

MINUTES OF THE MEETING  
NATURAL RESOURCES  
MONTANA STATE SENATE

February 1, 1977

The ninth meeting of the Natural Resources Committee was called to order by Senator Elmer Flynn, Chairman, at 9:30 a. m. on the above date in Room 405 of the State Capitol Building.

ROLL CALL: Upon roll call all members were present.

Mr. Larry Weinberg, Staff Attorney of the Legislative Council, was also present.

CONSIDERATION OF SB 295: An Act to amend the Montana strip and underground mine reclamation act to provide for reclamation plans which will put the reclaimed land into crop production or irrigated pasture.

Senator Frank Dunkle, from District 15 and Sponsor of Senate Bill No. 295, stated that he is interested in reclaiming land back to productivity. This is one more step in improving the Reclamation Act. I just think it is a proper bill and will do the job that is needed to be done.

Mr. Ward Shanahan, Attorney in Helena, representing Dreyer Bros. Inc., stated that he was supporting this bill. We feel that the bill should be broader in scope and incorporated. We think SB 295 is a satisfactory bill but feel it should be considered together with SB 284. (See Attachment #1.)

Mr. Bob Tully, member of the Northern Plains Resource Council, appeared as an opponent of this bill. He stated that this law has not stood the test of time. We feel erosion is one of the grave dangers affecting the soil of the State of Montana. This is the worst thing you can do in erosion control. I see nothing in this SB 295 that in any way offers any change or improvement of option to the landowner. To say that this bill would help agriculture is absolutely erroneous. Economically there is nothing offered to our agricultural economy in this bill. What this bill suggests is premature in the attempt to manipulate the machinery in use today under the 1973 Reclamation Act. I very vigorously oppose SB 295.

Mr. Leo Berry, representing the Department of State Lands, who was neither opposing nor supporting the bill spoke. He distributed amendments and explained them in detail. He said that HB 577 goes into more detail and specifications. (See Attachment #2.)

Senator Manley asked when the coal company gets done with this land don't you believe the surface landowner should have the right to declare what kind of crops he wants to raise on this land.

Mr. Tully said that when the 1973 Act was enacted he was in favor of the landowner if he were not the coal operator. He is subject to consultation only. We must be against a court that allows in effect for a coal company to have a large influence not only on how reclaimed but what it is reclaimed to and for. An enormous percentage of land in Montana that is being reclaimed is owned by a coal company.

Senator Manley asked if they wanted to plant sage brush and he didn't want to, could he overrule them.

Mr. Tully replied, no.

Senator Galt stated that in the 73' Act have you said the reclamation has been complete on any part of the ground.

Mr. Berry said, no. We couldn't make that determination for five years.

Senator Smith asked if the leeway is sometimes a loophole.

Mr. Ward Shanahan said, we can't farm more than 160 acres under the department's regulations. We are going to have to turn that land over to the farmers. Some of Mr. Berry's suggestions on language are very well taken.

Senator Galt asked, would you give any consideration to including the landowner.

Mr. Dunkle replied that the landowner should have some options.

Senator Galt asked if he would object to the Committee waiting until H. B. 577 is over to the Senate before taking action on S. B. 295.

Senator Dunkle said the surface owner should have a little more to say. He was agreeable to Senator Galt's suggestion.

Senator Jergeson asked if there is a great amount of land in the coal areas that has never been put into crop production.

Mr. Berry said there is a good percentage of land not put into crop production.

Senator Jergeson asked if there is reason why a great amount of land is not put into production.

Mr. Tully replied that he thinks it is the capability and the potential of the land as it is now. As yet we have no evidence in the law. The economics are vital. The true results are not yet in.

Senator Roskie said, as a rancher you must be familiar with what ranchers are doing to enhance production. Do you think that these are less than the unparalleled value of native species.

Mr. Tully replied, you are doing something to the ground that hasn't happened to the ground before. Just scratching on the earth is hard to recover from. I feel this bill is premature.

Senator Roskie asked, are you familiar with the species planted in Montana that have been in existence for 30 - 40 years. I am sure you know there are many species that have maintained themselves for 30 - 40 years. You made a statement that continued disturbance is the worst thing you can do.

Mr. Tully said, we are talking about reclaimed lands. We are not talking about farmlands.

Senator Manley asked, if the landowner makes a contract with the Coal Company, can that landowner make a contract with the Coal Company that after they mine it they will put sprinklers back on it. Can he immediately put the sprinklers back or does he have to prove it grows and then put the sprinklers in.

Mr. Berry said, the option of which you speak is not currently in the law. Such a contract would be of no effect.

Senator Manley asked, could they leave the ground level.

Mr. Berry said, the land could be leveled. It would depend on the amount of material that we are talking about.

Senator Manley asked if there would be no way for that landowner to make that ranch a better ranch under the current law.

Mr. Berry said, the options are somewhat limited under the current law.

