantity and quality of water in surface water and  
 18 ground water systems, including the dissolved and suspended  
 19 solids under seasonal flow conditions, the potential for  
 20 diminishment or degradation of water resources, and the  
 21 potential for adverse effects on beneficial uses and the  
 22 collection--of--sufficient--data--for--the--mine--site---and  
 23 surrounding---areas,--so--that--cumulative--impacts--of--all  
 24 anticipated--mining--in--the--area--upon--the--hydrology--of--the  
 25 area--and--particularly--upon--water--availability--can--be--made.

1 However, this determination is not required until such time  
 2 as hydrologic information on the general area prior to  
 3 mining is made available from an appropriate federal or  
 4 state agency. The permit may not be approved until such  
 5 information is available and is incorporated into the  
 6 application.

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

14 (v) the estimated cost of restoring or replacing any  
 15 water resources that may be diminished or degraded by the  
 16 proposed mining operations and the estimated cost of  
 17 ensuring the continuation of beneficial uses within the  
 18 water protection area at no greater cost to water users than  
 19 under conditions that existed prior to the commencement of  
 20 the proposed operations;

21 (n) a coal conservation plan; and

22 (o) such other or further information as the department  
 23 may require.

24 (2) The application for a permit shall be accompanied  
 25 by two copies of all maps meeting the requirements of the

1 subsections below. The maps shall:

2 (a) identify the area to correspond with the  
 3 application;

4 (b) show any adjacent deep mining or surface mining and  
 5 the boundaries of surface properties and names of owners of  
 6 record of the affected area and within 1,000 feet of any  
 7 part of the affected area;

8 (c) show the names and locations of all streams,  
 9 creeks, or other bodies of water, roads, buildings,  
 10 cemeteries, oil and gas wells, and utility lines on the area  
 11 of land affected and within 1,000 feet of such area;

12 (d) show by appropriate markings the boundaries of the  
 13 area of land affected, any cropline of the seam or deposit  
 14 of mineral to be mined, and the total number of acres  
 15 involved in the area of land affected;

16 (e) show the date on which the map was prepared and the  
 17 north point;

18 (f) show the final surface and underground water  
 19 drainage plan on and away from the area of land affected.  
 20 This plan shall indicate the directional and volume flow of  
 21 water, constructed drainways, natural waterways used for  
 22 drainage, and the streams or tributaries receiving the  
 23 discharge.

24 (g) show the proposed location of waste or refuse area;

25 (h) show the proposed location of temporary subsoil and

1 topsoil storage area;

2 (i) show the proposed location of all facilities;

3 (j) show the location of test boring holes;

4 (k) show the surface location lines of any geologic  
5 cross sections which have been submitted;

6 (l) show a listing of plant varieties encountered in  
7 the area to be affected and their relative dominance in the  
8 area, together with an enumeration of tree varieties and the  
9 approximate number of each variety occurring per acre on the  
10 area to be affected, and the locations generally of the  
11 various kinds and varieties of plants, including but not  
12 limited to grasses, shrubs, legumes, forbs, and trees;

13 (m) be certified as follows: "I, the undersigned,  
14 hereby certify that this map is correct and shows to the  
15 best of my knowledge and belief all the information required  
16 by the mining laws of this state." The certification shall  
17 be signed and notarized. The department may reject a map as  
18 incomplete if its accuracy is not so attested.

19 (n) contain such other or further information as the  
20 department may require.

21 (3) If the department finds that the probable total  
22 annual production at all locations of any strip- or  
23 underground-coal-mining operation applied for will not  
24 exceed 100,000 tons, any determination of probable  
25 hydrologic consequences that the department requires and the

1 statement of result of test borings or core samplings shall,  
2 upon written request of the operator, be performed by a  
3 qualified public or private laboratory designated by the  
4 department. The department shall assume the cost of the  
5 determination and statement to the extent that it has  
6 received funds for this purpose.

7 (4) In addition to the information and maps required  
8 above, each application for a permit shall be accompanied by  
9 detailed plans or proposals showing the method of operation,  
10 the manner, time or distance, and estimated cost for  
11 backfilling, subsidence stabilization, water control,  
12 grading work, highwall reduction, topsoiling, planting,  
13 revegetating, and a reclamation plan for the area affected  
14 by the operation, which proposals shall meet the  
15 requirements of this part and rules adopted under this part.  
16 The reclamation plan shall address the life of the operation  
17 and indicate the size, sequence, and the timing of the  
18 subareas for which it is anticipated that individual permits  
19 will be sought.

20 (5) Each applicant for a coal mining permit shall  
21 submit as part of the application a certificate issued by an  
22 insurance company authorized to do business in the state  
23 certifying that the applicant has in force for the strip- or  
24 underground-mining and reclamation operations for which the  
25 permit is sought a public liability insurance policy, or

1 evidence that the applicant has satisfied other state or  
 2 federal self-insurance requirements. This policy shall  
 3 provide for personal injury and property damage protection  
 4 in an amount adequate to compensate any persons damaged as a  
 5 result of strip- or underground-coal-mining and reclamation  
 6 operations, including use of explosives, and entitled to  
 7 compensation under applicable provisions of state law. The  
 8 permittee must maintain the policy in full force and effect  
 9 during the term of the permit and any renewal until all  
 10 reclamation operations have been completed.

11 (6) Each applicant for a strip-mining or  
 12 underground-mining reclamation permit shall file a copy of  
 13 his application for public inspection with the clerk and  
 14 recorder at the courthouse of the county where the major  
 15 portion of mining is proposed to occur."

16 **Section 7.** Section 82-4-223, MCA, is amended to read:

17 "82-4-223. Permit fee and surety bond. (1) An  
 18 application--fee--of--\$100--shall--be--paid--before Before the  
 19 permit required in this part shall may be issued, the  
 20 operator shall pay a basic application fee of \$100 and a  
 21 water resources assessment fee not to exceed the actual  
 22 amount of contractor and employee expenses of the department  
 23 that are necessary to provide for timely and adequate review  
 24 of the water protection plan AND INVESTIGATION OF COMPLAINTS  
 25 PURSUANT TO 82-4-253(3). The department may further define

1 these expenses by rule.

2 (2) Before a permit may be issued, the operator shall  
 3 file with the department a bond payable to the state of  
 4 Montana with surety satisfactory to the department in the  
 5 penal sum to be determined by the board, on the  
 6 recommendation of the commissioner, of not less than \$200  
 7 for each acre or fraction thereof of the area of land  
 8 affected, with a minimum bond of \$10,000, conditioned upon  
 9 the faithful performance of the requirements set forth in  
 10 this part and of the rules of the board. The operator may  
 11 elect to deposit cash, negotiable bonds, or negotiable  
 12 certificates of deposit of any bank organized or transacting  
 13 business in the United States. The cash deposit or market  
 14 value of such securities shall be equal to or greater than  
 15 the amount of the bond required for the bonded area. The  
 16 level of bonding shall be relative to the degree of  
 17 disturbance projected by the original permit and the annual  
 18 report. A political subdivision or agency of the state need  
 19 not file a bond unless required to do so by the board. The  
 20 board shall adjust the amount of bond required if the cost  
 21 of reclamation changes.

22 (3) In determining the amount of the bond, the board  
 23 shall take into consideration the character and nature of  
 24 the overburden, the future suitable use of the land  
 25 involved, and the cost of backfilling, grading, highwall

1 reduction, subsidence stabilization, water control,  
 2 topsoiling, and reclamation to be required, but in no event  
 3 shall the bond be less than the total estimated cost to the  
 4 state of completing the work described in the reclamation  
 5 plan. Water restoration and replacement costs that are  
 6 included in the amount of the bond required under this  
 7 section may not be included in the amount of water  
 8 restoration and replacement financial assurance required  
 9 pursuant to [section 8]."

10 NEW SECTION. Section 8. Water restoration and  
 11 replacement financial assurance -- release. (1) Before a  
 12 permit for strip mining or underground mining of coal may be  
 13 issued, the operator shall provide financial assurance  
 14 sufficient to ensure the restoration or replacement of  
 15 specific water resources and the restoration and  
 16 continuation of beneficial uses within the water protection  
 17 area at no greater cost to water users than under conditions  
 18 that existed prior to the commencement of the operator's  
 19 proposed operations. The board shall determine the amount of  
 20 financial assurance that the operator must provide based on  
 21 an assessment of the water protection plan and the  
 22 operator's estimated cost of restoring or replacing water  
 23 resources and restoring beneficial uses that may be  
 24 diminished or degraded by the operator's proposed  
 25 operations.

