MINUTES OF THE MEETING OF THE NATURAL RESOURCES COMMITTEE
FEBRUARY 6, 1981

The House Natural Resource Committee convened in Room 437 of the Capitol Building on Friday, February 6, 1981, at 12:30 p.m. with CHAIRMAN DENNIS IVERSON presiding and seventeen members present (excused was REP. HART).

CHAIRMAN IVERSON opened the hearing on HB 392.

HOUSE BILL 392 REP. JOE KANDUCH, chief sponsor, presented the bill which would generally revise the metal mine reclamation law. He feels the bill would make necessary changes in the hard rock mining act which would move Montana to a multi-type mining state. Reclamation has become part and parcel because of an over strict law. See Exhibit 1.

Speaking as a proponent of the bill was BILL HAND, Executive Secretary of the Montana Mining Association, who presented several other proponents.

PAT WILSON, Montco, said if companies did not have to go through so much, it would be a great benefit to both the mines and the department.

WILBUR CRISWELL, a mining engineer from Lewistown, said the purpose of this bill is not to gut the hard rock law. The present law puts constraints on the Department of State Lands and requires regulation for the sake of regulation. Must address the needs of small miners who cannot comply with the safety regulations of the state and federal governments. The small miner is excluded from the law. All land disturbed should be reclaimed. Under the present law there is also a vegetation requirement to meet but you cannot grow grass where there isn't any soil. Hard rock differs from coal mining in that there is usually nothing but rock anyway. There is no appeal procedure from the administrator of the Department of State Lands. An applicant should be able to appeal a decision. Enforcement is also a problem. Now, the Attorney General delegates the authority to an attorney in the Department of State Lands. Need to clarify whether or not environmental assessments and E. I. C.'s are necessary. Have a short expiration season in Montana. There has never been a way to specify the need to examine. The entire land has to be bonded which means you are bonding land that will not be disturbed for years to come. Why not have a bond required for one year at a time? Quite often more conditions are imposed on the applicant when the permits are being applied for.

HENRY SCHULTZ said the bonding requirements create a problem because of the need to bond the entire acreage instead of what is actually being disturbed.

DOMINIC JOB, Montana Mining Association, was interested in the five-acre requirements and the bonding problems.

CARL STADLER explained the problems with permits that his company, Johns-Manville, has. Usually they must acquire a permit from the Forest Service and if the state needs a preliminary environmental report, the company has a drilling team without a site. He felt there is a duplication of effort by the Forest Service and the state. Everyone must approve everything. When it is time to do reclamation, the same procedure is used.

PHIL WALSH, representing the Montana Council of Gem and Minerals, stated that his biggest problem is with the ten-acre compliance. Small operators want to comply with the law.

TAD DALE, a practicing mining engineer, said the small miners have a responsibility to comply with the rules and regulations. Felt the regulators also should have guidelines to go by. When you get a mining permit and need additional land, delays on additional bonded areas make you liable for fines.

PETER JACKSON, Western Environmental Trade Association, is concerned because we need progress and we need jobs.

ROGER GORDON, Anaconda Copper Company, testified that he felt the bill should be modified or qualified and would like to submit some amendments.

DON LAWSON, Montana Bureau of Mines, has worked with the small miners and feels the bill as amended would address some of the problems.

BILL STERNHAGEN, Northwest Mining Association, supported the bill.

TOM DOWLING, Montana Railroad Association, supported the bill but recommended one amendment on page 3, line 19, adding the word "ballast".

DON JENKINS, Amax Placer, said he has worked with the hard rock mining law and the law and the regulations have become different. The original intent of the legislature was to assure reclamation of land that has been disturbed by mining. Amendments are now needed.

D. L. REBER, President of the Montana Mining Association, said people do not have the money to put up the bond needed.

GEORGE JOHNSTON, ASARCO, told about an operation near Troy. Local people would be employed but all the rules and regulations thus far have kept the mine from opening.

Speaking as an opponent of HB 392 was LARRY WARD of Elliston. He was originally opposed to the hard rock act until the small miner exclusion part was enacted. Anyone disturbing over five acres is either a corporation or using money from somebody else. If you look at a section of land 16-1/2 feet wide and 2,644 feet long, you have one acre. That is a lot of ground for a small miner to work. Mr. Ward submitted some materials as Exhibit 2.

JOHN NORTH, representing the Department of State Lands, gave testimony opposing HB 392. See Exhibit 3.

REP. HARRISON FAGG gave a brief background of why the bill was written originally. The largest problem with the bill is the five and ten acre provision. The bonding is necessary if you are going to maintain an area.

BILL MACKAY, JR. testified on behalf of the Northern Plains Resource Council. See Exhibit 4.

CHAN WELIN, representing the Boulder Valley Association, spoke in opposition. The Boulder River Valley is a series of ranches and cabins and water is the lifeblood. We are concerned about what goes on underground. Water is the primary concern because it is used for stock and hay. Mines pollute the water with the tailings and dumps.

STANLEY BYRD of Helena testified in opposition. See Exhibit 5.

JACK HEFMAN, Stillwater Protective Association, said there are hard rock miners in his area. This bill would open it up for them to do little or no reclamation. We don't need the mess.

DOLORES ANSTETT gave testimony per Exhibit 6.

JIM ELLISON, a McLeod rancher, said they have a traffic problem in their area with mining equipment.

DON SNOW, representing the Environmental Information Center, spoke in opposition. See Exhibit 7.

MICHAEL MOORE, a minister from Absarokee, stated that there is something right about laws and rules. The legislature is in the business of making, not unmaking, laws. If this bill passes, it would be the unmaking of a good law.

JEANE ALLER said no department of government should have to deal with what is proposed by the amendments to this bill.

WILLA HALL, speaking for the League of Women Voters, was in opposition. See Exhibit 8.

MILES GEOGH said the mining companies since 1971 have learned how to reclaim the land they are turning upside down because they must. They know they have to do the reclamation so they have learned how.

On record as opponents also were PAUL HAWKS (Exhibit 9), KEN BEASLEY, FRANCES WALCOTT, PETER BENNETT, HELEN CLARK (Exhibit 10), PAUL DONOHOE (Exhibit 11), PAT CLARK (Exhibit 12), TOM AGNEW (Exhibit 13), MARY ANN MACKAY, and CHRIS DEVENY of the Lewis and Clark County Health Department.

Other written testimony was submitted by SARA TOUBMAN JONES as Exhibit 14.

REP. KANDUCH closed on HB 392.

During questions from the committee, REP. MUELLER asked if there was no reclamation required on ten acres. MR. HAND replied they had given up the five-acre exclusion and everything would be reclaimed.

REP. MUELLER asked if there was anything in the bill regarding maintenance of the road during the process of mining. MR. HAND said they would be happy to have that in the bill.

REP. MUELLER asked if passage of this bill would take away the authority to get the reclamation done. The answer from MR. NORTH was that for ten acres and under the bill requires them to reclaim but there is no enforcement required or provided for. Simply provides for a minimal fee.

REP. ROTH asked MR. HAND if the present regulations are so stringent that it excludes some mining. The answer was yes.

REP. ASAY asked how many of the 1,100 small miners try to make a living on their claims. BRACE HAYDEN of the Department of State Lands said 300 or 400.

REP. SALES asked what type of safety standards are required of small miners. MR. WARD replied that a small miner must take care of his own safety and access roads. REP. SALES asked what type of safety standards if employing other people. MR. BYRD said mining inspectors check regularly for safety problems.

REP. ASAY asked if changing the bonding requirements would be a big problem to the Department of State Lands. MR. HAYDEN said the bonding is done in installments with the coal companies and this could be done.

REP. MUELLER asked MR. HAND why the section dealing with public hazards has been deleted. The answer was that the Department of Health should have experts to deal with that.

REP. ROTH said that part of the bill reads "vegetation is only one form of reclamation". Is that reasonable? REP. FAGG said some areas you simply cannot reclaim with grass. Should clean up those areas though.

The hearing closed on HB 392.

EXECUTIVE SESSION HOUSE BILL 465 REP. HUENNEKENS moved DO NOT PASS. He said the present language includes the railroad track and the loop distance.

REP. ASAY made a substitution motion of DO PASS.

A motion of DO PASS was made on the amendments. REP. ASAY explained the amendments which would put back in the wording on-site but strike railroads. DEBBIE SCHMIDT, staff researcher, said this language separates the railroad track from the preparatory work.

REP. ASAY said it talks about a track that is being built from the mine site to the existing track; any new track. Feels the new track should be looked at along with the mining permit.

REP. SHELDEN asked if this wording is included, would that require an E. I. S. on the railroad. MS. SCHMIDT said on major railroads there are I. C. C. requirements for studies. The mining company could not commence preparatory work until the site of the mine and the railroad is established. She further stated that the Department of State Lands would have to review the site before construction of the railroad could begin.

REP. MUELLER said that on railroads the I. C. C. must issue the permit. Under this bill, the state would also look it over. Are we adding another layer of red tape?

REP. SALES said then the railroad could hold up the mine.

Vote on the amendments PASSED with REP. BURNETT opposing.

Motion of DO PASS AS AMENDED failed with REPS. IVERSON, BURNETT, CURTISS, SALES, MUELLER, NORDTVEDT, HARP, ROTH, COZZENS, QUILICI, voting no and REPS. ASAY, BERTELSEN, HUENNEKENS, KEEDY, SHELDEN, ABRAMS, and NEUMAN voting yes. REP. BROWN abstained.

The motion was reversed to DO NOT PASS AS AMENDED with REPS. IVERSON, BURNETT, CURTISS, SALES, MUELLER, NORDTVEDT, HARP, ROTH, COZZENS, and QUILICI voting yes and REPS. ASAY, BERTELSEN, HUENNEKENS, KEEDY, SHELDEN, ABRAMS, and NEUMAN voting no, with REP. BROWN abstaining.

HOUSE JOINT RESOLUTION 11 REP. HARP moved that HJR 11 be TABLED. Motion PASSED with REPS. ASAY and CURTISS opposing.

HOUSE BILL 509 REP. QUILICI moved DO PASS on the amendments which would eliminate "low-cost" from the wording and would include language that would allow small utilities to be part of the program. Motion on the amendments PASSED unanimously.

REP. MUELLER moved DO PASS AS AMENDED on HB 509. It PASSED with REP. ASAY opposing.

The meeting adjourned at 2:55 p.m.

