

MINUTES OF THE MEETING
NATURAL RESOURCES
MONTANA STATE SENATE

March 14, 1979

The twenty-fifth meeting of the Natural Resources Committee was called to order by Senator George F. Roskie, Chairman, at 12:10 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 Senator Lowe and Thiessen.

Mr. Jim Lear, Staff Attorney from the Legislative Council, was also present.

CONSIDERATION OF HB 717: Chairman Roskie called on Senator Elmer Severson, District 46, to address some of the questions the Committee had concerning HB 717. Senator Brown said he would like to have time to get with Senator Severson and Representative Bardanoue to work out some amendments that would remove the abusive language. He said he felt they could have some amendments worked out by Friday. Chairman Roskie appointed Senators Brown and Manley to work out some amendments to HB 717 for action at Friday's meeting.

DISPOSITION OF HB 759: Senator Dover moved that HB 759 be amended on page 4, line 11 by striking "10" following "2%" and inserting "2%". The motion carried unanimously with those present with Senator Roskie abstaining. Senator Lowe had previously registered a yes vote on the motion. Senator Lockrem then moved to amend HB 759 on page 6, line 10 through line 20 on page 7 by striking Section 6 in its entirety. Senator Dover seconded the motion. All those present voted in favor of the motion with the exception of Senator Brown with Senator Roskie abstaining. Senator Lowe had previously registered a yes vote on the motion. Senator Manley then moved to amend HB 759 on page 1, line 23 by striking "\$7.50" following "\$5" and inserting "\$6". All those present voted in favor of the motion with the exception of Senator Dover. Senator Lowe had previously registered a yes vote on the motion. Senator Dover then moved that HB 759 BE CONCURRED IN as Amended. Chairman Roskie called for a roll call vote on the motion (see attachment). The motion carried.

DISPOSITION OF HB 742: Senator Dover moved that HB 742 BE NOT CONCURRED IN. Senator Brown said he had an amendment to propose to HB 742 and he requested that the Committee defer action until he had time to go get the amendment.

DISPOSITION OF HB 617: Senator Manley moved that HB 617 BE NOT CONCURRED IN. Senator Dover seconded the motion. The motion carried with Senator Brown and Jergeson voting against the motion. Senator Lowe had previously registered a vote that HB 617 BE NOT CONCURRED IN.

DISPOSITION OF HB 842: Chairman Roskie called on Senator Etchart to report on what the subcommittee had decided on. Senator Etchart presented the Committee with a copy of the re-drafted bill and explained the amendments the subcommittee felt should be adopted. Senator Brown asked if Representative Day, Mr. Ted Doney and Mr. Al Kirsich had been invited to the subcommittee meetings. Senator Etchart explained that the only time the subcommittee had been able to meet was during breakfast and so the above named individuals were not made aware of the meetings.

Senator Dover moved that the amendments to HB 842 be adopted. The motion carried with Senator Brown voting no, Senator Jerge-son abstaining and Senator Lowe having previously registered a yes vote. Senator Dover moved that HB 842 BE CONCURRED IN as Amended. The motion carried with Senators Brown and Jerge-son voting no and Senator Lowe having previously registered a yes vote. Senator Lowe arrived at this time.

DISPOSITION OF HB 694: Senator Dover moved that HB 694 BE NOT CONCURRED IN. There was some discussion on the amendments put in by the House and then Chairman Roskie called for the vote. The motion carried with only Senator Brown voting no. Senator Lockrem registered a vote in favor of the motion before leaving the meeting.

DISPOSITION OF HB 742: Senator Brown presented his amendment to the Committee for their consideration. Senator Brown wanted to amend HB 742 on page 1, lines 15 through 21 by striking the remainder of lines 15 through line 21 following "state." on line 15 and inserting "However, nothing in the chapter expands the substantive decision-making authority of an agency to issue, deny, modify, or otherwise act upon an application for a lease, permit, contract, license, or certificate except where agency-initiated or agency-financed action is involved." Senator Brown then moved the adoption of the previously stated amendment. Senator Dover withdrew his motion that HB 742 BE NOT CONCURRED IN in order to vote on Senator Brown's amendment. The motion carried unanimously. Senator Brown then moved that HB 742 BE CONCURRED IN as Amended. Chairman Roskie called for a roll call vote on Senator Brown's motion (see attachment). Senator Lockrem registered a no vote on the motion at the close of the hearing making the vote a tie and keeping HB 742 in Committee.

Chairman Roskie adjourned the executive session and began the hearing on HB 883.

CONSIDERATION OF HB 883: "An act to generally revise the law relating to Major Facilities and Siting; amending sections

Natural Resources Committee Minutes
March 14, 1979
Page 3

75-2-211, 75-20-103, 75-20-104, 75-20-203, 75-20-211, 75-20-213 through 75-20-216, 75-20-218 through 75-20-222, 75-20-301, 75-20-302, 75-20-304, 75-20-401, 75-20-402, 75-20-406, 75-20-408, 75-20-501, and 75-20-503, MCA; AND REPEALING SECTIONS 75-20-1101 THROUGH 75-20-1105, MCA."

Chairman Roskie called on Representative Bardanouve, District 6, to present HB 883 to the Committee. Representative Bardanouve said HB 883 was a compromise bill between his original bill and Representative Scully's original bill. He said the Department of Natural Resources has been working with people on both sides of the fence to come up with something to speed up the process of siting major facilities and make a workable law. He said he felt this bill would simplify and modernize the Major Facility Siting Act.

Chairman Roskie called for any other proponents to HB 883. Mr. Ted Doney, Department of Natural Resources, spoke in favor of HB 883 and highlighted some of the major changes that it makes in the Major Facility Siting Act. He said meetings were still going on in order to propose further amendments to HB 883 and he suggested putting HB 883 into a subcommittee for further study.

Mr. Rod Hanson, Montana Rural Electric Coop and Chairman of the Montana Associated Utilities Legislative Committee spoke in favor of HB 883 and submitted his testimony in written form (see attachment).

Mr. Pat Smith, Northern Plains Resource Council, also spoke in favor of HB 883 and submitted his testimony in written form (see attachment).

Senator Cornie Thiessen, District 27, and President of Basin Electric, spoke in favor of HB 883 and pointed out the attitude Basin Electric has had to take regarding expansion in Montana because of the Major Facility Siting Act. He said they are not out to tear down the environment in Montana, but pointed out that not one major facility has been sited in Montana since the Major Facility Siting Act came into existence. Senator Thiessen said he also supported the idea of a subcommittee.

Mr. Ronald Pogue, Alternative Energy Resources Organization, said he supported the previous comments made on HB 883 and he supports HB 883 if no more substantive changes are made. He submitted testimony in written form (see attachment).

Mr. Allen Chronister, representing the Attorney General's Office, spoke in favor of HB 883 and pointed out some changes the bill would make in the Major Facility Siting Act. He said the bill would make the Attorney General's office the public interest advocate and felt that was a sham and would not come about. He

Natural Resources Committee Minutes
March 14, 1979
Page 4

also said the Attorney General's office was not consulted when the Department of Natural Resources was working to get changes in the Major Facility Siting Act that would be agreeable to all concerned parties. Mr. Chronister also pointed out some parts of the bill he felt were unworkable and presented some amendments for the Committee's consideration (see attachment).

Ms. Dawn North, League of Women Voters, spoke in favor of HB 883 and submitted her testimony in written form (see attachment).

Mr. Tom Ryan, Montana Senior Citizens Association, also spoke in favor of HB 883.

At this point Representative Scully arrived and Chairman Roskie called on him for his comments on HB 883. Representative Scully said it was necessary to change the Major Facility Siting Act but was fully aware that further amendments would be proposed. He pointed out that a great deal of work went into both his bill and Representative Bardanoue's bill before they were introduced.

Mr. Mike Meloy, Citizens for the Siting Act, spoke in favor of HB 883. He said this bill proposes changes that make things easier for the applicant without weakening the Siting Act. He also emphasized the need for a public advocate whether it be the Attorney General's office or the Department of Natural Resources.

Mr. Mike Dahlem, Associated Students from the University of Montana, also spoke in favor of HB 883.