1 (2) The operator may satisfy the financial assurance  
 2 requirement by:

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

5 (b) filing with the department a bond that is payable  
 6 to the state of Montana with surety satisfactory to the  
 7 department, conditioned upon the faithful compliance with  
 8 the requirements of this part and the rules of the board;

9 (c) filing an irrevocable letter of credit with the  
 10 department;

11 (d) obtaining water restoration and replacement  
 12 insurance and submitting a certification of insurance to the  
 13 department;

14 (e) filing with the department a cash deposit, an  
 15 assignment of a certificate of deposit, or other surety  
 16 acceptable to the board; OR

17 ~~(f) demonstrating to the department that the operator~~  
 18 ~~meets minimum financial worth and bond rating criteria that~~  
 19 ~~show that the operator has adequate internal resources for~~  
 20 ~~meeting the financial requirement established by subsection~~  
 21 ~~(i); or~~

22 ~~(g)~~ (F) a combination of financial assurance mechanisms  
 23 that are acceptable to the board and that may include a  
 24 trust fund, a surety bond, a letter of credit, and  
 25 insurance.

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

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

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

17 (6) If the board determines that the level of financial  
18 assurance provided for a permitted operation does not  
19 represent the present costs of water restoration or  
20 replacement or AND restoration of beneficial uses that may  
21 be diminished or degraded by the operation, the board may  
22 modify the financial assurance requirements of that permit.

23 (7) The permittee may file a request with the  
24 department for the release of all or part of the water  
25 restoration and replacement financial assurance requirement.

1 Within 30 days after an application for financial assurance  
2 release has been filed with the department, the permittee  
3 shall:

4 (a) submit a copy of an advertisement notice placed at  
5 least once a week for 4 consecutive weeks in a newspaper of  
6 general circulation in the locality of the mining operation.  
7 The notice must contain a notification of the precise  
8 location of the water protection area, the permit and date  
9 approved, the amount of financial assurance filed and, if  
10 applicable, the portion sought to be released, the type and  
11 appropriate dates of water restoration or replacement and  
12 beneficial uses restoration work performed, and a  
13 description of the results achieved as they relate to the  
14 permittee's approved water protection plan.

15 (b) mail a copy of the advertisement to water users in  
16 the water protection area, as identified in the water  
17 protection plan; and

18 (c) submit to the department a copy of the material the  
19 permittee has sent to water users.

20 (8) The department may not release a permittee from the  
21 water restoration and replacement financial assurance  
22 requirement and release funds or terminate the funding  
23 mechanisms the permittee relied upon to fulfill the  
24 financial assurance requirement:

25 (a) for a minimum of 10 years after the release of the



1 performance bond as provided in 82-4-232;

2 (b) until the department determines that the quality  
3 and quantity of water resources in the water protection area  
4 have been permanently restored or replaced and that  
5 beneficial uses in the water protection area are continuing  
6 at no greater cost to water users than under conditions that  
7 prevailed prior to the commencement of the permitted  
8 operations; and

9 (c) until the department holds a public hearing in the  
10 locality of the permitted operation if a hearing is  
11 requested by a resident of this state or any person having  
12 an interest that may be adversely affected by the  
13 permittee's request for release of all or a portion of the  
14 financial assurance requirement. The department may  
15 administer oaths, subpoena witnesses or written or printed  
16 materials, compel the attendance of witnesses or the  
17 production of materials, and take evidence. The department  
18 shall:

19 (i) hold a hearing within 30 days of receiving a  
20 request for a hearing;

21 (ii) advertise the date, time, and location of the  
22 public hearing in a newspaper of general circulation and in  
23 the county newspapers in the locality of the permitted  
24 operation for 2 consecutive weeks;

25 (iii) make all information in the department's

1 possession that is relevant to the decision on whether to  
2 release a permittee from the financial assurance requirement  
3 readily available to interested persons beginning no later  
4 than the date that notice of the public hearing is  
5 distributed;

6 (iv) conduct a site inspection of the land affected and  
7 of the work the permittee has done to replace or restore  
8 water resources and to restore beneficial uses, as  
9 applicable, and other operations carried on by the permittee  
10 in the general vicinity of the area where release of  
11 financial assurance has been requested; and

12 (v) keep a verbatim record of the hearing required by  
13 this section and make a transcript available on the motion  
14 of any party or by order of the department.

15 (9) A person may submit to the department information  
16 relevant to the department's decision to release an operator  
17 from all or a part of the financial assurance requirement  
18 for a period of 30 days after the date of the public  
19 hearing.

20 (10) Within 60 days after the public hearing is held,  
21 the department shall notify the permittee in writing of its  
22 decision to release or not to release all or part of the  
23 water restoration and replacement financial assurance.

24 (11) A person may request the department to reconsider  
25 its decision to release the permittee from all or part of

1 the financial assurance requirement, based upon information  
 2 the person submits to show that the permittee has not  
 3 restored or replaced the hydrologic balance, the quantity or  
 4 quality of water resources, or both or has not restored  
 5 beneficial uses in the water protection area at no greater  
 6 cost to water users than under the conditions that prevailed  
 7 prior to the commencement of the permitted operations.  
 8 Without prejudice to the rights of the persons who request  
 9 the department to reconsider its decision or the permittee  
 10 or the responsibilities of the department pursuant to this  
 11 section, the department may establish an informal conference  
 12 to resolve the matters raised in a request for  
 13 reconsideration. The department's response to a request to  
 14 reconsider its decision to release a permittee from all or  
 15 part of the financial assurance requirement is the final  
 16 agency decision.

17 **Section 9.** Section 82-4-225, MCA, is amended to read:

18 "82-4-225. Application for increase or reduction in  
 19 permit area. The department may increase or reduce the area  
 20 of land affected by an operation under a permit on  
 21 application by an operator, but an increase may not extend  
 22 the period for which an original permit was issued. An  
 23 operator may, at any time, apply to the department for an  
 24 amendment of the permit so as to increase or reduce the  
 25 acreage affected by it. The operator shall file an

1 application and map in the same form and with the same  
 2 content as required for an original application under this  
 3 part and shall pay an application fee of \$50 and shall file  
 4 with the department a supplemental bond in the amount to be  
 5 determined under 82-4-223 for each acre or fraction of an  
 6 acre of the increase approved. If the application is for an  
 7 increase in the permitted area, the operator shall pay a  
 8 supplemental water resources assessment fee not to exceed  
 9 the actual amount of contractor and employee expenses of the  
 10 department that are necessary to provide for timely and  
 11 adequate review of the water protection plan. The operator  
 12 shall also file with the department supplemental water  
 13 restoration and replacement financial assurance in an amount  
 14 to be determined pursuant to [section 8] for the additional  
 15 permitted area. All procedures of this part pertaining to  
 16 original applications apply to applications for the increase  
 17 of the area of land affected, except for incidental boundary  
 18 revisions. If the department approves a reduction in the  
 19 acreage covered by the original or supplemental permit, it  
 20 shall release the bond for each acre reduced, but in no case  
 21 shall the bond be reduced below \$10,000, except as provided  
 22 in 82-4-223."

23 **Section 10.** Section 82-4-227, MCA, is amended to read:

24 "82-4-227. Refusal of permit. (1) (a) An application  
 25 for a prospecting, strip-mining, or underground-mining

1 permit or major revision ~~shall~~ may not be approved by the  
 2 department unless, on the basis of the information set forth  
 3 in the application, an on-site inspection, and an evaluation  
 4 of the operation by the department, the applicant has  
 5 affirmatively demonstrated that:

6 (i) the requirements of this part and rules will be  
 7 observed;

8 (ii) ~~and---that~~ the proposed method of operation,  
 9 backfilling, grading, subsidence stabilization, water  
 10 control, highwall reduction, topsoiling, revegetation, or  
 11 reclamation of the affected area can be carried out  
 12 consistently with the purpose of this part; and

13 (iii) water resources and beneficial uses in the water  
 14 protection area will be protected and, if necessary,  
 15 restored or replaced consistent with the purpose of this  
 16 part at no greater cost to water users than under conditions  
 17 that existed prior to the commencement of the proposed  
 18 operation.

19 (b) The applicant for a permit or major revision has  
 20 the burden of establishing that his application is in  
 21 compliance with this part and the rules adopted under it.

22 (2) The department shall not approve the application  
 23 for a prospecting, strip-mining, or underground-mining  
 24 permit where the area of land described in the application  
 25 includes land having special, exceptional, critical, or

1 unique characteristics or that mining or prospecting on that  
 2 area would adversely affect the use, enjoyment, or  
 3 fundamental character of neighboring land having special,  
 4 exceptional, critical, or unique characteristics. For the  
 5 purposes of this part, land is defined as having such  
 6 characteristics if it possesses special, exceptional,  
 7 critical, or unique:

8 (a) biological productivity, the loss of which would  
 9 jeopardize certain species of wildlife or domestic stock;

10 (b) ecological fragility, in the sense that the land,  
 11 once adversely affected, could not return to its former  
 12 ecological role in the reasonable foreseeable future;

13 (c) ecological importance, in the sense that the  
 14 particular land has such a strong influence on the total  
 15 ecosystem of which it is a part that even temporary effects  
 16 felt by it could precipitate a system-wide reaction of  
 17 unpredictable scope or dimensions; or

18 (d) scenic, historic, archaeologic, topographic,  
 19 geologic, ethnologic, scientific, cultural, or recreational  
 20 significance. (In applying this subsection, particular  
 21 attention should be paid to the inadequate preservation  
 22 previously accorded Plains Indian history and culture.)