Respectfully submitted,

DENNIS IVERSON, CHAIRMAN

Ellen Engstedt, Secretary

VISITORS' REGISTER

HOUSE ______________________ COMMITTEE

BILL 392

Date 2/?/81

SPONSOR Kanduch

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
[illegible]	Helena	Self		X
William F. Criswell	Lewistown	Self	X	
Dominic Job	Missoula	N.M. AFLO	X	
Theresa Job	Missoula	" "	X	
[illegible]	Billings	L.W.V.	Listening	
F.A. Dale	DILLON	MONT. MINING ASS.	X	
Phil Walsh	Helena	self MT. Council [illegible]	X	
[illegible]	Hilger	Ass Newmont [illegible]	X	
[illegible]	Lewistown	[illegible]		
Mrs Dolores [illegible]	McLeod	self		X
[illegible]	Big Timber	[illegible] Valley Assn		X
Joane Allen	McLeod, MT	self		X
Helen Clark	McLeod, Mont	self		X
Peter Bennett	McLeod MT	Self		X
Katy Kavanagh	Heron Mt	self		X
Ken Beasley	" "	Self		X
Jim Ellison	McLeod	"		X
Michael Moore	Absarokee	"		✓
[illegible] Walcott	[illegible]	self		X
John M. [illegible]	Fishtail	Stillwater Protective Assn.		X

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Form CS-33
1-81

VISITORS' REGISTER

HOUSE NATURAL RESOURCES COMMITTEE

BILL 392

Date 2/6/81

SPONSOR KANDUCH

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOSE
Mary Ann MacKay	Roscoe	SPA		X
[illegible] MacKay	Roscoe	NPRC		X
Steve Doherty	Helena	NPRC		✓
Paul [illegible]	Nye	Rancher		✓
Miles Keogh	Nye	Rancher		✓
Paul Hawks	Melville	Rancher		✓
Jerry Ward	Hard Luck Mines Elliston Mont	self		✓
F. L. Reber	Missoula MT.	M.M. Assc	X	
Tom Agnew	Big Timber	rancher		X
Don Snow	Helena	EIC		X
Carl Stadler	Absarokee	Johns-Manville Corp	X	
Don C. Lawson	Butte	Mt. Bur of Mines	X	
H. A. Scholz	Great Falls	MT Mining Assoc	X	
Pat Clark	McLeod	self		X
[illegible]	Whitehall	PMMA	X	
[illegible] Hanson	Helena	self	X	
[illegible]	Helena	[illegible]	✓	
Bill Stevenson	Helena	Northwest Min Assn	✓	
Pat Wilson	Billings	Montco	✓	
Jerry Dillon	Hamilton	Ravalli County	✓	
[illegible]	Darby			
Roger Gordon	Butte	Anaconda Copper Co.	✓	
Pete Hayden	Helena	Dept State Lands		✓
John North	Helena	Dept of State Land		✓

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE _____ COMMITTEE

BILL SB 392

Date 2/4/81

SPONSOR KNUDSEN

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOSE
Peter Jackson	Helena	Weta	✓	
Tom Dowling	Helena	MINERALS ASSN	✓	
Mark Boardman	Helena	MT. Mining Assn	✓	
Robert L'Lynn	Col. Falls	Flathead Chapter	✓	
Lois Barta	Helena	KAISER CEMENT CORP	✓	
Willa Hall	LWV of Montana -	Helena		✓
Chris Devery	Helena	Lewis & Clark Exploration		✓
Myself	Big Timber MT	myself		✓

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

EXHIBIT 1

EXPLAINATION OF HOUSE BILL 392
Montana Mining Association
Montana House of Representatives
House Natural Resources Committee
The Honorable Dennis Iverson, Chairman
February 5, 1981

FORWARD

The basic thrust of the Hard Rock Mining Law of 1971 was to make the miner clean up his mess. This proposed revision strengthens that aspect of the bill.

The bill was written by Wilber Criswell, a mining engineer with 7 years experience as a Dept. of State Lands Bureau Chief. There he saw, first hand, the Dept's. and the miner's problems.

The bill seeks legislative direction in gray areas both for the miner and the Dept. It returns enforcement to local control, seeks to expedite when possible, and update the obsolete to meet federal standards.

Montana has an opportunity to move from a one product copper state to a very diverse mining field providing jobs, a stable economic base and a good environment. These changes hopefully will work toward that goal.

Since about 1975 the mining community has "knuckled under" to the reclamation laws. Little, if any, problem exists today. Reclamation has become part and parcel of the exploration and mining effort. The overtly strict laws of yesteryear are no longer appropriate.

EXPLAINATION

Page 2, line 7-15 - The purpose is to establish legislative recognition that vegetation cannot always be established in some circumstances, especially when nothing but rock exists; and to prevent the Dept. from requiring revegetion on waste rock dumps, pit benches and walls.

Page 4, line 5-12 - The originial 1971 Hard Rock Act did not envision the need for underground exploration. It addressed drilling only in the light of an exploration permit. This revision is necessary to prevent limits on underground exploration on the vein by drifts, raises and winzes which, under present law, would come to a stop when 10,000 tons of ore had been extracted from the workings being driven on the vein. This would necessitate a mine operating permit before exploration could be completed.

Page 5, lines 5-7 - It is believed the original legislative attempt of the law was to give authority to reclamation of land disturbed by mining and prevent, or minimize, damage to the environment. The deleted language has nothing to do with reclamation and is a duplication of the authority of other agency laws. It has been used by the State Lands Dept. to extend its authority to place conditions on mine operating permits not based on the provisions of the Hard Rock Law.

Page 5, lines 16 & 17 - This provision has given the State Lands Dept. a blank check under which the requirements can be endless and limited only the the imagination of the officials of the Dept. It does not define anything and does not belong in a section of definitions.

Page 5, lines 20-25 - The purpose of this law was to require reclamation of areas disturbed by mining. Area disturbed should be the consideration for classifying an operator as large or small. Therefore, the tonage limitation is left out of the definition of small miner. The tonage produced really has no effect as long as the disturbed area is limited.

Page 6, lines 2-5 - The limitation on disturbed area is raised from 5 acres to 10 acres because one suggested change in the law will no longer exclude the small miner from reclamation and he will have to, henceforth, be required to reclaim his area. Further, 5 acres, if a square, is only 467 feet on a side. This is just not enough room for a small operator to comply with other safety laws which require his shop, compressor house, and change rooms to be spaced a minimum distance apart then, from his portal or shaft collar, then, still include waste dump area and perhaps a small mill and tailings pond. 10 acres square is still only 660 feet on a side.

Page 6, lines 6-9 - In the past it was learned that roads or the renovation of existing roads often times used up too much of the 5 acre exclusion.

Page 6, lines 18-25 - The foregoing has excluded roads so this paragraph is no longer necessary.

Page 8, line 6 - It is believed that the original legislative intent of this section was to not apply the law retroactively to the pre-law mining operations. Based on a strained legal opinion by one of their attorneys, the Dept. of State Lands has interpreted the law to apply to lands disturbed by mining pre-law, when such lands continue to be mined or new operations or redisturbing pre-law sites, such as depositing rock on known waste dumps or new tailings in an old tailings pond.

Page 8, lines 10-21 - This subsection simply provides for the Dept. to issue small miners licenses without charge to be renewed annually and with certain other provisions. Departure from the present law is the 5 to lo acres.

Page 9, lines 8-17 - This section says that all areas disturbed will be reclaimed upon completion of the operations except a miner may elect to retain his life-time small miners exclusion statement and his 5 acres over the larger 10 acres amount. There are approximately 40% of the 1000 small miners registered with the Dept. who have life-time exclusion statements and 60% with a yearly situation. It is meant that the 40% would retain their 5 acres and not the 10 acres.

Page 9, line 23 - Amendment inserted - The amendment also makes it the same penalty for anyone to angage in the work of a small miner without a license.

Page 10, lines 7-13 - As things stand now, there is no simple, expedient, economical appeal of the department decisions. Because of the delay and frustration inherent in the operation of the Administrative Procedures Act and the expense and delay of litigation, the practical effect is that the Commissioner of State Lands becomes pretty much the dictator if he wishes. This revision permits the applicant to appeal the Commissioners decisions directly to the Land Board if he so chooses. It also sets up a minimum of 3 years experience in the mineral industry for those who are to administer this law.

Page 11, lines 6-19 - Subsection 3 establishes, by legislation, what has been the interpretation of the law. Subsection 4 simply states those activities which may be conducted without an exploration license, and subsection 5 again sets the policy for both the operator and the Dept. that they need not write environmental reviews or an EIS if there are no significiant effects to the environment. Again, it legislatively sets what has been assumed in the past.

INSERT AMENDMENT
House Natural Resources Committee
February 6, 1981
House Bill 392 - Page 9, line 8 - 82-4-305 paragraph 1, subparagraph (d) after areas

INSERT
"including his access roads"

INSERT AMENDMENT
House Natural Resources Committee
February 5, 1981
House Bill 392 - Page 9, between lines 23 & 24

"(4) The penalities set forth in (3) above shall likewise apply to any person, partnership, association, firm or corporation who may commence or conduct any operation meeting the requirements of 82-4-303 (10) without first securing a small miners license."

Page 12, lines 1-9 - These are recode and form revisions that are not changes of the present law.

Page 12, line 11 - The requirement for notarization of an application serves no discernible purpose and has been left out. The Dept. forms have never provided space for notarizing. The Dept. has never made any use of the copies of certificates of location filed with it, and this requirement has been deleted.

Page 12, lines 15 & 16 - Ordinairly little significant disturbance is encountered in most exploration operations. The stricken language is vague and has given the Dept. a "blank check" to make delays.

Page 12, between lines 20 & 21 - Insert Amendment - So as to further direct the Dept. and the miner as to what information can be expected and end the unnecessary delays.

Page 12, lines 21-25 & Page 13, lines 1-3 - This removes the need for the County Clerk and Recorder to send a copy of the certificate of location to the Dept. of State Lands. This was a very wasteful practice not used by the Dept. and certainly a burden to the counties.

Page 14, lines 9-21 - It is felt to be an unfair and severe burden to the operator to bond the entire permitted area before it is disturbed. This will require bonding only the area to be disturbed for one year. Subsequent disturbances will be recognized and paid for each year.

Page 14, lines 22-25 & Page 15, lines 1-8 - This removes the "blank check" provisions and gives legislative direction to both the Dept. and to the miner.

Page 15, lines 9-17 - This simply confines the surface disturbance and limits the Dept. to only the information that is germane to the project.

Page 15, lines 21-25 & page 16, lines 1-7 - This portion addresses the very difficult proposition that no one can see underground nor can he necessarily fortell the economic conditions in the future. Economics directly effect the amount of ore that can be mined and as a consequence much of the mining plan must be altered to the economics of the day. If the surface mining permit must be expanded, from a valid existing permit, this section expedites that procedure in as much as it tries to avoid the rewriting of environmental assessments and EIS. The original law was very vague in this area and this will tighten it.

Page 18, lines 9-15 - This simply gives legislative recognition that there are other types of reclamation besides vegetation. An area can be back sloped and stabilized. It also recognizes that there are areas of production more useful to mankind in the form of jobs and products than the original conture. This simply states that if the preceding is the case, there is no reason to deny the permit.

Page 18, lines 23 & 24 - This is simply a restriction on the Dept. so they cannot go on and on asking for more information in a delaying action.