Sharon Peterson, Women Involved in Farm Economics, submitted written testimony in favor of HB 883 (see attachment).

There being no other proponents to HB 883, Chairman Roskie called for any opponents to HB 883. Mr. Ward Shanahan, Dreyer Brothers Inc., said he opposes the bill in its present form but supports some proposed amendments. He said Dreyer Brothers is not a utility company and is not trying to locate a generating station but a fertilizer plant and will be producing methanol but they are still under the Major Facility Siting Act. He pointed out some of the major defects he felt were in HB 883. He then submitted some amendments for the Committee's consideration (see attachment).

Mr. John Ross, lawyer from Montana Power Company, was opposed to HB 883 but wanted to work out some amendments.

Mr. Pat McKittrick, former Speaker of the House, representing the REA's said they were concerned about taking the bugs out of the Major Facility Siting Act but maintaining the integrity of the Act.

Chairman Roskie then opened the hearing to questions from the Committee and there was some discussion about the changes this bill proposes to make in the Major Facility Siting Act.

Chairman Roskie then informed the Committee he would put HB 883 into a subcommittee.

Representative Bardanouve made a brief closing statement.

Senator Thiessen moved that Chairman Roskie appoint a subcommittee for HB 883 with Chairman Roskie being an ex officio member of the subcommittee. The motion passed unanimously with Senator Roskie abstaining.

There was a brief recess while those visitors only interested in HB 883 left the Committee Room.

CONSIDERATION OF HB 716: "An act to amend the Clean Air Act of Montana (etc.)".

Chairman Roskie called on Representative Daniel Kemmis, District 94, to present HB 716 to the Committee. Representative Kemmis pointed out that HB 716 was necessary to comply with federal laws and that if it was not adopted the Environmental Protection Agency will assess non-compliance penalties against sources not in compliance with the Clean Air Act and they will receive the money rather than the state of Montana. Representative Kemmis highlighted the main points of the bill and the reasons for their necessity. He then proposed some amendments for the Committee's consideration (see attachment).

Senator Chet Blaylock, District 35, co-sponsor of HB 716, said he would like to see the fine lowered from \$25,000 to \$10,000 as was proposed by Representative Kemmis.

Mr. Mike Roach, Air Quality Bureau. spoke in favor of HB 716 and submitted his testimony in written form (see attachment).

Mr. Steve Foster, Anaconda Company, spoke in favor of HB 716. He submitted his comments in written form along with some amendments for the Committee's consideration (see attachment).

Mr. Jim Mockler, Montana Coal Council, spoke in favor of HB 716 and offered some amendments for the Committee's consideration (see attachment).

Linda Ruprecht spoke in favor of HB 716 and submitted her testimony in written form (see attachment).

Mr. Don Allen, Montana Petroleum Association, said he supported HB 716 and the amendments.

Mr. David Feffer, Health Officer for Missoula County, also spoke in support of HB 716.

Natural Resources Committee Minutes
March 14, 1979
Page 6

Karen Zackheim spoke in favor of HB 716 and submitted her testimony in written form (see attachment).

Mr. Les Loble II, Montana Dakota Utilities, and Chairman of City-County Board of Health in Helena, spoke in favor of HB 716 and submitted some amendments for the Committee's consideration (see attachment).

There being no other proponents to HB 716, Chairman Roskie called for any opponents. Mr. Robert Holding, Executive Director for the Montana Wood Products Association, spoke in opposition to HB 716 and submitted some comments about the features of HB 716 which he still felt were objectionable (see attachment). He also submitted some amendments for the Committee's consideration (see attachment).

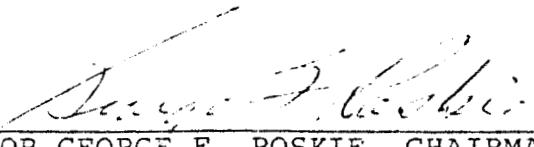
Mr. Peter Jackson, Western Environmental Trade Association, also spoke in favor of HB 716 and said he also supported the amendments.

Chairman Roskie then opened the hearing to questions from the Committee and there were none.

Representative Kemmis closed and said if there was any ambiguity about whether or not the local governments need to meet the requirements, he will prepare an amendment.

DISPOSITION OF HB 555: Chairman Roskie called the Committee's attention to their copy of the amendments proposed by Representative Hand on HB 555. Several questions were addressed to Mr. Wilbur Anderson, General Manager of Vigilante Electric Cooperative. Senator Dover moved the amendments proposed by Representative Hand be adopted. All those present voted in favor of the motion with the exception of Senator Brown. Senator Dover then moved that HB 555 BE CONCURRED IN as Amended and Senator Etchart seconded the motion. All those present voted in favor of the motion with the exception of Senator Brown.

ADJOURNMENT: There being no further business the meeting adjourned at 3:00 P.M.


SENATOR GEORGE F. ROSKIE, CHAIRMAN

3/14/79

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.

STANDING COMMITTEE REPORT

March 14, 1979

MR. President

We, your committee on Natural Resources

having had under consideration House Bill No. 759

Bertelson (Dover)

Respectfully report as follows: That House Bill No. 759,
third reading bill, be amended as follows:

1. Page 1, line 23.

Following: "\$5"

Strike: "\$7.50"

Insert: "\$6"

2. Page 4, line 11.

Following: "2e"

Strike: "10e"

Insert: "2e"

3. Page 6, line 10 through line 20 on page 7.

Strike: Section 6 in its entirety

And, as so amended,

~~DO PASS~~

BE CONCURRED IN

STANDING COMMITTEE REPORT

March 14, 1979

MR. President

We, your committee on Natural Resources

having had under consideration House Bill No. 617

Baeth (Roskie)

Respectfully report as follows: That House Bill No. 617

BE NOT CONCURRED IN

~~BE PASSED~~

STANDING COMMITTEE REPORT

March 15, 19 79

MR. President

We, your committee on Natural Resources

having had under consideration House Bill No. 842

Day (Etchart)

Respectfully report as follows: That House Bill No. 842, third reading bill, be amended as follows:

1. Title, lines 6 through 9.

Following: "MAINTAINING" on line 6

Strike: "IN-STREAM"

Insert: "MINIMUM"

Following: "FLOW" on line 6

Strike: remainder of line 6 through "REQUIRED;" on line 9

Insert: ", LEVEL, OR QUALITY OF WATER; LIMITING MINIMUM FLOW RESERVATIONS; REQUIRING ADJUDICATION BEFORE AWARD OF RESERVATIONS; CLARIFYING THE METHOD OF APPROPRIATION OF CERTAIN RESERVED WATER;"

Following: "SECTION" on line 9

Strike: "85-2-605"

Insert: "95-2-316"

DEPAXX

(Continued)

2. Page 1, line 13 through line 4 on page 2.

Following: line 12

Strike: Section 1 in its entirety

Insert: "Section 1. Section 85-2-316, MCA, is amended to read:
"85-2-316. Reservation of waters. (1) The state or any political subdivision or agency thereof or the United States or any agency thereof may apply to the board to reserve waters for existing or future beneficial uses or to maintain a minimum flow, level, or quality of water throughout the year or at such periods or for such length of time as the board designates.

(2) Upon receiving an application, the department shall proceed in accordance with 85-2-307 through 85-2-309. After the hearing provided in 85-2-309, the board shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, shall be paid by the applicant.

(3) The board may not adopt an order reserving water unless the applicant establishes to the satisfaction of the board:

(a) the purpose of the reservation;

(b) the need for the reservation;

(c) the amount of water necessary for the purpose of the reservation;

(d) that the reservation is in the public interest.

(4) If the purpose of the reservation requires construction of a storage or diversion facility, the applicant shall establish to the satisfaction of the board that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan.

(5) The board shall limit any reservations after [the effective date of this act] for maintenance of minimum flow, level, or quality of water that it awards at any point on a stream or river to a maximum of the historic low flow as determined by the department at such point on the stream or river.

(6) The board may not after [the effective date of this act] award any reservation on any stream or river until the existing water rights on that stream or river have been adjudicated in accordance with this chapter.