23 (3) The department may not approve an application for a  
 24 strip- or underground-coal-mining permit or major revision  
 25 unless the application affirmatively demonstrates that:

1 (a) the assessment of the probable cumulative impact of  
 2 all anticipated mining in the area on the hydrologic balance  
 3 has been made by the department and the proposed operation  
 4 thereof has been designed to prevent material damage to the  
 5 hydrologic balance and to the quantity and quality of water  
 6 resources outside the permit area, except as provided in  
 7 subsection (3)(b); and

8 (b) the proposed strip- or underground-coal-mining  
 9 operation would not:

10 (i) interrupt, discontinue, or preclude farming on  
 11 alluvial valley floors that are irrigated or naturally  
 12 subirrigated, excluding undeveloped rangelands that are not  
 13 significant to farming on alluvial valley floors and those  
 14 lands as to which the regulatory authority finds that if the  
 15 farming that will be interrupted, discontinued, or precluded  
 16 is of such small acreage as to be of negligible impact on  
 17 the farm's agricultural production; or

18 (ii) materially damage the quantity or quality of water  
 19 in surface water or underground water systems that supply  
 20 these valley floors in subsection (3)(b)(i).

21 (4) Subsection (3)(b) does not affect those strip- or  
 22 underground-coal-mining operations that in the year  
 23 preceding the enactment of Public Law 95-87 produced coal in  
 24 commercial quantities and were located within or adjacent to  
 25 alluvial valley floors or had obtained specific permit

1 approval by the department to conduct strip- or  
 2 underground-coal-mining operations within alluvial valley  
 3 floors. If coal deposits are precluded from being mined  
 4 under this subsection, the commissioner shall certify to the  
 5 secretary of interior that the mineral owner or lessee may  
 6 be eligible for participation in coal exchange programs  
 7 pursuant to section 510(5) of Public Law 95-87.

8 (5) If the area proposed to be mined contains prime  
 9 farmland, the department may not grant a permit to mine coal  
 10 on the prime farmland unless it finds in writing that the  
 11 applicant has the technological capability to restore the  
 12 mined area, within a reasonable time, to equivalent or  
 13 higher levels of yield as nonmined prime farmland in the  
 14 surrounding area under equivalent levels of management and  
 15 can meet the soil reconstruction standards of 82-4-232(3).  
 16 Nothing in this subsection applies to any permit issued  
 17 prior to August 3, 1977, or to any revisions or renewals  
 18 thereof, or to any existing strip- or underground-mining  
 19 operations for which a permit was issued prior to August 3,  
 20 1977.

21 (6) If the department finds that the overburden on any  
 22 part of the area of land described in the application for a  
 23 prospecting, strip-mining, or underground-mining permit is  
 24 such that experience in the state with a similar type of  
 25 operation upon land with similar overburden shows that

1 substantial deposition of sediment in streambeds,  
 2 subsidence, landslides, or water pollution cannot feasibly  
 3 be prevented, the department shall delete that part of the  
 4 land described in the application upon which the overburden  
 5 exists. The burden is on the applicant to demonstrate that  
 6 any area should not be deleted under this subsection.

7 (7) If the department finds that the operation will  
 8 constitute a hazard to a dwelling house, public building,  
 9 school, church, cemetery, commercial or institutional  
 10 building, public road, stream, lake, or other public  
 11 property, the department shall delete those areas from the  
 12 prospecting, strip-mining, or underground-mining permit  
 13 application before it can be approved. In no case may  
 14 strip- or underground-coal-mining be allowed within 300 feet  
 15 of any occupied dwelling, unless waived by the owner, nor  
 16 within 300 feet of any public building, school, church,  
 17 community, or institutional building, or public park; nor  
 18 within 100 feet of a cemetery; nor within 100 feet of the  
 19 outside right-of-way line of any public road, except where  
 20 mine access roads or haulage roads join such right-of-way  
 21 line. The department may permit such roads to be relocated  
 22 or the area affected to lie within 100 feet of the road if,  
 23 after public notice and opportunity for public hearing in  
 24 the locality, a written finding is made that the interests  
 25 of the public and the landowners affected will be protected.

1 (8) No strip- or underground-mining may be conducted  
 2 within 500 feet of active or abandoned underground mines in  
 3 order to prevent breakthroughs and to protect health or  
 4 safety of miners. The department shall permit an operator to  
 5 mine near, through, or partially through an abandoned  
 6 underground mine or closer to an active underground mine if:

7 (a) the nature, timing, and sequencing of specific  
 8 strip-mine activities and specific underground-mine  
 9 activities are jointly approved by the department and the  
 10 regulatory authority concerned with the health and safety of  
 11 underground miners; and

12 (b) such operations will result in improved resource  
 13 recovery, abatement of water pollution, or elimination of  
 14 hazards to the health and safety of the public.

15 (9) The department may not approve an application for a  
 16 strip- or underground-coal-mining operation if the area  
 17 proposed to be mined is included within an area designated  
 18 unsuitable for strip or underground coal mining or within an  
 19 area under review for this designation under an  
 20 administrative proceeding, unless in such an area as to  
 21 which an administrative proceeding has commenced pursuant to  
 22 this part, the operator making the permit application  
 23 demonstrates that prior to January 1, 1977, he made  
 24 substantial legal and financial commitments in relation to  
 25 the operation for which he is applying for a permit.

1 (10) No permit or major permit revision for a strip- or  
 2 underground-coal-mining operation may be issued unless the  
 3 applicant has affirmatively demonstrated by its coal  
 4 conservation plan that no failure to conserve coal will  
 5 occur. The department may require the applicant to submit  
 6 any information it considers necessary for review of the  
 7 coal conservation plan.

8 (11) Whenever information available to the department  
 9 indicates that any strip- or underground-coal-mining  
 10 operation owned or controlled by the applicant is currently  
 11 in violation of Public Law 95-87, as amended, or any state  
 12 law required by Public Law 95-87, as amended, or any law,  
 13 rule, or regulation of the United States or of any  
 14 department or agency in the United States pertaining to air  
 15 or water environmental protection, the department shall not  
 16 issue a strip- or underground-coal-mining permit or major  
 17 revision until the applicant submits proof that the  
 18 violation has been corrected or is in the process of being  
 19 corrected to the satisfaction of the administering agency.

20 (12) The department may not issue a strip- or  
 21 underground-coal-mining permit or major revision to any  
 22 applicant which it finds, after an opportunity for hearing,  
 23 owns or controls any strip- or underground-coal-mining  
 24 operation which has demonstrated a pattern of willful  
 25 violations of Public Law 95-87, as amended, or any state law

1 required by Public Law 95-87, as amended, of such a nature  
 2 and duration and with such resulting irreparable damage to  
 3 the environment to indicate an intent not to comply with the  
 4 provisions of this part.

5 (13) Subject to valid existing rights, no strip- or  
 6 underground-coal-mining operations except those which  
 7 existed as of August 3, 1977, may be conducted on private  
 8 lands within the boundaries of units of the national park  
 9 system, the national wildlife refuge systems, the national  
 10 wilderness preservation system, the wild and scenic rivers  
 11 system, including study rivers designated under section 5(a)  
 12 of the Wild and Scenic Rivers Act, or national recreation  
 13 areas designated by act of congress."

14 **Section 11.** Section 82-4-231, MCA, is amended to read:

15 "82-4-231. Submission of and action on reclamation plan  
 16 -- water protection plan. (1) As rapidly, completely, and  
 17 effectively as the most modern technology and the most  
 18 advanced state of the art will allow, each operator granted  
 19 a permit under this part shall reclaim and revegetate the  
 20 land affected by his operation, except that underground  
 21 tunnels, shafts, or other subsurface excavations need not be  
 22 revegetated. The operator shall restore or replace water  
 23 resources and restore beneficial uses adversely affected by  
 24 his operation. Under the provisions of this part and rules  
 25 adopted by the board, an operator shall prepare and carry

1 out a method of operation, plan of grading, backfilling,  
 2 highwall reduction, subsidence stabilization, water control,  
 3 topsoiling, and a reclamation plan for the area of land, and  
 4 a water protection plan for the water resources and  
 5 beneficial uses affected by his operation. In developing a  
 6 method of operation and plans of backfilling, subsidence  
 7 stabilization, water control, grading, highwall reduction,  
 8 topsoiling, and reclamation, and water protection, all  
 9 measures shall be taken to eliminate damages to landowners  
 10 and members of the public, their real and personal property,  
 11 public roads, streams water resources, and all other public  
 12 property from soil erosion, subsidence, landslides, water  
 13 pollution, water supply disruption, and hazards dangerous to  
 14 life and property.

