

THE MINUTES OF THE NATURAL RESOURCES COMMITTEE
JANUARY 30, 1981

The House Natural Resources Committee met in Room 104 in the Capitol Building on Friday, January 30, 1981, at 12:30 p.m. with CHAIRMAN DENNIS IVERSON presiding and eighteen members present.

CHAIRMAN IVERSON opened the hearing on HB 479.

HOUSE BILL 479 REP. GENE DONALDSON presented the bill which would revise the definition of "floodplain". The only change in the current law is the definition on page 3, line 3.

PAUL SPENGLER, Director of the Lewis and Clark County Disaster Planning Department, spoke as a proponent of the bill. The county must adopt a flood plan program and want to define sheet-flood and floodplain for federal insurance reasons. He used a map to show areas of the Helena valley that are affected. It is something that would be beneficial to Lewis and Clark County but he sees no adverse problems for other counties if this law is changed.

WILL SELSER of the Lewis and Clark County Health Department spoke as a proponent also. Even though sometimes septic systems are flooded, he felt it does not present a health problem in this area and so is for the change this bill provides.

MIKE STEPHENS, representing the Montana Association of Counties, spoke in favor saying that counties need help in growing and with development problems.

PETE MCHUGH, a Helena valley landowner, supported the bill by saying growth is at a virtual stop in the Helena valley due to the definition of sheetflooding in the law.

JOHN WILKINSON, Chairman of the Lewis and Clark County Commissioners, supported the change also. This law currently makes it impossible to obtain a permit for a septic tank for a new home in this area, but would also make it impossible to obtain a permit to install a tank replacing an existing one.

There were no OPPONENTS.

REP. DONALDSON closed on the bill.

During questions from the committee, REP. HUENNEKENS asked if the Department of Natural Resources had been consulted about the change. MR. SPENGLER said they had talked to the engineers and it was determined to be a problem fairly unique to Lewis and Clark County but it is a state law.

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REP. SALES asked what must be done to qualify for federal flood insurance. MR. SPENGLER replied there are certain restrictions involved.

REP. ROTH asked if the flood plan program is completely funded by the federal government. MR. SPENGLER said it is administered through the federal government but the county does derive benefits.

The hearing closed on HB 479 and opened on HB 465.

HOUSE BILL 465 REP. TOM ASAY presented the bill which would amend the definition of "preparatory work" to include construction of railroads in the strip and underground mine siting act. He feels we are allowing a federal agency i.e. I.C.C. to determine what happens in Montana. The State of Montana should have the say in building railroads. The same people should look at the whole project. There is an impact on an area made by a railroad.

HELEN WALLER spoke as a proponent and represented the Northern Plains Resource Council. See Exhibit 1.

GREG WALDIE of Miles City read a letter from GARY L. OCHSNER both supporting the bill. See Exhibit 2.

A chronology of events was presented showing permit process. See Exhibit 3.

ART HAYES, JR. presented Exhibit 4 in support of the bill.

TOM BREITBACH of Circle supported the bill. See Exhibit 5.

ED MALENOVSKY of Birney supported the bill. See Exhibit 6.

WALLACE MCRAE, Forsyth, spoke in favor of the bill. See Exhibit 7.

BILL GILLIN supported the bill saying it is time to see local people make the decisions. He wants it to be kept on a local basis with state people making the decisions.

KEITH POWELL and CHARLES GREEN of the Tongue River area spoke in support.

CONNIE EISSINGER testified for the McCone Agricultural Protection Organization. See Exhibit 8.

NICK GOLDER is interested in property rights. Someone must look at the whole project so everyone is protected.

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TOM KETCHUM said this bill would not stop the railroads. It simply gives control to the people of Montana.

CHARLIE BAUMGARDNER of Miles City said it does not stop the building of railroads.

RAY HAWARD spoke in support.

SENATOR DON OCHSNER said this bill will just postpone the railroad and not stop it completely.

Opponents to the bill included BILL HAND of the Montana Mining Association who said we should be working for less permits and not more. We are in a regulation overkill.

JAMES D. MOCKLER of the Montana Coal Council stated he felt the bill is a measure to stop railroads. He felt that the main intent is to inhibit the building of the Tongue River Railroad.

PAT WILSON, representing Montco, presented Exhibit 9.

TOM DOWLING of the Montana Railroad Association said it costs about one million dollars per mile to build a railroad. The industry does not need more regulations. This bill refers to all disturbances on mine sites which would be sites all over Montana.