~~(5)~~ (7) After the adoption of an order reserving waters, the department may reject an application and refuse a permit for the appropriation of reserved waters or may, with the

(Continued)

approval of the board, issue the permit subject to such terms and conditions it considers necessary for the protection of the objectives of the reservation.

(8) Any person desiring to use water reserved to a conservation district may apply to the department for a permit under 85-2-302, the department shall maintain records of permits issued for water reserved to conservation districts and be responsible for rendering all technical and administrative assistance in the processing of such applications for the conservation districts. The conservation district must concur with the department's action on any application for a permit for waters reserved to the district.

(9) A reservation under this section shall date from the date the order reserving the water is adopted by the board and shall not adversely affect any rights in existence at that time.

(10) The board shall, periodically but at least once every 10 years, review existing reservations to ensure that the objectives of the reservation are being met. Where the objectives of the reservation are not being met, the board may extend, revoke, or modify the reservation.

(11) The board may modify an existing or future order originally adopted to reserve water for the purpose of maintaining minimum flow, level, or quality of water, so as to reallocate such reservation or portion thereof to an applicant who is a qualified reservant under this section or who is eligible for a permit to appropriate water under this part. Reallocation of reserved water may be made by the board following notice and hearing wherein the board finds that need for the reallocation has been shown by the applicant to outweigh the need shown by the original reservant. Reallocation of reserved water shall not adversely affect the priority date of the reservation, and the reservation shall retain its priority date despite reallocation to a different entity for a different use.

(12) The board shall assign the following order of preference to reallocated reservations:

- (a) municipal and domestic use;
- (b) agricultural and stock water use;
- (c) industrial use;
- (d) maintenance of minimum flow, level, or quality of water.

(13) Nothing in this section vests the board with the authority to alter a water right that is not a reservation."

And, as so amended,
BE CONCURRED IN

ea

STANDING COMMITTEE REPORT

March 14, 1979

MR. President

We, your committee on Natural Resources

having had under consideration House Bill No. 694

Day (Roskie)

Respectfully report as follows: That House Bill No. 694

BE NOT CONCURRED IN
DO PASS

STANDING COMMITTEE REPORT

.....March 14..... 19 79.....

MR.President:.....

We, your committee onNatural Resources.....

having had under considerationHouse..... Bill No.555.....

Respectfully report as follows: That House Bill No.555,.....
third reading bill, be amended as follows:

1. Title, line 7.

Following: "POWER"

Insert: "AND TO PROVIDE FOR POWER GENERATION AT TOSTON DAM"

Following: "MCA"

Insert: "; PROVIDING AN IMMEDIATE EFFECTIVE DATE"

2. Page 3, line 16.

Following: line 15

Insert: "Section 3. There is a new MCA section that reads:

Power generation at Toston Dam. (1) The department shall conduct a study of the economic feasibility of power generation at the Broadwater-Missouri Dam facilities (Toston Dam). This study is to be completed no later than June 30, 1979. If the study shows that power generation is economically feasible, the department shall offer for lease the use of the facilities at Toston Dam for power generation, subject to the requirements of subsection (2).

DD:RASSY

(continued)

(2) The facilities, if subject to lease under subsection (1), shall be offered for lease no later than November 1, 1979, and a decision on the lease shall be made no later than February 1, 1980. Preference in granting the lease shall be given to nonprofit corporations. The minimum acceptable lease offer must provide for an annual payment of an amount equal or equivalent to 1 mill per kilowatt hour of power generated and sold. Notwithstanding the provisions of 85-1-332, the department shall use 50% of the lease revenues for maintenance and repair of Toston Dam and its associated irrigation facilities."

Renumber: subsequent section

3. Page 3, line 16.
Following: "CODIFICATION."
Strike: "SECTION 2 IS"
Insert: "Sections 2 and 3 are"

4. Page 3, line 19.
Following: "TO"
Strike: "SECTION 2"
Insert: "sections 2 and 3"

5. Page 3, line 20.
Following: line 19
Insert: "Section 5. Effective date. Section 3 is effective on passage and approval of this act."

And, as so amended,
BE CONCURRED IN

SENATE COMMITTEE NATURAL RESOURCES

Date March 14, 1979 House Bill No. 759 Time

NAME	YES	NO
ROSKIE, George F., Chairman	ABSTAINED	
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 SA

GEORGE F. ROSKIE
Chairman GR

Motion: By Senator Dover that HB 759 BE CONCURRED IN as Amended.

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

SENATE COMMITTEE NATURAL RESOURCES

Date March 14, 1979 House Bill No. 742 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

SN

GEORGE F. ROSKIE

Chairman

GFR

Motion: By Senator Brown that HB 742 BE CONCURRED IN as Amended.

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

SENATE

COMMITTEE

BILL _____

VISITORS' REGISTER

DATE _____

Please note bill no.

NAME	REPRESENTING	BILL #	(check one)	
			SUPPORT	OPPOS
Ted Doney	DNRC	HB 883	X	
Wendy Shamah	Greiner Bros Inc.	HB 883	Amend	
Steve Cawley	U/M Int'l	HR 716	X	
Shelley Thompson	Montana Mining Assoc	HB 716		
Ronald Pegue	Alternative Energy Resources Organization	HB 883	Support as is	
Dawn A. North	League of Women Voters	HB 883	X	
Karen Strickler	League of Women Voters	HB 883	✓	
John Ross	Montana Farmer	883		
Dee West	DNRC	883	✓	
Wendy Hill	Montana Health Dept	716	✓	
Bill Harbeck	ERC			
Patricia Brown		716	✓	
David R. Smith		716	✓	
Dennis L. Lynch	MPC	716	amend	
Karen Zachheim		716	✓	
Mike Rosen	ACB - DUES	716	✓	
Patricia Smith	ACB - DUES	716		
Patricia Smith	ACB - DUES	716		
Patricia Smith	ACB - DUES	716		
Jan Bolstad	DNRC - ACB	716	—	
Patricia Smith	ACB - DUES	716		
Patricia Smith	ACB - DUES	716	✓	
Wendy Hill	Montana Health Dept	716		
Wendy Hill	Montana Health Dept	716	✓	

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

COMMITTEE

DATE _____

(check one)	
SUPPORT	OP

OP 10

support
w/ documentation

✓ w/
am - ad - read

93 27

482

554

223

Q. 2

716

883

983

✓

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

NAME: 100 Doney DATE: 3/19/79

ADDRESS: _____

PHONE: _____

REPRESENTING WHOM? BACK

APPEARING ON WHICH PROPOSAL: A 5095

DO YOU: 'SUPPORT? AMEND? OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: WARD SCHAMMANN DATE: 3-14-79
ADDRESS: 301 FIRST NAT'L BANK BLDG, HELENA, MT 59601
PHONE: 442-8560
REPRESENTING WHOM? Dreyer Bros. Inc.
APPEARING ON WHICH PROPOSAL: HB 883

DO YOU: SUPPORT? XXX AMEND? XXXX OPPOSE?

COMMENTS: We will make oral statement in support of amendments prepared following a joint expense of DNR, Utility, Co-op and our staff attorneys.

We want to do business in Montana, HB883 doesn't solve our problem but as amended it might go some way toward doing that.

NAME: MILIE ROACH DATE: 3-14-79

ADDRESS: AQB - DHES

PHONE: 449 3454

REPRESENTING WHOM? AQB - DHES

APPEARING ON WHICH PROPOSAL: HB 716

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: STEPHEN FOSTER DATE: 3/14/79

ADDRESS: Box 689 BUTTE

PHONE: 723-4311

REPRESENTING WHOM? THE ANDERSONS Co.

APPEARING ON WHICH PROPOSAL: H.B. 716

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: David Alan Felt DATE: 3-14-79

ADDRESS: 301 W Alder St. Missoula

PHONE: 549-6989

REPRESENTING WHOM? Missoula City - County Health Dept.