15 (2) The reclamation plan shall set forth in detail the  
 16 manner in which the applicant intends to comply with this  
 17 section and 82-4-232 through 82-4-234, as amended, and the  
 18 steps to be taken to comply with applicable air and water  
 19 quality laws and rules and any applicable health and safety  
 20 standards.

21 (3) The application for permit or major revision of a  
 22 permit, which shall contain the reclamation plan and the  
 23 water protection plan, shall be submitted to the department.

24 (4) The department shall determine whether the  
 25 application is administratively complete. An application is

1 administratively complete if it contains information  
 2 addressing each application requirement in 82-4-222 and the  
 3 rules implementing that section and all information  
 4 necessary to initiate processing and public review. The  
 5 department shall notify the applicant in writing of its  
 6 determination no later than 90 days after submittal of the  
 7 application. If the department determines that the  
 8 application is not administratively complete, it shall  
 9 specify in the notice those items which the application must  
 10 address. The application shall be presumed administratively  
 11 complete as to those requirements not specified in the  
 12 notice.

13 (5) If the department determines that an environmental  
 14 impact statement on the application is required, it shall  
 15 notify the applicant in writing at the same time it gives  
 16 the applicant notice pursuant to subsection (4).

17 (6) After the applicant receives notice that the  
 18 application is administratively complete, he shall publish  
 19 notice of filing of the application once a week for 4  
 20 consecutive weeks in a newspaper of general circulation in  
 21 the locality of the proposed operation. The department shall  
 22 notify various local governmental bodies, planning agencies,  
 23 sewage and water treatment authorities, and water companies  
 24 in the locality in which the proposed mining will take place  
 25 of the application and provide a reasonable time for them to

1 submit written comments. Any person having an interest which  
 2 is or may be adversely affected or the officer or head of  
 3 any federal, state, or local governmental agency or  
 4 authority shall have the right to file written objections to  
 5 the proposed initial or revised application for permit or  
 6 major revision within 30 days of the applicant's published  
 7 notice. If written objections are filed and an objector  
 8 requests an informal conference, the department shall hold  
 9 an informal conference in the locality of the proposed  
 10 operation within 30 days of receipt of the request. The  
 11 department shall notify the applicant and all parties to the  
 12 informal conference of its decision and the reasons therefor  
 13 within 60 days of the informal conference. The department  
 14 may arrange with the applicant upon request by any party to  
 15 the administrative proceeding for access to the proposed  
 16 mining area for the purpose of gathering information  
 17 relevant to the proceeding.

18 (7) The filing of written objections or a request for  
 19 an informal conference shall not preclude the department  
 20 from proceeding with its review of the application as  
 21 specified in subsection (8).

22 (8) (a) The department shall review each  
 23 administratively complete application and determine the  
 24 acceptability of the application. During the review, the  
 25 department may propose modifications to the application or

1 delete areas from the application in accordance with the  
 2 requirements of 82-4-227. A complete application is  
 3 considered acceptable when the application is in compliance  
 4 with all of the applicable requirements of this part and the  
 5 regulatory program pursuant to this part.

6 (b) If the applicant significantly modifies the  
 7 application after the application has been determined  
 8 administratively complete in accordance with subsection (4),  
 9 the department shall under this section either deny the  
 10 application or conduct a new review, including an  
 11 administrative completeness determination, public notice,  
 12 and objection period.

13 (c) If an environmental impact statement is determined  
 14 to be necessary prior to making a permit decision, the  
 15 department shall complete and publish the final  
 16 environmental impact statement within 365 days of the date  
 17 of notice provided pursuant to subsection (5).

18 (d) Within 120 days after it determines that an  
 19 application is administratively complete, the department  
 20 shall notify the applicant in writing whether the  
 21 application is or is not acceptable. If the application is  
 22 not acceptable, the department shall set forth the reasons  
 23 why it is not acceptable, and it may propose modifications,  
 24 delete areas, or reject the entire application. All items  
 25 not specified as unacceptable in the department's



1 notification are presumed to be acceptable. If the applicant  
 2 revises the application in response to a notice of  
 3 unacceptability, the department shall review the revised  
 4 application and notify the applicant in writing within 120  
 5 days of the date of receipt whether the revised application  
 6 is acceptable. If the revision constitutes a significant  
 7 modification under subsection (8)(b), the department shall  
 8 conduct a new review, beginning with an administrative  
 9 completeness determination.

10 (e) When the application is determined to be  
 11 acceptable, the department shall publish notice of its  
 12 determination once a week for 2 consecutive weeks in a  
 13 newspaper of general circulation in the locality of the  
 14 proposed operation. Any person having an interest that is or  
 15 may be adversely affected may file a written objection to  
 16 the determination within 10 days of the department's last  
 17 published notice. If a written objection is filed and an  
 18 objector requests an informal conference, the department  
 19 shall hold an informal conference in the locality of the  
 20 proposed operation within 20 days of receipt of the request.  
 21 The department shall notify the applicant and all parties to  
 22 the informal conference of its decision and the reasons  
 23 therefor within 10 days of the informal conference.

24 (f) The department shall:

25 (i) hold a public information hearing prior to issuing

1 its decision to grant or deny a strip-mining or  
 2 underground-mining reclamation permit or major revision  
 3 application for the purpose of obtaining public comment on  
 4 the adequacy of the water protection plan and the water  
 5 restoration and replacement financial assurance to  
 6 accomplish the purposes of this part if a hearing is  
 7 requested by a resident of this state. The department may  
 8 hold one hearing to satisfy the requirements of this  
 9 subsection and the requirements of and rules adopted under  
 10 Title 75, chapter 1, parts 1 and 2.

11 (ii) no less than 30 days prior to the hearing required  
 12 by subsection (8)(f)(i), publish notice of the hearing in  
 13 newspapers of general circulation in the area to be affected  
 14 by the proposed mining operation and in the county  
 15 newspapers of the county or counties that would be affected;

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

19 (iv) ensure that the water protection plan, the  
 20 department's assessment of the water protection plan, and  
 21 information supporting the department's determination of the  
 22 amount of the water restoration and replacement financial  
 23 assurance are readily available for public review at the  
 24 time the department gives notice of the hearing provided for  
 25 in this subsection.

1       (g) The department shall prepare written findings  
 2 granting or denying the permit or major revision application  
 3 in whole or in part no later than 45 days from the date the  
 4 application is determined acceptable or from the publication  
 5 of the final environmental impact statement, whichever  
 6 occurs later. However, if lands subject to the federal lands  
 7 program are included in the application for permit or major  
 8 revision, the department shall prepare and submit written  
 9 findings to the federal regulatory authority. If the  
 10 department's decision is to grant the permit, the department  
 11 shall issue the permit on the date of its written finding  
 12 or, if any federal concurrence is necessary, on the date  
 13 when such concurrence is obtained. If the application is  
 14 denied, specific reasons for the denial must be set forth in  
 15 the written notification to the applicant.

16       (g)(h) If the department fails to act within the times  
 17 specified in this subsection (8), it shall immediately  
 18 notify the board in writing of its failure to comply and the  
 19 reasons for the failure to comply.

20       (9) The applicant, a landowner, or any person with an  
 21 interest that is or may be adversely affected by the  
 22 department's permit decision may within 30 days of that  
 23 decision submit a written notice requesting a hearing by the  
 24 board. The notice must contain the grounds upon which the  
 25 requester contends that the decision is in error. The

1 hearing shall be held within 30 days of the request. For  
 2 purposes of a hearing, the board may order site inspections  
 3 of the area pertinent to the application. The board shall  
 4 within 20 days of the hearing notify the person who  
 5 requested the hearing, by certified mail, and all other  
 6 persons, by regular mail, of the findings and decisions. No  
 7 person who presided at the informal conference may either  
 8 preside at the hearing or participate in the decision  
 9 thereon.

10       (10) In addition to the method of operation, grading,  
 11 backfilling, subsidence stabilization, water control,  
 12 highwall reduction, topsoiling, and reclamation requirements  
 13 of this part and rules adopted under this part, the  
 14 operator, consistent with the directives of subsection (1)  
 15 of this section, shall:

16       (a) bury under adequate fill all toxic materials,  
 17 shale, mineral, or any other material determined by the  
 18 department to be acid producing, toxic, undesirable, or  
 19 creating a hazard;

20       (b) as directed by rules seal off tunnels, shafts, or  
 21 other openings or any breakthrough of water creating a  
 22 hazard;

23       (c) impound, drain, or treat all runoff or underground  
 24 mine waters so as to reduce soil erosion, damage to grazing  
 25 and agricultural lands, and pollution of surface and

1 subsurface waters;

2 (d) remove or bury all metal, lumber, and other refuse  
3 resulting from the operation;

4 (e) use explosives in connection with the operation  
5 only in accordance with department regulations designed to  
6 minimize noise, damage to adjacent lands, and water  
7 pollution and ensure public safety and for other purposes;

8 (f) adopt measures to prevent land subsidence unless  
9 the board approves a plan for inducing subsidence into an  
10 abandoned operation in a predictable and controlled manner  
11 with measures for grading, topsoiling, and revegetating the  
12 subsided land surface. In order for a controlled subsidence  
13 plan to be approved, the applicant must show that subsidence  
14 will not cause a direct or indirect hazard to any public or  
15 private buildings, roads, facilities, or use areas,  
16 constitute a hazard to human life or health, or constitute a  
17 hazard to domestic livestock or to a viable agricultural  
18 operation, or violate any other restrictions the board may  
19 consider necessary.

