

MINUTES OF MEETING
SENATE NATURAL RESOURCES
MARCH 20, 1981

The twenty-second meeting of the Natural Resources Committee was called to order by Senator Harold Dover, Chairman, at 12:30 P.M., on the above date in Room 405.

ROLL CALL: All members were present.

CONSIDERATION OF HJR 18:

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE
OF REPRESENTATIVES OF THE STATE OF MONTANA
URGING THAT THE FEDERAL ENERGY REGULATORY
COMMISSION RELICENSE THE KERR HYDROELECTRIC
PROJECT TO THE MONTANA POWER COMPANY

Representative Seifert, District #26, introduced this bill. Montana Power has been operating for 50 years at the Kerr Hydroelectric Project located in Lake and Flathead Counties in Montana. License to operate the project expired May 23, 1980. Montana power is presently paying the Kootenai Tribes of the Flathead Reservation a rental charge. In discussion in the House it was brought out that this could result in a large tax impact upon Lake County and it was felt it would be in the best interest of the citizens of Montana and Lake County to have the dam relicensed to Montana Power. Montana Power has applied for license, in addition the federal government could take the project over or the tribes could end up with the project. This could result in taxpayers paying a higher price for electrical demands. Montana Power pays taxes to the state and local government. If the project were relicensed to the Montana Power Company it would remain a low-cost, reliable source of energy to Montana. He feels it would be in the best interest of the consumers of the State of Montana to relicense to Montana Power.

Chairman Dover asked for proponents.

Mark Clark, Attorney representing Montana Power Company, supports this resolution. This project represents a significant portion of the hydroelectric energy produced in the state of Montana. The Federal Water Power Act holds a license that expired in May, 1980. Under the Federal Legislation Congress may accept a recommendation from any Federal Agency to take the project over. If the Federal Government were to become the owner of the project the output and low cost that goes along with output, would be lost. The tribes application indicates their intent is to negotiate with the Montana Power Company to sell the project to the company. If a bargain could not be made between the Montana Power Company and the tribes the application specifies the tribes might seek other markets. With the energy shortage in the northwest this will be an attractive market. In either event, with the tribes as owner or the federal government, this would mean a loss of taxes to both local and state government.

Currently property taxes run at the rate of \$300,000 annually. Electrical energy license producer tax ranges from \$175,000 to \$270,000 a year. Risk of loss of production at the plant through license of the project to the tribes is significant and would result in a higher cost to Montana electrical consumers.

Senator Turnage supports this resolution. He thinks it would be in the best interest of the Confederated Salish and Kootenai Tribes if they were in a lease relationship rather than in an operating relationship. He hopes that the committee would see it in that manner. He feels sure that whatever is done with this resolution, the federal government will write the final answer.

Chairman Dover asked for opponents.

Fred Haule, Executive Secretary, Confederated Salish and Kootenai Tribes, gave testimony in opposition to this resolution. A copy of his statement is attached.

Bill Morigeau, Council Member, Confederated Salish & Kootenai Tribes, is opposed to HJR 18. He introduced two other members of the council, Victor Stuigu and Nod Picketts. He feels this resolution is an interference of two corporations, the tribal corporation and the Montana Power Company, to negotiate for lease. Each of us have application for the new license. It is only natural for the owners of property to apply for license. The long range plans of the tribes, if licensed, would be to develop Buffalo Rapids 2 and 4, which would provide 10 years of employment for the region, develop twice as much revenue as the Kerr site and would produce twice as much energy as Kerr Dam does presently. The tribe has made application to the Federal Power Commission for a primary license to do exploratory research on the other two sites. Lake County Commissioners have never met with the tribes on the matter of a new license. It would have been better for all of us if they had done this. The tribes and Montana Power Company have been negotiating for relicense for the past year. We have a scheduled meeting with the Montana Power Company on the 10th of April. We are opposed to a third party interfering with negotiation of a new lease. We do not object to talking with the Montana Power Company to negotiate for license.

Rod Sayegusa, Montana Inter-tribal Policy Board, recommends that the resolution do not pass.

Chairman Dover asked for questions from the committee.

Senator Elliott said Kerr Dam is not the first one that has come up for a license renewal. He asked what has been happening on the other dam sites that have come up for renewal.

Mr. Clark said the federal number assigned to Kerr Dam is #5. The federal government has licensing powers with respect to federal electric projects. This is the first project located within the reservation.

Bill Morigeau said there are two sites under the Portland General Electric. One of the sites was recently relicensed but no federal agency applied for that license. There is no federal agency applying for this license. Just the tribes and the Montana Power Company.

Senator Ryan said the resolution states that the Montana Power Company owns the dam.

Mr. Clark said although the dam is situated on tribal lands, the concrete, generators and facilities were installed by the Montana Power Company. In the event of a take over, the new party owning the dam would have to pay to the Montana Power the net investment in the project plus severance damages to the company. There is no doubt that the tribes own the land on which the project is situated.

Mr. Morigeau said it is true that the Montana Power Company has gotten first license for this project. Through the licensing practice of the Federal Power Commission they must supply the revenue to construct the site but they have the first 50 year period to amortize their investment for this site. Montana Power should have amortized this investment according to the terms of the license. Their initial investment was less than \$20,000. The appraised value of the project now is perhaps \$1 million. He questioned what this had to do with this particular resolution. This is something that should be ironed out between the Power Company and the tribes under a new application.