APPEARING ON WHICH PROPOSAL: HR-716

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Karen Zaackheim DATE: March 14, 1979

ADDRESS: 308 S. 6th E, Missoula

PHONE: 549-2179

REPRESENTING WHOM? myself

APPEARING ON WHICH PROPOSAL: HB 716

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

HOUSE BILL NO. 842

INTRODUCED BY WAY OF REQUEST OF SELECT WATER COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT THE
REALLOCATION AND APPROPRIATION OF WATER RESERVED FOR
PURPOSES OF MAINTAINING IN-STREAM MINIMUM FLOW--IN--THE
YELLOWSTONE--RIVER--AND--WHEREVER--THE--BOARD--OF--NATURAL--RESOURCES
AND--CONSERVATION--DETERMINES--THAT--THE--RESERVATION--IS--NOT
NECESSARY TO MAINTAIN THE QUALITY OF WATER; LIMITING MINIMUM FLOW
RESERVATIONS; PROVIDING FOR ADJUDICATION OF RIGHTS OF
RESERVATIONS; ESTABLISHING THE METHOD OF APPROPRIATION OF
SUCH WATER; AMENDING SECTION 85-2-305 OF 1972-1973
MCA; PROVIDING AN EFFECTIVE DATE."

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

SECTION 1. SECTION 85-2-305 MCA IS REPEALED AND

"85-2-305. Reservations. If the department may apply
for reservations and shall as rapidly as possible assist
other appropriate state agencies and potential subdivisions
in applying for reservations within the boundaries of the
state or any agency thereof may apply for reservation of
water in the basin under 85-2-305 for benefit or use of that
water in the state or none and for treatment and shall be
given to appropriations to reserve water for agricultural,
municipal and industrial purposes for the protection of

existing rights and interests

Article 1. The Department of the Interior, acting through the Bureau of Reclamation, shall have the authority to reserve water for existing or future beneficial uses or to maintain a minimum flow, level, or quality of water throughout the year or at such periods or for such length of time as the board designates.

Article 2. The Department of the Interior, acting through the Bureau of Reclamation, shall have the authority to reserve water for existing or future beneficial uses or to maintain a minimum flow, level, or quality of water throughout the year or at such periods or for such length of time as the board designates.

Article 3. The Department of the Interior, acting through the Bureau of Reclamation, shall have the authority to reserve water for existing or future beneficial uses or to maintain a minimum flow, level, or quality of water throughout the year or at such periods or for such length of time as the board designates.

SEC. 1. SEC. 2-310. RESERVATION OF WATERS. (1) The state or any political subdivision or agency thereof or the United States or any agency thereof may apply to the board to reserve

waters for existing or future beneficial uses or to maintain a minimum flow, level, or quality of water throughout the year or at such periods or for such length of time as the board designates.

(2) Upon receiving an application, the department shall proceed in accordance with 85-2-307 through 85-2-309. After the hearing provided in 85-2-309, the board shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing,

conducting investigations, and making records incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, shall be paid by the applicant.

(3) The board may not adopt an order reserving water unless the applicant establishes to the satisfaction of the board:

- (a) the purpose of the reservation;
- (b) the need for the reservation;
- (c) the amount of water necessary for the purpose of the reservation;
- (d) that the reservation is in the public interest.

(4) If the purpose of the reservation requires construction of a storage or diversion facility, the applicant shall establish to the satisfaction of the board that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan.

12) The board shall limit any reservations after the effective date of this act to a minimum of minimum flow, level, or quantity of water that it awards at any point on a stream or river to a maximum of the historic low flow as determined by the department at such point on the stream or river.

13) The board may not after the effective date of

1015. After the adoption of an order reserving
waters, the department may reject an application and refuse
a permit for the appropriation of reserved waters or may,
with the approval of the board, issue the permit subject to
such terms and conditions it considers necessary for the
protection of the objectives of the reservation.

1016. After the adoption of an order reserving
waters, the department may reject an application and refuse
a permit for the appropriation of reserved waters or may,
with the approval of the board, issue the permit subject to
such terms and conditions it considers necessary for the
protection of the objectives of the reservation.

1017. Any person desiring to use water reserved to a
conservation district may apply to the department for a
permit under section 204. The department shall maintain records
of permits issued for water reserved to conservation
districts and be responsible for rendering all technical and
administrative assistance in the processing of such
applications for the conservation districts. The
conservation districts must conform with the department's
action on any application for a permit for waters reserved
to the district.

1018. A reservation under this section shall date
from the date the order reserving the water is adopted by
the board and shall not adversely affect any rights in
existence at that time.

1019. The board shall, periodically but at least once
every 10 years, review existing reservations to ensure that

the objectives of the reservation are being met. where the objectives of the reservation are not being met, the board may extend, revoke, or modify the reservation.

(11) The board may modify an existing or future order originally adopted to reserve water for the purpose of maintaining minimum flow, level, or quality of water, so as to reallocate such reservation or portion thereof to an applicant who is a qualified reservant under this section or who is eligible for a permit to appropriate water under this part. Reallocation of reserved water may be made by the board following notice and hearing wherein the board finds that need for the reallocation has been shown by the applicant to outweigh the need shown by the original reservant. Reallocation of reserved water shall not adversely affect the priority date of the reservation, and the reservation shall retain its priority date despite reallocation to a different entity for a different use.

(12) The board shall assign the following order of preference to reallocated reservations:

(a) municipal and domestic use;

(b) agricultural and stock water use;

(c) industrial use;

(d) maintenance of minimum flow, level, or quality of water.

(13) Notwithstanding this section vests the board with the

authority to alter a water right that is not a reservation."

Section 2. Effective date. This act is effective on passage and approval.

-end-

TESTIMONY IN SUPPORT OF HB883 BY ROD HANSON, CHAIRMAN MONTANA ASSOCIATED UTILITIES LEGISLATIVE COMMITTEE.

SENATE NATURAL RESOURCES COMMITTEE

March 14, 1979

Mr. Chairman and Members of the Committee:

For the past several years the members of our electric cooperatives have watched, with increasing concern, the rapidly growing power needs of their 80,000 consumer/members - while at the same time the availability of power for their future needs steadily deteriorated. They were advised that:

1. The Bureau of Reclamation would not provide for any load growth beyond the amount of power already contracted for - unless the cooperatives were willing to pay 10 times the regular rate for the additional power.
2. The Montana Power Company would not increase the contract amount of power they would deliver to the cooperatives beyond that already specified for use in 1981.
3. Cooperatives west of the divide, in Montana, would be faced with an energy deficiency from the Bonneville Power Administration in 1983.
4. Basin Electric Power Cooperative declined to make application to construct a power plant in Montana due to the "impossible requirements" of the Major Facilities Siting Act.

With every additional notification, our members became more concerned about the possibilities of brownouts and blackouts down the road a few years. Where additional power needs were going to come from became the top agenda item for every MAU board and members meeting. Finally, at their October, 1978 annual meeting, the members adopted the following resolution:

"Whereas, Montana Rural Electric Cooperatives (Rural Electrics) are

HB 883 -- testimony by Rod Hanson

in complete agreement with the need to maintain the integrity and objectives of insuring proper siting of major facilities in Montana, and

Whereas, Rural Electrics believe that the present Montana Major Facility Siting Act (Siting Act) is overly cumbersome, expensive and time consuming, and

Whereas, Rural Electrics believe that the Siting Act could be amended in such a way as to expedite the application process while maintaining the integrity and objectives needed to insure proper siting of major facilities.

NOW THEREFORE BE IT RESOLVED, by the members of Montana Associated Utilities, that the legislative committee be empowered to work with the Montana Legislature and related governmental agencies and boards in a concerted effort to amend the Montana Major Facility Siting Act so as to make it more workable and reasonable within the guidelines stated above."

In carrying out the intent of this resolution we have spent considerable time working with interested groups - including, the Department of Natural Resources - in an effort to present legislation to this legislature.

We have assured the Department .. and we want to assure this committee .. that it is not our intent to change the objectives of the Act but rather to make it more workable in obtaining those objectives. HB 280 was the instrument proposed by the cooperatives to accomplish that purpose.

As you know, in an effort to expedite matters in the House, HB 280 was combined with HB 829 to become HB 883 with the understanding that additional amendments would be proposed to this committee.