20 (g) stockpile and protect from erosion all mining and  
21 processing wastes until these wastes can be disposed of  
22 according to the provisions of this part;

23 (h) deposit as much stockpiled waste material as  
24 possible back into the mine voids upon abandonment in such  
25 manner as to prevent or minimize land subsidence. The

1 remaining waste material shall be disposed of as provided by  
2 this part and the rules of the board.

3 (i) seal all portals, entryways, drifts, shafts, or  
4 other openings between the surface and underground mine  
5 workings when no longer needed;

6 (j) to the extent possible using the best technology  
7 currently available, minimize disturbances and adverse  
8 impacts of the operation on fish, wildlife, and related  
9 environmental values and achieve enhancement of such  
10 resources where practicable;

11 (k) minimize the disturbances to the prevailing  
12 hydrologic balance at the mine site and in associated  
13 offsite areas and to the quality and quantity of water in  
14 surface water and ground water systems both during and after  
15 strip- or underground-coal-mining operations and during  
16 reclamation by:

17 (i) avoiding acid or other toxic mine drainage by such  
18 measures as, but not limited to:

19 (A) preventing or removing water from contact with  
20 toxic-producing deposits;

21 (B) treating drainage to reduce toxic content which  
22 adversely affects downstream water upon being released to  
23 water courses;

24 (C) casing, sealing, or otherwise managing boreholes,  
25 shafts, and wells and keeping acid or other toxic drainage

1 from entering ground and surface waters;

2 (ii) (A) conducting strip- or underground-mining  
3 operations so as to prevent, to the extent possible using  
4 the best technology currently available, additional  
5 contributions of suspended solids to streamflow or runoff  
6 outside the permit area but in no event shall contributions  
7 be in excess of requirements set by applicable state or  
8 federal law;

9 (B) constructing any siltation structures pursuant to  
10 (ii)(A) of this subsection prior to commencement of strip-  
11 or underground-mining operations, such structures to be  
12 certified by a qualified registered engineer to be  
13 constructed as designed and as approved in the reclamation  
14 plan;

15 (iii) cleaning out and removing temporary or large  
16 settling ponds or other siltation structures from drainways  
17 after disturbed areas are revegetated and stabilized and  
18 depositing the silt and debris at a site and in a manner  
19 approved by the department;

20 (iv) restoring recharge capacity of the mined area to  
21 approximate premining conditions;

22 (v) avoiding channel deepening or enlargement in  
23 operations requiring the discharge of water from mines;

24 (vi) preserving throughout the mining and reclamation  
25 process the essential hydrologic functions of alluvial

1 valley floors in the arid and semiarid areas of the country;  
2 and

3 (vii) such other actions as the department may  
4 prescribe;

5 (l) conduct strip- or underground-mine operations in  
6 accordance with the approved coal conservation plan;

7 (m) stabilize and protect all surface areas, including  
8 spoil piles, to effectively control air pollution;

9 (n) seal all auger holes with an impervious and  
10 noncombustible material in order to prevent drainage except  
11 where the department determines that the resulting  
12 impoundment of water in such auger holes may create a hazard  
13 to the environment or the public health and safety;

14 (o) develop contingency plans to prevent sustained  
15 combustion;

16 (p) refrain from construction of roads or other access  
17 ways up a streambed or drainage channel or in such proximity  
18 to such channel so as to seriously alter the normal flow of  
19 water;

20 (q) meet such other criteria as are necessary to  
21 achieve reclamation in accordance with the purposes of this  
22 part, taking into consideration the physical,  
23 climatological, and other characteristics of the site;

24 (r) with regard to underground mines, eliminate fire  
25 hazards and otherwise eliminate conditions which constitute

1 a hazard to health and safety of the public;

2 (s) locate openings for all new drift mines working  
3 acid-producing or iron-producing coal seams in such a manner  
4 as to prevent a gravity discharge of water from the mine.

5 (il) An operator may not throw, dump, pile, or permit  
6 the dumping, piling, or throwing or otherwise placing any  
7 overburden, stones, rocks, mineral, earth, soil, dirt,  
8 debris, trees, wood, logs, or any other materials or  
9 substances of any kind or nature beyond or outside of the  
10 area of land which is under permit and for which a bond has  
11 been posted under 82-4-223, as amended, or place the  
12 materials described in this section in such a way that  
13 normal erosion or slides brought about by natural physical  
14 causes will permit the materials to go beyond or outside of  
15 that area of land. An operator shall conduct the strip- or  
16 underground-mining operation in such a manner as to protect  
17 areas outside the permit area."

18 **Section 12.** Section 82-4-237, MCA, is amended to read:

19 "82-4-237. Operator to file annual reports. (1) An  
20 operator shall file an annual report with the department  
21 within 30 days of the anniversary date of each permit. In  
22 lieu of an annual report for each permit, the department may  
23 allow the operator to file an annual report for each  
24 operation on a date determined by the department. Included  
25 within an annual report shall be:

1 (a) the name and address of the operator and permit  
2 number or numbers;

3 (b) a report in such detail as the department shall  
4 require, supplemented with maps, cross sections, or other  
5 material indicating the extent to which mining operations  
6 have been carried out, the progress of implementation of the  
7 water protection plan, and the progress of all reclamation  
8 work, including the type of planting or seeding, mixture and  
9 amount of seed, date of planting or seeding, and area of  
10 land planted, the extent to which expectations and  
11 predictions made in the original application have been  
12 fulfilled and any deviation therefrom, and the number of  
13 acres affected; and

14 (c) a revised schedule or timetable of operations, and  
15 reclamation, protection OF WATER RESOURCES, or restoration  
16 or replacement of water resources, and restoration of  
17 beneficial uses and an estimate of the number of acres to be  
18 affected during the next 1-year period.

19 (2) Upon receipt of the annual report, the department  
20 may make further inquiry and request further information  
21 and, if it does so, shall allow a reasonable opportunity for  
22 the operator to respond.

23 (3) When problem situations are revealed by review of  
24 new information or as a result of field inspections, the  
25 department may order such changes in the mining and

1 reclamation plans and the water protection plan as are  
2 necessary to insure compliance with this part."

3 **Section 13.** Section 82-4-238, MCA, is amended to read:

4 **"82-4-238. Successor operator.** Where one operator  
5 succeeds another at an uncompleted operation, either by  
6 sale, assignment, lease, or otherwise, the department may  
7 release the first operator from all liability under this  
8 part as to that particular operation if both operators have  
9 been issued a permit and have otherwise complied with the  
10 requirements of this part, and the successor operator  
11 assumes, as part of his obligation under this part, all  
12 liability for the reclamation of the area of land and the  
13 restoration or replacement of water resources and  
14 restoration of beneficial uses affected by the former  
15 operator."

16 **Section 14.** Section 82-4-239, MCA, is amended to read:

17 **"82-4-239. Reclamation and restoration or replacement**  
18 **of water resources and beneficial uses by board.** (1) The  
19 board may have reclamation, restoration or replacement of  
20 water resources, and restoration of beneficial uses work  
21 done by its own employees or by employees of other  
22 governmental agencies, soil conservation districts, or  
23 through contracts with qualified persons. The board may  
24 construct, operate, and maintain plants for the control and  
25 treatment of water pollution resulting from mine drainage.

1 (2) Any funds or any public works programs available to  
2 the board shall be used and expended to reclaim and  
3 rehabilitate lands that have been subjected to strip mining  
4 or underground mining and to restore or replace water  
5 resources and restore beneficial uses that have been  
6 adversely affected by mining operations that have not been  
7 reclaimed, and rehabilitated, or restored or replaced in  
8 accordance with the standards of this part. The board shall  
9 cooperate with federal, state, and private agencies to  
10 engage in cooperative projects under this section.