Senator Keating asked Mr. Haule to elaborate on his statement that Montana Power was paying taxes unnecessarily.

Mr. Haule said in the past both Mr. Clark and our attorneys have agreed that there is no law or court order requiring taxes to be paid for a facility that is situated on Indian land. They are doing it voluntarily.

Senator Keating asked Mr. Clark why this gift was coming to Lake County and the State of Montana.

Mr. Clark said he has never been part of such an agreement and is not aware of one that exists. While tribal organizations and income to tribes which occurs within the boundaries of the reservation can be tested, to his knowledge there is no decision which exempts private enterprise within the reservation. We certainly have no plans to contest our obligation on facilities we have installed of this kind. Our income as a corporate structure in the state of Montana is clearly taxable.

Senator Keating said part of this is considered as a property tax payment to Lake County. He asked Mr. Clark if he considered the property real or personal.

Mr. Clark said the County Assessor considers it real property and we are paying taxes on that basis.

Senator Manning said the original agreement is for increments of 50 years to apply for a new license. He asked if there was some provision for negotiation.

Mr. Clark said the Federal Legislation provides that while negotiation proceedings are taking place the project will be licensed on an annual basis under the same terms and conditions as the long term license. Until the Federal Energy Regulatory Commission completes its appraisal with respect to relicensing, the Montana Power Company will hold the project with annual renewals.

Senator Dover said the opponents mentioned being offended that you had not worked together on this. He asked if there were any plans to work something up with the tribes.

Mr. Clark said our attitude is to negotiate with the tribes and we will be meeting them with respect to what our annual charge will be during the month of April. The issue today is not what a reasonable annual charge will be. It relates to whether or not it is appropriate for the legislature, through a resolution, to recommend that the Montana Power Company should be licensee of the project; rather than the federal government taking over or the tribes, in view of the potential risk of loss of power and benefits from that project and potential loss of taxes to the state.

Senator Dover said a certified copy of this would be forwarded by the Secretary of State to the Secretary of the Energy Regulatory Commission. He questioned whether it would be necessary to alert our Congressmen to work for Montana Power on this.

Senator Turnage had no opinion on that.

Senator Dover asked what the Montana Power Company's practice was for depreciation over the last 50 years.

Mr. Clark said we depreciated \$14,000 of the original cost of the project. In 1954 we added a third generation unit which changed the capacity of the generation and we have made investments to the initial investment which have not been depreciated.

Representative Seifert closed by saying he is well aware of the operation at Kerr Dam and it is a very efficient and well managed plant and he would hope the committee would give this resolution favorable consideration.

CONSIDERATION OF HJR 40:

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES CONGRESS TO AMEND THE FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976 TO DELETE CERTAIN PROVISIONS RELATING TO RECORDING AND ABANDONMENT OF MINING CLAIMS AND CERTAIN ENFORCEMENT PROVISIONS

Representative Brand, District #20, introduced this resolution because there are many small miners in western Montana who are having trouble with the Federal Government regarding the Federal Land Policy and Management Act. The resolution asks that the Federal Land Policy and Management Act of 1976 be amended to delete certain provisions relating to recording and abandonment of mining claims and certain enforcement provisions. Representative Brand went through the bill and read certain parts which specifically relate to what he is trying to accomplish with this resolution.

Chairman Dover asked for proponents.

Larry Ward, Hard Rock Mines, has been mining for 40 years under the existing 1872 mining laws. The new law, PL 94-579, requires that a Notice of Location and a Certificate of Location be filed or your claim will be void by law. He reviewed parts of PL 94-579 and explained where he felt this law was unconstitutional. Attached are copies of papers he wanted the committee to review.

There were no opponents. Chairman Dover asked for questions from the committee. There were none.

DISPOSITION OF HJR 40: Senator Ryan made a motion that HJR 40 be concurred in.

The motion passed with a vote of 11 for and 1 opposed, Senator Van Valkenburg.

CONSIDERATION OF HJR 42:

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA THAT THE GOVERNOR NEGOTIATE AN INTERSTATE COMPACT WITH THE STATE OF WASHINGTON AND OTHER INTERESTED WESTERN STATES TO PROVIDE FOR REGIONAL DISPOSAL FACILITIES FOR LOW-LEVEL RADIOACTIVE WASTES.

Larry Fasbender, Legislative Liaison, presented this resolution in the absence of Representative Brown. A copy of his testimony is attached. Because of the deadline involved and political problems, the legislatures in Oregon and Idaho have set up a compact with

Washington, which eliminates the requirements of HJR 42. He requested that the committee postpone action on this resolution until more information is available as to what amendments might be necessary.

Senator Keating asked if the term low level radioactive waste has a definition.

Larry Fasbender said that low level radioactive waste has never been defined, although radioactive waste has been defined and you could deduct from that.

Senator Elliott asked where this radioactive waste is being created in the state.

Mr. Fasbender said it is mostly generated through universities and hospitals.

Senator Elliott asked how much it would cost to set up a program in Montana.

Mr. Fasbender said it would cost about \$500,000 just to establish a site in the State of Montana to handle the 3 cubic meters generated each year.