Page 20, lines 2-25 & Page 21, lines 1 & 2 - This says that you must permit the entire area that you wish to disturb, however, you need only bond that portion that you will disturb within a years time. Bonds have been required that may cost as much as 3/4 of a million dollars. This, of course, precludes any small miner in his work. Section 3 on page 20 simply says that if the operator cannot grow graas, he will ask the Dept. to provide the expertise; then if that doesn't work, they will give his bond back.

INSERT AMENDMENT
House Natural Resources Committee
February 5, 1981
House Bill 392 - Page 12, between lines 20 & 21 insert

"(3) The above requirement shall comprise a complete application for an exploration license and the Dept. shall make no rule or demand requiring additional information."

Page 21, lines 22-25 & Page 22, lines 1-24 - This gives the procedures for appealing the Commissioners decision to the Board.

Page 22, lines 8-15 - Legislative direction that old roads are exempt from the Act.

Page 22, lines 16-25 - This attempts to give legislative guidelines in a no-man's land. There are concentrators that are permitted and there are concentrators that are not. They are set by a case by case basis. This paragraph asks the legislature to exempt these facilities, custom mills, from the Act.

Page 23, lines 9-19 - This will return to local control the enforcement of the Hard Rock Law.

CX1416/72

STATE OF MONTANA
DEPARTMENT OF STATE LANDS AND INVESTMENTS
STATE CAPITOL, HELENA 59601
(406-449-2074)

TED SCHWINDEN
COMMISSIONER

September 15, 1971

Mr. Larry Ward
Elliston, MT 59728

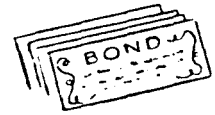
Dear Mr. Ward:

The enclosed rules and regulations pursuant to the "Montana Hardrock Mining Reclamation Act" (Chapter 252, Laws of Montana, 1971) were adopted, approved and promulgated by the State Board of Land Commissioners, effective September 15, 1971. Within sixty (60) days of that date, Chapter 252 provides that "no person shall engage in exploration for, or development or mining of minerals on or below the surface of the earth without first obtaining the appropriate license or permit from the Board. Upon receipt of a development or operating permit, the permittee, other than a public or governmental agency, shall not commence operation until the permittee has deposited with the Board an acceptable performance bond on forms furnished by the Board." In that no federal land administering agency imposes land reclamation controls equal to or greater than those imposed by Chapter 252, no lands in the State of Montana are excluded from the applicability of the Act.

All parties receiving this letter should have a copy of Chapter 252. Copies of all other documents relevant to the administration of the Act are also enclosed.

Those concerned with small mining operations or not engaged in active mining should examine closely the provisions of Section 3, part 15 and Section 20 of the Act. Should they qualify as "small miners" as defined in the Act, they need only complete the "Small Miner's Exclusion Statement" and execute same in the presence of a notary public. Both copies must be returned to this office. One copy will be returned.






Those operators not subject to the small miner's exclusion must obtain the licenses and permits appropriate within the specified sixty days. Applicants should consult relevant portions of the rules and regulations, as procedures are explained step-by-step. In that Chapter 252 is not retroactive, obtaining an exploration license for the first year will not be difficult.

Applicants for development or mining permits should submit applications as soon as possible. Upon receipt of the application and reclamation plan, representatives of this department will visit the mining or development site. Bonding levels will then be established.

Those having difficulties understanding provisions of Chapter 252 should contact this department immediately. We will provide all assistance possible.

Sincerely,

Ted Schwinden, Commissioner
Department of State Lands

TS/mw
Enc.
M-I

State Board of Land Commissioners
Department of State Lands

RULES AND REGULATIONS
Pursuant to
Chapter 252, Laws of Montana, 1971

Authority.

The State Board of Land Commissioners is authorized under Section 4, Chapter 252, Laws of Montana, 1971, to promulgate rules and regulations for the implementation and administration of the Act.

General Statutory Provisions.

Effective sixty (60) days after the Board shall promulgate rules and regulations authorized by the Act, the Act provides that no person shall engage in exploration for, or development or mining of minerals on or below the surface of the earth without first obtaining the appropriate license or permit from the Board. Upon receipt of a development or operating permit, the permittee, other than a public or governmental agency, shall not commence operation until the permittee has deposited with the Board an acceptable performance bond on forms furnished by the Board.

Exclusions:

1. Certain minerals are excluded. See definition of mineral below.
2. Should small miners sign an agreement described in Section 20 of the Act, they are excluded from the other requirements of the Act. See definition of small miner below.
3. The Act shall not be applicable to operations on certain federal lands as specified by the Board if federal law, or regulations issued by the federal agency administering such land, impose controls for reclamation of said lands substantially equal to or greater than those imposed by the Act.
4. The Act is not applicable to any person or persons collecting rock samples as a hobby or when the collection of rocks and minerals is offered for sale in any amount not exceeding one hundred dollars ($100) per year.

Definitions from the Act (Section 3):

"Person" shall mean and include any person, corporation, firm, association, partnership or other legal entity engaged in exploration for or development or mining of minerals on or below the surface of the earth.

"Exploration" shall mean and include all activities conducted on or beneath the surface of lands resulting in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitations, as well as all roads made for the purpose of facilitating exploration, except as noted in Section 20 and Section 24.

"Surface mining" shall mean and include all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits thereby exposed, including, but not limited to, open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and any and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining. Surface mining shall not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium nor excavation or grading conducted for on-site farming, on-site road construction, or other on-site building construction.

"Mining" shall be deemed to have commenced at such time as the operator shall first mine ores or minerals in commercial quantities for sale, benefication, refining, or other processing or disposition or shall first take bulk samples for metallurgical testing in excess of aggregate of ten thousand (10,000) short tons.

"Development" shall mean and include all operations between exploration and mining.

"Mineral" shall mean and include any ore, rock or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock or uranium, taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use (emphasis added) or processing or for stockpiling for future usage, refinement or smelting.

"Small miner" shall mean any person, firm, or corporation engaged in the business of mining who does not remove from the earth during any twenty-four (24) hour period material in excess of one hundred (100) tons in the aggregate.

RULE 1. Definitions promulgated for administration of the Act:

"Act" means Chapter 252, Laws of Montana, 1971.

"Board" means the State Board of Land Commissioners.

"Director" means the Commissioner, Department of State Lands.

"Placer or Dredge mining" means the washing or sorting of unconsolidated surficial detritus for gold, silver, tungsten or other valuable minerals. This definition includes, but is not limited to, mining by hydraulic giant, ground sluice, rocker or sluice box methods, the use of a dry land dredge or washing plant, and bucket type floating dredges, all as referred to in Mining Methods and Equipment Illustrated, Montana Bureau of Mines and Geology, Bulletin 63, December 1967.

"To Pollute or Contaminate any Stream" (as referred to in Section 20 of the Act) means to conduct any exploration, development, assessment or mining activity which will result in deterioration of water quality as specified by standards adopted by the Montana Water Pollution Control Council, 1967. Any future revisions of these standards adopted in accordance with the provisions of the Montana Water Pollution Control Act, 1971, will apply to this definition.

"Disturbed and Unreclaimed Surface" (as referred to in Section 20 of the Act) means land affected by exploration, development, assessment or mining activities that has not been restored to a continuing beneficial use, with proper grading and revegetative procedures to assure:

1. slope stability
2. minimal erosion
3. adequate vegetative ground cover (if in keeping with reclaimed use)
4. that no mine water or surface water passing through a disturbed area will pollute or contaminate any flowing stream

"Bulkhead" (as referred to in Section 20 of the Act) means a door, fence or other construction which allows periodic entry to a mine shaft, adequately secured and locked so that animals and unauthorized persons are denied entry.

RULE 2. Applicability of the Act:

A. Subject to the exclusions set forth in the Act and pursuant to the definitions of "surface mining," "mining" and "mineral" in the Act, placer or dredge mining, rock quarrying and peat mining operations are included in the application of the Act.

Board comment: This rule is adopted to clarify the application of the Act.

B. Section 7, part 5, Chapter 252, Laws of Montana, 1971, states, "Employees of persons holding a valid license or permit under this Act shall be deemed included in and covered by such license or permit." This provision is interpreted to cover subcontractors and their employees. With the adoption of this rule by the Board, the parent company is liable for violations of the Act by subcontractors (drilling, construction, maintenance or otherwise) and the subcontractor's employees.

EXPLORATION LICENSE:

Statutory requirements.

To secure an exploration license the applicant shall:

1. pay a fee of five dollars ($5) to the Board
2. agree to reclaim any surface area damaged by the applicant during exploration operations, all as may be reasonably required by the Board, unless the applicant shall have applied for and been issued a development or operating permit for the lands so damaged
3. not be in default of any other reclamation obligation under this law

On approval by the Board, the applicant will be issued an exploration license renewable annually on application and payment of renewal fee. The license will not be renewed if the applicant is held by the Board to be in any violation of the Act or rules and regulations promulgated by the Board. As per the provisions of Sections 16, 17 and 18 of the Act, an aggrieved applicant, licensee or permittee may appeal, the decision of the appeals board being subject to judicial review.

RULE 3. An exploration licensee is subject and must agree to the following minimal provisions for reclamation of surface areas damaged by exploration operations. Recognizing the inherent difficulties of promulgating regulations of state-wide applicability, the Board will allow variance from the following provisions of this rule, if a written request submitted prior to commencement of the subject disturbance is accompanied by the landowner's or land administrator's written consent to the variance and is sufficient to convince the Board that the public interest and the intent of the Act are best served by allowing such variance.

A. Exploration (temporary) roads.

1. Insofar as possible, all roads shall be located on benches, ridge tops and flatter slopes to minimize disturbance and enhance stability.
2. Road widths may not exceed a fourteen (14) foot single land standard. Turn-outs may be constructed according to the licensee's needs, but the turn-out area may not exceed thirty (30) feet in total width.
3. No road may be constructed up a stream channel proper or so close that material will be spilling into the channel. Minor alterations and relocations of streams may be permitted if the stream will not be blocked and if no damage is done to the stream or adjoining landowners. No alteration which affects more than one hundred (100) linear feet of the channel of a flowing stream may be approved by the Board without advice from the Montana State Fish and Game Department.
4. Road gradients must be kept low except for short pitches to take advantage of topography. Maximum sustained grades may not exceed eight (8) percent. Pitch maximum may not exceed twelve (12) percent and may not be over three hundred (300) feet in length.
5. Insofar as possible, the licensee must keep road cuts reasonably steep to minimize surface disturbances. Cut slopes may not be steeper than 1:1 in soil, sand, gravel, or colluvium; ¼:1 in lake silts, or more than 0:1 in rock. Where necessary to prevent significant sloughing or slumping, the top of road cuts must be rounded back to a more gentle slope. In selecting a slope angle, to prevent slope failure the licensee should consider at least the following factors: the nature of the material, compaction, slope height and moisture conditions.
6. A ditch must be provided on both sides of a through-cut and with the exception of outsloping roads, on the inside shoulder of a cut-fill section, with ditch relief cross drains being spaced according to grade. Water must be intercepted before reaching a switchback or large fill and be led off. Water on a fill or switchback must be released below the fill or switchback, not over it.
7. Streams shall be crossed at or near right angles unless contouring down to the stream bed will result in less potential stream bank erosion. Structure or ford entrances and exits must be constructed to prevent water from flowing down the roadway.