11 (3) Agents, employees, or contractors of the department  
12 may enter upon any land for the purpose of conducting  
13 studies or exploratory work to determine whether such land  
14 has been strip- or underground-mined and not reclaimed and  
15 rehabilitated and whether water resources and beneficial  
16 uses have been restored or replaced in accordance with the  
17 requirements of this part and to determine the feasibility  
18 of restoration, reclamation, abatement, control, or  
19 prevention of any adverse effects of past coal-mining  
20 practices, or replacement of water resources. Upon request  
21 of the commissioner, the attorney general shall bring an  
22 injunctive action to restrain any interference with the  
23 exercise of the right to enter and inspect granted in this  
24 subsection.

25 (4) If the department makes a finding of fact that:

1 (a) land, or water resources, or beneficial uses have  
2 been adversely affected by past coal-mining practices; and

3 (b) the adverse effects are at a stage where in the  
4 public interest action to restore, reclaim, abate, control,  
5 replace, or prevent should be taken; and

6 (c) the owners of the land or water resources where  
7 entry must be made to restore, reclaim, abate, control, or  
8 prevent the adverse effects of past coal-mining practices,  
9 or replace water resources are not known or readily  
10 available or the owners will not give permission for the  
11 department or its agents, employees, or contractors to enter  
12 upon such property to restore, reclaim, abate, control, or  
13 prevent the adverse effects of past coal-mining practices,  
14 or replace water resources;

15 then agents, employees, or contractors of the  
16 department, after giving notice by mail to the owner, if  
17 known, and any purchaser under contract for deed, if known,  
18 or, if neither is known, by posting notice upon the premises  
19 and advertising in a newspaper of general circulation in the  
20 county in which the land lies, may enter upon property  
21 adversely affected by past coal-mining practices and any  
22 other property necessary for access to such mineral property  
23 to do all things necessary or expedient to restore, reclaim,  
24 abate, control, or prevent the adverse effects of past  
25 coal-mining practices, or replace water resources. This act

1 is not an act of condemnation of property or of trespass but  
2 rather an exercise of the power granted by sections 1 and 2,  
3 Article IX of the Montana constitution.

4 (5) (a) Within 6 months after the completion of  
5 projects to restore, reclaim, abate, control, or prevent  
6 adverse effects of past coal-mining practices, or replace  
7 water resources on privately owned land, the department  
8 shall itemize the money so expended and may file a statement  
9 thereof in the office of the clerk and recorder of the  
10 county in which the land lies, together with a notarized  
11 appraisal by an independent appraiser of the value of the  
12 land before the restoration, reclamation, abatement,  
13 control, or prevention of adverse effects of past  
14 coal-mining practices, or replacement of water resources if  
15 the money so expended shall result in a significant increase  
16 in property value. Such statement constitutes a lien upon  
17 the land. The lien may not exceed the amount determined by  
18 the appraisal to be the increase in the market value of the  
19 land as a result of the restoration, reclamation, abatement,  
20 control, or prevention of the adverse effects of past  
21 coal-mining practices, or replacement of water resources. No  
22 lien may be filed against the property of any person, in  
23 accordance with this subsection, who owned the surface prior  
24 to May 2, 1977, and who neither consented to nor  
25 participated in nor exercised control over the mining

1 operation which necessitated the reclamation, restoration or  
 2 replacement of water resources, or restoration of beneficial  
 3 uses performed under this part.

4 (b) The landowner may petition within 60 days of the  
 5 filing of the lien to determine the increase in the market  
 6 value of the land as a result of the restoration,  
 7 reclamation, abatement, control, or prevention of the  
 8 adverse effects of past coal-mining practices, or  
 9 replacement of water resources. The amount reported to be  
 10 the increase in value of the premises constitutes the amount  
 11 of the lien and shall be recorded with the statement herein  
 12 provided. Any party aggrieved by the decision may appeal as  
 13 provided by law.

14 (c) The lien provided in this section shall be recorded  
 15 at the office of the county clerk and recorder. The  
 16 statement constitutes a lien upon the land as of the date of  
 17 the expenditure of the money and has priority as a lien  
 18 second only to the lien of real estate taxes imposed upon  
 19 the land.

20 (6) The board may acquire the necessary property by  
 21 gift or purchase or, if the property cannot be acquired by  
 22 gift or purchase at a reasonable cost, proceedings may be  
 23 instituted in the manner provided in Title 70, chapter 30,  
 24 against all nonaccepting landholders if:

25 (a) the property is necessary for successful

1 reclamation, restoration or replacement of water resources,  
 2 or restoration of beneficial uses;

3 (b) the acquired land after restoration, reclamation,  
 4 abatement, control, or prevention of the adverse effects of  
 5 past coal-mining practices, or replacement of water  
 6 resources will serve recreation and historic purposes or  
 7 conservation and reclamation purposes or provide open space  
 8 benefits; and

9 (c) permanent facilities such as treatment plants or  
 10 relocated stream channels will be constructed on the land  
 11 for the restoration, reclamation, abatement, control, or  
 12 prevention of the adverse effects of past strip- or  
 13 underground-coal-mining practices, or replacement of water  
 14 resources; or acquisition of coal refuse disposal sites and  
 15 all coal refuse thereon will serve the purposes of this part  
 16 in that public ownership is desirable to meet emergency  
 17 situations and prevent recurrences of the adverse effects of  
 18 past coal-mining practices."

19 **Section 15.** Section 82-4-240, MCA, is amended to read:

20 **"82-4-240. Reclamation of lands after bond forfeited --**  
 21 restoration or replacement of water resources after  
 22 financial assurance forfeited. In keeping with the  
 23 provisions of this part, the board may reclaim any affected  
 24 lands with respect to which a bond has been forfeited and  
 25 may restore or replace any affected water resources and



1 restore any affected beneficial uses with respect to which  
 2 water restoration and replacement financial assurance has  
 3 been forfeited."

4 **Section 16.** Section 82-4-241, MCA, is amended to read:

5 "82-4-241. Receipts paid into general fund. Except for  
 6 bond and water restoration and replacement financial  
 7 assurance forfeiture moneys, all fees, penalties, and other  
 8 moneys available or paid to the department under the  
 9 provisions of this part shall be placed in the state  
 10 treasury and credited to the general fund."

11 **Section 17.** Section 82-4-242, MCA, is amended to read:

12 "82-4-242. Funds received by board. The board may  
 13 receive any federal funds, state funds, or any other funds  
 14 for the reclamation of land, the restoration and replacement  
 15 of water resources, and restoration of beneficial uses  
 16 affected by strip mining or underground mining."

17 **NEW SECTION. Section 18.** 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 the hydrologic  
 21 balance and the quality of water resources, replace the  
 22 quantity of water resources, and restore beneficial uses in  
 23 the water protection area to the approximate conditions that  
 24 prevailed prior to the commencement of the permitted  
 25 operations at no greater cost to water users, except that a

1 permittee is not required to restore or replace the quantity  
 2 of a water resource solely to provide for the continuance of  
 3 a beneficial use if the permittee holds a water right that  
 4 is senior to that beneficial use and the permittee has  
 5 lawfully consumed or used only the water to which the  
 6 permittee is entitled.

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

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

23 (4) ~~The permittee shall restore or replace sufficient~~  
 24 ~~water on a temporary basis to provide for the continuation~~  
 25 ~~of a beneficial use within the water protection area that~~

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

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

12 (b)--72--hours--for--irrigation--and

13 (c)--7--days--for--any--other--beneficial--use;

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

25 (6)--The--board--shall--by--order--notify--the--permittee--and

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

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

1 prevailed prior to the commencement of the permitted  
 2 operations.

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

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

13 (a) The permittee has the burden of showing by clear  
 14 and convincing evidence that the permitted operations did  
 15 not cause the diminishment or degradation of the water  
 16 resource, beneficial use, or both.

17 (b) A record must be made of the hearing and of all  
 18 evidence presented and testimony taken.

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

23 (d) Either the permittee or the water user may request  
 24 that the department reconsider its determination. The  
 25 department's response to a request to reconsider is the

1 final agency decision.

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

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

24 (2) A water user who depends upon a water resource or  
 25 who has a beneficial use that is located outside the water

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

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

25 (4) Either the water user or the permittee may request

1 that the department reconsider its decision on the water  
 2 user's request to expand water monitoring. The department's  
 3 response to a request to reconsider is the final agency  
 4 decision.

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

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

23 (7) A water user who depends upon a water resource or  
 24 who has a beneficial use that is included within the  
 25 expanded boundaries of a water protection area is entitled

1 to all of the rights and obligations of water users included  
2 within the original boundaries of the water protection area.

