MINUTES OF THE MEETING
NATURAL RESOURCES
STATE SENATE

February 19, 1979

The fourteenth meeting of the Natural Resources Committee was called to order by Senator George F. Roskie, Chairman, at 12:00 P.M., on the above date in Room 405 of the State Capitol Building.

ROLL CALL: Upon roll call all members were present with the exception of Senators Brown, Etchart and Lockrem who all arrived shortly after the meeting began.

Mr. Jim Lear, Staff Attorney from the Legislative Council, was also present. See attached visitors' register for the names of visitors present.

Chairman Roskie then asked the visitors present which bills they wished to testify on. It was determined that the majority of visitors present planned to testify on SB 464 so Chairman Roskie opened the hearing on SB 464.

CONSIDERATION OF SB 464: "An act to remove the law providing for reservation of water by governmental entities for existing or future beneficial uses; amending sections 85-2-102, 85-2-307, and 85-2-311, MCA; and repealing sections 85-2-316 and 85-2-601 through 85-2-608, MCA."

Chairman Roskie called on Senator Jack Galt, District 23, to present SB 464 to the Committee. Senator Galt informed the Committee that he had intended to wipe out the reservation of water on the Yellowstone River, but was informed that this bill would not accomplish that end. Senator Galt said he felt the reservation idea was entirely premature. It is a policy of the state that should be corrected and done away with until an accurate inventory of what water is being used for can be done Senator Galt felt. Chairman Roskie then called on Mr. Franklin Grosfield to testify in behalf of SB 464. Mr. Grosfield submitted his comments in written form (see attachment).

Mr. Charles Rein, representing the Sweet Grass County Conservation District, spoke in favor of SB 464 and submitted his comments in written form (see attachment).

Mr. Al Kersich, Montana Water Development Association, spoke in favor of SB 464, and stated that water reservations as presently constituted in the law are not workable. They can not be administered or financed.

Mr. Peter Jackson, Western Environmental Trade Association, also spoke in favor of SB 464 and listed the following organizations that also supported SB 464: Montana Stockgrowers, Montana Wool-

growers, Montana Cattlemen, Chamber of Commerce, Montana Associated Utilities, Garfield-McCoon Leg. Group, Park County Protective Association, Sweet Grass Protective Association, Associated General Contractors, Montana Realtors Association, People for Progress, Farm Bureau. Mr. Jackson said there is a need for water quality in Montana but we shouldn't be using the flushing system.

There being no other proponents to SB 464, Chairman Roskie called for any opponents to SB 464.

Mr. Ted J. Doney, Director for the Department of Natural Resources, spoke in opposition to SB 464. He pointed out that this bill would do away with any water reservations in the future as well as any presently proposed for the Yellowstone River and any other ones either proposed or already approved. He stated that the water reservation system is unique in the United States and should be given some time to work. He admitted there were some problems with the Yellowstone reservation system but did not feel that warranted doing away with the whole system. Mr. Doney then pointed out the advantages of the water reservation systems and said this is Montana's answer to Federal reserve water rights.

Mr. John Gary, a rancher from the Yellowstone River Valley, spoke in opposition to SB 464 and submitted a written statement (see attachment).

Mr. John Parker also spoke in opposition to SB 464 and submitted a written statement (see attachment).

Mr. John Wilson, Montana Council of Trout Unlimited, spoke in opposition to SB 464 and submitted a written statement (see attachment).

Ms. Willa Hall, League of Women Voters, spoke in opposition to SB 464 and submitted a written statement (see attachment).

Mr. John Greene from Livingston spoke in opposition to SB 464 and submitted signed petitions from residents in the Livingston area stating why they opposed SB 464.

Mr. Bob Biggerstaff, Montana Association of Conservation Districts, said that the water reservation system is a good way to hold water for instate uses as well as being good for agriculture. Mr. Biggerstaff supports a high level of agricultural development but does not feel that agriculture has gotten a fair shake on the upper Yellowstone.

Mr. Hugh Zackheim, Montana Wildlife Federation rose to speak in opposition to SB 464.

Mr. Pat Smith, Northern Plains Resource Council, also spoke in opposition to SB 464 and submitted a written statement (see attachment).

Representative Willie Day, District 54, also spoke in opposition to SB 464. He said the House of Representatives is also concerned about this area and has a bill in the Select Water Committee which he feels would address this problem better.

Senator Galt made a brief closing statement and Chairman Roskie opened the hearing to questions from the Committee. Several questions were addressed to Mr. Ted Doney about the present operation of the water reservation system.

DISPOSITION OF SB 464: Senator Manley moved that SB 464 receive a DO PASS recommendation. Senator Brown made a substitute motion that SB 464 receive a DO NOT PASS recommendation and stated that he felt this bill was premature. There was further discussion and then Chairman Roskie called for a roll call vote on Senator Brown's motion. The motion failed (see attachment). Chairman Roskie then called for a roll call vote on Senator Manley's motion that SB 464 recieve a DO PASS recommendation. The motion carred (see attachment).

The Committee then recessed briefly while those visitors only interested in SB 464 left the committee room.

CONSIDERATION OF SB 515: "An act to make only those amendments necessary to bring the Montana strip and underground mine reclamation act into compliance with public law 95-87, the surface mining control and reclamation act of 1977; to repeal the strip-mined coal conservation act; amending sections 70-30-102, 82-4-202 through 82-4-205, 82-4-221 through 82-4-223, 82-4-225, 82-4-227, 82-4-228, 82-4-231, 82-4-232, 82-4-235, 82-4-239, 82-4-251, 82-4-252, 82-4-254; and repealing sections 82-3-101 through 82-3-110, MCA."

Chairman Roskie called on Senator Carroll Graham, District 29, to explain SB 515 to the Committee. Senator Graham submitted his comments in written form (see attachment). Senator Graham also proposed some amendments to SB 515 (see attachment) which would further clarify that the major provisions apply to coal mining only and not to uranium mining.

Chairman Roskie then called for any other proponents to SB 515. Mr. Leo Berry, Department of State Lands, stated that they support SB 515. Mr. Jim Mockler, Montana Coal Council, stated that both he and Mr. Berry assisted in working on this bill and he had some amendments to propose to the Committee for their consideration (see attachment).

Chairman Roskie called for any opponents to SB 515 and, hearing none, opened the hearing to questions from the Committee. There

was some discussion about the amendments proposed by Senator Graham and by Mr. Mockler.

DISPOSITION OF SB 515: Senator Brown moved the acceptance of all amendments. The motion carried unanimously. Senator Dover then moved that SB 515 receive a DO PASS as Amended recommendation. The motion carried unanimously.

Senator Jergeson then requested the disposition of SB 478 as he would have to leave the hearing to attend a Joint Rules Meeting. Chairman Roskie reread the amendments adopted in the meeting on February 16. Senator Jergeson then explained the amendments to the members who had not been present on Friday.

DISPOSITION OF SB 478: Senator Jergeson moved that SB 478 receive a DO PASS as Amended recommendation. The motion failed. Senator Dover moved that SB 478 receive a DO NOT PASS as Amended recommendation and reverse the vote from Senator Jergeson's motion. The motion carried.

CONSIDERATION OF SB 514: "An act to generally revise the Montana Major Facility Siting Act by amending sections 75-20-104, 75-20-211, 75-20-213, 75-20-215, 75-20-216, 75-20-218 through 75-20-220, 75-20-304, 75-20-501, and 75-20-503, MCA: also amending section 75-20-1102, MCA; and repealing sections 75-20-221, 75-20-222, 75-20-301, and 75-20-303, MCA."

Chairman Roskie turned the chair over to Vice-Chairman Harold Dover while he presented his bill to the Committee. Senator Roskie, District 21, stated that SB 514 would bring the Montana Facility Siting Act into a more workable operation so that we can all get on with getting the job done. Senator Roskie summarized some of the areas SB 514 addresses. He then submitted the testimony of Mr. Ward Shanahan, a proponent to SB 514, who was unable to attend the hearing (see attachment).

Senator Roskie then called on Mr. John Ross, an attorney with the Montana Power Company, who further highlighted the changes proposed by SB 514. Mr. Ross submitted his comments in written form (see attachment).

Vice-Chairman Dover called for any other proponents to SB 514. Mr. Ronald Waterman, Dreyer Brothers Inc., stated that he supported SB 514. Mr. Gene Phillips, Pacific Power and Light Company, said he was also in favor of SB 514. Mr. Jim Mockler, Montana Coal Council, also spoke in support of SB 514. Ms. Janelle Fallan, Montana Chamber of Commerce was also in favor of SB 514.

Vice-Chairman Dover then called for any opponents to SB 514. Mr. Clancy Gordon spoke in opposition to SB 514 and submitted his comments in written form (see attachment).

Ms. Joan Miles, Environmental Information Center, also spoke in

opposition to SB 514 and submitted her comments in written form (see attachment).

Mr. Charles Yarger, Northern Plains Resource Council, also spoke in opposition to SB 514 and submitted his comments in written form (see attachment).

Mr. Mike Meloy, representing Citizens for the Siting, an organization interested in maintaining the integrity of the Major Facility Siting Act, spoke in opposition to SB 514. Mr. Meloy said there are internal inconsistencies in the language throughout the bill and that it replaces with that new language a new set of rules and guidelines that we operate under. He also stated that SB 514 provides for some additional very cumbersome processes and asked the Committee to consider HB 829 as an alternative. He also said that the new process provides for a cumbersome system of negotiations on the filing fee. Mr. Meloy also pointed out that SB 514 amends two very important portions in the Siting Act and takes out all the environmental considerations in the bill.

Ms. Dawn North, League of Women Voters, spoke in opposition to SB 514 and submitted her comments in written form (see attachment).

Mr. Tom Scheider, representing the Public Service Commission out of Billings, spoke in opposition to SB 514 and pointed out that the time frame was totally unrealistic and provides for no PSC funding.

Mr. Ted Doney, Director of the Department of Natural Resources, spoke in opposition to SB 514 in its present form. He said he does support parts of this bill, however, as well as supporting HB 829.

Ms. Carol Brass, Nuclear Vote organization, spoke in opposition to SB 514 and submitted her comments in written form (see attachment).

With no other opponents to SB 514, Senator Roskie closed. He pointed out to the Committee that SB 514 was a concerted effort by a great many people and he felt a little experience was worth a year of hearings.

ADJOURNMENT: The Committee adjourned at 2:30 P.M. with the understanding that the hearing would continue upon adjournment of the Senate session.

George F. Roskie

SENATOR GEORGE F. ROSKIE, CHAIRMAN

SENATE COMMITTEE NATURAL RESOURCES

Date February 19, 1979 Senate Bill No. 464 Time

NAME	YES	NO
ROSKIE, George F., Chairman		↘
DOVER, Harold L., Vice-Chairman		↘
BROWN, Steve	↘	
ETCHART, Mark		↘
JERGESON, Greg	↘	
LOCKREM, Lloyd C., Jr.		↘
LOWE, William R.		↘
MANLEY, John E.		↘
STORY, Pete		↘
THIESSEN, Cornie R.		↘

SHARON NASON
Secretary

GEORGE F. ROSKIE
Chairman

Motion: By Senator Brown that SB 464 DO NOT PASS

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE NATURAL RESOURCES

Date February 19, 1979 Senate Bill No. 464 Time

NAME	YES	NO
ROSKIE, George F., Chairman	✓	
DOVER, Harold L., Vice-Chairman	✓	
BROWN, Steve		✓
ETCHART, Mark	✓	
JERGESON, Greg		✓
LOCKREM, Lloyd C., Jr.	✓	
LOWE, William R.	✓	
MANLEY, John E.	✓	
STORY, Pete	✓	
THIESSEN, Cornie R.	✓	

SHARON NASON
Secretary

GEORGE F. ROSKIE
Chairman

Motion: By Senator Manley that SB 464 DO PASS

(include enough information on motion—put with yellow copy of committee report.)

SENATE COMMITTEE NATURAL RESOURCES

Date February 19, 1979 Senate Bill No. 478 Time

NAME	YES	NO
ROSKIE, George F., Chairman		✓
DOVER, Harold L., Vice-Chairman		✓
BROWN, Steve	✓	
ETCHART, Mark		✓
JERGESON, Greg	✓	
LOCKREM, Lloyd C., Jr.	✓	
LOWE, William R.		✓
MANLEY, John E.	✓	
STORY, Pete		✓
THIESSEN, Cornie R.		✓

SHARON NASON
Secretary

GEORGE F. ROSKIE
Chairman

Motion: By Senator Jergeson that SB 478 DO PASS as Amended.

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE NATURAL RESOURCES

Date February 19, 1979 Senate Bill No. 478 Time

NAME	YES	NO
ROSKIE, George F., Chairman	✓	
DOVER, Harold L., Vice-Chairman	✓	
BROWN, Steve		✓
ETCHART, Mark	✓	
JERGESON, Greg		✓
LOCKREM, Lloyd C., Jr.		✓
LOWE, William R.	✓	
MANLEY, John E.		✓
STORY, Pete	✓	
THIESSEN, Cornie R.	✓	

SHARON NASON
Secretary

GEORGE F. ROSKIE
Chairman

Motion: By Senator Dover that SB 478 DO NOT PASS as Amended.