NAME: Ronald Pogue

DATE: 3/14/79

ADDRESS: 226 Power Block, Helena 59601

PHONE: 443-7272

REPRESENTING WHOM? Alternative Energy Resources Organization (AERO)

APPEARING ON WHICH PROPOSAL: HB 883

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

COMMENTS: AERO can reluctantly support HB 883 - IF no
amendments are made to it. We reluctantly support because
HB 883 represents the most severe streamlining ^{changes} ~~amendments~~
to the Major Facility Siting Act ~~that~~ ^{that} we can accept.

① We feel it is important to allow up to 2 years for the EIS
to do a proper job in examining not only the impacts of
the proposed facility, but to also examine the
feasible alternatives.

② We feel that the prehearing conference etc will speed up the
hearing & will bring all valid issues out in the open
to be responsibly addressed by all parties during the
hearing.

(over)

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(3) That HB 883 does not require non-profit organizations that wish to be active parties to show that a majority of ~~the~~ its members would be substantially affected. This is good.

(4) That the inclusion of the term "where applicable" to the laundry list in Section 22 page 32 line 4 is the only reasonable solution to the problem of having to consider all criteria for all facilities even if it is inapplicable. We are strongly opposed to an deletion of the laundry list - in part or in whole.

(5) We do feel that Section 25 on Surety Bonds is unnecessary. SMC 27-19-306 MCA already authorizes a judge to require surety bonds for cause. But we can live with it. We would be strongly opposed to making the surety bonds mandatory.

STATE
OF
MONTANA
ATTORNEY GENERAL
MIKE GREELY

STATE CAPITOL, HELENA, MONTANA 59601 TELEPHONE (406) 449-2026

SUGGESTED AMENMDENTS TO H.B. 883

Amend page 11, line 7 by deleting the comma after the phrase "water quality agencies" and inserting in lieu thereof the word "and".

Amend page 11, line 8, by deleting the phrase ", and the attorney general".

Amend page 12, lines 15 through 17 by deleting everthing following the phrase "allocated to the" and inserting in lieu thereof "board to provide a staff to assist, advise and consult with the board throughout the decision making process".

Amend page 14, lines 23 and 24 by deleting the words "department to act as staff".

Amend page 15, lines 9 through 14 by deleting the material contained therein in its entirety.

Amend page 15, line 15 by deleting "(3)" and inserting in lieu thereof "(2)".

Amend page 20, lines 19 through 25 by deleting the material contained therein in its entirety, and inserting in lieu thereof the following; "(4) The applicant and the department shall be active parties in all certification proceedings.".

12

ON FILE

LEAGUE OF WOMEN VOTERS OF MONTANA

Testimony supporting HB 983: An Act to Generally Revise the law relating
to Major Facilities and Siting

March 14, 1979

The League of Women Voters supports Montana's Major Facilities Siting Act because it allows orderly resource development while at the same time offering environmental protections. We support its provisions for citizen participation in the hearing process.

We favor HB 983 because it makes the act more workable. We feel the new language defining the hearing process and setting time limits will benefit industry and anyone who participates in the hearings. All parties will have a clear idea of what is expected of them and when.

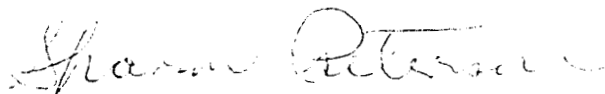
We have some reservations about section 25, regarding surety bonds. Courts already have the power to require bonds to prevent nuisance suits. This provision seems unnecessary.

On the whole we feel this is good legislation and we ask you to support it.

Mr. Chairman, members of the Committee, my name is Sharon Peterson. I have been asked by the McCone Women Involved in Farm Economics (WIFE) to indicate their support for House Bill 883.

The McCone WIFE is in full support of Montana's Major Facility Siting Act. Living in an area that is presently being considered for an industrial facility, we believe that the siting act is our only real protection to ensure that our areas agricultural productivity remains strong and healthy. As presently written, HB 883 cleans up some of the procedural problems in the siting act without weakening the siting act. We feel the bill is a good bill as presently written and hope that the committee does not substantially change the bill.

Thank you.

A handwritten signature in cursive script, appearing to read "Sharon Peterson".

Sharon Peterson
Women Involved in Farm Economics

NAME _____ BILL NO. HB 883
ADDRESS _____ DATE 031479
WHOM DO YOU REPRESENT _____
SUPPORT XXX OPPOSE _____ AMEND XXX

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

We respectfully request that the Third Reading copy of House Bill 883 be amended as follows:

1. On page 2, lines 14, and 15, delete the present language and insert the following:

(4) "Board" means the board of natural resources and conservation provided for in 2-15-3302. "Board of health" means the board of health and environmental sciences provided for in 2-15-2104.

2. On page 3, lines 17, 18 and 19, delete the present language and insert the following:

(7) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33. "Department of health" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

3. On page 4, line 5, strike the word "derived" and insert the word "made".

4. On page 4, line 8, following the word "products" insert the words "made from coal".

5. On page 4, line 22, following the word "gas" insert the words "made from coal".

6. On page 4, line 23, after the words "liquid hydro-

carbon products" insert the words "made from coal".

7. On page 5, between lines 22 and 23, insert the following two new subsections:

(12) "Gas" as used in this act means gas made from coal, and not natural gas, with a heating value exceeding 500 British Thermal Units (BTU) per cubic foot under standard conditions of temperature and pressure.

(13) "Standard conditions" means a temperature of 60°F. (15.5°C.) and a pressure of 14.75 pounds per square inch absolute.

8. On page 6, delete the present language of subsection (1)(a) on lines 5, 6, 7, 8 and 9, and insert the following in its place:

In those cases where it is applicable, an applicant shall file with the department and department of health a joint application for a certificate under this chapter and for the permits required by state air and water quality laws in such form as the board and board of health require under applicable rules, containing the following information:

9. On page 6, line 6, following the word "department" insert the words "and department of health" and strike the word "an" and insert in its place the words "a joint".

10. On page 6, line 7, following the word "board" insert the words "and board of health".

11. On page 6, line 8, following the word "department" insert the words "and department of health" and following the word "order" delete the word "prescribes" and insert in

its place the word "prescribe".

12. On page 6, line 20, insert a new subparagraph (v) as follows:

(v) an environmental study plan to satisfy the requirements of this chapter; and

13. On page 6, line 21, renumber subsection "(v)" as "(vi)".

14. On page 6, line 22, following the word "board" insert the words "and board of health" and following the word "department" insert the words "and department of health".

15. On page 6, line 23, strike the word "requires" and insert the word "require".

16. On page 6, line 23, insert a new subsection (vii) which would read as follows:

(vii) information required by other state agencies listed in 75-20-211(3).

17. On page 7, line 17, strike line 17 in its entirety and renumber the following subsections.

18. On page 7, line 24, delete subsection "(i)" in its entirety.

19. On page 8, line 19, through page 9, line 17, delete section 75-20-213 in its entirety and replace it with a new section 75-20-213 which would read as follows:

75-20-213. Supplemental material -- amendments.

(1) The applicant may, after an application is accepted, submit supplemental material in a timely manner as requested by the department or as offered by the

applicant to explain, support, or provide detail with respect to an item described in general terms in the original application without filing a formal application for an amendment.

(2) An applicant may make changes in the location, design, or operation of a facility as described in an application after it is accepted, or in a certificate after it is issued, if such change:

(a) results from requests of landowners upon whose property the facility is or would be located;

(b) results from requirements of other government agencies;

(c) results from compliance with a condition in the certificate; or

(d) would provide less environmental impact.

Such changes may be made without a formal application for an amendment upon approval by the department, which approval may be given upon such terms, conditions, or modifications as the department considers appropriate. The department's approval shall be made after reasonable notice.

(3) A change in an application after it is accepted or a change in a certificate after it is issued, other than as set forth in (1) and (2) of 75-20-213 shall require a formal application for an amendment, which shall be in such form and contain such information as the department by rule or order prescribes

and be accompanied by a filing fee based on the estimated cost of reviewing the application for an amendment. The department's decision on an application for an amendment shall be made following reasonable notice and shall be made within six months following receipt of such application which may be extended for good cause.

(4) Any person who is adversely affected by the department's decision made pursuant to (2) and (3) of 75-20-213 may requested, within 15 days after the department renders its decision, upon affidavit setting forth the grounds therefor, a hearing before the board, which hearing shall be held following reasonable notice.