3 **Section 20.** Section 82-4-251, MCA, is amended to read:

4 **\*82-4-251. Noncompliance -- suspension of permits. (1)**

5 The commissioner or an authorized representative of the  
6 department shall, if he determines on the basis of an  
7 inspection that any condition or practices exist or that the  
8 permittee is in violation of any requirement of this part or  
9 any permit condition required by the part that creates an  
10 imminent danger to the health or safety of the public or is  
11 causing or can reasonably be expected to cause significant  
12 and imminent environmental harm to land, air, or water  
13 resources, immediately order cessation of the operation or  
14 the portion thereof relevant to the condition, practice, or  
15 violation. The cessation order remains in effect until the  
16 commissioner or his authorized representative determines  
17 that the condition, practice, or violation has been abated  
18 or until modified, vacated, or terminated by the  
19 commissioner or his authorized representative pursuant to  
20 subsection (5). If the commissioner or his authorized  
21 representative finds that the ordered cessation of the  
22 operation, or any portion thereof, will not completely abate  
23 the imminent danger to the health or safety of the public or  
24 the significant and imminent environmental harm to land,  
25 air, or water resources, he shall in addition to the

1 cessation order impose affirmative obligations requiring  
2 whatever steps the commissioner or his authorized  
3 representative considers necessary to abate the imminent  
4 danger or the significant environmental harm.

5 (2) When, on the basis of an inspection, the department  
6 determines that any permittee is in violation of any  
7 requirement of this part or any permit condition required by  
8 this part which does not create an imminent danger to the  
9 health or safety of the public or cannot be reasonably  
10 expected to cause significant and imminent environmental  
11 harm to land, air, or water resources, the commissioner or  
12 authorized representative shall issue a notice to the  
13 permittee or his agent fixing a reasonable time, not  
14 exceeding 90 days, for the abatement of the violation and  
15 providing opportunity for public hearing. If, upon  
16 expiration of the period of time as originally fixed or  
17 subsequently extended, for good cause shown and upon the  
18 written finding of the commissioner or his authorized  
19 representative, the commissioner or his authorized  
20 representative finds that the violation has not been abated,  
21 he shall immediately order a cessation of the operation or  
22 the portion thereof relevant to the violation. Such  
23 cessation order remains in effect until the commissioner or  
24 his authorized representative determines that the violation  
25 has been abated or until modified, vacated, or terminated by

1 the commissioner or his authorized representative pursuant  
 2 to subsection (5). In the order of cessation issued under  
 3 this subsection, the commissioner shall determine the steps  
 4 necessary to abate the violation in the most expeditious  
 5 manner possible and shall include the necessary measures in  
 6 the order.

7 (3) When, on the basis of an inspection, the  
 8 commissioner or his authorized representative determines  
 9 that a pattern of violations of any requirements of this  
 10 part or any permit conditions required by this part exists  
 11 or has existed and if the commissioner or his authorized  
 12 representative also finds that such violations are caused by  
 13 the unwarranted failure of the permittee to comply with any  
 14 requirements of this part or any permit conditions or that  
 15 such violations are willfully caused by the permittee, the  
 16 commissioner or his authorized representative shall  
 17 forthwith issue an order to the permittee to show cause as  
 18 to why the permit should not be suspended or revoked and  
 19 shall provide opportunity for a public hearing. If a hearing  
 20 is requested, the commissioner shall inform all interested  
 21 parties of the time and place of the hearing. Upon the  
 22 permittee's failure to show cause as to why the permit  
 23 should not be suspended or revoked, the commissioner or his  
 24 authorized representative shall forthwith suspend or the  
 25 board shall revoke the permit. When a permit has been

1 revoked, the board may order the performance bond or the  
 2 water restoration and replacement financial assurance, or  
 3 both, forfeited.

4 (4) Any additional permits held by an operator whose  
 5 mining permit has been revoked shall be suspended and the  
 6 operator is not eligible to receive another permit or to  
 7 have the suspended permits reinstated until he has complied  
 8 with all the requirements of this part in respect to former  
 9 permits issued him. An operator who has forfeited a bond or  
 10 water restoration and replacement financial assurance or has  
 11 violated federal or state mine reclamation laws or rules, as  
 12 determined by the department based on information supplied  
 13 by any person, is not eligible to receive another permit  
 14 unless:

15 (a) the land where a violation occurred in this state  
 16 or the land for which the bond was forfeited has been  
 17 reclaimed or the water resources affected by the violation  
 18 or for which the financial assurance was forfeited have been  
 19 restored or replaced without cost to the state; or

20 (b) the operator has paid into the reclamation account  
 21 a sum together with the value of the bond the board finds  
 22 adequate to reclaim the lands or the value of the water  
 23 restoration and replacement financial assurance the board  
 24 finds is adequate to restore or replace the water resources  
 25 and any additional expenses incurred by the board that the

1 bond or financial assurance is insufficient to cover.

2 (5) Notices and orders issued pursuant to this section  
3 shall set forth with reasonable specificity the nature of  
4 the violation and the remedial action required, the period  
5 of time established for abatement, and a reasonable  
6 description of the portion of the operation to which the  
7 notice or order applies. Each notice or order issued under  
8 this section shall be given promptly to the permittee or his  
9 agent by the department or the commissioner or his  
10 authorized representative who issues the notice or order.  
11 All such notices and orders must be in writing and be signed  
12 by the authorized representatives. Any notice or order  
13 issued pursuant to this section may be modified, vacated, or  
14 terminated by the commissioner or his authorized  
15 representative, provided that any notice or order issued  
16 pursuant to this section that requires cessation of mining  
17 by the operator expires within 30 days of actual notice to  
18 the operator unless a public hearing is held at the site or  
19 within such reasonable proximity to the site that any  
20 viewings of the site can be conducted during the course of  
21 public hearing.

22 (6) A person issued a notice or an order of cessation  
23 pursuant to this section or any person having an interest  
24 that is or may be adversely affected by an order or by  
25 modification, vacation, or termination of an order may apply

1 to the department for review of that order within 30 days of  
2 its issuance or within 30 days of its modification,  
3 vacation, or termination. Upon receipt of the application,  
4 the department shall make an investigation. The  
5 investigation shall provide an opportunity for public  
6 hearing at the request of the applicant or the person having  
7 an interest who is or may be adversely affected to enable  
8 the applicant or the person to present information relating  
9 to the issuance and continuance of the notice or order or  
10 the modification, vacation, or termination of it. The filing  
11 of an application for review under this subsection may not  
12 operate as a stay of any order or notice. The department  
13 shall make findings of fact and issue a written decision  
14 incorporating an order vacating, affirming, modifying, or  
15 terminating the order.

16 (7) Whenever an order is issued under this section or  
17 as the result of any administrative proceeding under this  
18 part, at the request of any person, a sum equal to the  
19 aggregate amount of all costs, expenses, and attorney fees  
20 as determined by the department to have been reasonably  
21 incurred by such person for or in connection with his  
22 participation in such proceedings, including any judicial  
23 review of agency actions, may be assessed against either  
24 party as the court, resulting from judicial review, or the  
25 department, resulting from administrative proceedings,

1 considers proper.

2 (8) In order to protect the stability of the land, the  
3 commissioner or his authorized representative shall order  
4 cessation of underground coal mining under urbanized areas,  
5 cities, towns, and communities and adjacent to industrial or  
6 commercial buildings, major impoundments, or permanent  
7 streams if he finds imminent danger to inhabitants of the  
8 urbanized areas, cities, towns, and communities."

9 **Section 21.** Section 82-4-252, MCA, is amended to read:

10 **"82-4-252. Mandamus ENFORCEMENT -- ADMINISTRATIVE**  
11 **REVIEW -- MANDAMUS.** (1) A resident of this state or any  
12 person having an interest which is or may be adversely  
13 affected, with knowledge that a requirement of this part or  
14 a rule adopted under this part is not being enforced or  
15 implemented by a public officer or employee whose duty it is  
16 to enforce or implement the requirement or rule, may bring  
17 the failure to enforce to the attention of the public  
18 ~~officer-or-employee~~ commissioner and to the permittee by a  
19 written statement under oath that shall state the specific  
20 facts of the failure to enforce the requirement or rule.  
21 ~~Knowingly---making---false---statements---or---charges---in---the~~  
22 ~~affidavit-subjects-the-affiant-to-penalties-prescribed-in~~  
23 ~~45-7-202-~~

24 (2) Within 10 days of receipt of the AN affidavit THAT  
25 ALLEGES FACTS DEMONSTRATING PROBABLE CAUSE THAT A VIOLATION

1 OF THE ACT OR RULES HAS OCCURRED, the department shall  
2 inspect the operation and location named in the written  
3 statement and, based upon the inspection, the commissioner  
4 shall issue a written response to the person who filed the  
5 written statement and provide a copy to the permittee,  
6 stating whether the commissioner agrees or disagrees that a  
7 violation has taken place OR STATING THAT SUPPLEMENTAL  
8 INVESTIGATION IS NECESSARY. IF THE DEPARTMENT DETERMINES  
9 THAT SUPPLEMENTAL INVESTIGATION IS NECESSARY, THE  
10 COMMISSIONER SHALL INCLUDE IN THE WRITTEN RESPONSE A  
11 STATEMENT OF THE REASONS AND A SPECIFIC TIMEFRAME, NOT TO  
12 EXCEED 30 DAYS, UNLESS THE COMMISSIONER DEMONSTRATES GOOD  
13 CAUSE THAT MORE TIME IS NEEDED FOR COMPLETION OF THE  
14 INVESTIGATION AND ISSUANCE OF THE COMMISSIONER'S STATEMENT  
15 AGREEING OR DISAGREEING THAT A VIOLATION HAS TAKEN PLACE.