8. Culverts must be installed at prominent drainage ways, small creeks and springs. Upon abandonment of the road, culverts must be removed and the drainage way reopened. Such culverts must be sufficient to handle run-off expected from a statistical five-year storm and where necessary must be protected from erosion by adequate rock riprap.
9. Trees and vegetation may be cleared for only the essential width necessary to maintain soil stability and to serve traffic needs.
10. Drainage facilities must be installed as road construction progresses.
11. Adequate diagonal drainage barriers, open tops or Kelly dips must be placed at the following specified intervals.

Grade--Percent	Maximum Spacing (feet)
0 - 2	200
3 - 8	150
9 -12	80

12. When sideslopes are fifteen (15) percent or less, vegetative debris from clearing operations must be completely disposed of or stockpiled at specific areas. On sideslopes steeper than fifteen (15) percent such vegetative debris must be piled neatly parallel to and below the toe of the fill.
13. Roads must be outsloped whenever possible. If roads are to be used during snow season, insloping with proper drainage consideration is acceptable for vehicle safety reasons.
14. Snowplowing must be done in such a manner that run-off water will not be trapped between the snow berms and run down the road.
15. Materials which slough or slump onto the road bed or into the roadside drainage ditch before the licensee abandons the area must be disposed of in the road bed or on the side hill fill in a manner that will not obstruct any of the drainage facilities heretofore described.

B. Drill sites.

1. Drilling mud from drilling operations shall be permanently confined.
2. Drill sites may not be constructed in natural flowing streams.
3. Areas disturbed by removal of vegetation or grading must be kept to the minimum for drilling operation.

C. Discovery pits or other excavations.

1. Insofar as possible, discovery pits or other excavations must be located out of natural flowing streams.
2. Spoil from the pits or excavations may not be located in drainage ways. The lower edge of the spoil bank must be at least five (5) vertical feet above high flood flow level. Spoil piles must be neatly sloped and rounded to allow vegetation to be re-established.
3. Exploration excavations, such as shafts (vertical or inclined), tunnels or adits, which involve the removal of rock, mineral or soil material in excess of fifty (50) cubic yards in the aggregate shall be reclaimed in keeping with the standards described in Section 3, Subsection 11 and Section 9 of the Act and Rule 5 of these rules and regulations.

D. Assessment work. When such action will not physically hinder further development of the claim, all land surfaces disturbed by assessment work (that may be properly considered exploration) must be graded promptly to facilitate revegetation and to prevent excessive erosion.

E. All refuse connected with exploration activities shall be collected, removed and disposed of in proper disposal sites.

F. Revegetation of exploration roads, discovery pits, other excavations, drill sites and land disturbed by assessment work.

1. The first objective in revegetation is to stabilize the area as quickly as possible after it has been disturbed. Plants that will give a quick, protective cover or those that will enrich the soil shall be given priority. Plants re-established must be in keeping with the intended reclaimed use of the land.
2. Appropriate revegetation shall be accomplished as soon after necessary grading as possible; however, revegetation must be performed in the proper season in accordance with accepted agricultural and reforestation practices.
3. All fill and cut slopes, with the exception of rock faces, must be seeded or planted or both during the first appropriate season following construction of the road.
4. All drill sites and spoils from discovery pits or other excavations must likewise be seeded or planted or both, if feasible, in the first appropriate season following completion of the work. Exceptions may be made if such revegetation would hide or obscure significant evidence relating to the possible presence of an ore deposit.
5. Upon abandonment, and closure, the exploration road itself must be adequately prepared for suitable revegetation; such revegetation must be undertaken in the first appropriate season following abandonment, closure, and soil preparation.
6. In the event that any of the above revegetation efforts are unsuccessful, the licensee must seek the advice of the Board and make a second attempt, incorporating such changes and additional procedures as may be expected to provide satisfactory revegetation.

DEVELOPMENT PERMIT:

Statutory requirements.

The development permit shall be on a form prescribed and supplied by the Board.

To obtain a development permit, the applicant shall:

1. pay a $25.00 fee
2. describe the area where development is to be conducted
3. indicate proposed development method (drilling, trenching, etc.)
4. submit estimate of disturbed acreage for succeeding twelve month period.
5. provide a suitable map showing topographic, cultural and drainage features, location of primary support roads and facilities, and area to be disturbed
6. furnish an affidavit as may be required by the Board, showing that any lands disturbed by exploration, development or mining in the State of Montana by applicant within two years prior to application

has, is being, or will be reclaimed in accordance with the provisions of this Act. The requirement does not apply to lands disturbed prior to the effective date of this Act

7. submit a reclamation plan for lands to be disturbed in the next twelve months

RULE 4. For the purposes of administering this Act, the Board considers the following actions to constitute development in keeping with the intent of the Act.

A. Clearing, excavation or grading for, or construction or installation of:

1. an ore treatment mill or pilot mill contiguous or near to a mine or mine complex
2. a conveyor, narrow gauge railway or tramway leading from mine mouth to the mill site
3. electrical transmission lines to the mine, mine complex or mill site
4. a liquid or natural gas line leading to the mine, mine complex or mill site
5. a railroad or other vehicle road leading to the mine, mine complex or mill site
6. structures necessary for the creation or maintenance of leach dumps, tailings piles, or settling ponds or any other water impoundments

B. Alteration of any natural flowing streams.

C. Removal of overburden preparatory to open pit mining.

D. Sinking shaft or driving a tunnel or adit to reach ore minerals for planned economic exploitation.

E. Placing spoils from removal of overburden, sinking shaft, or driving a tunnel or adit upon nearby land surfaces, should such activity be conducted preparatory to planned economic exploitation.

RECLAMATION PLANS:

RULE 5. The definition of reclamation plan (Section 3, subsection 11 of the Act) lists nine considerations which"to the extent practical at the time of application" must be included in the plan. Using the same letter headings as in the above-referenced definition, the following are the Board's standards for each of the required provisions that must be included in the plan:

A. Land disturbed by development or mining activities must be reclaimed for one or more specified uses, including, but not limited to: forest, pasture, orchard, cropland, residence, recreation, wilderness, industry, habitat (including food, cover or water) for wildlife or other uses. Proposed reclamation need not reclaim subject disturbed areas to a better condition or different use than that which existed prior to development or mining (Section 9.g of the Act). The applicant must describe:

1. current use(s) of area to be disturbed
2. current and proposed uses of nearby land that by its proximity may influence or guide the choice of a reclaimed use of the disturbed area.
3. pertinent climatic, topographical, soil, water and wildlife data that govern choice of proposed use of the reclaimed land

B. With the use of cross-sections, topographic maps or detailed prose, the proposed topography of the reclaimed land must be adequately described. As specific situations warrant, proper grading must provide for adequately designed contour trenches, benches and rock-lined channelways on disturbed areas. The applicant must submit evidence to assure the Board that upon partial or complete saturation with water, graded fill, tailings or spoil slopes will be stable. The proposed grading methods must be described. Where practicable, soil materials from all disturbed areas must be stockpiled and utilized.

C. To the extent reasonable and practicable, the permittee must establish vegetative cover commensurate with the proposed land use specified in the reclamation plan. Should an initial revegetation attempt be unsuccessful, the permittee must seek the advice of the Board and make another attempt. The second revegetation operation, insofar as possible, shall incorporate new methods necessary to re-establish vegetation.

D. (1) Where operations result in a need to prevent acid drainage or sedimentation, on or in adjoining lands or streams, there shall be provisions for the construction of earth dams or other reasonable devices to control water drainage, provided the formation of such impoundments or devices shall not interfere with other landowners rights or contribute to water pollution (as defined in The Montana Water Pollution Control Act as amended). (2) The plan must provide that all water, tailings or spoil impounding structures be equipped with spillways or other devices that will protect against washouts during a one hundred (100) year flood. (3) All applicants must comply with all applicable county, state and federal laws regarding solid waste disposal. All refuse shall be disposed of in a manner that will prevent water pollution or deleterious effects upon the revegetation efforts. (4) Upon abandonment, water from the development or mining activities shall be diverted or treated in a manner designed to control siltation, erosion or other water pollution damage to streams and natural water courses. (5) All access, haul and other support roads shall be located, constructed and maintained in such a manner as to control and minimize channeling and other erosion. (6) All operations shall be conducted so as to avoid range and forest fires and spontaneous combustion. (7) Archaeological and historical values in area to be developed shall be given appropriate protection. (8) Provisions shall be made to avoid accumulation of stagnant water in the development area which may serve as a host or breeding ground for mosquitoes or other disease-bearing or noxious insect life. (9) All final grading shall be made with non-noxious, non-flammable, noncombustible solids unless approval has been granted by the Board for a supervised sanitary fill. (10) Proper precautions must be taken to assure that exposed cuts and tailings or spoil disposal areas will not be subject to wind erosion to the extent that air-borne detritus becomes a public nuisance or detriment to the flora and fauna of the area.

E. In a reclamation plan accompanying an application for operating permit, the applicant shall provide the Board with sufficiently detailed information regarding method(s) of disposal of mining debris, including mill tailings, and the location and size of such areas.

F. The plan must describe the location of the surface water diversions as well as the methods of diverting surface water around the disturbed areas. Properly protected culverts, conduits or other artificial channels may carry surface water through the disturbed areas providing such procedures prevent pollution of such waters and unnecessary erosion.

G. Requirements regarding reclamation of stream channels and stream banks must be flexible to fit circumstances of each stream site. Many stream relocations, however, will be permanent and thus will represent the reclaimed condition of stream channels and stream banks. Accordingly, reclamation plans must contain the following provisions should stream channels or banks be permanently relocated:

1. the relocated channel shall be of a length equal to or greater than the original channel, unless the Board after consideration of the local circumstance shall grant a variance
2. the relocated channel shall contain meanders, riffles and pools similar to those in the original channel
3. stream banks shall be rounded to prevent slumping and sloughing and shall be revegetated in keeping with accepted agriculture or reforestation practices the first appropriate season following channel relocation
4. rock riprap shall be used wherever appropriate

H. Sections 7 and 8 of the Act require that maps of the intended development or mining operation(s) accompany applications for permit. Should a copy of such maps, to scale, contain the following additional information (transparent overlays are acceptable), a separate map need not accompany the reclamation plan:

1. outline of the area to be disturbed in the first permit year
2. outline of areas where soil materials will be replaced
3. outline of intended revegetation areas showing plant or seed densitities and species chosen
4. location of such structures, drainage features, etc. as may be necessary to prevent erosion of bare slopes and subsequent siltation or other pollution of natural flowing streams or other natural water bodies

I. Reclamation shall be as concurrent with development or mining operations as feasible and must be completed within a specified reasonable length of time. Revegetation must be accomplished in the first appropriate season after necessary grading, in accordance with accepted agricultural or reforestation practices.