STEVE ELLIOT of Wesco Resources, Inc. said Montana is going to mine its coal. If you mine coal, you need railroads to transport it. They select routes that are the least obtrusive. The railroads are trying to pick routes from Miles City to the east but they must first get to Miles City. The I.C.C. does control the process used and the Department of State Lands has been cooperative in the past. Mining permits take a long time to obtain.

JAMES T. MULAR said railroad workers in the state are hurting and that 600 of them are out of work. They want to see railroads built and operating.

KENNETH CLARK of the United Transportation Union said that the Milwaukee is getting ready to stop near Miles City. It cannot keep operating with the business it now has. This bill would delay the building of railroads.

PETER JACKSON of the Western Environmental Trade Association felt it was another layer of red tape in government.

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BOB GANNON of the Montana Power Company opposed the bill.

REP. ASAY closed on the bill.

During questions from the committee, REP. SALES asked why "on site" was stricken. REP. ASAY said because that alluded to only railroad spurs.

REP. ROTH asked if the permit was issued, would you want to relocate the railroad. REP. ASAY stated that determination should be made by the Department of State Lands and that the mine and railroad should be looked at as a unit.

REP. KEEDY asked about the time frame needed in order to issue permits and have a mine in operation within three years. BRACE HAYDEN of the Department of State Lands replied that a mine does have to be in operation within three years. The department only can review a railroad on the last mile and the loop.

REP. BURNETT asked if this bill would put Montco in jeopardy. MR. ELLIOTT replied yes.

REP. HART asked once the railroad is built, how many employees does it take to operate. MR. CLARK replied probably about 150 to 200.

REP. ROTH asked if the people in the area felt they would derive any benefits at all. MR. MCRAE said they did not see that they would benefit at all.

The hearing closed on HB 465 and the meeting adjourned at 2:20 p.m.

Respectfully submitted,


DENNIS IVERSON, CHAIRMAN

Ellen Engstedt, Secretary

VISITORS' REGISTER

HOUSE NATURAL RESOURCES COMMITTEE

BILL 465
 SUBJECT ASAY

Date 1/30/81

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOSE
Wilson	Billings	Montco		✓
Thomas (William)	Billings	Montana P... ..	✓	
Thomas Essinger	Brockway	McCone Agr Prot Org.	✓	
W. Gordon	Forsyth	N.P.R.C. - R.P.A.		
MORRIS GULLICKSON	LIVINGSTON	UNITED TRANSPORTATION UNION		✓
Tom Dowling	Helena	Mont R.R. Ass'n		✓
James D. Mockler	"	Mont Coal Council		✓
Steve Elliot	Billings Here's Revenue Fund	Montana Express, Inc.		✓
Lee Waldie	Miles City	Myself	✓	
Ken Jensen	Miles City	Self	✓	
Steve Miller	Helena	Self		✓
James Miller	Butte	BRAC		✓
James L. Peak	Miles City	UTU		✓
Walter Jackson	Helena	WETA		✓
David Hahn	Helena	Self		✓
Tom Ketchum	Miles City	Self	✓	
W. H. ...	Miles City	Self	✓	
Ch. Bunge...	Miles City	Self	✓	
E. Malinovsky	Birney Mt.	Self & Boner Bros Ranch	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE NATURAL RESOURCES COMMITTEE

479

Date 1/30/81

SPONSOR DONALDSON

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOSE
Paul SPENGLER	307 CLARKE HELENA	Lewis + Clark Cty	✓	
Bill Selsler	122 - 12th Ave. Helena	Lewis + Clark Co. Health	✓	
Gene Donaldson	Helena	ND 29	✓	
Jim [unclear]	Butte MT	TRPA		✓
Leon E. Peterson	1316 Sierra Rd E Helena	self	✓	
Joseph J. Zimmerman	4280 Green Meadow Helena	self	✓	
Rita P. Phillips	Foothills	self		
Dave McCullough	Billings MT	"		
Tim Breitbach	Circle MT	"	✓	
Charles Green	Valhalla Mont.	Helena Land Inc	✓	
Keith Powell	Tongue River	TRAPA	✓	
Bill Gillin	RT #2 Forsyth	R.P.A.	✓	
Art [unclear]	Bainey	self	✓	
John Wilkerson	717 N. WARRICK	Lewis + Clark Co. Health	✓	
Mike Stephen	Helena	NRAC	✓	
Tom Ketchum				

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

WITNESS STATEMENT

Name MORRIS W. GULLICKSON Date 1/30/81
Address 323 So 6th LIVINGSTON MT Support ?
Representing UNITED TRANSPORTATION UNION Oppose ? ✓
Which Bill ? HB 465 Amend ?