20. On page 10, lines 10, 11 and 12, strike the language following "filing fee" on line 10 through the colon (":") on line 12 and insert the following:

as provided in this section based upon the estimated costs of processing the application under this chapter, but which shall not exceed the following scale based upon the estimated cost of the facility:

21. On page 10, line 22, through page 11, line 1, strike the present language and insert:

(2) (a) Notwithstanding the provisions of (2) (b) and (d) hereof, the revenue derived from the filing fee must be sufficient to enable the department, the department of health, the board, the board of health, and the agencies listed in 75-20-216(4) to carry out

their responsibilities under this chapter.

22. On page 11, between lines 8 and 9, insert the following subparagraph:

(b) The applicant may enter into a contract with the department for the development of information, provision of services and payment of fees and costs required under this chapter. The contract may continue an agreement entered into pursuant to 75-20-106. The moneys paid under any contract shall be credited against the fee payable hereunder.

23. On page 11, line 9, strike the word "agreement" and insert the word "contract" and strike the word "but".

24. On page 11, line 10, strike the words "desires to" and insert the word "must".

25. On page 11, line 11, strike the word "may" and insert the word "will".

26. On page 11, between lines 14 and 15, insert a new subsection (d) as follows:

(d) A potential applicant may receive credit against the fee payable under this section for the development of information or providing of services required hereunder or required for preparation of an environmental impact statement under the Montana or National Environmental Policy Acts. The applicant may submit said information to the department together with an accounting of the expenses incurred in preparing said information; the department shall then evaluate

the applicability of the data and determine the amount which may be credited against the filing fee payable under this section.

27. On page 12, line 8, place a period (".") after the word "chapter".

28. On page 12, strike all language on lines 13, 14, 15 and 16.

29. On page 12, line 20, following the word "department" insert the words "and the department of health".

30. On page 13, line 2, following the word "department" insert the words "and the department of health".

31. On page 13, line 6, following the word "department" insert the words "and department of health".

32. On page 13, line 10, following the word "department" insert the words "and department of health".

33. On page 13, line 11, delete the word "accepts" and insert in its place the word "accept".

34. On page 13, line 14, following the word "department" insert the words "and department of health".

35. On page 13, line 16, strike all language following the word "criteria." and insert in its place the words "required by applicable law".

36. On page 13, line 17, following the word "department" insert the words "and department of health" and following the word "extent" insert the word "they" and stike the word "considers" and insert in its place the word "consider".

37. On page 13, between lines 19 and 20, insert a new subsection (4) as follows:

(4) The department of health acting singly or with the board of health shall within one year following the effective date of an application as defined in 75-20-216(2) issue any decision, opinion, or order required by law of the department of health or board of health. The decision, opinion, or order, with or without conditions, is conclusive on all matters of air and water quality impacts under the federal and state air and water quality statutes that the department and board of health administer, and for the purposes of this chapter. The decision, opinion, or order of the department and board of health satisfies the requirements by those agencies under the Montana Environmental Policy Act; therefore, the department and board of health shall not prepare an environmental impact statement separate from the one prepared, if any, by the department. A decision by the department of health or board of health is subject to appellate review pursuant to the air and water statutes administered by the department of health and board of health. A copy shall be served upon the department.

38. On page 13, line 20, strike the words "2 years" and insert the words "18 months" and renumber the subparagraph as "(5)".

39. On page 14, lines 11 and 12, strike "(5)" and

insert "(6)", strike the words "health and environmental sciences" and capitalize the "H" in "highways" to read "Highways".

40. On page 14, line 14, following the word "department" insert the words "within six months following the effective date of an application".

41. On page 15, line 19, after the word "hearing." insert the words "In such a conjunctive hearing" and replace the capital "T" at the beginning of the next sentence with a lower case "t" thereby changing the word "The" to read as "the".

42. On page 17, line 12, following the word "board." strike all other language on lines 12, 13, 14 and 15.

43. On page 18, strike lines 11 through 15, and insert in their place the following language:

(6) Public witnesses and other interested public parties may submit written testimony to the hearing examiner in lieu of appearance at least 20 days prior to the date set for the hearing. This testimony shall be made available to the active parties by the examiner. The testimony shall be admitted into the record without cross-examination; but, if any active party desires cross-examination of such witnesses after review of filed written testimony, this cross-examination may be obtained by request for deposition filed with the hearing examiner, who may issue a subpoena to the witness. An active party may call such a witness in

its case with a subpoena to be issued by the hearing examiner, provided, however, that any such witness shall be considered an adverse witness and must be examined under the rules applicable thereto. Any active party calling such witness for deposition or appearance shall tender to the witness in advance such fees and expenses as are allowable in accordance with Rule 4 of the Montana Rules of Civil Procedure and shall advise the hearing examiner and the other active parties of the intention to depose or call such a witness.

44. On page 18, between lines 15 and 16, insert two new subparagraphs (7) and (8) as follows:

(7) All proceedings under this chapter are governed by the procedures set forth in this chapter and by rules adopted by the board. No other rules of procedure or evidence, including the contested case procedures of the Montana Administrative Procedure Act apply.

(8) The hearing examiner may make rules designed to exclude repetitive, redundant, or irrelevant testimony and may make other rules of evidence. The hearing examiner shall issue a prehearing order specifying the issues of fact and of law, identifying the witnesses of the active parties, naming the public witnesses and other interested parties who have submitted written testimony in lieu of appearance, outlining the order in

which the hearing shall proceed, and any other special rules to expedite the hearing which the hearing examiner shall adopt with the approval of the board.

45. On page 19, line 2, strike the number "90" and insert in its place the number "60".

46. On page 19, line 11, strike the number "12" and insert in its place the number "6".

47. On page 19, line 16, strike the words "attorney general".

48. On page 19, line 25, following the word "organization" insert the words "which establishes an interest in the proceeding".

49. On page 20, strike line 10 in its entirety.

50. On page 20, lines 19 through 25, strike subparagraphs (4) and (5) in their entirety.

51. On page 21, delete lines 12 through 17 in their entirety.

52. On page 24, delete subparagraph (5), lines 11 through 24, in its entirety.

53. On page 26, beginning at line 21 following the word "authority" insert the words "as provided herein." and then strike all other language on lines 21, 22, 23, 24 and 25.

54. On page 27, line 1, strike the word "standards".

55. On page 39, line 21, following the word "board" strike the "period" (.) and insert the following "; except that the cost of the bond is not chargeable to the applicant

as part of the fee."

56. On page 40, line 3, following the word "Sections" insert the words "75-20-219 and".

3
SENATE

Ken... [unclear]
SENATE COMMITTEE ON NATURAL RESOURCES AMENDMENTS
TO HOUSE BILL 716, Third Reading

1. Amend page 14, line 16.
Following: "any"
Strike: the remainder of subsection (a) in its entirety.
Insert: "one or more of the following requirements
applicable to such source and contained in the state
implementation plan as approved by the United States
Environmental Protection Agency:

(1) emission limitation specified in an order
issued by the Board or in a regulation or
standard adopted by the Board, and

(2) compliance schedule."

AMENDMENTS TO HOUSE BILL 716, Third Reading Copy

1. Amend page 15, line 15.

Following: "duration"

Strike: ";;"

Insert: ";;"

Following: "or"

Insert: "is caused by conditions beyond the reasonable control of the source and is of no demonstrable advantage to the source; or"

2. Amend page 15, line 17.

Following: Line 17.

Insert: "(3) Any person who is jointly or severally adversely affected by the department's decision may request, within 15 days after the department renders its decision, upon affidavit setting forth the grounds therefor, a hearing before the board. A hearing shall be held under the provisions of the Montana Administrative Procedure Act."

HOUSE BILL 716 Third Reading

1. Amend page 22, line 18.

Following: "exceed"

Strike: "\$25,000"

Insert: "\$10,000"

NORTHERN PLAINS RESOURCE COUNCIL

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419 Stapleton Bldg
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(406) 365-2525

Testimony of the Northern Plains Resource Council on House Bill 883
Presented to the Senate Natural Resource Committee--March 14, 1979

Mr. Chairman, members of the committee, my name is Pat Smith.