CONSIDERATION OF SJR 31:

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE
OF REPRESENTATIVES OF THE STATE OF MONTANA
DIRECTING THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION TO CONDUCT A FEASIBILITY STUDY
ON ETHACOAL AND METHACOAL PROCESSING IN MONTANA

Chairman Dover turned the meeting over to Vice Chairman Etchart so he could present this resolution. This resolution is to study another alternative for the use of ethanol. There is some real potential for the development of our farm products in Montana. Montana has problems with our agricultural projects in transporting them where they are needed. Therefore, it becomes more expedient to transport what people will really need, high protein food. Each kernel of grain we sell is approximately 2/3rd's starch. We can use this starch product and change it into fructose sweetener. There are other possibilities for its use. Other areas this bill relates to is mixing ethanol or methanol with coal to make a high BTU coal. The resolution asks that we study the possibilities. Money for this purpose would be funded from the Alternative Energy Fund.

There were no proponents.

Vice Chairman Etchart asked for opponents.

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Margaret MacDonald, Northern Plains Resource Council, opposes this bill. She stated she had not had time to adequately study this resolution and would like to have the opportunity to prepare some written comments prior to executive action on this proposal. Her main concern with SJR 31 is the use of funding from the Alternative Energy Fund. Section 90-4-101 states very clearly the purposes of this fund is to stimulate research, development and demonstration of energy sources which are harmonious with ecological stability by virtue of being renewable, thereby to lessen that reliance on nonrenewable energy sources which conflicts with the goal of long-range ecological stability and to provide for the funding and administration of such research. She also cited Section 90-4-102(1), which gives a further definition of "Alternative renewable energy sources", which very clearly gives the type of energy research to be conducted. She requested that the committee refer the resolution to the Senate Taxation Committee for review.

Vice Chairman Etchart asked for questions from the committee.

Senator Brown asked Ms. MacDonald if her basic objections to this resolution was the funding from the Alternative Energy Fund.

Ms. MacDonald said that is the only objection she can raise now. She would like to have more time to research the resolution further.

Senator Brown asked Leo Barry if the existing staff would be able to devote some time to this study.

Leo Barry said he assumed that they would put out a request for a proposal and contract this work out to somebody who has expertise in this field. It would be handled like a normal grant under the Alternative Energy Fund. Currently there are sufficient monies in the budget to handle this. He assumes the monies will be assigned by the Senate.

Senator Brown asked if he agreed with Ms. MacDonald concerning the use of the Alternative Energy Fund.

Leo Barry said he is not sure that it is a clear cut violation of the purpose of this fund.

Senator Van Valkenburg asked how much would be spent in conducting this study.

Senator Dover said we originally asked for \$5,000 to look into the feasibility study but it is now going through for something like \$25,000.

Senator Van Valkenburg asked Mr. Barry if that amount was already in the budget.

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Leo Barry said \$3.5 million has come out of the House for the Alternative Energy Program. The Advisory Council reviews all the proposals. This resolution would direct us to make a request for this study. The Advisory Council would put a limit on the funds.

EXECUTIVE SESSION - DISPOSITION OF HB 652: Senator Keating gave a subcommittee report on this bill. Edward Dobson presented amendments to the subcommittee which changed the title of the bill and the content from its present form to a form almost identical to Initiative 84, which HB 652 is attempting to amend. The subcommittee rejected these amendments. Dennis Lopach submitted amendments to the committee at the hearing and these amendments were passed by the subcommittee. Mr. Lopach also submitted additional amendments to the subcommittee. The first amendment related to license fees and was passed by the subcommittee. The second amendment was to clear up the Cooney language in the bill, which was thought to be unconstitutional. This amendment was amended by the subcommittee to clearly state that dumping from outside the state would not be permitted. In essence the language amended into the amendment would have the same force and effect as the language in the bill. Amendment number two was rejected for this reason. Senator Keating made a motion that the amendments accepted by the subcommittee be accepted by the committee.

Senator O'Hara said he understood Mr. Lopach's amendment number 1 to mean they are willing to pay more and that this would be giving the state a better deal than in the original bill.

Senator Keating said this provides for an annual fee instead of a one time fee.

Senator Dover said the amendments relating to the Department of State Lands were proposed by the Departments themselves. With regard to the unconstitutional language in the bill, we felt that the people voted that above all nuclear waste would not be brought into the state from another state and whether it is unconstitutional or not we felt it should be left in the bill.

Senator Van Valkenburg said that he was a member of the subcommittee and heard the testimony and received the amendments that were offered. He was not able to attend the meeting at which the subcommittee took action on the amendments that were offered. Senator Van Valkenburg joins in the subcommittees' recommendation to adopt the amendments that Senator Keating has outlined at this time but he does not reject the amendments by Mr. Dobson. With respect to amendment number two offered by the Mining Association, he disagrees with the statement that the people voted on keeping waste out of the state, and he thinks there is a problem with the constitutionality of the Cooney language. Amendment number two would eliminate the Cooney language.

Senator Ryan asked Senator Van Valkenburg what he thought the people voted on.

Senator Manley said the subcommittee amended amendment number two in subsection (2), after 75-3-103(1)(b), to insert the words "produced in Montana". This made it the same as the Cooney language.