Mr. McCall of the Land Board spoke briefly at this time.

Senator Manley asked if they would have to wait 5 years.

Mr. McCall said, no, the grading is a part of the plan.

Senator Manley said, it couldn't be made better than it was then.

Mr. McCall said, on the vegetation - what was there previously we have that in the law.

In summary, Senator Dunkle said, it doesn't say anything in this bill about that it changes the bonding at all. 50-1045 has not changed in any way - it is just another option that would work. There is no way for anybody to mine or reclaim that land except as said in this bill. This doesn't say that you can take all Eastern Montana and put in crop land. I would ask that you give this bill serious consideration or that you keep it until you consider S.B. 284 and H. B. 577.

CONSIDERATION OF SB 302: An Act to amend the Montana Environmental Policy Act to specify that the act does not expand the substantive decision-making authority of state agencies; deleting the requirement that an environmental impact statement be prepared on rules and legislation; authorizing the environmental quality council to review legislation and advise the legislature of potential environmental impacts; requiring state agencies to hold a public hearing on a proposed rule under the Montana Administrative Procedure Act when it has been determined that the proposed rule would constitute a major state action having a significant impact on the human environment.

Senator George Roskie, from District 21 and Sponsor of S.B. 302, stated that this is a bill that has the support of the Administrative Code Committee. He briefly explained the bill section by section. He said the essence of the law was the EQC was to be a supporting group to the Legislature.

Mr. Steve Brown, representing the Executive Branch of the Governor's Office, stated that he was neither supporting nor opposing this bill. We have been criticized for being the Executive Branch. The EQC has taken the rule making authority which openly conflicts with the Montana Administrative Code Committee. We have to have the Legislature decide what MEPA is going to mean. This bill points out specifically where the substantive decision making authority of agency on substantive rule making authority is. You have got to make a choice between this bill and the one introduced by Senator Hager. I am hoping you as a Legislator will say - this is what you want to discuss. The bill by Senator Hager will take the other approach. I think that we are being singled out unfairly. This bill attempts to equalize the burden. My concern is, there will be no more substantive or rule making authority in state government. I wish you would weigh them both as to what you think MEPA should mean to Montana.

Representative John Scully, Vice-Chairman of the Administrative Code Commission, spoke briefly. He said we recognize we are at fault with regards to the way we write regulations. The Administrative Code Commission favors this choice of legislation. We would like to limit that rule making authority.

Senator Roskie said he has talked to Senator Hager and will look at his bill at another time and that the opponents should be given another time on this bill as we do not have any more time in this meeting.

Senator Hager, being present, stated that he would agree with that. My purpose here was to withhold consideration of this bill until my bill comes in.

Motion was made by Senator Roskie and seconded by Senator Manley that this hearing on SB 302 be continued when we receive Senator Hager's bill and that the opponents be given time to appear. Motion carried.

Motion was then made by Senator Roskie and seconded by Senator Manley that we delay action on SB 295 also. Motion carried.

ADJOURNEMENT: There being no further business, Senator Flynn adjourned the meeting at 11:10 a. m.

  
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SENATOR ELMER FLYNN, CHAIRMAN

Figure 1. The effect of the concentration of the *Agaricus bisporus* spores on the growth of *Agaricus bisporus* on the substrate.

## NATURAL RESOURCES COMMITTEE

45th LEGISLATIVE SESSION - - 1977

Date 2-1-77

[illegible]

SENATE NATURAL RESOURCES COMMITTEE

BILL 295 &amp; 302

# VISITORS' REGISTER

DATE 1-31-77

Please note bill no.

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

NAME: Jo Bay DATE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE: 707/4 \_\_\_\_\_

REPRESENTING WHOM? State Lands \_\_\_\_\_

APPEARING ON WHICH PROPOSAL: \_\_\_\_\_

DO YOU: SUPPORT? \_\_\_\_\_ AMEND? X OPPOSE? \_\_\_\_\_

COMMENTS: \_\_\_\_\_

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NAME: S. Steven Brown DATE: 2/1/77

ADDRESS: 917 Cannon

PHONE: 413-5108

REPRESENTING WHOM? Dept. of Health & Sciences & Gov's Office

APPEARING ON WHICH PROPOSAL: S. B 302

DO YOU: SUPPORT? \_\_\_\_\_ AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENTS: In Between

NAME: John H. Hagan DATE: 2-1-77

ADDRESS: 1324 5th Ave

PHONE: 400 7537

REPRESENTING WHOM? *State Senator*

APPEARING ON WHICH PROPOSAL: 302

[illegible]

COMMENTS:

Hold for another bill

Est. Tally

Feb 1, 1971

75 Ranch Box 216 Roundup

323 - 1090

N. P. R. C.

SB 295

X

COMMENTS:

1. The first part of the document is a list of names and titles, including "The Hon. Mr. Justice" and "The Hon. Mr. Justice".

