MINUTES OF THE MEETING OF THE NATURAL RESOURCES COMMITTEE
MARCH 13, 1981

The House Natural Resources Committee convened in Room 437 of the Capitol Building on Friday, March 13, 1981, at 12:40 p.m. with CHAIRMAN DENNIS IVERSON presiding and fourteen members present (REPS. BURNETT, NORDTVEDT, and HARP were absent and REP. QUILICI was excused).

EXECUTIVE SESSION SENATE JOINT RESOLUTION 11 REP. MUELLER moved BE CONCURRED IN.

REP. CURTISS said that in districts where there have not been large fires recently the staff has been cut back. These funds will help those areas.

The motion PASSED with REPS. ROTH and SALES opposing.

SENATE BILL 80 REP. SALES moved BE CONCURRED IN.

REP. SHELDEN asked if this type of operation is confined to private land. REP. MUELLER said he knew of one peat operation on forest land and that a permit was needed from the Forest Service.

REP. KEEDY said he was not certain as to why the Small Miner's Exclusion does not apply. These are supposedly small operations within the five-acre limit. REP. MUELLER replied that some of the operations are nearing the limit.

CHAIRMAN IVERSON said that peat does grow and replace itself while gravel and sand do not; therefore, peat mining does not belong under that type of reclamation either. REP. ROTH stated that when peat is removed a lake forms and so it would take a very long time for the peat to grow back.

The motion BE CONCURRED IN PASSED unanimously.

SENATE BILL 16 REP. ROTH moved BE CONCURRED IN.

REP. KEEDY presented some amendments he felt might improve the bill. See Exhibit 1. He explained the first amendment deals with an effective date and that there is not a reason for a June 1 effective date.

The second amendment would mean the landowner would have to have reasonable notice rather than perhaps only a day or so.

The third one was presented because it is unclear what a landowner can do regarding compensation. It should be determined whether legal recourse is available under some circumstances.

The fourth amendment regarding attorney fees and court costs is the same type of language used in condemnation proceedings.

REP. SALES moved the amendments but after some discussion stating that the amendments were discussed in the Senate and caused a lot of problems, he withdrew his motion.

The motion BE CONCURRED IN PASSED with REPS. BROWN and BERTELSEN opposing.

SENATE BILL 278 REP. SALES moved BE CONCURRED IN.

REP. MUELLER said he could understand the concerns of the industry on the specifics but looking at the history of the department in handling this section, it has not been abused.

REP. BERTELSEN opposed the motion saying the subsection provides the Department of State Lands with a needed tool in gold dredging and uranium mining also. There is just not a dollar value on everything. He then provided a substitute motion of BE NOT CONCURRED IN.

REP. HART mentioned only 150 acres have been involved whereas over 22,000 acres have received permits.

REP. HUENNEKENS supported the substitute motion saying he understood subsection (b) and that it is perfectly clear. History says it will be used sparingly, if at all.

REP. SALES said the state does not use just that section but uses others as well to support it.

REP. BROWN asked how hydrology comes into this. DEBBIE SCHMIDT, staff researcher, said when drainage problems occur and an area cannot be returned to its former quality. Drainage in fragile areas is of unique importance.

REP. BROWN said he felt subsection (c) could be used or perhaps a federal act would help the hydrology problems.

MS. SCHMIDT said subsection (c) referred to a situation that would trigger a reaction that could not be put back due to a temporary suspension of quality.

REP. CURTISS said she opposed the substitute motion because she felt the department wanted to be able to use more than one section.

REP. MUELLER felt it was a matter of interpretation whether one thinks this section is necessary or not.

REP. HART asked what the problem was with the proponents of the bill. If it means nothing, why not leave it in.

REP. MUELLER said the subsections are loose. If you try to be too specific, the entire law would have to be rewritten.

REP. SALES said it appears that if the state is involved, the law is not abused, but what about individuals. The primary reason seems to be the lawsuit.

REP. BERTELSEN said the lawsuit would have been filed anyway. It comes up for a hearing eventually and this gives one more opportunity to check out what is fragile. It is not shutting down a mining operation, but rather perhaps reserving one small area.