Senator Van Valkenburg does not agree with that language. With the subcommittees' amendment he would not agree with amendment number two. This would make the language unconstitutional. He feels the bill should be amended in some way to make it constitutional.

Senator Brown would like the committee to be aware that he is representing a company that is involved in uranium exploration in Montana.

The motion on the amendments passed unanimously.

Chairman Dover asked Katherine Orr, Legislative Council Aid, where the committee stood with the bill.

Katherine Orr said the Statement of Intent does not conform with what is in the bill as far as the reference to the Department of State Lands nor does she think it conforms with the other amendments. The language in Section 11 might have some constitutional problems and she would be glad to look into that.

Senator Etchart said we had better hold the bill up.

Senator Brown said the Statement of Intent has to comply with the body of the bill.

Senator Ryan said that maybe there was a feeling of chickenheartedness to do with this bill.

Senator Dover said he did not think there was, they just wanted to get it done right.

Senator Ryan asked how many bills had been passed where there was a constitutionality problem.

Senator Van Valkenburg said that we had heard testimony from Larry Fasbender that there is some concerns in the Governor's office concerning the possibility of problems in the future in dealing with initiatives if this bill were passed. He had suggested to the subcommittee that a possible compromise to this would be to have an effective date of July 1, 1983. He thinks this would be a politically wise thing to do and he does not think it would be injurious to the uranium industries as they will have this law in the books as an affirmative action by the legislature. This would give time for a legislative study between now and the next session as to the advisability of entering into Agreement State Status. The subcommittee, in essence, rejected this idea.

Senator Manley said that since he has been in the legislature there has been adverse action taken on initiatives and he can remember a time when an initiative was recalled. He said this is not starting a new precedent as far as initiatives go.

Senator Van Valkenburg said this could result in something being put in the constitution which prohibits the legislature from taking action on initiatives.

Senator Brown sees a real problem with anyone taking the position that proponents of Initiative 84 could advocate some amendment to the constitution which says the legislature can't touch it. Our obligation as legislators is to review initiatives to determine whether they are good or bad. This is not an easy issue for any of us. We all have to decide in our own minds whether the problems in Initiative 84 justifies this bill.

Chairman Dover said we would wait to take action on this bill until we get amendments from Katherine on the Statement of Intent.

DISPOSITION OF HB '90: Senator Brown said he would hate to see the legislaure go into session just to declare an emergency if there is clear evidence an emergency exists. He suggests polling the legislature.

Senator Keating said no emergency lasts longer than 30 days.

Senator Elliott asked what the definition of emergency was.

Senator Brown said we are talking about an energy emergency, gasoline or electricity.

Senator Ryan made a motion that HB 90 be concurred in.

Senator Tveit made a substitute motion to change the time limit from 60 days to 30 days.

Senator Elliott would like to speak against the motion. He thinks we should leave it at 14 days to encourage the resolution of the problem as soon as possible.

Senator Manley has an altogether different opinion. He thinks we should strike the time limit altogether. He does not think the legislature should meet at all. The leadership of the legislature and the Governor can easily handle the emergency without the full legislature.

Senator Ryan said you would have a different opinion if it directly concerned you.

Senator Manley said he was sure he would not.

Senator Tveit withdrew his motion.

Senator Brown would like to be given time to sit down with Leo Barry and Katherine Orr to draft an amendment which would say- if the Governor and 3/4's of the 8 member legislative team agree, in lieu of having to call a session of the legislature, the legislature may be polled. Senator Brown made a motion that HB 90 be held until Wednesday to be voted on.

The motion passed unanimously.

DISPOSITION OF HB 398: Senator Elliott made a motion that we amend HB 398 to coordinate SB 141 into the bill. He would like HB 398 to include the monitoring of loans for energy efficiency and to insure that they get the projects done.

The motion passed unanimously.

Senator Brown asked who oversees the Alternative Energy Grants now.

Leo Barry said his understanding is that the Department prepares the report and submits a copy to the Coal Tax Oversight Committee.

Senator Brown made a motion that HB 398 be concurred in as amended.

Senator Van Valkenburg suggested that on page 3, line 10 we should insert loans, after grants, as part of the coordination amendment.

Katherine said the previously passed amendment would take care of that.

The motion passed unanimously.

DISPOSITION OF HB 600: Senator Dover explained the bill as it was presented at the hearing. He said that Katherine Orr had prepared amendments which were suggested at the hearing. A copy was passed out to the committee members.

Senator Van Valkenburg made a motion that the amendments be accepted.

The motion passed unanimously.

Senator Keating made a motion that the bill be concurred in as amended.

The motion passed unanimously.

DISPOSITION OF HB 697: Senator Van Valkenburg made a motion to move the amendments prepared on HB 697.

Katherine Orr said that the amendment should be written in the Statement of Intent.

Senator Brown thinks they are making a mistake with this bill and it should just be a simple addition to the Water Quality Law to require the permit to be stuck on the dredge. The bill requires that the dredge owner be aware of applicable state laws and regulations. If the Department wants to deny an applicant they could on that basis.

Senator Manley said what Representative McBride wants with this bill is to outlaw dredges.

The motion on the amendments passed unanimously.

Senator Manley made a motion that HB 697 be not concurred in as amended. The motion passed with a vote of 7 for and 5 opposed. See attached roll call vote sheet. This bill was reconsidered by the committee on March 23, 1981.