(include enough information on motion—put with yellow copy of committee report.)

Date 2/19/79

ROLL CALL

Natural Resources COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
ROSKIE, George F., Chairman	✓		
DOVER, Harold L., Vice-Chairman	✓		
BROWN, Steve	✓	✓	
ETCHART, Mark	✓	✓	
JERGESON, Greg	✓		
LOCKREM, Lloyd C., Jr.	✓	✓	
LOWE, William R.	✓		
MANLEY, John E.	✓		
STORY, Pete	✓		
THIESSEN, Cornie R.	✓		

Each Day Attach to Minutes.

SENATE

STANDING COMMITTEE REPORT

February 19, 1979

MR. President:

We, your committee on Natural Resources

having had under consideration Senate Bill No. 473

Respectfully report as follows: That Senate Bill No. 473 introduced bill, be amended as follows:

1. Page 2, line 17.
Following: "by"
Insert: "a regulated utility or"

2. Page 2, line 24.
Following: ";"
Strike: "and"

3. Page 3, line 2.
Following: "approval"
Strike: "."
Insert: "; and"

XDO PASS

(Continued)

Chairman.

STATE PUB. CO.
Helena, Mont.

4. Page 3, line 3.
Following: line 2
Insert: "(d) energy conversion facilities owned solely by the rural electric cooperatives or by utilities regulated by the public service commission."

5. Page 3, line 16.
Following: "by"
Insert: "a regulated utility or"

6. Page 3, line 23.
Following: ";"
Strike: "and"

7. Page 4, line 1.
Following: "approval"
Strike: "."
Insert: "; and"

8. Page 4, line 2.
Following: line 1
Insert: "(d) energy conversion facilities owned solely by the rural electric cooperatives or by utilities regulated by the public service commission."

And, as so amended,
DO NOT PASS

Senator George F. Roskie, Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

February 12 19 79

MR. President

We, your committee on Natural Resources

having had under consideration Senate Bill No. 464

Respectfully report as follows: That Senate Bill No. 464

DO PASS

P.Q.

George F. Roskie Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

February 13, 19 79

MR. President

We, your committee on Natural Resources

having had under consideration Senate Bill No. 515

Respectfully report as follows: That Senate Bill No. 515,
introduced bill, be amended as follows:

1. Page 14, line 18.
Following: line 17
Strike: "underground-coal-mining"
Insert: "underground-mining"

2. Page 18, line 13.
Following: "of"
Strike: "the"
Insert: "coal"

3. Page 22, line 1.
Following: "a"
Insert: "coal mining"

DO PASS

(Continued)

Chairman.

STATE PUB. CO.
Helena, Mont.

4. Page 26, line 22.
Following: "a"
Strike: "strip-mining or underground-mining"
Insert: "strip- or underground-coal-mining"

5. Page 27, line 6.
Following: "proposed"
Strike: "surface-coal-mining"
Insert: "strip- or underground-coal-mining"

6. Page 27, line 24.
Following: "conduct"
Strike: "surface-coal-mining"
Insert: "strip- or underground-coal-mining"

7. Page 28, line 7.
Following: "mine"
Insert: "coal"

8. Page 29, lines 11 and 12.
Following: "may" on line 11
Strike: remainder of line 11 through "mining" on line 12
Insert: "strip- or underground-coal-mining"

9. Page 29, line 24.
Following: "No"
Strike: "surface mining"
Insert: "strip-or underground-mining"

10. Page 31, line 7.
Following: "or"
Strike: "underground-mining"
Insert: "underground-coal-mining"

11. Page 31, line 14.
Following: line 13
Strike: "strip-mining or underground-mining"
Insert: "strip-or underground-coal-mining"

12. Page 31, lines 18 and 19.
Following: "a" on line 18
Strike: remainder of lines 18 through "underground-mining" on line 19
Insert: "strip-or underground-coal-mining"

(Continued)

Chairman.

STATE PUB. CO.
Helena, Mont.

13. Page 31, line 21.
Following: "or"
Strike: "underground-mining"
Insert: "underground-coal-mining"

14. Page 34, lines 22 through 24.
Strike: subsection (6) in its entirety

15. Page 40, line 2.
Following: "or"
Strike: "underground-mining"
Insert: "underground-coal-mining"

16. Page 44, line 2.
Following: "For"
Insert: "coal mining on"

17. Page 45, line 6.
Following: "pollution,"
Insert: "and"

18. Page 45, lines 8 through 10.
Following: "removal," on line 8
Strike: remainder of line 8 through "graded," on line 10

19. Page 46, line 15.
Following: "for prime farmlands"
Insert: "mined for coal"

20. Page 54, line 25.
Following: line 24
Strike: "underground-mining"
Insert: "underground-coal-mining"

21. Page 56, line 10.
Following: line 9
Strike: "underground-coal-mining"
Insert: "underground-mining"

22. Page 58, line 9.
Following: line 8
Strike: "underground-coal-mining"
Insert: "underground-mining"

23. Page 61, line 1.
Following: "to enforce"
Insert: "or implement"

(Continued)

Chairman.

STATE PUB. CO.
Helena, Mont.

24. Page 70, line 18.
Following: "Applicability."
Insert: "(1) This act does not become effective until the secretary of interior has conditionally or finally approved the state's permanent regulatory program under Public Law 95-87; however, rules pursuant to this act may be adopted pursuant to Title 2, chapter 4, prior to the effective date of this act and shall become effective only on the effective date of this act.
(2)"

And, as so amended,
DO PASS

Senator George F. Roskie Chairman.

STATE PUB. CO.
Helena, Mont.

SENATE *Natural Resources* COMMITTEE

BILL *464* VISITORS' REGISTER DATE *2/14/7*

Please note bill no. (check one)

NAME	REPRESENTING	BILL #	SUPPORT	OPPOSE
Tom & Donna Gray	myself	464		X
W. Parker	self	464		X
John Morrison	MWPA	"		✓
Myron D. Greene	myself	464		✓
Charles M Rein	Sweet Grass Conservation Dist.	464	✓	
Al Kersich	Myself	"	✓	
Ron Jackson	MACD	464	✓	
Otto Jackson	Water-Mont	464	✓	
Franklin Grosfield	Self	464	✓	
Ted Lucas	self	464	✓	
Vern Reesler	Self	514 464		✓
Leonard R. Sargent	ERC	464		✓
Charlotte Easter	self	464		✓
Lou Ann Crowley	self	464 514		X
John Gardner	self	514		✓
Alex Thompson	self	464		✓
Sandy Sargent	self	464		✓
Donna Casey	Self	464		✓
[illegible]	self	464		✓
Ted J. Doney	DNRC	464 514		✓
Tom Schneider	PSC Self	514		✓
T. Dowling	Mont. RR Assn	464 514 513		—
Richard W. Gillett	Self	514 515		
Jim Borngrover	self	464		✓

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

SENATE _____ COMMITTEE

BILL _____ VISITORS' REGISTER DATE _____

Please note bill no.

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPOSE
Bob Anderson	DNRC	514		✓
Jim Mockler	Mont Coal Council	514 506 515	✓ ✓	
Lee Brady	Dept of State Lands	515	✓	

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

NAME: Franklin Grosfield DATE: Feb 19

ADDRESS: Big Timber

PHONE: 932-2033

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: SB424

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

COMMENTS: Amend to clarify that Yellowstone Basin is included

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Charles M Rein DATE: 2-19-79

ADDRESS: Box 174 Melville Rt Big Timber, Mt

PHONE: 537-4485

REPRESENTING WHOM? Sweet Grass Conservation District

APPEARING ON WHICH PROPOSAL: SB 464

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

COMMENTS: Will testify

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: A. L. Kovach DATE: 2/10/09

ADDRESS: 2204 Bath Drive

PHONE: 656-1552

REPRESENTING WHOM? HWDA

APPEARING ON WHICH PROPOSAL: SB 464

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

COMMENTS:

Water Reservations are available at this time. Cannot be administered or financed. Amendments can be made to the permit system to handle Reservations

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Bob Jackson DATE: 2-19-79

ADDRESS: 1804 11TH AVE.

PHONE: 443-5541

REPRESENTING WHOM? WETA - MONT

APPEARING ON WHICH PROPOSAL: SB 464

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Ted J. Doney DATE: 2/19/79

ADDRESS: 32 S Ewing, Helena

PHONE: 449-3712

REPRESENTING WHOM? State Dept. Natural Resources

APPEARING ON WHICH PROPOSAL: 464; 514

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: John R. Parker DATE: 2/19/99

ADDRESS: 1113 S. 5th Ave Bozeman

PHONE: 586-7488

REPRESENTING WHOM? Self & Gallatin Wildlife Assn

APPEARING ON WHICH PROPOSAL: SB 464

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

COMMENTS: Will leave copy of statement

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: John Wilson DATE: 2/19/79

ADDRESS: Rt #1 Box 111 Belgrade, MT

PHONE: 388-4979

REPRESENTING WHOM? Mt. Council of Trout Unlimited

APPEARING ON WHICH PROPOSAL: SB 464

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

COMMENTS: Test. submitted

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Willa Hall DATE: 2-19

ADDRESS: 1502 Peosta

PHONE: 442 7495

REPRESENTING WHOM? League of Women Voters of MT

APPEARING ON WHICH PROPOSAL: SB 464

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

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: John Maxwell DATE: 8-2-19

ADDRESS: 307 S. 10th. Livingston Mt.

PHONE: 220 3562

REPRESENTING WHOM? signers of a petition against 464

APPEARING ON WHICH PROPOSAL: 464

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

COMMENTS: my testimony will be oral

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Bob Biggerstaff or Ronald Jackson DATE: 2-19-79

ADDRESS: Helena, MT.

PHONE:

REPRESENTING WHOM? MACD

APPEARING ON WHICH PROPOSAL: 464

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

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Hugh Zackheim DATE: _____

ADDRESS: _____

PHONE: _____

REPRESENTING WHOM? Montana Wildlife Federation

APPEARING ON WHICH PROPOSAL: SB 464

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Tim Smith DATE: 2/16/05

ADDRESS: _____

PHONE: _____

REPRESENTING WHOM? NPRC, 4BW 04 - Several Conservation Districts

APPEARING ON WHICH PROPOSAL: SB 4641

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Robert E. Carroll DATE: Feb 19, 1978

ADDRESS: Box 4222 Helena MT

PHONE: 442-0978

REPRESENTING WHOM? self

APPEARING ON WHICH PROPOSAL: SB 464

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

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Jim Mockler DATE: 2/12/79

ADDRESS: 2301 Colonial Dr

PHONE: 442-6223

REPRESENTING WHOM? Mont Coal Council

APPEARING ON WHICH PROPOSAL: 515, 514, 506

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Leo Berry DATE: _____

ADDRESS: _____

PHONE: _____

REPRESENTING WHOM? Department of State Lands

APPEARING ON WHICH PROPOSAL: SB 515

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Ronald F. Waterman DATE: 2/19/79

ADDRESS: P.O. Box 1686, Helena

PHONE: 2-8560

REPRESENTING WHOM? Dreyer Bros. Inc.

APPEARING ON WHICH PROPOSAL: SB 514

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: _____ DATE: _____

ADDRESS: _____

PHONE: _____

REPRESENTING WHOM? _____

APPEARING ON WHICH PROPOSAL: _____

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Don Miller DATE: Feb 18 79

ADDRESS: 402 Hayes Helena

PHONE: 443-5687

REPRESENTING WHOM? Environmental Information Center

APPEARING ON WHICH PROPOSAL: 514

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Charles Yeager DATE: 2-19-79

ADDRESS: Power Plant

PHONE: 445-3427

REPRESENTING WHOM? Northern Plains Resource Council

APPEARING ON WHICH PROPOSAL: SB 514

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

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Mike Mealoy DATE: 2/19/79

ADDRESS: Executive Blvd Helena

PHONE: 442-2442

REPRESENTING WHOM? Citizens for the Single Act

APPEARING ON WHICH PROPOSAL: SB 514

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Dawn A. North DATE: 2/19/79

ADDRESS: 914 Breckenridge, Helena, Montana

PHONE: 443-4284

REPRESENTING WHOM? The League of Women Voters of Mont

APPEARING ON WHICH PROPOSAL: SB 514

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

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Tom Schneider DATE: _____

ADDRESS: 1227 11th Ave Helena

PHONE: 449-3018

REPRESENTING WHOM? PSC/Self

APPEARING ON WHICH PROPOSAL: 514

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Bob Kiesling DATE: 2-19-77

ADDRESS: Box 1184 Helena

PHONE: 443-2520

REPRESENTING WHOM? Environmental Information Center

APPEARING ON WHICH PROPOSAL: SB 464 and SB 506

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

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: John R Stillman DATE: Feb 19, 79

ADDRESS: Shields Rt. Livingston, Mt

PHONE: 222-6173

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: SB 464

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

COMMENTS: Did not testify

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: [illegible] DATE: 2/17/77

ADDRESS: Box 1618 [illegible], MT

PHONE: 222 1673

REPRESENTING WHOM? [illegible]

APPEARING ON WHICH PROPOSAL: SB 464

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

COMMENTS: [illegible]

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Ted Lucas DATE: 2/14/79

ADDRESS: Highwood, Mont

PHONE: 733-2709

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: SB 464

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

COMMENTS: I live on Missouri drainage. Do not want this water to go the way of the Yellowstone.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Testimony on Senate Bill 464

to the

Natural Resources ~~Agriculture~~ Committee of the Montana Senate

by Franklin Grosfield

I'm a rancher from Sweet Grass County and was a conservation district Supervisor during the Yellowstone Water Reservation proceedings. I have also served as a Director, Legislative Chairman and Water Resource Chairman for the Montana Assoc. of Conservation Districts.