Comments:

THIS BILL EFFECTIVELY STOPS ANY BUILDING OF NEW
RAILROADS.

Please leave prepared statement with the committee secretary.

WITNESS STATEMENT

Name James P. [unclear] Date 11/11/11
Address 52 [unclear] [unclear] Support ?
Representing [unclear] Oppose ?
Which Bill ? [unclear] Amend ?

Comments:

Please leave prepared statement with the committee secretary.

WITNESS STATEMENT

Name Tom Dowling Date 1/30
Address 3030 N. Mountain, Helena Support ?
Representing Mont. RR Assn Oppose ? ✓
Which Bill ? HB 465 Amend ?

Comments:
approved

Please leave prepared statement with the committee secretary.

WITNESS STATEMENT

Name Ed Malenovsky Date 1-30, 80
Address Birney, Mt. Support ?
Representing Self. and Bones Bros. Ranch Oppose ?
Which Bill ? HB 465 Amend ?

Comments:

Please leave prepared statement with the committee secretary.

WITNESS STATEMENT

Name Pat Wilson Date 4/30
Address 1105. 28th Street Billings Support ?
Representing MONTCO Oppose ?
Which Bill ? HB 465 Amend ?
Comments: See written Testimony.

Please leave prepared statement with the committee secretary.

WITNESS STATEMENT

Name James T. Malone Date 1/19/77
Address PO Box 797 Support ?
Representing United Int Oppose ?
Which Bill ? A-1 Amend ?
Comments:

Please leave prepared statement with the committee secretary.

WITNESS STATEMENT

Name John J. [unclear] Date 1/31/57
Address 214 [unclear] Support ? ✓
Representing [unclear] Oppose ? _____
Which Bill ? [unclear] Amend ? _____

Comments:

Please leave prepared statement with the committee secretary.

WITNESS STATEMENT

Name Art Harper Jr Date ~~12~~ 1/31/80
Address Bismarck Support ?
Representing self Oppose ?
Which Bill ? 465 Amend ?
Comments: SEE written statement.

Please leave prepared statement with the committee secretary.

WITNESS STATEMENT

Name Vicki O'Leary Date 1-27-88
Address Ferret Support ?
Representing NPRC - R.P.G. Oppose ?
Which Bill ? 465 Amend ?

Comments:

102
102

Please leave prepared statement with the committee secretary.

WITNESS STATEMENT

Name Connie Eissinger Date 1-30-81
Address Brockway, N.H. 57514 Support ? —
Representing McCane Agricultural Protection Org. Oppose ? —
Which Bill ? HB 465 Amend ? —

Comments: Contained in written testimony

Please leave prepared statement with the committee secretary.

NORTHERN PLAINS RESOURCE COUNCIL

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

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

TESTIMONY OF

HELEN WALLER, CHAIRMAN OF
THE NORTHERN PLAINS RESOURCE COUNCIL

I am testifying today on behalf of the Northern Plains Resource Council. NERC is made up of farm and ranch people who are committed to agriculture as an economic base, and as a way of life which is rewarding in ways which go beyond the mere dollars and cents of it. We are essentially small businessmen and women and have a vital stake in decisions that are made here today.

The bill before you, House Bill 465, has to do with decision-making. It is a bill which basically requires that decisions be made in the proper and logical sequence.

The issue at hand is whether the State of Montana, in reviewing a mine permit can do so on the basis of its merit, or whether that decision is prejudiced by millions of dollars of company investments in a railroad built for the purpose of serving that proposed mine.

That was the rationale behind the strip mine siting act. It was to insure that when our delegated officials made a decision of such great importance to so many people, they could base that decision on the standards which have been put in place by the elected representatives of those people, the Legislature, and not be forced into a corner where that decision is clouded because of a 100 million dollar investment.

Unfortunately, the strip mine siting act left a loop-hole as big as the broad-side of a barn. That is: Landowners could be condemned, and a railroad could be built right up to the edge of that proposed mine permit area, and then, in a short, and all back would be for the State of Montana to have to

deny the mine permit.

We are not talking about the merits or demerits of any one railroad or any one mine, we are talking about the ability of the State of Montana, to have the option of acting upon a mine permit, unclouded by other monetary considerations.

The issue is clear. We must stand by the fundamental logic and common sense that says you don't paint yourself into the corner. Why have the reclamation act, why have a strip mine act, why carry on a charade that there is any decision to be made on permitting mines in this state, and then allow those decision-makers to be painted into an untenable corner?