REP. BROWN was not concerned about rocks and trees, but said the hydrology did concern him. He felt that subsection (c) could be used instead of (b).

The motion BE NOT CONCURRED IN failed with REPS. IVERSON, CURTISS, SALES, ASAY, ROTH, COZZENS, BROWN, and ABRAMS opposing.

REP. KEEDY stated that he felt the committee was making a mistake passing this bill. There was no testimony from the proponents as to what the problems actually are. If other sections of law cover this, why remove this particular one. We may be doing damage in future situations that we are not even aware of now.

REP. SALES moved the bill BE CONCURRED IN.

REP. HUENNEKENS felt this is a piece of special interest legislation to help the mining industry.

REP. COZZENS felt the section is unnecessary.

REP. KEEDY asked what other sections of law provide adequate protection for ecological fragility.

REP. BROWN replied he felt subsection (c) covered it.

REP. KEEDY stated that his interpretation of subsection (c) is that it governs only those problems of an unpredictable scope. There can be an irreparable amount of harm.

REP. SALES asked REP. KEEDY if he thought subsection (a) would help with what is needed. REP. KEEDY said no and that JOHN NORTH of the Department of State Lands indicated that the concerns of hydrology would not be covered.

REP. BERTELSEN felt that some areas simply should be saved for future generations.

The motion BE CONCURRED IN PASSED with REPS. MUELLER, BERTELSEN, HUENNEKENS, KEEDY, SHELDEN, NEUMAN, and HART opposing.

The meeting adjourned at 1:35 p.m.

Respectfully submitted,

DENNIS IVERSON, CHAIRMAN

Ellen Engstedt, Secretary

EXHIBIT 1

Proposed Amendments to SB 16, 3rd reading copy

1. Title, lines 10 and 11.
Following: "CONDITIONS"
Strike: "AND PROVIDING AN EFFECTIVE DATE"

2. Page 3.
Following: line 17
Insert: "reasonable"

3. Page 5, line 20.
Following: "compensation"
Insert: "under [sections 4 or 6]"

4. Page 6, line 3.
Following: "~~court~~"
Insert: "When the surface owner prevails by receiving an award greater than the final offer of the oil and gas developer or operator, the court shall award the surface owner reasonable attorney fees and any costs assessed by the court."

5. Page 6, lines 13 and 14.
Following: line 12
Strike: section 11 in its entirety

DEPARTMENT OF STATE LANDS

THOMAS L. JUDGE, GOVERNOR

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STATE OF MONTANA

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1625 ELEVENTH AVENUE
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~~XXXXXXXX~~ COMMISSIONER
Gareth C. Moon

March 13, 1981

MEMORANDUM

TO: Representative Dennis Iverson, Chairman
House Natural Resources Committee

FROM: John F. North J.F.N.
Chief Legal Counsel

At your request I have prepared a summary of the 4 times the department has used section 82-4-227(2)(b) regarding ecologically fragile lands.

It should be noted that in the 350 applications for permits, submitted to the department over the past eight year, more than four have contained areas which could not return to their former ecological roles. However, the department may use 227(2)(b) only if the area possesses special, exceptional, critical, or unique ecological fragility. Thus, only very important fragile areas are subject to 227(2)(b). Those important fragile areas were as follows:

1973 - Westmoreland Absaloka Mine - The department deleted 13 acres from the area applied for because it was of the opinion that the drainage function of that area could not be restored. The permit was issued in early 1974 without the critical/fragile area.

1973 - Western Energy's Colstrip Operation - The department deleted 33 acres from the application. That acreage included sandstone bluffs that were determined to be critical nesting areas. The permit was issued in 1974 without the 33 acre fragile area.

1976 - Decker Coal Company - East Decker Operation - The department deleted approximately 55 acres, which contained Deer Creek, from the application. The plan was to permanently place spoils at the mouth of the Deer Creek drainage. The department deleted the area on five grounds:

(1) That portion of the operation would constitute a prohibited hazard to a stream.