DISPOSITION OF SJR 31: Senator Tveit made a motion that SJR 31 do pass.

Senator Brown made a substitute motion to strike lines 12 through 14 on page 2. He is not comfortable with using the funds from the Alternative Energy Fund without first amending the statute.

Senator Keating said the Alternative Energy Fund is to be used only for renewable purposes. The study refers to development of agricultural products as well as coal. He thinks this is a good enough reason to continue with the grant.

Senator Brown's motion did not pass with a vote of 2 for, Senator Ryan and Senator Brown, and 10 opposed.

Senator Tveit made a motion that SJR 31 do pass. The motion passed unanimously.

ADJOURNMENT: The meeting adjourned at 2:30 P.M.


HAROLD DOVER, Chairman

ROLL CALL

NATURAL RESOURCES COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date 3/20/81

NAME	PRESENT	ABSENT	EXCUSED
Harold Dover, Chairman	✓		
Mark Etchart, Vice Chairman	✓		
Thomas Keating	✓		
Roger Elliott	✓		
Larry Tveit	✓ late		
Jesse O'Hara	✓		
John Manley	late		
William Hafferman	✓		
Steve Brown	✓ late		
Dave Manning	✓		
Patrick Ryan	✓		
Fred Van Valkenburg	✓ late		

Each day attach to minutes.

TESTIMONY BEFORE THE MONTANA HOUSE AND SENATE

PRESENTED BY

THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION

JOINT HOUSE/SENATE RESOLUTION 18

MARCH 20, 1981

Thank you for allowing me this opportunity to testify before the State Legislative Body on behalf of the Confederated Salish and Kootenai Tribes of the Flathead Reservation.

The Tribal Council has asked me to appear today for the purpose of expressing official objection to the Joint House/Senate action urging the Federal Energy Regulatory Commission in Washington, D. C. to approve the re-licensing application of the Montana Power Company for the future operation of Kerr Dam.

This action concerns the Tribes for obvious reasons--the location of Kerr Dam and part of the watershed are private, Tribally-owned properties; and the competing concerns making application to operate the Kerr facility involve protected rights to freely negotiate and present the matter before an unbiased forum. In fact, the action taken by the Legislature appears a violation of the U. S. Constitutional provisions guaranteeing freedom of contract rights. Such an attempt to impair and interfere with these contractual negotiations is an impermissible State action which cannot be taken lightly in view of Article I, §10, cl. 1 of the Constitution.

Apparently, the State is worried that if the Flathead/Kootenai Tribes take over the operation of Kerr Dam, a large tax base might be lost to Lake County. This presumption was arrived at without meeting or consulting with the Tribal Council to ascertain the Tribes' position and without investigating certain legal realities. There are no applicable laws nor orders requiring Montana Power or any other utility company to continue providing tax revenues from the facility--taxes have thus far been paid voluntarily even though the lawyers have maintained no obligation exists. There is no assurance that Montana Power Company will continue to provide

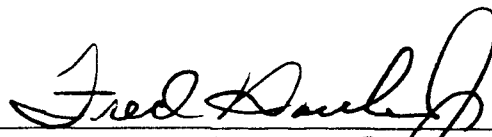
TESTIMONY
MARCH 20, 1981

this revenue, nor do you know that any other utility company would. On the other hand, there is a long history of the Flathead/Kootenai Tribes making considerable payments in lieu of taxes for the public good as well as sizeable contributions towards other community projects. We are also on record for extending such considerations as in lieu monies should the Tribes develop other hydroelectric sites. Without "meet and confer" sessions, therefore, the State's action appears premature and reckless.

There have been many discussions over the recent years about the need for Indian Tribes and State governments to develop better working relationships and cooperative agreements. Such an approach has seemed a viable goal to the Confederated Salish and Kootenai Tribes; but, examples such as the State has now given by entertaining House/Senate Resolution 18 should make it clear why Indian Tribes are reluctant to continue participation in these efforts. The State is well aware of the negotiations and proceedings before FERC concerning the relicensing of Kerr Dam and cannot be blind to the possible ramifications of State intervention.

Respectfully submitted,

CONFEDERATED SALISH & KOOTENAI TRIBES
OF THE FLATHEAD RESERVATION, MONTANA


Executive Secretary

K

State of Montana
Office of the Governor
Helena 59620

TED SCHWINDEN
GOVERNOR

February 10, 1981

MEMORANDUM

TO: Keith Colbo
FROM: Gerald Mueller *GM*
SUBJECT: Low Level Radioactive Wastes

Issue Summary *Issues*

The disposal and transportation of low-level radioactive wastes (LLW) is an issue of major and increasing concern because of the increasing quantity of such wastes and because of problems that have occurred in managing this waste.

There are presently three commercial disposal sites for non-federal LLW: Hanford, Washington; Beatty, Nevada; and Barnwell, South Carolina. The governors of these states have focused national attention on LLW by temporarily closing two of these sites (Hanford and Beatty) and restricting the disposal volumes of the third (Barnwell). In effect these governors have and are demanding a more equitable distribution of the costs of LLW management among the states.

