

MINUTES OF THE MEETING OF THE NATURAL RESOURCES COMMITTEE
MARCH 30, 1981

The House Natural Resources Committee convened in Room 437 of the Capitol Building on Monday, March 30, 1981, at 12:30 p.m. with CHAIRMAN DENNIS IVERSON presiding and thirteen members present (REPS. BURNETT, SALES, NORDTVEDT, and HUENNEKENS were absent and REP. QUILICI was excused).

CHAIRMAN IVERSON opened the hearing on SB 327.

SENATE BILL 327 SENATOR WILLIAM HAFFERMAN, chief sponsor, presented the bill which would provide increased authority to local governments and landowners in the alteration of rivers and streams in order to protect lives and property. The Senator submitted several letters and petitions which are attached as Exhibit 1.

Speaking as a proponent was JAMES CHALLINOR of Libby. He felt that landowners are not now able to properly protect themselves and their property and that this bill would help.

ROBERT HELDING favored the bill. He said people are simply asking that they be allowed to help themselves when the need arises.

DAN MIZNER, Montana League of Cities and Towns, felt the local governments should take care of the problem at the local level.

MIKE STEPHENS, Montana Association of Counties, stated that as situations develop, local people should be able to act.

Also supporting the bill were PETER JACKSON, Western Environmental Trade Association; BILL HAND, Montana Mining Association; GEORGE JOHNSTON, ASARCO; and, BILL STERNHAGEN, Northwest Mining Association.

Opposing the bill was FRANK THOMPSON of the Lewis and Clark County Conservation District, who felt that the law already covers the necessary emergency procedures.

JAMES W. FLYNN, Director of the Department of Fish, Wildlife, and Parks, opposed the bill. See Exhibit 2.

BOB DECKER, Lewis and Clark County Commissioner, opposed the bill saying that the procedures are in the law and can be utilized by the local governments.

SENATOR HAFFERMAN closed on the bill.

During questions from the committee, REP. MUELLER asked if the intent of the bill is strictly for emergency purposes to protect life and property and not beyond that. SENATOR HAFFERMAN answered yes.

Natural Resources

March 30, 1981

Page 2

REP. CURTISS asked if there have been problems between the soil conservation districts and the county commissioners throughout the state. MR. DECKER said no.

REP. HARP asked what procedure is used. MR. FLYNN explained that if a person has an emergency on his property, he would handle it and explain after the emergency is over.

REP. CURTISS asked if, during the Libby problem, someone filed an injunction. MR. CHALLINOR replied that he did not know. MR. FLYNN said it was not the Department of Fish, Wildlife, and Parks.

REP. HARP asked what the procedure is if the department decides that an emergency did not occur. MR. FLYNN explained that a panel of three hears the case first. If the problem is not solved by the panel, there is an arbitration board that can hear the case. The final step would be district court.

The hearing closed.

The meeting adjourned at 1:00 p.m.

Respectfully submitted,


DENNIS IVERSON, CHAIRMAN

Ellen Engstedt, Secretary

VISITORS' REGISTER

HOUSE NATURAL RESOURCES COMMITTEE

BILL 327

Date 3/30/81

SPONSOR HAFFERMAN

NAME	RESIDENCE	REPRESENTING	SUP- PORT	OP- POSE
Bill Hafferman	Selby Mont.		X	
Bill Hafferman	Judy Hafferman		X	
Bill Hafferman	Helena	MT. MNG RES	X	
Bob Decker	Helena	- SELF		X
Frank C. Thompson	Madison	M. G. F. P.		X
Paul	Helena	Visitors	X	
Clarence	Helena	Visitors	X	
Mike Stephen	Helena	M.A.C.	X	
Bill	"	M.A.C.	X	
Bob	"	Mont League of G	(
F.W. Wright		D.F.W.P.		X
Allen Ditzler	Helena	ETC		X

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Pass A Long

EXHIBIT 1

December 30, 1980

I took these
down to Legislat.
Council
prepare
could not
call Comm.

TO: STATE SENATOR WILLIAM F. HAFFERMAN
FROM: TAXPAYERS OF THE LIBBY, MONTANA, AREA

We have once again been exposed this year to the destruction which occurs when warm weather comes unexpectedly to this area, and the creeks in our area go on the rampage. It is, of course, of great concern to all involved--directly and indirectly alike--that the situation and remedy be of a priority nature in the Montana Legislative Session about the get underway. We are convinced that human life is of more importance than the wildlife of the area and contend that priorities MUST be put in order.

Therefore, we, the undersigned, urge that you place a Bill regarding this important matter before the men and women representing the citizens of Montana, that such waste not be suffered needlessly by residents of the creek-bordered areas, and that action be taken to protect homes, with due respect to the environment.

Respectfully submitted,

(NAME) (ADDRESS) (PRECINCT)

Edgar J. Warner Rt 1 Box 1458 Libby, MT.