On the basis of our experience in the Yellowstone Basin, it is my view that water reservations are a good idea but that in practice the process doesn't produce the desired results. I think the administrative proceedings have produced a result that is contrary to the legislative intent.

I don't entirely understand the final order granting water reservations by the Board of Natural Resources and Conservation, and I doubt if anyone does. It is lengthy, complicated, confusing and inconsistent among other things. It appears that the end result will be very much like that proposed in the scenic and wild rivers legislation which the Montana Legislature has several times refused to enact.

Many of us looked at water reservations as an opportunity provided by the legislature to make a legal claim on water for future needs in order to provide for the orderly development of agriculture, industry and cities and towns, as well as for water quality and fish and wildlife. What we got from the Board of Natural Resources instead was a system that will be very useful in preventing future development for agriculture or anything else.

Let's look at the stretch of river from Gardiner to the mouth of the Big Horn. Conservation districts were given third priority after the relatively large amount of water granted Fish and Game with a second priority. This means the instream grants must be satisfied before conservation districts can get any water. The Fish and Game reservation is the 95th percentile above Billings, which means their reservation will be met or exceeded 95% of the time. But at Billings, the instream reservation varies each month in a range from 50 to 80 percent. In August, for example, it is the 65th percentile which means that 35 years out of 100 the instream reservation at Billings will not be met. When this happens, Fish and Game will be out looking for more water and they will find several junior agricultural rights upstream including conservation district reservations and all water use permits dated after December 15, 1978 which they can shut off in August at least 35 percent of the time.

Now I ask you, how much water development is going to occur when water is available less than two years out of three ?

I think you can see that the 95th percentile figure for instream reservations is meaningless and I don't know why the Board used it. Either it was an attempt to pay some kind of lip service to agriculture or they don't fully understand that water flows downhill.

Even if we had been given a good reservation, the administrative rules would probably prevent development of most of it. Conservation districts' reservations must meet several very difficult requirements or DNRC may reduce their reservations any time in the future. The requirements for instream reservations, on the other hand, are met as soon as the fish swim in the water and the birds do their thing overhead. It is going to be difficult and probably impossible to reduce instream reservations once they are granted.

I would also point out that water reservations is a very costly procedure to the State so passage of Senate Bill 464 would result in saving those funds for a better purpose.

My conclusion is that we tried the water reservation process in the Yellowstone Basin, that we made an awful mistake in so doing, and that we should not repeat that mistake in the rest of Montana.

February 19, 1979

My name is Charles M. Rein. I am representing the Sweet Grass County Conservation District. I am also a director for Area IV of the Montana Association of Conservation Districts. I am testifying in favor of Senate Bill 464.

Water and its quality have always been major concerns for Montana! Lets keep it that way! Why not use Montana's water in Montana instead of keeping the water instream and letting it flow out of state. When the Fish and Game instream permit is gradually filed on by our neighbors across the state line, the water will be gone forever. These other states will have the benefit of economic growth due to the use of our water. As technology permits, agriculture will turn barren waste lands into productive farm and pasture land. Industry will create jobs and expand the tax base. All with Montana water. However without the use of its water, Montana will have little expansion of agriculture or industry.

Irrigation not only increases what our land will produce, but also is an integral factor in maintaining constant stream flow. As water soaks through the top soil, much of it joins underground water sources and slowly finds its way back to the river. This process creates a highly effective off-stream storage system which helps maintain a constant flow in Montana's rivers. Also if incentives for off-stream storage are provided, some spring run off can be stored for use in the dry, low flow months.

Because irrigation is a seasonal farm practice, control of how much water we take from our rivers is necessary. I propose that we repeal the Water Reservation and go back to a permit system administered by the legislature. This way the citizens of Montana, instead of a few appointed officials, will have control over their water.

Montana must have the opportunity to use its water as it passes through the state. Without this basic and vital resource the generations to follow will be forced to maintain a way of life much the same as we know it today. Are we as citizens of Montana today making responsible decisions concerning the use of water in Montana tomorrow?

SUPPORTER'S SB 464

~~WETA - MONT.~~
MONT. STOCK GROWERS
MONT. WOOL GROWERS
MONT. CATTLEMEN
CHAMBER of COMMERCE
MONT ASSOCIATED UTILITIES
~~MT. COAL COUNCIL~~
GARFIELD-McCOON LEG. GROUP
PARK COUNTY PROTECTIVE ASSC.
SWEETGRASS PROTECTIVE ASSC
ASSC. GENERAL CONTRACTORS
MONT REALTORS ASSC.
(trip) PEOPLE FOR PROGRESS
FARM BUREAU
WETA - MONT

Helena, Montana
February 19, 1979

Senator George Roskie, Chairman
Natural Resources Committee
Senate
Capital Building
Helena, Montana 59601

Dear Senator Roskie:

I am in opposition to Senate Bill 464.

In my opinion this bill, by eliminating legal authority for government entities to make reservations of water, would endanger urban, business and industrial water supplies, agricultural water needs, human health, fish, wildlife and recreation. It would also guarantee endless additional litigation.

Water is certainly a controversial subject, and no doubt will become even more controversial in the future. Senate Bill 464 is a simplistic attempt to dodge the issues rather than facing and solving them equitably for all interests.

Any time a bill has such detrimental potential across the board for Montanans, it deserves a speedy demise.

I urge you to vote against Senate Bill 464.

Sincerely,

Robert E. Carroll

Robert E. Carroll
P.O. Box 4222
Helena, Montana

REC:jw

12

NAME: John O. Bray DATE: 2/19/79

ADDRESS: PO Box 27 Pray, MT 59065

PHONE: 333-4355

REPRESENTING WHOM? myself & wife (ranchers)

APPEARING ON WHICH PROPOSAL: SB464

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

(1) I am a rancher-farmer and I believe that agriculture has an important role to play in the future of our state. Over the long range food will be in greater demand.

COMMENTS: SB464 would force a rancher/farmer to apply for water use permits; the basis for granting water use permits is a demonstrated need for beneficial use, and one of the findings is that the water will be used; no allowance is made for possible future uses (i.e. more land coming into production). The reservation granted by the Board of Natural Resources places a blanket of protection over agriculture and provides for possible future expansion. The same objection to SB464 applies to cities. (2) SB464 would relieve industries in Eastern Montana of the expense of building small water storage, because they could simply pump out of the River, but in low water months or drought years the River could fail to provide for their needs. They would create a demand for up-stream storage to even out flows and create a dependable water supply (for example it would revive the Allenspur Dam proposal)

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

It is not my intent to place an undue burden on industrial users. However, I believe industry should pay its own way and be ~~to~~ placed in a position where they understand the need to conserve water.

(over)

(3) The recreation protect water quality in accordance with already established standards of in stream flow over below the recreation established by the Board (with water quality in mind among other purpose) the SEO would be in conflict with itself by having created a situation by one law (SB 464) which would be in conflict with water quality statutes and standards.

(4) SB 464 is poor planning of the type that created the Colorado River situation. The Colorado does not even flow to its mouth and its lower reaches are relegated to the point of being almost useless. Historically this happened to the Colorado because of an attitude of allowing any use on a first come - first served basis with no concern for in-stream flows to protect the river as a resource and no real concern for what might happen in the future.

STATEMENT CONCERNING SB 464 46th LEGISLATURE

by John P. Parker
1113 S. Bozeman, MT 59715

Feb. 19, 1979

I am John P. Parker, a retired teacher from Bozeman where I have lived most of my life. Because I think of Clean, free-flowing streams as part of Montana's priveless heritage, and because I had the time, I've tried to make myself informed about Montana water law and particularly the process of alloting the Yellowstone kiver waters. I read the thick Environmental Impact Statements, some of the hearing records, The Montana-Wyoming Water Compact, and attended two all-day meetings of the Board of Natural Reszources and Conservation last fall while they were preparing their recommendations. This hardly makes me an expert, but it apparently reflects more time and effort than the average citizen has invested in the question "Who Gets the Water?"

I believe strongly in the principles underlying Article IX of the Montana Constitution titled "Environment and Natural Resources" which begins "The State and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations." Were you to pass SB464, I don't think you could fulfill that Constitutional mandate.

Sub-section (3) of Section 3 "Water Rights" says that "all the surface, underground, flood and atmospheric waters...of the State are the property of the State for the use of its people and are subject to appropriation for beneficial uses." To me, this means that those waters belong to all of us, farmers, industrialists, city dwellers, fishers--every kind of citizen, and that no one group is entitled to all of them, or to exclude any other group from a fair share of them.

My confidence in the governmental system under which we live was reinforced by my day-long observations of the meetings of the Board of Natural Resources and Conservation. This board of seven diverse

citizens from seven different areas, parties, and occupations, takes it work seriously. They read the mountains of testimony taken, weigned the arguments, projected the results of possible decisions, and voted their consciences. I feel fortunate to have been served by them in the long-drawn out proceeding about the Yellowstone River waters.

Now comes Senate Bill 464 which ~~would~~ wipe out the careful work of the Board and prevent a careful and just allocation of the waters in the other major basins of the State. It seems most unlikely to me those who drafted this bill have invested anything like the time and thought and discussion that went into the writing of Article IX of the Constitution or the Water Use Act of 1973 which first made legal the principle of water reservations for beneficial purposes.

Rather, it appears to me that this is a vindictive measure by powerful economic interests to get more water than the law allows, to prevent future generations of farmers, city dwellers, businesses, and sportmen from sharing this water of ours, not yours or mine, but ours. The reservation principle is certainly an idea whose time has come. The pioneer standard of "first in time; first in right" when applied arbitrarily does not fit conditions prevailing today, nor as they shall probably exist in the future. For example, the City of Billings asserts that they may have 300,000 people using their city water by the year 2050. And they may be right. If they are, the water for that population has got to be provided. Unless it is "reserved" now, it will be claimed by some one else and not available in 2050. The water in the lower Yellowstone is already of only marginal potability during the low-water months. Allowing it to be further drawn down will result in dangerously polluted water supplies for places like Miles City and Glendive. Reservations can prevent further degradation.

Reservations were granted to numerous Soil Conservation Districts in the Yellowstone basin so that there may be a modest expansion of

of farming and ranching in the years to come. I t would be unfortunate if this could not take place because all the water had been claimed by others, such as industrial or municipal users.

I suspect that much of the resentment against the reservation principle has come about from "hard-headed" business interests who think that saving water for the fish is a foolish luxury. It is true the Fish and Game Commission requested a large reservation in the Yellowstone, and they got a good bit of what they asked for. The law required them to make a vigorous attempt to preserve fish and game habitat. However, much of their reservations over-lap with those of the Department of Health and Environmental Sciences. The reservations of these latter are primarily to ensure that the water in the Yellowstone remains fit to drink. Without a reasonable flow to flush out the river each year, it won't be.

Perhaps some economic groups think water should not be used to keep fish and related wild life alive when there are water shortages. Yet the possibility of fishing and hunting along and in our streams is a part of our way of life, and pretty important to lots of our people. The Constitution makes it clear that the water is just as much theirs as it is the ranchers, the industrialists or the cities.

Abolishing the reservation principle opens the way for all comers-- great and small but with ~~the~~ a heavy advantage to the big ones-- to file claims on our river waters. What would be left then? And what will we do if Wyoming makes good on its claim to 70% of the waters in the Clark's Fork, Toungue, Powder, and Big Horn Rivers? They have already decided to take most of the Little Big Horn for a slurry line.

The Water Use Act of 1973 implementing Article IX of the Constitution seems to me to represent prudent stewardship of Montana waters--our, including ~~my waters~~ mine. I don't like what this bill would do to eviscerate that Act. I hope this committee will have courage and fore-sight to recommend that it Do Not Pass.

Thank you

February 18, 1979

Mr. Chairman, distinguished members of the committee, my name is John Wilson, and I represent the Montana Council of Trout Unlimited.

I rise in opposition to SB 464 for a myriad of reasons, future protection of fish and wildlife habitat being a major reason. I wish to speak to you today about Montana's Water Use Act, about the necessity of planning, and about the future values of recreation in this state.