LLW is material that has become contaminated with low levels of radiation in the course of research, radiopharmaceutical, nuclear reactor, industrial and other operations involving radioactive materials. As of today no standard or commonly accepted definition of low level radioactive waste exists. In general, LLW includes all radioactive wastes other than spent reactor fuel, fuel reprocessing wastes, uranium mine and mill-tailings, and wastes containing specific concentrations of transuranic elements (elements heavier than uranium).

Washington State Initiative 383

In the last election the voters of Washington passed (75% yes, 25% no) Initiative 383, the "Radioactive Waste Storage and Transmission Act of 1980". This initiative prohibits after July 1, 1981, the disposal in Washington of non-medial radioactive wastes generated outside the state. Exception from this prohibition is allowed only for states entering into a Congressionally approved interstate compact with Washington for regional storage.

Federal LLW Law

Last December the Congress passed and the President signed into law low level radioactive disposal legislation. This law makes the states individually responsible for providing disposal capacity either within or without their borders for instate generated LLW. In effect the states must either enter into interstate compacts for regional disposal or go it alone and establish their own instate disposal site. Congress reserved for itself the authority to review and approve each interstate compact and prohibited exclusionary compacts until 1986. This means that without specific Congressional approval no single state or group of states can exclude wastes generated from another state until 1986.

Necessary Short Term Regional Actions

Washington's I-383 apparently creates a July 1, 1981 deadline to ratify an interstate compact for those states wishing to continue to use the Hanford disposal site. Meeting this deadline is probably not possible because sufficient time is not available to obtain state and Congressional legislative approval. However, a legal advisor at the WIEB meeting was virtually certain that the I-383 exclusion would be struck down by the courts; hence the deadline is probably not enforceable.

Court action to void I-383 would leave Governor Spellman with the political problem of the overwhelming mandate of his populace to limit access to the Hanford site. Without some concrete evidence that progress was under way to assure that Washington will not remain the nation's "dumping grounds", he could be forced by public opinion to close the Hanford site completely. It is therefore very much in the interest of the states now using Hanford to cooperate with Governor Spellman in addressing his political situation. Public expressions by other Governors of their intent to negotiate a compact and evidence of progress of such negotiations may be helpful if not necessary.

Montana Actions

Montana faces the decision to either pursue a compact or open a site of our own. To make this decision we need to obtain specific information about the wastes we generate and present Montana law. We should also initiate discussions with key legislators and interest groups.

End
testimony
1

NAME: ROO SANTIAGO

DATE: 3/20/81

ADDRESS: _____

PHONE : _____

REPRESENTING WHOM? Arkiana Inter-Tribal Policy Board

APPEARING ON WHICH PROPOSAL: HJR-18

DO YOU: SUPPORT? _____

AMEND? _____

OPPOSE? X

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: E. W. (Bill) MORIGEAU DATE: 3-20-81

ADDRESS: E. Shore, Polson Mt. 59860

PHONE: 887-2579

REPRESENTING WHOM? Confederated Salish & Kootenai Tribes

APPEARING ON WHICH PROPOSAL: S-18

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

COMMENTS: I will make an oral statement

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Fred Houle Jr DATE: 3-20-81

ADDRESS: Box 278 Pablo

PHONE: 675-2700

REPRESENTING WHOM? Conf. Salish & Kootenai Tribes

APPEARING ON WHICH PROPOSAL: HR-18

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

COMMENTS: I and my group
are

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: James Ward DATE: 3-20-21

ADDRESS: Elkton, Maryland 29778

PHONE: _____

REPRESENTING WHOM? Harold Luck Menez

APPEARING ON WHICH PROPOSAL: HJR 40

DO YOU: SUPPORT? ✓ AMEND? OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: WARD SHANAHAN DATE: 3-20-81

ADDRESS: Box 1682 Helena

PHONE: 412-8560

REPRESENTING WHOM? M.E. Rogers / attorney

APPEARING ON WHICH PROPOSAL: HR 410

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENTS: Mr. Ward M.E. Rogers has a case
in the federal court against the Dept.
of the very poor record in HR 410
MR Rogers is a small miner. He sent the
B-100-100 of his claim in time to do the thing for
But he didn't do it. He didn't do it. He didn't do it.
10-20-1979. The cancelled his claim because he
didn't do it. He didn't do it.

Ward Shanahan

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: August M. [unclear] DATE: 3/20/81

ADDRESS: Box 858, [unclear] VT 59001

PHONE: 413-4915

REPRESENTING WHOM? W.D.D. Co.

APPEARING ON WHICH PROPOSAL: CD 31

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

COMMENTS: [Faint handwritten notes, mostly illegible]

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

HOUSE BILL NUMBER 652

AMENDED TITLE

A BILL FOR AN ACT ENTITLED: "AN ACT TO REMOVE THE PROHIBITION OF DISPOSAL OF CERTAIN RADIOACTIVE MATERIALS IN THE STATE OF MONTANA ENACTED BY INITIATIVE 84 AND PROVIDING INSTEAD FOR A STATE REGULATORY SYSTEM; PROVIDING FOR THE CONTROL AND CONDEMNATION OF LAND USED FOR DISPOSAL OF BYPRODUCT MATERIAL OR MILL TAILINGS FROM URANIUM AND THORIUM OR PROCESSING; ~~PROVIDING THAT STATE STANDARDS MAY BE NO MORE STRINGENT THAN FEDERAL STANDARDS;~~ AND TO REVISE THE LAWS CONCERNING RADIATION CONTROL; AMENDING SECTIONS 75-3-102, 75-3-103 AS AMENDED BY INITIATIVE 84, 75-3-104, 75-3-201, 75-3-202, 75-3-202 AS AMENDED BY INITIATIVE 84, 75-3-303 AS AMENDED BY INITIATIVE 84, 75-30-102, MCA, AND SECTION 1 OF INITIATIVE 84; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

AMENDMENT

HOUSE BILL NO. 652 IS AMENDED AS FOLLOWS:

SECTION 7.