I am testifying today on behalf of the Northern Plains Resource Council and our ten affiliated organizations. The NPRC is an agriculturally-based citizens organization; most of our members are involved in farming and ranching in eastern Montana.

Our members view Montana's Major Facility Siting Act as the single most important law Montana has because it contains necessary safeguards to ensure that Montana citizens, and not out-of-state energy companies, make the decisions on if, when, where and how large industrial facilities are sited in our state. At the time of its passage in 1973, Montana's siting act was viewed as a model siting law for other states. It still is a model siting law, and it is still in its infancy. We feel that the basic substance of the act is sound, workable and does not necessitate a major overhaul of the siting act. On the other hand, the act can stand some fine tuning.

HB 883 represents a sincere attempt on the part of all concerned parties--the Department of Natural Resources, industry and citizens--to fine tune the siting act without changing its basic purpose and substance. The amendments contained in HB 883 are a result of a lengthy public review process which the Department of Natural Resources initiated over nine months ago. Since that time, a series of meetings have taken place and the amendments have been redrafted several times in response

to input from ALL concerns. HB 883 received unanimous bi-partisan support in the House after additional compromises were made in committee. The reason for this bi-partisan vote of support is because this bill will result in a more streamlined decision making process. Some examples of some things in HB 883 that will facilitate the decision making on siting act applications include:

- 1) placing maximum time limitations on the hearing before the Board of Natural Resources to replace the present open-ended hearing process.
- 2) At the request of the applicant, the hearing before the Board of Health on air and water quality matters can be held in conjunction with the hearing before the Board of Natural Resources. This provision will cut down on the length of the hearings and will avoid duplication of testimony. Under this arrangement, the two boards would share the same hearings examiner, and the necessary air and water quality permits would be issued with the Board of Health's decision.
- 3) HB 883 nails down the hearing procedures before the Board of Natural Resources by providing for the selection of a hearings examiner, a pre-hearing conference and a pre-hearing order, defining the role and duties of the hearings examiner, and also spelling out the procedures for submitting testimony.
- 4) The bill will also avoid unnecessary duplication of environmental studies by requiring the department to use existing environmental studies submitted by the applicant or governmental agencies as long as they are valid and useful.
- 5) HB 883 also allows the department and the applicant to jointly agree to a schedule of payments whereby the required filing fee can be paid in installments rather than one lump sum, front end payment. A refund of the ^{unpaid} filing fee monies, at 6% interest, is also provided for.

While the Northern Plains Resource Council does not agree with all of the amendments contained in HB 883, if the bill is not weakened further, we could live with it. We have made concessions in HB 883 for two reasons. First, because we also sincerely want to see the procedures and decision making process streamlined and, second, because it seems like a reasonable compromise that would not result in a substantial weakening of the act.

SENATE NATURAL RESOURCES COMMITTEE

TESTIMONY ON HB 716

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE

MY NAME IS MIKE ROACH AND I'M WITH THE AIR QUALITY BUREAU.

MY REMARKS WILL SUPPORT THOSE OF REPRESENTATIVE KEMMIS.

THE BILL WAS DRAFTED AS A RESULT OF THE FEDERAL CLEAN AIR ACT AMENDMENTS WHICH WERE ADOPTED IN AUGUST OF 1977.

THE MAIN INTENT OF THE BILL IS TO PROVIDE STATUTORY AUTHORITY TO THE STATE TO ADMINISTER THOSE FEDERAL LAWS AND WHERE POSSIBLE KEEP EPA AT ARM'S LENGTH.

THE DESIRE FOR STATE CONTROL HAS DRAWN SUPPORT FROM DIVERSE MONTANA INDUSTRIES AND PUBLIC INTEREST GROUPS. ANACONDA COPPER, ANACONDA ALUMINUM, MONTANA POWER, EIC, BILLINGS REFINERIES, AND COAL COMPANIES HAVE WORKED TO TAILOR THIS LEGISLATION TO THE STATE'S NEEDS.

THERE ARE THREE MAJOR POINTS IN THE BILL. THESE POINTS INVOKE DIRECTLY OR INDIRECTLY PRESENT FEDERAL LAW.

THE FIRST IS A PROVISION THAT PERMITS SHALL BE IMPLEMENTED AND ENFORCED WITH THE REASONABLE COST CHARGED BACK TO THE INDUSTRY. FEDERAL LAW REQUIRES THIS. IF THE STATES DO NOT IMPLEMENT THEN EPA MUST, AND THE FEES WOULD REVERT TO THEM.

THE SECOND PROVISION IS TO ELIMINATE THE ECONOMIC ADVANTAGE ONE SOURCE MIGHT ENJOY OVER ANOTHER BY NOT SPENDING THE

MONEY TO PUT IN CONTROLS. THESE PROVISIONS ARE THE NEW NON-COMPLIANCE PENALTY SECTIONS. THE FEDERAL CLEAN AIR ACT REQUIRES NON-COMPLIANCE PENALTIES STARTING IN JULY OF THIS YEAR. IF THE STATE ASSUMES THE PROGRAM THEN MONIES COLLECTED WILL GO INTO THE STATE GENERAL FUND. OTHERWISE SUCH FUNDS WOULD REVERT TO THE U.S. TREASURY.

THE THIRD POINT IS AN INCREASE IN THE CIVIL PENALTY. THE FEDERAL ACT HAS A \$25,000 CIVIL PENALTY. THE DEPARTMENT HAS AGREED WITH INDUSTRY THAT A \$10,000 PENALTY IS SUFFICIENT. THIS CORRESPONDS TO THE AMOUNT AVAILABLE FOR WATER POLLUTION.

IN ADDITION TO THE REDUCTION IN THE CIVIL PENALTY, INDUSTRY WILL PRESENT SOME CLARIFYING AMENDMENTS THAT THE DEPARTMENT WILL SUPPORT.

ADDITIONAL PROVISIONS OF THE ACT CLARIFY THE ROLE OF THE LOCAL AIR POLLUTION PROGRAMS AND STREAMLINE NOTICE AND HEARING PROCEDURES.

THIS IS AN IMPORTANT BILL THAT HAS RECEIVED BROAD-BASED SUPPORT BOTH BY INDUSTRY AND PUBLIC INTEREST GROUPS. IT SHOULD BE PASSED.

4

Testimony on House Bill 716 - An Act to Amend the Clean Air Act of Montana

My name is Linda Ruprecht and I'm a resident of Missoula, a former schoolteacher, and now a candidate for a Master of Science degree at the University of Montana. I'd like to speak in support of House Bill 716 in general, and in specific, I'd like to offer my comments on the local air pollution control amendments included in this bill.

The first air pollution law in the United States was an 1881 ordinance adopted by the Chicago City Council. That ordinance allowed the emission of dense smoke from the smokestack of any boat or locomotive or from any chimney within the city to be treated as a public nuisance.¹ Air pollution now, as then, is predominantly a local problem and concern. The choice of air quality is essentially a local choice which depends on the local meteorological conditions, the mix of pollutants released, the availability of technology and the cost of controls, and the local preferences for clean air relative to other individual and social goals. Any air pollution control effort should be allowed to reflect the values of the local citizenry regarding air quality. House Bill 716, if passed, would allow for more sensitive responses by the state's air pollution control agencies to individual community situations.

Montana currently has only three local air pollution control programs: Missoula County, Yellowstone County, and Cascade County. These programs were established as a result of expressed community concern for air quality. In the future, public concern may bring about the establishment of similar programs in other communities. Montana citizens should have the right to handle their community affairs, including air quality, in ways which meet both the state regulations as well as their own community concerns. House Bill 716 is a step in that direction and I urge you to support it.

Linda J. Ruprecht

Linda J. Ruprecht

4801 Sundown Road
Missoula, Montana 59801

¹ J. Clarence Davies III and Barbara S. Davies, The Politics of Pollution (Indianapolis, IN: Pegasus, Bobbs-Merrill Company, 1975), p.19.