When the Montana Water Use Act was passed by this body in 1973 it was hailed as a landmark piece of water legislation. By drawing upon years of practical and legal experience that legislature authored an Act which had the ability to deal with the often thorny questions surrounding water rights and water reservations. Built into the Act was a far sighted provision which allowed for governmental agencies to reserve water. This provision allowed Montanans to take control of their water through a reservation process, without being subject to the "use it or lose it" provisions of water allocation which existed prior to the enactment of the Water Use Act. Similarly, the Water Use Act acknowledges the rights of Montanans under the Montana Constitution. I quote "The state and each person shall maintain and improve a clean and healthful environment in Montana."

Further, the Act acknowledges both Montana's boom-bust history, and the value of the state's agricultural base. It allows for planning, and it protects in-stream flows which are vital to water quality and quantity necessary to protect our agricultural base in Montana.

As evidenced by the Yellowstone Moratorium the legislature wanted the Water Use Act to work; they have gone to special

lengths to help this fledgling law through its first flight. The results of this first flight have evidenced two things. First, that fine tuning is necessary in the area of water rights adjudication. Second, that the reservation process does work!

As you all know, SB 76 currently before the legislature is addressing the adjudication problem. I refer you to a January 14, 1979 Billings Gazette article by Dr. Wilson Clark entitled "Most got what they asked in Yellowstone water". Dr.Clark is a member of the Board of Natural Resources, the body which spent many years agonizing over a just and equitable water settlement under the Water Use Act. As evidenced by Dr. Clark's article, the Board and the process were successful!

Now with the introduction of SB 464 we are being asked to throw all of this to the wind. We are being asked to revert back to 'first come-first served' allocation. We are being asked to trash our best planning tool. We are inviting other states, non - agricultural interests, and the federal government to take control of Montana's water. We are forgetting that each reservation that is granted must establish that it is "in the public interest".

Dr. Thomas Power, Associate Professor of Economics at the University of Montana has estimated that the recreational value of the Yellowstone River by the year 2000 is between $10 - 15 million per year. Multiply this by the other river basins yet to undergo the reservation process and it is conceivable that water-based recreational values in Montana could approach $1 billion per year by the year 2000. This too is being thrown to the wind.

In conclusion I wich to leave you with several matters relevant to the legislation before you.

First, the Montana Water Use Act acknowledges that water rights cannot be granted infinitely. Second, the Montana Water Use Act recognizes the need for future planning with regard to water resources and provides the mechanism to do so. Third, Montana water should be used for Montanans. And fourth, if Montanans were only primarily concerned with earning the highest money income possible the state long ago would have been largely abandoned.

We, the members of Trout Unlimited, respectfully request a DO Not Pass on SB 464.

ILLINGS GAZETTE
anuary 14, 1979

Most got what they asked in Yellowstone water

By DR. WILSON F. CLARK

A healthy majority of the applicants for water reservations were granted all or nearly all of their requests in the final decisions on the Yellowstone Basin water reservations made by the State Board of Natural Resources Dec. 15.

The board members were inclined to grant, in each case, the largest reservation that could be justified by the application, the record, the evidence and the available water supply. The water is now assured through the year 2000 or more for the growth of the cities, for the considerable expansion of irrigation agriculture and for maintaining adequate flows left in-stream — to the extent that ol' Ma Nature doesn't put us into more than two or three really low flow years out of each decade.

These decisions were the last step in a long legal and study process that started in 1974 when the Yellowstone moratorium went into effect. The moratorium was the result of growing concern over large industrial requests for water.

IT GAVE A BREATHING SPACE by prohibiting industrial water grants until "public bodies" had a chance to apply for water reservations to meet their expected growth through the year 2000 or after. The "public bodies" finally applying were eight cities, 14 conservation districts, two irrigation districts, four state agencies, and two federal agencies.

Even though the study and application process started in 1974, it was not until mid-September of 1978 that the state board at last had the green light to try to make its decisions. The long and laborious process up to that time often involved much more heat than light, for each applicant fiercely defended its own application, and just as fiercely attacked some of the other applications.

Unfortunately that adversary process is what the laws demand. Many absurd statements were made, however, and accepted as gospel truth. For instance, repeatedly heard was the statement — "if all of the reservations were granted, the river would be dry, since the total of all reservations is two and one-half times the flow of the river."

HOW SILLY THAT STATEMENT WAS is shown by the final results. The board rather wistfully wishes that folks would not get themselves upset, irate and polarized on the basis of emotions and irresponsible comments. It wishes advocates of every complexion would outgrow their childish tunnel vision.

So what really happened?

For the eight cities that did apply (out of 60 towns and cities in the Yellowstone Basin), the biggest problem seemed to be that they evidently did not understand that the water reservation was to cover only their expected increase in water needs.

The water a city has assured to it for around year 2000 is its present use plus the reservation. A second problem was that most of the cities requested very large increases in gallons per person per day over what they now use.

Lots of data showed that the average now is about 210 gallons per person per day. Yet Big Timber asked for 625. The board finally settled on 250 gallons per person per day, and applied it to each city.

A third problem was in the population estimates. Four cities (Big Timber, Columbus, Laurel and Broadus) gave estimates that were supported by several projection studies, and their population figures were accepted or only slightly modified. For three others (Livingston, Miles City and Glendive), their population estimates could not be supported, and the board used population figures considerably lower than those estimates.

THE TOUGHEST ONE WAS BILLINGS. It requested 472 gallons per person per day for a population of 600,000 people for the year 2070. There was no way the board or anyone else could say that the year 2070 population estimate was right or wrong — only time will tell. The board finally accepted a population figure and year which was in the Billings application and data. That year also used about 235 gallons. The final Billings reservation was for year 2010, at 250 gallons per person per day, for a population of 206,000. So Billings actually got more water than it requested for that year.

The total of the irrigation requests was for 1,176,559 acre feet of water to irrgate 443,711 new acres. The irrigation applicants did understand that the reservations were for new acreage, and in no way affected their present water rights and use. (An acre foot, by the way, is enough water to cover one acre one foot deep, or about 325,900 gallons.)

The problem here was very straightforward — was there enough water in the rivers or in planned storage to irrigate the new acres and still leave water in the rivers?

Of the 21 separate irrigation reservation applications, 10 received the full amount requested, or very nearly that amount. Three received what they asked for from the rivers directly, but were denied those parts that they said depended on storage, since the applicants themselves said they had no plans to build the storage dams. One applicant asked for 124,000 acre feet for many small units, but finally said only three units were serious requests, and the board accepted those three. Two were denied completely, since for one the applicant stated the water was already reserved in the Yellowtail Dam, and for the other because of excessive water per acre as well as for very incomplete information in the application.

THE REAL DIFFICULTIES CAME on the Tongue and the Powder Rivers. On the Tongue, the full service requests were met by requiring the Department of Natural Resources to release the needed water from a considerably expanded Tongue River Dam. On the Powder, the difficulty was that there was no storage planned, and that the flows are low and the water heavily charged with dissolved salts.

The 29-year average flow of the Powder is about 300,000 acre feet (Af) while the low flow was only about 32,000 Af. Yet the irrigation requests on the Powder were for 24,300 Af for water-spreading and 166,896 Af for full-service irrigation for a total of 191,196 Af. The board finally accepted the water-spreading requests and denied the full-service requests.

For the storage requests, the board [illegible]

TESTIMONY FOR SB 464

Feb 19, 1979

We are very concerned about the implications of this bill. We assume Government entities includes municipalities as well as the Fish and Game Dept and the Board of Health. We wonder how municipalities would obtain water or what its' quality would be if the water quantity in a river or stream was greatly reduced.

Requests for water permits will exceed the available water in at least some of the rivers of our state. Are we going to be faced with dry river beds as California is? I've seen the San Joaquin and Salinas Rivers in that state and some how I don't think the people of Montana want this - completely destroying the ecosystem, which affects not only the fish and wildlife but each one of us.

We urge a DO NOT PASS for this bill.

If you are dissatisfied with the reservations of the Yellowstone it should be handled separately, not in this bill. You can appeal the Board. until April 2.

Willa Hall,
League of Women Voters of Montana

We the undersigned oppose Senate Bill 468 for the following reasons.

1. It makes a mockery of the Montana Water Use Act and the reservation process just completed on the Yellowstone river.

2. It would take water reservation rights away from the conservation districts, citys & towns, the department of Health and Fish & Game without due process.

3. It places every drop of flowing water in this state in jeopardy and invites industry to resume its raid on Montana's rivers.

Legislative Operator: 406-5500

Vicki C. Stillman - Shields Rt, Livingston

John A. Fryer — 206 So THIRD ST LIVINGSTON MT 59047

John Q Stillman - Shields Rt. Livingston, Mt.

Lisa Clatsch Box 886 LIVINGSTON, MT

Box 1018 Livingston

Box 196 Emigrant, MT 59027

Frank K. Cheatham - HOFFMAN ROUTE - LIVINGSTON, MT. 59047

Heidi Kulish Dona Ranch Livingston. MT.

Box 773 Livingston

Box 886 Livingston MT.

328½ S. Yellowstone Livingston, MT

419 N. 5th Livingston, MT

719 West Crawford, Livingston

517 So 13th Livingston MT.

Box 1133 Livingston, MT.

A

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Legislative Operator: 449-5500

John Greene	307 South 10th Street Livingston Mt.
Catherine Paschl	Rt 85, Livingston, Mt 590[illegible]
Gary Goodwin	326 1/2 S 12 Livingston Mt 5904[illegible]
Dale K. Jones	411 So. 7th Livingston, MT 59047
J. S. Jetty	423 W Clark Livingston Mt
M. A. Omek	508 E. Callender Livingston Mt 590[illegible]
W. R. McDonell	109 So K St. Livingston Mt
M. A. Adams	#2 N. 15th Mt 59807
Ronald G. Buchheit	250 Quinn Creek Road Bozeman Mont. 5[illegible]
J. Bates	717 no 3rd Livingston mont 5904[illegible]
J. Maxwell	104 Altair Dr Liv. MT
L. Amund	Box #7 Clyde Park Mt. 59018
Russell Jordan	527 No. Main Livingston, Mont
Edward J. Martin	205 Blue Heron Dr. Livingston M[illegible]
Mark A. Stanley	Box 1204 Livingston Mt. 59047
P. J. Loring	114 N F Livingston Mt. 59047
Brian L. McGrady	Rt. 85, Livingston Mt. 59047

B

Clay Williams Wilsall, Mont.

Rocky Myers Livingston Mont

[illegible] 425 S 'H' Livingston

Robert O Wilson Box 777 Livingston Mont.

[illegible] 109 North D Livingston, Mont

[illegible] Rt 38 Livingston, MT.

Dick L [illegible] 1125 So 'O' Livingston MT.

Dennis [illegible] Livingston, Mont.

John L Howel Livingston Mont. Rt. 38

Milton E. Johnson 514 No. Yellowstone - Livingston

Edward [illegible] 313 So 6th Livingston Mont.

Lloyd W Thompson 314 So D Livingston MT.

Richard Payne Jr. 611 No 11th Liv. MT.

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Legislative Operator: 449-5500

James Mennes — Box 33 Liv. MT. 222-6[illegible]
Bus Fahrni — Box 942 Liv MT 222 654[illegible]
[illegible] — Box 1147 " " 222 1206

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Legislative Operator: 449-5500

[illegible]	309 S 11th St Livingston Mt
[illegible] C [illegible]	325 E. Gallatin " "
Toby Unlen	325 E. Gallatin " "
~~Lorraine Kardash~~	Box 905 ~~Livingston~~
Lawrence Kardash	Box 905 Livingston
Jo Ann Hudson	Rt 62 Livingston
Craig Angelos	311 So 3rd Liv
Lee R. McNeill	windmill tr Cr #15

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Legislative Operator: 449-5500

Dennis A Tang	116 E Clark St Livingston, Mont
Ed Breinesberger	104½ No. K Livingston Mt
Todd Quist	
Kim Ogilvie	BOX 377 Livingston Mont.
Sam Sutton	1104 So Montana A-9, Bozeman, MT
	1015 West Lewis, Livingston, Mt
Frank Kokot	117 S. K Livingston, Mont
J. D. Phillips	222 S. D. St. - Livingston Mont
Carol A. Phillips	222 S. D. St. " "
R. D. Tonnesen	Box 789 "
Sherry Tonnesen	" " " "
Loyd L. Garlyk	611 So 9th Livingston Mont
F. W. Dillon	417 North Main Livingston Mont
John M. Hartman	Box 125 Clyde Park, Mt.
Dan E. Moore	405 So. 5th Liv.
David Nelson	Box 165 Livingston, Mt
Darrel T. Juhnke	Frontier Trailer Ct #22
Gary Homme	Box 1384 Livingston, Mt
Charles R Jackson	BOX 302 Emigrant, Mt.

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3. It places every drop of flowing water in this state in jeopardy and invites industry to resume its raid on Montana's rivers.

