

MINUTES OF THE MEETING
NATURAL RESOURCES
MONTANA STATE SENATE

February 8, 1977

The thirteenth 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.

CONSIDERATION OF SB 284: An Act to amend sections 50-1039, 50-1043, 50-1045, and 50-1047, relating to the reclamation and revegetation of lands affected by strip-mining operations in the state of Montana to provide for future use of the reclaimed lands with consent of the surface owner.

Senator Cornie Thiessen, Co-Sponsor of SB 284, stated that this bill is an adjustment on the reclamation strip mining bill. Picture was passed out to the Committee. Also, proposed amendments to this bill were passed out by Senator Thiessen. (See Attachment #1.) These amendments were briefly explained by Senator Thiessen.

Senator Roskie, Co-Sponsor of SB 284, spoke briefly and introduced the following proponents.

Mr. Marc Nance, rancher from Birney, Montana, stated that this provision came to his attention about two years ago. I had a spot that was a potential sight for coal mining and it would change the nature of what we are using it for now. To me the objective of this reclamation is to get maximum productivity. I am of the opinion that I want to put it back better than it was. The aspect of the ranch is going to be changed. At least the landowner will have some input of the history of his ranch and the future of his ranch. I think a reclamation plan has to go right along with your engineering plan. The cheapest way to put this into the proper prospective is to plan this thing in advance.

Mr. Peter Jackson, from Birney, Montana, and representing himself, stated that this whole concept of revegetation of land is very important. The law started out and did a good job to a point but there is very much a need for freedom of action. There are kinds of lands, kinds of resources, and kinds of uses. There is very much a need for wide professionalism in this. I have all the confidence in the world in the Department of State Lands, but we do need to have it opened up. There is a need for a wide variety of tools to put the reclamation job in proper order.

Mr. Gene Phillips of Kalispell, Montana, representing Pacific Power and Light and Decker Coal Company, stated that this type of legislation will give us additional flexibility. The Wyoming laws are more flexible than the Montana laws.

Mr. Ward Shanahan, Attorney in Helena, and representing Dreyer Bros, Inc., stated that the principal point that should be remembered however is the choices available to the landowner, both surface and sub-surface to deal with their own property. (See Attachment #2.)

Mr. Phil Strobe was also introduced as a proponent.

Pat Stuart, Assistant Director of the Montana Coal Council, stated that her Association represents four of the five strip mines in the state. This bill will result in better reclamation. The better the reclamation, the better my industry will be accepted in the State of Montana.

Mr. Leo Berry, representing the Department of State Lands, distributed proposed amendments to SB 284 to the Committee members and explained them briefly. (See Attachment #3.)

At this time opponents to SB 284 were heard.

Mr. Charles Yarger, Chairman of the Northern Plains Resource Council, stated that he was an opponent of this bill. (See Attachment #4.)

In summary, Senator Thiessen, stated that apparently Mr. Yarger hasn't read the bill in its entirety. It is working in North Dakota as you can see from the picture which was distributed.

Senator Roskie stated that this bill really permits the Department of State Lands in conjunction with the landowner to establish reclaimed mined land to a higher level.

Senator Jergeson wondered how many years of reclamation the picture which was presented represents.

Senator Thiessen said it was one of the recent reclamations.

Senator Jergeson asked if there had been a serious drought.

Senator Thiessen answered that they had a serious drought the next year.

Senator Jergeson asked what was the percentage of damage to the crop.

Senator Thiessen said it was 10%.

Senator Jergeson said, then the crop yield without hail damage would be 19 bushels.

Senator Thiessen said, they figure it would be about 20 bushels.

Senator Jergeson asked, who the surface owner of the land is in most cases.

Mr. Berry answered that generally the companies are the owners of the surface.

Senator Jergeson asked, what about the case of federally owned land.

Senator Roskie said, that he had asked an imponderable question. I sincerely hope that the Montana Reclamation Laws will be the requirements on Federal lands.

Senator Jergeson stated, that this bill is being sought as an attempt to tell the farmer you will be able to start farming - but the bond still has to remain in effect for five years. How many coal companies are going to sell land back when the bond has to remain in effect for five years.

Mr. Shanahan stated, that their plan is to return portions of the ranch over to the farmers in increments as the mine goes along. The problem we are concerned about is the productivity of the land. There is nothing in the bill to force you to sell it to somebody.

Senator Jergeson asked, are you going to sell to a farmer before a bond is released on it.