2 1-76

[illegible]

2050

Environmental Information Center

SE 302

SUPPORT?

1

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There is no text or other markings on the paper.



NAME: MARK STANAHAN DATE: \_\_\_\_\_

ADDRESS: 347-1001 1ST NAT'L BANK BLDG, HELENA

PHONE: 442-8560

REPRESENTING WHOM? DREYER Bros. Inc.

APPEARING ON WHICH PROPOSAL: SD 295

DO YOU: SUPPORT? \_\_\_\_\_ AMEND? ✓ OPPOSE? \_\_\_\_\_

COMMENTS: Attached

(ATTACHMENT #1)

SB-295 Reclamation of Strip Mined Lands

Statement of Dreyer Bros. Inc. The Circle West Project.

Dreyer Bros Inc. is a corporation with lands in McCone County Montana. The company announced plans on June 24, 1974 to develop a lignite mine on its ranch properties for the purpose of providing raw materials for a fertilizer plant to produce anhydrous ammonia. The company is a subsidiary of Burlington Northern Inc. It is presently proceeding under a contract with the Montana Department of Natural Resources to develop the necessary "baseline" environmental information as a foundation for permit applications under the Major Facility Siting Act, and the Strip Coal Mine Siting Act, as well as applicable state and federal Air and Water Pollution control acts.

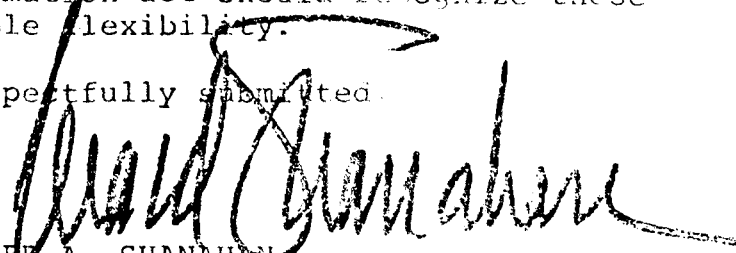
The Strip Coal Mine Siting Act is an alternative method of proceeding toward a mining permit and has the same requirements as the Strip Coal Mine Reclamation Act which Senate Bill 295 seeks to amend. Dreyer Bros. Inc. will have to satisfy the provisions of Section 50-1045, R.C.M 1947, in finally obtaining a mining permit. The provisions of the present law are unduly restrictive, in that they do not allow the proper kind of choices that "good sense" and fairness require.

WE ENDORSE IN PRINCIPAL THE OBJECTIVE OF Senate Bill 295  
But we feel the Bill should be broader in scope and incorporate the additional alternatives of Senate Bill 284 which is another bill with the same subject. SB 284 makes land use planning one of its express objectives and provides that reclamation be appropriate to the "future use of the land" and that the reclamation plan include the "surface owner" in the planning process.

The most serious problem confronting the planner at present is the requirement to reclaim the restored surface of the mine to native, diverse, vegetative cover. This requirement applies even if the owner of the surface and the miner recognize that such reclamation is unnecessary, and undesirable for their future plans. It also applies even if the land was being irrigated or farmed, or covered with blacktop prior to the start of mining.

Other laws such as the Major Facility Siting Act, the Clean Air Act, and the Water Pollution Acts have effects which require the installation of facilities to lessen adverse impacts. Social and economic planning, cooling ponds, pipelines, parking lots, buildings and other structures. The reclamation act should recognize these requirements and allow reasonable flexibility.

Respectfully submitted,

  
WARD A. SHANAHAN  
Registered Lobbyist  
Dreyer Bros. Inc.  
301 First National Bank Bldg.

(Attachment #2)

SB 295  
DEPARTMENT OF STATE LAND TESTIMONY

The department offers the following specific amendments and general comments on SB 295.

(1) On page 2, line 19, it is stated that the operator shall "affirmatively demonstrate" to the department.... It is unclear what is meant by "affirmatively demonstrate." The department assumes that the phrase requires the operator to carry the burden of proof.

(2) On page 2, line 23, the words "probability of" should be deleted. The current language could infer that the operator must show that adverse effects are probable. The word "potential" could be substituted.

(3) On page 2, line 23, after the word "on" insert "soil productivity, and"; on line 24 delete the words "and adverse effects" and "surface seepage of groundwater"; after the words "due to" insert the words "seeps or seepage." So subsection "b" reads as follows:

"potential adverse effects on soil  
productivity and surface or ground-  
water quality due to seeps or  
seepage."

(4) Most importantly the bill, as it currently reads, offers no substantial criteria by which reclamation can be judged. For example, subsection "a" of 50-1045 provides for "a suitable permanent diverse vegetative cover capable of:

"(i) feeding and withstanding grazing from  
a quantity and mixture of wildlife and  
livestock at least comparable to that  
which the land could have sustained prior  
to the operation;