Legislative Operator: 449-5500

Roman Schaefer	216 S. 3Rd	CITY
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Russ Lundgren	614 W. Chinook	"
Thomas C. Price	113 N I	Livingston
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Susan Ellis	207 So 5th	Livingston
Ronald D Evanson	Billman Cr. Lane	Livingston Mont.
Dan Sundberg	101 So Main	" "
Charles Sorick	8 - Stewart	Livingston Mont
R. A. McCaw	110 No Main	Livingston
James L. Parrow	405 No 6th	Livingston
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[illegible] De Young	118 No. MAIN	"
[illegible]ANLEY Ammerman	BOX 428	"
George Adkins	Box 88	
James L Parrow	405 No 5th	"

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Clara Neud	Sheldon St
R L Countryman	111 So. Ost Livingston

A

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Elmer W. [illegible]	112 So. 6th St Livingston
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Mike Donahue	531 N. L. ST. Livingston
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Jerry H. Jackson 109 So 10Th Livingston Mont.

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Mr. Chairman, members of the Committee, my name is Pat Smith. I am testifying today on behalf of the Northern Plains Resource Council, the Yellowstone Basin Water Use Association, the Kinsey Irrigation Project, the Buffalo Rapids Irrigation Project, the Richland County Conservation District, the Powder River County Conservation District, the Priarie County Conservation District, the Little Beaver Conservation District, and the Custer County CD.

Since the passage of the Montana Water Use Act in 1973, we have been involved in the water reservation program. We view water reservations as the only viable alternative to ensure that agricultural water users have sufficient water to meet their future needs. The passage of the 1974 Yellowstone Moratorium and its 1977 extension reaffirmed Montana's commitment to move forward to reserve water in the Yellowstone basin. Since that time considerable time and hard work has gone into the preparation of the water reservation applications and the hearings before the Board of Natural Resources. We feel it would be improper at this time to jeopardize the validity of these approved water reservations.

Urge Do Not Pass on SB464.

TESTIMONY SB 515
SENATOR CARROLL GRAHAM

Mr. Chairman and members of the Committee, as you all know, the mainstay of eastern Montana's economy is grazing and agriculture. That portion of our state also contains some of the richest strippable coal deposits in the nation. In these days of high energy consumption, the national interest demands that this coal be mined. However, it is vital to Montana's long-term economic health to insure that strip-mined areas be effectively reclaimed so that our agricultural and grazing industry is not diminished. It is for this reason that I have been involved in Montana's reclamation program since 1973. It is now necessary to amend the state's law for the following reasons.

In 1977, Congress passed the federal strip mine act. That act sets minimum standards and procedures which every coal producing state in the nation must meet. One of the federal bill's major provisions allows states to regulate strip mining within their borders if they enact and receive approval from the Secretary of Interior for their regulatory programs. Over the past year and a half, representatives of the Department of State Lands have met with federal officials to determine what changes in our law would be necessary to comply with the federal act. This bill makes the necessary changes--and only those changes. At my direction, the Department has included only those amendments absolutely essential for compliance with the federal act. I am satisfied that they have done so.

If we do not amend our act, the federal government will regulate strip mining in Montana. It would not be in the best interest of anyone--coal companies, farmers, ranchers, or other citizens of Montana--to have the industry regulated from Denver or Washington, DC by a massive federal bureaucracy. The Office of

Surface Mining has already demonstrated the federal characteristics of delay by being eight months behind schedule on implementing the act. A federally-run program in Montana would mean bureaucratic delays for the coal mining industry, less effective reclamation, less efficient use of tax dollars, and no state input into the program. It is therefore imperative that this bill be passed.

Montana's act is for the most part as stringent as the federal act--in fact, many federal provisions were taken from our act. The major changes SB 515 makes are:

(1) Designation of Lands Unsuitable - The Department presently has authority to deny a permit to mine on critical, unique, or fragile lands. It does not exercise this authority until a permit application is received. The federal law requires the Department to be able to designate areas unsuitable for mining based on the provisions of the federal act.

(2) Alluvial Valley Floors - State Lands must have authority to prohibit mining which would destroy the essential hydrologic functions of alluvial valley floors or would interrupt or preclude a significant portion of an irrigated farming operation on an alluvial valley floor.

(3) Prime Farmlands - More extensive topsoiling procedures are required for prime farmland areas. It appears that there are very few prime farmlands within potential coal-producing areas.

(4) Hydrologic Requirements - The federal law requires more detailed analysis of the hydrologic effects of mining on the permit and surrounding areas. If available, the state or federal government must provide applicants with baseline information necessary for compliance with this requirement.

(5) Coal Conservation - The federal bill requires coal conservation programs to be subject to the same procedures as the other requirements and for the requirements to apply to underground mining. The Montana Strip Mined Coal Conservation Act has therefore been repealed and its provisions incorporated into the strip mine act.

(6) Small Operator Assistance - State Lands must financially assist small operators. Federal funds are available to the state for the program.

(7) Procedures - Additional hearings, increased maximum penalties, minimum bonds, and civil actions for persons damaged by coal mining are provided.

(8) Abandoned Coal Mine Lands - State Lands is given authority to reclaim abandoned coal-mined lands that were mined and unreclaimed prior to the act. Federal funds are available for these reclamation projects. This section will be of limited application because there are very few abandoned and unreclaimed coal lands in Montana.

I am also submitting amendments to the bill which further clarify that the major provisions apply to coal mining only and not to uranium mining. The major requirements for uranium mining will remain unchanged. In the best interests of the people of the state of Montana, I urge you to give this bill a "do pass" recommendation.

AMENDMENTS - SB 515

1. Page 14, line 18.
   Following: "underground-"
   Strike: "coal-"

2. Page 18, line 13.
   Following: "consequences of"
   Strike: "the"
   Insert: "coal"

3. Page 22, line 1.
   Following: "for a"
   Insert: "coal mining"

4. Page 26, line 22.
   Following: "a"
   Insert: "coal"

5. Page 27, line 6.
   Following: "The proposed"
   Strike: "surface-"
   Insert: "strip- or underground-"

6. Page 27, line 24.
   Following: "to conduct"
   Strike: "surface-"
   Insert: "strip- or underground-"

7. Page 28, line 7.
   Following: "To mine"
   Insert: "coal"

8. Page 29, line 12.
   Following: "or underground"
   Insert: "coal"

9. Page 29, line 24.
   Following: (8) No"
   Strike: "surface"
   Insert: "strip- or underground-"

10. Page 31, line 7.
    Following: "underground-"
    Insert: "coal-"

11. Page 31, line 13.
    Following: "issue a"
    Insert: "coal"

12. Page 31, line 18.
    Following: "issue a"
    Insert: "coal"

13. Page 31, line 21.
    Following: "controls any"
    Insert: "coal"

14. Page 40, line 1.
    Following: "and after"
    Insert: "coal"

15. Page 44, line 2.
    Following: "(3) For"
    Insert: "coal mining on"

16. Page 46, line 15.
    Following: "for prime farmlands"
    Insert: "mined for coal"

17. Page 54, line 25.
    Following: "underground-"
    Insert: "coal-"

18. Page 56, line 10.
    Following: "underground-"
    Strike: "coal-"

19. Page 58, line 9.
    Following; "underground-"
    Strike: "coal-"

20. Page 61, line 1.
    Following: "to enforce"
    Insert: "or implement"

Proposed Amendments to

SB 515

#1

Page 34: delete (6) lines 22, 23 and 24.

~~(6) This section does not become effective until the secretary of interior has approved the state's permanent regulatory program under Public Law 95-87.~~

Page 70: line 18, following "Applicability" insert:

NEW SECTION. Section 19. Applicability.

(1) This act does not become effective until the secretary of interior has conditionally or finally approved the state's permanent regulatory program under Public Law 95-87, however

(a) Rules pursuant to this act may be adopted pursuant to Title 2, Chapter 4, MCA, prior to the effective date of this act and shall become effective only on the effective date of this act.

(2) Within 2 months of the secretary of interior's approval of the state's permanent regulatory program . . . . . .

#2

Page 45: line 8, following "removal" delete "and"
line 9, delete
line 10, delete "backfilled and graded,"

(4) All available topsoil shall be removed in a separate layer, guarded from erosion and pollution, kept in such a condition that it can sustain vegetation of at least the quality and variety it sustained prior to removal, ~~and returned as the top layer after the operation has been backfilled and graded~~, provided that the operator shall accord . . . . . .

SENATORS ROSKIE, GRAHAM AND THIESSEN

This is a statement of the rationale behind the changes contained in Senate Bill 514, modifying the Major Facility Siting Act.

The changes incorporate material from the Ford Foundation Study done by James J. Lopach and Gregory J. Petesch of the University of Montana, submitted to the Governor's Office in November, 1978, and they are based upon the assumption that any decision making activity should be rational and that the ultimate determination should be reasoned.

- - - - - - - - - - - - - -

There is general agreement among most parties that the existing Act is procedurally defective and it should be amended to remove the problems which caused the extended delay, confusion and expense in the case of Colstrip Units No. 3 and 4. Senate Bill 514 gets to the heart of the problem which is, that the existing Act is vague and confusing and does not contain a proper, logical method for reaching a rational determination.

The addition of non-utility plants to the Act in 1975 compounded some of the problems already there. Senate Bill 514 deals with this problem directly.

Although Senate Bill 514 contains other minor changes, in this statement we point out and answer those questions

which we believe are the major problems in the present Act:

1. THE QUESTION OF NEED: This question is first raised in 15-20-104(4) of the Act, which describes the certificate to be obtained by the applicant industry as "the certificate of environmental compatibility and public need" and the concept is continued throughout the Act.

This concept has resulted in two problems;

(a) The agency primarily responsible for a determination of "public need" for electric utility service (The Montana Public Service Commission) has no decision-making authority under the Act, but only a reporting requirement (75-20-216(3)) and then only after an application has been filed.

(b) The 1975 amendments included "non-utility" facilities under this same definition; and there have been arguments between the department staff and potential applicants for "non-utility" plants over determination of questions of need for those plants.

SOLUTION: Senate Bill 514 transfers the determination of "public need" for electric utilities to the Montana Public Service Commission as part of the "long range plan" process under 75-20-501(3)(4). The utilities are now required to submit long range plans 10 years in advance of their applications for a permit to construct a facility (75-20-501(1)). Therefore, it is a logical and time-saving

change to place the "need decision with that elected commission specifically charged with determining the public convenience and necessity" for electricity. This allows a "long range" determination of what those needs will be years in advance of plant construction. It does not subject rural electric co-ops to regulation by the commission. It only allows the commission to consider rural electrics as part of the "over-all" electric demand problems and determine if a real need exists as part of a "long range plan". This change also places that determination outside the question of "environmental compatibility", which remains with the Board of Natural Resources under the Act and removes the problem created for non-utility facilities. When an application is filed under the Act, the stage will be set for a rational determination of the main question, "the environmental compatibility of the plant".

2. THE QUESTION AS TO WHO DETERMINES AIR AND WATER QUALITY: This problem was a major dispute in the Colstrip 3 and 4 case, and it continues to be one of the major problems under the present Act.

Even though the Act (75-20-401) specifically reserves to the "state air and water quality agencies" their authority to make sure a plant qualifies under those laws; the Department of Natural Resources took the position in the Colstrip 3 and 4 case that it was required to make an additional finding of "minimal adverse effects on the environment"

under 75-20-102(2) which could possibly supersede and add requirements to the determination of both the Department and Board of Health. This resulted in legal conflict and indecision and extended an already long hearing time devoted to this question by both agencies.

SOLUTION: Senate Bill 514 makes the finding of the Board of Health as to air and water quality conclusive on the Board of Natural Resources (75-20-216(3) in the bill). This removes the conflict between the two agencies and eliminates great possibility for delay. The applicant is no longer required to satisfy a "double standard"; one for the Board of Health and another for the Board of Natural Resources. The Board of Health decision is fitted into the process before the final order of the Board of Natural Resources.

3. THE PARTIES TO THE PROCEEDING: The present Act places substantial requirements on only one party, the applicant. The applicant has the burden of proof (75-20-222) by "clear and convincing evidence" that;

(a) the application should be granted, and

(b) all of the many criteria of 75-20-301 are satisfied.

The other parties to the proceeding are only required to "show up" and make an "oral" presentation at the hearing.

None of the other parties are required (75-20-221(2)) to present even the slightest demonstration of how they will be affected by the application, why they are appearing or

what cause they have to complain (75-20-221). This places the applicant at an extreme disadvantage. After at least two years of examination by the Department, during which time the applicant has been required to "come clean" and expose all of its plans and designs to public scrutinity by filing documentary evidence on the public record, for public examination; the applicant must then proceed to a public hearing without knowing the interest or complaint of any protestant until after the hearing begins. It must support and be prepared to sustain hundreds of pages of technical information without any reasonable ability to identify the complaints of its potential opponents. This procedure guarantees a long and unstructured hearing procedure during which time the applicant must try to find out and answer the specific complaints of the opponents.

SOLUTION: Senate Bill 514 solves this dilemma in the only fair manner possible. It places some burdens upon the other parties by:

(a) requiring them to show how they would be "substantially affected" by the application; and

(b) requiring the hearing examiner to hold a prehearing conference and specify the "issues" to be examined during the hearing.