OPERATING PERMIT:

Statutory requirements.

Applicant must obtain an operating permit for each mine complex on a form prescribed by the Board.

The applicant shall:

1. pay a $25.00 fee
2. indicate proposed date for commencement of mining and minerals to be mined
3. provide a map to scale of the mine area and area to be disturbed (such map will locate and identify streams, and proposed roads, railroads and utility lines in the immediate area)
4. submit a plan of mining which will provide, within limits of normal operating procedures of the industry, for completion of mining and associated land disturbances
5. provide a reclamation plan that meets the requirements of Section 9 of the Act and the rules and regulations of the Board

RULE 6. Mining (Operating) Reclamation Plan, Abandonment--Completion.

For the purposes of administering the Act the Board will presume that an operation is abandoned or completed (and thus subject to the reclamation time schedule outlined in Section 9 of the Act) as soon as ore ceases to be extracted for future use or processing. Should the permittee wish to rebut said assumption, he must provide evidence satisfactory to the Board that his operations have not in fact been abandoned or completed.

Documentation of any of the following situations will be adequate evidence of intent not to abandon operations:

1. the mine or mill work force is on strike while negotiating a new contract
2. the mine or mill is shut down because of some failure of the transportation network in moving ore or processed material
3. the mine or mill is shut down because of a natural catastrophe and plans to resume operations are being formulated
4. the mine or mill is seasonally shut down due to predictable annual variance in the mined product's market or because of incliment weather or seasonal inaccessibility
5. the mine or mill is shut down for maintenance or the construction of new facilities
6. the mine or mill is forced to temporarily shut down because of violation of other state or federal laws and efforts are being made to remedy the cause of the violation

At the discretion of the Board, the following evidence and any other relevant evidence may be satisfactory to show intent to resume operations:

1. exhibition of drill core and accompanying assay reports to show that ore minerals still remain in the mine and that they are present in veins or accumulations of sufficient size, grade and accessibility to warrent continued development--geological, geochemical or geophysical indications of valuable mineralization sufficient to warrant further development or mining will also be considered by the Board
2. continued employment of a maintenance crew to dewater the mine or replace timbers, etc.,
3. data recording present and predicted commodity prices, labor and transportation costs, etc., or any other evidence which may show that mining may soon resume on a profitable basis

Board comment: It is recognized that "abandonment or completion of mining" under the operating permit (see Section 9 of the Act) is an action commonly predicated upon complex and changing economic circumstances; that cessation of mining need not mean abandonment or completion; and that short of obtaining an operator's records and examining his mine development drill core, the Board may be unable to determine the operator's true intent.

RULE 7. Mining (Operating) Reclamation Plan--Objectionable Effluents.

Section 9, part E, concerns abandoned open pits greater than two (2) acres in size and gives the Board the responsibility of setting levels of objectional effluents safe to humans and the environment that may flow or be pumped out of the pit, with or without treatment.

A. The Board rules that subject reclamation plans must provide that all discharges from such abandoned pits will be consistent with provisions of the Montana Water Pollution Control Act, Sections 69-4801 - 69-4823, R.C.M. 1947, as amended.

B. Effluents from a subject abandoned pit must meet the water quality standards adopted by the Montana Water Pollution Control Council, October 5, 1967, or any future revisions of these standards in effect at the time of pit abandonment. In accordance with criteria for other materials exhibiting a residual life exceeding thirty (30) days in water, no heavy metals or heavy metal compounds shall be pumped or allowed to flow from subject open pits in concentrations exceeding one-hundredth (1/100th) of the four (4) day median tolerance limit (TL_m 96) for game fish present in the receiving water.

GENERAL RULES:

RULE 8. Confidential Material:

Upon application, the Board shall release information acquired through the administration of the Act to proper interested persons. For these purposes "proper interested persons" are defined as follows:

A. As to information, contained in or accompanying applications for licenses or permits, "proper interested persons" are those persons so designated, in writing, by the operator or his authorized agents.

B. As to all other information (except information specified in Section 21 of the Act) acquired through the administration of the Act, all members of the public are "proper interested persons".

OTHER:

The licensee shall comply with all federal and state laws, and such rules and regulations as are promulgated by the Commission under this Act.

By action of the State Board of Land Commissioners, these rules and regulations were approved, adopted and promulgated effective the fifteenth (15th) day of September, 1971.

ATTEST:

Ted Schwinden

Secretary

Direct all inquiries to:

Ted Schwinden, Commissioner
Department of State Lands
State Capitol
Helena, Montana 59601
(Phone: 406-449-2074)

52 AJS § 78

Abandonment does not depend on any rules or regulations or customs of mining, but is largely, if not entirely, a matter of a locator's intention, which is to be determined from the acts and statements, together with other circumstances of the particular case. It is a question of fact to be determined by the trier of the facts and, where the question whether there has been an abandonment of a claim arises in a proceeding in which there is a jury trial, it is usually a question of fact for the jury to determine.

Thus, where there is no intention to abandon, or where a locator is induced to leave his claim, he has been held not to constitute an abandonment

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The right to locate and acquire public mineral lands under the federal mining acts attaches only to those lands belonging to the U.S. which contain mineral deposits and are not appropriated for any other use and which the government has indicated as held for disposal under the land laws.

*59 Page 113

The ground included within the boundaries of a valid location is withdrawn from the public domain and the right to its possession is vested exclusively in the locator during the period of his compliance with governing regulations.

Such a location has the effect of a grant from the federal government of the right of present and exclusive possession of the land located and includes every appurtenant belonging to the realty.

As long as the locator keeps his rights in force, such rights cannot be defeated by the torts and trespasses of others.

*75b Page 133 Effect of Failure Properly to File Affidavit.

Statutes providing for the filing of an affidavit showing that the assessment work has been done or the improvements made for a particular year are regarded as merely directory and do not preclude an owner from making proof of performance in some other way. Thus, a failure to file such an affidavit does not work a forfeiture of a claim, and a statute, under whose provisions a failure to file such an affidavit constitutes an abandonment of a claim and subjects it to relocation, has been held void as in conflict with the general laws governing such property.

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ASARCO Incorporated

East Helena, Montana 59635

PURCHASE SCHEDULE #

DATE EFFECTIVE 11-16-79

ER _____ ADDRESS _____

_____ LOCATION _____

LEAD ORES & CONCENTRATES R. R. STATION _____

The following purchase terms are subject to the General Clauses shown on the back of this sheet and are subject to change on 30 days notice. Unless shipments are begun within 30 days, this quotation is automatically cancelled.

Freight prepaid f.o.b. rail cars at unloading bins of the ASARCO Incorporated Smelter at East Helena, Montana. The rates quoted are based on shipment in open-top gondola equipment. Extra unloading charges of up to $2.00 per wet ton will be assessed for product received in other equipment.

PAYMENTS

Deduct 0.02 troy ounces per dry ton and pay for 95 % of the remaining gold content at the daily London Final Gold Quotation, as published in Metals Week, averaged for the second calendar month following date of delivery of product, less a deduction of 250 ¢ per troy ounce of payable gold. All purchases of gold will be subject to United States Governmental regulations pertaining to transactions in gold.

Deduct 1.0 troy ounces per dry ton and pay for 95 % of the remaining silver content at the Handy and Harman New York Quotation for refined silver, as published in Metals Week, averaged for the second calendar month following date of delivery of product, less a deduction of 15 ¢ per ounce.

Deduct from the wet lead assay 1.5 units and pay for 95 % of the remaining lead at quotations for common domestic lead for delivery in New York, as published in Metals Week, averaged for the second calendar month following date of delivery of product, less a deduction of 8.3 ¢ per pound of lead accounted for. The quantity of lead not paid for shall equal a minimum of 3.0 units per net dry ton.

Deduct from the wet copper assay 1.3 units and pay for 60 % of the remaining copper at the daily quotation for NW Copper Composite, as published in Metals Week, averaged for the second calendar month following date of delivery of product, less a deduction of 25 ¢ per pound of copper accounted for.
The maximum quantity of copper paid for shall not exceed 5 units.

NO PAYMENT WILL BE MADE FOR ANY METAL OR CONTENT EXCEPT AS ABOVE SPECIFIED.

DEDUCTIONS

The smelting deduction shall be $77.00 per dry ton based on

(a) A cost of employment of $11.00 per hour at East Helena
(b) A cost of fuel of 345 ¢ per MMBtu at East Helena
(c) A cost of electric power of 12 mills per kwh at East Helena
(d) Payment for gold, silver, lead and copper of $1000.00 per net dry ton or less.

(a) Increase or decrease smelting deduction by 8 ¢ for each 1¢ per hour that the average hourly cost of employment during the calendar month including date of delivery is greater or less than $11.00, fractions in proportion.

(b) Increase or decrease smelting deduction by 8 ¢ for each 1¢ per MMBtu that the average cost of fuel used during the calendar month including date of delivery is greater or less than 345 ¢, fractions in proportion.

(c) Increase or decrease smelting deduction by 12 ¢ for each 1 mill per kwh that the cost of electric power used during the calendar month including the date of delivery is greater or less than 12 mills, fractions in proportion.

(d) Increase the smelting deduction by 7.5% of the excess over such payments for gold, silver, lead and copper of $1000.00 per net dry ton.

If 0.5 units or more, charge for all at $ 2.00 per unit)
Allow 0.5 units free; charge for excess at $ 1.00 per unit)
Allow 0.05 units free; charge for excess at $ 0.50 per lb.) FRACTIONS IN PROPORTION
Allow 0.3 units free; charge for excess at $ 3.00 per unit)
Allow 10.0 units free; charge for excess at $ 0.50 per unit)

Limited to _____ tons per month.

ASARCO Incorporated

GENERAL CLAUSES COVERNING ALL OPEN SCHEDULES

XE : All taxes or other governmental charges, national, local or municipal, now or hereafter imposed in respect to or measured by the product purchased hereunder, or the production, extraction, smelting, refining, sale, transportation, proceeds or value thereof or of the metals derived therefrom, other than income taxes levied upon the BUYER, shall be for account of the SELLER and shall be deducted from the purchase price payable hereunder.

MPLING: Weighing, moisture and ore sampling (at which SELLER or a representative may be present) as done by BUYER according to standard practice, promptly after receipt of product, will be accepted as final. The absence of SELLER or a representative shall be deemed a waiver of the right in each instance. After sampling, the product may be placed in process, commingled, or otherwise disposed of by BUYER.