And if one could contend that the State permitting agency could make an unbiased judgement, and if that agency then denied a permit after a railroad was constructed, then what about the damage already done by the condemnation and construction of a railroad leading to nowhere? This legislation would prevent that useless destruction of landowners' condemned property, an act which no one can justify.

Much of the attention is now focused on the proposed Montco Mine on Tongue River. But this is an issue anywhere that a mine may be proposed. It is an issue in McCone County where Northern Resources and Washington Energy hope to open mines. It is an issue in Wibaux County where Tenneco has proposals. It is an issue in Dawson County where Mobil and Tosco are interested. It is an issue in Powder River County where Utah International and Exxon and Consolidated Coal and Cities Service have holdings. Let these mine proposals be considered and decided upon, on their merits or lack thereof.

These amendments as proposed in House Bill 465 would require the proper sequence for development projects. I urge you to support House Bill 465.

Testimony for the House Natural Resources Committee,
Representative Dennis Iverson, Chairman, concerning H.B. 465,
prepared by Gary L. Ochsner, Miles City, Montana.

Please accept this testimony that I am submitting as a
rancher and as president of Tongue River Agriculture Protection
Association, a group of individuals who ranch along and irrigate
from the Tongue River in Custer and Rosebud Counties.

I urge you to seriously consider H.B. 465. The strip mine
siting law needs to be amended to include railroad construction
in the definition of "preparatory work." As it now stands a
railroad could, by obtaining the "Certificate of Public Necessity
and Convenience" from the ICC, begin condemnation and construction
of rail lines before the necessary mining permits are obtained
from the Montana Department of State Lands. This possibility
creates a situation where undue pressure to influence the mine
permitting process could be exerted by those who might claim
that the money spent to build the railroad must not have been
spent in vain so therefore the mine permit application must be
approved. I do not believe that this is a healthy climate for
the permitting agency to be operating in.

It seems only reasonable to delay railroad construction and
especially "condemning" until the mine that it is to serve is first
permitted.

I am specifically concerned with the present law as it
applies to the Montco Mine and the Tongue River Railroad,
but as mining in Montana continues to accelerate this same
situation could arise in any or every area of the state. It
would be prudent to address this situation before there are
multiple occurrences.

Gary L. Ochsner

CHRONOLOGY OF EVENTS:

RAILROAD FROM BURLINGTON NORTHERN MAINLINE UP SARPY CREEK TO WESTMORELAND
ABSALOKA MINE

- September 12, 1972 - Westmoreland files application for mine permit under the Montana Open Cut and Strip Mine Act.
- October, 1972 - Ground broken, grading commenced on railroad right-of-way.
- Fall, 1972 - Burlington Northern initiates condemnation proceedings against Montana Garberich and Leslie Criswell.
- December 2, 1972 - Federal Court issues condemnation order against Montana Garberich and Leslie Criswell for Burlington Northern rail-line to proposed Absaloka Mine. (Signed November 28, filed December 2.)
- December 13, 1972 - Westmoreland files a mining plan with the U.S. Geological Survey.
- May 21, 1973 - Westmoreland submits new application for permit under the Montana Strip Mine and Underground Mine Reclamation Act.
- Sept. - Oct., 1973 - Railroad is nearly complete.
- December 14, 1973 - Final environmental impact statement completed on Westmoreland mine permit application.
- February 1, 1974 - Montana Dept. of State Lands issues permit for Westmoreland's Absaloka Mine.

From: Dept State Lands & Files
U. of Mont. Environmental Research
Libraries

January 30, 1981

I am Art Hayes Jr. from Birney, Montana.

I feel that any railroad built to a mine site should be considered as part and parcel of that mine, and so should be included in the Strip and Underground Mine Siting Act's definition of "preparatory work". Also, this amended definition will give State agencies--not just Federal--a voice in decisions regarding railroad construction.

The cost and investment of building a pre-permit railroad can too easily be used as leverage on regulatory agencies to insure a favorable decision when a strip mine application is being considered.

I support House Bill 465.

My name is Tom Breitbach of Circle, Montana. I farm in McCone County and have done so all my adult life. In recent years I have been thankful that the state of Montana had the foresight and wherewithal to face a tremendous challenge on its own terms. More than any other state in the West, Montana has been a place where its citizens have laid down their terms and conditions for coping with the energy situation of the 1970's. This speaks strongly to the political strength and integrity of the state. Montanans in the past decade were not about to be pushed around by large, out-of-state energy companies. We have not closed the door to them, but we have said on what terms they can conduct business in the state. The Legislature has spoken to the question with close attention to the very real concern that we must maintain control of our state and our decisions on energy-related matters.