This procedure will have the affect of establishing a logical framework upon which the hearing examiner and then the board can base findings of fact and conclusions of law.

All of the parties will know from the outset what is important and what is not, and their attention can be directed to the relevant issues.

In addition, the parties are divided into two classes. The "active" parties who wish to appear full time, cross-examine and test the applicant's case, and the "public parties" who only wish to submit comments by mail or make a statement for the record in person.

This method satisfies the Montana Constitutional requirement that citizens be given a "reasonable opportunity" to participate (Art. II, Section 8).

But the Major Facility Siting Act now provides an almost "unlimited" opportunity for citizen participation in this process, at the expense of the applicant. This type of "license" is neither required by the Constitution, nor permitted by it. The applicant is entitled to "due process of law" (Art. II, Secton 17), which at least means that the proceeding (which involves the use of its property) be conducted in a fair, logical and expeditious manner.

4. THE HEARING PROCESS (THE PAPER HEARING): The present hearing process is deficient because it contains only a skeletal outline of the hearing process and fails to guide the hearing examiner by establishing criteria for conducting the hearing.

SOLUTION: Senate Bill 514 in its amended Section 75-20-218 sets forth:

(a) A requirement for a prehearing conference;

(b) The presentation of all studies and other documentary evidence prior to the hearing. This allows for preparation by all parties without surprise and eliminates delay.

(c) The submission of all direct testimony in writing prior to the hearing. This eliminates the need for hours of direct oral testimony in the applicant's case and allows the parties to proceed directly to cross-examination of witnesses whose written statements they will have had a chance to review prior to the hearing. This is one of the specific recommendations of the Ford Foundation Study done by Lopach and Petesch for the Governor's office.

(d) The requirement that the hearing examiner digest the evidence and submit proposed findings of fact, conclusions of law and a proposed decision for the Board's consideration.

This amended process will make the best use of the professional hearing examiner, regulate the hearing and let everyone know the basis for the decision. It will also make the work of the "citizen board members" less time-consuming and more orderly and accurate. It is a well-organized, modern, rational process. It will provide direction where there is presently little or none in the Act.

5. THE FEE PROCEDURE: The applicant, under the Major Facility Siting Act, is presently faced with a mandatory requirement to pay all of a substantial fee at the time it files its application. This fee could amount to several hundred thousand dollars. It bears no relationship to the work to be done and is based on the "cost" of the proposed facility (75-20-215). Although the applicant is entitled to an accounting and a refund, this is actually an empty promise, because: (a) it would be required to sue the Department to get the fee back if there was disagreement; (b) it creates a "vested interest" in the agency to increase its costs and extend the time required to do the work in order to expend the whole fee.

SOLUTION: Senate Bill 514 provides a procedure for "contracting" for work to be done in preparation of an "environmental assessment" and an "environmental impact statement" with the Board to have the power to resolve disputes between the Department and the applicant (75-20-215 in the bill).

This procedure also allows the applicant the opportunity to stop the process and abandon the project if it becomes apparent that the problems cannot be solved or the environmental criteria satisfied. Thus, a business organization can "cut its losses" without facing the complete loss of a substantial sum of money paid "in advance" as a fee.

SUMMARY

The main problems are:

(1) The need question.

(2) The conflict between the Natural Resources and Health Departments over air and water quality.

(3) The identification of the opponents, their legitimate complaints and the proper issues in the case.

(4) The need for a definite hearing procedure.

(5) The arbitrary assessment of a fee that bears no relationship to the work to be done.

Senate Bill 514 addresses these issues in a just and equitable manner and will preserve to the people of Montana a "clean and healthful environment" while affording the applicant a fair hearing.

Respectfully submitted,

Ward A. Shanahan

INTRODUCTION TO SENATE BILL 514

I
History

The Montana Facility Siting Act was passed in 1973. Since the Act passed in 1973 there have been no new energy conversion facilities constructed in Montana. We have learned from prolonged proceedings, (not only Colstrip 3 and 4 but other transmission projects) and numerous lawsuits that amendments to the Act are now in order.

II
Problems With The Siting Act

It is not surprising that there are controversies and complaints surrounding the Siting Act, because it seeks to govern complex energy and environmental issues. However there are problems which should be corrected to the Siting Act, which will benefit landowners, users of electricity and the general public. Agency review is not properly coordinated, especially the function of the department and board of health on air and water issues. The duration of the review process is unpredictable and often takes too long. The hearing rules and procedures are inappropriate. More flexibility is needed in the decision making process to accomodate changes for compatability with other considerations. The nature of the filing fee and the department of natural resources role needs to be clarified. The states decisions on need issues, and in certificates on environmental compatability need to be restructured.

III
Subjects In SB 514

For purpose of discussion, the major topics, which SB 514 address include:

1. The determination of "public need" for utility facilities is transferred to the Montana Public Service Commission, using the existing Long Range Plan requirements in the Act as a logical tool to make such determination.
2. Air and water quality decisions, currently under broad consideration of the department and board of health remain under the sole jurisdiction of the health agencies to avoid duplication and carry out the mandates in federal and state

air and water laws.

3. A coordinated review is established, providing for input from local, state and federal entities. And a filing fee, based on the cost of the environmental assessment, which is to be subcontracted, is established.

4. A time schedule for agency decisions is established.

5. Hearing procedures are established to facilitate more orderly hearings, and avoid confusion as to which rules apply.

6. The criteria for the board of natural resources decision is restructured.

7. Further flexibility is created to accomodate modification to an application, or certificate.

The amendments in SB 514 which relate to these seven topics are explained further in a separate document.

1. Determination of Need

I
Statutes

Set forth below are citations to proposed amendments in SB 514 relating to need.

1. p. 6, lines 11-12 -- Certificate of need by Montana Public Service Commission (P.S.C.) included in application

2. p. 28, beginning at line 6 -- long range plan filed and reviewed by Montana Public Service Commission

3. p. 29, lines 22-25
p. 30, lines 1-12 -- procedure for determining need

II
Reason for Amendments

The Siting Act now provides that utilities file annually a long range plan, which, among other things, describes the need for facilities and their proposed location. (copies of our long range plan are available). The plan provides a logical tool to study electrical energy needs and plan for facilities to meet those needs. It is also logical for the P.S.C. to make determination on need because complaints concerning inadequate service go to the P.S.C., and the construction of facilities is interrelated to financing and rate matters under the jurisdiction of the P.S.C. The amendments provide that the issue of need would be determined as a logical first step prior to filing of an application for a particular facility, which determination would be made with opportunity for public input. With the decision on need being made prior to the review on a particular facility, the review of the facility would be limited to other issues involving environmental compatability and location, and thus simplify and shorten the review on particular facilities.

2. Air and Water Issues Decided By Department and Board of Health

I
Statutes

Set forth below are citations to amendments in SB 514 relating to jurisdiction

of the department and board of health.

1. p. 2, lines 1-4 -- Definitions
   p. 3, lines 8-10

2. p. 5, lines 15-19 -- provides for joint application filed with department of natural resources and department of health.

3. p. 6, lines 15-19 -- joint application contains information required under water and air statutes.

4. p. 15, line 25
   p. 16, lines 1-18 -- board of health decision made within one year

5. p. 27, lines 6 - 11 -- department of health retains monitoring authority

II

The language in the 1973 Act, providing that "duly authorized air and water quality agencies---" is vague and confusing and has resulted in disputes and lawsuits, and delay and duplication. Who is the "duly authorized air and water agencies" should be, and is spelled out in SB 514, to be the Montana department and board of health. The department now has responsibility under state and federal air and water laws and standards to review, permit and monitor facilities. If the health agency determines that a facility complies with these laws and standards it should be a conclusive decision on air and water issues, and further consideration of such issues is an unwarranted duplication. It is important to understand that the health agencies make comprehensive review on air and water matters. For example, the permitting procedures under the "prevention of significant deterioration regulations" requires 1 year meteoralogy baseline data, and requires the equivalent of an environmental impact statement considering all impacts of the proposed facility. (a copy of the requirement is available, to demonstrate the scope of review)

SB 514 provides that a joint application be filed with the department of health and department of natural resources, and that a parallel, simultaneous review be conducted by each agencies in the area of its expertise and jurisdiction. SB 514 allows health agencies to carry out its review as it is required to do under air and water laws. Combining air and water reviews and judicial review thereof, with the department and board of natural resources review, is uncompatible, duplicative and causes delay.

3. Coordinated Review and Filing Fee

I
Statutes

Set forth below are citations to proposed amendments in SB 514 relating to coordinated review and the filing fee.

1. p. 5, lines 15-25
p. 6, lines 7-12 --- joint application containing information from or for all state agencies

2. p. 7, lines 1-13 --- copy of application to other local, state and federal officials

3. p. 9-10 --- delete filing fee scale based on cost of facility

4. p. 10, lines 6-23 --- acceptance of application

5. p. 11, lines 10-13 --- department and applicant agree on study plan and bids for environmental assessment

6. p. 12, lines 7-10 --- contract covering environmental study

7. p, 12, lines 16-25 --- limit on filing fee

II

The amendments provide for the filing of one joint application with the department of natural resources and department of health, with copies of the application going to various local, state and federal officials. This initiates the simultaneous, parallel review by all agencies, with the department of natural resources serving as state lead agency. The department participation in the hearing is limited to presentation of its studies. A process to determine if an application is complete is established. The present fee schedule based on the estimated cost of the facility is deleted and replaced by a contracting scheme whereby the department and applicant agree on the study plan and retain acceptable third party consultants to make the environmental assessment under the direction of the department, and at the expense of the applicant.

4. Time Schedule

I
Statutes

Set forth below are citations to proposed amendments in SB 514 relating

to time schedules.

1. p. 29, lines 1-25
   p. 30, lines 1-25
   p. 31, lines 1-25 -- proposed facilities to be built in next 10 years identified

2. p. 13, lines 18-23 -- applicant may contract with department 1 year in advance of filing

3. p. 10, lines 5-15 -- department notifies within 30 days if application complete

4. p. 14, beginning line 13 -- delete 2 year and 1 year department study

5. p. 15, beginning line 12 -- other departments report within 6 months

6. p. 15, beginning line 25
   p. 16, lines 1-18 -- health agency decision within 1 year

7. p. 16, lines 19-25
   p. 17, line 1 -- department natural resources report within 9 months

8. p. 17, lines 13-24 -- Hearing examiner appointed within 30 days; prehearing within 60 days; hearing commence within 90 days

9. p. 20, lines 9-13 -- Hearing examiner proposed findings within 60 days

10. p. 20, lines 18-22 -- Hearing within 12 months

11. p. 22, line 21 -- Board decision within 60 days

12. p. 27, line 16 -- judicial review

II

To comprehend the time schedule and reasons therefore in SB 514, the overall review process must be considered. The first stage of the review process, is the long range plan, which identifies proposed facilities and needs, and their possible locations, 10 years in advance, and culminates in resolution of the need issue prior to filing a specific application. It also enable the state to commence its general consideration of facilities, and their location prior to a specific application.

The second stage includes gathering and preparation of at least 1 year of baseline environmental data, which can be done by contracting with the department, one year in advance of filing a specific application. This

work prior to a specific application fosters more orderly energy planning and avoids unnecessary costs.

The third stage is initiated by the filing of a joint application with the departments of health and natural resources. Other state agencies report on their expertise within 6 months after the filing of the joint application. The department of natural resources reports within 9 months. The health agencies make their decisio within 1 year, which decision is appealable pursuant to air and water statutes. The shortening of the agencies review is supportable for a number of reasons including:

(1) the overall process allows much work to be accomplished prior to filing of a specific application

(2) the need, and air and water issues are decided separately and thus the department of natural resource's work load is reduced

(3) other state siting laws, provide less time for review than Montana's current siti law

The fourth stage, commences with the appointment of a Hearing Examiner within 30 days after the department of natural resource's report. The Hearing Examiner sets a prehearing conference within 60 days and the hearing commences within 90 days of the departments report, and must conclude within 12 months. The Hearing Examiner makes proposed findings within 60 days after the close of the hearing, and the Board makes its decision within 60 days after the Hearing Examiner's proposed findings.

The fifth stage of review, consists of judicial review in Montana district and Supreme Courts, which takes approximately two to three years. The creation of these time frames is absolutely essential. They are certainly liberal enough considering the overall time scheme. If time limits do not exist the harm and cost to the public, from haphazard and delayed energy programs is unbearable.

5. Hearing Procedures

I
Statutes

Set forth below are citations to proposed amendments in SB 514 relating to hearing procedures.

1. p. 17, lines 13-25 -- Appoint Hearing Examiner who sets prehearing and hearing

2. p. 18, lines 11-25
   p. 19, lines 1-18 -- "paper hearing"

3. p. 19, lines 19-25
   p. 20, lines 1 - 8 -- Only rules in Siting Act apply

4. p. 20, lines 9 - 13 -- role of Hearing Examiner

II

These provisions in SB 514 on Hearing procedures are based in part on a Ford Foundation study of the Montana Siting Act process, and are similar to those proposed by the department in HB 829. They provide for the appointment of a hearing examiner who is given authority and responsibility to run the hearing. It also importantly provides that the procedures in the Siting Act apply exclusively and other rules do not. In the Colstrip hearings there were long debates and litigation over what rules apply. Other rules, such as those in the Montana Rules Civil Procedure and Montana Administrative Procedures Act are not suited to govern the special type of proceedings under the Siting Act, and only lead to litigation. SB 514 provides all necessary procedures in the body of the Siting Act.