(2) The Deer Creek drainage could not return to its former ecological role((2)(b)) as a drainage area. The drainage area supported wildlife and riparian vegetation.

(3) The area was ecologically important ((3)(b)) in that loss of the drainage could set off a system wide ecological reaction.

(4) The spoiling would adversely affect the Tongue River Reservoir ((2)(b)).

(5) The spoiling operation would violate the requirement that the mining operation take all measures to eliminate damages to streams, and other public property from soil erosion, water pollution, and hazards dangerous to life and property.

As a result of the department's action, Decker converted to a truck shovel operation, which allows more flexibility in spoil placement. In so doing, Decker recovered approximately 57 million more tons of coal.

1978 - Westmoreland Absaloka Mine - After discussion the area with department personnel during a site inspection, Westmoreland voluntarily deleted a 65 acre area. The department had expressed its opinion that this area could not be returned to its former ecologic role of providing winter forage for wildlife.

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[redacted], COMMISSIONER
Gareth C. Moon

March 13, 1981

MEMORANDUM

TO: Representative Dennis Iverson, Chairman
House National Resources Committee

FROM: John F. North J.F.N.
Chief Legal Counsel

RE: EDWARD M. DOBSON, FRIENDS OF THE EARTH, INC., and NORTHERN PLAINS RESOURCE COUNCIL, INC. vs. DEPARTMENT OF STATE LANDS and WESTMORELAND RESOURCES, INC.

At the hearing on SB278 on March 11, you requested me to provide you with a summary of the lawsuit. The original complaint was filed in Lewis and Clark County District Court on behalf of Dobson and FOE on February 7, 1980. The suit was filed to prohibit the department from issuing a five year permit for additional acreage at the Absaloka Mine. The issues raised in the complaint were as follows:

1. Whether issuance of a mining permit would violate section 82-4-227(1) and 82-4-227(2) MCA. The language of the complaint on this issue was:

> The spring and coulee system which will be affected by the permitted mining activity is highly productive biologically. It provides an exceptionally diverse vegetative habitat which supports a variety of wildlife diversity in the area, and the area would be unable to return to its present ecological role in the absence of these springs. Therefore, approval of permit No. 80005 was, and mining thereunder would be violations of §82-4-227(1) and §82-4-227(2) M.C.A.

2. Whether issuance of a mining permit violates ARM 26-2.10(10)-S10330, which is a rule requiring the restoration of the hydrologic balance after mining.

3. Whether issuance of a mining permit would violate 82-4-233, which requires that the reclaimed land be capable of supporting comparable grazing pressure by livestock and wildlife.

4. Whether issuance of a mining permit without a supplemental EIS to present the plaintiff's analysis of the groundwater system violated the Montana Environmental Policy Act.

Along with the complaint, Dobson and FOE filed a motion for a temporary restraining order to restrain the department from issuing the permit.

On February 11, 1980 Westmoreland Resources filed a motion to intervene as a defendant. On February 13, 1980, the court held a hearing and refused to grant the TRO since no permit had been issued and therefore no injury could occur.

The department issued the permit on February 25, 1980. On February 27, 1980 Northern Plains Resource Council moved to intervene on the issue of whether the grazing capacity of the land could be restored. On March 3, 1980 the plaintiffs moved for both a TRO and preliminary injunction and filed a second amended complaint. A hearing was held and the TRO was again denied. The plaintiff voluntarily withdrew the motion for a preliminary injunction on March 9, 1980 and the trial was postponed.

A hearing on various motions, including motions to dismiss the case, was held on January 30, 1981. After considerable argument and discussion the case was reduced to the following two issues:

1. Was the department required to issue a supplemental EIS concerning the material on groundwater submitted by Westmoreland after the draft EIS had been issued, in order to comply with the Montana Environmental Policy Act?

2. Was a statement in the final EIS concerning historic management practices an admission that the land could not be reclaimed to support grazing pressure comparable to that which it supported prior to mining?

The court has not yet issued its decision on the motions.