House Bill 465 is a continuation of that very important attempt to keep control of the reins in Montana. To keep the reins in the hands of those who are delegated with that responsibility.

House Bill 465 fills in an important hole in the strip mine siting act. I ask you to cast your vote in support of this bill.

Testimony of Ed Malenovsky
Birney, Montana
on HB 465

Mr. Chairman, members of the committee, for the record my name is Ed Malenovsky and I am the ranch foreman of the Bones Brothers Ranch in Birney, Montana. I am speaking for myself and for the ranch today.

I am in favor of HB 465. To those of us that live in the area there are more things than railroads. This bill would mean that all the disturbances would be looked at. Let me give you a few examples of why that is important to us.

- 1) For those of us who live north of the Decker mine there has been 6 miles round trip added when we go into Sheridan because of the railroad and mines in the area.
- 2) When a mine is opened and railroads put in existing roads must be relocated, this can add distances for those of us that use the roads.
- 3) All of these impacts affect us in the area.

These impacts can mean extra miles and inconvenience for us if the mine facilities are not sited correctly.

It is for these reasons I ask you to pass this bill.

Testimony before House Natural Resources Committee. 1/29/61

Mr. Chairman, members of the committee: My name is Wallace D. McRae. My address is Rucker Six Cattle Co., Forsyth, Montana.

Probably the potentially most productive part of my ranch is currently being threatened by a railroad that is proposed to serve a series of mines in the Tongue River area. The proposed railroad is an integral part of the proposed strip mines, and as such, should logically be included when considering the other mine-related facilities such as roads, transmission lines, and train load out facilities that are already included in the Mine Siting Act.

The logical inclusion of rail lines in the Mine Siting Act would preclude the Sarpy Syndrome, where construction of the Sarpy Creek railroad was begun prior to the permitting of the Westmoreland Mine. If the Sarpy Creek railroad had been included in the consideration of the Sarpy Creek (Westmoreland) Mine, it would have prevented the expenditure of millions of dollars for a railroad to serve a mine without a permit; or prevented pressure being applied to the permitting body to approve a pot of gold that already had a railroad rainbow running to it.

If a coal-related railroad was considered along with the mine it would serve, it would not only consolidate the permitting procedure, but would also preclude the possibility of a logical mine being served by an illogical railroad. We ranchers along the Tongue River have constantly asked why a railroad line to Colstrip, a distance of 47 miles, or to Miles City (over 80 miles) are the only routes that have been considered when

a rail outlet from the proposed Montco mine to Decker would be only around 35 miles long.

When we ranchers ask why the shortest waterline railroad route is not even being considered, our question is not answered but we are characterized for even asking the question, as being obstructionists that are opposed to the exercise of free enterprise. I am a member of the Northern Plains Resource Council, and I deeply resent our organization being described as a group of "rabid destructionists" bent on establishing an environmental dictatorship", as I understand we were called before this committee earlier this week. Let me assure everyone in this room that we are not rabid. We are not destructionists. And we advocate neither an environmental nor industrial dictatorship. My family for three generations, however, resisted drought, hard winters, fires, weeds, predators both human and animal, and every other kind of threat that would prevent us from producing agricultural products, food and fiber, meat and wool for the nation. My family has paid its taxes without protest, served in the armed services, supported our local merchants, community, schools and churches for 99 years in what is now Rosebud County, Montana. When we are criticized by a bunch of Johnny-come-lately exploiters in pinstripe suits as being unpatriotic obstructionists, we resent it deeply.

I am sure that this piece of legislation which we are considering today will be labeled by the proponents of energy exploitation as obstructionism. I ask the members of this committee to consider the fact that future coal hauling railroads will obstruct water getting to irrigated fields, and will obstruct livestock getting to water. Rather than having

these impacts considered concurrently and rationally with the mines that cause them, these obstacles to agricultural production will continue to be evaluated, and approved, separately which will continue the practice of placing the cart before the horse, or in this case, the caboose will continue to pull the train.

Finally since condemnation of private property has been tacitly threatened, and may well be exercised for the proposed Tongue River railroad, it seems that the right of eminent domain granted by the government should dictate the responsibility of governmental review. I firmly believe that rights dictate responsibilities. Only if the opponents of this bill would relinquish the right of eminent domain should they be allowed to escape public, and governmental review of their activities. In fact if the opponents of this legislation would relinquish the right of eminent domain, and all governmental subsidies, and guaranteed loans their pious pontifications about free enterprise might be more credible.