PAGE 13, LINE 15: STRIKE THE WORD "AND"; INSERT IN ITS PLACE THE
WORD "OR".

SECTION 10.

PAGE 16, LINE 6: REINSTATE THE WORD "PROHIBIT" AND ADD IMMEDIATELY
THEREAFTER THE WORD "AND".

SECTION 11.

STRIKE SECTION 11 IN ITS ENTIRETY.

~~RENUMBERING.~~

~~SECTIONS 12 THROUGH 18 ARE RENUMBERED AS SECTIONS 11 THROUGH 17.~~

see next page

HOUSE BILL NO. 652 IS FURTHER AMENDED AS FOLLOWS:

SECTION 2.

PAGE 3, LINE 18: STRIKE THE PERIOD (.) AND ADD:

"AND THE SCREE OR ROCKY DEBRIS PRODUCED BY OTHER MINING."

INSERT NEW SECTION 11.

SECTION 11. SECTION 75-3-302, MCA, AS AMENDED BY INITIATIVE 84, IS AMENDED TO READ:

"75-3-302. DISPOSAL OF LARGE QUANTITIES OF RADIOACTIVE MATERIAL PROHIBITED -- EXCEPTIONS AND EXCLUSION.

(1) NO PERSON MAY DISPOSE OF ~~LARGE-QUANTITY-RADIOACTIVE-MATERIAL~~, BYPRODUCT MATERIAL, OR SPECIAL NUCLEAR MATERIAL WITHIN THE STATE OF MONTANA.

(2) BYPRODUCT MATERIAL ~~(EXCEPT-LARGE-QUANTITY-RADIOACTIVE-MATERIAL)~~ POSSESSED, USED, AND TRANSPORTED FOR EDUCATIONAL PURPOSES, SCIENTIFIC RESEARCH AND DEVELOPMENT, MEDICAL RESEARCH, DIAGNOSIS, AND TREATMENT, GEOPHYSICAL SURVEYING, AND SIMILAR USES LICENSED BY THE UNITED STATES NUCLEAR REGULATORY COMMISSION SHALL BE EXCEPTED FROM THIS PART, ~~PROVIDED-THAT-SUCH-MATERIAL-IS-BEING-OR-HAS-BEEN-LAWFULLY-DISPOSED-OF WITHIN-MONTANA-UPON-THE-EFFECTIVE-DATE-OF-THIS-ACT.~~

(3) NOTHING IN THIS PART PRECLUDES THE CONSTRUCTION OF A NUCLEAR FACILITY APPROVED UNDER THE REQUIREMENTS OF THE MAJOR FACILITY SITING ACT, OR THE MINING OF ANY RAW ORE, PROVIDED THAT SUCH ACTIVITY IS NOT INCONSISTENT WITH THIS PART.

HOUSE BILL NO. 652

SENATE NATURAL RESOURCES COMMITTEE

* * * * *

1. Statement of Intent, page 1, line 23.
Following: "for"
Strike: "licensing and"
2. Statement of Intent, page 1, line 24.
Following: "purposes"
Strike: "or"
Insert: "of"
3. Page 4, lines 4 and 5.
Following: "department"
Strike: "OR DEPARTMENT OF STATE LANDS"
4. Page 4, lines 11 and 12.
Following: "department"
Strike: "OR DEPARTMENT OF STATE LANDS"
5. Page 5, line 6.
Following: "department"
Strike: "OR DEPARTMENT OF STATE LANDS"
6. Page 9, line 25.
Following: "FOR"
Strike: "LICENSING AND"
7. Page 12, line 3.
Following: "ISSUANCE OF"
Insert: "uranium or thorium milling or concentration"
8. Page 16, line 15.
Following: "department-"
Insert: "-"
Strike: "OR DEPARTMENT OF STATE LANDS."

Third Reading Copy

1. Amend page 12, line 5:

Following: "APPLICATION"

Insert: "The department shall establish a fee structure for such milling or concentration licenses which includes an application fee and an annual license maintenance fee. The maintenance fee shall be set at a level which, taking account of the nature and size of the various types of licensed activities, will defray the department's costs of inspections and review and approval of license revisions."

2. Amend page 16, lines 12 - 24:

Following: "material" on line 12

Strike: the balance of lines 12 -24

Insert: ", high-level radioactive material, byproduct material as defined in Section 75-3-103(1)(a), or special nuclear material, within the state of Montana.

(2) Notwithstanding subsection (1) of this section, the disposal in Montana of byproduct material, as defined in Section 75-3-103(1)(b), is authorized if done pursuant to a license issued by the United States or by the department.