Mr. Shanahan stated that he thought it could be done.

Senator Jergeson asked if they would give the water to the farmer.

Mr. Shanahan said, they are going to help pay for it. Our intention is to utilize the land and put it into use.

Senator Jergeson stated, in your case the surface owner involved might not necessarily be the one who is the surface owner later.

Mr. Shanahan answered, that's right. We don't want to fight with the farmers and ranchers either.

Senator Devine added, that probably some of these farmers have an arrangement to buy the land back at a dollar.

Mr. Shanahan said, it requires us to buy the land back at the current market value.

Senator Galt asked Mr. Berry, if, in his proposed amendments to SB 284 he isn't trying to retain the word "diverse".

Mr. Berry replied, yes.

After brief discussion, motion was made by Senator Manley and seconded by Senator Roskie that we delay action on SB 284. Motion carried.

ADJOURNMENT:: There being no further business, the meeting was adjourned at 11:00 a. m.



SENATOR ELMER FLYNN, CHAIRMAN

ROLL CALL

NATURAL RESOURCES COMMITTEE

45th LEGISLATIVE SESSION - - 1977

Date 2-8-77

[illegible]

NATURAL RESOURCES COMMITTEE

SB
BILL 284

VISITORS' REGISTER

DATE 2-8-77

Please note bill no.

(check one)

NAME	REPRESENTING	BILL #	(check one)	
			SUPPORT	OPPOSE
Marion M. Van Tassel	Tennessee	SB 284	following	
Phil Stroppe	Mark Vance	SB 284	—	
Shirley Pittsford	Wesley L. Brown	SB 284	✓	
Mr. Ball	State Lands			
Dick Juntunen	" "	SB 284		
Dennis H. H. H.	" "	SB 284		
Pat Stewart	Montana Coal Council	SB 284	✓	
Yager	Self	SB 284		✓

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

NAME: Marcus L. Nance DATE: 2/8/77

ADDRESS: Birney, Mont.

PHONE: 784-2443

REPRESENTING WHOM? myself

APPEARING ON WHICH PROPOSAL: SB 284

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

ADDRESS: HARRISON 170NT

REPRESENTING WHOM? My self

DO YOU: SUPPORT? ☒ AMEND? OPPOSE?

COMMENTS:

NAME: G. M. Phillips DATE: 2/8/77

ADDRESS: Kalispell, Montana

PHONE: 155-6694

REPRESENTING WHOM? Pacific Power & Light and Docket Coal Co.

APPEARING ON WHICH PROPOSAL: SB 284

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENTS:

NAME: WARD SHANAHAN DATE: 2-8-77

ADDRESS: HELENA

PHONE: 442-8560

REPRESENTING WHOM? Dwyer Bros Inc.

APPEARING ON WHICH PROPOSAL: S-284

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: written statement filed

NAME: _____ DATE: _____

ADDRESS: _____

PHONE: _____

REPRESENTING WHOM? *John Doe*

APPEARING ON WHICH PROPOSAL:

DO YOU: SUPPORT? AMEND? X OPPOSE?

COMMENTS:

NAME: Robert J. Jones DATE: 2-6-71

ADDRESS: Coolidge, The Place

PHONE: 415-397-1111

REPRESENTING WHOM? North Plains Resource Council

APPEARING ON WHICH PROPOSAL: CB 264

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? X

COMMENTS: _____

(Attachment #1.)

Amend Senate Bill 284.

1. Page 13, Section 3, line 13.

Following: "trees"

Insert: "upon the area of land affected"

2. Amend page 14, section 3, (c), line 4.

Following: "."

Insert: "The seeding mixture shall contain suitable amounts
of native or introduced species, but is not required
to contain primarily native species."

3. Amend page 15, section 4, (3), line 5.

Following: "~~cover~~"

Strike: "stand"

Insert: "cover"

Senate Committee on Natural Resources

SB 284 Amendments to Reclamation law

From : Ward Shanahan, Registered Lobbyist, Dreyer Bros. Inc.
3rd Floor First National Bank Bldg, Helena Tel: 442 8560