In ^{illogical} conclusion, it seems ~~that~~ for mining-related railroads not to be included in the consideration of the mines themselves, and all of the other related services and facilities, ~~is illogical~~ ^{HOPE S. 11 465 will rectify this situation.} I urge favorable consideration of this bill.

I am Connie Eissinger from Brockway, Montana. I am testifying today for the McCone Agricultural Protection Organization. We are an agricultural organization whose members have a large stake in the question of coal mining and industrialization in McCone County.

House Bill 465 says, very simply, that if a mine is to be opened, the decision to grant the mining permit should be made by the state of Montana. It should not be predetermined by the existence of a very expensive railroad to the boundaries of that proposed mine.

Preliminary surveys have been made from the existing railroads, to the proposed mine site, commonly known as Circle West. Our neighbors have happened upon the markers, and talked to the surveyors. It is no secret. It is alarming to realize that this railroad could be built before there is any permission to open that mine.

We do have real concerns about the mine, and would not try to conceal that from you. But, if the mine is to come into our neighborhood, we want the decision to grant the mine permit to be a fair and honest and conscientious decision. We want it to be in compliance with the laws passed by the Montana Legislature. We do not want additional pressure placed on decision-makers by the existence of some tracks representing a huge investment.

I urge you to support this bill. Recognize it for its practicality and simplicity.

MONTCO

House Bill 465

Mr. Chairman, for the record my name is Pat Wilson, and I represent MONTCO on its opposition of HB 465. MONTCO is a Montana General Partnership between Tongue River Resources, a subsidiary of Diamond Shamrock, and Thermal Energy, a subsidiary of Washington Energy. On November 14, 1980, MONTCO filed a Strip, Underground Mining and Reclamation application with the Department of State Lands for an area located 7.5 miles southwest of Ashland.

MONTCO opposes the adoption of this bill for the following reasons:

1. The MONTCO mine will be the only mine affected by this legislation. All other mines developed in the area will not have to structure their mine plan schedule around the building of a railroad. This places an economic hardship on MONTCO.
2. The time tables for a mine project are long, costly and many times hard to determine. The MONTCO project started in 1973 and if all projections are right 1985, 12 years later, the project will become a reality. Once a permit is granted to a mine, it must be producing coal within 3 years. The time to construct a mine and begin production is much shorter than the construction and completion of a railroad. This bill could close a mine because of the possible time lapse.
3. The railroad and the mine are two completely different projects, therefore, they should be treated as such. The Department of State Lands regulates the issuance of mining permits.

The ICC regulates the issuance of documents of public convenience and necessity. The Department of State Lands is a cooperating agency with ICC on railroad's request. Any data gathered by the ICC can be used by DSL in the consideration of the MONTCO application. We believe the cooperation and division of the two agencies is well organized. The MONTCO mine will be built in the State of Montana and, therefore, should be regulated by Montana. The Tongue River Railroad will be a carrier of interstate commerce and the U.S. Constitution delegates the authority of interstate commerce to the federal government.

4. The MONTCO mine is a big gamble, and we would not have entered into this game if we had not first done our homework. We have done environmental studies which include air, water, soils and fish and game. Economic impacts are also being studied. The MONTCO mine permit application contains 33 volumes of data, baseline studies and plans. MONTCO believes that this bill is another stall tactic in the scheme of trying to prevent the construction of the mine. The same is true of the unsuitability petition filed with the Department of State Lands which will cost about 1/2 million dollars of federal and state monies for studies that have already been done.
5. It must be made perfectly clear that the defeat of the MONTCO project would not mean an end to the Tongue River Railroad. The abundance of coal in the region means other companies will be filing for mining permits. Likewise, the defeat of the Tongue River Railroad does not spell the end to the MONTCO project. MONTCO is looking at a railroad to haul its coal because there is not another economically feasible transportation method. The Legislature deemed water used in a slurry

pipeline as not a beneficial water use. A barge method is impossible and hauling the coal by truck is uneconomical. Therefore, if coal is to be mined in eastern Montana it must be hauled out by train.

MONTCO has been more than cooperative with the land owners, government agencies, and the Northern Cheyenne Indian Tribe. We have conducted intense studies of the area and developed feasible reclamation plans. To tie us to the railroad would be a burden that we cannot be expected to carry. We stand on our record and ask a "do not pass" from the committee.