Testimony of Karen Zackheim on House Bill 716

Presented to the Senate Natural Resources Committee on March 14, 1979

My name is Karen Zackheim. For the past four years, I've been involved in air pollution research as a graduate student at the University of Montana. During this time, I've become familiar with the federal Clean Air Act Amendments of 1977 and the Montana Clean Air Act. The noncompliance penalty fee system proposed in sections 7 through 15 of HB 716 was taken directly from the federal Clean Air Act Amendments. It is a system designed to reduce the unfair economic advantage a polluting industry could have over its competitors by not investing in the pollution abatement equipment necessary to comply with federal emission standards. Under the noncompliance penalty system, any industry not in compliance with emission standards will be assessed a penalty fee, comparable to the cost of installing the appropriate abatement equipment. In this way, industries are encouraged to invest in clean air technology in the first place, rather than being forced to by the state or the EPA.

The Environmental Protection Agency will assess and collect non-compliance penalty fees if we do not pass HB 716. Montana stands to lose considerable control over its air pollution enforcement program and may lose substantial sums of money to the federal government if this happens. I would rather see the state continue to control our air pollution enforcement program than see it handed over to the EPA.

Another section of HB 716 proposes to increase the civil penalty from \$1000 per day to \$25,000 per day. Civil penalties are entirely different from noncompliance penalties, they apply to anyone who violates any provision of the Montana Clean Air Act unless otherwise exempted. The maximum penalty is not automatically assessed against a violator; it is only an upper limit on what the courts are allowed to assess. Penalty fees will continue to be set by the district courts based on the court's consideration of each individual case brought before them.

HB 716 will insure state control over air pollution enforcement and will encourage industries to work for cleaner air. I urge the Committee to recommend that this bill be concurred in by the full Senate.

HOUSE BILL 716

The Department bill to amend the Clean Air Act, although amended in the House, still contains features which are objectionable.

Local Government Authority without guidelines or limitations

Probably the most serious problem with this bill is that it gives local government the authority to assess and collect noncompliance penalties for air contaminant sources under its jurisdiction (p. 11, l. 21) without any guidelines or limitations whatsoever, and also without any right of notice, appeal or other protection. If it were intended that local government was to follow the same procedure as the department the bill should so state. But even then it would be objectionable because local government possesses neither the staff nor the abilities to fulfill the functions contemplated by House Bill 716 with respect to the determination of penalty (p. 15), the adjustment of penalty assessment (p. 18), or giving notice of noncompliance and providing a hearing on challenges.

Local Government Authority Conflicting

On page 14, lines 7 to 12, there seems to be a clear statement that the Department will do the assessing of noncompliance penalties which is directly in conflict with the provisions on page 11, line 21 which gives to local government the power to assess and collect the penalties.

Economy and Efficiency Discarded

On page 10, line 24, why was the clause "or may be more efficiently and economically performed at the state level" deleted? Is it desirable to give compliance work to local jurisdictions even though the state could perform the work more efficiently and economically?

Inconsistent Administration

Under this proposed bill it is both possible and likely that the policies and enforcement of ambient air standards by the local jurisdiction will be entirely inconsistent with enforcement by the state Department in areas where no local authority is available. Certainly this double standard would be undesirable.

Proposed Amendments

This bill could be substantially improved by eliminating all new material referring to municipal and county government. If it is the wish of the legislature to give to the local government some portion of the permit fees or penalties, this could be done in a separate section but should not be done by adding a third tier in government to police air pollution laws, rules and regulations.

SENATE

SENATE COMMITTEE ON NATURAL RESOURCES AMENDMENTS TO HOUSE BILL 716

1. Amend title, line 20.
Following: "MAIL;"
Strike: "TO REVISE AND CLARIFY THE ROLE OF LOCAL GOVERNMENT
IN THE CONTROL OF AIR CONTAMINATION;"
2. Amend page 6, line 15.
Following: "to"
Strike: "a local government exercising authority under
75-2-301(9) or to"
3. Amend page 6, line 16.
Following: "department"
Strike: "if such local authority is not exercised"
4. Amend page 6, line 25.
Following: "department"
Strike: "OR SAID LOCAL GOVERNMENT"
5. Amend page 9, line 8.
Following: "75-2-203,"
Strike: "75-2-204, 75-2-211,"
6. Amend page 10, line 25.
Following: "level"
Insert: "or may be more efficiently and economically per-
formed at the state level"
7. Amend page 10, line 25 and page 11, lines 1 and 2.
Following: "level"
Strike: "and that the department is better able than the local
jurisdiction to control the air contaminant source"
8. Amend page 11, line 18 through line 11 on page 12.
Strike: subsection (9) in its entirety.
9. Amend page 14, lines 9 and 10.
Following: "(2)"
Strike: "and subject to collection by a local government
pursuant to 75-2-301(9),"

HB 555, Third Reading Copy

1. Title, line 7.

Following: "POWER"

Insert: "AND TO PROVIDE FOR POWER GENERATION AT TOSTON DAM"

Following: "MCA"

Insert: "; PROVIDING AN EFFECTIVE DATE"

2. Page 3, line 16.

Following: line 15

Insert: "Section 3. There is a new MCA section that reads:

Power generation at Toston Dam.

(1) The department shall conduct a study of the economic feasibility of power generation at the Broadwater-Missouri Dam facilities (Toston Dam). This study is to be completed no later than June 30, 1979. If the study shows that power generation is economically feasible, the department shall offer for lease the use of the facilities at Toston Dam for power generation, subject to the requirements of subsection (2).

(2) The facilities, if subject to lease under subsection (1), shall be offered for lease no later than November 1, 1979, and a decision on the lease shall be made no later than February 1, 1980. Preference in granting the lease shall be given to nonprofit corporations. The minimum acceptable lease offer must provide for an annual payment of an amount equal or equivalent to 1 mill per kilowatt hour of power generated and sold. Notwithstanding the provisions of 85-1-332, the department shall use 50% of the lease revenues for maintenance and repair of Toston Dam and its associated irrigation facilities."

Renumber: subsequent section

3. Page 3, line 16.

Following: "CODIFICATION."

Strike: "SECTION 2 IS"

Insert: "Sections 2 and 3 are"

4. Page 3, line 19.

Following: "TO"

Strike: "SECTION 2"

Insert: "sections 2 and 3"

5. Page 3, line 20.

Following: line 19

Insert: "Section 5. Effective date. Section 3 is effective on passage and approval of this act."

Anaconda Co. submitted same Amendment as Rep. Lemmis

THE ANACONDA COMPANY
POSITION ON HOUSE BILL 716

The Anaconda Company supports House Bill 716, as amended, for a number of reasons.

1) The bill authorizes the Board of Health to issue orders to nonferrous smelters which relieve them of the burden of complying with sulfur dioxide regulations where no technology is reasonably available by which they can do so. We don't know if we will need this relief, but we may, and such an order could avoid closure of the smelter.

2) The bill contains provisions which will make it possible for The Anaconda Aluminum Company to avoid exposure to heavy fines while it is in the process of completing construction of pollution control facilities as fast as possible.

3) The bill will allow the Department of Health to issue air quality permits to new mines and industrial facilities. This will facilitate development of Montana's energy and mineral resources with a minimum of interference by the U.S. Environmental Protection Agency which in the past has demonstrated an insensitivity to the economic needs of this state and its citizens.

NAME Les Lowe II Bill No. 1K 716
ADDRESS 716 Power DATE 3-14-79
WHOM DO YOU REPRESENT Montana Dakota Utilities Co
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: Amendments

p 22, line 17, add after "pursuant thereto"

The language -

~~"and after notice thereof is given of violation"~~

"and after notice of violation is given by the department"

p 6, lines, 18-19, and 25, Strike references to
Local government

p 11, l 18 Strike lines 18-25 and

p 12, ~~l 18-25~~ Strike lines 1-11

NAME: Jim Mockler DATE: 3/13/79

ADDRESS: 2301 Colonial Dr

PHONE: 442-6223

REPRESENTING WHOM? Montana Coal Council

APPEARING ON WHICH PROPOSAL: H.B. 716

DO YOU: SUPPORT? ☒ AMEND? ☒ OPPOSE? ☐

COMMENTS: Amend:

page 5, line 7, following "fees" insert
"to the applicant"

page 22, line 18; delete "\$25,000" insert
"\$5,000"

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.