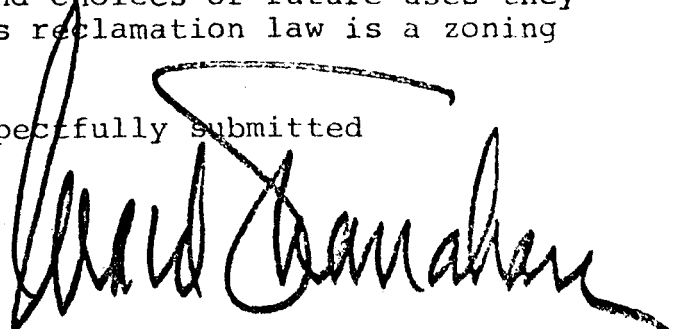
Subject: Explanation in Support of SB284

1. This bill amends three sections of the code; 50-1039, 50-1043 and 50-1045. This is necessary in order to achieve the express purpose of the changes, which is to include options for future land use planning in the Strip Mine Reclamation Act.
2. The bill specifically includes the surface owner as a part of the decision making process. Other parts of the Act were amended last session to give the surface owner "consent" but nothing was included to show how he was to participate in the process. We are dealing with private property rights both on the surface and under the surface...why should government agencies be given the absolute final say in decisions affecting these rights. Why are "public interest or consumer organizations" given an uncontested right to participate in decisions affecting the ownership and use of private property? This bill is intended to begin reversing that process.
3. The future use concept is carried through each section.
4. The principal changes occur in Section 3 of the bill, where a series of options are granted to include agricultural uses as well as wildlife, residential and industrial uses in future planning.

The Department of State Lands has objected that the bill is not specific enough. We have no objection to including the specific provisions of SB 295 or even HB 577 into this bill if that will obtain the specificity for agricultural reclamation that the department requires.

The principal point that should be remembered however is the choices available to the landowner, both surface and sub-surface to deal with their own property. The state is intervening in the ownership of property because strip mining is felt to be a subject worthy of regulation to prevent environmental damage. Once that objective has been satisfied the state should not be allowed to dictate to the surface and sub-surface owners what they can do with their property or the types and choices of future uses they can consider. If that is done, this reclamation law is a zoning bill.

Respectfully Submitted



(Attachment #3.)

AMENDMENT TO SB 284

The department offers the following amendments and comments on SB 284.

1. Amend page 2, line 13 to read "written consent of the surface owner, other than the operator, to the"
2. Page 13, line 13 - After the word "trees" insert: "upon the area of land affected"
3. Page 15, line 5 - delete the word "stand" and insert the word "cover"
4. It appears that the word "diverse" has been deleted in an attempt to address the question of the "primarily native species" requirements presently existing in the rules. Deletion of the word "diverse" does not, however, address that question. The "primarily native species" requirement is based on the assumption that, given the unknowns of surface mine reclamation, native species are best suited to accomplish the purposes of the act; that is establishing a vegetative cover capable of:
 - "(a) feeding and withstanding grazing pressure from wildlife and livestock to a degree comparable to that prior to mining;
 - (b) regenerating under the natural conditions prevailing at the site, including occasional drought, heavy snowfalls, and strong winds; and
 - (c) preventing soil erosion to the extent achieved prior to the operation."

NORTHERN PLAINS RESOURCE COUNCIL

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419 Stapleton Bldg
Billings, MT 59101
(406) 248-1154

TESTIMONY OF CHARLES YARGER
IN OPPOSITION TO SENATE BILL 284

Field Office
P.O. Box 886
Glendive, MT 59330
(406) 365-2525

Chairman Flynn, Members of the Committee,

My name is Charlie Yarger. I am a farmer, rancher from McCone County and am Chairman of the Northern Plains Resource Council. I am here today representing that organization, testifying in opposition to Senate Bill 284.

To me, the purpose of this bill seems quite evident. It strikes every mention of the word "diverse" in describing vegetative cover.

To a farmer like myself, this means primarily one thing (a monoculture). However, this bill in striking the word "diverse" makes no attempt to even mention crops. It places in its stead the words "permanent vegetative stand". This type of language is woefully inadequate. What do we define as a permanent vegetative stand? Morning Glory, Buckwheat, Foxtail, Canadian Thistle, Russian Thistle and Cheat Grass I can assure you will establish a permanent vegetative stand and would qualify under the provisions of this law, thus mandating the releasal of the bond on the strip mined land.

The second area of this bill that we find objectionable are those portions that discuss future use. In striking the words "diverse" and " revegitation" and inserting in their places future use alternatives, rips the Strip Mine Reclamation Act wide open. When the bill discusses future use, it makes no mention of specific criterea necessary to allow future use or even what some of those future uses might be.

Are we therefore to assume that these vague, undefined future uses of Montana's agricultural land may be motorcycle hill climbs or