16 (3) If the public--officer--or--employee--neglects-or  
17 refuses-for--an--unreasonable--time--after--receipt--of--the  
18 statement--to--enforce--or--implement-the-requirement-or-rule  
19 commissioner determines that there is no violation, the  
20 resident or person having an interest which that is or may  
21 be adversely affected may appeal---the---commissioner's  
22 determination-to-the-board REQUEST AN ADMINISTRATIVE HEARING  
23 or, IF THE COMMISSIONER'S DECISION IS ARBITRARY, CAPRICIOUS,  
24 OR AN ABUSE OF DISCRETION, bring an action of mandamus in  
25 the district court of the first judicial district of this



1 state, in and for the county of Lewis and Clark, or in the  
 2 district court of the county in which the land is located.  
 3 If the commissioner fails to respond within 10 days of  
 4 receipt of the written statement, the resident or person  
 5 having an interest that is or may be adversely affected may  
 6 either proceed with an appeal to the board or bring an  
 7 action of mandamus as though the commissioner had decided  
 8 that no violation occurred OR BRING AN ACTION OF MANDAMUS.

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

12 (a) order the public officer or employee whose duty it  
 13 is to enforce the requirement or rule commissioner to  
 14 perform his duties. If he fails to do so, the public officer  
 15 or employee shall commissioner must be held in contempt of  
 16 court and is subject to the penalties provided by law.

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

1 ~~department shall reimburse the citizen, provided that the~~  
 2 ~~department may continue to attempt to obtain reimbursement~~  
 3 ~~from the permittee.~~

4 (3) ~~Any 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, or~~  
 8 ~~permit issued hereunder. However, no such action may~~  
 9 ~~commence:~~

10 (a) ~~prior to 60 days after the plaintiff has given~~  
 11 ~~notice in writing to the department and to the alleged~~  
 12 ~~violate, 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, or permit issued~~  
 16 ~~hereunder.~~

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

22 (A) PRIOR TO 60 DAYS AFTER THE PLAINTIFF HAS GIVEN  
 23 NOTICE IN WRITING TO THE DEPARTMENT AND TO THE ALLEGED  
 24 VIOLATOR; OR

25 (B) IF THE DEPARTMENT HAS COMMENCED AND IS DILIGENTLY

1 PROSECUTING A CIVIL ACTION TO REQUIRE COMPLIANCE WITH THE  
2 PROVISIONS OF THIS PART OR ANY RULE, ORDER, OR PERMIT ISSUED  
3 UNDER IT.

4 ~~(5)(6)~~ Any person may intervene as a matter of right in  
5 ~~any such a~~ civil action brought under this section.

6 ~~(6)(7)~~ Nothing in this section restricts any right that  
7 any person may have under any statute or common law to seek  
8 enforcement of this part or the rules adopted hereunder or  
9 to seek any other relief.

10 ~~(4)(7)(8)~~ Any person who is injured in his person or  
11 property through the violation by any operator of any rule,  
12 order, or permit issued pursuant to this part may bring an  
13 action for damages (including reasonable attorney and expert  
14 witness fees) only in the county in which the strip- or  
15 underground-coal-mining operation complained of is located.  
16 Nothing in this subsection affects the rights established by  
17 or limits imposed under chapter 71 of Title 39.

18 ~~(5)(8)(9) The court, in issuing any final order in any~~  
19 ~~action brought pursuant to subsection (3), may award costs~~  
20 ~~of litigation (including attorney and expert witness fees)~~  
21 ~~to any party whenever the court determines such award is~~  
22 appropriate. THE COURT, IN ISSUING A FINAL ORDER IN ANY  
23 ACTION BROUGHT PURSUANT TO SUBSECTION (3), MAY AWARD COSTS  
24 OF LITIGATION, INCLUDING ATTORNEY AND EXPERT WITNESS FEES,  
25 TO ANY PARTY WHENEVER THE COURT DETERMINES AN AWARD IS

1 APPROPRIATE. The court may, if a temporary restraining order  
2 or preliminary injunction is sought, require the filing of a  
3 bond or equivalent security in accordance with the Montana  
4 Rules of Civil Procedure."

5 **Section 22.** Section 82-4-253, MCA, is amended to read:

6 **"82-4-253. Suit for damage to water supply.** (1) An  
7 owner of an interest in real property who obtains all or  
8 part of his supply of water for domestic, agricultural,  
9 industrial, or other legitimate use ~~from an underground~~  
10 ~~source other than a subterranean stream having a permanent,~~  
11 ~~distinct, and known channel~~ may sue an operator to recover  
12 damages for contamination, diminution, or interruption of  
13 the water supply, proximately resulting from strip mining or  
14 underground mining.

15 (2) Prima facie evidence of injury in a suit under this  
16 subsection is established by the removal of coal or  
17 disruption of overlying aquifer from designated ground water  
18 areas as prescribed in Title 85, chapter 2, part 5. If the  
19 area is not a designated ground water area, a showing that  
20 the coal or overlying strata is an aquifer in that  
21 geographical location and that the coal or the overlying  
22 strata has been removed or disrupted shifts the burden to  
23 defendant (operator) to show that plaintiff's (owner's)  
24 water supply was not injured thereby.

25 (3) An owner of water rights adversely affected may

1 file a complaint detailing the loss of his water in quality  
 2 and quantity with the department. Upon receipt of this  
 3 complaint the department shall:

4 (a) investigate the complaint using all available  
 5 information, including THE WATER PROTECTION PLAN AND  
 6 monitoring data gathered at the mine site AND IN THE WATER  
 7 PROTECTION AREA;

8 (b) require the defendant (operator) to install such  
 9 monitoring wells or other practices that may be needed to  
 10 determine the cause of water loss, if there is a loss, in  
 11 terms of quantity or quality;

12 (c) issue within 90 days a written finding specifying  
 13 the cause of the water loss, if there is a loss, in terms of  
 14 quantity or quality;

15 (d) order the mining operator in compliance with  
 16 chapter 2 of Title 85 to replace the water immediately on a  
 17 temporary basis to provide the needed water and within a  
 18 reasonable time, replace the water in like quality,  
 19 quantity, and duration, if the loss is caused by the surface  
 20 coal mining operation; and

21 (e) order the suspension of the operator's permit for  
 22 failure to replace the water, until such time as the  
 23 operator provides substitute water.

24 (4) A servient tract of land is not bound to receive  
 25 surface water contaminated by strip mining or underground

1 mining on a dominant tract of land, and the owner of the  
 2 servient tract may sue an operator to recover the damages  
 3 proximately resulting from the natural drainage from the  
 4 dominant tract of surface waters contaminated by strip  
 5 mining or underground mining on the dominant tract.

6 (5) This section and 82-4-252 do not create, modify, or  
 7 affect any right, liability, or remedy other than as  
 8 expressly provided.

9 ~~{6}--The provisions of {sections 1 through 23} supersede~~  
 10 ~~the provisions of this section for operations permitted~~  
 11 ~~after October 1, 1991."~~

12 NEW SECTION. Section 23. Rulemaking. The department  
 13 shall adopt:

14 (1) interim rules to implement [sections 1 through 22]  
 15 to be in place no later than October 1, 1991; and

16 (2) final rules to implement [sections 1 through 22] to  
 17 be in place no later than July 1, 1992.

18 NEW SECTION. Section 24. Codification instruction.  
 19 [Sections 8, 18, 19, and 23] are intended to be codified as  
 20 an integral part of Title 82, chapter 4, part 2, and the  
 21 provisions of Title 82, chapter 4, part 2, apply to  
 22 [sections 8, 18, 19, and 23].

23 NEW SECTION. Section 25. Severability. If a part of  
 24 [this act] is invalid, all valid parts that are severable  
 25 from the invalid part remain in effect. If a part of [this

1 act] is invalid in one or more of its applications, the part  
2 remains in effect in all valid applications that are  
3 severable from the invalid applications.

4 NEW SECTION. Section 26. Applicability. [This act]  
5 applies to ~~proceedings-begun~~ PROPOSED MINING OPERATIONS FOR  
6 WHICH AN APPLICATION FOR AN OPERATING PERMIT IS FILED OR FOR  
7 WHICH AN APPLICATION FOR A PERMIT RENEWAL OR FOR AN AMENDED  
8 OR REVISED PERMIT TO EXPAND OPERATIONS IS FILED after  
9 October 1, 1991.

10 NEW SECTION. Section 27. Effective date. [This act] is  
11 effective on passage and approval.

-End-