6. Board Decision

I
Statutes

Set forth below are citations to proposed amendments in SB 514 relating to board decision.

1. p. 22, lines 23-25
   p. 23, lines 1 -25
   p. 24, lines 1 -25
   p. 25, lines 1 -11 -- Content of Board certificate reorganized and concl[illegible]i
   and minimum adverse Environmental Impact d[illegible]e

2. p. 30, 31, 32, 33, 34, 35 -- delete "laundry list"

II

The current Siting Act, sections 75-20-301, 302, and 303 are poorly organized and drafted. The Fundamental should be -- what should the Board consider, find, and conclude in its decision on a facility. SB 514 reorganizes the present Act, incorporates the concepts in the present Act, except for the requirement of a finding on need, which is replaced in SB 514 by the Public Service Commission Finding under 75-20-501, and a finding that the facility represents the minimum adverse envrionmental impact considering the state of available technology and the nature of economics of various alternatives. This requirement concerning minimum adverse impact is too subjective, as evidenced by issues pending litigation. No applicant wants to commit time and money on the basis of such subjective standard if a facility meets the other more objective standards in the Act, which are equivalent to minimum adverse impact.

The second change SB 514 makes in the Board decision is the deletion of the "laundry list". In many instances this itemized laundry list is irrelevant. For example the criteria on sulfur oxides is inapplicable to transmission lines. Furthermore, the relevant considerations in its laundry list are considered anyway in the application, regulations and department review.

This deletion of the "laundry list" is viewed as cleaning the present Act of unnecessary verbage and does not weaken the Act.

7. Modification for Compatability

I

Statutes

1. p. 4, lines 21-25 -- Definition
2. p. 8, lines 6 - 21 -- Mkodification for compatibility does not require an amendment
3. p. 10, lines 15-21 -- may add to application to explain
4. p. 25-26 -- Waiver for emergencies

II

Almost everyone, including the department recognize the need for further

flexibility in the Siting Act to allow changes in an application or certificate to accomodate wishes of landowners, requirements of other government agencies or improvement lessening environmental impact. The Siting Act should not discourage helpful changes, or be used to require a new application and review thus delaying facility.

And finally, the waiver provision in the Act are updated and changed to provide for emergency situations created by possible significant energy shortage or va problems.

-End-

SITING ACT REVIEW PROCESS AND TIME SCHEDULE

SB 514

First Stage Long Range Plan	Year 1	-Utility files annually Long Range Plan, which forecasts need and proposed facilities to meet need (75-20-501)
		-Montana Public Service Commission (P.S.C.) publicly reviews Long Range Plan annually and certifies need (SB 514, p. 29-30)
	Year 5	-department natural resources (dnr) study facilities and their location, which are identified in Long Range Plan, to be built within next 5 years (75-20-502)
Second Stage Utility obtains baseline data and prepares environmental assessment	Year 9	-Utility obtains information for application which includes at least 1 year of baseline environmental data (SB 514, p. 5-6; Siting Act regulations; federal Clean Air Act)
		-Potential applicant may contract with depar ment for environmental study (75-20-214)
Third Stage	Year 10	-Joint application filed with department of natural resources and department of heal with copies to other officials (SB 514, p. 6-7)
	Year 10 + 6 months	-Various state agencies report within 6 mont (SB 514 p. 15)
	Year 10 + 9 months	-department of Natural Resources report with 9 months (SB 514, p. 16)
	Year 11	-health agency decision pursuant to Clean Ai and Water Act within 1 year;
		Year 13 -health agency decision appealable to Montana District and Supreme Court pursuant to Air and Water Statutes.
Fourth Stage Board Natural Resources Hearing and Decision	Year 10-10 months	-Hearing Examiner appointed within 30 days after department report (SB 514, p. 17)
	Year 10 + 11 months	-Prehearing conference within 60 days after dnr report (SB 514, p. 17)
	Year 11	-Hearing Commences within 90 days after dnr report (SB 514, p. 17)
	Year 12	- Hearing limit 12 months (SB 514, p. 20)
	Year 12 + 2 months	-Hearing examiner proposed findings within 60 days after hearing closed (SB 514, p.20)
	Year 12 + 4 months	-Board Decision within 60 days after hearing examinier's proposed findings (SB 514, p. 2

Testimony of C. C. Gordon in opposition to Senate Bill 514 which requests the revision of Montana's Major Facility Siting Act

My name is Clancy Gordon and I reside at 1650 Madeline Ave., Missoula. For the past 19 years I have been employed by the University of Montana where I am currently a Professor of Botany and Dirctor of the Environmental Studies Laboratory. I present this statement as a private citizen in opposition to Senate Bill 514 for numerous reasons, a few of which I will now present to this committee.

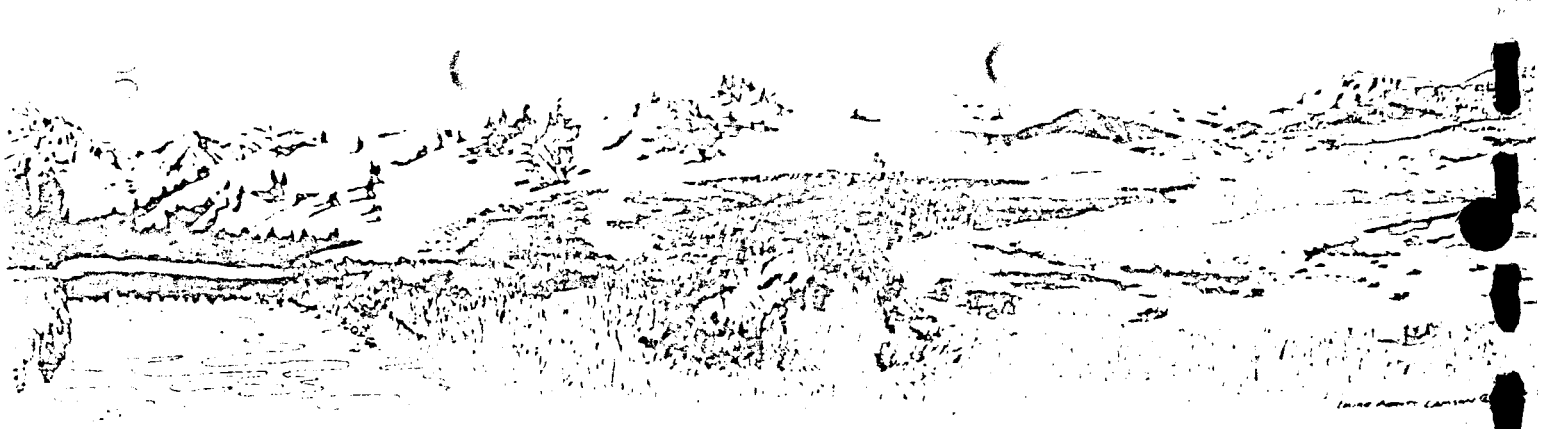
One of the major reasons that Senate Bill 514 should not be passed is that the time allocated, in this bill, for State agencies or hired consultants to carry out their respective studies, inventories, and writings is totally inadequ For instance, on page 16 (lines 19-25) it is stated that the final report by DNRC is required 9 months after the effective filing date by the applicant and it must contain all pertinent data and opinions accrued by all other participating State agencies, consultants and applicants. This impossible 9-month time limit also condradicts the 12-month time limit given to the Department of Health and Environmental Sciences and its Board members to conduct their studies and prepare their opinions and decisions (p. 15 line 25, p. 16 lines 1-18), which must be included in the DNRC final report.

I am fully aware that the sponsors of Senate Bill 514 desire to reduce the amount of time for deciding the siting of coal-utilization industries. However, to reduce the time allowed to carry out any meaningful social/economic, biological, and physical studies, to accomplish a reduction in the current siting time sequen is a serious insult to the agricultural and forested lands and to the communities of Montana.

To give you an example of why the 9-12 month time limit for completion of the final DNRC report is totally inadequate, one only has to utilize the studies

and Environmental Impact Statements prepared for the Colstrip 3 and 4 coal-fired units. The latest EIS prepared for the siting of Colstrip Units #3 and #4 was published by the Bonneville Power Administration, a federal agency considered by most to be sympathetic to the siting and constructing of coal-fired power plants anywhere in the Northern Rocky Mountain and Pacific Northwest States. This EIS by the Bonneville Power Administration, distributed Jan. 5, 1979, took over 12 months to complete. What is most important about this 12-month plus period is that NO on-site studies were conducted by Bonneville personnel or their consultants in preparing this document. Rather, this 12-month plus period was consumed in just reviewing and utilizing pertinent scientific, engineering, and social/economic information gathered by various State and Federal agencies, utility company personnel and consultants, and scientists, economists, sociologists, and engineers from various universities. If the personnel from the Bonneville Power Administration and their numerous consultants were required to carry out even a few of the most important social/economic, engineering, and biological studies needed to assess the impacts of siting Colstrip Units #3 and #4, it would have required at least 12 additional months.

It is my belief that it is totally impossible for the personnel of our State agencies and their contracted consultants, regardless of the number of personnel and monies available, to conduct a meaningful study on the siting of coal-utilization industries in a 9-12 month period. If it is your intent to pass Senate Bill 514, I request that you either ammend the bill so that a minimum of 18 months be given for EIS preparation or that monies required from the coal-utilization industries for preparation of the DNRC statement be eliminated, since it would be a total waste of money, and the resultant EIS could only be considered an insult to the citizens and lands of Montana.



Environmental Information Center Box 1184, Helena, MT 59601 (406) 443-2520

TESTIMONY IN OPPOSITION TO SB 514

Mr. Chairman and members of the Committee:
My name is Joan Miles and I am here to represent the Environmental Information Center in opposition to SB 514. EIC is a statewide citizens organization of some 1500 members concerned with the wise and just use of Montana's natural resources.

Section 75-20-503 on page 30 of the bill deletes all reference to air quality impacts in determining environmental compatibility of a proposed facility. This mean that the is no consideration of factors influencing plume dispersion, topography of the area stack design, emission control technologies and most importantly, no consideration of the effects and relationships on present and projected air quality. We feel that this is totally unjust to the agricultural areas of the state and to the citizens whose livelihoods depend on this since there will be no evaluation of adverse impacts on sensitive species and agricultural commodities.

The Department of Health does have the responsibility to issue opinions and decisions within 1 year of application on whether of not air quality impacts will be in compliance with state and federal statutes. There are two problems with this; compliance with state and federal regulations is after the fact. That is, the facilities are built and then will be required to meet all air quality regulations. Again, this deletes any consideration of potential impacts and merely requires that, quite possibly, worst possible standards will be complied with. The second point is that the DNR is required to make their recommendations to the Board within 9 months of application. In all probability, they will be issuing an opinion of environmental compatibility before the DHES confirms that compliance with air quality regulations will be met.

We are also concerned with the proposed changes in the assessment of the environmental impacts of the facility as provided in Section 75-20-215. If SB 514 becomes law, there would be no filing fee as such. The utility would contract with a private consulting firm for environmental assessment studies. The department would merely audit this work. The utility then would decide which studies the department should use in compiling the department's own environmental impact statement. These amendments impose unreasonable time and financial constraints on the department's evaluation of the facility as well as severely limit the autonomy of the department.

The current law insures that the department will be provided with sufficient funding from the filing fee to carry out its own studies and evaluations of the proposed facility. If this bill is passed and the department is required to utilize environmental impact statements and studies provided by the utility, we have lost the right to an independent, impartial, thorough analysis of the potential impacts of the proposed facility.

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TESTIMONY OF CHARLIE YARGER ON BEHALF OF THE NORTHERN PLAINS RESOURCE COUNCIL ON SENATE BILL 514 PRESENTED FEBRUARY 19, 1979

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS CHARLIE YARGER. I AM A FARMER-RANCHER AND LIVE EIGHT MILES FROM THE BURLINGTON NORTHERN'S PROPOSED CIRCLE WEST PROJECT IN MCCONE COUNTY. I AM TESTIFYING TODAY ON BEHALF OF THE NORTHERN PLAINS RESOURCE COUNCIL AND OUR TEN AFFILIATE ORGANIZATIONS. THE NPRC IS A RANCHER- AND FARMER-BASED CITIZENS' ORGANIZATION; MANY OF OUR MEMBERS AND THEIR FAMILIES LIVE IN AREAS PROPOSED FOR COAL-FIRED FACILITIES.