(3) For purposes of subsection (1) of this section, 'radioactive material' means any material, or combination of materials, which spontaneously emits ionizing radiation and for which a specific license is required by the United States or by the department.

(4) For purposes of subsection (1) of this section, 'disposal' means the single deposit of any container or vehicle content.

(5) For purposes of subsection (1), 'high-level radioactive material' means spent nuclear fuel or the highly radioactive waste resulting from the reprocessing of spent nuclear fuel."

STANDING COMMITTEE REPORT

March 20,

19 81

MR. **PRESIDENT**

We, your committee on **NATURAL RESOURCES**

having had under consideration **HOUSE JOINT RESOLUTION**

Bill No. **40**

BRAND (HAPPEMAN)

Respectfully report as follows: That **HOUSE JOINT RESOLUTION**

Bill No. **40**

BE CONCURRED IN

~~DO PASS~~

GA

STANDING COMMITTEE REPORT

March 20,

19 81

MR. **PRESIDENT**

We, your committee on **NATURAL RESOURCES**

having had under consideration **House**

Bill No. **398**

QUILICI (DOVER)

Respectfully report as follows: That **HOUSE**

Bill No. **398**

third reading copy, be amended as follows:

1. Page 4.

Following: line 1.

Insert: "Section 4. Coordination instruction. If Senate Bill 141 is passed and approved, section 4 of Senate Bill 141 pertaining to the awarding of loans under 90-4-106, shall be subject to the provisions of House Bill 398."

And, as so amended,

~~XXXXXX~~

DO PASS
BE CONCURRED IN

Amendment to House Bill 398

1. Page 4.

Following: line 1.

Insert: "Section 4. Coordination instruction. If Senate Bill 141 is passed and approved, section 4 of Senate Bill 141 shall be subject to the provisions of House Bill 398."

STANDING COMMITTEE REPORT

March 20,

19 81

MR. **PRESIDENT**

We, your committee on **NATURAL RESOURCES**

having had under consideration **HOUSE**

Bill No. **600**

CURTISS (TURNAGE)

Respectfully report as follows: That **HOUSE** Bill No. **600**

third reading copy, be amended as follows:

1. Page 2, line 3

Following: "2."

Insert: "(1)"

2. Page 2, line 11

Following: line 10

Strike: "(1)" on line 11

Insert: "(a)"

3. Page 2, line 13

Following: line 12

Strike: "(2)"

Insert: "(b)"

~~XXXXXX~~

Y/C.

(continued)

March 20,

1981

4. Page 2, line 16

Following: line 15

Strike: "(3)"

Insert: "(c)"

5. Page 2, line 17

Following: ";"

Strike: "AND"

6. Page 2, line 18

Following: line 17

Strike: "(4)"

Insert: "(d)"

7. Page 2, line 19

Following: "RESERVATIONS"

Insert: "; and

(e) 20% shall be designated for such other projects as the department considers appropriate.

(2) If qualified applications are not received by the department to meet the allocations set forth in subsection 1, the remaining allocation shall be designated for qualified projects in (a), (b), (c), (d) or (e) of subsection 1."

J.C.
And, as so amended,
BE CONCURRED IN

H. Dover
HAROLD DOVER,

Chairman.

HB 600

Proposed Amendments

Page 2, line 3

Following: "2."

Insert: "(1)"

Page 2, line 11

Strike: "(1)"

Insert: "(a)"

Page 2, line 13

Strike: "(2)"

Insert: "(b)"

Page 2, line 16

Strike: "(3)"

Insert: "(c)"

Page 2, line 17

Following: ";

Strike: "AND"

Page 2, line 18

Strike: "(4)"

Insert: "(d)"

Page 2, line 19

Following: "RESERVATIONS."

" , and

Insert: [•](e) 20% shall be designated for such other projects as the department considers appropriate.

- (2) If qualified applications are not received by the department to meet the allocations set forth in subsection 1, the remaining allocation shall be designated ~~for qualified projects~~ ^{or (e)} for qualified projects in (a), (b), (c), ~~and~~ (d) of subsection 1."

SENATE COMMITTEE Natural Resources

Date March 20, 1981 Bill No. HB 697 Time 2:15 P.M.

NAME	YES	NO
Harold Dover, Chairman	✓	
Mark Etchart, Vice Chairman	✓	
Thomas Keating		✓
Roger Elliott	✓	
Larry Tveit	✓	
Jesse O'Hara		✓
John Manley	✓	
William Hafferman	✓	
Steve Brown		✓
Dave Manning		✓
Patrick Ryan	✓	
Fred Van Valkenburg		✓

Agnes Hamilton
Secretary

Harold Dover
Chairman

Motion: HB 697 do not pass.

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

Amendment to the Statement of Intent of HB 697

1. Page 1, lines 11 and 12

Following: "operations" on line 11

Strike: "and ensure compliance with state law"

Insert: "to ensure that the applicant is aware of applicable
state and federal laws."

STANDING COMMITTEE REPORT

March 20,

19 81

MR. **PRESIDENT**

We, your committee on **SENATE NATURAL RESOURCES**

having had under consideration **SENATE JOINT RESOLUTION**

Bill No. **31**

Respectfully report as follows: That **SENATE JOINT RESOLUTION** Bill No. **31**

DO PASS

H. D. Dover
HAROLD DOVER,

G.A.
Chairman.