SAYING: As soon as available, BUYER will furnish a pulp sample to SELLER, or to SELLER's representative or the firm handling SELLER's assay work. On SELLER's request, BUYER will make assay comparison with SELLER, or his representative, by exchange of assay certificates over the counter. Comparison may be made by exchange of certificates through the mail, and in such event BUYER and SELLER will mail to each other their respective assay certificates on the sixth day following date appearing on smelter pulp sample envelope, or other such date as may be agreed upon. Gold and silver assays are to be determined by commercial fire assay method, unadjusted for slag loss and cupel absorption, and umpire assayers shall be so informed. The following splitting limits will be used for comparison of assays under other exchange method listed above:

Gold - .02 troy ounce per ton	Lead - .5%	Antimony - .2 %
Silver - .5 troy ounce per ton	Copper - .3%	Bismuth - .02%
	Arsenic - .3%	Nickel - .1 %

If assays of BUYER and SELLER are within limits above specified, settlement assays will be determined by averaging the two results. If assay comparisons indicate differences greater than the above limits, control sample shall be submitted to umpire. Umpires shall be selected in rotation from a list mutually agreed upon, whose assays shall be final if within the limits of the assays of the two parties; and, if not, the assays of the party nearer to the umpire shall prevail. Losing party shall pay cost of umpire. In case of SELLER's failure to make or submit assays, BUYER's assays will govern.

MALL LOT: The rates quoted herein are for carload lots. On truck shipments and/or any lot containing less than 20 tons, there will be a handling charge of $25.00.

LL ON FREIGHT: This schedule is based upon published all-rail freight rates applicable to carload minimum weight of 50 tons on lead bullion from East Helena, Montana via Omaha, Nebraska (for refining) to New York City of $ 64.93 per ton. Any increase or decrease in said 50 ton rate in effect on the date of delivery of product shall be for SELLER's account, and proper charge or credit shall be made accordingly.

FINITIONS: In this schedule the word "ton" means a ton of two thousand pounds avoirdupois; the word "ounce," as referring to gold and silver, means the troy ounce; and the word "unit" means one percent of a ton, or twenty pounds avoirdupois.

RCE MAJEURE: Performance of this agreement is subject to any delays caused by strikes or other disabling causes beyond the control of either party.

EIGHT AND ADVANCES: All freight and other charges paid by BUYER for SELLER's account will be considered as an advance payment and will be subject to an interest charge. Such interest shall be charged from the date of the advance payment to the date of final settlement at a rate of 1.25 times the rate quoted to Asarco from time to time by the Chase Manhattan Bank, N. A.

SELLER should consign his shipments to ASARCO Incorporated, East Helena, Montana and it is required that the original bill of lading covering each such shipment be delivered to the BUYER promptly on release of the shipment to the carrier. Full details as to the disposition of settlement returns, including royalty instructions if any, must be furnished by SELLER to BUYER before shipments can be processed.

ASARCO Incorporated

58 CJS § 78

Abandonment does not depend on any rules or regulations or customs of mining, but is largely, if not entirely, a matter of a locator's intention, which is to be determined from his acts and statements, together with other circumstances of the particular case. It is a question of fact to be determined by the trier of the facts, and, where the question whether there has been an abandonment of a claim arises in a proceeding in which there is a jury trial, it is usually a question of fact for the jury to determine.

Thus, where there is no intention to abandon, or where a locator is forced to leave his claim, it has been held not to constitute an abandonment.

Larry Ward
Hard Luck Mines
Elliston, Mt.

STATE OF MONTANA
Board of Land Commissioners
Helena, Montana 59601

MINING RECLAMATION BOND

Operating Permit No. _____

KNOW ALL MEN BY THESE PRESENTS, That we (I), _____

_____

as Principal, and _____

a corporation organized and existing under the laws of the State of _____

and duly authorized to transact business in the State of Montana, as Surety, are held and firmly bound unto the State of Montana, acting through the Board of Land Commissioners, in the sum of _____ ($_____) DOLLARS, for the payment of which sum, well and truly to be made, we bind ourselves, and each of our legal representatives, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has received a permit from the Board of Land Commissioners to operate a mine or mine site on the following described premises, to wit:

NOW, THEREFORE, The conditions of this obligation are such that if the above bounden Principal shall, in conducting such mining operations faithfully perform the requirements of the permit, the reclamation plan and Chapter 252, Laws of Montana, 1971, relating to mining and the Rules and Regulations adopted pursuant thereto, then this obligation shall be exonerated and discharged and become null and void; otherwise to remain in full force and effect.

PROVIDED, However, the Surety shall not be liable under this bond for an amount greater in the aggregate than the sum designated in the first paragraph hereof, and shall not be liable as respects any obligations related to mining operations performed after the expiration of thirty (30) days from the date of the mailing by the Surety of a cancellation notice directed to the Principal and the Board of Land Commissioners, Helena, Montana. The bond shall remain in full force and effect as respects obligations and related to mining operations performed prior to the effective date of such cancellation unless the Principal files a substitute bond, approved by the Board of Land Commissioners, or unless the Board of Land Commissioners shall otherwise release the Surety.

Signed, sealed and dated this _____ day of _____, 19_____.

_____
Signature: Principal

_____
Title

(Surety's Seal)

_____
Mailing Address

Bond Approved _____, 19____.

_____
Surety

_____
Commissioner of State Lands and Investments

_____
Mailing Address

REC-5 (6-71)

EXHIBIT 3

HB 392
Testimony of Department of State Lands

The Department of State Lands, as the regulatory agency charged with the duty of administering the Hard Rock Act, opposes HB 392 for the reason that passage of the bill would deprive the department of its ability to insure the major hard rock mining operations in Montana are adequately reclaimed upon abandonment.

The Hard Rock Act passed in 1971, applies to the mining of all hard rock minerals - copper, silver, gold, talc, rock quarries, for example.

The purpose of the act is to require, wherever practical, reclamation of mined land through a permit system. The act authorizes the administering agency, the Department of State Lands, to issue two types of permits - an exploration license and an operating permit. In order to obtain the required license or permit, the applicant must file with the department an exploration or mining plan, a reclamation plan, and a bond insuring that the reclamation plan is followed. There are presently 51 exploration licenses and 75 operating permits in effect.

Most hard rock miners in the state are not, however, required to apply for and obtain operating permits. The act provides that operators who will leave unreclaimed fewer than five acres (or two five acre operations if they are more than a mile apart and are operated in different seasons) and remove less than 36,500 tons/year are exempted from the permit provisions of the act by filing with the department a Small Miner Exclusion Statement and a map generally locating their operation. To obtain the small miner exclusion, all the small miner need do is promise not to pollute or contaminate any stream and install bulkheads and tunnel doors for safety reasons. The exemption is automatic-no environmental review is conducted. Currently, there are about 1,170 Small Miner Exclusion Statements on file with the department.

Issuance of exploration licenses and operating permits is subject to the requirements of the Montana Environmental Policy Act and an EIS is required if issuance of the permit or license would constitute a major action of state government significantly affecting the human environment. The department has never written an EIS on an exploration license application and has written an EIS on only five operating permit applications.

The Department's Hard Rock Reclamation Bureau, which reviews permit applications and inspects mines, is composed of four full-time employees with backgrounds in geology, and the biologic and physical sciences.

This gives a general overview of the operation of the Hard Rock Act. The general approach is to exclude small miners from the provisions of the act and require other miners to reclaim to the extent practicable. Success in reclamation is achieved in the same manner it is achieved in other projects. Planning is required and the plan must be adhered to. For that reason, the Hard Rock Act requires the large operator to file a reclamation plan in which he states a reasonable post-mining land use and describes how that land-use is to be achieved.

HB 392 would weaken the Hard Rock Act in many ways. Some major areas are as follows:

1. Reclamation - The bill deemphasizes revegetation and removes the requirement that the reclamation plan address procedures to avoid public nuisances and public health and safety problems.

2. Exemption of Larger Operations from Permit/Reclamation Plan Requirements - The bill raises size of operation required to obtain a permit from 5 to 10 acres and removes the tonnage limitation. Although HB 392 requires all small miners to reclaim, it practically removes the ability of the department to enforce by providing a one-time-only fine of $10 - $100.

3. Ineffective Enforcement - The bill substitutes a one-time only penalty of $10 - $100 for failure to obtain a small miner exclusion statement for the present penalty of $100 - $1000 for each day of violation.

4. Narrowing of "Mining" - The bill excludes from the definition of "mining" the removal of ore, even in commercial quantities, when the primary purpose is to gain access to another deposit.

5. Review of Proposed Operations by the Department - HB 392 does not give the department the ability to sufficiently review a planned operation because of weakened requirements for application requirements reclamation plan. The bill removes the requirement for a mining plan. Also, it requires issuance of certain acreage additions to be permitted without review.

6. Bonding - Bonding requirments are weakened by providing lower standards for release of bond and by freezing bond levels for acreage additions at lower rates.

7. Land Exemption - Land subjected to exploration or mining prior to 1972 and redisturbed after the act became effective need not be reclaimed at all, no matter how slight the previous disturbance. Presently, the act requires reclamation to previous condition.

In summary, HB 392 provides for a program which increases the number and size of operations exempted from departmental review and severely restricts the department's ability to require planning for reclamation and compliance with the plan on others. If good reclamation is not planned, it will not occur. The Constitution of Montana requires that the legislature provide for the reclamation of all lands disturbed by the taking of natural resources. HB 392 does not provide for effective mined land reclamation. The department urges the committee to give HB 392 a do not pass recommendation.

EXHIBIT 4

NORTHERN PLAINS RESOURCE COUNCIL

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

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

TESTIMONY OF THE NORTHERN PLAINS RESOURCE COUNCIL ON HB 392
HOUSE NATURAL RESOURCES COMMITTEE FEBRUARY 6, 1981

Mr. Chairman, members of the committee, for the record my name is Bill Mackay, Jr.. I am from Roscoe, Montana where four generations of Mackay's have been on the Lazy EL, our family ranch. I am immediate past chairman of the Northern Plains Resource Council for whom I am testifying today. Northern Plains has long been interested in reform of the hard rock mining laws because we have many members who ranch and live in hard rock areas such as the Stillwater Complex.

We are well aware that we in this country use minerals. We are also aware that mining companies have been granted broad leeway in this State from its very beginning. A prime example of this is the small miner's exclusion which is blatantly unconstitutional. We are also aware, as landowner's who live in these areas, that our lands, our water, and our air may be severely impacted. We are aware that our rights to live on the land, to produce food and fiber for the world must be protected.

It took 82 years from our birth as a State for Montana to break the infamous copper collar and in 1971 pass a hard rock reclamation act. It is ironic that the proposal before your committee, ten short years after the hard rock act's passage, speaks not of strengthening this law and making it comparable to our strip mine act, but attacks the premise of the law and effectively leaves it useless. On to the specifics of HB 392.

Coming straight out of the chute on page 2 of the bill, in the purpose section, HB 392 makes no bones about its intent, reclamation of lands mined is effectively removed as a foundation for the hard rock act. This is in direct contradiction to Article 9, Section 2, of the Montana constitution which states "All lands disturbed by the taking of natural resources shall be reclaimed." There is no ambiguous, weasel language here, there is in HB 392.