Betty A. Warner Rt. 1 Box 1458 Libby, Montana

Mrs R. W. Landa Rt. 1 - Box 1464 Libby Montana

Mrs. R. W. Landa Rt 1 Box 1464 Libby Mont

Bill Jeffrey RT-1 - Box - 1459 Libby

Dorothy Jeffrey RT1 - Box 1459 Libby

Floyd S. Adkison Rt 1, Box 1235 Libby

Betty G. Adkison Rt 1, Box 1235 Libby

George A. Shattuck P.O. Box 349 Libby, Mont 59923

Carlson E. Shattuck P.O. Box 349 Libby, Mt

March 27, 1981
R-1 Box 1658
Libby, mt. 59923

Re. flood

Dear Senator:

I think if you would spend our money more wisely, there would be some left to help those of us that need it.

Why is it that 3 privately owned pieces of land must connect to get financial help? I am sure we aren't the only ones that have land, that you might call isolated, and we all need to save our land.

St. Regis paper Co. land is above and below us on Libby Creek. We can do some work on our land to help save it, but it won't do much good. The last flood came into St. Regis land about a mile above our place, that's where the work needs to be done. It makes no difference to them if the water comes through there, because there aren't that many good trees and if they do wash out into the creek St. Regis gets them anyway. (they get ours too.)

We want to save our land that's what is important to us, but we need financial help. Please consider helping the working class people.

Sincerely

R W Boatman

1 EXCEPTING AND RESERVING therefrom unto the property owners hereinafter named all water, water-rights and drainage thereof which are
2 appurtenant thereto, together with such ditches and water structures as are necessary and required for conveyance thereof, provided,
3 however, that in the exercise and use of said rights, the same shall be constructed and maintained across or on the above-described premises by the State of Montana in such a manner so that the surface thereof shall not be disturbed, interfered with, or in anywise damaged and the public improvement constructed thereon shall be adequately protected.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

FLOWAGE EASEMENT

Also, an easement consisting of the right to discharge seasonal runoff waters from the surface of Federal Aid Project F 250 (7) not to exceed at any time 11.3 cubic feet per second to be discharged from a point opposite highway survey station 1817+, together with the right to flow such waters northerly and into U.S. Government Lot 3, Section 4, Township 30 North, Range 31 West, M.P.M. Lincoln County, Montana, and away from said Highway Project, reserving unto the landowner, however, the right to control the course of such flowage.

The above-described tracts of land do not in themselves constitute entire tracts of land, but are only parts of a larger tract; which is owned, or claimed to be owned, by F. E. VINION and LUCILLE VINION, Husband and Wife, and by JAMES CHALLINOR and BETTY CHALLINOR, Husband and Wife.

PRESENTED BY: James W. Flynn, Director
Dept. Fish, Wildlife, & Parks

March 30, 1981

SB 327

Mr. Chairman, members of the committee, my name is Jim Flynn. I appear today on behalf of the Montana Department of Fish, Wildlife, & Parks, and I speak in opposition to SB 327.

For purposes of clarification, SB 327, as proposed, amends two acts -- the Natural Streambed & Land Preservation Act of 1975 (Title 75 sections) and the Stream Protection Act passed originally in 1963 (Title 87 sections). The 1975 Act is administered by local conservation districts. In the 1975 Act, individuals and entities not covered in the 1963 Act must give notice and receive approval of local conservation boards before a stream may be altered. The 1963 Act provides that state and local government agencies must give notice to the department when they plan to alter a stream. If fish or game habitat is adversely affected, then the department must recommend alternatives.

Under the 1975 Act, private persons who desire to alter a streambed must give notice to their local conservation district. If necessary, a team reviews that proposal. The team consists of a representative of the conservation district, the applicant, and a Department of Fish, Wildlife, & Parks' representative. The team may recommend changes in the proposal. The conservation district then approves or disapproves the proposal. If one of the team members doesn't agree with the conservation district action, he may ask for an arbitration panel. That panel listens to all sides and makes its decision. District Court is available if either party does not like the decision.

There have been over 3,000 applications for permits under the 1975 Act to date. Of these, only four were taken to an arbitration panel -- three by the department and one by the district involved. In the department initiated cases, we've accepted the locally appointed arbitration panel's decisions in the two decisions against our position and one decision in favor of our position. To date, we have appealed the arbitration panel's decision in only one instance and that one has been dismissed by the District Court. In recent weeks, the department has received notification from Lincoln Conservation District of two applications that were handled under the "emergency" clause of the 1975 Act. The department does not agree with the type of solutions proposed, but no further department action is anticipated.

The department has received notices for almost 1,700 projects since the Stream Protection Act was first passed in 1963. During this period, the arbitration procedure was used only one time. So, I believe it is safe to say we have not overutilized our administrative authority in this case either.

We believe the amendments to both Acts in SB 327 were designed by the sponsors to permit private individuals and local governments to respond to "emergency" situations when life and property are endangered. We have no objections to that concept; however, the emergency situation is already provided for in both statutes.

In conclusion, I ask you to consider the successes of these Acts and the lack of major difficulties in their enforcement. They have worked well as written; I recommend a do not pass on SB 327.