BEFORE I GET INTO OUR SPECIFIC CONCERNS WITH SENATE BILL 514, I DO HAVE A FEW BRIEF GENERAL COMMENTS. FIRST, WE RECOGNIZE THAT MONTANA'S MAJOR FACILITY SITING ACT IS NOT PERFECT--IT NEEDS SOME CLEANING UP. SECOND, IN SPITE OF ITS IMPERFECTION, TO THE RANCHERS AND FARMERS AND OTHER CITIZENS WHO LIVE ON THE COAL FIELDS OR ALONG IDENTIFIED TRANSMISSION CORRIDORS, MONTANA'S SITING LAW IS THE MOST IMPORTANT STATUTE ON THE BOOKS. THE SITING ACT IS WHAT PROTECTS CITIZENS FROM SOME OF THE LARGEST UTILITIES AND ENERGY COMPANIES IN THE WORLD. IT IS OUR INSURANCE THAT MONTANA'S CITIZENS HAVE A VOICE IN THESE SITING DECISIONS.

THIRD, IT IS IMPORTANT TO KEEP IN MIND THAT THE CONGRESS IS AGAIN CONSIDERING LEGISLATION THAT WOULD CREATE A REGIONAL ENERGY PLAN FOR THE PACIFIC NORTHWEST THAT WOULD GIVE MORE POWER TO THE

BONNEVILLE POWER ADMINISTRATION. SHOULD THIS LEGISLATION PASS THE CONGRESS, MONTANA WILL FEEL CONSIDERABLE ADDITIONAL PRESSURE TO LOCATE MORE AND MORE MINE-MOUTH, COAL-FIRED POWER PLANTS AND THEIR ACCOMPANYING EXTRA HIGH VOLTAGE TRANSMISSION LINES WHICH WOULD CARRY THE ELECTRICITY TO WEST COAST CONSUMERS. IF MONTANA EVER NEEDED A STRONG MAJOR FACILITY SITING ACT, WE NEED IT NOW. IN THE HASTE TO STREAMLINE MONTANA'S SITING ACT THIS LEGISLATIVE SESSION, WE CANNOT AFFORD TO STRIP THE SITING ACT OF ITS SUBSTANCE.

THE NPRC FEELS THAT SB 514 GOES BEYOND STREAMLINING OF THE ACT IN SIX KEY AREAS:

FIRST, SB 514 ALLOWS THE APPLICANT CONSIDERABLY MORE CONTROL OVER THE PREPARATION OF THE ENVIRONMENTAL IMPACT STATEMENT ON THEIR FACILITY. THE PROPOSED AMENDMENTS GIVE THE APPLICANT EQUAL STATUS WITH THE DEPARTMENT OF NATURAL RESOURCES IN SELECTING A CONTRACTOR FOR THE EIS. SB 514 ALSO ALLOWS THE APPLICANT, RATHER THAN THE DEPARTMENT, TO ENTER INTO THE CONTRACT WITH THE EIS CONSULTANT, AND RELEGATES THE DEPARTMENT OF NATURAL RESOURCES TO AN "AUDITING" FUNCTION. SUCH AN APPROACH INVITES A LESS OBJECTIVE OVERVIEW OF SOCIAL, ECONOMIC AND ENVIRONMENTAL IMPACTS OF FACILITIES. THE APPLICANT HAS A DIRECT FINANCIAL INTEREST IN THE FACILITY AND SHOULD NOT BE ALLOWED SUCH AN ACTIVE ROLE IN THE PREPARATION OF THE EIS. WE FEEL THIS SHOULD BE EXCLUSIVELY THE DEPARTMENT'S ROLE.

SECOND, WE BELIEVE THE CHANGED TIME LIMITATIONS IN SB 514 ARE UNREASONABLE. THE PRESENT SITING ACT ALLOWS A MAXIMUM OF TWO YEARS FOR COMPLETION AND PUBLIC REVIEW OF THE DEPARTMENT'S ENVIRONMENTAL IMPACT STATEMENT BEFORE THIS REPORT IS SUBMITTED TO THE BOARD. THIS TIMEFRAME IS REDUCED TO NINE MONTHS IN SB 514. NINE MONTHS IS SIMPLY AN INSUFFICIENT TIME TO GATHER NECESSARY BASELINE INFORMATION;

PREPARE A STATEMENT ON THE SOCIAL, ECONOMIC AND ENVIRONMENTAL IMPACTS; PUBLICLY REVIEW THE DOCUMENT, AND FINALIZE IT WHILE TAKING INTO CONSIDERATION PUBLIC COMMENT. NINE MONTHS MAY BE A SUFFICIENT TIME TO REVIEW A SMALL GENERATING PLANT OR A SMALL TRANSMISSION LINE, BUT WOULD NOT ALLOW ADEQUATE TIME FOR REVIEWING IMPACTS OF LARGE APPLICATIONS SUCH AS BURLINGTON NORTHERN'S AND BASIN ELECTRIC'S PROPOSED CIRCLE WEST PROJECT IN MCCONE COUNTY. THE PROPOSED TIMEFRAMES IN SB 514 MAY REQUIRE THE DEPARTMENT OF NATURAL RESOURCES TO ISSUE ITS RECOMMENDATIONS AND REPORT TO ITS BOARD WITHOUT KNOWING WHETHER THE PLANTS CAN MEET AIR AND WATER QUALITY STANDARDS. THE SIX-MONTH TIME LIMIT FOR AGENCIES TO SUBMIT THEIR REPORTS TO THE DEPARTMENT IS ALSO NOT ENOUGH TIME FOR THE REASONS MENTIONED ABOVE.

THIRD, THE PROCEDURES FOR DETERMINING THE AMOUNT OF THE FILING FEE IN THE BILL DO NOT GUARANTEE THE STATE WILL HAVE SUFFICIENT MONEY TO ADMINISTER THE SITING ACT. WE PREFER THE PRESENT FORMAT WHERE THE APPLICANT SIMPLY PAYS A FILING FEE BASED ON THE OVERALL COST OF ITS FACILITY, RATHER THAN A NUMBER OF CONTACTS AND NEGOTIATIONS WITH THE DEPARTMENT OVER THE FEE. SB 514 ALSO REQUIRES THE DEPARTMENT TO CREDIT THE COSTS OF ANY ENVIRONMENTAL STUDIES DONE BY THE APPLICANT OR GOVERNMENTAL AGENCIES AGAINST THE FILING FEE. THIS TYPE OF A FILING FEE CREDIT DOES NOT GIVE THE DEPARTMENT THE DISCRETION TO DETERMINE WHICH STUDIES ARE CREDIBLE AND VALID, AND COULD LEAVE THE STATE WITH LITTLE OR NO MONEY TO REVIEW THE APPLICATION AND CONDUCT NECESSARY HEARINGS.

FOURTH, SB 514 PROVIDES FOR LESS PUBLIC PARTICIPATION AND CITIZEN PROTECTION. THE PRESENT SITING ACT REQUIRES A FULL PUBLIC HEARING IF THE APPLICANT APPLIES FOR AN AMENDMENT TO A CERTIFICATE THAT WOULD

RESULT IN A MATERIAL INCREASE IN INVIRONMENTAL IMPACT OR A SUBSTANTI CHANGE IN THE LOCATION OF THE FACILITY. SB 514 STRIKES THIS PROVISION IN THE LAW, AND MERELY REQUIRES THE BOARD TO GIVE REASONABLE NOTICE TO AFFECTED PARTIES BEFORE IT CONDITIONS A CERTIFICATE. SB 514 ALSO LIMITS ACTIVE PARTICIPATION IN THE HEARINGS TO ONLY THOSE NON-PROFIT ORGANIZATIONS WHERE A MAJORITY OF ITS MEMBERS WOULD BE SUBSTANTIALLY AFFECTED BY THE APPLICATION. THE WORDS "SUBSTANTIALLY AFFECTED" ARE AMBIGUOUS. IT IS QUITE POSSIBLE THAT CONSIDERABLE DELAY COULD RESULT FROM THE IMPLEMENTATION AND POTENTIAL LITIGATION OVER THIS LANGUAGE. THIS PROVISION WOULD REQUIRE NON-PROFIT GROUPS TO TURN OVER THE NAMES AND ADDRESSES OF ALL OF THEIR MEMBERS TO THE ENERGY COMPANIES. MANY OF OUR MEMBERS ARE RELUCTANT TO DO THIS BECAUSE THEY FEEL IT IS A VIOLATION OF THEIR RIGHT TO PRIVACY, MAY SUBJECT THEM TO RETALIATION, AND MAY RESULT IN THEIR NAMES BEING PLACED ON MAILING LISTS THAT THEY DO NOT WANT. SB 514 ALSO LIMITS THE DEPARTMENT'S ROLE IN THE HEARINGS TO THE PRESENTATION OF ITS STUDIES. THIS LIMITATION WILL DEPRIVE THE PUBLIC OF AN ADVOCATE TO REPRESENT THE PUBLIC INTEREST DURING THE HEARINGS.

FIFTH, THE PUBLIC SERVICE COMMISSION'S ABILITY TO DETERMINE ENERGY NEEDS IS TOO LIMITED IN SB 514. ONCE THE PUBLIC SERVICE COMMISSION CERTIFIES A NEED, THE ONLY WAY IT CAN REVOKE THIS CERTIFICATE IS ON THE BASIS OF THE EVIDENCE CONTAINED IN THE UTILTIES' SUBSEQUENT LONG-RANGE PLANS. ALSO, SB 514 DOES NOT ALLOW THE PSC TO MODIFY ITS NEED CERTIFICATION ONCE AN APPLICATION FOR A FACILITY IS SUBMITTED. FOR EXAMPLE, IF AFTER THE APPLICATION WAS SUBMITTED, THE PSC OBSERVED A DRAMATIC DROP IN ELECTRICITY CONSUMPTION OR OBTAINED NEW INFORMATION WHICH AFFECTED THEIR PREVIOUS CERTIFICATION OF NEED, THE PSC COULD NOT REVISE ITS NEED CERTIFICATION.

AND LAST, WE RECOGNIZE THE PROBLEM THAT EXISTS WITH THE PRESENT CRITERIA IN THE SITING ACT. THE PROBLEM IS THAT SOME OF THE CRITERIA JUST DON'T MAKE SENSE FOR SOME OF THE FACILITIES COVERED BY THE SITING ACT (SUCH AS STUDYING THE STACK HEIGHTS FOR TRANSMISSION LINES). HOWEVER, WE BELIEVE THE DEPARTMENT'S APPROACH IN HOUSE BILL 829 OF ADDING THE WORDS "WHERE APPLICABLE" TO THE CRITERIA IS A BETTER WAY TO SOLVE THE PROBLEM THAN DELETING NEARLY ALL OF THE ENVIRONMENTAL CRITERIA IN THE SITING ACT.

AS AN INDIVIDUAL WHO LIVES NEXT TO A LARGE PROPOSED INDUSTRIAL COMPLEX, I AM VERY MUCH CONCERNED WITH AN ADEQUATE EVALUATION OF ALL THE SOCIAL, ECONOMIC AND ENVIRONMENTAL IMPACTS. THE NPRC IS DISAPPOINTED TO SEE THAT SB 514 REPEALS SECTION 75-20-301, WHICH CONTAINS THE BOARD OF NATURAL RESOURCES FINDINGS THAT "THE FACILITY MUST REPRESENT THE MINIMUM ADVERSE ENVIRONMENTAL IMPACT." WITHOUT THE MINIMUM ADVERSE IMPACT PROVISION, THERE IS NO CERTAINTY THAT THE INDUSTRIAL FACILITIES WILL BE LOCATED IN THE BEST LOCATIONS AND DESIGNED TO TRULY MINIMIZE ADVERSE IMPACTS TO MONTANA CITIZENS.

WE URGE DO NOT PASS.

Mr. Chairman, members of the committee, my name is Carole Brass. I am a member of the Nuclear Vote organization and have been asked to testify in opposition to SB 314.

The vote on Initiative 80 affirms the desire of the public to be included in energy decisions. Despite a well financed campaign against I-80, the public voted for strong nuclear siting standards and mandatory voter review. We feel a fair interpretation of that vote is that the public overwhelmingly wants to participate--even to the point of a direct vote on--major energy siting decisions. It also seems clear that the Montana public would not support a siting process controlled by the applicant.

There are many reasons that Nuclear Vote opposes SB314. However, for the sake of time, I will only call your attention to three of our major areas of concern.

1. Section 4, starting on page 29, describes the certification of need by the PSC as being permanent; the state's role is rigidly constrained; while the applicant seems free to change their plans. Further action is not subject to public imput, but is based only on the applicants own long range plans

2. Page 26, lines 9-11, states a facility could be built without any public review or siting process for a voltage problem in part of the state.

3. Section 3, page 24-25, allows substantial modification of the application without public hearing but with only a notice of decision.

In closing, I would ask you to consider the Montanans you represent. Do not close off their ability to participate in the decision making process.

From: League of Women Voters of Montana

Subject: Testimony on Senate Bill 514.

February 19, 1979

The League of Women Voters of Montana opposes Senate Bill 514, because we are of the opinion that it does not protect the citizens and enviroment of Montana as well as the present facility siting Act For this reason we hope that you give Senate Bill 514 a do not pass recommendation.

Thank You