The bill moves on to strike the language which requires permit operators to have procedures to avoid foreseeable situations of public nuisance, endangerment of public safety, and damage to human life or property. Why is the public to be damned in this instance, why is insult added to injury?

We then move on to the historically remarkable phenommenon of the rapidly shrinking miner or how the big boys want to grab the benefits now granted to the small miners. In the 1977 Legislature the tonnage limitation on small miners was changed, big miners thus qualified to be small. In 1979 the Legislature upped the acreage limitation to two five acre tracts and agreed not to count roads if they were to be maintained. Now in 1981, the already unconstitutional exemption is to be doubled, and there will be no handle whatsoever on roads. It gets a lot thicker.

We at Northern Plains generally have no quarrel with a legitimate small miner who is out there trying to make a living like everybody else. We wondered what firms were in the five to ten acre range, what were the outfits like that this bill would affect. We came up with the following potential small miners - Burlington Northern, assets $2.5 Billion, 52,000 employees; Pfizer, assets $2.7 Billion, 41,000 employees; St.Regis Paper, assets of $2.3 Billion, 31,800 employees; and Stauffer Chemical assets $1.5 Billion and a measly 12,500 employees. Sure, some small miners may benefit, but who will benefit more?

Next we move on to the issue of roads. The language that gave the Department of State Lands flexibility on counting or not counting roads if those roads were to be maintained is struck. The key issue is who will maintain those roads, if no agency of government wants the road and will not agree to maintain it, it should be reclaimed.

Next, the issue of employment requirements. This is a reclamation act, not a mining act. State Lands should have range scientiests, high altitude vegetation experts, soils scientiests, hydrologists - The Bureau of Mines can assist the companies with mining engineers. State Lands should assist in reclamation.

Then there is the issue of exploration. There are several points to make. Exploration itself can be a very involved and complicated process. Allowing one exploration license for the whole State of Montana - for alpine high lands in the Stillwater,

for the prairies near Zortman and Landusky, or for the heavy rainfall areas of far Northwest Montana is absolutely ludicrous. Also, to my reading the proposed language would allow the exploration adit on the Stillwater River to weasel out of getting an exploration license. Further, there are some exploration projects that will signficantly affect an area, there should be some review by State Lands. This bill would strike that protection.

Next there are the amendments to the present law on operating permits. The language on page 15, subsection 2 completely and totally ignores the problems of hydrology and aquifers when dealing in underground mines. It strips bare any pretense the already weak hard rock act has had to protect groundwater.

Then we come to the language that will force State Lands to grant a large mine operator carte blanche for unlimited, expandable tailings ponds. Tailings ponds are dumps. The residents of Butte in the Hillcrest addition know what a dump is. This bill would mandate no review for expansion of a tailings pond. Again the public be damned.

The requirements for bonding and revegation in HB 392 make it far more attractive for an operator to walk away from a site, pay the $10 to $100 fine and let the State pick up the mess. High alpine reclamation may cost $5,000 an acre, is this committee willing to absolve operators from their responsibility and force the State and its citizens to pick up the mess that may be left?

Moving on, at first we could not understand why anyone would want to avoid the established procedures of the Montana Administrative Procedures Act. It is hard to conceive why anyone would want to create a whole new process, where no one knows the rules, when we already have an appeal process that is clearly laid out. Upon closer examination it became clear. The language of the bill would allow only an applicant or an operator to appeal any decision or action. There is no mention of an aggrieved lanowner, or a downstream water user. The public is excluded from the process. HB 392 locks landowners out and is contrary to our system of justice.

NPRC testimony
HB 392
February 6, 1981

There are the two new sections dealing with roads and trails and custom mills and their ancillary facilities. In the front of this bill roads and reclamation for tailings ponds are loosened up considerably, in the back of the bill they are exempted entirely.

After wrecking havoc for 22 pages on the hard rock act, the crowning blow comes on the final two pages that would turn enforcement over to the county attorneys, thus insuring that the practical effect would be no enforcement.

In sum, HB 392 does not create loopholes, it tears at the very foundation of the hard rock reclamation act. It expands and weakens, then it exempts altogether. It is bad legislation. Its flaws are numerous, deep, and too many to give adequate review to. We urge a do not pass and a quick death for HB 392.

EXHIBIT 5

February 6, 1981

House Committee on Natural Resources
Representative Iverson, Chairman
Montana House of Representatives

Representative Iverson, Members of the Committee:

By way of introduction, I am Stanley Byrd of Helena, a small miner and one of the original authors of the Small Miners Exclusion Amendment to the original Metal Mine Reclamation Law passed by this legislature 10 years ago in 1971. Now, as in 1971, I represent no organization nor am I a professional lobbyist. I have been actively engaged as a miner for the last 15 years.

I oppose House Bill 392 because through these seemingly innocent amendments I feel it would allow wholesale strip mining without the reclamation restrictions we now have. And I strongly resent the fact that the large mining firms are attempting to use the "small miners exclusion" for this purpose.

I refer you to pages 5 & 6, starting at line 20 of page five. This section is the definition of a small miner. In 1971, the term small miner had two basic criteria: one, that no more than 36,500 tons in the aggregate could be mined in any calendar year; and two, that no more than 5 acres could be disturbed without reclamation.

Striking the basic tonnage definition guts one of the primary terms used to originally define what a small miner really is. In essence what this new amendment does is to allow unlimited tonnage.

The other primary term used to define a small miner was the 5 acre exclusion. On page 6, lines 2-5, this has been increased to 10 acres. The apparent purpose of doubling the acreage definition is to allow large mining firms to evade reclamation.

Continuing down on page 6, lines 6-14: These deletions and additions actually double the amount of acreage (from 5 acres to 10 acres) that would be exempt from reclamation. If passed, they would allow 20 acres to be exempted if two operations were the case. Do you realize that 20 acres are equivalent to approximately four city blocks?

What I am saying is that without any tonnage limitation and 20 acres being allowed, a mining firm could follow an ore body 10,000 feet down (if it extended that for) with absolutely no reclamation. How can we justify an operation of this magnitude being considered a small miner.

Last week I talked to officials in the Department of State Lands, who administer the Metal Mine Reclamation Law. They assured me that they have had virtually no problems as far as the small miners are concerned. Do you realize that there are currently 1,173 small miner exclusion permits? Can you imagine the problems they would encounter if these restrictions were lifted or expanded as proposed? Can you visualize the devastation of open pit mining without reclamation.

Envision an ore body two miles long and three hundred yards wide. By utilizing these new proposals, a mining firm could open pit mine this entire area over a period of years without reclamation. This was not the purpose of the Mine Metal Reclamation Act, nor by any stretch of the imagination, the reasons for excluding small miners.

I think it is time to address these questions:

1. Who is really behind this bill?

2. Why are they using the small miner definition as a vehicle?

Obviously they are not small miners!

I honestly feel that the large mining firms are the only ones who would benefit from these proposed amendments. Actually, I believe that they have misjudged the nature of this legislature. Reclamation and preservation of our environment are still critical issues.

Please Kill this bill.

I will try to answer any questions that you may have. Thank you.

EXHIBIT 6

1. My ① name is Dolores Crockett, a ~~resident~~ of the Main Boulder Valley south of Mc Leod. I am against when our legislators introduce such bills which propose to take away the many controls we now have + need. The amendments proposed in H.B. 392 would have the same effect as if we scrapped the entire reclamation law as it now exists. This is particularly true in Sec 2 # 9 (d) page 5 where all but damage to flora + fauna is deleted!! Is damage to human life or property not worthy of consideration at all? I adopted Montana 13 years ago. It is my home and I love it. I acknowledge the need for change in many situations. The ore is here! It will be mined! but should be done in a reasonable + responsible fashion by the mining company. But it is breaking my heart, it boggles my mind and shatters my composure to think our legislators would throw open the gates to these mining companies to devastate our land and ignore the well being of its ~~voters + taxpayers~~ people.

2. To ② allow mining companies the end-open option of increasing their operation without adequate further E.I.S. work by the state is unthinkable + incredibly stupid. I urge you to consider all the ramifications if this bill were passed. It's amazing that anyone in our state could ignore the environmental rape in Butte, for example.

I will never forget the horrifying awe with which I first viewed the Berkley pit — my initial shock turned to justified anger that people of this beautiful state could allow such a thing to happen. Now that we have a law to prevent such hideous cancers, I strongly urge you to throw H.B. # 392 into that pit + cover it up so that no one can know it was ever proposed. I thank you.

EXHIBIT 7

The Montana Environmental Information Center

• P.O. Box 1184, Helena, Montana 59601 (406) 443-2520
• P.O. Box 8166, Missoula, Montana 59801 (406) 728-2644

February 6, 1981

Testimony Before
the
House Natural Resources Committee
Opposing HB 392 (Kanduch)
An Act to Generally Revise the Metal Mine Reclamation Law

Mr. Chairman, members of the Committee, I am Don Snow, Staff Coordinator of the MEIC, a citizens' organization comprised of 1,300 members and directed by an 18-member Board. I rise today in opposition to HB 392.

EIC recognizes that our country faces a potential minerals shortage in the coming decades. Our nation is dependent on imports to provide some portion of 23 strategic minerals. The Reagan administration has repeatedly favored increasing domestic production of all mineral commodities. That action will inevitably lead to the opening of new mines in certain areas of our country. With its abundance of economically mineable metals, possibly including chromium, platinum, and palladium, Montana will figure in new production scenarios. Recent reports of metal-rich oil shale deposits in our state remind us of a potentially bright future for Montana's mining industry.

The companies who come here to mine will not be little mom and pop operations. They will be, for the most part, large corporations with astronomical operating budgets. They will be the Johns-Manvilles, the ARCO-Anaconda's, the Amax's, the ASARCO's, and the Kerr-McGee's. For precisely that reason, EIC opposes HB 392.

The bill before you today is hardly a small-miner bill, as its proponents declare. It's a wish-list for Montana's mining moguls. And it's a giant step backwards in the long and difficult history of mining reformation in this country and this state.

Consider the following provisions in the bill:

(1) The bill eliminates consideration of public nuisance, and endangerment of health, safety, and property before the Department grants an operating permit. Strange that such a provision should occur in the wake of public hearings and litigation concerning citizens' rights over the Kaiser Cement (Montana City) and the Hill Crest (Butte) affairs. I urge members of the Committee to ask the Department about these matters.

(2) The bill eliminates appeal procedures for persons adversely affected by mining operations, and reserves, instead, the right of appeal only to mine operators and applicants for permits. Due process is thus denied to anyone other than miners and mining companies.

(3) The bill exempts "custom mills" and "ancillary facilities" (ie., tailings ponds) from all reclamation and reporting requirements of the Metal Mine Reclamation Act. A custom mill might be a new facility at, say, a copper-silver mine that processes a little extra ore mined by a nearby small miner. Virtually any corporate operation, then, could exempt itself from tailings and mill site reclamation simply by accepting a little ore from another mine. Mill tailings reclamation is one of the chief environmental concerns at many mining and milling sites.

(4) The bill changes the operating plan of large facilities in such a way that the Department cannot be sure at the time of application how much land will be disturbed, and which areas will be used for dump-sites or tailings facilities. The bill also prohibits requests by the Department for further information as the operations expand over time.

(5) The bill establishes that reclamation need not include revegetation, regardless of how appropriate revegetation may be to future uses of the land. The bill further guarantees that a company could abandon an area where reclamation failed, and still have its bond released.

(6) The bill eliminates any type of EIS or minimal environmental assessment report for exploration activities, regardless of the extent or potential impact of those activities. The bill further allows unlimited excavation and dumping of materials

from drifts, shafts, and openings made for the purpose of exploration. These are especially significant provisions, considering that several organizations, including the Western Environmental Trade Association, have at times called for programmatic environmental impact statements relating to mining exploration.

Mr. Chairman and members of the Committee, HB 392, despite its pretenses as a new relief bill for Montana's small miners, is really a carte blanc license for corporations that hope to mine in Montana. The bill would more than double the acreage exemptions for "small miners," raising the ante to two ten-acre tracts plus roads. But consider this: 17 corporations in Montana who are not now subject to the small miner exemptions under existing law would be exempt under HB 392 (see attached table). These are corporations whose mines disturb less than 10 acres, but who in many cases operate large, profitable facilities that demand regulation and review. This bill would put real small miners on competitive par with the majors.

EIC supports revision of the Metal Mine Reclamation Act, but HB 392 runs exactly counter to constructive amendments. Our hard rock law is generally considered the weakest of Montana's three major mining reclamation acts.

Almost 1,200 small miner exclusion statements have been issued under present law. Fifty exploration licenses and 75 operating permits have been issued. No operator has ever been denied a permit. No exploration license has ever been denied. In the past three years, fewer than 30 violations have been cited, amounting to less than $20,000 in fines.

Mr. Chairman and members of the Committee, HB 392 effectively tears the gums out o an already toothless law. EIC urges you to recommend DO NOT PASS for this bill. It's hopelessly beyond amendment.

Thank you.

Respectfully submitted by

Table 1

Corporations Mining with Fewer Than 10-Acres Disturbed

Quarries

Burlington Northern
Choteau County Conservation District
St. Regis Paper (2)
Western Energy

Silica

Janney Construction
Manufacturing Minerals
Stauffer Chemical

Vermiculite

Mine-X, Inc.

Silver, Lead, Zinc, Copper

National Minerals Corp.

Sapphires

Skalkaho Sapphire

Iron

Hallett Minerals

Lime and Gypsum

Maronick Construction (2)
U.S. Gypsum

Gold

Montana Research
Wolverine

Talc

Pfizer, Inc.

Antimony

U.S. Antimony

EXHIBIT 8

League of Women Voters

Testimony for

HB 392

We appose the changes in the Metal Mine Reclamation Law. With the increase interest in mining we should be strengthening instead of weakening this Law. To quote the Montana Constitution, Article IX Section 2: Reclamation (1) All land disturbed by the taking of natural resources shall be reclaimed. The legislature shall provide effective requirements and standards for the reclamation of lands disturbed. You are certainly not upholding the constitution if you enact this piece of legislation, which inserts vague terms such as practical reclamation (other than re-vegetation), significant disturbance + reasonable, without criteria for these terms.

To increase the small miners exclusion from 5 acres to 10, plus any roads necessary and additional land for waste or tailings is irresponsible. There are presently over 1000 in the small miners exclusionary category-

The 10 acre exclusion which would greatly increase the number, would also have a substantial effect on our lands.

We are especially concerned about erosion from roads poorly designed. There will be no way of controlling the number or design of these roads.

A reclamation penalty of only $100 will either be paid instead of reclaiming the land or will not be enforced by the county attorney.

This is a very irresponsible bill & we urge a do not pass.

Willa Hall
Natural Resource Chairman
League of Women Voters
of Montana

EXHIBIT 9

Mr. Chairman, members of the committee

My name is Paul Hawks. I ranch near Melville in Sweet Grass County.

I am concerned about the weakening amendments proposed in this bill at a time when increased mining activities are occurring in my county and elsewhere in the State.

This bill would require reclamation of mined lands, and yet at the same time, allow the mining companies to use whatever "reasonable and practical reclamation measures" as they deem appropriate. (section 1(2))

It would require that the companies post a reclamation bond and yet at the same time, that bond could be released before reclamation is accomplished. (section 9(6))

This bill would protect citizens from the adverse effects of mining, yet it strikes the section allowing for citizen's appeal (section 11(2)). To be even more unfair, new language would allow only the mining company to appeal a decision.

While the bill applies to underground mining, it requires the company to report surface disturbances while ignoring underground disturbances (section 8(2)). If the company needs additional dumping grounds for its wastes, it need only apply for a permit amendment which the department shall issue (section 8($)). No thought need be given to neighboring landowners. In fact, the landowner could even be condemned for such beneficial use.

Two new sections of the bill (section 12 and 13) completely exempt from reclamation reconstructed roads and custom mills. Who is to be responsible for these disturbances upon abandonment?

Since the mining companies are allowed to develop these minerals in the public interest, they ought to have to operate within the rules of public interest. This bill is not in Montana's public interest and does not induce the companies to operate as good corporate citizen's of this State.

Thank you.

EXHIBIT 10

My name is Helen Clark and I live on a ranch in the Boulder River valley south of McLeod. Our family has lived on the ranch since 1925 + we love our beautiful + heretofor unspoiled area, with its clear air, clean water, and abundant wildlife. Now that the mining companies have stepped in, HB 392 would allow them to ride roughshod over our human and property rights by removing ~~any of~~ the restrictions that ~~would~~ might protect us. ~~We~~ We feel that our lax and antiquated mining laws need to be strengthened, not diluted, so we urge you to vote against this blatantly exploitive bill!

EXHIBIT 11

Donohoe-Keogh Outfitting

Nye, Montana 59061

~~(406) 327-4427 or (406) 327-4440~~

My name is Paul Donohoe. I live in the Nye area where I am a rancher and outfitter.

I strongly oppose HB 392. I feel it would greatly degrade the quality of reclamation needed and that the rewording of this bill totally changes the purpose of the reclamation law.

In sec. 5 I disagree with giving the mining industry special privileges when it comes to rule enforcement. The administrative procedure act should be adhered to by everyone at the same level and under the same exact circumstances.

another major concern in this bill is the 10 day limitation for an exploration license. ~~I don't feel this is ample time for the department to review exploration operations~~ this the department will have very little time to check out the operations. This would be a very inefficient system.

Donohoe-Keogh Outfitting

Nye, Montana 59061

(406) 328-3[illegible]40

Section 10 dealing with the performance bond imposes an impossible duty upon the department. In fragile areas it is hard to identify which reclamation method will work prior to experimentation. The bond will be returned to the miner & he will not be subjected to penalties or other requirements if he doesn't carry out a favorable reclamation.

These problems that I have brought up are disturbing to me since I feel reclamation is so essential & must be done properly.

It is imperative that this bill does not pass as we must keep the reclamation laws as stringent as possible so as to ~~keep~~ protect Montana's land & water for generations to come.

Thank you

EXHIBIT 12

Mr Chairman, members of the committee,

My name is Pat Clark, I am a rancher from McLeod, also I am in the guiding and outfitter business.

I have a problem with a large part of the bill, but especially with section 12 near the end of the bill. This section would give the mining companies a legal basis to undiscriminately build or reopen roads in the mountains, which would affect me in an undesirable way as a guide & outfitter.

I strongly oppose passage of this bill. HB 392

EXHIBIT 13

Pacific™
Iron & Steel

626 East Main Street
Bozeman, Montana

(406) 587-0662

Mr. Chairman + committee:

My name is Tom Agnew. I ranch east of Big Timber, downwind from the proposed smelter of Johns-Manville/Chevron. My family moved here from West Virginia, in part due to mining pressure there. What appalls me most about this bill is an attitude that comes through it's language. I am reminded of the deception of unscrupulous miners upon the Appalachian people. The phases and latitude of the bill as written would certainly not impose any burden on the mining interests of Montana, but the flagrant disregard for the good of the people exemplified by its language ought to be obvious to anyone who has carefully read this bill. If it is truly the aim of this body to represent its constituents, and not mining interests, I submit that inspection of HB392 should deter any of you from supporting it.

Your Complete Steel Supplier

Thank you

EXHIBIT 14

Western Sanders County Involved Citizens
Box 539 Bull River
Noxon, MT 59853
February 3, 1981

Dear Mr. Iverson,

The Western Sanders County Involved Citizens is writing to you as Chairman of the Natural Resources Committee to express our grave concern over HB 392. We live in an area where hard rock mining is fast becoming one of the major industries. We realize mining and minerals are necessary to our lives and our national security, but we feel an effort can and should be made to mine with the least damage possible to the environment. For this reason we feel HB 392 should not be passed.

HB 392 contains several provisions which restrict the applicability of reclamation requirements, and which allow for circumstantial de facto exemptions from those requirements. It thus would seriously weaken the state's ability to ensure that hard rock mining does not permanently impair the primary renewable resources of the state. For example, the "exemption" from reclaiming by revegetating could result in the loss of many acres of good cattle grazing land (especially to roads), one of the most important economic foundations of this state. Also, if a site and its tailings are not reclaimed properly, it may create problems such as leaching of poisonous minerals and metals into drinking water and/or streams. The taxpayers would then have to pay to have it cleaned up rather than the companies or miners who mined and created the problem. This is unfair to Montana citizens.

HB 392 also does away with the requirement for environmental information and review for any exploration work. Since "exploration work" includes the removal of an unlimited amount of ore for "underground exploration activities" and for gaining access to a mineral deposit, unscrupulous miners and mining companies could carry our mining actitities under the guise of exploration. Their damage to water supplies, hunting, fishing, and grazing land could be extensive, but it would be perfectly legal since they were only exploring and did not have to take environmental concerns in to account. We are very thankful that the ASARCO exploratory drilling in the Cabinet Mts. Wilderness is being carried out in accordance with an environmental assessment report that requires that the water and the wildlife and the ground itself be protected as much as possible.

This law also states that violations will be determined and prosecuted by the local county attorney where the violation occurs instead of by the State Attorney General. A local county attorney would not have the support necessary to withstand the pressures from local miners (who might also be friends) or from a powerful mining company, such as ASARCO. Violations could thus easily be overlooked creating problems that we taxpayers would have to deal with later.

Basically HB 392 does not protect our rights as Montana citizens, and we urge you to kill this bill in committee.

Sincerely,

Sara Toubman-Jones

Sara Toubman Jones for
Western Sanders County Involved Citizens